



Legal Migration Fitness Check

Evidence base for practical
implementation

Member State summary

Malta

Annex 2 MT

Written by ICF Consulting Services
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LEGAL NOTICE

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More information on the European Union is available on the Internet (<http://www.europa.eu>).

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Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Malta**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant¹ for the following Directives:

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research ers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme	No	No	No	No	Yes	No
Options implemented?						

Main differences between EU statuses and the respective national parallel schemes

The Key Employee Initiative Scheme (KEI) regulated by Identity Malta was created to allow for a fast-tracked service to highly-specialised TCNs who are employed in Malta. There is no legislation implementing the granting of the KEI and the only guidelines for the KEI application process is found on the Identity Malta website². The basis of the scheme can be found in Article 7 of the Immigration Act³ which gives the Minister responsible for immigration the discretion to issue residence permits.

This scheme is considered as an equivalent status to the Blue Card permit by the authorities, however procedurally it is similar to the Single Permit. The KEI application procedure is expedited and labour market test is not conducted. Although the applicant is highly qualified, they are not granted the same rights as a Blue Card holder. Furthermore, the KEI permit may only be renewed for up to three consecutive years. It is unclear whether any specific procedural guarantees apply to the KEI scheme in relation to the application phase as there is no legislation that can be

¹ . See ref document (EU summary) Under each phase, the following aspects are examined : :

Legal transposition of the EU legal migration acquis: including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these non-compliance issues affect the practical application of the Directive; **Practical application of the EU legal migration acquis:** overview of the main application issues/problems arising in the MS per each of the migration phases; **Differences between national statuses and the EU legal migration acquis:** substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

² The Key Employee Initiative: <https://identitymalta.com/wp-content/uploads/2016/09/Key-Employee-Initiative.pdf>

³ Immigration Act <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1>

examined. However, since the KEI was only launched in mid-2016 it is difficult to assess its implementation and long-term impact.

1 Pre-application phase

1.1 Legal transposition of the EU legal migration acquis

There were no compliance issues in relation to the legal transposition of the EU legal migration acquis.

1.2 Practical application of the EU legal migration acquis

In general, there is no hotline nor any help desks at Identity Malta through which information can be obtained by the TCN, future employers or education institutions. There is a general telephone number and a general email address which can be used. Information is generally difficult to get and desk clerks receiving applications may give information, however such information is many times conflicting or not complete. Applicants, lawyers and NGOs who give legal advice to applicants reported that many times information is conflicting and/or not complete. The applicant usually would have to go back and forth a number of times to the desk officers in order to supply further documentation. However, in relation to applications for a Single Permit there is a specific contact person at Jobsplus, the contact information is online and the contact person is generally available.

In relation to access to updated information, in general the main source of information for all statuses is the Identity Malta⁴ website. This information consists of the application form which contains a list of required supporting documents, however there are no supporting guidelines for applications for Family Reunification, Long Term Residence, Students or Blue Card permit⁵. The Integration website gives more detailed information in relation to Family Reunification, Long Term Residence, Students and Blue card permits and single permits⁶.

Information relating to Family Reunification permits on the Integration website refers to the requirement of resources equivalent "the average wage", as opposed to the minimum wage, in Malta. This is also reflected in the practical implementation of such requirement by Identity Malta when examining such applications, as required by the Maltese implementing regulations⁷. This constitutes a legislative and a practical breach of the directive. There is no application form for Researcher permits, nor any information available online, and any applications are dealt with on an ad hoc basis, this is a de facto infringement of the Researchers directive.

There are a number of guidelines for applications for a Single Permit on the Identity Malta website and also the Jobsplus website⁸.

Directive	FRD (Family Reunification Directive 2003/8	LTR (Long Term Residency Directive 2003/109 /EC)	SD (Students Directive 2004/114 /EC)	RD (Research ers Directive 2005/71/ EC)	BCD (Blue Card Directive 2009/50/ EC)	SPD (Single Permit Directive 2011/98/ EU)
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⁴ Identity Malta is the central authority that receives all residence applications.

⁵ Identity Malta information: <https://identitymalta.com/citizenships-expatriates/>

⁶ Integration webpage <http://integration.gov.mt/en/Pages/Home.aspx>

⁷ Family Reunification Regulations, 2007, SL 217.06
<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=19495&l=1>

⁸ Jobsplus, Third Country Nationals Guidelines <https://jobsplus.gov.mt/employers-mt-MT-en-GB/employing-persons/third-country-nationals>

6/EC)						
Languages	National language (s)					
The information is easy to find*	3	2	4	5	4	3

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Information can be found on the following aspects of the application procedure:

Application procedure	Conditions for admission	Entry requirements (e.g. visa etc.)	Cost of application	Applicable deadlines	Rights upon admission	Any differences between the Directives
Yes	Yes	Yes	No	No	No	No information found on RD on application procedure, on RD on conditions for admission, on RD on entry requirements and NA on LTR on entry requirements; Yes information found on SPD on cost of application, on SPD on application deadline on FRD and SD on rights upon admission.

Information upon request

There are no specific information desks available at Identity Malta or at the Ministry of Foreign Affairs locally and also in countries of origin. Applicants may request basic information to the desk clerks at Identity Malta and it was noted that many times desk clerks provide conflicting information. This information is given orally or written down in an informal manner.

1.3 Differences between national statuses and the EU legal migration acquis

The Key Employee Initiative (KEI) regulated by Identity Malta was created to allow for a fast-tracked service to highly-specialised TCNs who are employed in Malta. The only information online relating to his scheme is found on the Identity Malta website . The basis of the scheme can be found in Article 7 of the Immigration Act which gives the Minister responsible for immigration the discretion to issue residence permits. This scheme is considered as an equivalent status to the Blue Card permit by the authorities, however procedurally it is similar to the Single Permit. The procedure is

expedited in relation to the KEI and labour market test will not be conducted. Although the person is highly qualified, they do not get the same rights as a Blue Card holder and the KEI permit may only be renewed for three consecutive years.

2 Preparation phase

2.1 Legal transposition of the EU legal migration acquis

There have been some concerns in the transposition of Article 7(1)(c) of the Family Reunification Directive implemented by Regulation 12(d) of the Family Reunification Regulations. The Maltese provision requires the sponsor to prove stable and regular resources which should be equivalent to, at least, the average wage in Malta with an addition of another 20% income or resources for each family member. Identity Malta uses this criterion when assessing family reunification applications and not the required minimum wage criteria laid down by the Directive.

Regulation 5(2)(b) of the Status of Long-term Residents (Third Country Nationals) Regulations was found to be partially compliant in implementing Article 7(1) of the Long-term residence directive. This Regulation requires the applicant to provide evidence of appropriate accommodation in line with health and safety guidelines issued by the Government. Compliance issues were raised due to the fact that the failure to present evidence of appropriate accommodation would lead to a refusal of the application.

The Maltese Conditions of Admission of Third-country Nationals for the purposes of Studies Regulations fail to transpose Article 7(2) on the automatic qualification for sickness insurance by requiring all student applicants to present proof that they are covered by sickness insurance.

Nevertheless it must be taken into account that Malta has amended its legislation for a few months in order to change it in a conform way.

2.2 Practical application of the EU legal migration acquis

Generally, the application process is streamlined into a process in which one only one application needs to be submitted to one central agency. The application is lodged by submitting the required application form and the supporting documents to Identity Malta and any further checks are carried out internally by Identity Malta, in conjunction with relevant stakeholders. The application forms can be obtained online or collected physically from Identity Malta. The online forms cannot be submitted online but must be printed out, filled in and sent to the Director for Citizenship and Expatriate Affairs.

Separate application forms exist for each directive, except for the Researchers directive for which there is no official form. This may be considered a de facto infringement. Guidance notes only exist for Single Permit applicants, for all other applications there are no guidelines. The lack of guidance notes relating to filling in the form and the supporting documentation (e.g. what constitutes proof of sufficient resources, or adequate accommodation) results in different interpretations of what is required by the desk-clerks working within Identity Malta. In practice, desk clerks routinely refuse to accept applications due to lack of supporting documentation⁹ or sufficient proof and such a refusal would not constitute a basis for appeal, as the "decision" not to accept an application is not recorded nor given in writing. These practices could constitute a breach of the procedural guarantees and right of redress provisions within the directives.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
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⁹ Interviews with lawyers and staff of migrant supporting NGOs, see list of sources below.

The information that applicants need to complete is not extensive	1	1	1	1	1	1
The application form is user-friendly	1	1	1	1	1	1

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C				
Continuous legal residence					
Sufficient resources	Yes, T, C, R		Yes, T, C, R	Yes, T, C, R	
Accommodation/Address in territory	Yes, T, C, R	Yes, T, C, R	Yes, T, C, R		Yes, NA, NA, NA
Sickness insurance	Yes, T, C, R	Yes, T, C, R	Yes, T, C, R	Yes, T, NA, R	Yes, T, C, R
Work contract (for RD host agreement)				Yes, T, C, R	Yes, T, C, R
Minimum salary threshold					
Professional qualifications				Yes, T, C, R	
(Pre-) Integration measures	No	Yes, T, C, R			
Pre-departure conditions					
Proof no threat to public	No	No, T, C, R	No	NA, T, NA, NA	No
Medical examination certificate	No		No	No, T, NA	No
Valid travel document			Yes, T, C, R	Yes, T, C, R	Yes, T, C, R
Entry visa					Yes, T, C, R
Other	Yes, T, C, R	Yes, T, NA, NA	Yes, T, C, R	No	Yes, T, C, R

Note: T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.

2.3 Differences between national statuses and the EU legal migration acquis

Guidelines for applicants for the Key Employee Initiative (KEI) are published on the Identity Malta website, as is done for the single permit directive.

3 Application phase

3.1 Legal transposition of the EU legal migration acquis

The transposition of Article 11(3) of the Blue Card directive was found to be in partial compliance due to the fact that Maltese legislation provides that Identity Malta must notify the applicant in cases of rejection of the application or withdrawal of the permit of the possible redress procedures available and the time limit for taking action. However, this obligation only applies in cases of rejection or non-renewal but not in cases of non-renewal.

The Single Permit Directive obliges the Member State in any decision rejecting an application to issue, amend, renew or to withdraw a permit to inform the applicant of the court or authority where the applicant may lodge appeals and the time limit to do so. Although partial conformity has been noted due to the unclear transposition, in practice Identity Malta in their negative decisions informs the applicant of the authority where appeals should be lodged and specifies the time-line for lodging such appeal.

3.2 Practical application of the EU legal migration acquis

TCNs can lodge an application by post or in person to Identity Malta. There are no online options available, although the applicant may download the forms online. Identity Malta consults internally with other government authorities. They routinely consult with Jobsplus (Single permit); the relevant education institution (Student permit); Refugee Commissioner (Family reunification and Long-Term Residence); Immigration Police (consulted in respect of all residence permits for TCNs) and the Malta Qualifications Recognition Information Centre (MQRIC) (Student Permit, Blue Card and Researchers Scheme).

One of the main issues encountered during the application phase is that of incomplete application. Desk clerks working within Identity Malta routinely refuse to accept applications due to lack of supporting documentation or sufficient proof of a requirement at law. This refusal is given verbally and not recorded and the applicant is not allowed to lodge the application in the first place. This is a practical application problem in the context of Art. 5(4) of the SPD. The applicant may return with the required documents, however due to lack of specific guidelines some applicants have experienced returning multiple times with documents required by different desk officers. The applicant does not have any right to contest that refusal to lodge an application. Such practices could amount to a breach of the procedural guarantees and right of redress provisions within the directives.

In relation to the Single Permit directive and its implementing Maltese regulations, problems have been noted where Identity Malta fails to notify the applicant in writing of any additional information required in cases of incomplete applications and fails to allow for the applicant to rectify the situation. In those instances where Identity Malta requests further information by email, it fails to give a deadline by which the applicant or the employer must respond. In addition, in practice Identity Malta has also routinely refused to issue Single Work permits on the basis that the applicants' referees failed to answer emails sent by Identity Malta.

It must also be noted that all the redress procedures in the relevant regulations require the lodging of an appeal to the Immigration Appeals Board (IAB) which is a quasi-judicial tribunal composed of a lawyer, a person versed in immigration matters and any other person. Professionals have expressed concern on the quality of the

decisions of the Board. In addition, the decisions of the IAB are final and there is no further effective judicial remedy from such decisions on points of law or fact.

All decisions are given in writing via post and via email in English to the employee. Reasons are generally given, however the reasons given are very brief and at times do not give a fully reasoned decision.

The decision is an administrative decision and the concept of administrative silence applies in the following fashion. It should be noted that the applicant is not informed of any redress procedures that apply in these cases. In the case of Long-term Residence, Single Permit, Blue Card if the authority fails to give a decision within the prescribed time limit within the relevant regulations, the application automatically passes on the Immigration Appeals Board.

Applicants for Family Reunification would have recourse to art. 469A of the COCP, as although the implementing regulations lay down a time period within which a decision should be given it does not prescribe the automatic referral to the Immigration Appeals Board. This would mean recourse would have to be made by filing an application for judicial review within the civil courts.

The transposing legislation for the Students and Researcher Directives does not include provision concerning the time limit within which the authority must take a decision on the application. Hence, in such cases the remedy under art. 469A would not be applicable. In effect the applicant would have no remedy.

Directive	General	FRD	LTR	SD	RD	BCD	SPD
Application from third country	Yes						
Permit received in third country	Yes	No					
Number of authorities involved in the application	Yes, 5						
Number of authorities involved in the issuance of the residence permit	2 or 3						
Application modalities	Post In person						
Existence of a standard application form for all statuses	No						
Language of the application form	National language(s)						

Fees charged	NA	NA	NA	NA	NA	€ 280.50
Other fees charged?	Yes	Yes	Yes	Yes	Yes	No
Fees charged for permit issuance	€ 27.5	€ 27.5	€ 27.5	€ 27.5	€ 27.5	No
Fees charged for renewal / replacement of the permit	€ 27.5	€ 27.5	€ 27.5	€ 27.5	€ 27.5	€ 280.50

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law) (SQ3e(i))	NI	NI	NI	NI	NI	NI
Processing time (in practice) (SQ3e(i))	NI	NI	NI	NI	NI	NI

3.3 Differences between national statuses and the EU legal migration acquis

There are no specific regulations that govern the KEI scheme. The authorities apply the same procedural rules as are applicable to Single Permit applications, although they consider it to be equivalent to the Blue Card permit. It is unclear whether any specific procedural guarantees apply to the KEI scheme in relation to the application phase as there is no legislation that can be examined.

4 Entry and travel phase

4.1 Legal transposition of the EU legal migration acquis

There were no compliance issues in relation to the legal transposition of the EU legal migration acquis.

4.2 Practical application of the EU legal migration acquis

No specific issues that been identified for this particular phase of the migration process. In practice, the person who wishes to enter the territory would need to apply for an entry visa, if a visa is required for entry. Those migrants who do not require a visa are allowed to stay in Malta for 90 days, after which they must return to their country of origin if they have not been granted a permit to reside. There are no differences in procedures based on the Directives, barring the basis for the application of the entry visa.

As the third-country national is not yet in the possession of a residence permit, the Member State issues a visa and but has not put a specific timeframe for issuing the latter.

The Member State allows country nationals who hold a valid permit and valid travel document to enter and re-enter their national territory only on the basis of the permit.

The third-country national is allowed to travel to other Schengen Member States only on the basis of the permit and valid travel document.

The Member State imposes specific entry requirements to third-country nationals of a visa free country.

Upon arrival, third-country nationals are required to register with the local authority.

4.3 Differences between national statuses and the EU legal migration acquis

In relation to entry and travel persons who have been granted the Key Employee Initiative permit are treated in the same way as third country nationals who have been granted permits under the directives.

5 Post-application phase

5.1 Legal transposition of the EU legal migration acquis

There were no compliance issues in relation to the legal transposition of the EU legal migration acquis.

5.2 Practical application of the EU legal migration acquis

No specific issues that been identified for this particular phase of the migration process. The permit is not delivered to the applicant by the Maltese authorities. Once the application has been approved, the applicant receives a letter containing the decision and informing the applicant to collect the permit within a specified time-frame, usually 60 days, from the Identity Malta offices. A fee of €27.50 is charged when biometric data is submitted for blue card, family reunification, long-term residence and students and researcher approved permits.

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	12 months	60 months	12 months	Duration of research if less than one year or a year	12 months	12 months
Maximum validity of first permit	The permit is renewable	The permit is renewable	The permit is renewable	12	Duration of the work contract	The permit is renewable
Minimum validity of permit renewal						
Maximum validity of permit renewal	12 months	60 months	The permit will be renewed for a year or up until the remaining duration of the course, if less than	12 months	The permit is renewable for the duration of the work contract. If the duration is less than a	12 months

a year.	year, it shall be renewed for the remaining period with an additional validity of 3 months.
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The Member State does not have a set timeframe to deliver the permit following the notification of the decision.

The employer is the main applicant but is not involved in the delivery of the permit.

5.3 Differences between national statuses and the EU legal migration acquis

The Key Employee Initiative permit may only be renewed for a maximum period of three years.

6 Residency phase

6.1 Legal transposition of the EU legal migration acquis

Conformity issues have been identified with Malta's transposition of the equal treatment provisions under the long-term residents regulations, specifically Article 11(1)(d) of the LTR directive. Maltese law provides that long-term residents enjoy equal treatment with nationals as regards social security, social assistance and social protection with is limited to core benefits. Maltese law does not give a specific definition of the terms 'social security', 'social assistance' and 'social protection', these are elaborated within the Social Security Act¹⁰. However, the Social Security Act does not explicitly provide that social security and core benefits in relation to social assistance and social protection are to apply in an equal manner to long-term residents. The lack of clarity results in partial conformity issues.

6.2 Practical application of the EU legal migration acquis

Generally, for all permits renewals, applications may only be lodged before the previous permit expires. In practice, once a permit has expired then Identity Malta would not allow for a new application to be lodged as the person is deemed to be residing in Malta irregularly, this is particularly problematic for Single Permit holders who get fired from their place of work and who find second employment.

It has been reported¹¹ that holders of Family Reunification permits have been refused renewal on the basis of the fact that they do not satisfy the financial resources threshold following the birth of a child. The financial threshold being applied is that of the average wage in Malta. Subsequently, both permit holder and child are requested to leave the country without regard to the respect for family unity.

In order to be granted long-term residence a TCN must have (i) attended 100 hours of an integration course and achieved a 75% pass mark in the course examination in the last 12 months prior to the application; and (ii) obtained 65% pass mark in a Maltese language course at secondary education level. Both conditions are extremely hard to satisfy. Integration courses are not offered regularly and attending 100 hours has proved difficult for workers. Secondly, the language criteria is considered to be excessively onerous seeing that a verbal and written test in Maltese at secondary

¹⁰ Part IV, Second Schedule, Social Security Act
<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8794>

¹¹ Interviews with lawyers and staff of migrant supporting NGOs, see list of sources below.

education level is hard to achieve for migrants, especially in a country where English is also an official language.

Single permit holders also have difficulty in changing permit when they wish to change employment. Since the permit is issued in relation to a particular employer, the permit holder must request a new permit when changing employment. In practice, Identity Malta asks applicants to lodge the new application some weeks before they stop working with their previous employer, however most applicants are not aware of this procedure as it is not public. Although there are provisions in place against labour exploitation, serious concerns have been raised in relation to the fact that Single Permits are linked to a specific employer compounded with a lack of clear guidelines on how to change employer.

It was also reported that if an appeal in front of the IAB is pending then the appellant may not apply for a new permit or a change of status.

a. Use of the permit:

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a declaratory value. It gives third-country nationals to right to move freely on the Member State's territory.

The Member State allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

The permit is required as a legal document for the following other administrative procedure:

Access to education	Access to healthcare	Registration with PES	Fixed telephone subscription	Utility subscription	Open a bank account	Social security registration
X	X	X	X	X	X	X

b. Renewals of the permit:

National or EU law imposes a direct or indirect requirement to renew a valid residence document.

The renewal process follows a single procedure, involving one authority. The same authority are involved as in the first application procedure.

c. Change of status and naturalisation

Status changes are possible for most statuses, with the exception of a person holding a Research Permit to Blue Card, any TCN legally residing in Malta to Family Reunification and any Student to change to a Researcher permit. The procedure for requesting a status change is the same as the first application procedure.

In order to obtain citizenship, the third-country nationals needs to comply with the following conditions:

- Resided in Malta throughout the 12 months immediately preceding the date of application and
- Resided in Malta for periods amounting in the aggregate to a minimum of 4 years, during the 6 years preceding the above period of 12 months.
- Be of good character

- Have an adequate knowledge of the Maltese or the English language.

Naturalisation of persons that have invested 350.000 in residential immovable property and 150.000 in investment and provided a contribution of 650.000 to the State budget.

d. Employment rights on the basis of the permit

In general, a work-related permit is linked to a certain employer. When changing employer, the third-country national needs to request a change to the permit.

e. Equal treatment

In implementing the Long-Term Residence Directive Malta limits the equal treatment in respect of social assistance and social protection to "core benefits". Maltese law does not give a specific definition of the terms 'social security', 'social assistance' and 'social protection'.

Part VI of the Second Schedule of the Social Security deals with Social Assistance. The Act does not explicitly provide that the social security and core benefits as regards social assistance and social protection are to apply in an equal manner to long-term residents

With regard to identifying labour exploitation, the Member State has a mechanism in place to monitor the exploitation of third-country nationals.

f. Integration:

Specific integration procedures and conditions apply to third-country nationals that apply for a long-term residence permit. If the TCN does not fulfil the required conditions their application for long-term residence will be refused. ..

6.3 Differences between national statuses and the EU legal migration acquis

The Key Employee Initiative permit may only be renewed for a maximum period of three years. However, since the initiative was only launched in mid-2016 it is difficult to assess its implementation during the residency phase.

7 Intra-EU mobility phase

7.1 Legal transposition of the EU legal migration acquis

Regulation 14(2)(b) of the Maltese Long Term Residence (LTR) Regulations provides that in order for TCN's to reside in Malta as a second Member State they should provide evidence of stable and regular resources which should be equivalent to the average gross wage in Malta plus an addition of 20% of the average wage for each family member. The use of the national average wage as opposed to national minimum wage as an amount of reference raises conformity issues. The requirement that the TCN must provide evidence of appropriate accommodation as a condition for admissibility also raises issues of conformity.

Furthermore, Regulation 14(3) of the LTR Regulations provides that TCNs wishing to reside in Malta must also provide evidence of compliance with certain integration conditions if the TCN has not been submitted to integration measures in the first Member State. These conditions relation to attendance to an integration course and the passing of its examination and also passing a Maltese language test. The evident difficulty in satisfying these integration conditions for new arrivals result in non-conformity with the Directive. In addition, the proviso to Regulation 14(3) that the TCN must provide evidence of the attendance of language courses in Malta hampers intra-mobility rights and are not compliant with the Directive.

Practical application of the EU legal migration acquis

No specific issues that been identified for this particular phase of the migration process. Generally, there are no differences in the procedures and documents required if a TCN wants to move from one Member State to Malta. Facilitated procedures exist for Blue Card holders and TCNs that hold long-term residence permits from another Member State. Dependent family members are allowed to move from a first Member State to Malta and retain the same rights, except for TCNs holding Student permits.

For short-term mobility, the Member State:

- Does not require the third-country national to notify
- Does not require the third-country national to ask for authorisation.

7.2 Differences between national statuses and the EU legal migration acquis

No particular differences have been identified between the KEI and the legal migration acquis.

8 End of legal stay / leaving the EU phase

8.1 Legal transposition of the EU legal migration acquis

Under the Maltese Long Term Residence Regulations, a TCN will not lose his status in specific and exceptional circumstances as may be determined by Identity Malta for absences of a period of 12 months or in specific circumstances relating to six year absences. Issues with compliance with Article 9(2) of the Directive arise due to the discretionary power of Identity Malta as the legislation does not elaborate on what are considered to be specific and exceptional circumstances.

Compliance issues were also flagged in the implementation of Article 9(7) of the Directive by Regulation 9(4) of the Maltese Regulations. The Maltese Regulations provide that where the withdrawal or loss of LTR status does not result in the removal of the TCN, and the TCN does not constitute a threat to public policy or public security, he shall be issued with a residence permit provided that he meets the certain conditions. The Regulations however do not specify what type of permit is issued to such TCN and such omission raises conformity issues.

8.2 Practical application of the EU legal migration acquis

There is a lack of public information on the transfer of social security benefits when a TCN leaves for a third-country. The Director International Relations, Department of Social Security confirmed that transfer was possible once the TCN applies for his pension on reaching statutory retirement age.

No information was available both in law and in practice on the loss of residence permits or rights due to absence from the territory.

As mentioned above, once a TCN loses his residency right in practice it is extremely difficult to regularise themselves. In exceptional circumstances, such as the impossibility to return or vulnerability issues, the Principle Immigration Officer within the Police Immigration section may consider a request for regularisation. This regularisation is given temporarily and in order for the TCN to be able to apply with Identity Malta for a regular residence permit under one of the legal migration regulations, although this does not guarantee a positive outcome of their residency application.

There are no specific procedures in place for third-country nationals who choose to leave the Member State.

There is no information whether the Member State **allows** third-country nationals to export certain social security benefits.

A third-country national residing in the Member State is allowed to be absent from the territory for a maximum of 365 days for LTR before s/he loses the residence permit and/or right to stay. The absence of third-country nationals is not monitored by the Member State.

The Member State does not have measures or a scheme in place to allow circular migration.

The consequences of deliberate overstay of the duration of the residence permit are that the Immigration Police to return to their country of origin voluntarily, failing that they would be deported and possibly issued with a Schengen ban.

8.3 Differences between national statuses and the EU legal migration acquis

The Key Employee Initiative permit may only be renewed for a maximum period of three years. However, since the initiative was only launched in mid-2016 it is difficult to assess its implementation during the end of stay phase.

9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State

One of the main findings on the practical implementation of EU legal migration legislation is the lack of consistent and clear information across the board for all phases of migration and for all directives. The most comprehensive, though not complete, information exists for applications for a Single Permit whereas no form even exists for researcher permits. There was no public information of the applicable fees, on changes of status, on permit holder rights, on the appeals process, on intra-EU mobility rights and on any end of stay rights. This lack of information creates a scenario where TCN's are unaware of the procedures and their rights as applications or as permit holders.

In addition, there are no public guidelines or policies on how the legislation is implemented in practice by Identity Malta, or other authorities that may be involved in the process. In implementing the directives, the Maltese legislator chose to adopt and almost cut and paste approach without further defining concepts and processes. This leaves excessive room for discretion on the part of the authorities, which in turn creates uncertainty for the TCN.

The lack of information and absence of proper guidelines were found to be most problematic in the pre-application phase, the preparation phase, the application phase, residency phase and end of stay phase. During the preparation and the application phases, it was noted that Identity Malta routinely refuse to accept applications due to lack of supporting documentation and such a refusal would not constitute a basis for appeal, as the "decision" not to accept an application is not recorded nor given in writing. These practices could constitute a breach of the procedural guarantees and right of redress. Linked to this issue is the inappropriateness of the redress procedures in front of the Immigration Appeals Board, a quasi-judicial tribunal, which decision are final meaning no further appeal is possible.

Permit holders in practice find it extremely difficult to apply for a change of status or change of employer if they have been dismissed, in the case of Single Permit holders. This is due to the policy that persons whose permits have expired are deemed to be irregular migrants and are not allowed to apply for a second permit due to their irregularity. It was also reported that if an appeal in front of the IAB is pending then the appellant may not apply for a new permit and must inform Identity Malta of their intention to apply for a second permit in order to receive informal approval before withdrawing their appeal. It should be noted that the appeals procedure can take several months, at times even a year, before a final decision is given.

The Family Reunification regulations presented issues of compliance both in law and in practice in the implementation of the financial resources requirement with the requirement of resources equivalent “the average wage”, as opposed to the minimum wage. This presented problem at pre-application, preparation and residency (in relation to renewals) phases. In practice, a particularly problematic issue related to renewals of family reunification when a child was born and the sponsor does not satisfy the financial requirements any longer. Nevertheless it must be emphasised that Malta has changed its legislation for a few months to improve the legal frame.

A number of legislative compliance issues were raised by the Long-Term Residence regulations in relation to the requirement of evidence of appropriate accommodation, the right to social assistance benefits, intra-EU mobility rights and loss of status. In practice, the impossibility of satisfying the integration measures test, particularly the Maltese language test, created a real barrier for TCNs wishing access this right. Single permit applicants are faced with refusals based on missing information, such as referee’s failure to answer the authority’s email, without being given time to rectify the situation¹². In addition, the difficulty faced by single permit holders to change employment due to the fact that the permit is linked to the particular employer has resulted in cases of labour exploitation.

¹² Interviews with lawyers and staff of migrant supporting NGOs, see list of sources below

Annex 1 References

Sources:

Director International Relations, Department of Social Security, 24th June 2017

Senior Manager, Expatriates Unit, Identity Malta, 23rd June 2017, 26th June 2017 and follow-up 3rd July 2017

Maltese Serbian Community, 21st June 2017

Director, Jesuit Refugee Service Malta, 12th June 2017

Superintendent Immigration, Malta Police Force, 26th June 2017

Director, aditus foundation, 14th June 2017

Partner, Mifsud & Mifsud Advocates, 15th June 2017

National Commission for Further and Higher Education, 26th June, 2017

Reference sites:

Central Visa Unit, Identity Malta: <https://identitymalta.com/visas/>

Citizenship & Expatriates, Identity Malta: <https://identitymalta.com/citizenships-expatriates/>

Department of Social Security: <https://socialsecurity.gov.mt>

Department of Employment and Industrial Relations: <https://dier.gov.mt>

Immigration Section, Malta Police Force: <https://pulizija.gov.mt/en/police-force/police-sections/Pages/The-Immigration-Section.aspx>

Integration web portal: <http://integration.gov.mt/en/Pages/Home.aspx>

Ministry for Foreign Affairs and Trade Promotion:
<http://foreignaffairs.gov.mt/en/Pages/Travelling-To-Malta.aspx>

National Commission for Further and Higher Education:
<https://ncfhe.gov.mt/en/Pages/default.aspx>

National Statistics Office Malta: <https://nso.gov.mt/en/Pages/NSO-Home.aspx>

Third Country Nationals, Jobsplus: <https://jobsplus.gov.mt/employers-mt-MT-en-GB/employing-persons/third-country-nationals>

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