

Gender Audit

Results and Recommendations

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Common Traits

Gender Neutral Language

All laws and regulations analysed contain male gender references

Although the Interpretation Act under article 4(b) provides that “words importing the masculine gender shall include females”, it has been proposed that in every law and regulation more gender neutral language be used.

For example, it is proposed that when possible (both grammatically and contextually), gender neutral terms be used: “person” and “spouse” be used; ‘man’ is replaced by the word ‘person’ and ‘wife’ by the word ‘spouse’; all references to ‘chairman’ should also be replaced by ‘chairperson’.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Common Traits ...

Composition of Boards

The absence of gender balance in the establishment and composition of the committees and boards

It has been proposed that amendments be made to the relevant provisions of the laws and regulations establishing a requirement that such committees and boards be composed of both males and females by providing a minimum percentage representation of both sexes.

In line with the trends prevailing in other European states, it is suggested that each gender must be represented by a minimum of forty per cent (40%) of the total number of members constituting such committees and boards.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Common Traits ...

Discrimination/Gender Mainstreaming

Although Maltese law does not contain provisions which are blatantly discriminatory against either gender, there are several provisions which can give rise to indirect discrimination or which are not mainstreamed from a gender perspective.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Education Act (Cap. 327)

Teachers (Code of Behaviour) Regulations - LN 81 of 1988

- Parental Involvement

Teachers should be obliged to involve fathers, as well as mothers, in the education of their children. In the case of separated parents, when the teacher has been informed of such, the teacher shall inform both parents separately as to the welfare or progress of a pupil.

- Gender Equality

Teachers have the responsibility to ensure that full gender equality is promoted at all times. Teachers are to ensure that through the methods of teaching, female participation is encouraged and gender stereotyping and segregation is discouraged.



Education Act ...

Family circumstances

To achieve full gender equality and gender mainstreaming in education, research has shown that there is the need to facilitate access to education for women and men who are looking after young children and for those who might have interrupted their studies to have children.

Examples:

Bachelor of Science (Honours) in Nursing/Midwifery Studies - B.SC. (HONS) - Degree Course Regulations: 'A candidate may be allowed to repeat the final year before re-sitting the final comprehensive examination in its entirety in **special circumstances** and with the permission of Senate.'

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Education Act ...

Examples:

Master of Philosophy - M.Phil. - Degree Regulations: A candidate shall present his thesis within three months of completion of his research studies prescribed in regulations 4 or 5. In **exceptional circumstances** a candidate may by permission of Senate present his thesis at a later date as may be determined by Senate.'

Master of Arts in Human Resource Development - M.A. - Degree Course Regulations: In **exceptional circumstances** a candidate may be allowed by the Faculty Board to complete the course programme within a maximum period of three years after registration.'

Family Circumstances: In the case of pregnancy or childbirth, care of an elderly ascendant or minor dependent or sick partner or spouse permission shall always be granted. This should be made applicable to all courses at University.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Education Act ...

Diploma in Guidance and Counselling

Many reports on gender equality and gender mainstreaming in education stress on the importance that guidance teachers and counsellors have on equality.

Equality should be given more importance - these students will eventually have an impact on the future generations.

Units on Equality should be introduced.

Guidance teachers and counsellors should be adequately trained to deviate from their traditional attitudes about 'appropriate' occupations for male and female students.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Education Act ...

School Council Regulations

Information Campaigns/Subject Choices

- The NCPE should be invited to give regular training and information campaigns to students and parents: 'The Council shall, at least once a year, invite the National Commission for the Promotion of Equality to give an educational talk to students and to parents on the issue of equality.'
- The School Council is responsible for ensuring that both girls and boys are exposed to a diverse range of subjects and classes such as mechanical and design and information technology classes as well as cookery/ domestic science classes. If commenced at a young age and continued throughout student life, boys and girls will start to 'ignore' the stereotype attached to science subjects as 'boys' subjects and soft subjects as 'girls' subjects.



Education Act ...

Sexual Harassment

The Director of Studies should have the responsibility of ensuring equal treatment in the running of the school; that the school is sexual harassment free and the responsibility to implement policies to this effect.

The proposed amendment would read as follows: 'It is the responsibility of the Director of Studies to ensure that sex-based harassment is not carried out by students or staff of the school and that the school shall have a sexual harassment policy in place.'



Education Act ...

Ongoing training on equality for B.Ed. students

- A module on 'Gender and Education' is to be added in this course and lectures on the same subject, the philosophy of gender, the sociology of gender, gender and culture, gender and development are to be compulsory credits.
- It shall be the responsibility of the board of studies of the Faculty to encourage and foster the creation of new teaching aids and methodologies that reflect academic and teaching experience of gender education issues.



Education Act ...

Stipends

A change in the amount of the maintenance grant given to students depending on the selection of career path.

Figures in 2005:

- graduates in education: 78.7% were females and 21.3% were males
- graduates in architecture: 35.5% were females and 64.5% were males
- graduates in engineering: 20.0% were females and 80.0% were males

...

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Education Act ...

Recommendations:

- positive measures in favour of the male gender in the teaching profession and establish a gender balance in the teaching profession. A target of 40% for both male and female admission to these courses should be established;
- although there is a predominance of female teachers, there is still a lack of female science teachers; therefore girls should be encouraged to take a science specialization in teaching which will help in creating positive role models for future students;
- women be encouraged to enter the traditional male professions. It is being suggested that positive measures be introduced for those courses which are traditionally followed by a majority of one gender.



Education Act ...

Role of NCPE - Recommendations

- The Education Personnel should draft a National Action Plan on Equality in Education and if need be assistance from NCPE is sought;
- The Education Division is responsible for the contents of all curricula and textbooks;
- NCPE shall randomly monitor books to ensure that all curricula and textbooks are free from gender stereotypes or sexism, and that they promote gender equality and are balanced in the representation and contribution of both sexes to subject areas. This is applicable to government schools as well as Church and independent schools;
- NCPE shall be responsible for providing training to teachers. As part of their in-service training, all teachers are to attend training on equality and gender mainstreaming once every three years;



Education Act ...

Role of NCPE - Recommendations ...

- It shall be the responsibility of the NCPE to liaise with the Department of Education to promote the appointment of an Equality Officer in the Department and in every school. The role of the equality officer shall be to monitor the practices of the school on equality and mainstreaming and act as mediator and reference person in the case of any complaints;
- NCPE shall promote the creation of an Equality Charter in Education;
- The Equality Officer shall draft guidelines for all teachers on how to integrate gender equality and mainstreaming in their classroom and teaching practices; support of NCPE may be sought.



Social Security Act (Cap. 318)

Cohabitation

- Article 1 of CEDAW states that 'For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field';
- The SSA only makes reference to 'wife' or 'husband' without any mention of 'partner';



Social Security Act ...

Cohabitation

- Maltese law recognizes co-habitation only in limited cases. One such case is under the SSA. When computing income for the purposes of benefits, the income of a person living with another person as a spouse will be taken into consideration;
- In the light of CEDAW it is recommended that a clause be added under Article 2 to state that: 'spouse shall include such person who is living with the claimant as if such person were the lawful wedded spouse of such person.'



Social Security Act ...

Positive Action for Inactive Women

The proviso to Article 7 (2) states that:

- 'So however that, where an employer binds himself with the Employment and Training Corporation, established under the Employment and Training Services Act, to employ a person who is over the age of forty years and who has been registering for more than one year under Part One of the Register kept in accordance with the provisions of the Act, such employer shall be entitled to retrieve from the said corporation a sum equivalent to 25% of the rate of contribution paid by the employer, as his share in respect of such employee, in accordance with Part I of the Tenth Schedule to this Act.'

...

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Recommendation:

It is suggested that this positive measure be extended to employers employing women who have been out of the labour market for some time due to family responsibilities. This measure will help to create and reinforce demand side incentives.

This measure together with measures in the income tax system, such as the provisions found in LN 110 of 2005 Tax Credit (Women Returning to Employment) Rules, will serve to incentivise women to return to employment after having been absent from the labour market to care for their family.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Crediting of contributions - Article 16 (2)

Taking time off to take care of a child:

- this draws the line at credits for persons born on or after the 1st of January 1962;
- persons born before 1962 will be affected by the pension reform due to the fact that for persons born between 1952 and 1961 the number of years of contributions have increased by 5 years from 30 years to 35 years. However, despite this increase, these women cannot claim for child rearing credits like the other women born in 1962 and later.

Recommendation:

- it is being proposed that women who do not fall within the time bracket are given child rearing credits together with a one-time opportunity to pay for those years which one would have missed, as an effect of the increase in contributions brought about by the pension reform.



Social Security Act ...

Crediting of contributions - Article 16 (2) ...

The period of contribution:

'Provided that the sum total of such credited contributions which may be given in regard of each child to a parent or to both parents together shall not exceed 104 contributions in any period of two years.'

Recommendation:

'The father or the mother, who have attained the age of eighteen years and has the legal care and custody of a child who has not attained the age of six years, or the age of ten years in the case of a child who has been certified by a medical consultant as suffering, during the period of which the credit is being requested, from a serious disability: Provided that the sum total of such credited contributions which may be given in regard of each child to a parent shall not exceed 156 contributions in any period of three years.'

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Crediting of contributions - Article 16 (2) ...

Crediting to parents on parental leave:

Recommendation:

Crediting should also be available for persons who take care of other persons, especially members of their family. Thus it is suggested that this clause be inserted: 'any person who stops working to take care, all by himself or herself, on a full-time basis and regularly, or her parent or brother, sister, grandparent, uncle, aunt, father or mother-in-law or brother or sister-in-law and who is suffering from a severe physical or mental infirmity, as certified by a medical practitioner specializing in the field of the infirmity denoted, or who is aged sixty years or over and is physically or mentally unable to take care of himself and of his day to day needs.'



Social Security Act ...

Sickness Benefit

- Article 18 (1) of the European Code of Social Security (Revised) states that 'In the case of the death of a person who was in receipt of, or entitled to receive, sickness cash benefit, a grant for funeral costs shall, under the prescribed conditions, be paid to his survivors, dependents or other persons as specified by national legislation.'
- It is suggested that this clause be inserted after Article 18 of the SSA which deals with Sickness Benefit.



Social Security Act ...

Lone Parents - Article 30(7)

Facts and Figures:

- According to a recent study carried out by Angela Abela and Rev. Tabone it was found that 'Single persons on a minimum wage do not fall under the poverty line but the minute someone else is also dependent on that income, they do.';
- Lone-parent households are vulnerable to poverty for several reasons. There is the financial disadvantage of raising a family single handedly plus the added pressure of work-family reconciliation;
- Lone parents, which in the majority are women are at an added disadvantage since women generally command lower wages in the labour market which makes it difficult for them to be in a breadwinner position]. According to the National Statistics Office, the highest at risk of poverty category in 2005 emerged as single parent households with one or more dependent children. The poverty rate among single parent households stood at 47.9%;



Social Security Act ...

Lone Parents - Article 30(7)

Facts and Figures:

- Often maintenance orders are not complied with. A lengthy court procedure is rather daunting and might put off mothers resorting to court remedies when they are not being paid maintenance.
- According to research carried out by the ETC, some of the factors which were identified as hindering mothers' decision to work is having no one to look after their children, the lack of childcare centres and lack of trust in child carers;
- Another problem which is encountered by lone mothers are the working conditions which they tend to find themselves in. Usually the jobs they find tend to be low-earning and part-time;
- Another problem is that if the lone parent finds employment which would involve an income which is higher than the national minimum wage, the assistance granted is revoked;
- Conclusion: in many cases, the system is not making work pay and is acting as a disincentive for lone parents to seek work, or else to choose to work in the black economy.



Social Security Act ...

Recommendations:

- providing higher social benefits to lone mothers, and instead of being granted cash benefits they be given as subsidies for child care services;
- benefit entitlements for lone parents should continue once they are in employment, until they reach a level of employment income which would ensure protection from poverty for themselves and for their children. Once they reach this level of income, the benefits should be staggered off and not stopped immediately;
- implement recommendation of the ETC Study for lone mothers is having a more flexible work organization and respectful environment;
- adopt measures found under Lithuanian Labour Code by increasing the number of annual leave for lone parents. Thus an amendment should be introduced in Legal Notice 247 of 2003 the [Organisation of Working Time Regulations](#) increasing the annual leave for lone parents up to 30 days. This would be available until the child is 14 years of age and in the case of a child with disability until the child is 16;

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Recommendations:

- better enforcement of maintenance orders by empowering the Social Security Department to take steps against the spouse who is not supporting the family. Thus when a spouse applies for Social Assistance for lone parents, the applicant has to present a court decree or separation contract to ensure that there was a maintenance order issued. In the case that no award was issued, the Department will commence proceedings for the award of this maintenance order. The Department will subsequently monitor the payment of maintenance and in the eventuality that it is not, it will be empowered to initiate proceedings against the defaulting spouse;



Social Security Act ...

Recommendations:

- incentives should be made available to employers who employ lone parents. Activation is important for lone parents since the social allowance given to them is only available until the child is 16 years of age. A scheme similar to that existing for employers employing persons over the age of 40 years can be extended to those employers who employ lone parents;
- another incentive which could be offered to employers is an In-work Training Grant whereby employers who recruit eligible lone parents may be able to claim a grant towards the costs of accredited training for these workers. This scheme would have the dual function of training lone parents who tend to have a low level of education and incentivising employers to employ this group of workers.



Social Security Act ...

Social Assistance to Carers

The law can be deemed discriminatory against a married employed person who wishes to take care of his/her relatives:

- the use of the pronoun 'she' creates the assumption that these carers are women. In the remainder of the SSA the pronouns used are mostly in the masculine and it is only when there is reference to carers and to widows that the pronoun used is in the feminine;
- it is only available to carers who give up employment; and
- the assistance granted is very low.

Recommendations:

The social assistance to carers be increased so that the total income (social assistance + carers' pension) of the carer would be more in line with the prior earnings of the person.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Widow's pension

A widow's or survivor's pension is only available to persons who were married. This in itself is creating discrimination between married and unmarried persons.

Recommendations:

- the definition of 'widow' be extended to a person who was co-habiting with the deceased;
- the provisions on the Survivor's Pension be amended so that both a legally separated spouse and a registered cohabiting partner are eligible for the pension and that the amount is split between the eligible survivors calculated on the basis of the period of time that the survivors lived with the deceased.



Social Security Act ...

Non-eligibility for widow's pension - dependant children

Article 32 (2) states that 'Notwithstanding the provisions of sub article (1), a widow under the age of 60 years who is taking care of her son or daughter in respect of whom an allowance under article 76 is being paid and such son or daughter has not yet reached his or her 18th birthday shall still be entitled to a pension payable under this Part whilst she is gainfully occupied, whatever the earnings derived therefrom.'

Recommendation:

- The age of the child should not be taken into consideration in respect of dependant children who are still furthering their education on a full-time basis.



Social Security Act ...

Cessation of widow's pension upon re-marriage

This concept goes against the principle of which property forms part of the community of acquests under Article 1320 of the Civil Code. This provides that which is acquired during the marriage is the property of both spouses.

Therefore in the case of the husband who pays National Insurance contributions, half of those contributions, according to the system of community of acquests belong to the wife, even though she is not working and thus contributing directly to these contributions.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt

LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Cessation of widow's pension upon re-marriage ...

Recommendation:

Article 40 should be amended to read as follows:

'A widow who is in receipt of any pension under this Part shall, immediately upon remarriage, cease to be entitled to the full amount of such pension; so however that, she shall remain entitled to half the amount that prior to her remarriage she was entitled to.'

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Children's allowance

- The amount of children's allowance received is means tested;
- In Austria, a universal cash benefit is available in the form of family allowances. These allowances are provided to families and are based on the presence, number and age of the children.
- This would also be in line with Part VII of the European Code of Social Security (Revised). Article 47 of the Code states that: 'The benefits shall comprise:
 - either periodical payments for families; or
 - a combination of periodical payments, tax relief, benefits in kinds or social services for families.



Social Security Act ...

Children's allowance

Recommendation:

Means testing is removed. The abolition of means testing would also allow a better combination of seeking employment and receiving family allowances.

Article 76 should be amended to read as follows:

'Subject to the provisions of this Act, it shall be the right of every child in any household to have an allowance paid out in his respect to the parent or parents who has the care and custody of such child. Where the claimant is not the parent of the child, this allowance shall still be paid if the Director is satisfied that it in the best interests of the child to accept such claimant as being the effective custodian of such child, and for such purpose the Director may request from the Director General (Social and Family Affairs), who is to submit the same within a month, a situation report as to whether such child is best considered to form part of the relative household of such claimant.'

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Social Security Act ...

Beneficiary of the Children's Allowance

The law is making an assumption that it is the wife who manages the household expenses.

Recommendation:

Article 82(1) should be amended to read as follows:

'An allowance due under the provisions of articles 76, 76A and 79 shall be paid to the party who the parents decide that the payment is to be made to. The applicant shall state in his application whether the payment is to be made to him or to his spouse or partner. Such spouse or partner are to give their consent to this decision and in the case that there is no consensus it is the Director who takes such decision, taking into consideration the best interests of the child or the person in respect of whom the allowance is payable.'



Social Security Act ...

Subsidies for child day care services

The subsidy of EUR 942 (Lm400) is not deemed sufficient to incentivise women to return to the labour market upon having children.

Recommendations:

- The subsidy be increased with a view to covering amounts actually paid for such services;
- The subsidy be increased in the case of lone parents who cannot rely on the added income from their spouse or partner.



Criminal Code (Cap. 9)

Gender Based Violence

The UN defines Violence against Women as:

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.”

Violence against women can be said to encompass:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; and
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

Gender Based Violence

Article 2 of UN Declaration provides that violence on the basis of gender differences commonly used are:

- Physical, Sexual, Verbal, Mental;
- Expression of unequal power relations between men & women (stereotypes, culture, norms, values); and
- Recognised as weapon of war and crime against humanity (Conflict, refugees, migrants).



Criminal Code ...

Gender Based Violence - Recommendation:

Where the violence committed is gender based, this would render the crime more serious and hence aggravated. It is therefore suggested that new provisions be inserted in the Criminal Code rendering gender based violence an aggravation to crimes committed and hence resulting in an increase in the relative punishment.



Criminal Code ...

Gender Based Violence - Recommendations:

The Criminal Code should provide definitions of the different forms of violence:

“Gender-Based Violence” means any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to a person due to such person’s gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life;

“Physical violence” means the slapping, pushing, shoving, pulling aggressively of another person; the hitting with an object or the perpetrators fist, the choking or burning of another person; and the threatening with or the actual use of a weapon against another person;

“Sexual violence” means any act, or attempt to obtain a sexual act; unwanted sexual comments or advances; or acts to traffic, or otherwise directed, against a person’s sexuality, using coercion by any person regardless of their relationship to the victim, in any setting.”

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

Gender Based Violence – Recommendations: Responsibility of Government and government authorities

The Criminal Code should provide for the obligation of the Government and any government authorities to “exercise due diligence to prevent, investigate and punish acts of violence against women”.



Criminal Code ...

Domestic Violence

Violence against women has profound implications on the health of victims, but this is very often not given its due weight. The World Health Organisation's (WHO) World Report on Violence and Health notes that "one of the most common forms of violence against women is that performed by a husband or male partner." This type of violence is frequently invisible since it happens behind closed doors, and more effectively, when legal systems and cultural norms do not treat it as a crime, but rather as a 'private' family matter, or a normal part of life.

The following statistics are indicative of the scale of domestic violence within the EU:

- 1 woman in 5 has at least once in her life been the victim of violence by her male partner; and
- 25% of all violent crimes reported involve a man assaulting his wife or partner.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

EU Dimension on Domestic Violence

Within the EU dimension, a non-legally binding resolution issued by the European Parliament does indicate that criminalisation of domestic violence is an appropriate way for Member States to fulfil their legal obligations under EU law. In its resolution of the report from the Commission to the Council, the European Parliament and the Economic and Social Committee and the Committee of the Regions on the state of women's health in the European Community, the European Parliament called on Member States to make domestic violence against women, including rape within marriage and sexual mutilation, a criminal offence and to set up services to help women who are victims of this kind of violence.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

Domestic Violence

Given the particular nature of domestic violence and its 'private family' dimension, the ability of Maltese law to protect women against violence is seen to be very limited.

The importance of criminalising domestic violence lies in the fact that the arrest, prosecution and conviction, with punishment of an offender, is a process that carries the clear condemnation of society for the conduct of the abuser and acknowledges the person's personal responsibility for the activity.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

www.emd.com.mt
Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

Domestic Violence - Recommendations:

- domestic violence should be in itself regarded as a crime under the Criminal Code and provide for the relative sanctions, since gender inequality results from unequal power relationships between women and men, based on their different roles in society;
- the standard of proof in domestic violence cases should be lower than that with ordinary criminal proceedings;
- a civil remedy is made available wherein the victim of abuse has an action in tort claiming damages from the marital partner;
- any relief given to domestic violence victims should include counselling for both the battered and the culprits;



Criminal Code ...

Domestic Violence – Recommendations:

- the police should be allowed to enter premises if requested to do so by a person who apparently resides in the premises or where the officer has reason to believe that a person in the premises is under attack or imminent attack;
- no release on bail should be given without prior warning to the victim;
- judges hearing cases of domestic violence are to see that the needs of the victims are taken care of and they are addressed to the appropriate centres and care facilities, as may be required;
- the provisions of the Domestic Violence Act should be incorporated into the Criminal Code to have one legislation regulating domestic violence.



Criminal Code ...

Rape/sexual assault

The Criminal Code refers to rape as 'carnal knowledge with violence'. No definition of carnal knowledge is given.

Recommendation:

A definition of carnal knowledge be inserted in the law to include any type of penetrative assaults. Article 198 of the Code should be amended by inserting a new proviso defining carnal knowledge:

'Provided that for the purposes of this Code, "carnal knowledge" shall mean the introduction of any extent of the male reproductive organ into another person's vagina, anus or mouth or the introduction of any extent of any object or any other part of the body into another person's vagina or anus.'



Criminal Code ...

Date Rape

Rape may occur when there is a sexual act on a date without the consent of the other party, sometimes when the victim is drugged or made drunk beforehand.

Recommendation:

The Criminal Code should recognise as a criminal offence the administration of a substance with intent, in order to stupefy or overpower a victim to enable sexual activity, and the punishment imposed should reflect the seriousness of the offence.



Criminal Code ...

Trafficking of human beings

Recommendation:

The definition on human trafficking be made more comprehensive: **“Trafficking in human beings” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.**

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

Trafficking and Prostitution

Article 248A of the Criminal Code states that: 'Whosoever, by any means..., trafficks a person of age for the purpose of exploiting that person in the production of goods or provision of services shall, on conviction, be liable to the punishment of imprisonment for a term from two to nine years.'

Recommendation:

The movement to abolish trafficking and sexual exploitation needs a more comprehensive approach, one that includes an analysis of the demand side of trafficking. A focus on the demand side means that men would be made personally responsible and accountable for their behaviour. Therefore, those that have actually exploited women by availing themselves of their services must also pay the consequences of their actions. To address the demand side of sex trafficking and prostitution, several amendments must be made to the Criminal Code so as to criminalize men who purchase sex acts:

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

Trafficking and Prostitution - Recommendations:

- Under the title “Of the Traffic of Persons”, a clause is inserted to provide: ‘Whoever uses or makes it possible for another person to use sexual favours against payment of any kind, shall be sentenced to imprisonment of one to five years.’ One therefore renders a crime using of services of a prostitute in general, without making recourse to the requirement that a person making use of sexual favours against payment must have known that the person was a “trafficking victim”;
- The law should provide for prostitution in both public and private areas since it is the actual act of prostitution that should be criminalised and not whether or not it is done in a public area or not;



Criminal Code ...

Trafficking and Prostitution - Recommendations:

- The White Slave Traffic (Suppression) Ordinance states that where a person, in order to gratify the lust of any other person, compels by means of violence or threats, or induces by deceit, a person to leave Malta for the purposes of prostitution elsewhere or vice versa, such person shall be liable on conviction to imprisonment for a term not exceeding two years. The term of imprisonment is inadequate when keeping in mind the gravity of such an action. It is suggested that the punishment be increased to not less than three years and not exceeding ten years, with or without solitary confinement;
- Combating and preventing trafficking in persons is a shared responsibility between the countries of origin, transit and destination. The real, long-term impact of the various initiatives and provisions of the law will be greatly reduced if they are not matched by actions in the countries of origin and of transit. This requires the public authorities of these countries to give a higher priority to this issue and to intervene at various levels to combat traffickers; warn potential victims and re-integrate victims who return;



Criminal Code ...

Trafficking and Prostitution - Recommendations:

First offenders programme having as the main aims:

1. to educate offenders as to the consequences of sexual violence and the importance in today's society of gender mainstreaming;
2. to challenge the offender's resistance, in the form of denial or minimization, to acknowledge their choice to seek prostitutes;
3. to provide accurate information about prostitution and to provide a forum to discuss their involvement;
4. to help offenders identify the physical risks involved in prostitution, including the risk of sexually transmitted diseases and physical assault;
5. to assist offenders to talk about the emotional and relational consequences of their behaviour, including public humiliation and potential family disruption; and
6. to teach concepts related to relationships with both men and women.



Criminal Code ...

Sex Tourism

Travelling for the purpose of buying sexual services is referred to as 'sex tourism'.

Recommendation:

A regulation could be promulgated under the Criminal Code to prohibit the operation of agencies that organize sex tours for persons going abroad. The purpose of the regulation would be "to promote and protect the human rights of those persons exploited by sex tourists". In the said regulation the promotion of travel for the purpose of prostitution would be considered as a crime and this should be a ground for revocation of a travel agents' license.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE

Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund

Co-Financing Rate: 75% ESF, 25% Government of Malta



Criminal Code ...

Compensation scheme for victims of violent crimes

On the 27 July 2007 a new compensation scheme for victims of violent crimes was introduced. Such a scheme is intended to cover as many victims of crime as possible. However, at the moment its application is still quite limited. The scheme is to date only applicable to:

- dependants of persons killed by voluntary homicide after 1 January 2006;
- persons maintained by the deceased or who had the right to be maintained by the deceased;
- citizens of Malta of another Member State in the European Union;
- compensation for damages that led to criminal proceedings, which crime was reported to the Police without delay.

Recommendation:

The scope of the scheme should be extended over the passage of time and attention should be given to its application in respect of victims of trafficking and domestic violence.

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta



Thank you

EMD

ELLUL MIFSUD & DEBONO ADVOCATES

www.emd.com.mt



LEGAL ■ TAX ■ ADVISORY ■ CORPORATE
Structural Funds Programme for Malta 2004-2006

Project Part-financed by the European Union, European Social Fund
www.emd.com.mt

Co-Financing Rate: 75% ESF, 25% Government of Malta

