



Your ref: **OL MLT 1/2017**

Our ref: *GNV 1/4/05 - 221*

11 May 2017

Mr José Guevara,
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Mr François Crépeau,
Special Rapporteur on the Human Rights of Migrants

Ms Maria Grazia Giammarinaro,
Special Rapporteur on trafficking in persons, especially women and children

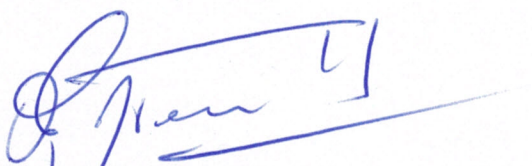
Excellencies,

I refer to your joint communication dated 28 February 2017 in which you addressed the Government of Malta in its capacity as Presidency of the Council of the European Union concerning allegations about draft policy proposals which raise serious concerns regarding the human rights of migrants, including children.

In this regard, I have the pleasure to enclose an advance copy of the terms of reply as issued by the Government of Malta. Hard copy of the original will follow in due course.

Please accept, Excellencies, the assurances of my highest consideration.

Kind regards



Olaf J. Terribile
Ambassador, Permanent Representative

Permanent Mission of the Republic of Malta to the United Nations Office and other international organisations in Geneva

Enc.

MINISTERU GHALL-INTERN U
S-SIGURTA' NAZZJONALI



MINISTRY FOR HOME AFFAIRS
AND NATIONAL SECURITY

Uffiċċju tas-Segretarju Permanenti

Office of the Permanent Secretary

28th April, 2017

José Guevara

Vice Chair, Rapporteur of the Working Group on Arbitrary Detention

Francois Crépeau

Special Rapporteur on the Human Rights of Migrants

Maria Grazia Giammarinaro

Special Rapporteur on Trafficking in Persons, especially Women and Children

Excellencies,

Reference is made to your Joint Communication dated 28th February 2017, wherein you request information concerning the recommendation from the European Commission to the European Union (EU) Member States relating to the implementation of return procedures.

You may wish to note that the mentioned recommendation has since been issued as Council Document 6949/17, which document is available online. The recommendation is titled 'Commission Recommendation of 7.3.2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council.'

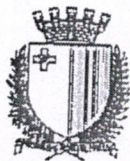
The purpose of the document, as clearly illustrated by its title, is to recommend the implementation of specific measures already contemplated by the EU's Return Directive, which became part of the EU's Acquis in 2008, pursuant to approval by the Union's two co-legislators, namely Council and the European Parliament.

It is considered that the Return Directive is fully in line with international law, particularly given that even if the Directive allows for detention, this is subject to relevant safeguards, which include the conducting of regular reviews. Moreover, detention is only allowed so long as there are reasonable prospects of removal within reasonable timeframes.

For these reasons, it is not considered that the Presidency needs to take any specific action vis-à-vis the Commission's recommendations, particularly given that the recommendations specifically refer to the principle of the best interest of the child, which was highlighted as a point of particular concern in your letter.

As for the fourth point in relation to which you requested information in your Joint Communication, i.e. what measures would the Presidency undertake to develop alternatives to immigration detention; your attention is drawn to the fact that the Return Directive already features safeguards against prolonged and unnecessary detention in Article 15. Moreover, as Presidency of the Council of the European Union Malta does not have the authority to initiate

MINISTERU GHALL-INTERN U
S-SIGURTA' NAZZJONALI



MALTA

MINISTRY FOR HOME AFFAIRS
AND NATIONAL SECURITY

Uffiċċju tas-Segretarju Permanenti

Office of the Permanent Secretary

amendments to EU legislation, as this power is vested in the EU Commission as guardian of the Treaties.

Please accept, Excellencies, the assurances of our highest consideration

A handwritten signature in black ink, appearing to read 'K. Mahoney'.

Kevin Mahoney
Permanent Secretary