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**THE EFFICIENT USE OF INFORMATION
AND COMMUNICATION TECHNOLOGIES
IN ACTIVITIES OF THE COURTS**

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REPORT

**CURRENT AND FUTURE INFLUENCES TO THE STATE OF PLAY
OF ELECTRONIC JUSTICE IN MALTA**

by

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Back ground Information

Malta is an archipelago of two main islands in the centre of the Mediterranean Sea therefore it has always been at the cross-roads of the trading and military routes of this sea. This has meant that over the ages Malta has been occupied by many different international powers. This has impacted on the formation of the Maltese legal system with particular reference to external influences over the past centuries.

As a result of this we see that Malta has a legal system that was initially based on Roman Law and which progressed to the Code de Rohan, the Napoleonic Code with influences from Italian Civil Law. English common law however is also a source of Maltese Law, most notably in Public Law. Malta is the only ex-British Commonwealth state to use Civil Law.

Malta joined the European Union in 2004 and this further continued to influence the legislation through EU directives being transcribed into national law and the implementation of EU Regulations.

The Malta Information Technology Agency (MITA) has been directly involved in projects related to the different arms of Justice for the past 20 years. MITA, as a government agency, is the central driver of Government's Information and Communications Technology (ICT) policy, programmes and initiatives in Malta. (www.mita.gov.mt)

MITA's role is now heavily focused on the delivery and implementation of the programmes as set out in the Digital Malta National ICT Strategy 2014 - 2020 (www.digitalmalta.gov.mt). The Digital Malta ICT Strategy is endorsed by the Prime minister of Malta and this places an emphasis on governmental bodies to ensure the implementation of this strategy in their respective business areas.

CEPEJ 2014 Report

The European Commission for the Efficiency of Justice (CEPEJ) is today a unique body for all European States, made up of qualified experts from the 47 Council of Europe member states, to assess the efficiency of judicial systems and propose practical tools and measures for working towards an increasingly efficient service for the public¹.

The CEPEJ report for 2014 considers ICT to be a key enabler of an efficient Justice system and in this respect has highlighted the following ICT areas to be of importance;

1. Direct assistance to Judges and Court Clerks
Office tools, E-mail, Internet & Electronic database of case law
2. Administration and Management
Case registration system, Case management information, Financial information system, Videoconferencing
3. Communication between Courts and Parties
Electronic web forms, Website, Follow-up of cases, Electronic registers, Electronic processing of small claims, Electronic processing of undisputed debt recovery, Electronic submission of claims, Videoconferencing

Malta scores well in all areas of the ICT section of this report. I will highlight the importance of a number of ICT systems and services that members of the legal profession have indicated are of particular importance in the execution of their daily duties.

¹ CEPEJ Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice"

Online Laws of Malta - (www.Justiceservices.gov.mt) this site is available to the general public and enjoys a considerable hit rate of around 6,000 hits per day. The site holds Acts of Parliament, Bills, Legal Notices, Local Councils Bye-Laws, Primary Legislation and Subsidiary Legislation. The site is updated on a daily basis and is therefore the primary reference point by the Judiciary and the legal profession when referencing legislation. The online version holds the current version of the legislation although versioning is kept on internally facing servers. Any future major enhancement to the online system should contemplate the functionality to display any legislation as it stood at a stated point in time.

e-Justice Portal - (e-justice.europa.eu) The e-Justice portal is an initiative that was developed by the European Commission to hold information on the Judicial systems of all member states. The portal provides information (in all 23 official languages) relevant to Citizens, Businesses, Legal Professions and the Judiciary spanning from Laws, procedures, rights, court fees, querying of registers and online eForms. Malta has effectively used this tool to provide a one-stop-shop of comprehensive information on its justice system to interested parties.

Online database of Jurisprudence - (justiceservices.gov.mt) provides the actual text of case Judgements spanning most cases from constitutional cases down to tribunals/small claims. The portal therefore provides an invaluable source of information to legal professions and also law students. All judgements published in this portal are accessible to the general public and a number of search tools are available by keyword, by litigants, by Judiciary or by free text patterns. Sensitive cases such as those originating from the family courts are anonymised to protect the identity of the children who are involved. The same portal additionally provides publicly available case and sitting information (including the case verbals) along with a number of other online services.

Online Case Management System - (justice.gov.mt) – use of this system is restricted to members of the legal profession as it holds elements of case information that are not made available to the general public. The system has been built in a manner that provides a good user experience even if accessed from smaller devices such as mobile phones. Feedback from the legal profession has been very positive as they system allows a location independent interaction with the Courts which results in better service delivery to their clients. Information elements from the publicly accessible justiceservices.gov.mt site is being migrated in phases to this new portal in anticipation of stricter data protection legislation coming into place as of 2015.

Case Management/registration tools - The current case management suite of tools was built over a number of years as a bespoke development. The building rather than buying off the shelf products has allowed the Court to build the tools that match the processes and requirements of the Courts procedures. The functionality implemented covers the full case management cycle and spans from the initial stages of the opening of a case to the submission of acts and extends to the publication of the sentence over the internet. The case management system also provides functionality to cover the processing of warrants of seizure, financial management, court deposits, auctions, marriage petitions (annulments by Cannon Law), automated Juror selection, court hall management and generation of management information including clearance rates and disposition times.

The Case management system interfaces with a number of other 3rd party data sources such as an official citizen register therefore ensuring the unique identification of litigants. Information from the Prisons' Inmate database is available to the Courts system therefore assisting them when scheduling cases involving inmates and when processing warrants of arrest. Electronic services are also in place to ensure the collection of Court fines such as the interfacing with the vehicle licensing system therefore ensuring that all pending vehicle related Court fines are paid up before the vehicle registration can be renewed.

In response to feedback from the legal profession and citizens we have implemented a number of push notifications; examples of these are SMS alerts for deferred cases, email messages for notifications of court acts/warrants and email notification of court decrees and transcripts. Positive results have been noted from this functionality.

The positive aspects of merging parallel IT systems cannot be ignored. During a business reengineering process it was noted that the Courts and the Attorney General's office (which acts as the prosecuting arm) maintain a large subset of the same data in separate systems and additionally manually transfer information between both parties with some resultant inconsistencies. The solution implemented was to merge both systems into a single case management system therefore maintaining a single set of data. During this process due attention was given to respecting the independence of both entities through the implementation of strict application user roles.

Lessons learned: The Case Management system provides well for the requirements of the Courts and can be easily modified and scaled upwards although today it is unclear if a bespoke development was the optimal solution due to the time required for development. If we were to start anew, then a structured decision making paradigm would need to be put in place to decide the way forward. One would need to consider the advances made in commercially available and highly customisable off the shelf products that are available on the market, many of which are also used by other national Jurisdictions.

Enablers of eGovernment (eJustice)

There are a number of enablers that facilitate the effective implementation of eGovernment and some of these can be considered as show stoppers if not in place.

Malta has established these enablers over a number of years and many of which are still in the process of being refined or augmented;

Legislation

- Electronic commerce Act CH426 - as an enabler of electronic services to recognise the electronic transactions on par with paper based transactions; it also gives legal status to electronic signatures and certificates.
- Data protection Act - CH440 - to provide guidelines on data privacy
- Computer misuse Act - Articles 337B-337H of the Criminal code and Council of Europe Convention to enable the due processing of cybercrime.
- Electronic Communications Networks and Services (General) Regulations 2011 (Subsidiary Legislation 399.28)
- ePrivacy Directive (2002)
- Directive on attacks against information systems (2013) which still needs to be transcribed into national legislation by 2015Q4.
- A number of agreements with international bodies for cooperation on matters pertaining to cybercrime.

A Digital strategy that outlines the organisation's vision, goals, opportunities and related activities in order to maximize the benefits of digital initiatives to government and the citizen. Critical to the success of the strategy is the endorsement and ownership at the highest level of government therefore ensuring the political will to take it forward.

An Electronic Identity system (eID). Malta established its first electronic identity services in 2004. Prior to this electronic service providers had to go through a cumbersome process of issuing separate accounts and credentials for each user and additionally had to verify the identity of the user prior to doing this. Initially the take up of the eID was slow and this was attributed to a combination of the lack of electronic services available at the time and the

cumbersome procedures required to acquire the eID. The take up of this identify system picked up over time in particular in areas where professionals were required to interact electronically with government under the B2G model. Malta has now implemented the next generation of electronic identity through the issuing of an electronic national identity card. The eidentity card also embodies a qualified digital certificate that can be used for digital signing documents. Under this new scheme penetration rates will excel as all residents of the Maltese Islands are legally obliged to hold a current ID card. The use of a national identity system increases the trust factor for both the service provider and the citizen. Needless to say that user confidence is an essential element for the success of any eGovernment system.

A robust and resilient hosting environment to ensure the availability of the electronic services. The entry of reputable and certified Cloud services on the market has provided a good alternate local hosting environment.

Challenges on the horizon (and opportunities)

Device Independence

Substantial corpora of research studies highlight the strong movement of bring your own device 'culture' (BYOD). The proliferation of the use of tablets and other mobile media has created an expectation by the end users to extend the usage of the device of choice to their workplace.

There are a number of positive aspects related to the increase in productivity and lower capital outlay for office based computer equipment which is driving organisations to adopt the BYOD approach.

There are a number of concerns when adopting this approach in particular in business areas such as the Courts which process sensitive information. The organisations must ensure the same level of security that they had in place with the more traditional desktop machines that were usually locked down with *group policies*, implemented on standardised operating system, had Local Area Network restrictions, pre installed end point security and automated patching services. Additional burdens are also placed on the IT department as it must support the end user who is now using proliferation of different devices running diverse operating systems.

The Courts of Malta were early adaptors of IT and this means that a number of systems, although kept in a current technology stack, were built with an architectural blueprint that is now dated. Many of the older applications are bound to the host operating system (quite often a flavour of the Microsoft Operating System) and are not portable to other Operating Systems such as Android, IOS or Linux. The strategy being adopted by Malta is to rebuild the front end application using a web based responsive technology therefore ensuring that the applications run seamlessly on different form factors. Other approaches being considered are the use of virtualisation technologies to run the client applications; this will allow the current systems to be run from any device supported by the access virtualization technology. BYOD pilot projects are being run in Malta to assess the optimal way forward.

Data Protection and the right to be forgotten

The upcoming EU Data Protection Regulation (2015) and the recent ruling by the Courts of Justice of the European Union on the 'right to be forgotten' (May 2014) are anticipated to have an impact on the current services being offered to the legal profession and citizen. The new regulation is expected to reverse the burden of proof on to the holder of the data i.e the holder of the data must prove why the data still needs to be maintained. Subsequent to the 'right to be forgotten' ruling the data protection commissioner in Malta has already received a number of requests to have access to individual judgments removed from the internet. Each decision is of course taken on its own merits.

Although Malta will continue to extend the scope of electronic services we may have to rethink any services that are directly accessible to the citizen and therefore effectively have to balance elements of transparency with data privacy issues.

Projects In the making

For reasons already discussed in this report the Court of Malta will be moving away from Windows client based systems to web enabled responsive technologies which are independent of form factor. A number of developments are already underway and these include;

An eCaseFees module which will provide the citizen with real time information of costs for civil court cases that they are party to. Primarily this project will introduce better transparency on the levying of Court taxation (costs). It is anticipated that by giving the citizen access to the accumulated court costs during the running of a civil court case, that they will be in a better position to decide if an alternate and quicker approach such as arbitration would provide them with a better solution. A reengineering of the case fee structures is currently underway.

Form factor independent services - We are also further extending case management information to mobile enabled services as this factors in the needs of a user on the move and it is anticipated to eliminate delays that were associated with services that are location dependant.

myCourts - A number of new online services will be implemented with the branding of *myCourts*. These services will personalise the work load of the legal profession and make it easier to find the required information. Through these services the legal profession will be able to modify notification services, monitor notifications and have a personalised view of the Information available in the system.

On the drawing board

The following initiatives are still at inception/discussion stage and not yet accepted or formalised as a project.

myCourts 4 Citizen - Extending services to the Citizen that take the citizen from the back seat to the driving seat. This project will extend further case information to the citizen (as a litigant) and give the citizen with visibility of any bottlenecks in the process and put them in a position to take the necessary action as required to expedite their case. Monitoring by the citizen (as the interested party) would also reduce instances where decisions taken during the lifetime of a case go un-actioned for a period of time.

End to End Offender Management – The creation of an ‘End to end offender management system’ which will bring together information held by the different arms of justice to create a single view point of offender history from the initial reporting to the charging and processing of the case, prison sentence, parole and probation. This system would be an essential tool for decision making in restorative justice.

The European Union Context – Malta, as a member of the European Union, will participate directly in a number of initiatives such as the interconnection of insolvency registers and the implementation of the European Case Law Identifier (ECLI). These new services will bring about greater transparency in the pan-European context.

Disclaimer: The views expressed in this report do not necessarily reflect the views or the official position of the Malta Information technology Agency or the Courts of Malta.