
Malta welcomes the Green Paper on Modernising Labour Law as another instrument aiming towards the Lisbon Strategy’s objective of achieving more and better jobs in a more responsive and inclusive labour market.

The issues raised within the Paper stimulate reflection and debate on how to achieve an optimal balance between flexibility and security in the labour market. However, the pursuit of such a policy mix is ultimately a national endeavour. It is, therefore, from a perspective of a small firm economy, such as Malta’s, with its significant legislative development in the area of labour law in recent years that each question outlined in the paper has been approached.

Malta’s Replies

Q1: What would you consider to be the priorities for a meaningful labour law reform agenda?

Labour laws, at both European and national level, were originally designed to cater for traditional employment contracts, that is, indefinite, full-time employment with an accountable employer.

However, in recent years, the law itself started to cater for more flexible forms of employment relationships, such as part-time work, fixed-term work, and, within the context of Maltese legislation, full-time work with reduced hours. There are other flexible forms of employment relationships which are not envisaged in the overall framework of labour law. This notwithstanding that new forms of employment relationships are continuously coming into existence, therefore, rendering labour law subject to a continuous need for further review and adaptation in order to be able to reflect the reality of today’s labour market and to support the drive towards increased employability. However, it must also be ensured that any barriers which may render it difficult for one to resort to new forms of employment contracts are avoided. Moreover, flexibility in labour law must not prejudice social cohesion and security.

The European labour market is currently composed of 27 national labour markets each with their own respective characteristics and perspectives, strengths and weaknesses. Malta, therefore, feels that any fine tuning required in labour law should be both conceived and managed at the national level, since it is the individual Member State who is in the best position to ensure the best possible fit to address any particular problems faced at the national level. It is also important to emphasise the importance of ensuring proper implementation of the existing labour acquis before embarking on new initiatives which may lead to a further increase in the administrative burden already imposed on national stakeholders.

Q2: Can the adoption of labour law and collective agreements contribute to improved flexicurity and employment security and a reduction in labour market segmentation? If yes, then how?
It is debatable whether law can be considered to serve as an appropriate tool to cater for new forms of working arrangements, this due to its difficulty to adapt and keep abreast with changes. It is always desirable to have in place a legislative framework which defines the general principles protecting employees, particularly those who, whether voluntarily or out of need, take the initiative to take up flexible work contracts.

At present, Maltese labour law allows for transitions between different forms of employment to take place with relative ease, thus avoiding as much as possible any form of inhibitions. The availability of unemployment benefit protection for persons who have lost their employment, offers the necessary security needed for a period of six months, during which most jobseekers find new employment; whilst those who do not, are entitled – subject to a means test – to social assistance until such time when they re-enter the world of work.

Labour market segmentation – though not relatively widespread in Malta, and not necessarily considered a negative phenomenon – is rising gradually. It is, therefore, important that any legislation, as much as is practicable, be applied uniformly so as to avoid further segmentation.

When collective agreements are compared with labour legislation in Malta, there is no doubt that collective agreements are increasingly being drawn up, at least in part, to address today’s economic and competitive realities. This is of more relevance because collective agreements are practically always negotiated at an enterprise level in Malta and they are regularly updated, with an average lifespan of three years. The negotiation at enterprise level can be advantageous when addressing specific difficulties through the application of tailor-made solutions which cater for special difficulties or opportunities of a particular enterprise. Thus they are considered to be of considerable importance.

Q3: Do existing regulations, whether in the form of law and / or collective agreements, hinder or stimulate enterprises and employees seeking to avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to international competition? How can improvements be made in the quality of regulations affecting SMEs, while preserving their objectives?

In any discussion on the benefits or otherwise of regulations on the productivity of enterprises, one must seek to find the right balance between over-regulation, which may stifle initiatives and productivity, and too little or insufficient regulation, with the possible problems relating to inadequacy of social protection. Laws and collective agreements are usually drawn up on the basis of the particular needs perceived by employers and employees. The degree of balance achieved during the regulatory or collective agreement drafting process, in particular with regard to flexible arrangements, will in time be reflected by a corresponding benefit accruing to both parties. This may provide the impetus to stimulate both parties to respond appropriately to the opportunities which may arise. Employers become more competitive on their part, whilst employees will be able to upgrade their lifestyle by, for example, achieving a better work-life balance. It is, however, important for a Member State to retain its right to decide on the proper balance addressed through its labour legislation. This will allow it the necessary flexibility to implement specific solutions to address particular difficulties in its labour market.

It is pertinent to keep in mind SMEs and their particular problems. With regard to regulations affecting SMEs, the coverage of Maltese labour law has no size threshold, with the exception of legislation relating to employee involvement and employee information and consultation. The
introduction of such a threshold in other areas is not envisaged. There may be a case for promoting in a clear and simple way, the provisions of employment and labour law for SMEs whose administrative capacity is often limited. In this respect, work is underway to publish an informative brochure for SMEs on the various employment rights and obligations of employers and employees in small enterprises.

Regulating SMEs can be improved by easing unnecessary burdens, especially administrative burdens, so that they too are not hindered and may benefit from developments that are currently taking place.

Q4: How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective agreement, so to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?

Flexibility within the framework of permanent and temporary contracts demands that both employers and employees are open and willing to take advantage of opportunities that present themselves along the way. Employees are encouraged, and sometimes expected, to change jobs more frequently. Termination and recruitment sometimes involve formal procedures which could hinder flexibility. However, relaxation of such rules as dismissal rules could indeed be detrimental to the employee. The problem is that what has been found to work reasonably well in the Maltese context, and which has become accepted over the years by the social partners, may not be the right way forward in other scenarios. The individuality of a particular labour market requires a specific balance to be sought between demands to improve flexibility whilst at the same time ensuring an adequate means of social protection, particularly for the disadvantaged.

It is not believed that prevailing Maltese legislation in any way inhibits recruitment under permanent or temporary contracts. Registration of a new employee (or termination of employment) is a relatively straightforward administrative requirement and efforts are being made to further streamline such notification to the various authorities. Notice periods in respect of indefinite contracts are reasonable, and a means of redress to contest unfair dismissal has long been established. The breach of a definite contract, whether by employer or employee, requires the payment of half the salary due for the unserved period of the contract, which may be a deterrent to the use of temporary contracts. However, the current provisions are considered to be just and no change to the system is envisaged.

The facilitation of recruitment is therefore considered less a matter of employment laws or collective agreements, but more a matter of making work pay. The proximity of social protection to the minimum wage in Malta continues to pose a challenge to the mobilisation of jobseekers for certain occupations. Various budgetary measures have been announced to partly address this situation. However, the monetary incentive to work remains an issue for unskilled jobseekers.

Q5: Would it be useful to consider a combination of more flexible employment protection legislation and well designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?

Malta agrees that due consideration should be given to measures to mitigate any harmful effects of more flexible employment legislation. However, there is agreement between the Maltese
social partners that this should not be supplemented by passive labour market policies but by active labour market policies that promote employability. Thus, these policies should encourage training and lifelong learning.

Maltese employment protection legislation is considered adequate and social security provides for those who have lost their job through no fault of their own (that is, not through resignation or dismissal) and also provides for those who – irrespective of the reason for unemployment – require social assistance following a means test. These passive policies are accompanied by active labour market policies, where jobseekers in receipt of unemployment benefit are obliged to participate in a flow of active labour market services. These include profiling and commitment to a personal action plan; undertaking training in line with one’s stated job aspirations; and participation in work placements or referral to job interviews. Failure to participate in these active labour market services may lead (subject to review by an appeals board) to his / her removal from the unemployment register and subsequent loss of unemployment benefits.

Q6: What role might law and / or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?

Malta feels that this matter should be discussed at the appropriate national levels to analyse the best way forward to promote the concept of increasing employee training, both during and especially in between jobs. Policies can be drawn up to offer incentives to those who avail themselves of upward mobility. Moreover, there has to be a move from the traditional collective bargaining mentality and model, related primarily to negotiating wage increases and other bread and butter issues, to the consideration and tackling of other important areas like work-life balance, training and life long learning. At present in Malta, while lifelong learning and in-work training are vigorously promoted, training obligations on the part of either the employer or employee do not form part of the vast majority of collective agreements. Neither is such provision made within labour law. Many employers maintain that their staff have the necessary skills to fulfil their positions. Furthermore, small enterprises maintain that informal, on-the-job training is the most appropriate form of learning in such cases. Others express concern over the possibility of spiralling wage expectations if training is conducted, or the possibility of the poaching of staff by other firms after training.

While the training of staff remains a voluntary initiative and should continue to be so, a number of measures exist to increase the take-up of lifelong learning. Short vocational programmes in more than one hundred skills and trades are offered during the day and evening by entities such as the national Employment and Training Corporation service and the Malta College for Arts, Science and Technology, as well as by the private sector. Furthermore, training grants for enterprises are available under the Business Promotion Act (Cap. 325) and also under the Training Subsidy Scheme for workers in small enterprises. This training also assists persons to move between forms of employment, including training in setting up and managing one’s business, as well as training in various aspects of management and other career development skills.

Q7: Is greater clarity needed in Member States’ legal definitions of employment and self-employment to facilitate bona fede transitions from employment to self-employment and vice-versa?
Malta agrees that the time has come to seriously consider the implications of an often increasingly unclear delineation between employment and self-employment. The Maltese social partners are in agreement on this need, since there is a possibility that this flexibility can be abused. Practices brought about and justified on the basis of flexibility may also be brought about with the intention to avoid the application of the law.

While non-standard work in Malta is estimated to be at a relatively lower level than in many other Member States, a degree of disguised employment does exist and Malta would like to be in a better position to identify this and to make provisions for appropriate coverage through labour law. Work is underway to determine the feasibility of defining self-employment more restrictively and to differentiate it from disguised and dependent work.

8: Is there a need for a ‘floor of rights’ dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

Current Maltese labour law provides for a ‘floor of rights’ for all employees, and covers all categories of full- and part-time workers alike. Malta agrees that there should be a discussion on the possibility of whether general principles can be established to protect the employee as the weaker party in all kinds of work contracts. Further consideration may be required as to whether there is a need for the extension of such a floor of rights and the areas which such protection could cover, for example, wage protection, individual information, information and consultation and health and safety. A delicate balance would need to be found between the need to ensure adequate protection to all categories of employees and the necessity not to be too restrictive or burdensome on the employers operating in a changing economy.

Q9: Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in “three-way relationships”?

Malta believes that attempts should be made to try to determine the responsibilities of the various parties within multiple employment relationships and thus identify who is to be held accountable for compliance with employment rights. This has proved to be difficult to achieve at EU level when one considers the problems encountered with regard to the Proposal for a Directive of the European Parliament and of the Council on working conditions for temporary workers. However, infliction of subsidiary liability should be left optional. In the absence of a clear delineation of responsibilities, it would be difficult to put in place a proper monitoring and enforcement regime.

Q10: Is there a need to clarify the employment status of temporary agency workers?

The use of temporary agency workers in Malta is very limited, though it does exist in particular sectors such as within the construction industry and cleaning services. Temporary workers usually have an employment relationship with the temporary agency and are more or less already within the scope of labour and social legislation.

Ideally, further clarification should be made with respect to three way relationships, especially since resort to this kind of relationship seems to be on the increase. However, as has been
stated above, it is doubtful whether an initiative at EU level will bear the desired fruit, given the differences in opinion on this matter between Member States. In this situation, it should be left to the Member States to consider what initiatives may be required in their particular circumstances.

Q11: How could minimum requirements concerning the organisation of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers’ health and safety? What aspects of the organisation of working time should be tackled as a matter of priority by the Community?

It is important to strike the right balance between the workers’ right to have his / her health and safety protected and one’s right to freely choose to work longer hours in a safe environment. Both are equally important and it is felt that Directive 2003/88/EC on the Working Time Directive offers sufficient flexibility and adequate protection. Particularly when one considers the long term problems of discussing amendments to the working time Directive, it is felt that this is hardly the propitious moment to embark on a new initiative in this area.

In Malta, a consensus on the retention of the opt-out clause has been reached between unions, employers and Government, and there is agreement that there should be no modifications to the current version of the working time Directive that would render it any more restrictive.

Q12: How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of ‘worker’ in EU Directives in the interests of ensuring that these workers can exercise these employment rights, regardless of the Member States where they work? Or do you believe that Member States should retain their discretion in the matter?

Most EU Directives define the ‘worker’ by reference to national laws and practices. Malta views this approach of convergence with caution and feels that given the variety of industrial relations systems, a degree of convergence should only take place in case of high divergence. It is also to be noted that the ECJ has provided, to date, ample guidance on the definition of ‘worker’.

All workers in Malta are covered by labour law which does not differentiate on the basis of nationality. In Malta, the social partners agree that Member States should retain their discretion on the definition of the word ‘worker’.

Q13: Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

Enforcement has an important place in the move towards a flexible labour law system. Malta deems it necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law, as in the case of Directive 96/71/EC concerning the posting of workers. There exists a considerable degree of administrative co-operation between the relevant authorities in Malta. Work is underway to further simplify the administrative dimension of recruitment across the various entities, for instance, to streamline the notification of employment and termination to both the public employment service and the Inland Revenue Department simultaneously. Data sharing agreements exist between the public employment service that maintains employment data and
the Department for Employment and Industrial Relations, which enables the monitoring of labour law. A similar agreement also exists between the former and the Department for Benefit Fraud to ensure that social security beneficiaries are not carrying out undeclared work while receiving benefits. Furthermore, an agreement is being drawn up for the contact details of employers of foreign (non-EU) nationals (together with the wages and working conditions declared in the application for the respective work permit), to be provided by the Employment and Training Corporation service to the Department for Employment and Industrial Relations to ensure that foreign nationals in Malta enjoy similar protection to Maltese employees.

The reinforcement of administrative co-operation is, therefore, very much an ongoing process. To date, the social partners have been involved in a voluntary manner, in providing information to their respective members and on occasion, in reporting identified breaches of the law. It is believed that any further involvement of the social partners in helping to enforce Community labour law should remain on a voluntary basis, though efforts will continue to be made to establish a common discourse on the rationale and application of labour law.

This is a case where the framework exists and where the administrative tools need strengthening. It is felt that enforcement, being a sensitive issue, should be left to a state enforcement authority and should not be a competence of social partners as such. However, social partners can aid the process of effective application of the law by reporting and increasing awareness of reciprocal rights and obligations.

Q14: Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

Malta is committed to reducing the rate of undeclared work at a national level, by enabling its transformation into regular employment. Undeclared work distorts competition and renders employees outside the scope of employment and social security regulation. Malta is currently preparing a campaign on the benefits of ‘declared’ work, while simultaneously strengthening its inspectorate capacity to address undeclared work where this is identified. Other positive incentives have also been introduced in recent budgets to encourage regular employment, including the broadening of the tax-free band for low income earners, the pro-rating of social security contributions by part-timers, and tax incentives for women returning to the world of work.

One should also stress the importance of renewed efforts to make work pay by effectively combating impeding disincentives to declare work and to eliminate policies which may lead towards the development of poverty gaps. However, before any action is taken, one should concentrate on the key factors which seem to contribute to the existence of undeclared work such as a high level of tax and social contributions which fall under the competence of individual Member States.

In Malta, the social partners agree about the need to strengthen the observance of employment laws. Member States should strive to promote and share between them policies relating to “best practice”.