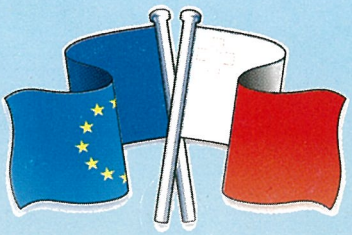
MALTA AND THE EUROPEAN UNION



A Comparative Study on Social Policy, Employment & Industrial Relations

Godfrey Baldacchino

MALTA EMPLOYERS' ASSOCIATION

April 2000

MALTA AND THE EUROPEAN UNION

Published by the Malta Employers' Association
Printed by Progress Press Co. Ltd.
Sponsored by Allied Newspapers Ltd & Progress Press Co. Ltd
ISBN 99932-24-00-6

A comparative analytic study of European Union (EU) & Maltese legislation in the fields of social policy, employment and industrial relations, as well as an overview of the impact on employers in Malta of the EU acquis in this area.[1]

prepared by

Dr Godfrey Baldacchino

for the

Malta Employers' Association (MEA)

April 2000

[1] This study is being carried out by the Author in a personal and independent capacity and has no relation to his professional or other institutional affiliations; nor does it necessarily spell out the policy of any such institutions in the area being addressed in this report.

FOREWORD

This study prepared by Dr. Godfrey Baldacchino, was commissioned by the Malta Employers' Association as a contribution to the on-going national debate on the rights and wrongs of Malta's current bid to join the European Union. It has served as the basis for discussions with Government in preparation for bilateral negotiations with the European Union on behalf of all employers in Malta.

The Malta Employers' Association (MEA) is the "trade union" of employers in Malta, specialising in Social Affairs, Employment and Industrial Relations. In the light of this vocation it took the initiative to gauge the reactions of the private sector to a number of key proposals contained in E.U. Directives. This publication throws some useful light on the impact of E.U. legislation in this area.

The Malta Employers' Association has always believed in and supported Malta's bid for membership in the E.U. and is therefore urging Government to secure the best possible conditions.

The Study is based on the replies to questionnaires circulated to employers earlier this year. In general, employers are not unduly disturbed by the adoption of EU Directives in the aforesaid areas. But it also highlights the need for a realistic transitional period within which Malta should take on board the required changes to its own legislative framework.

This Study has been vetted by Council Members who have ordered its publication with a view to reaching a wider audience.

Encouraged by this support the M.E.A is now considering commissioning a further Report on the cost to employers of implementing the relevant EU Directives.

These publications highlight the important role which the M.E.A. can perform in providing its members with counsel and assistance in adapt-

ing themselves to the new requirements. This means complying with a number of new provisions for which specialised expertise will be indispensable. This is where the MEA can render an irreplaceable service to its members. No employer can afford to remain on his own in the years ahead.

In commending this Study to the attention of businessmen and all those interested in Malta's future within or outside the European Union, I should like to express my thanks to all those who took the trouble to complete and return the Questionnaire, without whose cooperation this Study would not have been completed.

Finally it gives me much pleasure to thank the Allied Newspapers Limited, publishers of the Times and its subsidiary companies Progress Press and Allied Insurance Services Limited, for printing this Report.

Victor SCICLUNA
President
MALTA EMPLOYERS' ASSOCIATION

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1. Inspiration

The promotion of sustainable employment and self-employment, the promotion of improved living and working conditions, proper social protection, an effective dialogue between management and labour, the development of human resources and the combating of social and economic exclusion ..... these are the key principles which have inspired the European Union (EU) in its systematic build-up of its social and employment policy. The legal basis for such a stance are derived primarily from EU Treaty Articles 2, 3, 13, 125-130 and 136-148.

The EU strategy on social policy has gone through quite a radical and dramatic transformation over the years. Indeed, it is now broadly understood as one of the lynchpins of community policy. Firstly, because it is explicitly deployed to balance some of the excesses of free market forces and unbridled, cross-border competition - including increases in structural, mass unemployment; poverty; and the marginalisation of different social groups. Secondly, because if the European Union is truly meant to be a *union,* then it must inevitably concern itself proactively in carrying along its citizens - the latter must understand that the EU is proving to their benefit and that 'the internal market' is acceptable to them. Indicators such as the results of referenda endorsing EU Treaties or the turnout for European Parliament elections have been interpreted with alarm as signs of, at best, indifference and, at worst, hostility and resistance. Promoting social cohesion and thus correcting the perceived "democratic deficit" is now seen as being equally important to promoting competition policy.

Such a prioritisation is fairly recent in the development of the EU. Clearly, the European project was conceived as essentially one of economic liberalisation. The social dimension was at best an 'add-on', expected to come into its own either spontaneously or even to be played down in the interests of the free market. A few, scattered articles in the Treaty of Rome (1957) addressed social policy issues: the European Social Fund, the freedom of movement of labour and the freedom of establishment (now Articles 39, 40, 42, 146-150); as such, most of these too had the ultimate intent of promoting market liberalisation.

Furthermore, these provisions were not legally binding but more akin to political declarations. It was after 1974 that the European Community began adopting *Programmes of Social Action,* seeking to improve living and working conditions for particularly vulnerable social and economic groups. These led to the first directives on social policy, including those on equal opportunities, health and safety at work and the legal position of employees in undertakings.

Initiatives on employment and social policy were nevertheless scant in the 1970s and 1980s. Such a faltering was primarily due to two reasons. Firstly, the fundamentally diverse attitudes among EC member states as to the responsibilities which ought to be allocated to the European Community, rather than being entrusted solely in the hands of national institutions. Secondly, because all decisions required the unanimity of the Council of Ministers. Particularly with the U.K. Conservative Government determined to prevent social policy "interference" from Europe into home affairs, practically no initiatives were possible.

The *Single European Act* (which came into force in 1987) broke through this stalemate situation. Mainly adopted in order to facilitate the implementation of the internal market, the SEA introduced the principle of *qualified majority voting* for different aspects of community policy, including a fair number of issues relating to social policy. Thanks to this Act, the Council of Ministers could henceforth adopt directives by qualified majority in order to act or reinforce initiatives in the following areas:

- health and safety of workers;
- improvements in the working environment to protect employees;
- occupational integration of people excluded from the labour market;
- the information and consultation of workers;
- equal opportunities and treatment to men and women in relation to the labour market and their equal treatment at work.

The above list was actually extended after the Treaty of Maastricht, in spite of the legal challenge of the UK Government in 1993, subsequently turned down by the European Court of Justice (case C-84/94).

Unanimous agreement has nevertheless remained necessary in relation to initiatives in the following areas:

- social security and social protection for workers;
- protection of workers when their employment contract is terminated;
- representation and defence of collective worker and employer interests;
- conditions of employment of third country nationals;
- financial contributions for promotion of employment and job creation.

Finally, the Council of Ministers of the European Union remains to date expressly prohibited from involving itself in any matter relating to: pay; the right of association; the right to strike; and the right to impose lock outs.

In 1989, the Governments of 11 EC member states (that is, all except that of the United Kingdom, which "opted out") endorsed the *Community Charter of the Fundamental Social Rights of Workers* - more popularly referred to as the Social Charter. This document lays down a series of social rights in 12 main areas that are to be guaranteed in the European labour market; these rights in turn being based on the Council of Europe's own Social Charter (drafted back in 1961) as well as various key conventions of the International Labour Organisation (ILO). Once again, however, this charter has been meant primarily as a document of political intent rather than of legalistic commitment, in spite of 47 proposals by the European Commission to push for the latter. As a Charter, the document remains a powerful declaration of worker rights and serves as a manual for 'best practice'; but few binding directives have actually materialised from the Social Charter, the most notable being the obligation on employers to inform employees of the conditions applicable to their employment relationship and, more spectacularly, those on occupational health and safety.

It was the Treaty of Maastricht, coming into force in November 1993, which gave the social policy agenda another major boost. This Treaty contained *Protocol Number 14 - Agreement on Social Policy* which,

because of the opposition - and 'opt out' - of the United Kingdom, was accorded the status of an annexe, and only incorporated as core community policy in the subsequent Treaty of Amsterdam, which has come into force in May 1999. The Agreement on Social Policy has now become a fully-fledged component of the EU's *acquis communautaire*, primarily enshrined in Article 137 of the Treaty.

The *Agreement on Social Policy* stated that the 11 signatory member states "wish to continue along the path laid down in the 1989 Social Charter" and provided for the adoption of measures in areas previously requiring unanimity, as well as setting out an enhanced mechanism for consultation of employer and employee organisations, both in preparing proposals as well as reaching European-level contractual agreements which could take the place of legislation.

The *Agreement on Social Policy* has so far enabled the implementation of a small number of such *framework agreements.* These include: the directive about parental leave (December, 1996); the directive about part-time workers (June, 1997); and the directive about fixed time employment contracts (January, 1999).

2. Substance

The European Union's policies concerning social policy, employment and industrial relations may be classified into seven distinct though inter-related sub-sections. These are: the European Social Fund; the European Employment Strategy; social security for immigrant workers; health and safety at the place of work; the social dialogue; information and consultation rights for employees; equal opportunities, rights and treatment for men and women; senior citizens, persons with disability and the socially excluded. These are being reviewed separately below:

2.1 The European Social Fund (ESF)

The European Social Fund, created in the early 1960s, has the task of

improving employment opportunities for workers in the internal market by increasing their mobility and facilitating their adaptation to industrial change. This is done particularly through vocational training and retraining, and thereby contributes to raising the standard of living of individual citizens, as well as to strengthening the economic and social cohesion within the Union. These principles are spelt out in Articles 146-148 and 158-162 of the EU Treaty.

The European Social Fund is one of four structural funds set up by the European Union; the other three are the European Regional Development Fund (ERDF); the Fisheries Industrial Financial Grant (FIFG) and the European Agricultural Guidance and Guarantee Fund (EAGGF). The ESF by itself accounts for some 35% of the total structural fund budget for the 7-year period 2000-2006.

In common with the other structural funds, the utilisation of the ESF is expected to comply to the 'structural intervention approach' which has the following characteristics:

- resources deployed should be concentrated geographically;
- resources are deployed as part of programmes which are basically drawn up by EU member states and approved by the European Commission;
- EU measures should contribute to the corresponding national measures, providing a range of 50% to, in exceptional cases, 80% of overall costs;
- the European Commission, the member state, the regional and local authorities designated by the member state and the two sides of industry (management and labour) are to pursue a common objective in partnership;
- Community measures are subject to continuous monitoring to ensure that the objectives set are being met;
- all measures must be consistent with the provisions of the Treaty of the European Union and any other Community policies.

The latest financial cycle of the European Union (2000-2006) has brought about changes in the application of the European Social Fund,

since this Fund has now been aligned with the new European Employment Strategy, serving as its key financial instrument.

The geographical areas designated for Structural Fund support are referred to as Objective Regions. These have also been streamlined and, as from January 2000, consist only of three regions as follows:

- *Objective 1* - [some 74% of total structural fund budgets] - The purpose of the first objective is to help those regions whose level of development is less than 75% of the European Union average, assisting them to close this 'development gap'. Assistance for Objective 1 Regions will be available from all four of the Structural Funds.

- *Objective 2* - [some 12% of total structural fund budgets] - The purpose of the second objective is to cover regions whose economies are not sufficiently diversified. Assistance will be focused strictly on those regions that are most seriously affected by economic and social conversion. This objective will also be covered by all four structural funds.

- *Objective 3* - [some 14% of total structural fund budgets] - The purpose of the third objective relates to the adaptation and modernisation of national and EU policies and systems for employment, education and training. This will serve to support the EU's new Employment Strategy, but will be implemented with a flexibility which will take account of the diversity of policies, practices and needs that exist in the different EU member states. Eligible measures and policy priorities under Objective 3, which are financed solely by the ESF, include:

- active labour market policies to fight unemployment, prevent long-term unemployment and providing support for those entering or re-entering the job market;

- promotion of social inclusion and equal opportunities for men and women;

– supporting education and training as part of a policy for life-long

learning; and

- encouraging a skilled, trained and adaptable workforce, fostering innovation in work organisation, supporting entrepreneurship and job creation, boosting human potential in research, science and technology.

2.2 The European Employment Strategy

It was only in 1993 that the EU started serious deliberations about how to tackle the unemployment problem from a Union-wide angle, over and above a national one. This occurred in the context of the EU ('Delors') White Paper on *Growth, Competitiveness and Employment* which, for the first time, proposed concrete solutions for improving the employment situation. A second White Paper, published in 1994 on *European Social Policy,* articulated the balance necessary between the liberal economic policy of the Union and its social programme. At the Essen Summit of December 1994, drawing from these two White Papers, the foundations were laid for a European Strategy in favour of work and employment; whereas in June 1996 the *Action for Employment in Europe - a Confidence Pact* was launched, with the intention of involving public authorities and social partners in a co-ordinated and pragmatic strategy.

The Amsterdam Treaty saw the inclusion of an 'Employment Title' which recognises high employment levels as a key EU objective; emphasises that employment is an issue of common, and not just national, concern; contains the principle of mainstreaming employment policy; and creates the framework for a country surveillance procedure.

November 1997 then saw the Employment Summit in Luxembourg where the Council of Ministers gave its backing to the setting up of 19 European Employment Guidelines, formally adopted the following month. These guidelines were to be incorporated into national employment action plans, be subject to EU review on an annual basis, and to accept a measurable, 'management by objectives' approach. These

guidelines consist of four, so-called 'pillars':

- *Employability* - How to cover the skills gaps in Europe and create attachments to the world of work for the young and the long-term unemployed and other groups who are less competitive in the labour market so that they do not drift into exclusion;

- *Entrepreneurship* - How to create a new entrepreneurial culture and entrepreneurial spirit in Europe by encouraging self-employment, cutting red tape, reforming taxation systems and identifying new sources of jobs especially at a local level and in the social economy;

- *Adaptability* - How to strengthen the capacity of workers to meet the challenges of change and how to change the organisation of work in such a way that structural adjustment can be managed and competitiveness maintained. This means also investment in life-long learning and reforming contractual frameworks to take into account new emerging forms of work;

- *Equal Opportunities* - How to create conditions where men and women, older workers, young workers, people with disability ... all enjoy equal responsibility and opportunities in family and working life, and how to respond to the demographic challenges which require the EU to maintain conditions for growth through high participation rates in the labour market.

2.3 Social Security for Migrant Workers

Articles 432 and 308 of the Treaty of Amsterdam spell out the elimination of any obstacle to the freedom of movement of persons within the EU. This principle also holds true for citizens of Iceland, Norway and Liechtenstein, by virtue of the agreement on the European Economic Area (EEA).

The EU has no intention of interfering with how individual member states decide to organise their own social security systems; what it does,

however, is to ensure that potential mobility is not impeded or thwarted by penalties incurred by virtue of moving from one member state to another. This is done primarily by co-ordinating - and not harmonizing - national legislation on social security and social protection. Hence, arrangements would be possible across completely different social security schemes.

The four principles underlying the guidelines to be adopted by the individual EU member states on this topic are the following:

- *equal treatment:* workers (and, since 1982 even the self-employed) who are citizens of EU member states must enjoy the same benefits and rights of citizens of the state in which they are working, as long as the immigrant workers have resided for a stipulated period of time in that state. These rights and benefits extend also to the dependants and family members of the worker, as well as to state-less citizens and refugees.

- *aggregation:* this means that the period of time that a person works and has contributed to the social security system of another EU member state must be recognised in any other EU member state. This holds true in such matters as the calculation of insurance payments and pension contributions.

- *prevention of benefit overlap:* this measure is intended to prevent an abuse of the aggregation principle. The fact that one person may have contributed to two insurance schemes not simultaneously but in succession, for example - one part in one member state and another part in another - does not mean that such an individual is entitled to the cumulative benefits of the two schemes.

- *exportability:* this means that the payment of social security benefits must be done within the EU as a whole and must not be restricted, with some exceptions, only to whoever is resident in a particular member state. (Thus, for example, unemployment benefits may be 'exported' for up to three months, as beneficiaries who are citizens of one member state may look for work in another member state with-

out losing their unemployment benefits.)

As a rule, benefits in kind (such as medical assistance) are governed by the rules of the member state in which the person who is entitled to them resides or stays.

The social security benefits covered by the above regulations are:

- sickness and maternity benefits;
- invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
- old-age benefits;
- survivor's benefits;
- benefits in respect of accidents at work and occupational diseases;
- employment benefits;
- family benefits.

2.4 Health and Safety at Work

The sphere of occupational health and safety is one of the most advanced aspects of European social policy. This is intended to establish decent standards of living and working conditions for all workers in the EU; as well as to prevent any form of "social dumping" between EU member states, thus ensuring a "level playing field" for businesses in realising the growth and employment potential of the single market.

Article 137 of the Treaty of Amsterdam comments about the responsibility of the EU to promote improvements in working conditions by ensuring the health and safety of workers. This is undertaken by means of the acceptance and enforcement of minimum standards, while each EU member state remains free to improve upon such standards by adopting ulterior provisions.

EU regulations on occupational health and safety fall into two main categories. There are the so-called framework directives which establish fundamental principles; then there are the specific, "daughter" directives

which apply to particular issues and/or specific agents. The two key framework directives on occupational health and safety are:

Council Directive 80/1107 regarding protection of workers from exposure to physical, chemical and biological agents at work.

Council Directive 89/391 which contains basic provisions for organising health and safety at work and sets out the responsibilities of both employers and workers in this regard.

Another important directive (Council Directive 93/104) with wide-ranging implications - so crucial that the UK Government refused to accept it as an "occupational safety and health" matter, took the European Commission to Court in 1993 but lost the case [Case No. 84/94] - deals with the organisation of working time.

Other pieces of legislation which are concerned with the area of health and safety at work (such as *Council Directives* 76/464, 86/280, 88/347 and 90/415 dealing with dangerous substances; *Council Directives* 67/548 and 93/90 dealing with principles of risk assessment; and *Council Regulation* 793/93/EC and *Commission Regulations* 1488/94, 2268/95, 142/97 and 143/97 also about risk assessment) fall within the remit of a different chapter of the *acquis communautaire* - that of the Environment *(Chapter 22).*

2.5 Social Dialogue: Information, Consultation and Participation of Workers

The legal basis of the social dialogue are to be found in Articles 136-140 of the Treaty of Amsterdam. Their key objective is to promote a dialogue between labour and management which also enhances their influence in determining Community policy. Indeed, it was considered essential from the outset of the European project to involve various economic and social groups as advisors in drawing up Community legislation, mainly via the establishment of the *Economic and Social Committee.*

Since 1985, the most active dialogue at cross-industry level has been taking place within the Social Dialogue Committee, one of a series which advises the European Commission on the formulation of specific policies. Labour and management are represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre for Public Enterprises (CEEP). Such meetings have resulted in a number of joint statements on such issues as employment, education and training.

It is definitely the post-Maastricht Agreement on Social Policy which has however given the social dialogue a prominent role in the process of adopting Community action. At the national level, management and labour are given the opportunity of implementing directives by way of agreement, as well as expected to negotiate the details of other agreements decided at a Community level. Meanwhile, the European Commission must consult management and labour before taking any action on the social policy front. Management and labour can also forward to the Commission an opinion or, where suitable, a recommendation. Alternatively, they may inform the Commission that it is their wish to initiate, independently, a process of negotiation which could lead to the establishment of a direct agreement between the two parties. There are three possible outcomes to such a negotiation process-

- having concluded an agreement, management and labour jointly request the Commission to propose that the Council adopts a decision on its implementation;

- having concluded an agreement, management and labour prefer and agree to implement it in accordance with the procedures and practices specific to management and labour in the different EU member states;

- with management and labour not having been able to conclude an agreement, the Commission will take the initiative and submit its own proposals to the Council.

The practical outcome of such a negotiation track have been the coming into force of a number of *framework agreements:* on parental leave

(Council Directive 96/34), on part-time work (Council Directive 97/81) and on fixed term employment contracts (Council Directive 99/70).

Legislative progress has also been registered in areas which affect employee rights in relation to information, consultation and participation in decision making. As from 1975, a directive has been obliging employers to negotiate with employees in cases of imminent collective redundancies. Other directives protect worker rights in cases of take-overs or mergers; in relation to the provision of information concerning the employment contract; and to provide protection in cases where employers become victims of insolvency. Yet another directive sets up European Works Councils in enterprises of a certain size and spread. There is also a resolution of the European Parliament in favour of schemes which encourage the financial participation of workers in the companies where they work, particularly through profit-sharing [Refer to the Pepper I & II Reports on this subject].

Proposals for greater worker participation in decision making on company boards or management - such as the Vredeling Proposal - have come up against resistance and no directives have been implemented in this area to date.

Proposals for distinct statutes for a European company, a European co-operative, a European association and a European mutual society have also so far been left pending.

2.6 Equal Rights for Men and Women

What is today Article 119 of the EU Treaty (Article 114 of the Treaty of Rome) had already set out the principle of equal pay for equal work, in line with the basic objective of ensuring equal opportunities and treatment for men and women.

From 1975, the EU started adopting a number of directives which were intended to provide a concrete manifestation of the member states' often lip service support of such a key principle as equal rights for men and

women. The directives deal with such areas as:

- application of the principle of equal pay for men and women (Council Directive 75/117);
- equalisation of access to employment, vocational training and conditions of employment (Council Directive 76/207);
- equalisation of access to social security (Council Directives 79/7; 86/378 and 96/97);
- extension of equalisation of access also to people who are self-employed (Council Directive 86/613);
- occupational health and safety to women who are pregnant, have just had a baby or are breast-feeding (Council Directive 92/85);
- responsibility of burden of proof in cases of alleged sexual discrimination (Council Directive 97/80).

The enactment of an *equal opportunity policy* has also been accepted as one of the four pillars of the European Employment Strategy Guidelines.

The *framework agreements* on part-time work (Council Directive 97/81) and on parental leave (Council Directive 96/34) are also seen as addressing the issue of equal treatment of men and women, since it is women who by and large resort to both part-time work and parental leave in order to balance the requirements of work and family.

In 1996, the European Parliament adopted a resolution in favour of *equal pay for work of equal value.* This in recognition that men and women who perform the same work and fall within the same employment category nevertheless continue to enjoy differential gross remuneration.

2.7 The Disabled, the Elderly and the Excluded

According to new Article 13 of the Treaty of Amsterdam, the EU Council of Ministers may, on the basis of unanimity, take appropriate action to combat discrimination based, amongst other things, on disability and age. In accordance with Articles 136 and 137 of the same Treaty, the objectives of the European Union and of the respective Member States include the combating of exclusion and the integration of persons excluded from the labour market.

Those with Disability

Eurostat estimates that the percentage of disabled persons in the EU member states is between 10% and 12% of their total population.

In a communication of July 1996 [COM (96) 406], the European Commission launched a new European disability strategy based on equal rights and non-discrimination as well as on mainstreaming disability issues into all appropriate EU policies, such as social policy, education and training, research, transport, telecommunications and public health. In a Resolution of 20th December 1996, the EU Council of Ministers reaffirmed its commitment of equality in the development of comprehensive policies in the field of disability and to avoiding any form of negative discrimination.

The European Social Fund has been instrumental in improving the lot of people with disabilities. ESF support provides for the establishment of comprehensive packages of measures which form a pathway to the integration or re-integration into the labour market. These include guidance and counselling; support for self-employment; wage subsidies; and work experience schemes.

In 1991, the Commission adopted a proposal for a directive relating to minimum requirements for safe transport to work for the disabled [COM (91) 539]. In 1997, the Commission also adopted a proposal for a directive relating to special provisions for vehicles used in the carriage of passengers, requiring them to be accessible for people with reduced mobility [COM (97) 276].

The Elderly

Some 22% of the total EU-15 population is already 60 years of age or older; and this percentage is increasing.

The European Commission has, over the years, carried out a number of action programmes focussing on the contribution of the elderly to economic and social life. But in 1996, the U.K. Government contested the legitimacy of such spending. In a ruling of 12th May 1998, the European Court of Justice [C- 106/96] found in favour of the U.K. Government and ruled that the EU's financing of 86 projects in 1995 to combat poverty & social exclusion amongst the elderly had no legal basis.

This event necessitated a temporary budgetary freeze and an overhaul of Community measures in this field. There is now no general EU programme for older people as such. The new Amsterdam Treaty and current policy comprises a shift from a 'target group' focus to a horizontal approach with an emphasis on support for older people in situations of particular need (such as when unemployed, discriminated against or socially excluded).

The Socially Excluded

Eurostat estimates that some 16% of households in the EU are unable to secure for themselves a minimum standard of living. These are roughly equally divided between working households, retired households and those whose members are either inactive or registering for work. Meanwhile, income disparity between the highest and lowest income groups within the Community has tended to widen.

Certain social groups are evidently more at risk: young and elderly people; families with children; single parent households; the low skilled, whether employed or unemployed. Unemployment, particularly long-term, is recognised as a main contributor to such forms of exclusion.

EU initiatives to combat social marginalisation have been limited by a

lack of legal provision *(see above)*. This has led to the blockage of the 4th poverty programme. Only the revised Amsterdam Treaty, now in force, allows the EU to move out of this policy impasse.

In a Round-Table Conference held in May 1999, the approach and principles of EU action in favour of social integration were confirmed as follows:

- to support co-operation which enables Member States to enhance the effectiveness of all policies which affect social exclusion;
- to promote an integrated approach;
- to underpin all action with partnership and participation;
- to actively explore and promote the idea of minimum Community-level requirements as a useful way of fostering integration.

These measures complement those already announced in Recommendation 92/441/EEC of June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems.

Both the European Employment Strategy Guidelines and the European Social Fund embrace active measures for the integration and re-integration of people.

The Employment Guidelines include reforms to tax and benefit systems and life-long learning to enable workers - particularly older workers, returners to work and the disabled - to improve skills especially in fast-changing environments such as information and communication technologies.

The European Social Fund serves as the main financial instrument for addressing the disadvantaged regions of the EU. The re-integration of people, excluded from the labour market and the fight against long-term unemployment are key policy priorities under Objective 3.

3. Impact on Malta

Apart from our Constitution, Maltese law on social policy, employment and industrial relations is primarily based on five pieces of legislation: the *Conditions of Employment (Regulation) Act,* 1952; the *Industrial Relations Act,* 1976; the *Occupational Health & Safety Act,* 1994; the *Social Security Act,* 1988; and the *Employment & Training Services Act,* 1990. It so happens that three out of five of these pieces of legislation are currently in the process of amendment.

On the basis of the actual body of law currently in force, it is clear that there are some significant differences between Maltese legislation and the *acquis communautaire.* However, to put this observation in a proper perspective, one must also recognise the following:

- Malta's application to join the EU as a full member comes at a time when social partnership is, with some hiccups, well on the way to becoming well established and recognised locally as a legitimate instrument for social policy. This conforms to the continental model of industrial relations which has become entrenched within the EU, particularly during the 1990s. Thus, both in terms of substance and in terms of procedure, Malta's existing social policy regime is relatively well advanced and recognises most of the key principles of its EU variant.

- Most of the departures between Maltese legislation and the *acquis communautaire* as far as social policy is concerned are concentrated in the sphere of occupational health and safety.

- Other features of the EU *acquis* which are not currently recognised at law in Malta have nevertheless been negotiated between the social partners and are largely accepted on a *de facto* basis. These provisions will still need to be transposed into Maltese law but this transposition becomes, in such cases, a primarily technical issue without any other repercussion.

This report will therefore: (a) identify what exactly will need to be transposed into local legislation from the EU's body of law concerning social policy, employment and industrial relations, including occupational health and safety; (b) assess the extent and level of current preparedness of different employers in Malta in conforming to the implications of such a transposition; (c) comment on the strategic and tactical implications of these results.

The actual directives and agreements falling under Chapter 13 of the *acquis* (Social Policy and Employment) and which still require transposition into Maltese law can be classified into three sub-groups:

- Labour Law and Worker Rights;
- Equality of Treatment of Men and Women; and
- Health and Safety at Work.

Furthermore, there are other directives and principles which concern social policy, employment and industrial relations which do not fall under Chapter 13 but must nevertheless be addressed in this report. These include: freedom of movement of persons and the comparability of qualifications for professional purposes (Chapter 2); and the freedom to provide services (Chapter 3).

3.1 Labour Law & Worker Rights

3.1.1 Council Directives 75/129 and 98/59 concern the rights of workers on an indefinite contract of employment to be informed and consulted by their employers when these are contemplating collective redundancies. Does not apply to workers in public administration or to crews on board vessels.

3.1.2 Council Directives 77/187 and 98/50 are about the protection of the rights of workers affected by mergers or take-overs of the places where they work, including their rights to be informed and consulted

prior to such mergers or take-overs taking place and with the new employers assuming responsibilities regarding the conditions of employment.

3.1.3 Council Directive 80/987 concerns guaranteed payments to workers affected by the onset of insolvency of their employer. This is to be undertaken by the setting-up of a guarantee fund for this specific purpose.

3.1.5 Council Directive 97/81 (98/23 for the United Kingdom) eliminates discrimination against part-time work and improves the quality of this type of employment; apart from assisting in the creation of flexible systems of work which take into consideration the interests of both workers and employers.

3.1.5 Council Directive 93/104 - also considered as a health and safety at work directive - establishes minimum conditions for the organisation of working time, including periods of rest.

3.1.6 Council Directive 94/45 (97/74 for the United Kingdom) establishes the parameters for European Works Councils as a forum of information and consultation by company management with workers. These are mandatory in enterprises based in at least 2 EU member states with at least 150 employees in each of two such states and with an overall minimum of 1,000 employees.

3.1.7 Council Directive 96/71 ensures that employees who are posted (on secondment) to offer their services in another EU member state will enjoy at least the minimum level of social protection and conditions of employment which are applicable in that state, irrespective of what is stipulated in their employment contract. Firms which offer cross border services must therefore accept certain basic standards, including the protection of the minimum wage in the EU member state where the service is being delivered.

3.1.8 Council Directive 99/70 eliminates discrimination against employees who work on the basis of fixed term employment contracts.

3.1.9 Council Directive 91/533 concerning the employer's obligation to inform employees of the conditions applicable to the contract of employment or to the employment relationship.

3.2 Equality of Treatment of Men & Women

3.2.1 Council Directive 75/117 concerns the approximation of the laws of the EU member States with respect to the application of the principle of equal pay for men and women.

3.2.2. Council Directive 76/207 implementing the principle of equal treatment for men and women with respect to access to employment, vocational training and promotion, as well as working conditions.

3.2.3 Council Directives 79/7, 86/378 and 96/97 concern the principle of equal treatment of men and women in occupational social security schemes.

3.2.4 Council Directives 86/613 deals with the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

3.2.5 Council Directives 96/34 (and 97/75 for the U.K. and Northern Ireland) concern the framework agreement on parental leave.

3.2.6 Council Directives 97/80 (98/52 for the United Kingdom) concerns the burden of proof in cases of alleged sexual discrimination.

3.3 Health & Safety at Work

3.3.1 Council Framework Directives 80/1107, 88/642, 89/391 and 91/322 concern the protection of workers from risks relating to exposure to chemical, physical and/or biological agents at the place of work, including the setting up of indicative limit values for this purpose.

3.3.2 Council Directive 89/654 concerns minimum standards of health and safety at the place of work.

3.3.3 Council Directive 92/58 concerns the minimum provision of signs and signals relating to occupational health and safety.

3.3.4 Council Directive 90/270 concerns minimum standards of health and safety at the place of work in relation with the use of visual display units (VDUs).

3.3.5 Council Directive 82/130 concerns the use of electronic equipment in mines.

3.3.6 Council Directives 90/394 and 97/42 concern the protection of workers from hazards relating to exposure to carcinogens at the work-place.

3.3.7 Council Directive 88/364 prohibits the use of certain specific agents at the workplace.

3.3.8 Council Directive 78/610 concerns the protection of the health of workers from the effects of vinyl chloride monomer.

3.3.9 Council Directive 82/605 concerns the protection of the health of workers from the effects of metallic lead and its derivative ionic compounds.

3.3.10 Council Directive 83/477 concerns the protection of the health of workers from the effects of asbestos at the place of work.

3.3.11 Council Directive 86/188 concerns the protection of the health of workers from the effects excessive noise at the place of work.

3.3.12 Council Directive 91/383 concerns the application to temporary workers of measures relating to occupational health and safety, including those who work under a definite contract of employment.

3.3.13 Council Directives 90/679, 93/88, 95/30, 97/59 and 97/65 concern the protection of workers from exposure to biological hazards at the place of work.

3.3.14 Council Directive 92/57 concerns minimum standards of health and safety at workplaces where work is of a temporary nature or relates to construction activity.

3.3.15 Council Directive 92/104 concerns minimum standards of health and safety at work for workers who are engaged in extractive industries and in mineral extraction through drilling.

3.3.16 Council Directive 93/103 concerns minimum standards of health and safety at work for workers who work on board fishing vessels.

3.3.17 Council Directive 90/269 concerns minimum standards of health and safety at work for workers who deal with heavy loads, especially where there is risk of bodily injury or harm to the worker.

3.3.18 Council Directive 92/29 concerns minimum standards of health and safety for the provision of medical treatment and medical assistance on board ships.

3.3.19 Council Directive 98/24 concerns minimum standards of health and safety for workers who are exposed to chemical agents at work.

3.3.20 Council Directive 89/622 relates to the labelling of tobacco products.

3.3.21 Council Directive 90/239 relates to the maximum tar yield allowed in cigarettes.

3.3.22 Council Directive 98/43 concerns adequate provisions for the advertising and sponsorship of tobacco products.

3.3.23 Council Directive 92/85 establishes measures intended to

improve the health and safety of women workers who are pregnant, have just delivered a baby or are breast-feeding.

3.3.24 Council Directive 94/33 protects, along with some exceptions, the safety and health of youth up to the age of 18 years, including the prohibition of night work, the importance of adequate supervision at work and the guarantee of minimum rest periods.

3.4 Freedom of Movement of Persons & Services

The *acquis communautaire* also has extensive provisions concerning the mutual recognition of qualifications for professional purposes, as well as for the regulation of a variety of other services which may involve both the private and public sectors of the different Member States.

- Chapter 2 (Freedom of Movement of Persons) involves provisions which also have an impact on social policy and employment.

3.4.1 Council Directive 68/360 provides for the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

3.4.2 Council Directive 73/148 provides for the abolition of restrictions on rights of establishment and the provision of services within the Community for workers of Member States and their families.

3.4.3 Council Directive 98/49 removes obstacles to the free movement of employees and self-employed persons and their families, while safeguarding their supplementary pension rights.

3.4.4 Council Directive 64/221 relates to measures concerning the entry of nationals from other EU member states into a territory, issue or renewal of residence permits, or expulsion from a territory.

3.4.5 Council Directives 93/96, 90/365 and 90/364 grant limited residence rights to citizens of EU Member States if they are respectively:

students; employees and self-employed persons who have ceased their occupational activity; or who would otherwise not enjoy this right under any other legal provision.

3.4.6 Council Directives 89/48 and 92/51 establish two "general systems" for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. These systems recognise the right of each EU Member State to determine the level of qualification required to practise specific professional activities in that State; and where qualifications obtained in one state do not correspond to those required in another, the application of compensatory measures - involving periods of professional experience, adaptation periods or aptitude tests - is sanctioned. These directives apply to all the professions for which higher education is required, except for those governed by the specific directives mentioned hereunder.

3.4.7 Council Directive 77/249 and *European Parliament and Council Directive* 98/5EC (with respect to lawyers), 85/384 (architects); 85/432, 85/433, 85/584 and 90/658 (pharmacists); 93/16, 97/50, 98/21 and 98/63 (doctors) make provision for the recognition in each Member State of the specific qualifications awarded to each of these professional employees or self-employed persons.

3.4.8 Council Directive 86/653 lays down measures governing relations between self-employed commercial agents and their contractors.

- In the case of Chapter 3 (Freedom to Provide Services), the bulk of directives concern the regulation of credit institutions, insurance, investment services and the stock exchange.

3.4.9 Council Directives 64/225, 72/166, 73/239, 73/240, 76/580, 77/92, 78/473, 79/267, 84/5, 84/641, 87/344, 88/357, 90/232, 90/618, 90/619, 91/371, 91/674, 91/675, 92/49 and 92/96; and *European Parliament and Council Directive* 98/78 EC - deal with the co-ordination of laws, regulations and administrative provisions relating to different types of insurance services, including life insurance.

3.4.10 Council Directives 73/183, 77/780, 86/635, 89/117, 89/299, 89/646, 89/647, 92/30 and 92/121; *Commission Directives* 91/31EC, 94/7EC and 95/67EC; and *European Parliament and Council Directives* 94/19 and 97/5 - deal with the co-ordination of laws, regulations and administrative provisions relating to banks.

3.4.11 Council Directives 79/279, 80/390, 82/121, 85/611, 88/627, 89/298, 89/592 and 93/22 deal with the co-ordination of the operation and administration of stock exchanges and other securities markets.

3.4.12 Council Directives 87/540, 91/670, 91/672, 96/26 and 96/50 relate to the recognition of qualifications pertaining to occupations which facilitate the free movement of services - such as carriers of goods along waterways, civil aviation personnel, boat-masters, road haulage operators and road passenger transport operators.

3.4.13 Council Directives 97/67 deals with common rules for the development of the internal market of Community postal services.

3.4.14 Council Directives 74/ 556 and 74/557 setting up measures for the professional use and distribution of toxic substances in trade.

3.4.15 Council Directives 77/452 and 77/453 (nursing services); 78/686 and 78/687 (dental services); 78/1026 and 78/1027 (services of veterinary surgeons); 80/154 and 80/155 (midwifery services) - and all these as amended by Council Directive 89/594 - relate to the mutual recognition of qualifications and to the co-ordination of these professions.

3.4.16 Council Directives 71/304, 89/665, 92/50, 93/36, 93/37 and 93/38 concern the regulation and administration of the award of public works and public supply contracts and of related procurement procedures.

4. Comparing Legislation: Malta versus EU

Having itemised the body of EU legislation (at Directive level only)

which impinges on social policy, employment and industrial relations practices, the next step is to identify the general implications of each of these measures. In this exercise, the focus of analysis is being placed exclusively on labour law and worker rights; equality of treatment of men and women; and the freedom of movement and services.

In the context of this assessment, one must take note that the field of social policy and industrial relations in Malta today is not exclusively regulated by provisions at law. Measures which are enacted de facto may exist on the basis of collective agreements struck by the social partners on a bipartite, enterprise level; while others may have become standard practice after having been initiated in the context of such bipartite bargaining. Such a legacy considerably alters any compliance costs which must be borne in the course of the adoption of the EU acquis.

4.1 Labour Law & Worker Rights

4.1.1 Council Directives 75/129 and 98/59 concern the rights of workers on an indefinite contract of employment to be informed and consulted by their employers when these are contemplating collective redundancies. Does not apply to workers in public administration or to crews on board vessels.

Discussion

Where employers are contemplating collective redundancies (other than by a judicial decision) they are expected to notify a competent public authority in writing of any projected collective redundancies at least 30 days - and possibly extended to 60 days - from the date at which the envisaged redundancies will take effect. Employers are also expected to begin consultations with worker representatives on such collective redundancies in good time.

For the purpose of the directive, a 'collective redundancy' means a dismissal effected by an employer for one or more reasons not directly related to the individual workers concerned. The number of such redun-

dancies must also be at least 10 workers (in firms employing between 20-100 employees) at least 10% of the workers (in firms employing 100-300 employees) and at least 30 workers (in larger firms). The minimum number of workers is brought down to 20 if the notification period is extended to 90 days prior from the date at which any contemplated collective redundancies are to take effect.

Both obligations are intended to enable adequate discussions and consultations to take place, possibly with the view of avoiding the collective redundancies contemplated, or otherwise to mitigate their consequences by, for example, providing assistance for re-deploying workers or re-training those workers who are made redundant.

Local legislation in Malta does not provide for procedures to be followed in the case of contemplated collective redundancies. In practice however, the obligation to consult worker representatives is often invoked where such trade union representation exists.

This obligation is a direct outcome of what had been contemplated in the 1989 Social Charter. It is premised essentially on the notion of the right of workers for information and consultation. The information that must be passed on by employers to worker representatives must include the reasons for the contemplated collective redundancies, the period when such redundancies are to be effected, the number and category of workers involved, the criteria used for their selection and the method used to calculate compensation.

4.1.2 Council Directives 77/187 and 98/50 are about the protection of the rights of workers affected by mergers or take-overs of the places where they work, including their rights to be informed and consulted prior to such mergers or take-overs taking place and with the new employers assuming responsibilities regarding the conditions of employment.

Discussion

Again, Maltese law makes no provision for such worker rights. But,

again, in situations where mergers and take-overs have occurred, employers have generally consented to the continuation of existing conditions of employment. This is very often the case in unionised firms, where the "carried over" conditions of employment are therefore spelt out in the latest collective agreement undertaken with the immediately preceding employer.

The Directive now establishes that extant conditions of employment enshrined in a collective agreement will continue to be observed after the transfer of ownership of a firm until the expiry of the said agreement or, via a specific provision, up to at least a year after the transfer.

A transfer shall not, of itself, constitute grounds for dismissal. This provision, however, shall not obstruct dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce.

Whether employers actually consult with their employees prior to mergers or acquisitions is a different matter. The Directive now obliges the transferor and transferee to provide specific information to the workers, representatives (or, in the absence of representation, the employees themselves) in good time before the transfer is carried out and in any event before the employees are directly affected by the transfer as regards their conditions of work and employment. Such information must include: the proposed date of the transfer, the reasons for the transfer, and the implications and measures envisaged on the employees as a consequence of the transfer.

The status and function of worker representatives shall not be affected by the transfer.

To avoid a "diffusion of responsibility", both transferor and transferee shall be 'jointly and severally liable' in respect of any obligations arising from the Directive.

4.1.3 Council Directive 80/987 concerns guaranteed payments to work-

ers affected by the onset of insolvency of their employer. This is to be undertaken by the setting-up of a guarantee fund for this specific purpose.

Discussion

The Conditions of Employment (Regulation) Act, Section 27, affords some limited protection in the event of insolvency of the employer by means of the existence of a sum of Lm200 as a "privileged debt" with respect to the assets of the employer.

The provisions of the Directive are mainly procedural since they stipulate the setting up of "guarantee institutions" which are independent of the employerís operating capital. Such institutions will guarantee the payment of outstanding claims resulting from contracts of employment.

In order to avoid the payment of any sums beyond the social objective of this Directive, a Member State may - in terms of Clause 4(3) - set a ceiling to the liability for employees' outstanding claims - as CERA, Section 27, already does.

Specific classes of employees in each Member state may be excluded from the provisions of this directive, either because of the special nature of the employee's contract and especially if such employees enjoy some other form of guarantee offering equivalent protection.

The Directive, while allowing for flexibility in the determination of the date at which its measures are to come into effect (Clause 3), intends to ensure that employees affected by insolvency are assured the payment of outstanding claims relating to pay for up to the equivalent of three months' wages.

It remains up to each member state to decide whether the financing of these funds shall be the responsibility of government and/or of employers. Clause 5b states that employers shall contribute to financing, unless it is fully covered by the public authorities.

It also remains at the discretion of member states to decide as to how such guarantee funds are to be administered and by whom.

4.1.4 Council Directive 97/81 (98/23 for the United Kingdom) eliminates discrimination against part-time work and improves the quality of this type of employment; apart from assisting in the creation of flexible systems of work which take into consideration the interests of both workers and employers.

Discussion

One tenet of this Directive is for part-time workers not to be treated in a less favourable manner than comparable, full-time employees, for the simple and single reason that they work part-time. Where appropriate, the principle of *pro-rata temporis* shall apply. This directive applies not just in the case of pay and leave entitlements but also in such other measures as access to vocational training.

The second principle behind this Directive is to enhance the flexibility of the labour market by the removal of the discrimination described above. Thus employers are obliged to remove any obstacles which may exist in allowing workers to move from full-time to part-time work or vice versa; to provide timely and relevant information on the availability of full-time or part-time positions in their firm; and to make available measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions

The situation governing part-time work in Malta is sparsely regulated. A National Standard Order provides that the hourly rate for part-time work may not be less than the hourly rate worked out through the minimum wage. Otherwise, Legal Notice 61 of 1996 gives part-time workers whose part-time employment is their main occupation and who are working more than 20 hours a week a pro rata entitlement to vacation leave, sick leave and bereavement leave.

The Directive leaves ample room for the social partners "to conclude....

agreements [at both national and European levels] adapting and/or complementing the provisions of this agreement in a manner which will take account of the specific needs of the social partners concerned" (Clause 6 [3]). Indeed, most EU Member States have deemed fit to insert special provisions which either restrict the classes of workers who are covered by the Directive, or else impose legitimate thresholds for the provision of the *pro rata* facility. Such thresholds include a period of service, time worked [which is what applies in Malta's case] or an earnings qualification, while bearing in mind the principle of non-discrimination (Clause 4[4]). In these respects, Maltese legislation is already in line with the acquis - although the manner in which such provisions were arrived at in Malta is not exactly an example of "social partnership" in action.

4.1.5 Council Directive 93/104 - also considered as a health and safety at work directive - establishes minimum conditions for the organisation of working time, including periods of rest.

Discussion

The Directive sets out to establish minimum periods of daily rest, weekly rest and annual leave, breaks and maximum working hours as well as regulating certain aspects of shift work as well as night work. It is a directive meant to ensure a better level of protection of the safety and health of workers, while avoiding administrative, legal or financial constraints which would deter business development and economic growth.

The basic provisions of this directive include the following minimum standards:

- (Clause 3)- a daily rest period of 11 consecutive hours per 24-hour period (meaning that no working day can be longer than 13 consecutive hours);

- (Clause 4) - at least one rest break where the working day is longer than six hours;

- (Clause 5) - at least one, 24-hour period of rest per week, preferably a Sunday;

- (Clause 6) - the average time spent working per 7-day period not to exceed 48 hours, inclusive of overtime;

- (Clause 7) - paid annual leave entitlement of at least 4 weeks, and not replaceable by an allowance, except where the employment relationship is terminated;

- (Clause 8) - normal working hours at night not to exceed an average of 8 hours per 24-hour period; such hours never to be exceeded by night workers whose work involves special hazards or heavy physical or mental strain; and

- (Clauses 9 & 12) - night workers are entitled to free health checks; to be assured appropriate health and safety protection; and to a transfer to suitable day work if found suffering from health problems associated with their night work.

Derogations may be applied by Member States, preventing the application of Clauses 3, 4, 5, 6 and 8 above from: Managing executives, family workers and workers officiating at religious ceremonies.

Derogations from the Clauses 3, 4, 5 and 8 above - *but not Clause 6* - may be obtained for *all* categories of workers by means of collective agreements.

Compensatory agreements to those in Clauses 3, 4, 5 and 8 may be struck in the case of security personnel and where continuity of service is essential (such as hospitals, prisons, residential institutions, docks, airports, media, utilities, fire and civil protection, research and development, agriculture, tourism and postal services.

The Conditions of Employment (Regulation) Act, 1952; as well as the relevant Wage Regulation Orders (WRO) provide for most of the aspects identified in this Directive. However, not all employees are cov-

ered by the WRO provisions.

Ironically, the Constitution of Malta (Article 13[2]) does lay down that all workers shall have, and indeed may not renounce to, one day of rest per week as well as paid leave; the Constitution (same Article 13) also declares that national legislation shall stipulate the maximum statutory number of working hours. These declarations have, however, never been translated into legislation.

Thus, there is as yet no attempt to cap the maximum hours worked, inclusive of overtime, at law. The only way in which an employer can circumvent this clause is to obtain the employee's consent to work beyond the stipulated 48 hours-a-week maximum:

> "no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average over a reference period of four months, unless he has first obtained the worker's agreement to perform such workî (Directive 93/104, Clause 18 (1) b [i]).

This particular feature of the Directive may prove particularly difficult to enforce in Malta in those occupational sectors where the ënormalí hours of work are still above 40 per week

Various WROs still allow specific occupational groups to have a normal working week in excess of 40 hours. Examples include cinemas and theatres (46 hours); drivers of hired cars (46 hours); paper, plastics, chemicals and petroleum (44 hours); public transport (48 hours); while a part-time watchman would work a maximum of 44 hours -and up to 47 hours in a private school!!

A survey has been carried out over autumn 1999 by the Malta Employers Association which solicited information from private and parastatal employers regarding the organisation of their working time. The 55 employers who replied reported 5,600 employees working a typical week of between 40 and 48 hours; but as many as 1,900 other employees working over 48 hours per week, and with more than 2,000 employees having a normal working day in excess of 8 hours. There is

still a powerful work culture in place in Malta today - and employers will find employees ready to serve as accomplices in working extraordinary hours.

Employers in Malta are also not legally bound to grant time off in lieu to workers who are required to work on their weekly day of rest. Typically, such workers are currently granted extra pay, but not another day of rest during the week as compensation. Such a measure is also endorsed in the relevant WROs.

4.1.6 Council Directive 94/45 (97/74 for the United Kingdom) establishes the parameters for European Works Councils as a forum of information and consultation by company management with workers. These are mandatory in enterprises based in at least 2 EU member states with at least 150 employees in each of two such states and with an overall minimum of 1,000 employees.

Discussion

This directive is also one which concerns the provision of information, consultation and participation rights to workers and stems from the general provisions of the 1989 Social Charter. It obliges employers to set up, at their own expense, a structure - referred to as a European Works Council (EWC) - for the purposes of informing and consulting employees. The only employers affected by this directive are limited to "Community-scale undertakings or groups of undertakings", meaning a firm with at least 1,000 employees within the EU Member States and at least 150 employees in each of at least two Member States. (The numbers of employees includes part-timers, where they exist.)

The directive spells out the procedure by which the EWC - or an "information and consultation procedure", as an alternative - is to be established, following negotiations between a special negotiating body and central management. Such negotiations may commence upon management's own initiative or upon the receipt of a written request by at least 100 employees or their representatives in at least two firms in at least

two EU Member States. The eventual agreement will stipulate the details by which employees' representatives will have the right to meet to discuss trans-national questions which significantly affect workers' interests.

Maltese Labour Law makes no provision for, or reference to, such Councils; although, in practice, some Maltese trade union officials have recently already been involved as observes in meetings abroad of EWCs which they would be entitled to join once Malta adopts the *acquis communautaire* in this area.

The number of Malta-based enterprises which would fall under this directive is bound to be small: It will include STMicro-electronics, Dowty Forsheda, Playmobil, Baxter, Thomas de La Rue and Central Cigarettes. It would also include such Maltese firms as the Corinthia Group.

This Directive also makes provision for "employee representatives" which are distinct from "trade unions" - a nuance which may not carry much weight in Malta today and which may, should it be tested, be resisted by local trade unions. In any case, the Industrial Relations Act, 1976, has no distinct definition for "employee representatives" other than as trade unions.

The Directive also requires worker representatives, whoever they may be, to enjoy the same protection and guarantees provided for them in their national legislation. Furthermore, those employees who attend at meetings of the EWC shall be entitled to the payment of wages for their period of absence necessary for the performance of their duties.

4.1.7 Council Directive 96/71 ensures that employees who are posted (on secondment) to offer their services in another EU member state will enjoy at least the minimum level of social protection and conditions of employment which are applicable in that state, irrespective of what is stipulated in their employment contract. Firms which offer cross border services must therefore accept certain basic standards, including the pro-

tection of the minimum wage in the EU member state where the service is being delivered.

Discussion

According to this Directive, EU Member States shall ensure that firms guarantee workers posted to their territory from another Member State those terms and conditions of employment applicable in the Member State where the work is being carried out, as may be laid down at law, but also in regulations, collective agreements or other provisions. Such terms and conditions of employment are meant to cover:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates - but not to occupational retirement pension schemes;
- the conditions of hiring-out workers, in particular the supply of workers by temporary employment firms;
- health, safety and hygiene at work; and
- protective measures with respect to the terms and conditions of pregnant women or women who have recently given birth, of children and of young people.
- equality of treatment between men and women and other provisions on non-discrimination.

Maltese Law is non-discriminatory, except in those instances where the legislation explicitly provides rights, advantages or benefits to Maltese citizens. Such features in the local legislation must be changed to ensure compatibility with the *acquis.*

What remains uncertain is the extent to which foreign, EU nationals

would be posted to work in Malta. In any case, given that Malta is a low-income economy within the EU, the likelihood is that workers posted to work in Malta from other EU Member States would enjoy a more substantial remunerative package than that of comparable local workers.

4.1.8 Council Directive 99/70 eliminates discrimination against employees who work on the basis of fixed term employment contracts.

Discussion

This Directive, only promulgated as recently as June 28th 1999 in terms of Article 4(2) of the Agreement on Social Policy, was not included in the list of directives for the 1999 round of Malta-EU screening.

The main purpose of this Directive is to strengthen flexi-curity- flexibility in working time *and* security for workers. It establishes a general framework of working conditions (but excluding considerations of social security) for ensuring equal treatment for fixed-term workers by protecting them against discrimination and for using fixed-term employment contracts on a basis acceptable to employers and workers. The substance of the directive is similar, in many respects, to that concerning non-discrimination to part-time workers (Directive 97/81 reviewed above). It stipulates that fixed-term workers shall not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract or relation. Where suitable, the principle of *pro rata temporis* shall apply.

The specific details of the application of this clause are left to be hammered out by the Member States in consultation with the social partners, or else directly by the social partners.

The Conditions of Employment (Regulation) Act, 1952, Section 30, is the only instance in local labour law which specifies some basic rights for workers on fixed-term contract.

Of particular relevance to Maltese employers is Clause 5 of this

Directive, intended to prevent abuse arising from the use of successive fixed-term employment contracts or relationships. Once again, it is Member States, after consultation with the social partners; or else the social partners directly who have the responsibility to introduce legal measures to prevent such possible abuse and to determine under what conditions fixed-term employment contracts or relationships shall be deemed as "successive" and to be/become contracts of indefinite duration.

Employers shall also be responsible for providing information to workers on fixed-term employment contracts about vacancies which may become available in the firm, ensuring that they have the same opportunity to secure permanent positions as other workers. Employers shall also be held responsible for ensuring equal access to training opportunities for such fixed-term contract workers, thus enhancing their skills, career prospects and employability.

This Directive applies to fixed term workers who have an employment contract or employment relationship as may defined at law; and may exclude apprentices or those undergoing vocational training.

4.1.9 Council Directive 91/533 concerning the employer's obligation to inform employees of the conditions applicable to the contract of employment or to the employment relationship.

Discussion

The Conditions of Employment (Regulation) Act, 1952, Section 15(2) imposes a general obligation on an employer to explain to any employee, upon engagement, "the provisions of any recognised conditions of employment applicable in his case". Sections 31 and 32 of CERA then spell out the details of such a provision, which are similar to those of the Directive.

The Directive spells out the following "provisions", to be communicated in writing to any employee within two months of engagement:

- the identity of parties;
- the place of work;
- job description or job title;
- pay;
- leave entitlement;
- hours of work; and
- information regarding collective agreements.

If an employee is expected to work abroad for more than one month, the employer should issue him/her with specific provisions enshrined in a written document which shall be in the worker's possession prior to his/her departure. This document shall include:

- the duration of the employment abroad;

- the currency to be used for the payment of remuneration;

- benefits in cash or kind attendant on employment abroad, if applicable; and

- the conditions governing the employee's repatriation, if applicable.

4.2 Equality of Treatment of Men & Women

4.2.1 Council Directive 75/117 concerns the approximation of the laws of the EU member States with respect to the application of the principle of equal pay for men and women.

Discussion

Article 119 of the Treaty of Amsterdam provides that each Member State shall ensure the application that the principle that men and women should receive equal work for equal pay, taken to mean the ordinary basic or minimum wage or salary and any other remuneration, whether in cash or in kind, which workers receive, directly or indirectly, from their employer in respect of their employment. Where a job classifica-

tion system is used to establish rates of remuneration, its criteria must not discriminate between men and women. The Directive also provides for Member States to set up a recourse procedure within the judicial process for employees to submit a claim of denial of the "equal treatment" principle, as well as an effective remedy should the claim prove successful (Articles 2 & 6).

The provision of equal pay for equal work for men and women has been establish at law in Malta since 1976 and is enshrined in Article 14 of the Constitution. There are, however, no provisions in Malta for guaranteeing the principle of "equal pay for work of equal value", implied in Article 1 of the Directive. An extension in extremis of the "equal treatment" principle would suggest that all work of equal value (however established), irrespective of where and by whom it is performed, should be paid at the same rate - a measure which may be considered draconian and which does not reflect the reality and flexibility of market forces.

4.2.2 Council Directive 76/207 implementing the principle of equal treatment for men and women with respect to access to employment, vocational training and promotion, as well as working conditions.

Discussion

The intention of this Directive is to ensure the absence of discrimination on the grounds of sex, either directly or indirectly as regards access to employment, vocational training and working conditions.

The judgement of the European Court Of Justice on 17th October 1995 in Case C-450/93 (known as the Kalanke judgement) created some uncertainty about the legitimacy of quotas and other forms of "positive action" meant to increase the number of women in certain sectors or levels of employment. The European Commission adopted a communication on 27th March 1996, clarifying that "positive action" measures short of rigid quotas are permissible under Community Law. Such "positive action" measures would include "the giving of preference, as regards access to employment or promotion, to a member of the under-

represented sex, provided that such measures do not preclude the assessment of the particular circumstances of an individual case". The Commission's proposal for such an amendment to Article 2 of the Directive was however not approved by the European Parliament on 9th March 1999 and has not yet been adopted by the European Council.

In Malta, the position of the public sector and of the private sector on this issue differ at law. Act XIX of 1991 (effective as from January 1993) amended the Constitution such that it assures equal treatment in respect of conditions of service and access to job requirements in the case of public officers. As an equal opportunities employer, the civil service has adopted certain standards on gender equality in its interviewing procedures, on the basis of OPM Circular 37/90. These include gender representation on interviewing boards and the setting up of selection criteria for training and development. The Staff Development Organisation at OPM has also, as of 1995, included gender sensitivity training within its training courses. "Positive action", to some extent, has also been entertained within the Malta public service: The Labour Administration (1996-1998) had expressed itself in favour of affirmative action in relation to the percentage of women in executive posts, as well as on government boards and committees.

In contrast, the private sector in Malta remains in a position to perpetuate discrimination based on gender as reflected in the criteria for access to jobs; a specific gender required for a specific job for which no objective reasons exist to defend such a choice (as witnessed in advertised job vacancies); as well as requests for information regarding family intentions or marital status in the context of personnel screening and interviewing for the purpose of recruitment or promotion.

Act XIX of 1991 amending the Constitution, the word "sex" was added to the definition of "discriminatory treatment". This provides a legal basis for those who consider themselves victims of sexual discrimination. Such constitutional redress will have to be strengthened by other legal provisions once this Directive comes into force in Malta.

4.2.3 Council Directives 79/7, 86/378 and 96/97 concern the principle of equal treatment of men and women in occupational social security schemes.

Discussion

These three directives build on Article 1(2) of Council Directive 76/207 (see above) which ensures provisions for the eventual equal treatment of men and women in matters of social security.

In terms of Directive 79/7, the principle of equal treatment is extended to mean no discrimination on the grounds of sex directly or indirectly by reference in particular to marital or family status, and in particular to the obligation to contribute and the calculation of social security contributions, as well as the calculation of any benefits thereof. (Article 4). The directive applies to wage-earners and to self-employed persons, including persons whose economic activity has been interrupted by illness, accident or involuntary unemployment. This directive, however, does not apply to provisions relating to survivors' benefits (such as widow's pensions) and family benefits and is without prejudice to any provisions intended to protect women on the grounds of maternity.

Directive 86/378 extended the coverage of such "equal treatment" to occupational social security schemes for all paid workers, intended to supplement, or to replace, the benefits provided by statutory social security schemes, whether membership in such schemes is compulsory or optional. It does not, however, apply to individual contracts, insurance contracts taken out by salaried workers which do not involve the employer, and any optional provisions which may be offered by occupational schemes.

The effect of this Directive was severely tested, and indeed in part automatically invalidated, by Case 262/88 (Barber versus Guardian Royal Exchange Assurance Group), where the Court of Justice, in its judgement of 17th May 1990, confirmed that all forms of occupational pension constitute an element of 'pay' within the meaning of Article 119 of the EC Treaty, as against any benefits awarded under national statutory

social security. As a result, and in view of subsequent case law, Directive 96/97 was brought into force, drastically revising Directive 86/378 and, inter alia, establishing the 17th May 1990 (the date of the Barber judgement) as the date from which employers in Member States are allowed to raise the retirement age for women to that which exists for men.

It is to be noted that the determination of pensionable age for the granting of retirement pensions is deliberately excluded from the obligations of equal treatment imposed by the above three Directives. Thus the current difference which exists in Malta in this respect (retirement age of 60 for women; and 61 for men) does not constitute a violation of these directives.

Furthermore, all workers in Malta, whether men or women, are covered by the same social security provisions which are spelt out in the Social Security Act 1988 (Chapter 318).

4.2.4 Council Directive 86/613 deals with the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

Discussion

This Directive concerns the application of the same principle of "equal treatment" between men and women as defined in Directive 76/207 and extends it to those workers who are in self-employment. The definition of the term "self-employed worker" implies all persons pursuing a gainful activity for their own account, including spouses who habitually assist them.

Maltese law makes no distinction on the basis of sex where "own account workers" are concerned. Therefore, the local situation may be deemed to be already fully compatible with the *acquis* where this Directive is concerned.

4.2.5 Council Directives 96/34 (and 97/75 for the United Kingdom) concern the framework agreement on parental leave.

Discussion

This framework agreement on parental leave, concluded by UNICE, ETUC and CEEP, is derived from the Agreement on Social Policy. It specifies minimum requirements on parental leave as well as time off from work on grounds of force majeure. The agreement, which applies to all workers having an employment contract or employment relationship, is intended to facilitate the reconciliation of parental and professional responsibilities for working parents. In the spirit of Article 189 of the EC Treaty, the Directive is binding on the Member States in so far as to the results to be achieved, but then leaves them the choice of form and methods.

The agreement (Clause 2[1] & 2[2]) grants men and women workers, on a non-transferable basis, an individual right to parental leave - whether paid or unpaid - on the grounds of the birth or adoption of a child to enable them to taken care of that child, for at least three months, until a given age up to 8 years. The details of the actualization of these rights shall be defined at law and/or in collective agreements (Clause 2[3]). Thus, for instance, parental leave may be granted (a) only to workers who have been in employment for at least one year (Clause 2[3b]); and (b) on a part-time or full-time basis, in a piecemeal manner or in the form of a time-credit system (Clause 2[3a]). At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship (Clause 2[5]).

Member States and/or management and labour shall also take the necessary measures, and specify the terms of application, to entitle workers to time off from work, on grounds of force majeure for urgent family reasons in cases of sickness or accident, making the immediate presence of the worker indispensable (Clause 3).

No legislation exists as yet in Malta concerning parental leave. The con-

cept has however been acknowledged in the civil service over these last few years. MPO Circular 6/94 established the right to one year unpaid leave after the birth of a child; while MPO Circular 28/96 extended this to a further three years of additional unpaid parental leave - referred to as a career break - to be availed of by public servants who are parents in order for them to better care for their children who are under 5 years of age. This provision is available to both fathers and mothers, if they are both state employees, provided that together they do not exceed the prescribed limit and do not utilise the leave concurrently. Since 1996, a provision for one-year parental leave, enjoyed by female employees in the public sector, was extended to fathers who are also employed in the public sector. Today, either parent is thus eligible to parental leave, as long as they are both public servants. (The above provisions have been consolidated by MPO Circular 29/98, particularly in relation to the abuse of career breaks when public officers engage in full time employment, rather than dedicate the time to take care of their young children.)

No time off from work on grounds of family illness or accident is available in Malta at law, except for the statutory 13 weeks maternity leave, marriage leave and bereavement leave. In practice, it is not excluded however that employees currently utilise their own sick leave entitlement to take care of sick spouses, relatives or children.

4.2.6 Council Directive 97/80 (98/52 for the United Kingdom) concerns the burden of proof in cases of alleged sexual discrimination.

Discussion

The aim of this Directive (Article 1) is to ensure that the measures taken by the EU Member States to implement the principle of equal treatment are rendered more effective. This is done by enabling an assertion of rights by judicial process to all persons who consider themselves wronged because the principle of equal treatment has not been applied to them.

In accordance with their judicial systems, Member States will ensure

that, when persons who consider themselves aggrieved because the principle of equal treatment has not been applied to them, establish before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

The "equal treatment" principle means that there shall be no discrimination, either directly or indirectly, based on sex. Such discrimination shall exist where an apparently neutral position, criterion or practice disadvantages a substantially higher proportion of the members of one sex - unless such a provision, criterion or practice is appropriate and justified by objective factors unrelated to sex.

To date, Maltese legislation makes no reference to such a procedure.

4.3 Health & Safety at Work

Although excluded from the terms of reference of this study, reference to two ëhealth and safetyí directives is included in this discussion because of their close affinity with conditions of employment.

4.3.1 Council Directive 92/85 establishes measures intended to improve the health and safety of women workers who are pregnant, have just delivered a baby or are breast-feeding.

Discussion

This is the tenth individual Directive within the meaning of Article 16(1) of the parent Health and Safety Directive 89/391. It establishes the minimum measures intended to safeguard the occupational health and safety of pregnant women workers, workers who have recently given birth and others who are breast-feeding. It protects such workers from dismissal resulting from their condition, obliges a minimisation of exposure to risks through the adjustment of working conditions or through the temporary transfer to another activity. If such measures are not pos-

sible, special leave must then be made available. The Directive also provides a specific list of activities that the pregnant worker should not be allowed to perform, and a list of agents/chemicals to which she must not be exposed (see list below). Night work is also not allowed during pregnancy and for a period following childbirth.

The Directive also provides for a period of 14 uninterrupted weeks of maternity leave to be taken before and after delivery; and for the right of pregnant women to take paid leave from work to attend ante-natal examinations, if this cannot be done outside working hours.

In Malta, Legal Notice 72/96 on the Protection of Maternity at the Workplace ensures that the women workers covered by Directive 92/85 will no longer be required to perform any work which may endanger their health and safety and the health and safety of their child. Neither are they obliged to perform night work if this activity can have harmful effects on the mother, on the pregnancy, or on the child. The same Legal Notice provides for time off from work to pregnant women, without loss of pay, for the purpose of attending ante-natal examinations during working hours.

NON-EXHAUSTIVE LIST OF AGENTS, PROCESSES AND WORKING CONDITIONS referred to in Article 4 (1)

A. Agents

1. Physical agents where these are regarded as agents causing foetal lesions and/or likely to disrupt placental attachment, and in particular:

(a) shocks, vibration or movement; (b) handling of loads entailing risks, particularly of a dorsolumbar nature; (c) noise; (d) ionizing radiation; (e) non-ionizing radiation; (f) extremes of cold or heat; (g) movements and postures, travelling - either inside or outside the establishment - mental and physical fatigue and other physical burdens connected with the activity of the worker within the meaning of Article 2 of the Directive.

2. Biological agents

Biological agents of risk groups 2 and 3 within the meaning of Article 2 (d) numbers 2, 3 and 4 of Directive 90/679/EEC, in so far as it is known that these agents or the therapeutic measures necessitated by such agents endanger the health of pregnant women and the unborn child and in so far as they do not yet appear in Annex II.

3. Chemical agents

The following chemical agents in so far as it is known that they endanger the health of pregnant women and the unborn child and in so far as they do not yet appear in Annex II:

(a) substances labelled R 40, R 45, R 46, and R 47 under Directive 67/548/EEC in so far as they do not yet appear in Annex II; (b) chemical agents in Annex I to Directive 90/394/EEC; (c) mercury and mercury derivatives; (d) antimitotic drugs; (e) carbon monoxide; (f) chemical agents of known and dangerous percutaneous absorption.

B. Processes

Industrial processes listed in Annex I to Directive 90/394/EEC.

C. Working conditions

Underground mining work.

NON-EXHAUSTIVE LIST OF AGENTS & WORKING CONDITIONS referred to in Article 6

A. Pregnant workers within the meaning of Article 2 (a)

1. Agents

(a) Physical agents: Work in hyperbaric atmosphere, e.g. pressurized enclosures and underwater diving.

(b) Biological agents: toxoplasma, rubella virus (unless the pregnant workers are proved to be adequately protected against such agents by immunization).

(c) Chemical agents: Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. Working conditions: Underground mining work.

B. Workers who are breastfeeding within the meaning of Article 2 (c)

1. Agents

(a) Chemical agents: Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. Working conditions: Underground mining work.

Legal Notice 184/96 introduced amendments to the above provision. Amongst these, employers are obliged to take necessary steps to remove female workers from assessed exposures to her health and safety. This is done by the employer: (a) either temporarily adjusting the working conditions and/or working hours; (b) or else by assigning the female worker concerned to another job but under such conditions of employment as may pertain to her newly assigned job. This is contrary to the spirit of the Directive, which stipulates that, irrespective of any transfer or adjustment of working conditions, the female employee must continue to enjoy conditions of employment not less favourable to those which she had enjoyed in her previous job.

Furthermore, no pregnant women or mother who has recently given birth shall be required to perform night work, subject to the submission of an appropriate medical certificate. Such workers shall be transferred to day time work where possible, and definitely if within a period of 21 weeks, these being 8 weeks before and 13 weeks after giving birth. But even here, the Legal Notice maintains that, once transferred to another job, the female employee will become entitled to the conditions of employment appertaining to her newly assigned post, even if these are less favourable to her - as they probably would be, since they will not involve premiums associated with night work. Once again, this is an infringement of the 92/85 Directive.

There is no provision yet at law in Malta specifically obliging employers to provide special leave if it is not possible to adjust working conditions and/or working hours or else transfer a female employee, if this is assessed to be necessary for the health and safety of the employee and/or that of her child.

Local regulations today still do not provide a specific list of activities that the pregnant worker should be protected from performing; but only a list of agents and/or chemicals to which the same pregnant worker should not be exposed. Much, therefore, still depends on the discretion of the employer in this domain.

Furthermore, the Conditions of Employment (Regulation) Act, 1952

(Section 18) lays down a mandatory 13 weeks of maternity leave, payable in full: one week less than that requested by the EU Directive. Our law is also much less flexible in determining how such maternity leave is to be divided before and after delivery.

4.3.2 Council Directive 94/33EC protects, with some exceptions, the safety and health of youths up to the age of 18 years, including the prohibition of night work, the importance of adequate supervision at work and the guarantee of minimum rest periods.

Discussion

This Directive intends to ensure the protection of young people from health hazards at work, obliging EU Member States to: abolish child labour - a child being a person under 15 years of age; ensure the strict regulation of work performed by youths; and ensure that employers guarantee that young workers enjoy working conditions commensurate with their age.

The Directive applies to all persons under the age of 18 years having an employment contract or an employment relationship; although Member States may, by apposite legislation, exclude occasional work and certain types of short-term work involving domestic service in a private household or in a family undertaking from the provisions of the Directive (Clause 2). Youths who are at least 14 years old and are following a certified "work + training" course or an "in-house" work experience (such as an apprenticeship or internship) can, along with some other specified categories of youth workers, also be excluded from the provisions of the Directive (Clause 4[2]).

The Directive prohibits youth work in those situations where the work: is objectively beyond their physical or psychological capacity; involves harmful exposure to a variety of agents and chemicals- including toxins, carcinogens, biological agents and radiation; involves risk of accident which finds youths particularly ill-prepared; and involves health risks

because of extreme cold or heat or from noise or vibration. Derogations from any such prohibitions are possible only in cases where such exposures form an indispensable and supervised component of certified vocational training (Clause 7).

Working Time cannot exceed 7 hours per day and 35 hours a week for child workers aged less than 15; and cannot exceed 8 hours a day and 40 hours a week for youths between the ages of 15 and 18 years. This includes time spent at training as part of a combined work/training scheme (Article 8). Where daily working time is at least 4 1/2 hours, a break of 30 minutes, taken at a stretch if possible, is mandatory (Clause 12).

Children under 15 years of age shall be prohibited from working at night, between 8 p.m. and 6 a.m. Youths aged 15-18 years shall be prohibited from working between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m. Derogations are here possible if any young worker is adequately supervised and his/her protection is assured. No derogations are possible between midnight and 4 a.m., except in shipping, fisheries, armed forces, police, hospitals and similar establishments and cultural, artistic, sports or advertising activities (Clause 9).

For each 24-hour period, child workers less than 15 years of age are to be guaranteed a minimum rest period of 14 consecutive hours; while youth workers aged from 15-18 years are guaranteed a minimum rest period of 12 consecutive hours. For each 7-day period, young workers are entitled to a rest period of two, preferably consecutive, days which shall, in principle, include Sunday. In specific areas of work- shipping, fisheries, armed forces, police, hospitals & similar establishments, agriculture, tourism, hotels, restaurants & cafes -such rest periods may be split up, subject to compensatory rest being given (Clause 10).

The main legislation in Malta which gives specific protection to young persons at work is Legal Notice 71/96, involving regulations set out in terms of the Occupational Health and Safety (Promotion) Act of 1994. These regulations -which were amended to come into force on 1st January 1998 - establish the prohibition of child labour, except by an

exemption issued under Section 43(2) of the Education Act. It is likely that any such blanket exemptions would be against this Directive, unless related to the specific work activities and conditions spelt out in Clause 2 (as described above).

Legal Notice 71/96 also establishes the minimum hours of consecutive rest per day, and the minimum number of weekly days of rest, the necessary supervision and proper training in the employment of young persons, and their prohibition, with exceptions similar to those earmarked in the Directive, from night work between 10 p.m. and 7 a.m. (This 9-hour time band is wider than that stipulated by the Directive and was brought down to between 10 p.m. and 6 a.m. by the amendments of Legal Notice 185/96.)

Legal Notice 185/96 replaces the five day working week for young persons aged between 16 (the compulsory school leaving age) and 18 years of age (stipulated in LN 71/96) with a six day working week, without exception. This amendment replaces the previous regulation which had obliged not less than two days of rest; the measure is also definitely against the provisions of the Directive. A similar amendment by LN 185/96, introducing the right of all young persons to work overtime for a period not in excess of ten hours in any calendar week, infringes on the Directive's specification of a maximum, 8-hour working day and a 40-hour working week (Clause 8[2]).

5. An Assessment of Employer Opinions

The foregoing detailed analysis of the implications of the EU acquis on social policy and labour law, confronted by the state of current legislation in Malta, leads one naturally towards a clear appreciation of the resulting differences. At that point, it was decided to invite local employers to react to these differences; in this way, an evaluation of the possible impact of such obligations would be possible.

Arguments about the implications of EU accession may tend to fall between two extremes. On one hand, we have bland and simplistic dec-

larations of virtues and vices, typically forthcoming from certain politicians keen on scoring points and/or others who may not have the knowledge or access to the minutiae of the various directives and regulations of the EU. However, when it comes to an appraisal of detailed documentation, this is generally produced by experts with a legal background and the uninitiated may feel helpless in trying to decipher what the text really means. Maltese employers cannot be expected to be lawyers; nor can they be expected to have the disposition, or the capacity, to study the fine print of each and every directive which may have a bearing on their operation.

With this in mind, a survey questionnaire was produced. The questionnaire consisted in 21 statements, these being the main challenges which will have to be transposed into local legislation when and if the acquis communautaire of Chapter 13 is fully in place in local law. These statements synthesise, in understandable and clear terms, what the hard core of each obligation is. A balance has been attempted between detail and clarity; between length and conciseness. To do so, some of the exceptions pertaining to each specific obligation may have been omitted. This has been deliberate, and is definitely not an attempt to misrepresent the facts. Rather, giving too much weight to what are essentially exceptions or matters of marginal relevance to Malta would not be appropriate for the purpose of this study.

Furthermore, the concern of the researcher has been also directed at the response rate derived from any eventual questionnaire. A detailed and longish survey instrument would risk being dismissed by busy respondents, put off by detail as well as by the technical content. A low response rate would also defeat the purpose of the survey exercise.

Another issue at stake was how to allow for the many possibilities of response by different employers with respect to any listed obligation. For the sake of analysis, a structured format was preferred, obliging employers to select one out of just three possible and mutually exclusive responses: that the employer perceives no problem to implement the obligation; that implementing the obligation would present serious difficulties to the employer; or that the employer is not affected by the

obligation. The same set of three options was laid out for each of the 21 listed obligations. The opportunity to provide comments or general remarks was nevertheless made available at the end of the questionnaire; indeed, a number of employers did take up this option.

As it turned out, the questionnaire emerged as a 4-page document, and made available to employers in both Maltese and English versions. (Interestingly, only 18% of the filled in questionnaires received did utilise the Maltese version!) *The English version of the questionnaire is provided as an appendix to this report.*

The sampling of the population of employers was also a necessary operation. It was physically impossible to send out a questionnaire to over 23,000 persons registered in Malta as employers and self-employed persons; nor would this be necessary when a valid and reliable sampling strategy is adopted. A response rate of around 30% was also to be expected from a postal questionnaire. It was early on decided to remove the self-employed from the population of respondents, since practically all obligations arising from Chapter 13 of the acquis affect the conditions of work of employees. It was also decided to restrict the questionnaire to private sector employers, since a fairer assessment of their ability to absorb any obligations and any associated costs in the context of market considerations would be obtained in this way. This decision restricted the population to 6,600 registered employers in the private sector. It was also decided to stratify the sample of employers by size of their workforce. This in view of the fact that employers responsible for a small, medium or large workforce may have respectively different opinions and concerns in respect to the various obligations listed in the questionnaire.

In order to translate the above considerations into the research design, an updated printout of all the employers in the Maltese islands was kindly obtained from the Employment & Training Corporation (ETC). All these 6,600 employers - except the very largest - were then divided into five classes, depending on the size of their workforce. These classes were:

less than 10 employees	(Code A)
between 10 and 19 employees	(Code B)
between 20 and 49 employees	(Code C)
between 50 and 99 employees	(Code D)
between 100 and 199 employees	(Code E)

20 employers were then selected randomly - using computer generated figures - from each of these five employment classes, thus achieving a total sample of 100 employers.

To ensure the recognition of returned questionnaires in accordance with their employment class, a colour code was used. Thus, employers within the "less than ten employees" class were sent a green questionnaire. This technique nevertheless still preserved the full anonymity of the actual employer.

Added to these 100 randomly selected employers was a second list of 47 employers. These comprise all local private sector employers with a workforce of 200 employees or more. There was no sample undertaken of this employer class, for two main reasons: (a) it is already a fairly small and manageable class for research purposes; and (b) it is disproportionately responsible for the bulk of employment, investment and value added to the Maltese economy.

A press conference was held to launch the survey on January 14th 2000. Participating employers were subsequently reminded and solicited by phone and by letter sent from the Malta Employers Association to submit their replies. To be on the safe side, full anonymity and confidentiality of any replies was guaranteed - even though a number of employers still volunteered their identity when returning their questionnaires. By the end of February 2000, 56 replies had been received, broken down as follows:

firms with less than 9 employees:	5 replies	(25% response rate)
firms with between 10 and 19 employees:	8 replies	(40% response rate)
firms with between 20 and 49 employees:	4 replies	(20% response rate)
firms with between 50 and 99 employees:	5 replies	(25% response rate)
firm with between 100 and 199 employees:	7 replies	(35% response rate)
firms with over 200 employees:	27 replies	(56% response rate)
Total:	**56 replies**	**(38% response rate).**

All considered, this was an encouraging response. It was anticipated that, the smaller the firm, the less enthusiastic or keen it would have been to participate in this study. This diffidence or disinterest is clearly borne out from the distribution of results. On the other hand, the strong feedback from the larger firms ensures that the opinions of those who provide the bulk of employment in the Maltese private sector are well represented.

5.1 Discussion and Analysis of Survey Results

What follows is a review of employer concerns in relation to each of the identified obligations, as arising out of the survey responses.

1. Informing workers, or their representatives, when considering transfers of ownership of the firm, or when expecting collective redundancies affecting more than 10 workers - in order for discussions to take place.

Only 6 out of 56 employers report serious difficulty in taking over such an obligation. This limited hostility may represent some of the discomfort which certain Maltese employers face in relation to any form of information or consultation rights being granted to their workforce. The smaller the firm, the greater the likelihood that the employer will not be affected by any such obligation: this is well borne out from the employer data.

Q. No. 1	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	18	6	3	3	5	1
Serious Difficulty	4	1	1	0	0	0
Not Affected	5	0	1	1	3	4

2. Maintaining existing conditions of employment enshrined in collec tive agreements after the transfer of ownership of a firm, until the expiry of the said agreement or up to one year after the transfer.

Only 5 employers voice their concern with implementing this obligation. The condition is already *de facto* in existence in most large firms where the workforce is unionised. Once again, smaller firms correctly express that they are not likely to be affected by this obligation. Most of their employees, we must remember, are not covered by a collective agreement.

Q. No. 2	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	15	5	3	2	4	0
Serious Difficulty	4	1	0	0	0	0
Not Affected	8	1	2	2	4	5

3. Setting up a guarantee fund, independent of the employer's operating capital, to guarantee payments to workers who may be affected by the onset of the employer's insolvency.

This is one obligation that various employers are concerned with, including half of the largest employers. 26 out of 56 employers claim that such an obligation would present them with serious difficulties. Both the administration as well as the financing of this 'fund' are likely to be causes of employer anxiety.

Q. No. 3	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	8	0	2	1	4	2
Serious Difficulty	13	6	2	2	2	1
Not Affected	6	1	1	1	2	2

4a. Unless superseded by collective agreements, providing adult employees (of age 18 years and over) with a daily rest period of 11 consecutive hours out of every 24-hour period.

Only 9 employers envisage any serious difficulty in transposing this condition of employment. This expression is likely to be related to the resort to 12 hour working days followed by overtime or "standing in" for absent colleagues.

Q. No. 4a	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	19	5	2	2	4	2
Serious Difficulty	5	2	0	1	1	0
Not Affected	3	0	3	1	3	3

4b. Unless superseded by collective agreements, providing adult employees (of age 18 years and over) with at least one rest break where a working day is longer than 6 hours;

No single employer has expressed any serious difficulty in abiding by this condition.

Q. No. 4b	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	25	7	5	3	8	4
Serious Difficulty	0	0	0	0	0	0
Not Affected	2	0	0	1	0	1

4c. Unless superseded by collective agreements, providing adult employees (of age 18 years and over) with at least one day of rest per week, preferably a Sunday.

Only 8 employers expressed difficulty in abiding by this obligation. This attitude is related to the practice - especially in the larger firms - of offering work to employees also on the seventh day of the week.

Q. No. 4c	**Firms with Employment Range**					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	16	6	5	3	7	3
Serious Difficulty	7	1	0	0	0	0
Not Affected	4	0	0	1	1	1

4d. Unless superseded by collective agreements, providing adult employees (of age 18 years and over) with night work which does not exceed 8 hours per 24 hour period.

With 12 employers - particularly in the largest firms - expressing serious difficulty in transposing this obligation, such would be an indication of the resort to night shifts of up to 12 hour duration.

Q. No. 4d	**Firms with Employment Range**					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	12	4	2	2	2	1
Serious Difficulty	10	1	0	0	0	1
Not Affected	5	2	3	2	5	4

5. Provide a working week not exceeding 48 hours of work (averaged out over a 17-week period) *inclusive* of overtime, unless the worker's consent is obtained in advance.

Employer opinions on this obligation appear mixed. There are those 7 - belonging to the largest firms -who project difficulties in bringing them-

selves in line with the above obligation. Others may have claimed to find "no problem" with transposition; but this is stated on the assumption that the workers' consent to work over and above the 48 hour limit will be achieved without any hesitation. (Current work practices in Malta with overtime arrangements of 15 hours per week are common.)

Q. No. 5	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	19	7	5	3	6	4
Serious Difficulty	7	0	0	0	0	0
Not Affected	1	0	0	1	2	1

6. Allowing worker representatives to join and participate in European Works Councils, at the employer's expense, in order to discuss trans-national issues which significantly affect workers' interests.

Now this was a deliberate "trick" question: employers were not told in the questionnaire that the obligation to set up a European Works Council only applies to specific trans-national firms employing over 1,000 employees. Thus, most of the sampled employers would be exempted from the obligation. Nevertheless, 27 - almost half of the employers sampled - expressed serious difficulty in the eventuality of transposing such an obligation. It would indeed, had it been intended for them! This means that many employers are yet to inform themselves well on the features of the European Union's social policy. 11 other employers in the sample correctly identify that they have no obligation to set up a European Works Council.

Q. No. 6	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	13	1	1	1	1	1
Serious Difficulty	11	6	3	2	2	3
Not Affected	3	0	1	1	5	1

Ensuring that employees from another EU member state who are 'on secondment' to work in Malta will enjoy at least the minimum level of social protection and conditions of employment applicable in Malta.

Only 1 employer expressed serious difficulty with regards to this obligation.

Q. No. 7	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	26	5	4	3	6	3
Serious Difficulty	0	1	0	0	0	0
Not Affected	1	1	1	1	2	2

8. Preventing abuse in the granting of successive fixed-term employment contracts or employment relationships (definite contracts).

Only 3 of the large employers object to transpose this obligation. It must be clarified that the directive will not oblige employers to engage workers who have completed a fixed term contract on an indefinite contract; but will merely oblige them to consider bridging any gaps in the conditions of work existing between the 2 groups of workers.

Q. No. 8	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	21	7	4	3	5	4
Serious Difficulty	3	0	0	0	0	0
Not Affected	3	0	1	1	3	1

9. Avoiding discrimination by providing equal treatment to men & women with respect to recruitment (including advertising of job vacancies and interviewing), promotion, vocational training and working conditions.

Again, only 3 employers, from three different employment classes,

expressed concern with the enforcement of this obligation. 48 out of the 56 sampled envisage no problems in abiding by its terms. One employer claimed that serious difficulties could be presented in relation to construction site works.

Q. No. 9	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	25	7	3	3	6	4
Serious Difficulty	1	0	1	0	1	0
Not Affected	1	0	1	1	1	1

10. Granting all male and female workers an individual right to unpaid parental leave of at least 3 months following the birth or adoption of a child.

A considerable number of employers (34 out of 56) expressed concern with respect to this obligation, and these are spread out over all employment classes. Indeed, this is the obligation which has generated the largest amount of employer protest. Employers have argued that the Maltese are culturally unprepared for such a move, apart from the fact that it could cause havoc in complement levels.

Q. No. 10	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	10	0	3	0	3	1
Serious Difficulty	17	7	2	3	3	2
Not Affected	0	0	0	1	2	2

11. Granting workers time off from work for urgent family reasons in cases of accident or sickness for which the worker's presence is indispensable.

This is a fairly humanitarian obligation which many employers would be *de facto* already implementing in many cases. Nevertheless, 9 employers - 6 of whom from the largest firms - claim serious difficulty in

implementation. One employer qualified the concern if it envisaged employees on 'long periods' away from work; another employer was prepared to consider cases "on their own merits". Justifiably, these employers are concerned lest the obligation transforms itself into an opportunity for workers to play truant.

Q. No. 11	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	21	6	4	3	7	3
Serious Difficulty	6	1	1	1	0	0
Not Affected	0	0	0	0	1	2

12a. Protecting women workers who are known to be pregnant, have recently had a baby and/or are breast-feeding by not requiring them to perform work which may be dangerous to them and/or to their child, including night work by a temporary transfer to other work; by re-organising their existing work; or else by granting them special leave as a last resort.

Twelve employers reveal their concerns with this obligation. This appears especially so when the obligation stipulates the granting of special leave.

Q. No. 12a	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	15	5	3	1	4	1
Serious Difficulty	8	2	1	1	0	0
Not Affected	4	0	1	2	4	4

12b. Protecting women workers who are known to be pregnant, have recently had a baby and/or are breast-feeding by not requiring them to perform work which may be dangerous to them and/or to their child, including night work by ensuring that their conditions of employment, following any transfer or adjustment as noted in 12a

above, are no less favourable than those which they had previously enjoyed.

The response to this question is very similar to that of the previous one. 10 employers voice concerns, based on the current practice that women workers transferred are at times not offered similar conditions of employment but qualify instead for those different ones pertaining to their new work duties.

Q. No. 12b	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	16	5	3	1	4	2
Serious Difficulty	6	2	1	1	0	0
Not Affected	5	0	1	2	4	3

13. Providing 14 uninterrupted weeks of maternity leave, of which at least two weeks after delivery.

Considerable employer opposition - especially in the largest firms - is demonstrated with respect to this measure, especially if this is also expected to be introduced as an extra week of paid maternity leave. This would translate into higher production costs for employers, especially those dependent on a largely young, female workforce.

Q. No. 13	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	19	4	2	2	2	2
Serious Difficulty	8	3	2	0	2	0
Not Affected	0	0	1	2	4	3

14a. Safeguarding the health and safety of young workers aged between 15 and 18 years of age, by ensuring that working time does not exceed 8 hrs a day or 40 hrs per week.

Only 11 employers have protested against the introduction of this oblig-

ation; apparently, it is established policy amongst certain employers not to employ under 18-year-olds. However, those who have expressed concern have done so quite vociferously, adding some strong comments. This obligation is claimed by some employers as discriminatory (which it is definitely meant to be!); while others claim that, were such a measure to come into force, then young people would stand little chance of being employed. It must be reasserted here that, unlike older workers, young workers are not allowed to sign away their entitlement to a maximum 48 hour working week, inclusive of overtime.

Q. No. 14a	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	16	3	3	2	4	3
Serious Difficulty	6	3	1	1	0	0
Not Affected	5	1	0	1	4	2

14b. Safeguarding the health and safety of young workers aged between 15 and 18 years of age, by ensuring that there is a minimum break of 30 minutes where the working day is at least 41/2 hours long.

As in the case of comparable older workers (see question 4b), few employers (5) voiced a concern with this measure coming into effect. Again, a dozen employers - a fairly consistent number across questions 14a-d - explain that they are not affected by any such obligation, presumably because they do not employ under 18-year-olds.

Q. No. 14b	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	16	6	5	3	6	3
Serious Difficulty	4	0	0	1	0	0
Not Affected	7	1	0	0	2	2

14c. Safeguarding the health and safety of young workers aged between 15 and 18 years of age, by ensuring a minimum rest period of 12

consecutive hours for each 24-hour period.

A somewhat larger number of employers - 10 - expressed concern with respect to this particular obligation regarding young workers. Once again, there are arguments brought forward that such would amount to discrimination, effectively working against the interests of young people in search of employment.

Q. No. 14c	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	16	3	3	2	6	4
Serious Difficulty	6	3	0	1	0	0
Not Affected	5	1	2	1	1	1

14d. Safeguarding the health and safety of young workers aged between 15 and 18 years of age, by ensuring that for each 7-day period, there is an entitlement to a rest period of two consecutive days which shall, in principle, include a Sunday. Such rest periods may only be split up in shipping, fisheries, armed forces, police, agriculture, hospitals, tourism, hotels, restaurants and cafes.

An almost identical number of responses (11) protest that such an obligation would lead to serious difficulties by employers. A perusal of the questionnaires reveals that most employers reported a consistent concern with respect to the four questions 14a, b, c and d.

Q. No. 14d	Firms with Employment Range					
Employer Response:	*more than 200 employees*	*100 to 199*	*50 to99*	*20 to 49*	*10 to 19*	*up to 9*
No Problem	13	6	1	3	5	3
Serious Difficulty	7	0	2	0	2	0
Not Affected	7	1	2	1	1	2

6. Conclusions and Recommendations

Obviously, the presumed impact of Malta's eventual accession to the European Union is hardly computable at this point in time, with Malta yet to embark on the negotiation stage while the European Union itself is set to internal reform following the deliberations of its latest Inter-Governmental Conference. Nor are the concerns of Malta's employers exclusively dependent on Chapter 13 of the EU's *acquis*. However, after having invited a representative sample of employers from the Maltese private sector to comment on their preparedness and willingness to take on board the core obligations of Chapter 13 of the *acquis communautaire*, the following observations are in order:

- Excluding the responses to Question No.6 (see below), and as a general comment, 63% of the employers' answers express no problem in abiding by the Chapter 13 acquis; 18% of employers' answers indicate serious problems; while 19% of employers' answers claim that they will not be affected by such directives. In proportionate terms, those employers who have the largest workforces claim the strongest degree of difficulty:

General Employer Opinions on each of the 20 statements presented*

Employer Category (by No of workers)	Employer Opinion (by number of responses; and by %)		
	No Problem	Serious Difficulty	Not Affected
1 - 9:	50 51%	3 3%	46 47%
10 - 19:	96 61%	12 8%	49 31%
20 - 49:	45 56%	12 15%	23 29%
50 - 99:	64 65%	14 14%	20 20%
100-199:	97 69%	34 24%	9 6%
200 +:	346 64%	122 23%	72 13%
total:	698 63%	197 18%	219 19%

** That is, all questions except No.6.*

A different and more precise picture emerges when employer responses are plotted against different concerns:

Summative Responses (N=56)

Question Number	*Employer Answer* No Problem	Serious Difficulty	Not Affected	Subject
Q1	36	6	15	info to workers
Q2	29	5	22	maintain conditions
Q3	17	26	13	Guarantee Fund
Q4a	34	9	13	11hrs rest/day
Q4b	52	0	4	1 rest/6 hrs
Q4c	40	8	7	1 rest day/week
Q4d	23	12	21	8 hrs night work
Q5	44	7	5	max 48hr week
Q6	18	27	11	EU-Works Council
Q7	47	1	8	workers on secondment
Q8	44	3	9	no abuse-definite contract
Q9	48	3	5	avoid gender bias
Q10	17	34	5	3 mths Parental Leave
Q11	44	9	3	urgent time off
Q12a	29	12	15	protect pregnant workers
Q12b	31	10	15	protect pregnant workers
Q13	31	15	10	14wks maternity leave
Q14a	31	11	13	youths: 8hr day
Q14b	39	5	12	youths: 30 min break/4.5 hrs.
Q14c	34	10	11	youths: 12hrs rest/day
Q14d	31	11	14	youths: 2days rest/wk
Average:	**34.2**	**10.7**	**11.0**	
Total %:	**61%**	**19%**	**20%**	
Total lessQ6:	**63%**	**18%**	**19%**	

- Employers express concern with the comprehensive implementation of Council Directive 94/33, **affecting conditions of employment for those under 18 years of age.** Although intended as a health and safety directive, its sudden coming into force in Malta may effectively cheat youths below the age of 18 years from successfully seeking employment, especially in limiting working time per day and per week (Q14a, c, d); all the more so if the wage differential between an

under-18 year old and an over-18 year old is not so significant as exists currently at law. It is hereby proposed that Government be encouraged to negotiate a transitional period for the coming into force of this directive.

- The introduction of a **fourteenth week of maternity leave** may also prove contentious (Q13). Council Directive 92/85 does not oblige that such maternity leave be necessarily paid. It is proposed that the extra 14th week be introduced in Malta originally on an unpaid basis, with its staggered, eventual inclusion as a paid week of leave being made subject to collective bargaining.

- The operation and financing of the **guarantee fund** protecting employees from employer insolvency, as determined by Council Directive 80/987, require serious thinking (Q3). One possibility for discussion would be to set up a national fund having employers and trade unions as joint trustees, preferably with some financial contribution by the state.

- The introduction of three months of **parental leave** is also the cause of some logistic alarm (Q10). This may cause serious problems of deployment in various private sector firms, and it is therefore proposed to introduce the obligations of Council Directive 96/34 gradually, such as over a 5-year transitional period.

- It is also felt by employers that capping normal **night-work** to a maximum of 8 hours per day - as envisaged by the Working Time Council Directive 93/104 - will severely disrupt industry and labour productivity (Q4d). Where firms are unionised, the terms of a collective agreement may supersede the obligation. In non-unionised firms, however, such circumvention is not possible. A transitional period should be requested by Government for the coming into force of this specific measure from that particular directive.

- The question concerning **European Works Councils** (Q6) was deliberately worded in such a way as to avoid spelling out that such a directive applies only to trans-national firms employing at least 1,000

employees in at least 2 EU members states. As a result, at least 16 employers replied that implementing such a directive would place them in serious difficulty when they will - in actual fact - not be affected by it.

- One difficulty in relation to the transposition of the obligations of Council Directive 97/81 eliminating discrimination against **part-time workers** is that the part-time phenomenon in Malta is not to the exclusion of full-time work but parallel to it. The Malta Government must argue convincingly that any application of the principle of pro rata temporis should apply only in the case of those workers whose part-time work constitutes their "principal employment".

- Finally, and perhaps most significantly, the basis of most of the social policy directives lies squarely on **social partnership**: most of the directives allow a fair degree of flexibility in how they are to be implemented, following an agreement between employer and worker representatives. This would avoid the heavy-handed approach inevitably associated with legislation; while leaving ample room for striking deals which bear a distinct sensitivity to particular economic sectors, sub-sectors or enterprises. Within this spirit, it is argued that the implementation of such provisions as contained in the directives regarding part-time work, fixed term employment contracts, the organisation of working time etc., are struck between employers and trade unions as provided for in the same directives, making use of one or more of three main instruments:

- an enterprise-specific collective agreement; and/or

- an industry-wide agreement, establishing conditions of employment across a whole economic sector or sub-sector; and/or

- a nation-wide framework agreement, setting parameters which would then be fleshed out in the context of industry or enterprise specific bargaining.

The MEA had indeed established such a model framework agreement

with the GWU in 1968. Otherwise, an agreement similar to the incomes policy accord of 1990-1993 may be entertained.

Malta has a long and sustained tradition of working within such a 'social model' and the social partners should have no difficulty in rising to the occasion and striking deals on the various directives, for the mutual benefit of all concerned.

Appendix

Letter and Questionnaire sent to Sampled Employers

Date: 15 January 2000

Dear Sir/Madam,

With the eventuality of Malta's accession as a full member of the European Union, a series of obligations will become mandatory on employers operating from Malta. The Malta Employers' Association has therefore commissioned a scientific study to investigate the full implications of Malta's accession to the EU in the fields of social policy, employment and industrial relations.

As a crucial component of this study, a random sample of 100 employers from Malta, representing small and large employers in the private sector, is being invited to participate in this study.

As one of these employers, you are kindly requested to complete the attached questionnaire. This will allow you to indicate whether you and your firm consider yourselves to be prepared to take up a number of obligations arising from EU Directives. For each obligation, you are invited to indicate whether you envisage any serious difficulties in reaching compliance.

This study is completely anonymous and all the information received will be treated with the utmost confidentiality and only published in an aggregate format.

Kindly send us your completed questionnaire - in the English or Maltese versions - to the MEA, 35/1, South Street, Valletta, VLT 11 before 5th February 2000, thus ensuring that your views are included in the analysis. The outcome will enable the MEA to prepare its policy position on this matter and to lobby Government appropriately.

Thanking You for your co-operation and for your time.

Alfred Mallia-Milanes –Director General

Questionnaire

Can you handle these Obligations as an Employer?

Please answer each question by choosing only one answer:

1. Informing workers, or their representatives, when considering transfers of ownership of the firm, or when expecting collective redundancies affecting more than 10 workers - in order for discussions to take place.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

2. Maintaining existing conditions of employment enshrined in collective agreements after the transfer of ownership of a firm, until the expiry of the said agreement or up to one year after the transfer.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

3. Setting up a guarantee fund, independent of the employerís operating capital, to guarantee payments to workers who may be affected by the onset of the employerís insolvency.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

4. Unless superseded by collective agreements, providing adult employees (of age 18 years and over) with:

4a. a daily rest period of 11 consecutive hours out of every 24-hour period;

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation
4b. at least one rest break where a working day is longer than 6 hours;

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

4c. at least one day of rest per week, preferably a Sunday;

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

4d. night work which does not exceed 8 hours per 24-hour period.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

5. Provide a working week not exceeding 48 hours of work (averaged out over a 17-week period), inclusive of overtime, unless the worker's consent is obtained in advance.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

6. Allowing worker representatives to join and participate in European Works Councils, at the employer's expense, in order to discuss trans-national issues which significantly affect workers' interests.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

7. Ensuring that employees from another EU member state who are "on secondment" to work in Malta will enjoy at least the minimum level of social protection and conditions of employment applicable in Malta.
I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

8. Preventing abuse in the granting of successive fixed-term employment contracts or employment relationships (definite contracts).

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

9. Avoiding discrimination by providing equal treatment to men and women with respect to recruitment (including advertising of job vacancies and interviewing), promotion, vocational training and working conditions.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

10. Granting all male and female workers an individual right to unpaid parental leave of at least 3 months following the birth or adoption of a child.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

11. Granting workers time off from work for urgent family reasons in cases of accident or sickness for which the worker's presence is indispensable.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties

I am not affected by this obligation

12. Protecting women workers who are known to be pregnant, have recently had a baby and/or are breast-feeding by not requiring them to perform work which may be dangerous to them and/or to their child, including night work:

12a: by a temporary transfer to other work; by re-organising their existing work; or else by granting them special leave as a last resort.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

12b: by ensuring that their conditions of employment, following any transfer or adjustment as noted in 12a above, are no less favourable than those which they had previously enjoyed.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

Providing 14 uninterrupted weeks of maternity leave, of which at least two weeks after delivery.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

14. Safeguarding the health and safety of young workers aged between 15 and 18 years of age, by ensuring that:

14a. working time does not exceed 8 hrs a day or 40 hrs per week;

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

14b. a minimum break of 30 minutes where the working day is at least 4.5 hours long;
I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

14c. a minimum rest period of 12 consecutive hours for each 24-hour period;

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

14d. for each 7-day period, an entitlement to a rest period of two consecutive days which shall, in principle, include a Sunday. Such rest periods may only be split up in shipping, fisheries, armed forces, police, agriculture, hospitals, tourism, hotels, restaurants and cafes.

I have no problem in abiding by this obligation
Abiding by this obligation will present me with serious difficulties
I am not affected by this obligation

Do you have any other comments, or general observations to add? (Please feel free to write overleaf.)