3.5 Fault Lines in Bridges to Europe

SAVIOUR RIZZO

The shift to a European model of industrial and employment relations during the first ten years of EU membership continued to gather momentum. Through the updating of the Maltese labour law in order to conform to the EU Directives, the Maltese industrial and employment scenario moved closer to the ideals of the European social model. Nevertheless, in the transposition of the EU Directives into Maltese law, little heed was given to the substantive features. Moreover the policy of abolishing all existent practices of workers' participation tends to diverge from the European social model. These are some of the visible fault lines in the bridges which have been built towards a more Europeanised system of employment and industrial relations.

One of the legacies of the 164 years of British rule in Malta has been an Anglo-Saxon system of industrial and employment relations based on voluntary bipartisan collective bargaining at enterprise level. Like their counterparts in Britain, the main point of reference for Maltese trade unions at the workplace is the shop steward, who acts as the representative of the trade union at the enterprise. Statutory institutions at workplace level representing the interest of the workers, which are visible features in the European model on industrial relations, have been notably absent. Thus the consensual ethic, which tends to be well ingrained in the European model as a result of the existence of this institutional framework of workers' participation, has been lacking in Maltese industrial relations. Another notable feature of Maltese industrial relations is the lack of collective bargaining at sectoral level. Collective negotiations generally take place at enterprise level on a single employer basis.

This attachment to the British model can be traced to the origins of Maltese trade unions back in the 19th century. The birth of the General Workers' Union (GWU), still Malta's largest trade union which has been one of the dominant actors in local industrial relations since its registration in 1943, owes its origin to expatriates and other workers at the naval dockyard who were imbued with the militancy of their counterparts in Britain. In May 1946, its members, numbering 29,660 out of a national trade union membership figure of 33,309, were organised in three sections namely: Army, Air Force, Admiralty (Baldacchino, 2009). The GWU, set up on the model of its British counterpart, developed an affinity with the British unions, especially with the affiliates of the Trade Union Council (TUC). The larger trade unions in Malta, have been set up, inspired and run along similar lines.

3.5.1 A Shift to the European Model

Yet, in spite of the legacy of this British model and its persistent features, attempts have been made to shift the Maltese industrial relations system to the European model. Tripartite social dialogue at national level was institutionalised in 1990 through the setting up of the Malta Council for Economic Development (MCED). In 2001, this institution was given a legal status by the enactment of the Malta Council for Economic and Social Development (MCESD) Act (Chapter 431 of the Laws of Malta). The institutionalisation of this social partnership mechanism and its subsequent codification at law contributed to relatively more harmonious industrial relations (Zammit, 2003). Although the integrative and collaborative spirit upon which this social partnership was designed may not have always prevailed, there has never been any subversive plot to abort this partnership. Successive Maltese Governments have sought to incorporate trade unions into the formulation of national labour, economic and social policy, rather than trying to marginalise them (Rizzo, 2003).

This tripartite social dialogue was conducive to the enactment of the Employment and Industrial Relations Act (EIRA) which came into force in December 2002. The enactment of this Act, which became possible following protracted discussions among the social partners at national level, brought in its wake a modicum of consensual ethic rarely seen in the field of Maltese

industrial relations. Whether this development, becoming so visible 16 months prior to Malta's EU accession in May 2004, was by default or design is a moot point. This Act, which came into force following prolonged discussions among the social partners, overhauled the practices of local industrial and employment relations. Indeed a review of developments in Maltese industrial and employment relations during the ten years of Malta's EU membership (2004-2014) has to be viewed within the context of the provisions of EIRA and the amendments which followed suit.

This Act amalgamated the two previous legislative pillars of labour law namely: the Conditions of Employment Regulations Act (CERA 1952) and the Industrial Relations Act (IRA 1976). The innovations introduced in this Act were made to overhaul the features which had become defunct in the two previous laws (cited above), to recognise new ways of organising work and at the same time bring Maltese labour law in alignment with the EU Labour Directives (Baldacchino, 2003).

In 2002, in preparation for EU Accession, prior to the enactment of EIRA, Legal Notices were drafted and approved by Parliament. These Legal Notices sought to harmonise national legislation with the policy of the European Union's *acquis communautaire* as well as to adopt the basic features of the EU's revised Social Chapter. They included regulations related to Parental Leave Entitlement, Guarantee Fund, Part-Time Employees, Posting of Workers in Malta, Contracts of Service for a Fixed Term, Information to Employees, Collective Redundancies and Transfer of Business (Protection of Employment). After the coming into force of EIRA, additional regulations were drafted to transpose EU Labour Directives. Practically all the EU Labour Directives were transposed within the time frame set by the EU Commission.

And yet, while these Directives were often transposed verbatim into regulations, little notice may have been paid to their substantive features. In the Maltese regulations transposing the directive establishing a general framework on Information and Consultation, the method of calculation for the 50 employee requirement (Article 3 (1) of the Directive) is not specified. These regulations also fail to specificy the timing of consultation, except what is mentioned in Article 4.3 and 4.4 of the Directive. Even in the transposition

of the Directive of European Work Councils (EWCs) there are no additional information and consultation requirements other than those found in the Directive.

Due to this apparent lack of effort by the Maltese legislators to go beyond the minimum requirements of most of these Directives, there are a number of shortcomings in the Maltese regulations. A case in point concerns the Maltese regulations transposing the directive relating to collective redundancies. The exclusion of workers on a fixed term contract is not clear. There are no provisions for those circumstances when negotiations and consultations lead to a stalemate. The participation of experts in the negotiations is not defined. As regards collective redundancies, Maltese legislators opted to transpose Article 4.4 of the directive which states that, in those cases where collective redundancy is the result of a judicial decision, the regulations shall not apply. The regulations stop there, without any detailed provisions for due process accompanying the liquidation of firms.

There has not been any case law relating to the implementation of the regulations that transposed EU labour directives such as would provide evidence about their proper implementation or lack thereof. Anecdotal evidence, gleaned from trade union officials, suggests that the impact of these directives on Maltese labour and employment relations was neither substantial nor negligible. The introduction of information and consultation rights in Maltese law via the directives may not have had a strong appeal to the trade unions, which, having secured a bargaining power base at enterprise level, had already established such practices. It is on the issues of relocation and closures that they seem to be very sensitive to the timing of information and manner of consultation.

The implementation of the regulations relating to information and consultation would be more effective among the non-unionised work force (comprising around half the labour force) and even more so the workforce not covered by any collective agreement (comprising around one third of the workforce). Union officials maintain that enforcement agencies should focus their attention on those undertakings with a non-unionised workforce since in those undertakings where trade unions are recognised these can

deal adequately with the issues addressed in the directive. There seems to be no evidence of a monitoring exercise on the implementation of these regulations in such more vulnerable sectors.

The directive most exposed to the test of implementation during these ten years has been the one relating to collective redundancies. There was one instance where the trade union representing the workers protested about the non-compliance of the transposed regulations with the relevant directive. This case was the closure of *Interprint*; a state-owned enterprise whose core operations consisted of printing and binding books for both the international and local market. The Secretary of the GWU section representing the employees in this firm complained that he was not informed in writing about this closure as stipulated in the law, claiming that the announcement was instead made in the media through a press release by the Department of Information (The Malta Independent, 2005, p.3 and L-Orizzont, 2005, p.2). The government immediately retorted that it was going to abide by the law. Eventually discussions were held between the union and government officials.

Thus, the awareness of the provisions of the Legal Notice relating to collective redundancies must have brought about an improvement to the workers' plight with regard to their rights in the process of the termination of their employment. In a number of cases, consultations resulted in a reduction of dismissed workers and in mitigating the consequences of such dismissals. Also for cases of take-over bids, it was the EU Directive (2004/25/EC) that introduced a statutory framework in Malta dealing with this eventuality. Take-over legislation in Malta had been practically non-existent before the transposition of this directive which binds the board of directors of the offeree company to communicate with the representatives of its employees or, where there are no such representatives, the employees themselves (MFSA Listing Rules Chapter18 Clause 30).

Subsidiary Legislation 452.85 on Transfer of Business (Protection of Employment) Regulations gives more or less the same rights of consultation to the workers' representative in case of transfer of business. The employees are provided with a higher level of security in the sense that these regulations state that the transfer of undertaking shall not in itself constitute sufficient ground for dismissal of employees who have been affected by this transfer.

This provision was tested by a court case dealing with the decision of a company engaged in the importation and servicing of vehicles. This company sub-contracted its cleaning operations to a company which, upon taking over these operations, dismissed a cleaner by declaring her to be redundant. The Court of Appeal (Appeal 32/2007 Maria Norma Abela vs Peter Holding Company) ruled that this dismissal was illegal since sub-contracting could be defined as a transfer of undertaking. The Court ordered the cleaning company to reinstate the said employee subject to the same conditions she enjoyed when employed with the former company before the transfer (www.gvthlaw.com).

What however is striking about the transposition of these EU Directives is the fact that they failed to generate any national debate. In the context of the protracted discussions among the social partners that preceded the enactment of EIRA, this lack of debate sounds rather paradoxical. The only directive that generated a national debate was the Working Time Directive. Malta - along with the United Kingdom - is one of the few member states that have taken the option of not applying Article 6 of the Working Time Directive concerning aspects of working time which specify a maximum average working week (including overtime) of 48 hours. The Maltese social partners vehemently expressed their disagreement with the initiative taken by the European Parliament in May 2005 to repeal the "opt-out" clause. On this issue the social partners presented a common front.

The discussion that the transposition of this directive generated may be due to the fact that it deals with a substantive rather than a procedural issue. Maltese trade unions do not tend to show the same level of concern about the procedural issues of industrial relations as they do about the substantive ones. Being work-based in structure and traditionally more dedicated to collective bargaining, they are wary of the procedural practices invoked by the EU directives especially those prescribing institutional forms of workplace representation, fearing that these may be used to bypass the trade union. They are still attached to the practice of appointing a shop steward to act as their representative at the workplace. This is a typical case of the persistence of the British model of industrial relations where the unions tend to exert their power at enterprise rather than at sectoral level. They tend to be suspicious of any move that may tinker with this practice.

3.5.2 Form and Substance

In the institutionalisation of workplace representation through EU directives, the larger Maltese trade unions see the threat that they may pose to their cherished autonomy and interference in their bargaining role. Indeed, during these years of EU membership, we have witnessed the abolition of the post of worker director in all the state-owned or run enterprises. All the vestiges of workers' participation have been eliminated in Malta during the past decade. In these issues with one exception, the voice of the unions was notable by its absence. The exception was the abolition of the post of worker director at the Bank of Valletta in December 2008. In this case, the General Workers' Union (GWU) made a token resistance to government. Through articles in its newspapers and the protest of the Secretary of its Professional, Finance and Services Section, it expressed its disapproval and urged government to revise its decision. The other trade union involved in the industrial relations of the bank, the Malta Union of Bank Employees (MUBE), gave its tacit approval as the GWU had also done in January 2007 to the directors of Maltacom (now GO) to abolish the post of the worker director. The post of worker director has hardly ever enthused the Maltese trade unions. EU membership does not seem to have caused any change in attitude. As affiliates of the European Trade Union Confederation (ETUC) which unequivocally espouses and promotes the principles and practices of workers' participation, one would have expected the Maltese trade unions to be vocal in their protests rather than tacitly accepting these measures.

Another employment policy being activated at present at EU level and to which there has been no response from Malta is financial participation of employees through profit sharing and/or share ownership schemes. Apart from being an element of the European social model, financial participation of employees fits with principles of corporate governance based on the notion of creating a balance between the disparate interests of shareholders and stakeholders rather than simply on benevolent work towards the community. Being seen as part of the emerging reform of post-industrial society and untrammelled by socialist ideology, financial participation of employees appeals to the political spectrum at the centre where most of the European parties, including the Maltese political parties, now converge. Yet, so far, it has escaped the radar of the Maltese trade union movement as well as that of the Maltese political parties.

3.5.3 Conclusion

In conclusion, it might be said that during these ten years of EU membership, Maltese employment and industrial relations did not remain untouched. EU membership contributed to improved statutory provisions for workers' rights and employee representation in non-unionised workplaces. What however emerges from the debate in this essay is that the bridges that have been built to approximate the European model still include some notable fault lines.

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