

**The Evolution of Labour Law in the  
New Member States of the European Union:  
1995-2005**

**Country Studies on Cyprus and Malta**

**Study Undertaken for the Employment, Social Affairs and Equal  
Opportunities  
Directorate-General of the European Commission**

**Professor Andreas Theophanous  
Michalis Antoniou  
Yiannis Tirkides  
Christina Ioannou  
Rose-Marie Azzopardi  
Kyriakos E. Georgiou**

**(Research Center – Intercollege, Cyprus)**

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## List of Acronyms for Chapter I

AKEL – Progressive Party of the Working People  
COLA – Cost Of Living Allowance  
DEOK – Democratic Labour Federation of Cyprus  
EDEK – Movement of Social Democrats  
EIRO – European Industrial Relations Observatory  
ETUC – European Trade Union Confederation  
ETYK – Cyprus Union of Bank Employees  
GSEE – General Confederation of Greek Workers  
HRDA – Human Resource Development Authority  
ILO – International Labour Organisation  
IOE – International Organisation of Employers  
ITUC – International Trade Union Confederation  
JAP – Joint Assessment Paper  
KEBE – Cyprus Chamber of Commerce and Industry  
NAP – National Action Plan  
NGO – Non-Governmental Organisation  
OEB – Employers and Industrialists Federation  
OELMEK – Organisation of Greek Secondary Education Teachers  
PASYDY – Pancyprian Union of Public Servants  
PEO – Pancyprian Workers’ Federation  
POAS – Pancyprian Federation of Independent Trade Unions  
POED – Pancyprian Organisation of Greek Teachers  
SEK – Cyprus Workers’ Confederation  
UEAPME – European Association of Craft, Small and Medium-sized Enterprises  
UNICE – Union of Industrial and Employers' Confederations of Europe  
WCL – World Confederation of Labour

## List of Acronyms for Chapter II

AYS – Active Youth Scheme  
BPA – Business Promotion Act  
CERA – Conditions of Employment Regulations Act  
DIER – Department of Industrial and Employment Relations  
EIRA – Employment and Industrial Relations Act

EIRO – European Industrial Relations Observatory  
EMWA – Equality for Men and Women Act  
ERB – Employment Relations Board  
ESF – European Social Fund  
ESTS – Extended Skills Training Scheme  
ETC – Employment and Training Corporation  
ETPS – Employment and Training Placement Scheme  
FHRD – Federation of Human Resource Development  
FOI – Federation Of Industry  
GRTU – General Retailers and Traders Union  
GWU – General Workers Union  
ICC – International Chamber of Commerce  
ICFTU – International Confederation of Free Trade Unions  
IRA – Industrial Relations Act  
ILO – International Labour Organisation  
ITUC – International Trade Union Confederation  
JES – Job Experience Scheme  
LFS – Labour Force Survey  
LN – Legal Notice  
MBB – Malta Business Bureau  
MCAST – Malta College for Arts, Science and Technology  
MCCE – Malta Chamber of Commerce and Enterprise  
MCESD – Malta Council for Economic and Social Development  
MEA – Malta Employers’ Association  
MHRA – Malta Hotels and Restaurants Association  
MUT – Malta Union of Teachers  
NEA – National Employment Authority  
NGO – Non-Governmental Organisation  
NRP – National Reform Programme  
NSO – National Statistics Office  
OHSA – Occupational Health and Safety Authority  
RS – Redeployment Scheme  
TAS – Technician Apprenticeship Scheme  
UHM – Union Haddiema Maghqudin

WFTU – World Federation of Trade Unions

WSS – Work Start Scheme

## Executive Summary

This Report traces the development of Labour Law and the implications for Industrial Relations, as well as social and employment policy more generally, in the two small Mediterranean countries of Cyprus and Malta during the period 1995–2005. This period was particularly important for the two countries as it coincided with their efforts for accession to the European Union (EU) and the process of harmonisation with the *Acquis Communautaire*.

Since their independence in 1960 and 1964 respectively for Cyprus and Malta, successive Governments in each country – working with the social partners – had sought to steer a policy of social cohesion to underpin their development efforts. Whilst these strategies were successful in fostering a long period of economic growth and peaceful labour relations, a major outcome was the existence of relatively inflexible labour markets. Liberalisation and globalisation of international markets, coupled with the pressure exerted by the accession process, which required the implementation of the *Acquis Communautaire* necessitated a series of changes with far reaching implications in social and economic affairs. Naturally the framework of Labour Law – and labour practices thereof – came under increasing pressure to adapt and reform.

The Executive Summary describes the main aims and objectives of the Report on the evolution of Labour Law in Cyprus and Malta in the period 1995-2005, and provides an outline of the component chapters. Specifically the Report is divided into three chapters. The first and second chapters consist of the individual Reports on Cyprus and Malta respectively. These constitute the main body of the Report and investigate the evolution of Labour Law in the two countries separately and the implications for Industrial Relations, employment and social policy. The third chapter provides a concluding overview of the two countries' experiences and an evaluation of the state of implementation of the *Acquis Communautaire* in the fields examined.

More analytically, Chapter I on the evolution of Labour Law in Cyprus is subdivided into six parts (A-F), which trace the historical background and institutional framework of Labour Law developments, job security and employability, adaptability and equal opportunities. Reference is made to the key actors, the characteristics and methods of policy regulation, with particular focus on the process of harmonisation with the *Acquis Communautaire*. The evolution of Labour Law and its reliance on statutory regulation *vis-à-vis* the traditional voluntary nature of Cypriot Industrial Relations are also addressed.

Part A begins with an overview of the historical background of the emergence in Cyprus of Industrial Relations in general and Labour Law in particular. The social partners are identified and the collective bargaining process is described, with reference to the main regulatory techniques that traditionally existed in the country, particularly the Industrial Relations Code that constituted the main mechanism for collective bargaining and dispute resolution.

Part B looks at new ways of regulating work in Cyprus in view of the process of harmonisation with the European *Acquis*. In this respect, the harmonisation process in relation to Labour Law is reviewed, with specific reference to core pieces of legislation in the areas of employment and social affairs, as well as health and safety at work. The ways of regulating the national minimum wage are also discussed.



Part C deals with the issues of job security and employability in the context of prevailing market conditions, the legal framework and established practices. Issues of training and lifelong learning are examined, and wider concerns regarding the gap between school and labour market and ways of introducing young people to the workplace are considered. Reference is also made to the Social Insurance Fund and ways of securing its future viability in light of current practices and low birth rate concerns.

Part D focuses on the process of adaptability and the gradual liberalisation of the labour market, in view of the transposition of pertinent EU Directives into national law. Although the labour market retains the traditional features of employment relations, there is a clear trend towards more flexible and atypical employment practices, even though there is little experience in Cyprus in most forms of atypical employment. At the same time, the statistical data indicates that most people on part-time or temporary employment would prefer a more “traditional” form of employment.

Part E outlines the policies and mechanisms established by the Government in an effort to promote equal opportunities for women and young people. In this respect, the regulatory adjustments made to gender issues in the process of the country’s harmonisation are discussed. Reference is also made to how inequality affects women in terms of higher unemployment – especially among younger women – and lower salaries. The statutory and policy measures taken to balance work and family life are also discussed.

Finally, Part F gives an overview of the Cypriot case and makes some final remarks.

Chapter II looks at the evolution of Labour Law in Malta. The chapter is also subdivided into six parts (A-F), tracing the historical background and institutional framework of Labour Law developments in Malta, job security and employability, adaptability and equal opportunities.

Part A presents the background to the evolution of Labour Law and the supporting institutional framework, focusing on issues specific to the Maltese Industrial Relations situation. This part also looks at the main actors within the institutional framework and discusses the process of social dialogue within the country.

Part B considers new ways of regulating work. It provides information on the legal framework regarding various aspects of the work environment, while main acts and subsidiary law are discussed. This is followed by a presentation of the issues surrounding the statutory minimum wage, health and safety matters and the role of the Occupational Health and Safety Authority.

Part C looks at various changes that are necessary to transform job security to employability and reviews the various schemes available especially to the unemployed. Ways of bridging multi-level gaps in society, particularly between school and work and the skills gap in the economy, are also considered.

Part D discusses the prospects for adaptability with a focus on atypical work, including fixed term contracts and telework. Conditions of work that may help in the adaptability process are examined.

Part E considers the issue of promoting equal opportunities especially with a view to the goals of the Lisbon Agenda for increased participation of the female population.

Finally, Part F gives an overview and makes recommendations on ways of improving the work environment by ensuring guarantees for the employees without causing frictions in the labour market.

In Chapter III (the Conclusion), the main issues discussed in the two country specific chapters are retrospectively assessed, as they are brought together in an effort to highlight core considerations, concerns and challenges, and point out similarities and differences between the two national experiences.

# Chapter I

## The Evolution of Labour Law in the New Member States of the European Union: 1995-2005 Country Study on Cyprus

### INTRODUCTION

This chapter traces the evolution of Labour Law in Cyprus in the period 1995-2005, with particular emphasis on the process of harmonisation with the *Acquis Communautaire*. In this respect, it addresses the transformation of Labour Law regulatory practices *vis-à-vis* the traditional voluntary nature of Industrial Relations and the impact that EU compliance pressures exerted on this framework.<sup>1</sup>

The period in question was critical for Cyprus because events and processes outside the immediate focus of Industrial Relations shaped the national agenda and indirectly affected Industrial Relations as well. These events and processes included:

(a) The accession process and harmonisation with the *Acquis Communautaire* – Whilst much remains to be done before the *Acquis* is fully implemented, the accession process itself brought about a major restructuring of the economy, the society, and public life in general.

(b) Concerted efforts to reach agreement on the Cyprus problem prior to EU accession – Whilst these efforts did not succeed, the resolution of the Cyprus question and the reunification of the island's economy remain a daunting task, which will continue to exert considerable influence on future developments.

(c) The impact of globalisation and the general process of liberalisation domestically – The forces of globalisation and the process of liberalisation of the economy intensified competition, forcing the further restructuring of the economy.

A core characteristic of traditional Industrial Relations practices in Cyprus has been its voluntary tripartite nature built on consensus, as opposed to a strictly statutory system. The harmonisation process, however, shifted the balance of Industrial Relations, giving more weight to statutory means of regulation. By the time of accession to the EU on 1<sup>st</sup> May 2004, Cyprus had succeeded in transposing the relevant Directives in the field of Labour Law.<sup>2</sup>

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<sup>1</sup> The report focuses on the Government-controlled area of the Republic of Cyprus. The northern part of the island has remained outside the control of the Republic since the Turkish invasion of 1974. The Republic of Cyprus acceded to the EU on 1<sup>st</sup> May 2004, but the application of the *Acquis Communautaire* was suspended in the northern part.

<sup>2</sup> See Annex A for Cyprus, for Labour Law Directives transposed into national law.

## **A. HISTORICAL BACKGROUND AND GENERAL FRAMEWORK**

### **1. Historical Background: Industrial Relations and Labour Law**

The early history of Industrial Relations in Cyprus begins around 1910 when the first trade unions were established in the form of social clubs. In this early period the embryonic trade union movement was united, fighting for survival and acceptance. The British Colonial Government introduced the first Trade Unions Law in 1932. This Law, which for the most part is still in force today, led to the appointment of the first Trade Union Registrar and provided the framework for the establishment of proper trade unions.

The period 1929-1945 was an exceedingly difficult period for the underdeveloped agricultural economy of Cyprus. Economic conditions deteriorated rapidly forcing thousands of farmers to seek employment in the towns and mining areas. From 1932 to 1938 foreign companies rapidly developed the mining industry. At the same time, the construction industry grew considerably along with the liquor, tobacco and tanning industries. The growth of the secondary sector of the economy led to the creation of a working class.

In the early 1940s the young trade union movement was divided along ideological lines resulting eventually in the formation of two separate trade union movements: the Pancyprian Trade Union Committee that was later renamed the Pancyprian Workers Federation (PEO), and the Cyprus Workers' Confederation (SEK).

In 1948 an important new development took place with the establishment of the Labour Advisory Board and the four Joint Staff Committees. The Advisory Board was a tripartite body of social dialogue, which continues to play an important role in industrial and labour relations to date. The Joint Staff Committees were responsible for Industrial Relations in the public sector.<sup>3</sup>

The period leading up to 1950 saw the creation of a number of smaller trade unions formed along professional lines. This was complemented by an unprecedented growth and strength in terms of membership, power and success. From 1950 onwards trade unions continued to develop rapidly. In 1954, the Pancyprian Federation of Turkish Trade Unions was established, whilst throughout the 1950s a large number of independent trade unions were also registered. These independent trade unions mainly represented employees in semi-public organisations. At the same time, trade unions in the public sector also experienced rapid development with the establishment of the Pancyprian Union of Public Servants (PASYDY), the Pancyprian Organisation of Greek Teachers (POED), and the Organisation of Greek Secondary Education Teachers (OELMEK).<sup>4</sup> In 1955 the Union of the Banking Employees of Cyprus was also registered as a trade union, and still remains the sole representative of employees in the banking sector.

The early period following the declaration of independence in 1960 was very active in terms of establishing the foundations of Labour Law on the basis of the existing legal structure and the relevant ILO Conventions. The Constitution safeguards all fundamental rights and freedoms. It also includes three articles dealing specifically with Industrial Relations (Articles 21, 26 and 27).

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<sup>3</sup>The four committees were: the Joint Staff Committee (for Civil Servants); the Joint Labour Committee (for Government Industrial Workers); the Joint Committee (for Technical School Teachers and Teachers of Basic and Secondary Education); the Joint Committee (for Members of the Police Force).

<sup>4</sup> These trade unions are reviewed later in this section.

These articles recognise the right to freedom of peaceful assembly, freedom of association – including forming or joining a trade union – and with some exceptions the right to strike.<sup>5</sup>

During this period Cyprus also ratified ILO Convention No. 87 on the Freedom of Association and the Right to Organise, and ILO Convention No. 98 on the Right to Organise and Collective Bargaining. All these rights acquired legal stature. In 1962 the first social contract was signed between the social partners. This was the 1962 Basic Agreement, which secured the right to organise, negotiate, sign collective agreements, as well as the right to strike. It also made provisions for dealing with industrial disputes. In 1965 a new Trade Unions Law was passed, providing extensive protection and total freedom regarding the registration of trade unions (on the basis of specific provisions laid out in the Law).

The main characteristics of the post independence period leading up to the Turkish invasion of 1974 were the urbanisation of the population, the establishment of light industry, and the substantial improvement of living standards.<sup>6</sup> The invasion of 1974 and the occupation of 38% of the territory of Cyprus led to an unprecedented economic and social dislocation. In the period immediately following the Turkish invasion, amid efforts to reconstruct the economy, the trade union movement suspended the submission of any claims, and volunteered a scaled reduction in salaries and benefits of up to 25%. During this period the Government, with the consent of the social partners, presented to the House of Representatives a series of amendments to basic Labour Laws that allowed for the temporary reduction in salaries and social insurance benefits. The economy started to recover fast from the ruins of war, and pre-invasion income levels were restored by 1979. Thereafter, the reconstruction and modernisation that was achieved was so remarkable that it was characterised as an ‘economic miracle’.<sup>7</sup>

In 1977 the social partners amended the Basic Agreement of 1962 and agreed on the introduction of the Industrial Relations Code, which is still in force today.<sup>8</sup> The Code, which is discussed in more detail later, regulates the process of collective bargaining and dispute resolution and takes into consideration the provisions of ILO Recommendation on the examination of Grievances.<sup>9</sup>

Cyprus constitutes a model of tripartite consensus-building cooperation, where social dialogue is well established. Under the guidance of successive administrations, the social partners established a number of tripartite committees – most of them under the jurisdiction of the Ministry of Labour and Social Insurance – which provide forums for sharing views and offering advice to the Minister regarding the best way forward.<sup>10</sup>

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<sup>5</sup> Kapardis 2004: 4.

<sup>6</sup> Theophanous 1995: 15.

<sup>7</sup> For an economic analysis of the period see Christodoulou 1992, 1995 and Theophanous 1995.

<sup>8</sup> For a more detailed discussion on the historical background and evolution of the labour movement in Cyprus see Paionides 1995 and Ioannou 2002.

<sup>9</sup> Examination of Grievances Recommendation (R130), 1967.

<sup>10</sup> Mallis and Messios 2003 point out how useful the tripartite social dialogue in the harmonisation process was and how well the social partners worked at the policy and technical levels in order to complete the process in an orderly and timely manner. For further discussion on social dialogue in Cyprus see Paionides 1995; Ioannou 2002; Kapardis 2003, 2004; Yannakourou and Soumeli 2004.

## 2. The Changing Face of the Cyprus Labour Market: Key Characteristics

The labour market in Cyprus is constantly expanding along with the overall economy. In 1995 the gainfully employed population was 284.400. By 2004 this number increased to 322.500, adding a total of 38.100 new jobs in the economy (Table 1). This increase was the outcome of natural population increases, net immigration of expatriate Cypriots and the introduction of foreign workers. In fact, a total of 46.217 foreign nationals were legally working in Cyprus on temporary work permits in 2004 (Table 5).

The vast majority of the gainfully employed – more than 70% – worked in the services sectors in 2004. About 20% were employed in the secondary sectors and less than 8% in the primary sectors. Of these, wholesale and retail trade accounted for 17,6% of the gainfully employed in 2004, manufacturing accounted for 10,6% and construction for 10,2% (Table 1).

**Table 1 – Gainfully Employed Population: 1995-2004**

	1995	2000	2001	2002	2003	2004
Economically active population (thousand)	302,70	325,10	330,60	335,30	340,10	347,00
As % of the total population	46,10	46,60	46,90	46,90	46,60	46,30
Gainfully employed population (thousand)	284,40	302,00	308,60	311,90	316,00	322,50
Male (%)	61,00	59,10	58,80	58,40	58,30	57,50
Female (%)	39,00	40,90	41,20	41,60	41,70	42,50
Gainfully employed by economic activity						
In 000s of persons						
Primary sectors	30,50	25,80	25,30	24,90	24,70	24,40
Secondary sectors	73,10	64,70	64,70	65,30	66,70	68,90
Manufacturing	44,00	37,00	35,70	34,60	34,00	34,30
Construction	27,70	26,20	27,50	29,30	31,30	33,00
Electricity, gas & water	1,40	1,50	1,50	1,40	1,40	1,60
Tertiary sectors	180,80	211,50	218,60	221,70	224,60	229,20
Wholesale and retail trade	49,50	54,20	56,00	56,80	56,50	56,90
Hotels and restaurants	30,10	33,00	33,50	32,00	31,90	32,10
Transport, storage and communication	17,90	21,40	22,20	21,90	21,60	21,90
Financial intermediation	12,30	16,00	15,70	15,60	15,80	16,00
Real estate and business activities	12,60	15,20	15,70	16,30	16,80	17,70
Other	58,40	71,70	75,50	79,10	82,00	84,60
In % of total gainfully employed						
Primary sectors	10,72	8,54	8,20	7,98	7,82	7,57
Secondary sectors	25,70	21,42	20,97	20,94	21,11	21,36
Manufacturing	15,47	12,25	11,57	11,09	10,76	10,64
Construction	9,74	8,68	8,91	9,39	9,91	10,23
Electricity, gas & water	0,49	0,50	0,49	0,45	0,44	0,50
Tertiary sectors	63,57	70,03	70,84	71,08	71,08	71,07
Wholesale and retail trade	17,41	17,95	18,15	18,21	17,88	17,64
Hotels and restaurants	10,58	10,93	10,86	10,26	10,09	9,95
Transport, storage and communication	6,29	7,09	7,19	7,02	6,84	6,79
Financial intermediation	4,32	5,30	5,09	5,00	5,00	4,96
Real estate and business activities	4,43	5,03	5,09	5,23	5,32	5,49
Other	20,53	23,74	24,47	25,36	25,95	26,23

Source: Republic of Cyprus, Statistical Service official website.

For the most part, with the exception of the immediate years following the Turkish invasion, the labour market in Cyprus displayed conditions of full employment. The registered unemployed in 2004 numbered 12.700 persons and the unemployment rate was 3,6%. This compares sharply with an unemployment rate of just 2,6% in 1995. The percentage of the unemployed under the age of 25 in the total of registered unemployed has been steadily declining in the period. More than half of the registered unemployed were secondary school graduates (both General and

Technical) without tertiary education. At the same time the number of unemployed with only primary education was about 22% of the total in 2004 and those with tertiary education around 21%. However, these statistics are not easily comparable because of population differences and different dynamics in terms of frictional unemployment (Table 2).

**Table 2 – Registered Unemployed: 1995-2004**

	1995	2000	2001	2002	2003	2004
Registered Unemployed (thousand)	7,90	10,90	9,50	10,60	12,00	12,70
Unemployment rate (%)	2,60	3,40	2,90	3,20	3,50	3,60
Male	1,90	2,70	2,30	2,30	2,50	2,60
Female	3,70	4,40	3,80	4,30	4,90	5,10
Unemployed under 25 years as % of total	14,80	11,00	11,70	12,70	13,10	11,60
Unemployed by level of education (%)						
No schooling	1,00	0,60	0,40	0,30	0,30	0,30
Primary	27,00	28,10	24,00	21,90	21,80	22,30
Secondary General	44,60	45,80	46,50	47,70	47,20	46,60
Secondary Technical	6,30	8,90	9,30	9,10	9,60	9,40
Tertiary	21,10	16,60	19,90	21,10	21,10	21,40

Source: Republic of Cyprus, Statistical Service official website.

Traditionally the unemployment rate in Cyprus was estimated as a percentage of the registered unemployed in the gainfully employed population. As of 2002 onwards the unemployment rate is also estimated using the Labour Force Survey in line with EU practice. The survey methodology shows somewhat higher unemployment rates than the traditional method. The unemployment rate at the end of 2004 was estimated at 4,6% by the survey method (and 5,2% in 2005) compared with 3,6% by the traditional method.<sup>11</sup>

Unemployment rates are higher among young people and the female population. Young people tend to exhibit higher rates of frictional unemployment until they settle with a more suitable or more desirable job. Female participation rates remain low for a number of reasons. Childcare combined with lack of corresponding infrastructure and limits on flexible forms of employment such as part-time or telework, are contributing factors. A more integrated public policy on childcare, school hours and care for the elderly could potentially facilitate higher participation rates among the female population. It is interesting to note that unemployment is higher and employment rates correspondingly lower, for young women below the age of 25 where family responsibilities have higher priority.

In general, employment rates in Cyprus are satisfactory and remain at levels higher than the EU averages. Specifically, the employment rate for the age group 15-64 in 2005 was 68,5% for Cyprus compared with 63,5% in the Eurozone. Employment rates in Cyprus were higher in comparison with EU averages, for men as well as for women and display small changes over time. Employment rates increased more noticeably in the case of women between 2001 and 2005 whereas corresponding rates for men dropped albeit marginally (Table 3).

<sup>11</sup> Employment and unemployment data of the Labour Force Survey is obtainable on the Eurostat official website, structural indicators.

Looking at all age groups for Cyprus, the increase in the total employment rate between 2001 and 2005 is entirely attributable to higher employment rates for women. Whereas the corresponding employment rates for men remained unchanged in the period, employment rates for women rose from 48,8% to 49,9%. There were significant shifts in the age group 25-54 where the corresponding employment rate for women rose by almost four percentage points to 72,2% in 2005 whilst the employment rate for men actually dropped by about 2 percentage points. Naturally the lowest employment rates occur in the age groups of 15-24 and the 65+ (Table 3).

**Table 3 – Employment Rates by Age Group and Sex**

	2005			2001		
	Total	Men	Women	Total	Men	Women
All Ages	59,8	70,7	49,8	59,2	70,7	48,8
15-64	68,5	79,2	58,4	67,9	79,4	57,1
15-24	36,7	40,5	33,2	39,0	40,4	37,7
25-54	81,8	91,8	72,2	80,7	93,5	68,6
55-64	50,6	70,8	31,5	49,1	66,8	32,2
65+	11,4	19,5	4,7	10,6	17,9	4,5
EU Rates: age group 15-64						
Euro zone	63,5	71,8	55,2	62,2	72,0	52,4
EU - 15	65,2	72,9	57,4	64,0	73,1	55,0
EU - 25	63,8	71,3	56,3	62,8	71,3	54,3

Source: Republic of Cyprus, Statistical Service, Labour Force Survey 2005, and Eurostat website, Structural Indicators, Employment.

Following a period of rapid economic expansion during the 1980s and early 1990s, labour shortages began to appear in the economy, which in some cases were quite acute. Legislation was thus passed allowing businesses to hire foreign nationals from overseas. At the end of 2005 a total of 46.217 foreign workers were employed in Cyprus on temporary work permits. Of these about 8,7% were employed in primary sector activities, 18,1% in the secondary sector and the remaining 73,2% in the services industries -mainly in tourist related activities and domestic help.

**Table 4 – Foreign Workers by Economic Sector**

	Number of workers		% Distribution	
	2004	2005	2004	2005
Primary sectors	3.893	4.022	8,99	8,70
Secondary sectors	8.282	8.358	19,12	18,08
of which: Manufacturing	3.808	3.897	8,79	8,43
Construction	4.463	4.450	10,31	9,63
Tertiary Sectors	31.130	33.837	71,89	73,21
Wholesale and Retail Trade	4.101	4.728	9,47	10,23
Hotels	2.976	2.752	6,87	5,95
Restaurants	5.427	5.662	12,53	12,25
Other trading services	1.196	1.427	2,76	3,09
Education, Health and social activities	1.354	1.385	3,13	3,00
Private Households	14.290	15.736	33,00	34,05
Other	1.786	2.147	4,12	4,65
Total	43.305	46.217	100,00	100,00

Source: Ministry of Labour and Social Insurance, Annual Report 2005.



Also since the partial lifting of restrictions on the free movement of people across the Green Line (cease fire line) on 23 April 2003, an estimated 10.000 Turkish Cypriots have been working in the Government-controlled areas, either on full-time or part-time basis.<sup>12</sup>

### **3. The Main Actors of the Cypriot Labour Market**

Industrial Relations in Cyprus rest on two pillars: tripartite cooperation and voluntarism. The three parties to Industrial Relations in Cyprus are the employers' organisations, the trade unions and the Government. Close cooperation and consensus building constituted the foundations of peaceful labour relations, underpinning a long period of sustained high growth. At the same time, tripartite cooperation and consensus building were instrumental in the success of the voluntary nature of Industrial Relations in Cyprus. Both employers' organisations and trade unions are well established, and have strong and effective organisational structures.

In Cyprus there are two main employers' organisations, which represent almost all the members of the business/entrepreneurial community. These are the Employers and Industrialists Federation (OEB) and the Cyprus Chamber of Commerce and Industry (KEBE). Both organisations have equal representation in the various tripartite bodies, such as the Labour Advisory Board, the National Employment Committee, the Economic Consultative Committee, the Social Security Committee, and others. Individual enterprises can become members of either or both of these organisations.

OEB was founded in 1960 and its members come from all sectors and industries of the economy. OEB's membership comprises 53 main professional and sector associations representing more than 4.500 enterprises corresponding to more than 60% of the private sector's workforce. It is a member of the International Organisation of Employers (IOE), the Union of Industrial and Employers' Confederations of Europe (UNICE), and others. OEB is also a member of the following EU bodies: the European Economic and Social Committee, the European Foundation for the Improvement of Living and Working Conditions, the European Agency for Health and Safety at Work, and the European Social Dialogue Committee.

KEBE was founded in 1927 and it is the umbrella organisation of the regional Chambers of Commerce and Industry operating in Nicosia, Limassol, Famagusta, Larnaca and Paphos. It is the union of Cypriot businessmen, whose interests it promotes by submitting to the Government and to Parliament the members' positions on relevant issues, while, through its participation in tripartite bodies and committees, it conveys and promotes the views of the business community. The membership of KEBE exceeds 8.000 enterprises from the whole spectrum of business activity, while affiliated to the Chamber are more than 120 Professional Associations from the trade, industry and services sectors. KEBE is a member of EUROCHAMBERS, the International Chamber of Commerce (ICC), and the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) among others.

The Pancyprian Federation of Labour (PEO) was established in 1946 as the successor to the Pancyprian Trade Union Committee. PEO is a member of the World Federation of Trade Unions (WFTU) and has recently expressed an interest in joining the European Trade Union Confederation (ETUC). It is affiliated with AKEL, the left-wing party of Cyprus, and members of its leadership also hold posts in the party.

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<sup>12</sup> A. Theophanous and Y. Tirkides 2006: 19-81.

The Cyprus Workers Confederation (SEK) was established in 1944. SEK is a member of the European Trade Union Confederation (ETUC), and the International Confederation of Free Trade Unions (ICFTU), which recently merged with the International Trade Union Confederation (ITUC) and the General Confederation of Greek Workers (GSEE). SEK has no specific political party affiliation.

In addition to the two main multi-sector trade unions, there are also two smaller unions: the Democratic Labour Federation of Cyprus (DEOK) and the Pancyprrian Federation of Independent Trade Unions (POAS). DEOK was initially established in 1962 as a split union from SEK. However, it became active as a trade union after its re-establishment in April 1982, and it is now affiliated with the Socialist Party EDEK. POAS consists of workers from minor enterprises and from the British Sovereign Bases on the Island. Both DEOK and POAS are members of the World Confederation of Labour (WCL).

There are numerous sectoral trade unions, the most important of which are: the Pancyprrian Union of Public Servants (PASYDY), the Pancyprrian Organisation of Greek Teachers (POED), the Organisation of Greek Secondary Education Teachers (OELMEK) and the Cyprus Union of Bank Employees (ETYK).

After the split of the trade union movement in the early 1940s, SEK and PEO, which jointly represent the substantial majority of workers in the private and semi-public sectors, worked out a *modus operandi* that gradually allowed them to work together in promoting the interests of their members. Cooperation between SEK and PEO also stemmed from the close working relationship that the leaders of the two trade unions (Michalakis Ioannou and Andreas Ziartides respectively) established in the period after 1960. There was a realisation at the time that consensus was important for promoting their members' interests. At the same time the nature of the heavily protected economy for the most part of the period after independence, was facilitated by close cooperation between the social partners.

Members of the security forces (the Police Force, the Fire Brigade and the National Guard) are not permitted to form trade unions. The members of the Police Force and the Fire Brigade have, however, formed clubs that are registered under the Law on Social Clubs. Recently the Government has submitted a bill to the House of Representatives that will enable members of the Police and the National Guard to form trade unions.

#### **4. The Industrial Relations Code**

The system of Industrial Relations in Cyprus dates back to the period of British Colonial Administration, and it still retains some 'British' characteristics. As mentioned earlier, its most prominent features are tripartite cooperation and voluntarism. Collective agreements – concluded on the basis of cooperation between the social partners – are essentially gentlemen's agreements.

However, during the harmonisation process the social partners began to question the wisdom of a fully voluntary system of Industrial Relations and to place more weight on the benefits of statutory regulation. As a result, a number of terms and conditions of employment that were previously determined by collective agreements are now legally enforceable. Whilst this has not affected the significance and process of collective bargaining, it has nonetheless assisted in providing the minimum terms and conditions of employment for non-unionised employees and

for employees in enterprises that are not signatories of collective agreements. Cooperation between the parties involved is still essential for the system's success.

The first social contract was the Basic Agreement signed in 1962. As mentioned earlier, this secured the right to organise, negotiate, sign collective agreements, and the right to strike, and also provided for a procedural framework dealing with industrial disputes. This social contract was replaced in 1977 with the Industrial Relations Code.

The Industrial Relations Code of 1977 is essentially a gentleman's agreement, which is considered to be a landmark in the development of an efficient system of Industrial Relations in Cyprus. It is a voluntary agreement, not legally enforceable, that lays out the procedures to be followed for arbitration and the settlement of labour disputes. The Code consists of two parts that contain substantive and procedural provisions. The first part that deals with the substantive provisions identifies the principles that should govern Industrial Relations. These include:

- The right to organise;
- The institution of collective bargaining as the basic way for the determination of the conditions of employment and remuneration;
- The obligation to negotiate in good faith;
- The existence of managerial prerogatives, consultative and negotiated issues;
- The commitment not to resort to strikes or lockouts in disputes over rights and grievances;
- The understanding to observe faithfully the provisions of collective agreements;
- The obligation to respect and adhere to the Code.

The second part of the Code, dealing with the procedural provisions identifies the procedures to be followed in disputes over interests. Disputes over interests might arise during negotiations for renewing or concluding a new collective agreement, or during negotiations over a new claim. The settlement of disputes over interests is carried out through direct negotiations between the parties concerned, mediation by the Ministry of Labour and Social Insurance, voluntary arbitration and public inquiry, even though the latter are not frequently exercised. Disputes over interests can potentially lead to strikes or lockouts.

Disputes over rights or grievances refer to disputes that may arise out of the interpretation and/or implementation of a collective agreement, out of existing conditions of employment, or out of a personal complaint, including a complaint over a dismissal. The procedures for resolving disputes over rights include: direct negotiations between the parties concerned, mediation by the Ministry of Labour and Social Insurance, and voluntary and compulsory arbitration. Strikes or lockouts are prohibited in the case of disputes over rights. An exception to this rule is the case of a flagrant violation of an existing agreement in which case strikes and lockouts are permitted.

The Industrial Relations Code does not apply to organisations that are not signatories, even though all social partners in the private and semi-public sectors abide by its provisions. In the public sector the right to negotiate, to consult and to settle disputes rests with four separate and independent bodies that are modelled on their British counterparts:

- The Joint Staff Committee (for civil servants);
- The Joint Labour Committee (for Government industrial workers);
- The Joint Committee (for technical school teachers and teachers of basic and secondary education);
- The Joint Committee (for members of the Police Force);

All social partners acknowledge that the Industrial Relations Code has served Cyprus very well, but at the same time an update and critical revision was deemed necessary in view of harmonisation, as under the requirements of the *Acquis Communautaire* it was deemed more effective for labour and other social provisions to take a statutory form.

At the same time the Code failed to effectively address the issue of the resolution of differences, especially in the area of essential services. The resolution of differences in essential services was addressed with the Agreement on the Procedure for the Settlement of Labour Disputes in Essential Services signed in March 2004. The agreement was reached after a long period of consultation and negotiation among the social partners and it represented an extension to the Industrial Relations Code, even though the Government insisted on a statutory resolution. The agreement secured the right to strike in essential services, while at the same time providing for skeleton staff to remain on duty. This procedure was enforced for the first time in July 2005.<sup>13</sup>

Regarding the more general problem of dispute resolution, one approach might be the introduction of compulsory arbitration enforceable by the Ministry of Labour and Social Insurance in cases of disputes over interests. Another relevant consideration is the application of practical time limits for the resolution of disputes. There are several other points that require clarification and implementation on the same issue. These include: (a) the need to identify the issues that are essentially employer privileges as opposed to those that must be mutually agreed, (b) the need also to introduce, in consultation with the other social partners, rules on arbitration, and (c) the need to enforce the practice of joint press releases during negotiations.<sup>14</sup>

## **5. Collective Bargaining: Coverage and Levels**

Collective bargaining in Cyprus retains its voluntary nature. It is essentially a multi-level process that involves all the social partners at the sectoral and enterprise levels. As discussed earlier, the harmonisation process of the Cypriot legislation with the European *Acquis* led to legislation of several terms and conditions of employment (which thus became legally binding). Collective agreements can still be reached over and above these legally binding conditions. More recently, following the accession of Cyprus to the EU, the issue of granting legal status to collective agreements is being considered.

The number of employees covered by collective agreements cannot be easily estimated given the lack of precision in trade union data regarding their membership. However, the reported data in the period 1993-2003 show that union membership ranges between 52% and 54% of the economically active population (Table 5). At the same time one has to take into consideration that most of the provisions of collective agreements are incorporated into personal contracts of employment and/or the internal rules and regulations of organisations that are not formally unionised. The legalisation of some clauses due to harmonisation has facilitated this process.

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<sup>13</sup> Ministry of Labour and Social Insurance Annual Report 2004: 209; SEK, 2002: 40-46.

<sup>14</sup> Pavlikkas 2004: 14.

**Table 5 – Trade Union Membership 1993-2003**

	1993	1998	2003
SEK	55.000	61.000	65.000
PEO	66.000	64.000	64.000
DEOK	6.000,00	6.000,00	7.000,00
Others	32.000	36.000	39.000
Total	160.993	168.998	177.003
% to economically active	53,19	54,10	52,04

Source: Eiro online, Trade Union Membership 1993-2003.

Based on the most recent available data from the Industrial Relations Department of the Ministry of Labour and Social Insurance, there were 13 individual labour agreements in 2003 in the following sectors of private economic activity: financial services, leather goods, clothing, footwear, metal products, construction, construction companies, electrical installations, transports, hotels, catering, and oil service companies.

In the public and semi-public sectors the Ministry of Finance acts as the employer, negotiates with the trade unions directly and issues guidelines for the boards of semi-public organisations to follow. Most collective agreements are concluded at the company level, even though the majority of employees are also covered by some national collective agreements, such as those in construction, hotel and hospitality industries, the banking sector and the public and semi public sectors.<sup>15</sup>

## **6. Dispute Resolution and Enforcement of Labour Rights**

As previously discussed, the Industrial Relations Code incorporates provisions for the resolution of disputes over interests that may arise during the negotiation of collective agreements, and disputes over rights or grievances that may arise out of the interpretation and/or implementation of collective agreements, out of existing conditions of employment, or out of personal complaints including complaints over dismissals. The Department of Labour Relations in the Ministry of Labour and Social Insurance is the competent authority for enforcing labour legislation and for mediating among the social partners in resolving disputes.

The Judiciary has a rather limited role in labour relations. More specifically, the Labour Court is responsible, among other issues, for hearing cases on dismissals and redundancies, gender equality, the establishment and operation of provident funds, parental leave, and the organisation of working time including part-time work.<sup>16</sup> The District Courts are responsible for hearing civil cases that deal, for the most part, with cases of sexual harassment, whereas the Supreme Court is responsible for cases of employment and promotion in the public sector, as well as in public utilities and municipal authorities. The Supreme Court is also responsible for hearing appeals.

In 2005 the Department of Labour Relations received 221 labour disputes affecting 44.760 employees, out of which 108 were disputes over interests (issues raised during negotiations), and 113 were disputes over rights (covered by collective agreements). It also handled another 127 cases that had been pending since the previous year. Overall, in 2005 the Department handled

<sup>15</sup> Yannakourou and Soumeli 2004: 37-38.

<sup>16</sup> Kapartis 2004: 157.

348 cases, as opposed to 220 which was the average caseload for the period 2000-2004. Out of these, 98 cases remained pending at the end of 2005.<sup>17</sup>

In recent years the Department was able to handle more cases than in the past, but overall there is an overload of cases. This relates to the tendency of the social partners to register cases with the Department instead of trying to resolve them. It is also noted that in 2005 a total of 25 strikes were reported, affecting 14.637 employees and resulting in the loss of 15.339 workdays. The average workdays lost in Cyprus during strikes per 10.000 workers was estimated at 300 annually.<sup>18</sup>

## **B. NEW WAYS OF REGULATING WORK**

### **1. The Accession Process and the Harmonisation of Labour Law**

The accession process and the eventual harmonisation of the legal and institutional framework of Cyprus with the *Acquis Communautaire* was a significant factor that influenced the evolution of labour relations in Cyprus in the period under examination. The process reinforced the rights and obligations of the social partners and to a large extent safeguarded the rights of the workers.<sup>19</sup>

The process of accession negotiations started officially on 30<sup>th</sup> September 1998. Prior to that the Government of the time had established 22 high level technical tripartite committees charged with the responsibility of screening the *Acquis* in relation to existing legislation and suggesting ways of bridging the differences.

### **2. Terms and Conditions of Employment**

In the field of Labour Law, harmonisation with the provisions of the *Acquis Communautaire* involved a great number of changes to the existing legal framework. Many legislative adjustments were deemed necessary in order to achieve full compliance. This involved both the upgrading of existing legal clauses as well the introduction of new legislation, which would supersede the existing collective agreements on many labour issues. Ultimately this would create a more sustainable system of social protection.

The legislation that had to be introduced and enforced in Cyprus, in order to harmonise the national legal framework with the terms and conditions of employment required under the relevant European Directives, involved a number of areas. These can broadly be summarised as follows: information on individual employment conditions, transfer of undertakings, collective redundancies, employer insolvency, young people at work, working time, health and safety in fixed term and temporary employment, European Works Councils, the posting of workers, part-time and fixed term work.

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<sup>17</sup> Ministry of Labour and Social Insurance, Annual Report 2005: 208-209.

<sup>18</sup> Ministry of Labour and Social Insurance, Annual Report 2005: 209-210.

<sup>19</sup> A systematic analysis of Labour Law in Cyprus before harmonisation with the *Acquis Communautaire* can be found in Christodoulou (1992). Also Antoniou (2003) gives a detailed account of the most significant work carried out in the harmonisation process. Most of the legislation can now be found online on the website of the Ministry of Labour and Social Insurance (<http://www.mlsi.gov.cy>).

Prior to the harmonisation process legislation covering the whole of the workforce in Cyprus had existed on the issues of collective redundancies, termination of employment, annual leave and the protection of young people at work. Apart from these limited areas that enjoyed universal coverage, the only other issues that were governed by statutory regulation concerned the minimum wage and maximum hours protection. However, these only covered specific groups of workers, such as sellers, clerks, school assistants, nurses and kindergarten staff. These groups were considered vulnerable either because they were not union organised, or because their unions were very weak, thus lacking the bargaining power that more densely unionised sectors enjoyed.

Clearly, in view of the limited scope of existing legislation due to extensive reliance on the system of collective agreements, the new legal framework had to introduce provisions on a wide range of issues including the following:

- Employer's obligation to inform employees of the particulars of their contract of employment or their employment relationship;
- The safeguarding and protection of employees' rights in the event of the transfer of undertakings, businesses or parts thereof;
- Collective redundancies;
- Protection of employees in the event of insolvency of their employer;
- Protection of young persons at work;
- The organisation of working time;
- The establishment of a European Works Council for the purpose of safeguarding the employees' right to information and consultation in Community-scale undertakings and Community-scale groups of undertakings;
- The elimination of unfavourable treatment in the case of part-time employees;
- The prohibition of discriminatory treatment in the case of fixed term work employees.

As far as the issue of transfer of undertakings is concerned, a law providing for the protection of employees in the event of a transfer was introduced in the process of harmonisation with the *Acquis*. The Law safeguards and preserves the rights of employees in cases of transfers of undertakings, businesses, or parts of undertakings and businesses to another employer.

In relation to collective redundancies, a new law also had to be introduced containing specific provisions as to an employer's obligations when he intends to proceed to collective redundancies. Such obligations should include consultation with the workers' representatives, with the aim of reaching an agreement, as well as providing them with all useful information during the consultations. Useful information in this regard would include mainly the reasons for the intended redundancies, the period over which the redundancies will take effect and the criteria to be used for selecting the employees that are to be made redundant and, finally, the method for calculating possible compensation payments.

On the issue of employer insolvency the previously existing legislation - the Termination of Employment Law - had to be amended for reasons of full compliance. Such amendments had to do with the imposition of penal sanctions or other similar methods that could act as incentives for employers providing relevant information or consulting with the workers concerned. The Termination of Employment Law is discussed in more detail in Part C.

Legislative measures had to be introduced for the organisation of working time, for the posting of workers, as well as for the information and consultation of workers. At the same time, new laws also had to be introduced in relation to part-time and fixed term work, for the elimination of unfavourable treatment, and for the prohibition of discriminatory treatment. Regarding workers with fixed duration or temporary employment contracts, legal measures covering provisions for their health and safety were introduced under the previously existing Health and Safety at Work Law, which is considered below. Under this Law, issues relating to the health and safety of young people at work also had to be included.

### **3. Health and Safety**

The legal framework in relation to Health and Safety prior to harmonisation displayed significant gaps *vis-à-vis* the *Acquis Communautaire*. The volume of legal provisions and laws that had to be introduced in order to satisfy the requirements of the various European health and safety Directives was indeed very extensive. As a result, the harmonisation process brought about substantial improvements in the provisions regarding the area of health and safety at the workplace. New legislation either amended existing laws or introduced new ones.

An important achievement was the full alignment with the Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the health and safety of workers at work. This Directive introduced new approaches and a new philosophy for the prevention of accidents and diseases at the workplace. It laid down the basic principles and suggested new ways for handling and settling health and safety issues – mainly by encouraging social dialogue in this area, both at the national and company levels.

Prior to harmonisation the main legislation in Cyprus covering health and safety matters was the 1996 ‘*Safety and Health at Work Law*’ (89(I)/96), which focused on the introduction of measures to encourage improvements in the safety and health of workers at work. Even though the 1996 Law took into account some of the provisions of the European Framework Directive 98/391/EEC, a number of improvements needed to be made to this in order to achieve full compliance. Moreover, existing national laws dealing with provisions regarding specific risks, especially asbestos exposure, needed upgrading. For the most part, however, new laws and regulations had to come into effect as the national regulatory framework was insufficient.

In this respect, the legislation that had to be enforced in Cyprus, in order to harmonise health and safety at work with the provisions required under the relevant European Directives, involved a number of issue areas. These dealt with minimum requirements for the workplace and work equipment (including protective equipment), with minimum protection requirements in different sectors of activity – such as construction sites and extracting industries – and with the protection of workers dealing with specific risks – such as the manual handling of loads, display screen equipment, and exposure to carcinogens, asbestos, as well as chemical, biological and physical agents at work.



#### **4. The National Minimum Wage**

The national minimum wage is regulated annually by Order of the Council of Ministers. The Order provides for a minimum wage for particular occupations and affects mainly people working as shop assistants, clerks, nurses' aides and teachers' aides in nursery and primary schools. The minimum wage is generally observed in the sectors it applies to and there is no evidence that the system is abused.

In 2005 the minimum wage was revised to £362 per month, as compared to £345 in 2004 for newly recruited employees. The minimum wage for employees with more than six months working experience was revised to £385 in 2005, compared with £367 in 2004. The Government objective is to raise the minimum wage to 50% of the national median wage by 2008.<sup>20</sup>

### **C. FROM JOB SECURITY TO EMPLOYABILITY**

#### **1. The Context of the EU Employment Strategy**

Cyprus has been enjoying conditions of full employment for a long time, even though the unemployment rate began to creep modestly higher in more recent years. With a view to implementing the Lisbon Agenda, the First National Action Plan (NAP) for employment 2004-2006 sets out the guidelines that Cyprus should follow. The NAP includes the following objectives: ensuring conditions of full employment, quality and productivity at work, cohesion, and an inclusive labour market. Its role in the implementation of the Lisbon objectives is undoubtedly of utmost importance. In this context the adaptability of both the workforce and the business enterprises to the new realities of the Lisbon Agenda is examined herewith.

#### **2. Protection against Dismissals**

The Termination of Employment Law, which entered into force on 1<sup>st</sup> February 1968 – and subsequently amended to adopt the provisions of the relevant EU Directive – provides for the conditions under which an employer can dismiss an employee and the procedure that has to be followed in each case. The Law was drafted in such a way so as to safeguard employment, while at the same time enabling an employer to dismiss an employee for a 'just cause' and with appropriate compensation.

The main objectives of the Termination of Employment Law are: (a) to protect all employed persons against arbitrary dismissals and redundancies with the payment of compensation, (b) to provide for a minimum period of notice in cases of termination of employment, and (c) to establish a Redundancy Fund to which employers pay contributions for the purpose of payment of compensations for reasons of redundancy. This last feature is very significant because it enables employers under specific conditions to reorganise their businesses and introduce new technology that sometimes may result in redundancies. Reorganisation plans, however, cannot be used as short-term excuses for making employees redundant. The Law stipulates strict procedures for dismissing employees as redundant and hiring new ones.

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<sup>20</sup> Ministry of Labour and Social Insurance, Annual Report 2005: 213-214.

On top of the protection offered by the Termination of Employment Law to employees working under personal contracts of employment or covered by collective agreements, employees can use these instruments to defend their rights. The Termination of Employment Law recognises clauses that are more favourable to employees, as having precedence. For employees covered by collective agreements dismissals are enforced after consultation with the competent trade unions. Employees with personal contracts of employment can resort to the Department of Labour for protection and/or the Labour Court.

### **3. Measures to promote ‘Employability’**

The Joint Assessment Paper (JAP) agreed upon in 2001, included jobseekers’ access to training programmes as an employment priority. According to the NAP the percentage of jobseekers who participated in educational and training activities increased from 4,2% in 2000 to 8,8% in 2003. However, vocational training is mainly oriented towards those in employment or those that can easily secure employment, rather than the unemployed.<sup>21</sup>

The NAP for Employment 2004-2006, also calls for greater emphasis on active and preventive policies in order to (a) reduce the duration of the unemployment period of specific target-groups, such as young and older people, (b) provide support for the promotion of the employment of women and persons with disabilities and (c) more closely link education to labour market needs.<sup>22</sup>

### **4. Training and Lifelong Learning**

Cyprus is a small and open economy with limited natural resources and thus has to rely on its human capital for sustained growth and development. Inevitably, education, training and lifelong learning constitute important national goals. The responsible body for implementing the training strategy of Cyprus is the Human Resource Development Authority (HRDA), which is a semi-public organisation. A 13-strong Board of Directors, comprising representatives from the Government, the employers’ organisations and trade unions, governs HRDA. The Minister of Labour and Social Insurance is by law the competent Minister.

The HRDA's activities focus on the formulation and implementation of an integrated training and human resource development strategy in accordance with the priorities of national socioeconomic policy objectives. On this basis, specific training programmes are promoted and corresponding costs are distributed. The Authority also subsidises the modernisation of the training system with the creation of the necessary infrastructure, the systematisation and certification of training, and the introduction of standards for vocational qualifications. Participation in training programmes financed by the HRDA is rapidly increasing.<sup>23</sup>

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<sup>21</sup> Republic of Cyprus, NAP for employment 2004-2006, 2003: 11.

<sup>22</sup> Republic of Cyprus, NAP for employment 2004-2006, 2003: 12.

<sup>23</sup> Specifically, participation increased from 14.300 in 1993 to 27.804 in 1997 and to 34.389 in 2003; Human Resource Development Authority, Annual Report 2004: 35-37.

## **5. Bridging the Gap between School and Labour Market**

Cyprus has long enjoyed a tradition of high educational levels, which is confirmed in the National Action Plan.<sup>24</sup> Specifically, the percentage of persons between the ages of 20 and 24 that have completed secondary education is 79,5%. This is higher than the EU average of 75,5%, but lower than the European Employment Strategy (EES) target of 85% by 2010. The net participation rate in education for young persons of 12-17 years is estimated at 90%. In the academic year 2002-2003 about 64% of the secondary education graduates continued their studies in tertiary education (23% in Cyprus, 41% abroad). At the same time, the proportion of early school leavers was 17,4%, which is slightly lower than the EU average of 18,8%, but higher than the EES target of 10%. The participation rate in secondary technical/vocational education is lower particularly amongst girls. The proportion of the labour force with higher education was 32,4% in the academic year 2002-03 compared with the EU average of 24,2%.<sup>25</sup>

Efforts directed towards bridging the gap between school and the labour market are led by the competent Ministries of Education and Culture, and of Labour and Social Insurance respectively. A major reform programme of upper secondary education began in 2000 and was completed in 2002. Reform of technical/vocational education was targeted for completion by 2006. The main aim of this reform was to adjust to the growing demand for mobility and flexibility in the labour market. A programme for introducing information technology in education – both primary and secondary – was also initiated.

The focus of the reform effort is to prepare secondary education graduates to either continue at tertiary level or follow an apprentice course and gain the necessary professional skills for entering the labour market. The Government is placing emphasis on the development of public and private tertiary education and vocational training through strengthening and upgrading the training infrastructure, modernising the Apprenticeship Scheme and expanding the training activities offered.

## **6. Active Ageing**

The retirement age in the private sector is 65 years for both men and women. However, employees can draw retirement pensions from the Social Insurance Fund from the age of 63. In this case they can continue working until the age of 65. During this period contributions to the Social Insurance Fund are compulsory. Additionally, with the consent of their employers, employees can continue working until the age of 68 while in receipt of pension. In this case, from the age of 65 to 68 contributions to the Social Insurance Fund are voluntary. Those who choose voluntary contributions will be receiving a higher pension at the end of the period. The retirement age for people working in the broader public and banking sectors is 60 years, or after 400 months of employment.

The burden on the system from people retiring early is putting pressure on the long-term viability of the Social Insurance Fund. The problem is further exacerbated by the low birth rate and the corresponding implications upon the demographic distribution of the population. The problem thus generated is currently being discussed in the context of a social dialogue between the social partners, with a view to extending the retirement age first to 63 years and later to 65 for the extended public and banking sectors, and to 67 for the private sector. At the same time,

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<sup>24</sup> Republic of Cyprus, NAP for employment 2004-2006, 2003: 20.

<sup>25</sup> Republic of Cyprus, NAP for employment 2004-2006, 2003: 20.

contributions to the Fund are likely to go up while the possibility of lowering benefits has not yet been considered.

It should be noted that more and more people choose to work in the private sector, mainly on a part-time basis beyond the normal retirement age. This is more pronounced among people retiring at 60, but the extent of this practice is not statistically recorded.

## **7. Categories of Workers at Risk of Social Exclusion**

Social cohesion is a crucial contributor to both the stability of the socioeconomic system and to the sustainability of growth. Economic inequality, poverty and social exclusion may not in general be considered as acute problems in Cyprus. However, pockets of exclusion exist amongst the elderly, people with disabilities, single-parent families, and families whose head is of low educational level. Cyprus is gradually becoming a multi-cultural society where people from various countries converge in search of employment and a better life. There is a growing trend whereby people coming from less privileged countries face problems of social exclusion. The Government is working with the trade unions to solve this problem.

In the drafting of the NAP 2004-2006, an effort was made to include the less privileged and to take into consideration the changing social patterns and the demographic issue. As already mentioned, the ageing of the population is exerting considerable pressure on the Social Insurance System. At the same time the recipients of social security assistance are increasing, thus adding further pressures on the Fund. It is therefore important that measures are taken soon to ensure the long-term viability of the Social Insurance System.<sup>26</sup>

## **D. LABOUR LAW AND ADAPTABILITY**

In addition to the process of harmonisation, globalisation and technological change combine together to forge changes in the labour market. The need for labour market flexibility and adaptability is obvious and the social partners are incorporating these parameters in the process of collective bargaining.

As mentioned earlier, during the harmonisation process the two more pertinent Directives on part-time work (97/81/EC) and on fixed term contracts (97/71/EC) were incorporated into national law. Unfortunately, empirical data on their implementation and their extent of applicability is not available. Data gathering on part-time employment, temporary employment and persons holding second jobs was introduced in 2001 as part of the harmonisation process with the European *Acquis*. Table 6 below summarises part-time employment by reason and sex for 2005 and 2001. Similarly Table 7 summarises temporary employment by age group, reason and sex, also for 2005 and 2001.

Part-time employment in 2005 consisted of 30.984 persons or 8,4% of total employment. The corresponding ratios in the male and female employment populations were respectively 4,8% and 13,1%. Looking into the reasons for part-time as opposed to full-time employment, it is clear that the most common occurrences involve people who did not want a full-time job.

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<sup>26</sup> Republic of Cyprus, NAP 2004-2006, 2003: 31.

Specifically, 50,4% of men and 54% of women on part-time employment in 2005 did not want a full-time job. At the same time 23,2% of men and 30,1% of women on part-time employment in the same year, could not find a full-time job.

The proportion of part-time employment in total employment crept higher in the period since 2001 when data gathering started. Part-time employment comprised 8,1% of total employment in 2001. Regarding the reasons cited the proportion of those claiming they did not want a full-time job has been declining while the proportion of those claiming they could not find a full-time job was increasing.

**Table 6 – Part-Time Employment by Professional Status, Reason and Sex**

	2005			2001		
	Total	Men	Women	Total	Men	Women
Total Employment Full-Time	367.524	206.395	161.129	322.351	180.927	141.424
Part-Time Employment	30.984	9.888	21.096	26.049	8.883	17.166
As a Percentage of Total Employment (%)	8,43	4,79	13,09	8,08	4,91	12,14
Reason for Part-Time Employment						
In education or training	1.049	565	484	1.191	557	634
Own illness or inability	1.983	1.326	657	1.493	1.168	325
Could not find a full-time job	8.649	2.293	6.356	4.512	2.040	2.472
Did not want a full-time job	16.390	4.984	11.406	15.856	4.004	11.852
Other reason given	1.207	665	542	2.181	984	1.197
No reason given	55	55	0	194	130	64
Looking after children or adults	1.651	0	1.651	622	0	622
Reason for Part-Time Employment-% to total						
In education or training	3,39	5,71	2,29	4,57	6,27	3,69
Own illness or inability	6,40	13,41	3,11	5,73	13,15	1,89
Could not find a full-time job	27,91	23,19	30,13	17,32	22,97	14,40
Did not want a full-time job	52,90	50,40	54,07	60,87	45,07	69,04
Other reason given	3,90	6,73	2,57	8,37	11,08	6,97
No reason given	0,18	0,56	0,00	0,74	1,46	0,37
Looking after children or adults	5,33	0,00	7,83	2,39	0,00	3,62

Source: Republic of Cyprus, Statistical Service, Labour Force Survey 2005 and 2003.

Regarding temporary employment the corresponding proportion in total employment was increasing more steeply in the period under consideration (2001-05) than the proportion of part-time employment. In 2005, temporary employment represented 10,1% of total employment or 37.316 persons, compared with 7,9% in 2001 or 25.402 persons. Also noted is the fact that women are consistently twice as likely to hold temporary employment as men. In 2005 women on temporary employment accounted for 15,3% of the female employment population. At the same time, men on temporary employment accounted for 6,1% of the male employment population. By far the main reason cited for holding a temporary job was that they 'could not find a permanent job'. In 2005 for instance 90,7% of temporary employment said they 'could not find a permanent job'. A considerably smaller proportion (5,7%) said they were on 'contract for training' (Table 7).

**Table 7 – Temporary Employment by Age Group, Reason and Sex**

	2005			2001		
	Total	Men	Women	Total	Men	Women
Total Employment Full-Time	367.524	206.395	161.129	322.351	180.927	141.424
Temporary Employment	37.316	12.676	24.640	25.402	8.767	16.635
As a Percentage of Total Employment (%)	10,15	6,14	15,29	7,88	4,85	11,76
Reason for Temporary Employment-% to total						
Contract for training	5,69	8,50	4,25	5,24	4,29	5,75
Could not find a permanent job	90,66	85,04	93,55	80,24	70,83	85,20
Did not want a permanent job	1,38	1,96	1,08	4,87	7,68	3,39
No reason given	0,98	1,90	0,50	3,67	9,31	0,70
Probationary period	1,28	2,59	0,61	5,98	7,89	4,97
Temporary Employment by Age Group-% to Total						
15-24	17,27	19,19	16,28	18,06	19,24	17,43
25-34	39,61	49,60	34,47	40,21	41,42	39,58
35-44	27,47	17,62	32,54	25,49	24,17	26,19
45-54	11,73	7,97	13,66	11,03	8,13	12,56
55-64	3,52	4,53	3,00	4,55	5,81	3,88
65+	0,41	1,10	0,06	0,66	1,23	0,35

Source: Republic of Cyprus, Statistical Service, Labour Force Survey 2005 and 2003.

At the same time, a considerable number of employees have second jobs. In 2005, for instance, 4,7% of all employees had a second job. Of these 84% were men and the remaining 16% were women. The biggest percentage of the second jobholders, 62,2% of the total, concerned the primary sectors (Table 8).

**Table 8 – Persons in Employment having a Second Job by Economic Activity and Sex**

	2005			2001		
	Total	Men	Women	Total	Men	Women
Total Employment Full-Time	367,524	206,395	161,129	322,351	180,927	141,424
Persons in employment having a second job	17,239	14,543	2,696	13,201	10,397	2,804
As a Percentage of Total Employment (%)	4.69	7.05	1.67	4.10	5.75	1.98
Economic Activity of 2nd Job						
Primary sectors	10,692	9,742	950	6,317	5,694	623
Secondary sectors	579	331	248	855	731	124
Tertiary sectors	5,968	4,470	1,498	6,029	3,972	2,057
Economic Activity of 2nd Job - % distribution						
Primary sectors	62.02	66.99	35.24	47.85	54.77	22.22
Secondary sectors	3.36	2.28	9.20	6.48	7.03	4.42
Tertiary sectors	34.62	30.74	55.56	45.67	38.20	73.36

Source: Republic of Cyprus, Statistical Service, Labour Force Survey 2005 and 2003.

In sectors of the economy where labour unions are strong, there is reluctance to accept new forms of employment not covered by collective agreements. More recently, collective agreement negotiations in the hotel and hospitality industry, as well as in the construction industry, almost broke down on the issue of introducing new forms of employment. In the banking sector labour concessions in the form of work flexibility were compensated by additional benefits, in the form of higher pay and fewer hours of work.

Beyond the unionised sectors of the economy there is only anecdotal evidence regarding the forms and extent of atypical employment. The available statistical data on atypical forms of employment, as presented above, is limited, since data gathering was initiated after the harmonisation process had started and includes only data on part-time and temporary work, and people holding second jobs. Finally, due to budget constraints, the need to contain the ever expanding civil service sectors, and the extended period of time it takes to complete the filling of a permanent post, the Government is experimenting with alternative forms of employment and legal structures.

In practice, most personal contracts of employment are of indefinite duration. Fixed term contracts are used only in cases of projects with specific timetables. In recent years the Government has initiated a practice of hiring temporary employees, some of them on renewable fixed term contracts of varying duration, and some of them on contracts of indefinite duration. A number of these jobs are temporary in nature, but most of them are not. There is strong pressure on the Government to reform this practice focusing on short-term requirements only.

There is little, if any, experience with alternative forms of employment relations such as temporary agency work, pools of workers (multisalariat), company networks and on call work. There is casual work mostly in housecleaning and maintenance activities, construction, catering and agriculture. On call work in Cyprus is usually associated with full-time employees in essential services in the Government, the health sector, the Police Force, the Fire Department and the Security Forces, who are on call for emergency cases and they have to report to work. Some private companies also have people on call in order to serve customers in the case of an emergency outside normal working hours.

Subcontracting/outsourcing is a form of employment used extensively in Cyprus, mainly in construction and, to a lesser extent, in the hotel and hospitality industry. The practice is for former employees to be “offered” the opportunity to work for themselves – in practice carrying on their normal duties as usual – but on different terms. In most cases, these employment relations lead to economically dependent workers without the benefits of job security and protection. The trade unions, however, are against this practice.

Telework is a rare form of employment in Cyprus, given the short distances between towns, even though anecdotal evidence suggests that in more recent years an increasing number of people choose to work through this medium. It is a form of employment which is compatible with people working in sectors of the knowledge economy and who prefer work flexibility. It is also compatible with work on international projects.

## **E. PROMOTING EQUAL OPPORTUNITIES**

Issues of equality and equal treatment of men and women and discrimination based on race or national origin gained attention in Cyprus in the late 1980s and were gradually addressed at all levels. In the field of gender equality in particular, harmonisation with the *Acquis Communautaire* involved, as in other cases, a great number of changes to the previously existing legal framework.

Prior to harmonisation the national regulatory framework in this field was quite extensive but lacked considerably with regard to the full set of *Acquis* provisions. More explicitly, Article 28 of the 1960 Constitution outlined the principle of equal treatment. In addition, relevant legislation in Cyprus also developed by adopting international agreements and conventions of the International Labour Organisation regarding discrimination against women, equal pay, and human rights. The Government had ratified these agreements over the years endorsing them with Article 169 of the Constitution.

At the same time national legislation concerning issues of gender equality, prior to harmonisation with the *Acquis*, covered aspects of social security, maternity protection, protection of pregnant women and equal pay. In 1994 the Government established the “National Mechanism for Women’s Rights” as a consultative body under the guidance of the Ministry of Justice and Public Order with the aim of promoting equality and women’s rights in all spheres of public and private life. Members of this body consisted of civil servants, representatives of labour unions and women’s organisations and other NGOs.

Despite the regulatory provisions that already existed, a number of statutory adjustments were necessary in order to comply with the full set of the *Acquis* requirements. In this respect, the legislation that had to be introduced in Cyprus, in order to harmonise gender equality provisions required under the relevant European Directives involved a number of issue areas. These can be summarised as follows:<sup>27</sup>

- Equal pay for men and women;
- Access to employment, vocational training and promotion, and working conditions;
- Equal treatment for men and women engaged in an activity, in a self-employed capacity and on the protection of self-employed women during pregnancy and motherhood;
- Health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding;
- Parental Leave;
- Burden of proof in cases of discrimination based on sex;
- Equal treatment in matters of social security;
- Equal treatment in occupational social security schemes.

The harmonisation process acted as a catalyst on the process of promoting gender equality at work. The legal framework introduced safeguards for equality of treatment in terms of salary and benefits, social security, occupational social security schemes and other plans. It provides for equal treatment of men and women in employment and vocational training, and also contains provisions for the protection of maternity, for parental leave, and leave on grounds of *force majeure*. The legal framework also protects workers from discrimination based on religion, beliefs, special needs, age, national origin, race and sexual preferences.

In spite of these regulatory changes, discrimination against women at work is still an issue. Gender discrimination is reflected in the number of people per level of occupation and the difference in salaries paid for similar work and level of responsibility. According to the Ministry of Labour and Social Insurance, women in 2005 accounted for 43,3% of total employment and 35,4% of total employment in jobs requiring higher education. Interestingly there was an equal number of men and women with tertiary education in 2005 (Table 9). Their average monthly remuneration was 74,9% of the corresponding remuneration for men. Statistics for previous

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<sup>27</sup> Annex B for Cyprus, for Gender Equality Directives transposed into national law.



years are similar.<sup>28</sup> Women also experience higher levels of unemployment. This phenomenon, as already noted, is more acute among young women.

**Table 9 – Labour Force by Educational Attainment and Sex**

	2005			% Distribution to total		
	Total	Men	Women	Total	Men	Women
Less than upper secondary	107.816	65.938	41.878	29,34	31,95	25,99
Upper secondary	145.520	83.285	62.235	39,59	40,35	38,62
Teritary	114.188	57.172	57.016	31,07	27,70	35,39
of which: ages 25-44	72.150	35.492	36.658	19,63	17,20	22,75
ages 45-64	31.267	18.504	12.763	8,51	8,97	7,92
Total	367.524	206.395	161.129	100,00	100,00	100,00

Source: Republic of Cyprus, Statistical Service, Labour Force Survey 2005.

The Government has introduced measures for reconciling work and family life, thus enhancing employment opportunities for women. As stated in the National Action Plan, “Particular attention is paid to women who continue to have the main responsibilities for the care of children and other family dependants (such as older persons and persons with disabilities). The Public Assistance and Services Laws and their implementation policies favour women, since they deal with the support of single-parent families and cover special needs such as the care of dependants (children, the elderly and people with disabilities).”<sup>29</sup>

## F. Overview and Comments

The period 1995–2005 was particularly important for Cyprus since during this period accession negotiations with the EU were initiated and completed. Harmonisation with the *Acquis Communautaire* affected Labour Law and Industrial Relations both directly and indirectly. In itself, harmonisation and the implementation of the *Acquis* transformed and enriched the country’s Labour Law in fundamental ways. At the same time it brought into question the very nature of Industrial Relations. The twin forces of harmonisation and globalisation forced upon the full liberalisation of the domestic economy enhancing the competitive forces in all areas.

Through the harmonisation process, a number of terms and conditions of employment that were in the past secured by collective agreements and/or personal contracts have now acquired a statutory form and are therefore legally enforceable. This shift strengthens the individual protection of workers’ rights but at the same time it diminishes the capability of trade unions to offer collective protection and services to their members.

One of the major shifts in Industrial Relations in recent years, which is reinforced by the new legal framework, is that organisations use personal contracts, as opposed to collective agreements, in establishing the legal employment relation between the organisation and the particular employee. This shift further erodes the collective power of employees and of trade unions. At the same time, the two contractual parties assume rights and responsibilities that are legally enforceable.

<sup>28</sup> Ministry of Labour and Social Insurance, Annual Report, 2005.

<sup>29</sup> Republic of Cyprus, NAP 2004-2006, 2003: 27.

New forms of atypical employment are slowly introduced into the labour market, as employers test the limits of the labour market's flexibility and more workers are either forced or choose to enter into new forms of employment. Unfortunately, there is little national experience on the implications of these new forms of atypical employment on the workers and their long-term interests. The existing legal framework in this area has yet to prove its potential. The statistical data available on the issue is limited, and does not really distinguish among different forms of atypical employment.

The accession of Cyprus to the EU and the new Labour Law framework has forced upon the trade union movement a formidable challenge they have been avoiding for years. Traditionally, the Anglo-Saxon tradition of voluntarism and the understanding of collective agreements as "gentlemen's agreements" had guided the labour movement in Cyprus. It thus played down the importance of the statutory nature of labour relations that is more popular in continental Europe.

The labour market in Cyprus is faced with a number of issues that directly affect the effective functioning of the economy. These include the viability of the Social Insurance Fund, the age of retirement for private and public sector employees, the restructuring of the broader public sector with particular reference to work schedules and the refocusing and fine tuning of education, lifelong learning and training systems, so that their objectives are compatible with the needs of the economy. Moreover, the labour movement finds itself at the crossroads of formidable challenges, threats and opportunities. For example, it has yet to find ways of fully addressing the needs of knowledge workers and professionals.

This new and more dynamic environment in which Cyprus finds itself should not in principle further erode the traditional consensus and social dialogue among the social partners. At the same time, the social partners should find ways to further strengthen the partnership through the establishment of a local Economic and Social Committee. It is not enough for them to participate at the European level and not be willing to do so at the local level.

Last but not least, the resolution of the long-standing Cyprus problem and the reunification of the island remains the highest priority. The eventual resolution of the problem and reunification of the economy will open the issue of implementing the *Acquis* across the whole country.

## **Chapter II**

### **The Evolution of Labour Law in the New Member States of the European Union: 1995-2005 Country Study on Malta**

#### **INTRODUCTION**

This report traces the evolution of Labour Law in Malta during the period 1995-2005. Particularly in the past four years there has been an increase in labour legislation, mainly due to two separate reasons: the need to update the existing laws to reflect and respond to emerging realities in the work environment, and the need to align national legislation with EU Directives in view of EU membership. This has led to the widening and enhancement of workers' rights and added new emphasis on the improvement of the work-life balance.

#### **A. HISTORICAL BACKGROUND AND GENERAL FRAMEWORK**

##### **1. Historical Background: Labour Law in Malta**

The very first endeavours at securing good conditions of work date back to pre-independence days, namely the 1939 'Stevedores and Port Workers Ordinance' and the 1940 'Factories Ordinance'. By 1945, these mandates were accompanied by the 'Health, Safety and General Welfare Regulations'. The General Workers' Union, set up in 1943, was instrumental in pushing forward a string of labour legislation that was to secure the rights of workers in various areas.<sup>30</sup> The Trade Unions and Trade Disputes Ordinance of 1945 installed a legal code of procedures for unions, even though they had been officially registered since 1919. Trade Unions were not liable to actions of tort in events associated with trade disputes.

The Health, Safety and General Welfare Regulations of 1945 continued to strengthen the position of workers. The election of the first Labour Government solidified the position of workers and led to the 'Conciliation and Arbitration Act' in 1948 that set up the institutional framework for the settlement of disputes, which included an Arbitration Tribunal and a Court of Inquiry. However, military and civil service employees were excluded. This exclusion has been retained to date and has been incorporated in the Employment and Industrial Relations Act (EIRA) of 2002. The 'Essential Supplies and Services Regulations' of 1952 guaranteed that trade unions did not abuse their power and hinder the provision of essential goods and services. The Dock Safety Regulations of 1953, which derived from the Factories Ordinance, focused on safety conditions on any dock, wharf, quay, or harbour, in Malta.

The 'Conditions of Employment Regulation Act' of 1952 (CERA) was the main framework of labour legislation, which lasted fifty years and provided the basis for the relationship between employers and employees. It was the key means of protection in terms of wages, leave, overtime, and security of job tenure. The Act also provided for Wages Councils, which set the

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<sup>30</sup> For example these included the Night Work by Women Regulations of 1952, the Woodworking Machinery Regulations of 1949, and the Steam and Hot Water Boilers Regulations of 1976.

working conditions for different sectors, and the Labour Board, which acted as a consultative board, offering advice to the Minister on various issues. The Act further gave the then Department of Labour more power in terms of duties to inspect and enforce regulations. Therefore the Wages Councils and the Labour Board can be considered as the first attempt at social dialogue, incorporating the three main stakeholders in the working relationship. In 1955, the Employment Service Act saw the introduction of a National Employment Board with an obligation to register the unemployed workers.

The 'Industrial Relations Act' of 1976 (IRA) set the stage for collective labour conditions. It merged and expanded the previous acts, the Trade Unions and Trade Disputes Ordinance (1945) and the Conciliation and Arbitration Act (1948), to reflect changes in the working environment. These included an Industrial Tribunal, a distinction between trade unions and employers' associations, union recognition and the possibility of reinstatements following unfair dismissals. The last amendment came in 2001 with Act 6. Therefore, while the legal situation continued to develop and get upgraded due to work environment changes, there was, at the same time, a need to overhaul the legislative framework – both to present a more coherent and consolidated version and to sustain the alignment to EU law.

In 2002, after about ten years of discussions, EIRA consolidated CERA and IRA, whilst ensuring increased protection for new types of working relationships based on the relevant EU Labour Directives. EIRA, which replaced CERA, is now Title I of the Act, and deals with Employment Relations. IRA, which is now Title II regards Industrial Relations. Title III includes Supplementary Provisions.

Title I is subdivided into seven sections: the legal status of the Employment Relations Board; the recognised conditions of employment; protection of wages; protection against discrimination in employment; termination of contracts of service; enforcement and non-compliance in employment; and administration related to employment. Title II regulates the Industrial Relations environment and is subdivided into three parts: organisation of workers and employees, dealing with the status, registration and conduct of both trade unions and employers' associations, the restrictions in legal liability and proceedings and on union membership; voluntary settlement of disputes; and the Industrial Tribunal. Title III has three articles: the exemption of certain provisions for Government employees; the expenses related with the operation of the provisions of the Act; and the legal recognition of regulations, orders and subsidiary legislation which had emanated from CERA and IRA (even though these were both repealed by EIRA).<sup>31</sup>

Other work-related legislation dealt with the employers' duties in terms of compulsory employee insurance protection. Act 13 of 1983 amended Act 16 of 1974, Employers' Liability (Compulsory Insurance) Act. The Social Security Act 10 of 1987 was amended several times, to reflect changes in the social and work environment, the more recent being through Legal Notices 100 and 101 of 2006.

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<sup>31</sup> EIRA Act and subsidiary legislation is available at:  
<http://gov.mt/frame.asp?l=2&url=http://www.education.gov.mt>

Act 31 of 1976, later amended by Act 13 of 1983, set up the Employment Commission. Act 30 of 1975 dealt with National Holidays and Other Public Holidays Act. This act was amended recently through Act 2 of 2005, which at the time caused a heated debate in national fora, and in some respects it is still a contested issue.<sup>32</sup>

Act 4 of 1970, Public Transport Regulation of Employment Act, later amended by Act 23 of 2000, deals with public transport workers. Act 14 of 1962, Port Workers Act, later amended by Act 17 of 1991, deals with port workers.

The 1964 Constitution was the first constitution of Malta as an independent country. It was later significantly amended in 1974, and on several occasions thereafter. Chapters II, IV and XI of the Constitution contain elements related to employment issues. Chapter II is a declaration of various principles including the following: the upholding of the right to work; the state's duty to protect work; the maximum number of working hours; workers' entitlement to a day of rest per week and to annual vacation leave; the promotion of gender equality; the minimum working age; the safeguarding of the labour of minors; the minimum wage; unemployment benefits; social insurance policy; and the entitlement of the disabled and persons unable to work to educational opportunities. Although these provisions are not enforceable in court, it is the state's duty to apply the principles when enacting laws.

Chapter IV, which deals with the Fundamental Rights and Freedoms of the Individual, has several work-related articles. Article 32 is a declaration of the fundamental rights and freedoms of the individual irrespective of "*race, place of origin, political opinions, colour, creed or sex*". Article 35 refers to the protection from forced labour, except in cases in which it is related to a court sentence, or in cases of public emergencies. Article 42 refers to the protection of the freedom of assembly and association.

Chapter XI includes Article 20 dealing with the Employment Commission. The article, among others, refers to the configuration of the Commission, made up of a Chairman and four members – two from Government and two from the opposition. The role of the Commission is to ensure equality and non-discrimination, especially in relation to political affiliations.

This brief exposition clearly shows that the groundwork for Labour Law was laid down over half a century ago. Later amendments have strengthened this base, and more recent Labour Law provisions have been adopted, mostly due to the need to align legislation with the EU *Acquis*.<sup>33</sup> The following section takes a closer look at Industrial Relations, by presenting details on the employers' associations and trade unions.

## **2. Employers' Associations and Trade Unions**

Title II of EIRA regulates the Industrial Relations scenario. It is the organisation of both the Employers' Associations and the Trade Unions. The Department of Industrial and Employment Relations (DIER) has the role of keeping an updated register of these organisations.

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<sup>32</sup> National holidays coinciding with weekend days used to be added to the leave entitlement. However, the amendment did away with this practice with the consequence that in 2005 workers felt they were deprived of four additional leave days.

<sup>33</sup> For further information see Baldacchino 2002 and Bronstein 2003.

### *Employers' Associations*

At the end of June 2005, 23 employers' associations were registered in Malta. Together these had a membership of 8.789.<sup>34</sup> Out of these 23 associations, the five main ones are the Malta Employers Association (MEA), the General Retailers and Traders Union (GRTU), the Malta Hotels and Restaurants Association (MHRA), the Malta Chamber of Commerce and Enterprise (MCCE) and the Malta Federation of Industry (FOI). All five of these associations are represented in the Malta Council for Economic and Social Development (MCESD), although the latter two do not feature in the official list presented by the Department of Industrial and Employment Relations (DIER).<sup>35</sup>

MEA was set up in 1965, after it had joined the Association of Employers<sup>36</sup> (1958) and the Malta Employers Confederation (1960). At the end of June 2005 a membership of 260 was recorded. The main aims of MEA are the protection of members' interests within a healthy Industrial Relations environment, and the maintenance of a viable competitive environment. MEA has ten sector groups and members are included under one of the groups, which practically cover all areas of business.<sup>37</sup>

GRTU started operating in 1948 under the name of General Retailers Union to safeguard the interests of what they referred to as the "neglected class". Today, the GRTU<sup>38</sup> has 6.934 members hailing from 12.000 different small business companies. In fact, it represents the widest cross section of proprietor-managed business enterprises.<sup>39</sup>

MHRA was established in 1958 and represents 70% of all hotels and 35% of the restaurants which together account for about 20.000 employees. Its main objective is to promote Malta's tourist industry. It provides information seminars and collects data for statistical analyses. At the end of June 2005, its membership totalled 280 (down from 385 a year earlier).<sup>40</sup>

MCCE was founded in 1948 and it is a voluntary organisation open to all those involved in different types of commerce, shipping, insurance, tourism and merchandizing. It acts as arbitrator in disputes related mostly to areas within its competences. Apart from providing various services to its members, it represents them in national and international fora and also reviews their opinions on certain policies. It has 839 members representing 1.137 companies, which produce or provide 1.615 products or services.<sup>41</sup> The Chamber also offers a wide range of business training programmes.

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<sup>34</sup> Department of Industrial and Employment Relations, 2005.

<sup>35</sup> Of the 23 employers' associations, the remaining are small, serving the interests of specific sectors.

<sup>36</sup> This was initially registered as the Union of Employers.

<sup>37</sup> The website of the association provides a range of documents and position papers on various topics.

<sup>38</sup> GRTU is seen as the "voice of the private initiative", and it is also referred to as the Malta Chamber of Small and Medium Enterprises.

<sup>39</sup> Entrepreneurs can join the GRTU under one of its six divisions: supply of household and personal goods; construction, civil engineering and development; supply of hospitality and leisure services; supply of nutrition and health goods; and supply of general services and small manufacturing enterprises. Members are divided into a number of Trade Sections, which act as mini assemblies bringing together entrepreneurs from different fields of activity, who can coordinate their activities to strengthen their specific business sector as one interest group.

<sup>40</sup> See Department of Industrial and Employment Relations, 2006.

<sup>41</sup> MCCE website.

FOI was founded in 1946 and is the ‘defender of the interests of local industry’. It acts as a consultation body between its members and Governmental organisations and, in cooperation with the social partners, endeavours to create a better climate for industry to develop. FOI organises numerous seminars and information sessions to keep its members updated with developments and events. It further disseminates information about possible joint ventures with other businesses abroad and offers the possibility for meetings within its premises. Furthermore it issues Certificates of Origin and Authentication of Trade Documents.

MCCE and FOI cooperated in opening a joint office – the Malta Business Bureau (MBB) – in 1996 in Brussels to deal with the issues related to Malta’s accession to the EU.<sup>42</sup> The role of the MBB is to liaise with the relevant institutions in Brussels on matters that directly affect the interested parties in Malta and to provide assistance in accessing funding possibilities to organise seminars for the members.

### *Unions and Union Membership*

According to the Department of Industrial and Employment Relations, by end June 2005 there were 33 registered trade unions accounting for 85.679 members.<sup>43</sup> There is an ongoing debate on the actual number of unionised workers, as some members may still be considered members even if they are not actually paying their membership fees. Furthermore, due to the increase in atypical work and the decrease in manufacturing and Government employment which are highly unionised sectors, the “*recruitment policy of the general unions... is... ineffective*” and may lead to a downward trend in unionised workers.<sup>44</sup>

Trade union membership in Malta started to decline in more recent years. Trade union density<sup>45</sup> declined from 63,1% in 2000 to 57,8% in 2005. Certain sectors such as the Police Force and the Armed Forces are precluded from being members of a union. The decline in union members in recent years is mainly due to a restructuring in both the manufacturing sector and the privatised public entities (both had been traditionally highly unionised sectors).

**Table 1 – Trade Union Membership and Density 1990-2005**

Year	No of Unions	No of Union Members	Union Density (%)
1990	25	69.200	56,9
1991	30	70.704	57,2
1992	30	71.471	57,0
1993	35	73.970	58,5
1994	37	76.795	60,3
1995	39	78.126	59,4
1996	38	79.217	59,4
1997	37	80.972	60,6
1998	34	81.983	61,2
1999	36	84.132	62,4
2000	38	86.107	63,1
2001	33	87.332	63,0
2002	35	86.501	62,8
2003	33	86.061	62,5
2004	33	86.156	58,0
2005	33	85.679	57,8

Sources: EIRO and DIER, Registrar of Trade Unions.

<sup>42</sup> MHRA also joined them in their Brussels office-networking project in 2004.

<sup>43</sup> DIER, Annual Report 2006.

<sup>44</sup> Zammit and Rizzo 2003:147.

<sup>45</sup> Trade union density is defined as, trade union membership as a percentage of the gainfully employed.

Trade union membership is strongest in the public sector (including parastatal organisations) with a unionisation rate of about 90%. These employees are covered by collective agreements. Within the private sector it is mainly manufacturing that has the highest union density, while the primary sector (agriculture, fishing, quarrying) and the services sector have low densities. This is mainly due to the small size and family oriented business entities in these sectors. Overall, industrial action is somewhat stable. Higher demands are targeted in the public sector, which appears immune to competitiveness, as opposed to the private sector where unions realise that a loss in competitiveness will dramatically result in job losses for their members.

According to EIRA, at least seven persons are needed in order to register a union. A breakdown of union membership in 2005, as shown in Table 2 below, indicates that the size of unions varies a lot. Figures show that five unions have over 1000 members, while the greater part of unions has a lower level of members.

**Table 2 – Number of Unions and their Membership Grouped by Size (2005)**

Union Membership	Up to 50	51-100	101-500	500-1000	Over1000
No of Unions	13	7	7	1	5

Source: DIER, Register of Trade Unions

Membership is rather gender biased, since about 72% are male, except in traditional female employment sectors such as teaching and nursing. This is due to the low female participation in Malta, which hovers around 34%. Unions have generally maintained their bargaining power, although in recent years they have been displaying a more moderate attitude during negotiations. Table 3 shows the five biggest unions by membership in 2005. There may have been some shedding of members in the later years due to economic restructuring as mentioned earlier.

**Table 3 – Main Unions and their Membership**

Union	Members in 2005
General Workers' Union	45.901
Union Haddiema Maghqudin*	26.018
Malta Union of Teachers	6.667
Malta Union of Bank Employees	3.027
Malta Union of Midwives and Nurses	2.301
Others	1.765
Total	85.679

Source: DIER, Registrar of Trade Unions

\* Union of United Workers

Employees in the public sector and large companies in the private sector are generally covered by collective agreements. Collective agreements must incorporate the requirements under EIRA. If an agreement falls short of the conditions of EIRA, even if agreed by the two parties, it becomes null and void. Some agreements may also include other aspects specifically pertaining to the company or the sector in question. Collective Agreements have to be registered at the Department of Industrial and Employment Relations within fifteen days from their signature.



### **3. Dispute Resolution and other Adjudication Bodies**

The Department of Industrial and Employment Relations endeavours to intervene in order to solve industrial disputes. Title II (Part II) of EIRA refers to the Voluntary Settlement of Disputes and deals with the appointment of a Conciliation Panel, made up of five conciliators, appointed by the Minister in consultation with the Malta Council for Economic and Social Development (MCESD). A trade dispute may thus either be referred to the Director or to a conciliator. If unsuccessful, then the Director refers the case to the Ministry, which either appoints a court of inquiry or refers the matter to the Industrial Tribunal. The latter is an administrative Tribunal consisting of a Chairman and two members, representing workers and employers, unless the case to be adjudicated deals with unfair dismissal, in which case only the Chairman reviews the case.<sup>46</sup>

Another adjudication body is the National Employment Authority (NEA). The unemployment register at the Employment and Training Corporation (ETC) is divided into three parts: Part I includes those who are ready to work immediately and who can apply for unemployment benefit (the registered unemployed); Part II incorporates those who have left their job willingly or due to misconduct or who for some reason have been relegated to the Part II section; Part III includes those who are looking for an alternative or a temporary job. Complaints emanating from the unemployed in Part II, who feel they should be in Part I, may appeal for adjudication by the NEA, whose role is to ascertain fairness in this regard. The NEA derives its legal status from the Employment and Training Services Act 28 of 1995 and consists of 7 members (three independent, two representing employers and two representing the workers.)

### **4. Social Dialogue**

Two entities may be viewed as working towards forms of social dialogue, although no official social pact is currently in place in Malta. The first is the Employment Relations Board (ERB), whose legal status derives from EIRA.<sup>47</sup> ERB is made up of thirteen members: an independent chairperson; the Director of DIER (who acts as deputy chairperson); four members representing the unions and four members of the employers' associations;<sup>48</sup> and three other persons appointed by the Minister. The role of ERB is advisory, as with regard to conditions of employment. Through ERB the stakeholders have ownership of the legislative process, through consultation during the development process, since EIRA provides the possibility of continuous updating of the legislation, through legal notices (LN).

The process of enactment of a legal notice is tripartite, and it is regulated by EIRA.<sup>49</sup> ERB recommends to the Minister draft legislations to existing regulations that are national standard orders and sectoral regulation orders. The Minister may enact the legislation or make amendments and refer to ERB. It is returned to the Ministry for the final review prior to being presented in Parliament.

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<sup>46</sup> The jurisdiction of the Industrial Tribunal is governed by Title II (Part III) of EIRA.

<sup>47</sup> Title I, Part I.

<sup>48</sup> These eight are nominated by the MCESD.

<sup>49</sup> Title I, Part I, Articles 3 and 4.

The second body is the Malta Council for Economic and Social Development (MCESD). MCESD – established by Act 15 of 2001 – is a consultative and advisory body made up of 14 members that represent the Government, the employers and the unions. Under its umbrella three Working Committees were set up, each focusing on a specific issue: competitiveness, the role of the Government in the economy, and the public health sector. A Civil Society Committee is also included to account for the views from civil society at large. MCESD also had the role to agree on a Social Pact.<sup>50</sup> However, due to internal disagreements on certain clauses it never came into being. Nonetheless, the Government has passed legislation to validate various points in the Social Pact, thus taking on board aspects of issues set out in the draft.

## 5. Malta's Employment Situation

Following the mid-term review of the Lisbon Agenda, which aimed to make the Community the most competitive economy in the world by 2010, the Commission launched a three-year programme (2005-2008) to provide guidance to the member states in their endeavour to reach the goals set out in the original Agenda. The Council Decision of 12 July 2005 provides guidelines 17 to 24 dealing with Employment policies. Guidelines 17 to 20 aim to increase the labour supply by attracting and retaining more people and to provide sustainable social protection systems. Guidelines 21 and 22 are meant to improve the adaptability of both workers and enterprises. lastly, Guidelines 23 and 24 aim to increase investment in human capital through the provision of better education and skills training.

In the case of Malta, as stated in its National Reform Programme (NRP), Guidelines 19 and 22 were not “tackled”, as the other guidelines were seen to be more of a priority. The NRP lists five priority areas: sustainability of public finances, competitiveness, employment, education and training, and environment.

According to the Labour Force Survey of 2005, the employment rate for January/March 2005 was only 54,6% (up 0,2% from a year earlier). The corresponding male rate was 74,5% while the female rate was only 34,5%. This translated into 102.777 male and 46.959 female workers, bringing the total employed to 149.736.<sup>51</sup>

The number of unemployed was 10.838 or 6,7% of the total workforce (which is lower than the 11.528 (7,2%) of a year earlier). Of these 6.806 were males while 4.032 were females. Almost half (48,1%) are in the 15-24 age group while 22,1% are in the over 40 age bracket (45-54). Only 23,2% of all unemployed are actually registering for work and receiving some type of financial assistance. Furthermore, 57,7% had been in employment before becoming unemployed, while 49,1% had been searching for a job for over a year.<sup>52</sup>

The number of males in full-time employment was 98.873, while the corresponding figure for females was 36.346 bringing the total figure for January/March 2005 for full-time employees to 135.219 (a year earlier the figure had been marginally higher at 135.468). For the three-month period October/December 2005, this figure continued to decrease to 133.841.<sup>53</sup>

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<sup>50</sup> A draft was completed on 15 December 2004 to run for 3 years.

<sup>51</sup> Labour Force Survey 2005.

<sup>52</sup> Labour Force Survey 2005.

<sup>53</sup> Labour Force Survey 2005.

In terms of part-time work, for January/March 2005 the figure stood at 14.517 (3.904 males and 10.613 females).<sup>54</sup> The figure marginally decreased for the period October/December 2005 to 14.388 (4.946 males and 9.442 females).<sup>55</sup> This indicates that while full-time employment declined part-time employment increased marginally though not with a magnitude to counterbalance the lost full-time jobs. The result was a decline in the number of gainfully employed.

## **B. NEW WAYS OF REGULATING WORK**

### **1. Main Acts and Subsidiary Law**

The major changes in Labour Law since the 1990s have been in connection with the necessity to update the existing legislation and align national law to the *Acquis Communautaire*. New work-related legislative acts – apart from the amendments mentioned above – are listed below in chronological order with the latest amendments in brackets:

Act 28 of 1990 – Employment and Training Services Act (Act 7 of 2006)  
Act 24 of 1994 – Professional Secrecy Act (Act 10 of 2004)  
Act 14 of 1996 – Periti Act (LN 248 of 2004)  
Act 17 of 1996 – Security Services Act (Act 16 of 1997)  
Act 8 of 1997 – Tribunal for the Investigation of Injustices Act (Act 16 of 1997)  
Act 18 of 1998 – Insurance Brokers and other Intermediaries Act (Act 17 of 2002)  
Act 1 of 2000 – Equal Opportunities (Disabled) Act  
Act 28 of 2000 – Occupation Health and Safety Act  
Act 15 of 2001 – Malta Council for Economic and Social Development Act  
Act 30 of 2001 – Cooperative Societies Act  
Act 18 of 2002 – Mutual Recognition of Qualifications Act (LN 248 of 2004)  
Act 22 of 2002 – Employment and Industrial Relations Act (Act 3 of 2004)  
Act 1 of 2003 – Equality for Men and Women Act  
Act 9 of 2003 – Data Protection Act (LN 186 of 2006)  
Act 12 of 2003 – Health Care Professions Act (LN 147 of 2006)  
Act 17 of 2003 – Social Work Profession Act  
Act 10 of 2004 – Psychology Profession Act

One of the main legislative acts was Act 28 of 1990, which set up the Employment and Training Corporation (ETC).<sup>56</sup> Act 28 of 2000 set up the Occupational Health and Safety Authority and an Occupation Health and Safety Appeals Board, which aimed to provide a regulatory function in terms of health and safety issues at work. Act 1 of 2000 and Act 1 of 2003 both deal with the elimination of discrimination. The former deals with the non-discrimination of disabled people whilst the latter deals with equality between men and women. The major work-related legislation was incorporated in Act 22 of 2002 (EIRA). This practically merged CERA and IRA and also strengthened work issues, such as: recognition of full-time employees with reduced hours; specific references to health and safety and protection from victimisation and discrimination; longer probation and notice periods; explicit reference to collective agreements;

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<sup>54</sup> This figure experienced an increase from the previous year, when the total was 13.187.

<sup>55</sup> Labour Force Survey 2005.

<sup>56</sup> ETC took over from the work of the previous Labour Department including the unemployment register and the inspectorate role. Act 28 also replaced the National Employment Board with the National Employment Authority.

providing stronger powers to the Industrial Tribunal. Legal notices related to the Employment and Industrial Relations Act are noted in Table 4 below.<sup>57</sup>

**Table 4 – Legal Notices under the Employment and Industrial Relations Act**

2002	
LN 426	Parental Leave Entitlement
LN 427	Part-Time Employees
LN 428	Collective Redundancies (Protection of Employment)
LN 429	Contracts of Service for a Fixed Term
LN 430	Posting of Workers in Malta
LN 431	Information to Employees
LN 432	Guarantee Fund
LN 433	Transfer of Business (Protection of Employment)
2003	
LN 224	European Works Council (Information and Consultation)
LN 225	Parental Leave Entitlement
LN 247	Organisation of Working Time
LN 296	Urgent Family Leave
LN 297	Employment and Industrial Relations Interpretation Order
LN 306	Organisation of Working Time (Civil Aviation)
LN 413	European Works Council (Information and Consultation)
LN 439	Protection of Maternity (Employment)
LN 440	Young Persons (Employment)
2004	
LN 3	Protection of Maternity (Employment)
LN 324	European Works Council
LN 442	Collective Redundancies
LN 443	Posting of Workers in Malta
LN 444	Guarantee Fund
LN 452	Employee Involvement
LN 461	Equal Treatment
2006	
LN 10	Employee (Information and Consultation)

Act 15 of 2001 refers to the Malta Council for Economic and Social Development. This is an advisory body, which incorporates all the social partners – the Government, employers’ and employees’ representatives. Its main role is to ensure dialogue in order to reach consensus on issues that impact on economic and social development.

The remaining acts concern specific groups of workers and the regulation of their profession or work organisation. These are the main acts of law that are directly or indirectly related to work. Subsidiary law, emanating from these Acts, is enacted through legal notices that are discussed in Parliament and published in the Government Gazette.<sup>58</sup>

<sup>57</sup> Annex A provides a list of Legal Notices and the corresponding Directives.

<sup>58</sup> For example, EIRA grants the Minister of Employment and Industrial Relations, the power to prescribe various types of Regulations after consulting with the Employment Relations Board. These Regulations take the form of Legal Notices and are enforceable by law.

There are other means of regulating labour conditions including:

- The collective agreements negotiated by the unions on behalf of their members;<sup>59</sup>
- The Public Service Management Code<sup>60</sup> which spells out the conditions of employment of public officers;
- The arbitration awards emanating from the Industrial Tribunal;
- Judicial decisions which seek to regulate events in Industrial Relations practice.

## **2. The Minimum Wage**

In 2004 the statutory minimum wage in Malta was Lm53,88 (125,54 euros) per week. This legislation is accompanied by Wage Regulation Orders, (of which there are 31) covering the working conditions of certain sectors of the economy. Employees covered by the Wage Orders do not fall under the statutory minimum wage. The Government establishes these orders after consultation with the various Wages Councils.<sup>61</sup> Therefore the statutory minimum wage applies to all employees except for the 31 sectors for which the Wage Orders apply.

There is no distinction made between an employee being more qualified or experienced, except in the sectors covered under the Wage Orders. However, employees under the age of 18 may be allocated reduced rates. In fact employees aged 17 get 94,6% of the minimum wage while those under 17 receive 92,34%. The Government adjusts statutory minimum wages annually. Such adjustments depend on changes in the cost of living, based on the inflationary process in the previous twelve months, and after consultation with the Employment Relations Board. The Department for Employment and Industrial Relations is responsible for supervision and enforcement of the minimum wage legislation.<sup>62</sup>

This legislation for the national minimum wage was enacted in 1974 as a means of social protection. Most unions agree with this type of rationale. However, employers tend to regard the law as restricting because it increases their overall labour costs without linkage to productivity gains. For this reason, given the rather restricted labour market in Malta, removal of the minimum wage legislation may well result in a race to the bottom, with the main casualty being the low wage earner.

## **3. Health and Safety**

The main health and safety legislation is the Occupational Health and Safety Authority Act (2000), which has led to a number of related legal notices which are listed in Table 5 below.

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<sup>59</sup> As far as they respect the minimum parameters established by EIRA, any additional provisions in the agreements are legally binding.

<sup>60</sup> Previously EstaCode.

<sup>61</sup> Annex B presents a list of these Orders and the sectors they refer to.

<sup>62</sup> Non-compliance can result in fines ranging from Lm100 (233 euros) for the first infringement to Lm1000 (2330 euros) for a second infringement.

**Table 5 – Legal Notices Emanating from the Occupational Health and Safety Authority Act**

Legal Notice	Regulations
2000 LN 91 LN 92	Protection of Young Persons at Work Places Protection of Maternity at Work Places
2002 LN 10 LN 11 LN 43 LN 44 LN 45	Occupational Health and Safety Appeals Board (Procedural) Work Place (First Aid) Minimum Health and Safety Regulations for Work with Display Screen Equipment Workplace (Minimum Health and Safety Requirements) Workplace (Provision of Health and/or Safety Signs)
2003 LN 34 LN 35 LN 36 LN 37 LN 120  LN 121 LN 122 LN 123 LN 227  LN 228 LN 379	Factories (Night Work by Women) Protection against Risks of Back Injury at Workplaces General Provisions for Health and Safety at Workplaces Control of Major Accident Hazard Indicative Occupational Exposure Limit Values on the Protection of the Health and Safety of Workers from Risks related to Chemical Agents at Work Minimum Requirements for the Use of Personal Protective Equipment at Work Protection of Workers from the Risks Related to Exposure to Carcinogens or Mutagens at Work Protection of Workers from the Risks related to Exposure to Asbestos at Work Protection of the Health and Safety of Workers from the Risks related to Chemical Agents at Work Protection of Workers from Risks related to Exposure to Biological Agents at Work Protection of Workers in the Mineral Extracting Industries through Drilling and of Workers in Surface and Underground Mineral-extracting Industries
2004 LN 41  LN 185 LN 281 LN 282 LN 283	Workplace (Minimum Requirements for Work Confined Spaces and Spaces having Explosive Atmospheres) Workplace (Minimum Health and Safety Requirements for the Protection of Workers from Risks arising from Exposure to Noise) Workplace (Minimum Health and Safety Requirements for Work at Construction Sites) Work Equipment (Minimum Safety and Health Requirements) Protection of Young Persons at Work Places (Amendment)
2005 LN 6 LN 371	Control of Major Accident Hazards (Amendment) Work Place (Minimum Health and Safety Requirements for the Protection of Workers from Risks resulting from Exposure to Vibration)
2006 LN 158	Work Place (Minimum Health and Safety Requirements for the Protection of Workers from Risks resulting from Exposure to Noise)

Source: Occupational Health and Safety Authority (OHSA)

The Occupational Health and Safety Authority (OHSA) is the institutional body responsible for health and safety issues related to the work environment. Its responsibilities include: advising the Minister regarding necessary regulations and preparing legislation; monitoring compliance with these regulations; promoting the dissemination of information and providing training programmes; gathering and analysing data; keeping records of expert personnel on health and safety issues; registering plant and equipment utilised in workplaces and vetting certificates; carrying out investigations; and undertaking scientific research to ameliorate working conditions in terms of health and safety. In the twelve months prior to September 2005, OHSA had conducted 1.364 workplace visits, organised 48 courses, vetted 2.907 equipment certificates, replied to 2.419 telephone requests for information and had 1.987 participants at its training programmes.<sup>63</sup>

<sup>63</sup> OHSA Activity Report 2005.

## **C. FROM JOB SECURITY TO EMPLOYABILITY**

### **1. The EU Context**

Employability is becoming a key issue in countries that want to retain their competitive advantage. This has led to claims for the need of lifelong learning and the ability of workers to be equipped with skills so that in the event of a job loss they are capable of finding alternative work. However, this has also meant that there are tensions between the idea of job security and jobs for life. It is important to guarantee that while workers should be encouraged to seek to update their skill base, they are not at the mercy of the employers and thus have protection against unfair dismissals. A term that has gained coinage in EU circles is the idea of flexicurity, defined as: *“a policy strategy that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, the work organisation and labour relations on the one hand, and to enhance security – employment security and social security – notably for weaker groups in and outside the labour market on the other hand.”*<sup>64</sup>

### **2. Protection against Dismissals**

Traditionally, employment in Malta has been characterised by the idea of jobs for life. Relevant surveys over time have ascertained the overriding ‘job security’ concern in Malta.<sup>65</sup> With over one third of employed in Government jobs, job security has always been a much cherished characteristic. However, in recent years, job security is weakening. This is particularly true especially in the private sector, which has witnessed an increase in definite contract workers, as well as in part-time and temporary workers. Even the role of trade unions was focused primarily on job security. This was done mainly through collective agreements with a substantial number of employees in both the private and public sectors still being regulated by them. Although most collective agreements tend to reproduce the formal legal structure, some elements may still be specific to the particular employer/employee relationship.

In Malta employment may be terminated either by operation of law, by the employer, or the employee. The operation of law is basically the expiry of the term according to the contract signed between the two parties. The employee may leave during the probation period or by resigning afterwards.<sup>66</sup> Similarly, the employer may dismiss an employee both during the probation period and afterwards. The grounds for dismissal are three: redundancy; a sufficient cause if on an indefinite term contract; and for whatever reason in the case of a fixed term contract. Even if the employer does not include the probation period in the contract, EIRA safeguards this, and it is stated that the probation period is generally six months.

Articles 36 to 39 of EIRA deal with termination of employment, collective redundancies and transfer of business. These apply to all employees, except public sector employees. There are two other exceptions: in the case of Police officers who are provided for under Article 123 of the Police Act of 1961; and seamen who fall under the provisions of the Merchant Shipping Act of 1973.

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<sup>64</sup> Wilthagen and Rogowski 2002: 250.

<sup>65</sup> See Zammit 1994.

<sup>66</sup> In the case of managerial or technical grades, who earn more than double the minimum wage, the probation period is one year.

### **3. Individual Dismissals**

Regulations under LN 431/2002 are the transposition of Council Directive 91/533/EEC regarding information on individual employment contracts, although such provisions for information date back to 1952. It applies to all employees except those employed for a period of less than one month; less than eight hours a week; or for a 'specific defined task'. The latter is more restrictive than the phrase 'of a casual and/or specific nature' found in the Directive.<sup>67</sup> Except for the date of contract and some changes to the grade and type of work, the transposition of the Directive has been effected. The LN also applies to outworkers and employees required to work outside the country for more than one month.

The fines for an employer that breaches this LN can range from Lm50 (116,50 euros) to Lm500 (1.165 euros). However, this amount is insufficient to act as a deterrent against unfair dismissal. DIER handles inspections and enforcement. Although the incidence of contraventions can be high, it is the general impression that the inspectorate tries to resolve the issue without resorting to legal action, especially since these are more likely to occur in small enterprises. Larger companies however tend to comply with the regulations.

### **4. Collective Redundancies**

In a globally competitive work environment, companies may be forced to close shop if they cannot cope with competition and this may lead to collective redundancies. LN 442/2004 (which amended LN 428/2002) adopted the provisions of Council Directive 98/59/EC. Prior to harmonisation, Maltese law did not incorporate a definition of collective redundancy and thus the Industrial Tribunal used to make references to ILO Recommendations. Following harmonisation, the Regulations defined collective redundancies as about 10% of the employed, depending on company size. However, there is a second criterion for definition in the Directive, which is the fact that such dismissals must occur over a period of thirty days, and this definition is absent from the Maltese transposed regulations. As a result of this, complications may arise especially in the case where the situation signifies collective redundancies under the EU Directive but not under the Maltese Regulations.<sup>68</sup>

The Maltese Regulations stipulate that within seven working days of having notified redundancies, the employer has to provide all relevant information in written form, stating reasons for such action and termination details. This time limit clause is not included in the Directive. The employer is not allowed to shirk from the duty of consultation and information under the excuse that the redundancies derive from a decision of the parent company. The law also conditions the employer to inform the Director for Employment and Industrial Relations, unless the redundancies result from a judicial decision. The fine for breaching is to be no less than Lm500 (1.165 euros) per employee made redundant.

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<sup>67</sup> The individual must receive within eight days of signing the contract a copy of such agreement, or a letter of engagement if the contract does not include all relevant information that should be passed on to the employee. Such information must include details of the contracting parties, place of work, date of beginning of employment, grade and type of work, duration of contract if fixed term, leave entitlement, notice period, remuneration, working hours, probation period and fines applicable.

<sup>68</sup> The exclusion clause provided for by the Directive has been used by Malta with the result that the Regulations do not apply to terminations under fixed term contracts, for specific tasks or to seamen.



The Employee Information and Consultation Regulations (LN10/2006) is based on Council Directive 2002/14/EC and provides for a framework for consultation and the provision of information to employees. Currently, the Regulations are applicable only to undertakings with 150 employees and over.<sup>69</sup>

**Table 6 – Number of Business Units and Employees by Sector 2005**

Sector	No of Enterprises	No of Persons Employed
Agriculture and Fishing	4.423	5.684
Mining and Quarrying	92	401
Manufacturing	4.074	29.942
Construction	4.872	12.917
Wholesale and Retail	15.377	28.268
Hotels and Restaurants	3.543	18.861
Services	22.004	73.611
<b>TOTAL</b>	<b>54.385</b>	<b>169.684</b>

Source: NSO, the Business Register

Table 6 presents the number of business units and the number of employees per company by sector, for 2005. Table 7 provides the number of enterprises by company size and number of persons employed in the manufacturing sector. The Regulations apply to 18 companies, which increase to 25 and 40 in the following two years.

The employer is obliged to inform the employees or their representatives on the economic situation of the company, on the probable development of employment, and on the possible changes in work organisation that impinge on the employees. Employees that are not represented by a union have the right to elect one of them to act as their representative and the employer is obliged to ensure that the correct procedure for representation is followed.<sup>70</sup>

**Table 7 – Manufacturing Enterprises by Size of Firm and Number of Employees 2001**

	Micro Less than 5	Micro 6 to 9	Small 10 – 19	Small 20 – 49	Medium 50 – 99	Medium 100-149	Large 250 and more	TOTAL
No of Enterprises	2.519	219	147	112	40	25	18	3.080
No of persons employed	3.874	1.589	2.008	3.450	3.761	2.741	13.234	30.657

Source: NSO

These Regulations may help to avert collective redundancies, as the employees have the chance to be informed (firsthand) about the company's situation and thus work towards keeping up with time stipulations in contracts, ensure work of quality, and other elements in order to ensure the production of a competitive good, thus safeguarding their employment.

<sup>69</sup> In 2007, they will be applicable also to enterprises employing between 100 and 149 employees, while in 2008 companies with 50 employees and over will also be included. In an economy characterised by SMEs, this LN may not be effective in encouraging information and consultation to employees in small companies.

<sup>70</sup> Fines regarding non-compliance with this can range from Lm10 (23,30 euros) to Lm50 (116,50 euros) for every employee. Fines for any other offence are higher and may range from Lm500 (1.165 euros) to Lm 5000 (11.650 euros).

## 5. Measures to Encourage Employability

The shift from job security to employability entails a culture shift in Malta, mainly due to the idea that a lifelong job has not traditionally been associated with lifelong learning. However, the increase in fixed term contracts, part-time work and the impression that the Government cannot afford to increase its employment level have led to an impetus to make use of the increased opportunities for learning, in order to increase the personal knowledge base. The focus from the Government agency, the Employment and Training Corporation (ETC), is on the unemployed or categories at risk.<sup>71</sup> However, there are other opportunities for workers and these derive from both public and private institutions.

The Employment and Training Placement Scheme (ETPS) provides training to newly employed personnel drawn from the registered unemployed.<sup>72</sup> The programme caters for specific clusters of people, such as: those who have been registering for over twelve months; for the age-group 25-39 who have been registering for at least six months; for the disadvantaged registering as unemployed such as single parents with child custody, ex-convicts or ex-substance abusers – all considered as categories of possible workers but at risk of social exclusion. For the duration of the training period, the working conditions are those stipulated under the main legislative framework (EIRA).

The Job Experience Scheme (JES) targets new labour market entrants, essentially school leavers, to provide them with a degree of work experience. The programme provides for a combination of in-house training and work experience, although it does not oblige the employer to offer the trainee a future job. Young people aged 16 and over are eligible to apply for a placement.<sup>73</sup> Sponsors may come from all sectors of economic life. The aim is to provide a bridge between school and the labour market. The Work Start Scheme (WSS) is similar but is geared towards adults who have been inactive for some time and need training to re-integrate into the labour market. However, the same conditions as for JES apply; participants must be over 25 years. The underlying idea is to provide for the upgrading of skills for the older prospective workers.

The Redeployment Scheme (RS) provides for training to newly appointed workers who had been made redundant or to persons whose employment is at risk, to enable the individual to re-integrate into the labour market. Again the ETC provides for 50% of the minimum wage for a maximum of 13 weeks. The Active Youths Scheme (AYS) is directed towards young people, and it aims to help them realise new or hidden talents by practically providing their services in community work.<sup>74</sup> Young people between 16 and 24 years of age, who have been registering for at least six months, are eligible to apply. The sponsoring organisation must be a Non-Governmental Organisation (NGO), politically neutral.

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<sup>71</sup> The ETC has several employment schemes that together with training programmes help the unemployed find a job. At present the schemes are the following: Employment and Training Placement Scheme (ETPS); Job Experience Scheme (JES); Redeployment Scheme (RS); Work Start Scheme (WSS); and Active Youths Scheme (AYS).

<sup>72</sup> The ETC provides 50% of the minimum wage for the training for a maximum of 52 weeks.

<sup>73</sup> This may last for a maximum of 13 weeks providing for a 20-hour working week

<sup>74</sup> ETC provides a remuneration of Lm30 (about 70 euros) per week for a period of six months, working a 20-hour week.

On the individual level, the number of employed who are choosing to follow courses at private institutions or at the tertiary level have been increasing in recent years. This can be confirmed when one investigates the increasing number of part-time (normally evening) courses being offered, at every level, from certificate courses to new master's degrees. The evening courses provide full-time workers with the possibility to follow courses after their working hours, while providing them with a wider skill base for promotions, or in the event of changing jobs.

Furthermore, the Government is working towards increasing the number of young people that continue with their education after the age of 16.<sup>75</sup> Table 8 provides data on the number of graduates from the University of Malta between 2000 and 2005. Figures show that the female population is increasing at a faster rate than the male population; however, the figure of 2.594 is still a low percentage of the 16+ age group compared to other European countries. Furthermore, the figures include also post-graduates, who are not of school-leaving age. Recent years have seen the provision of tertiary education services by private institutions in collaboration with external universities; however, data not available.

**Table 8 – Degrees and Diplomas Conferred by the University of Malta 2000-2005**

	Males	Females	Total
2000	645	660	1.305
2001	943	1.029	1.972
2002	937	1.096	2.033
2003	965	1.248	2.213
2004	1.067	1.643	2.710
2005	845	1.113	1.958*

Source: University of Malta

\*excludes 636 diplomas and post-graduate certificates for which a breakdown by sex was unavailable. Total should read 2.594.

The Government has its own staff development schemes, both external sponsorships and internal training sessions. The internal courses tend to be of a short duration (one to five half days) in specific areas related to public service, such as management development, the EU, Information Technology, and finance. The Staff Development Organisation organises other courses, in collaboration with external agencies, such as foreign language courses, which may be of a longer duration. External courses include sponsorships for a two year part-time Diploma Course in Public Administration and another Diploma in Social Studies (Gender and Development). The Government also provides financial assistance and scholarships for post-graduate training, although a limited number of these are offered.

Other Government agencies, such as the diverse Foundations, the Central Bank, and the University of Malta, also provide for the training needs of their employees. For example, the Foundation for Human Resource Development (FHRD) is a national non-Government organisation with input from the private and public sectors. It was established in 1990 with the main role of developing human resources. The foundation offers a broad range of services, from short courses, to degrees (in collaboration with universities on a distance learning basis). The input of the FHRD, which also organises conferences, appears to be a valid contribution to the continuous learning of employees.

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<sup>75</sup> 5-16 is the compulsory education age.

The private sector is however less inclined to invest in the training needs of its employees. In-house training is provided for new employees, but the percentage of the budget allocated for ongoing training is usually negligible. The private sector demands qualified personnel in order to be in a position to upgrade its productive capacity but somehow appears unwilling to loosen the purse strings to do so, and expects the Government and the general taxpayers to provide for such expertise. There is a need for more coordination between the private and public sector, and for financial commitment from the end users of such knowledge gain (that is, the employers and the employees themselves). A training fund with input from the employers had been one of the items on the draft Social Pact but this item never materialised.

## 6. Training and lifelong learning

The main institution, for work-related issues, is the ETC. At six-month intervals it issues the “Employment Barometer” that provides the prospects for employment through short-run indicators. Its aim is to identify the general employment needs where gaps and shortages exist, and thus act as a labour forecasting tool. It is essential for the educational institutions to provide the adequate training in order to meet the needs of the economy.

The survey reviewed, consisted of 1.104 company respondents (or 70% of the original sample), which together accounted for 63.348 full-time and part-time employees. This figure represented 58,3% employees in entities employing more than 4 persons.<sup>76</sup> The following table presents the structure of the respondents according to company size.

**Table 9 – Respondents of ETC’s Employment Prospects Survey**

Company size	Number of employers	Respondents as percentage of all companies of similar size
5-49 employees	1.248	70%
50 and over employees	331	68,6%

Source: ETC Employment Barometer, Summer/Autumn 2005.

NB: The original population sample was 1579 employers, representing a total workforce of 106,615 persons. Employers with four or less employees were not included in the sample even though they constitute 21.4% of all workers.

The top ten full-time occupations in demand by the employers for the months June/November 2005 were: unskilled labourers; clerks; accountants; crane drivers/operators; plumbers and pipe fitters; mechanical technicians; sales representatives; machine operators and assemblers; waiters/waitresses and stackers for supermarkets. This is mainly because the sectors that felt they would improve their operations and would require new workers were in the machinery and electrical appliances manufacturing sector; banks and financial institutions; community and business; and hotels, catering and other personal services. The majority of jobs therefore do not require extensive training programmes in order to meet the needs of the market.

In terms of part-time work, the top ten requests by employers for the same period were: waiters/waitresses; animators; cleaners; teaching professionals (special education); housekeepers and related workers; chambermaids, clerks; skilled labourers; chefs; and kitchen hands. The seasonal aspect is very much evident. Due to the tourist industry, the summer period provides for temporary workers in ancillary services, including the teaching of English to foreigners, for which demand increases during the summer. The training needs are therefore those associated

<sup>76</sup> The sample is considered as representative as it was stratified according to economic activity and company size and gleaned information from both public and private sector, although the latter responded more.

with catering establishments and do not constitute a higher rank type of educational expertise as they deal mostly with elementary occupations.

Nonetheless the expectations of the employers can be high. According to the summer/autumn 2005 Employment Barometer, *“Employers demand a balanced mix of basic and soft skills as well as sound academic qualifications from prospective job candidates”* Of the prospective job seekers, employers expect 25% of them to be of “O” level standard (essentially of secondary school leaving level), 11% to possess secondary level vocational qualifications, and 18% to derive from a tertiary level educational background. For 22% of applicants, the employers do not require any type of qualifications, although the applicants are nonetheless required to state them during the interviews. The employers do not specifically require qualifications for certain jobs, but would prefer previous work experience (19%), flexibility (12%), literacy (11%), motivation (11%), work ethic (11%), interpersonal skills (6%) and communication skills (4%). Considering that the prospective jobs availability for full-time workers, (except for accountants) were in vocational and low-skilled jobs, the emphasis on basic skills is not surprising. Furthermore, if the employer can pay a lower wage for a more qualified employee it is a bonus for him/her, though not for the individual involved.

In the case of part-time work the prerequisites-mix is somewhat different: ‘O’ level standard (26%), ‘A’ level standard (post secondary but not tertiary level) (21%); post-secondary vocational qualifications (8%); tourism related training at secondary (6%) and tertiary (4%) levels. In 26% of the cases, no specific official qualifications were required but the employer emphasised other attributes: work experience (22%); interpersonal skills (13%); language skills (11%); flexibility (8%); work ethic (8%); communication skills (7%); and motivation (4%). Since most of the part-time jobs anticipated for the coming six months were seasonal and tourism related, the skills requested did not require a high level of educational achievement but were more basic and related to interpersonal communicative skills.

When shortages in the skills pool occurred, 10,4% of employers solved the problems by internal redistribution of work, outsourcing, or recruitment of foreigners and casuals. The remaining 89,6% that did not solve the shortages, stated that this was due to the lack of necessary skills and because the available workers were not suitable or were too expensive to employ. It is remarkable to note that the employers did not suggest the introduction of training as a top priority, to assuage their needs. This sustains the assertion made earlier that employers want a ready-made pool of available skills but appear unwilling to pay for their needs as prefer to enjoy a free ride.

This rings rather hollow if one considers that the effect of shortages led to an increase in the working hours of their employees (31,4%), a reduction in output (3%) or a downright turning down of orders (3,7%), outsourcing of activities (0,7%), postponement of expansion plans (1,1%), and even serious consideration of moving production abroad (0,4%). However, on the positive side, this also triggered in some employers a need for training activities. The overtime cost increased the human resource wage bill by 26,6%, which prompted 16,1% of employers to commence their own training programmes, while a further 16,8% enhanced their existing training provisions.

The Survey of the Employment Prospects, found employers agreeing on the need for staff training although only 17,3% agreed that the skill mix has to be of academic/vocational and soft skills. The request to upgrade the skills base varied: some calling for basic academic secondary level training, while others for secondary level vocational skills, but only 7,1% of employers would prefer their employees to reach the tertiary level. In order to build a more advanced

human resource base, therefore one first needs to promote basic education; however, it does not augur well that employers do not prefer a more educated and skilled workforce. While 25,7% did not specify the level of training or qualifications deemed as useful to acquire, soft skills were seen as essential to develop. These included: work experience (15,4%); communication skills (11,5%); interpersonal skills (10,2%); motivation (8,1%); work ethics (7,6%); IT literacy (6,8%); team building (5,8%); literacy/numeracy (2,9%); and flexibility (2,1%).

The employers within certain industries showed a higher interest in the training needs of their employees across all occupational grades. These included employers in the community and business sector (18,3%); hotels and catering (12%); machinery and electrical appliance manufacturing (9,4%) and wholesale, retail and warehousing (8,9%).

From the sides of the social partners and constituted bodies, there was a 50% response rate for the survey. The respondents also agreed that there was a need to continue developing a variety of skills for the employees. For front-line employees in the hospitality industry, there was a need for personal and social soft skills. Employees, who have been on the job for a long time, need retraining in people management and customer care. The legal and accounting professions needed more technical support of qualified personnel, especially in the financial sector, where skills in certain types of new products were still weak. In general, there is agreement on the need for an increased training base in IT skills. Due to the general indication that the pharmaceutical industry might be given an investment boost, training for chemical and biological researchers is also seen as appropriate.

Regulation 14 of the Business Promotion Act (BPA) (1998, last amended by LN 42 of 2004) provides financial assistance for training purposes and the ETC is responsible for its administration. It promotes lifelong learning, by offering training to new employees, upgrading of skills to workers and training grants to employers. Therefore, assistance is available for those employers who would like to upgrade the skill base of their personnel, since they are offered training grants, depending on the size of the company. Assistance can vary from 35% to 80% of the training costs entailed. The private sector should be obliged to partially provide compensation for the upgrading of the skill base, for example, by paying a percentage of annual profit into a special training fund, as was originally included in the draft Social Pact.

In the case of employees based in micro enterprises (defined for this purpose as enterprises with less than 20 employees) or are self-employed, the ETC provides for training grants (reimbursable after the training has been successfully concluded) under the Training Subsidy Scheme. This scheme forms part of the National Action Plan for Employment and can only be used once. Employees or apprentices who have been in employment for at least six months can apply, as long as the course leads to 'transferable vocational skills' and the training institution is approved by the ETC. The grant constitutes 75% of the cost up to a maximum of Lm200 (466 euros) (excluding ancillary costs such as equipment and fees for test taking or certification).

## **7. Bridging the Gaps**

In order to ascertain a better functioning of the economy, there is an urgent need for more coordination by the different stakeholders and the social partners. There are diverse gaps to bridge but especially between school and the labour market; between skills and available jobs; and between job seekers and job providers.

In order to bridge the gap between school and work, an apprenticeship scheme is one method of providing the prospective worker with academic training coupled with on-the-job training to provide work experience. ETC offers various apprenticeship schemes. These schemes include the Technician Apprenticeship Scheme (TAS) and the Extended Skill Training Scheme (ESTS). These require the support or sponsorship of employers that can herald from both private and public entities. The training schemes, which are of three years duration, are varied and cover a large number of occupations. The benefits are multi-fold, such as smoothing the process from school to the workplace, providing practical experience to the apprentices, while giving the employers an opportunity to get involved in the training needs of the country in order to provide a more qualified workforce.<sup>77</sup>

ETC conducted a survey involving apprentices and employers, to gain information on the reasons for applying for the scheme, why some prefer to discontinue the programme and the experiences of the employers on these schemes. The reasons for applying were varied but the common feature appeared to be the fact that applicants' fathers were employed in elementary jobs such as machine operators or shop assistants. The career guidance support offered by the educational system through guidance teachers did not appear fruitful. Furthermore, the applicants also had a low level of education, not going beyond the secondary level and most had attended state schools, rather than private ones. There was also a gender bias, in that the few female apprentices chose soft options such as hairdressing, while the males were more inclined towards the mechanical or electrical fields.

Applicants were mainly attracted to the scheme because of the expectation of a future job. Although information regarding entry requirements was very good, the applicants felt that details on the actual on-the-job experience were somewhat lacking, although the majority admitted to not attending the information session conducted before the application process.

Both employers and apprentices appreciate and value the scheme as recommendable. It appears therefore that while the schemes appear interesting, there is a need for more involvement both of the guidance teachers and the prospective employers. A compulsory information session, as a prerequisite for application may prove beneficial. Furthermore, there was a need for better coordination between the actual academic training at the institute and the work training on the job, with enhanced monitoring of working conditions of apprentices. Overall apprenticeship does provide employment opportunities; however, self-employment or further studies do not feature as a result. A push towards entrepreneurial possibilities and opportunities for higher-grade studies should be encouraged as a post-apprenticeship assessment.

MCAST (Malta College for Arts, Science and Technology) commenced operations in 2001.<sup>78</sup> It houses 9 institutes: Art and Design, Building and Construction Engineering, Community Services, ICT, Mechanical Engineering, Business and Commerce, Electrical and Electronics Engineering, Maritime, and the Gozo Centre. Both full-time and part-time courses are offered. With the partial financing from the European Social Fund (ESF) MCAST is also offering retraining and upgrading courses to those over 25 years of age, through six specific courses:

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<sup>77</sup> Most of the apprenticeship conditions are on a pro-rata basis, such as vacation leave, sick leave entitlement and bonuses, and are guaranteed by law. The Government pays a maintenance grant of Lm40 (93,20 euros) per month for the first two years, plus a one-time grant of Lm140 (326,2 euros) for educational needs such as books. Apprentices, who successfully complete the training, are awarded a Journeyman's Certificate, for TAS at the Technician level, and at the Craftsman level for ESTS.

<sup>78</sup> It amalgamated under one building and under one management the various trade and technical schools that had operated prior to this date.

mechanical engineering; electronics; building and construction; preservation of traditional Maltese crafts; caring for the elderly; and employability skills for women returning to the workforce.

The University of Malta offers a myriad of courses on a full-time and part-time basis to cater for the needs of a workforce that continually needs to adapt to a changing working environment. Part-time evening courses are proving particularly attractive to those who do not wish to take a career break to study and such courses are well attended. From the university's side, it has also encouraged a new breed of courses that cater for particular niches of the Maltese economy. Courses vary from short certificate courses to two/three year master's degrees.

According to the Employment Prospects (Summer/Autumn 2005), the social partners suggested ways in which employers could themselves work towards bridging the skills gaps: within the financial sector, there was a need for more training initiatives and avenues for the design and development of new types of financial products; employers also need to take a more active role in the provision of training programmes and do not rely entirely on the Government to provide training in order to better coordinate the link between training and job needs; part-time workers and seasonal or temporary workers, especially in the hospitality industry, should also be provided with in-house supervised training; and finally there should be more synergy between the educational system and the needs of the labour market.

It appears that the effort to bridge the gaps is being taken seriously and the number of persons attending further retraining is on the increase. The effects of the transferability of such new skills or their relevance in the working place must however be treated with caution, since there is a need for further research in this area. One must be careful not to judge the issue of training on its own but rather the implications this may have on the capabilities of the employees and their capacity to utilise such capabilities, that is, not to treat training as an end in itself but merely as a means to increase the potential for employability and the ability to transmit these new skills on the job.

#### **D. LABOUR LAW AND ADAPTABILITY**

This part looks at different types of working conditions that are considered as atypical but which have become an important aspect of the modern working environment. It thus considers the need for Labour Law to reflect such changes and the adaptability of the labour structures to mirror the changes in the economy and in the labour market. The shift has occurred from lifelong jobs to jobs of a more temporary nature, from fixed to more flexible arrangements. These include fixed term contracts, part-time work, temporary agency work, apprenticeship, telework and the working time legal structure underpinning all types of jobs. Table 10 provides data regarding this type of atypical work.

**Table 10 – Work in Malta and EU15, classified by Type 2002**

Type of work	Malta (%)	EU 15 Average (%)
Indefinite contract	85	82
Fixed term contract	7	10
Temporary Agency contract	6	2
Apprenticeship	1	2
Other	1	4

Source: European Foundation for the Improvement of Living and Working Conditions (2003)



## 1. Fixed Term Contracts

One form of atypical work is the increasing number of fixed term contracts.<sup>79</sup> This type of contract provides the employer with more flexibility and the possibility to employ certain skills only when actually needed. Such contracts are more common in the case of top organisational positions and also in the case of seasonal employment. The influence of trade unions is consequently somewhat diminished, since the negotiating of the conditions of work is on a one-to-one basis. For the lower types of jobs it may be reasonable to assume that, unless regulated, it may result in a watering down of the conditions of work, unless legally safeguarded.

According to the Labour Force Survey (LFS), 5.392 employees (3,6% of the working population) were on a fixed term contract in 2004, the majority (about 80%) working in the services sector. Of these 2.868 were men while 2.524 were women. This figure is much lower than that shown in Table 10 for 2002.

The Contracts of Service for Fixed Term Regulations (LN429/2002) is the transposition of Directive 99/70EC. The LN defines the phrase “contracts of service for a fixed term” as contracts where “*the end of the contract is determined by reaching a specific date, by completing a specific task or through the occurrence of a specific event*”. The Regulations follow the Directive’s spirit in that such contracts must not be less favourable than those offered to indefinite period workers. However, at times it is difficult to find a comparator in order to ascertain that treatment is the same, since the LN states that the persons have to be employed by the same company, need to be on different types of contracts and must be engaged in a similar type of work. If the employee feels that there has been unfavourable treatment, she/he may make a complaint to the Industrial Tribunal, before the lapse of three months from such treatment. The onus of justifying such treatment shifts on to the employer.<sup>80</sup>

The LN permits differential treatment under two conditions. The first is if the individuals have different qualifications, experience or length of service or “*other such differences justified on objective grounds*”, which rather allows a huge leeway for interpretation. The second is when the job is specific and differentiation is thus justified.

If upon expiration of the contract the employer decides to retain the employee, notice of a new contract must be given within 12 working days. Otherwise the employee begins to benefit from the status of a worker on an indefinite contract. Furthermore, if a vacancy of an indefinite duration becomes available the employer is duty bound to inform the definite contract worker, although to satisfy this obligation, such information may just be posted on a notice board at the location of work. The LN also puts the onus on the employer to facilitate training, enhance the worker’s skills, career development and occupational mobility.<sup>81</sup>

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<sup>79</sup> These stipulate the exact beginning and end of a working contract, which, however, must be distinguished from those contracts that have a particular task to accomplish.

<sup>80</sup> The fine for contraventions is Lm500 (1.165 euros). Similar to the EU Directive, the provisions of the LN do not apply to initial vocational trainees or apprenticeship schemes.

<sup>81</sup> The LN (Article 7) decrees that a person who has been ‘continuously employed’ (i.e. contracts renewed within six months from their termination) or on a fixed term for a period exceeding 4 years is deemed to have become an employee on an indefinite term. Until the publication of this paper, Government employees in the wider public sector were exempted from this clause [Article 7 (5)]. This situation may need to be remedied in the future, as it is discriminatory. The LN aims to defend employees from the possible abuse of the misuse of successive fixed term employment contracts.

## 2. Part-Time Work

The number of part-time workers has increased in the past years. This is primarily due to three reasons: the attraction of reduced hours of work particularly for women; the additional job after a full-time one; and the availability of a part-time job instead of a full-time one, although the latter would be preferred. This type of work has its advantages for those who would prefer to balance home and work life; however, it may also be a means of exploitation by employers. For the Government, part-time jobs may be a means of alleviating unemployment and redistributing working hours in an economy that is not creating enough new jobs to replace those lost. The advantage of part-time work is that it facilitates the entry of new and young workers and also female workers. Table 11 provides a breakdown by age of the part-time employed persons in the last three months of 2005.

Figures confirm that females are more likely to work on a part-time basis; in fact they constitute almost double the number of men. In the case of men, half of the part-timers are in the lower age group between 15 and 24. This may be due to the unavailability of full-time jobs, or to the holding of a part-time job while undergoing training or educational programmes. The least affected are those between 35 and 54 years of age, possibly because at this age, part-time jobs are not the main job but in addition to the full-time job. In the case of females, the allocation appears to be on an equal basis in the different age groups, except those over 55 years of age. The main reasons may be due to family considerations since those working on reduced hours are also included. However, the reasons may also be the unavailability of full-time jobs and the increased incidence of females on temporary and seasonal jobs.

**Table 11 – Part-Time Workers October-December 2005**

Age group	Males		Females		Total	
	No.	%	No.	%	No.	%
15 – 24	2361	47,7	2378	25,2	4739	32,9
25 – 34	695	14,1	2057	21,8	2752	19,1
35 – 44	403	8,1	2496	26,4	2899	20,1
45 – 54	205	4,1	2209	23,4	2414	16,8
55 - 64	799	16,2	302	3,2	1101	7,7
65 +	483	9,8	-	-	483	3,4
Total	4946	100,0	9442	100,0	14388	100,0

Source: NSO, Labour Force Survey 2005

The Legal Notice 427 of 2002 is the transposition of Directive 97/81EC. This LN also replaced LN 61 of 1996 (Part-Time Employment National Standard Order), which regulated in a more loose form, aspects of part-time employment. If the conditions in the collective agreement benefit the employee more then it finds precedence over the LN.

One distinction between the Directive and the LN is the term “workers” used by the Directive, but replaced by the word “employees” in the LN. While the Directive appears to exclude the self-employed, the Maltese version clearly excludes this category since it specifically states, “*excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service*” (LN 427/2002).

The LN both acts as a guarantee of non-discrimination towards part-timers but also helps to facilitate the development of this type of atypical work by providing a more flexible work environment, while taking into account both the needs of the employee and the employer.

The ILO defines part-time worker as “*an employed person whose normal hours of work are less than those of comparable full-time workers*”. The definition used by the LN is similar in that it also utilises the hours of work, calculated in comparison with full-timers, as a means of definition. In Malta, the standard weekly hours worked are forty, therefore a part-timer is one that within one week works less than forty hours. The LN asserts that part-timers are not to be treated less favourably than full-timers, although one proviso does affirm that differential treatment may be undertaken on objective grounds, without actually defining what such grounds may be. It is then up to the Industrial Tribunal to decide on this. An employee that’s allegedly subjected to differential treatment has the right to request in writing the reason for this from the employer, who is obliged to reply in writing within 21 days. In terms of overtime, the part-timer must first work the number of hours comparable to a full-timer, in order to request a wage similar to a full-timer. {Such} does not constitute unfavourable treatment and the LN does not afford protection to the employee concerned in such circumstances.

According to Article 6, if the part-time work is the individual’s principal employment (i.e., for which Social Security contributions are paid), and she/he works over twenty hours, then the conditions of work of the employee are on a pro-rata basis. Part-timers are entitled to public holidays and types of leave (vacation, sick, bereavement, marriage, injury) in proportion to the number of hours worked and calculated as a percentage of the full-time comparable worker. Bonuses or other income supplements are also estimated on a pro-rata basis. In cases “*where the maximum number of hours permissible in terms of the recognised conditions of employment for a part-time employee is less than twenty hours a week*”, such protection is also guaranteed provided that the individual works at least 14 hours and that the job is the principal employment for the individual. The EIRA makes no mention of this distinction between the principal and non-principal employment, therefore it would appear that such conditions also apply regardless of whether it is the principal job or not. The LN also regulates wages, based on the hourly rate. The LN further provides for part-timers to partake of vocational training programmes if they work at least 20 hours or 50% of the normal working week, whichever is the lesser.

Another distinction between the Directive and the LN is the fact that the Directive stipulates that the employer must take into consideration requests for transfers between full-time and part-time work, though not necessarily complying with such requests. This is not included in the LN. However, it obliges the employer to inform about the availability of full-time and part-time employment and ascertain that this is done in a timely manner to allow interested employees ample time to apply for such posts. If the employee does not prefer to move from one state to another, this does not provide a reason for dismissal. Neither does the fact that the employee had brought proceedings against the employer. The LN incorporates an umbrella clause, which allows for a non-exhaustive list of unfair dismissal grounds. This provides for ample protection of the employee. However, if the allegations the employee’s allegations of unfair dismissed are found to be unfounded then the action does not constitute unfair dismissal. The burden of proving or otherwise is on the employer. The employee has to resort to the Industrial Tribunal before the lapse of three months of such unfavourable treatment.

The LN applies to all part-timers except those in any political position, including Members of Parliament and Local Councilors, apprentices, or those in ETC employment schemes, members on public sector boards, commissions or Governmental authorities, and holders of judicial posts.

### 3. Telework

The Employment and Training Corporation has commissioned a study on the actual role teleworking has in the Maltese work environment and the results are very disappointing by its near absence. There are some companies that have tried to introduce it, however, out of 1.118 employers that replied, only 43 mentioned use of some type of telework; that is a mere 3,8%. The NSO also issued a report on ICT Usage in Enterprises, which concluded “*teleworking does not seem to be popular with only 11 per cent of surveyed enterprises responding positively to this practice*”. (NSO) The highest usage is in two sectors: real estate and energy. However, the report fails to provide a definition of telework, therefore the figure of 11,3% may not reflect the actual usage of telework in Malta.

The benefits from telework are many, not only affecting employees and employers but also having social and environmental implications. From a social perspective, telework helps women who have small children participate in the workforce; from an environmental perspective it helps to lessen the time spent in traffic jams.

By September 2006, there were 127.200 Internet users in Malta, that is 33% of the population, indicating a 218% increase between 2000 and 2006.<sup>82</sup> Although by EU standards this percentage is still considered low, the increase in IT penetration in the Maltese islands should work in favour of teleworking. There is, however, a need for a culture shift, especially from the employers' side, from one based on rigorous control to one more inclined towards trust and flexibility. The importance of telework should be stressed, especially at a time when Government is trying to entice more women to work, to partially attain one of the Lisbon Agenda goals, since the level of female employment is very low.

An example of telework is a pilot project employed by the Malta Information Technology and Training Services (MITTS Ltd), which provides its services to the Government of Malta. In 2001 it started a pilot hybrid programme, involving three days' work from home and two days in the office. It is presented as a success story by the ETC. Information regarding the actual number of employees making use of this programme, however, was not available.

A study by the ETC (2006) on the IT Market in Malta, however, showed that there is more penetration in IT related work by men rather than women. In fact only 10% of persons working in IT careers are women. This is due to the misguided perceptions that the jobs are more men-based and that it is more difficult for the woman to balance work and home life. Telework in this case would be the ideal solution to create the necessary balance. Women, who outnumber men at the University of Malta, nonetheless tend to be underrepresented (only 28%) in courses related with IT and computing. Encouraging more females to participate in these courses is likely to provide them with a significant tool to participate in jobs while managing the home as well, provided employers utilise such knowledge and make available the possibility of telework.

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<sup>82</sup> For details refer to, <http://www.internetworldstats.com/stats9.htm>

#### 4. Working Time

Working time includes the actual hours worked, annual leave entitlement, maximum weekly hours worked, minimum daily rest period and night work. LN 247 of 2003 transposed Council Directive 2003/88/EC and included the main areas dealing with the organisation of work and need to be seen as the minimum requirements to safeguard the health and safety of the workers. Similar to the Directive, such regulations do not apply to seafarers or in the case where other specific conditions are already in force for certain sectors of the economy.

For example, while the Directive stipulates that the night time is to include at least the hours between midnight and 5.00 am, the LN extends this time from 10.00 pm to 6.00 am. Section 8 (6) (a) of the LN, stipulates that in the case of a regular worker, when a public or national holiday falls on the worker's normal resting day (normally taken to be Saturday and Sunday), then the 'lost' day is added on to the worker's annual leave entitlement. However, this clause was subsequently revoked by Act 2 of 2005 leading to a loss of four days in the same year.

The rest period is to be of not less than 15 minutes at a stretch if the working day is longer than six hours. However the specific time for such allocation is according to the arrangement in collective agreements or other agreements between employer and employee. An employee is entitled to an uninterrupted rest period of 24 hours in a seven-day week. However, if the employer can prove that for '*technical or work organisation conditions*', this is not possible then the Director of DIER can permit "*a minimum rest period of 24 hours for each seven day period*", which is somewhat more loosely formulated. Furthermore the employer may decide if the weekly period entitlement of rest can be calculated on a fourteen-day time frame. In this case the employee has two options, either two 24-hour rest periods, or one 48-hour rest period, with each being preceded by a daily rest period. This is always within the provision that the weekly working hours cannot exceed 48 hours.

In the case of annual leave entitlement the Directive provides for a minimum of four weeks, while the LN provides for four weeks and four days, which, except in the case of urgent leave, need to be "*availed of as whole working days*" unless decided differently under a collective agreement or by '*mutual consent*'. Unavailed of annual leave entitlement can be carried forward to the next year, at least up to 50% of it, and needs to be utilised first in the second year.

However, regulations dealing with minimum rest periods, maximum working hours, night work and shift work do not apply in cases where it is not possible to measure the actual working time, such as in the case of family workers, managing executives or persons working in religious communities. The list is not exhaustive and other such workers may be included. There is also a longer list of activities where such regulations do not apply: the place of work and residence are far from each other (including offshore work); the actual presence of the person is required (security posts); there may be a need for continuity in the service (airports, hospitals, prisons, postal services, refuse collection, electricity and water services, manufacturing activity that needs to be ongoing for technical reasons, agriculture, etc); there is a 'foreseeable surge of activity' (agriculture, tourism); there are employees in railway transport (even though there are no railway lines in Malta); and the workers' may be affected by an accident or event beyond the control of the employer. The list appears to incorporate every type of working activity. Nonetheless the employer is obliged to safeguard the health and safety of the employee by offering alternatives, or a means of compensation, provided this does not include financial compensation, e.g. for unavailed of leave or rest periods. Furthermore, a collective agreement may modify or change such conditions provided that an equivalent type of safeguard for the

employee is retained. Non-compliance with the regulations can invoke a minimum fine of Lm200 (466 euros).

## **E. PROMOTING EQUAL OPPORTUNITIES**

Fostering equality at the place of work is very important, and this has been strengthened with the enactment of related legislation. These include the non-discrimination towards young workers, part-timers, women and the disabled. The first two have already been discussed previously; therefore this section reviews the latter two.

EIRA defines “discriminatory treatment” as, “*any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association.*”

LN 461/2004 on Equal Treatment gives effect to Directives 2000/78/EC and 2000/43/EC and deals with the elimination of discriminatory treatment in employment “*on the grounds of religion or religious belief, disability, age, sexual orientation, and racial or ethnic origin.*” In order to be more in conformity with EU law, the word “sex” was replaced with the term “sexual orientation”. The regulations however, do not apply to differences based on nationality and to Armed Forces personnel on the grounds of disability and age. Apart from the above conditions, harassment, the violation of a person’s dignity, and creating a hostile or humiliating environment, are also treated as discriminatory treatment. The employers are also liable to prosecution if they incite others towards such treatment or if they fail to suppress such behaviour in their organisation.

Furthermore, employers’ and employees’ organisations may not inhibit membership, or access to benefits. Employment agencies cannot refuse services to anyone, unless the person applying for a job is deemed to have fewer requisites than another person and therefore is not seen as appropriate for the job.

When there are allegations of misconduct, the employer or person responsible is informed in written form and has to reply in writing to such accusations within ten days, unless proceedings have already commenced before the Industrial Tribunal or a court. The employee must inform of the breach of conduct before the lapse of four months from the event. The onus of falsifying such accusations is on the employer. Any provisions in individual or collective agreements that are considered discriminatory are deemed invalid.<sup>83</sup>

A study conducted by the ETC, shows that “*the employment of persons with disabilities can be an overall positive experience*”. Nonetheless, some negative issues are also present. The study found that these persons are normally employed in low status jobs although they are capable of retaining a job and working the same number of hours as any other employee. Yet those unemployed were finding it hard to obtain a job, while some of the employed would have preferred more assistance on the job, such as having a mentor. Those unable to find a job have a low level of education and they lacked work experience.

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<sup>83</sup> If the offender is found guilty, she/he can be fined a sum not exceeding Lm1000 (2.330 euros) or serve a prison sentence of not more than six months, or a combination of both.

The study also pinpointed a distinction based on age and gender. Women were less able to find a job. The younger group (ages 15 -24) was also finding it more difficult to secure a job compared to older job seekers. The ETC's new Supported Employment Scheme (funded by the ESF) is intended to provide more synergy between training and work experience in order to provide a better foundation for disabled people to find a job, apart from financial assistance to employers. The worrying feature is the fact that a number of respondents saw their work experience as a negative one, since they had bad working conditions, were abused by their work colleagues or were obliged to work informally if they wanted the job. This suggests the need to have a more adequate inspectorate service. While employers seem ready to make the necessary adaptations in the place of work in order to facilitate the integration of disabled persons, they are however not willing to pay for such adaptations.

Working towards gender equality is a major commitment, not only to guarantee the treatment of women on the same footing within the working environment, but also to encourage more women to become productive members of the workforce and contribute to the economic growth of the country. The main recent legislative framework in Malta is the Equality for Men and Women Act of 2003 (EMWA). A year later the National Commission for the Promotion of Equality for Men and Women in 2004 strengthened this. Moreover, in 1991, Malta ratified the UN Convention on the Elimination of all forms of Discrimination against Women and as a member of the ILO, Malta also falls under the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Malta has also signed two gender specific ILO Conventions: No 100 on equal remuneration; and No 111 on discrimination.

EIRA envisages the promotion of female employment through family-friendly approaches, which include: equal pay for work of equal value; protection against discrimination (on the basis of marital status, pregnancy or potential pregnancy); and minimum employment conditions for employees on reduced hours. The annual budget presented by the Government in November 2006, also included various family-friendly measures. The 2003 EMWA endeavours to strengthen this by inhibiting discrimination in: employment and employment procedures; advertisements; by banks and financial institutions; and educational and vocational guidance, while including provisions against sexual harassment. Other related legislation dealing with creating the optimal conditions for the women to engage in paid work include: Urgent Family Leave Regulations (LN 296 of 2003); Parental Leave Entitlement Regulations (LN 225 of 2003); Protection of Maternity Regulations (LN 439 of 2003); and Equal Treatment in Employment Regulations (LN 461 of 2004).

In order to create an environment that provides equal treatment, women, being the child bearers, need special consideration in terms of maternity leave and other types of family or care leave. The year 1981 saw the introduction of maternity leave, with a paid period of 13 weeks. In 2004, another week was added, although during the fourteenth week the woman is considered as being on unpaid leave. It is the Government that strives to create an environment for equality; however, the private sector tends to lag behind on certain issues. There is a need for more monitoring in this area.

Equality can also be accommodated through flexible arrangements in working times, working on reduced hours and access to career breaks, or special leave for family reasons such as parental leave. In Malta, employees within the public sector may avail themselves of parental leave within the first eight years of a child. Unpaid leave may take up to four years but can only be used once. Both women and men can utilise this option.

A study carried out by the Department of Women in Society in 2003, on the impact of parental leave, career breaks and responsibility leave in the Maltese public sector, found that it is largely dominated by women (98,4%) against the uptake by men (1,6%). Positively speaking, few women who make use of this option leave their job, thus increasing the probability that they will retain their job in the long term. Where family-friendly measures and flexibility options such as working reduced hours, were put into place, job retention was facilitated.

A study looking at parental leave and the attitude of fathers to it was conducted in four European countries (Lithuania, Iceland, Denmark and Malta) and coordinated by the Centre for Equality Advancement in Vilnius (2005). The study revealed some very interesting details from the perspective of different people involved: the man, family and friends and the employer. Men made use of such leave mainly for two reasons: either if the spouse or partner had a higher paid job; or if the individual wanted to take time out from the working environment or a career break. In Malta, men were traditionally seen as the main breadwinners; therefore few men actually take parental leave. The reactions from family, friends or colleagues, though generally positive, differed from “*mild but non-judgmental surprise to verbally expressed disdain*” (ibid. p.37) while some negative reactions were also expressed, mainly from the man’s parents due to fears of job loss, colleagues who had to take over the workload, and friends who considered childrearing a woman’s job. Employers tried to persuade the men to opt for reduced hours or to accept to be called back if need be, in order for their application to be processed.

The suggestions to improve the terms of parental leave included: financial support during the leave period; increase the age limit of child when leave can be taken; allow workers to choose the reduced hours option when the child becomes older; parental leave years should be counted as time in service so as not to detract from the individual’s career prospects; change the law so that parental leave can be availed of not in one go, but possibly broken down to allow it to be staggered depending on the number of children.

The latest data shows that the employment gap between men and women in Malta is the highest compared to the other 24 EU member states, standing at 42,4%, with the EU25 average at 15,2%, and Sweden at 3,1% having the smallest gap (European Foundation for the Improvement of Living and Working Conditions 2006:41). This indicates that the Maltese authorities need to provide more incentives to entice women to become active in the labour market. Although incentives such as flexible hours, telework, part-time work, may be a sound beginning, there are other issues involved, such as reasonable prices for day-care centres and tax incentives. In 2005, the Government had introduced a scheme whereby women returning to work after five years were given tax credits. The effect of this measure has not been analysed in detail yet. The traditional extended family type in Malta has made it possible for working mothers to have grandmothers and relatives look after children when not at school, and this has meant that childcare centres were not very much in demand. However, the fact that grandmothers and relatives are being encouraged to participate in the labour market puts more pressure on the provision of safe childcare centres, in order to prolong the working life of women.



## **F. OVERVIEW AND COMMENTS**

This chapter has presented the Labour Law situation in Malta and its evolution over the years. The more recent changes have been necessary due to two main reasons: the need to upgrade legislation to better accommodate a changing working environment and to align national law with EU Labour Law Directives. The main legislation is EIRA 2002, and the legal notices emanating from it. Other important work related laws include the Employment and Training Services Act (1990), the Equality for Men and Women Act (2003), the Occupational Health and Safety Authority Act (2000), and the Malta Council for Economic and Social Development Act (2001).

The transposition of the relevant Directives into national law has overall been effected; however, slight differences exist. It is perhaps more important to strengthen the supervision and enforcement of such regulations, as the general impression is that this is where the main problem lies. The enforcement sections of ETC and DIER may themselves need to be reinforced.

Certain elements are evident in the Maltese labour market, but most important is the fact that more persons need to be enticed to participate in the economy, while ensuring that the skills base is kept updated. The three main issues that stand out are: low female participation; low uptake of training possibilities; and a need for more proactive participation of all social partners.

The very low female activity reflects the traditional view of the family, with the male as the main breadwinner and the female as the home carer, which is more evident in the lower strata of the society. However, even within the higher educated strata, measures can be taken to encourage women to retain their jobs and careers after they have given birth. This is possible if adequate support structures and services are in place, such as reasonable fees for childcare centres, lower income tax rates and/or tax rebates.

As far as vocational training, is concerned, this is unfortunately at low levels. Labour statistics (NSO 2003) show that only 6,1% of employed persons undertook any type of training or educational courses, with 78% of these being in the services sector. The younger workers were more likely to undergo training, in fact 69,3% were under 40 years of age. Furthermore, the higher educated workers were more inclined to take up further training, but the figures remain very low. A more proactive approach by the private sector would, in the long run, prove beneficial both for the employee and the businessman.

The draft Social Pact proposed in 2004 included various measures that could have contributed to a better working environment for the social partners. Although it failed to materialise, the Government did introduce some of the measures. However, other crucial measures, especially commitments from the employers' side, are still lacking. Although MCESD has the official role of being the main national forum for social and economic dialogue, the general public impression is that it is used more as a sounding board, and its input is not very powerful. There is therefore a need to strengthen this Council and to make it more representative of all stakeholders within the country. There is a need for more commitment and a wider involvement in the process of consultation.

Although, in the Labour Law field, the work accomplished so far in Malta is commendable, there is a need for a more coordinated effort by a wider representation of society. While flexicurity can provide the framework for future working relationships, there is arguably a need to balance the idea that flexibility is not a prerogative of the employer just as much as lifelong job security is not the privilege of the worker. If enforced fairly, the legal structure can provide the basis for this compromise.

## Chapter III

### Conclusion

The period 1995-2005 has witnessed major changes in the Labour Law regulatory frameworks of the two small Mediterranean islands of Cyprus and Malta. Both countries acceded to the EU in the enlargement phase of 1<sup>st</sup> May 2004. In this respect, the period under examination was marked, for its greatest part, by an evolutionary process of harmonising existing laws and regulations in many policy fields with the provisions of the *Acquis Communautaire*. In this context, Labour Law evolution constituted an aspect of this adjustment course, which this Report has sought to examine.

Both countries are former British colonies and members of the British Commonwealth, and they have both gained their independence in the early 1960s (Cyprus in 1960 and Malta in 1964). In the case of Cyprus, however, following the Turkish invasion of 1974 and the occupation of 38% of the country's territory, the political problem of the country remains unresolved. Technically the occupied northern part of the island is exempted from the application of the *Acquis Communautaire*.

In terms of Labour Law evolution in the two countries one can point out that the adoption of the relevant *Acquis* was completed successfully in the period under examination. In both countries there has been an unchallenged trend toward the prevalence of the statutory norm as a way of regulating labour issues. The insurmountable pressure that EU harmonisation provisions exerted heralded a major shift in Labour Law regulation and acted as a catalyst for major adjustments in the field.

Against this background, a *sine qua non* in the process of understanding the evolutionary framework of this adjustment course is the study of the historical development of Labour Law – and Industrial Relations in general – in the two national settings. Traditional means of regulation in this field vary in the two countries, and in this respect the adjustment trajectories followed bear some distinctive features.

One major difference between the two countries is the way Industrial Relations have traditionally been structured and carried out. Malta has been characterised by a higher level of statutory control over Industrial Relations, which is much closer to the continental system. On the other hand, a primary attribute of the traditional system of Industrial Relations in Cyprus has been its voluntary nature, which has relied upon tripartite consensus building between the social partners and the Government. This had its roots in the British tradition of free collective bargaining. The Industrial Relations Code has traditionally exemplified the voluntary nature of Industrial Relations in Cyprus. Signed by the social partners in 1977, the Industrial Relations Code represented a 'gentlemen's agreement' that was considered to be a landmark in the development of the Industrial Relations system in Cyprus. The Code laid out the procedures for the settlement of labour disputes over rights and interests, and this was in contrast to the Maltese traditional system that supported collective bargaining and dispute resolution with statutory institutions and processes.

Nonetheless, the harmonisation process has shifted the balance of Industrial Relations in Cyprus, giving more weight to 'hard law' statutory means of regulation of labour issues, as opposed to 'soft law' alternatives. Even though collective agreements are still used as a regulatory instrument, making provisions over and above statutory requirements, emphasis on the latter is the primary form of regulation. As a result, EU adjustment requirements have turned the spotlight on legislative measures of control and an ever-increasing reliance upon the mechanisms of statutory regulation. As in the case of Malta, the social partners can now rely more on a legislative base, as the basic means of regulating Labour Law matters.

In both countries there has been an observably strong desire to ensure compliance with EU obligations in the Labour Law field, and the social policy area more generally. The accession process and the harmonisation of the national legal framework of both Cyprus and Malta with the requirements of the European *Acquis* was the most pertinent factor that influenced the evolution of labour relations in the period under examination. The process of adjustment, although strenuous and lengthy, has proved essential and useful, as it reinforced, and even secured, the rights of the workers in a number of domains that directly impact upon their well-being. In this aspect, matters such as the terms and conditions of employment, health and safety at work, equal opportunities (including gender equality) have acquired a stronger legal base. The latter is important considering especially that women and young people in both countries experience higher levels of unemployment.

It is stressed that in recent years both Cyprus and Malta have been experiencing atypical forms of employment and experimenting with ways to introduce more flexibility in their labour markets. The overall aim is to increase employment while at the same time taking into consideration issues of equality between men and women, family and work balance and promotion of employability of young people, especially young women.

The real challenge for both countries is to strengthen the supervision and enforcement of the new legal framework. In the case of Malta, the enforcement sections of ETC and DIER may need to be reinforced, and the Inspectorate section of DIER may consider taking a tougher approach towards Labour Law compliance. In the case of Cyprus, more expertise could be sought on the highly technical aspects of Labour Law enforcement, whereas the Ministry of Labour and Social Insurance could strengthen even more the departments that handle the enforcement of Labour Law in areas such as Industrial Relations and health and safety at work.

A key issue in countries that want to retain their competitive advantage is that of employability. This has led to claims for the need of lifelong learning and skill equipment for workers. It is important however, to guarantee that while workers should continuously be encouraged to update their skill base, their employers should not leave them unprotected against unfair dismissals. In the framework of the Lisbon Agenda, both countries have in fact – through their respective National Action Plans for employment – set overreaching goals that call for full employment, quality and productivity at work, as well as cohesion and an inclusive labour market.

The shift from job security to employability entails a cultural shift for both countries, mainly due to the idea that a lifelong job has not traditionally been associated with lifelong learning. However, the changes in the economies and labour markets of the two countries have forced them both to focus on the need to formulate training and employment policies and establish appropriate institutions to deal with these new demands.

In the case of Malta this task had been entrusted to ETC, which – with training programmes – helps the unemployed find a job. As outlined in the Report, current schemes include the Employment and Training Placement Scheme (ETPS), the Job Experience Scheme (JES), the Redeployment Scheme (RS), the Work Start Scheme (WSS) and the Active Youth Scheme (AYS). In the case of Cyprus, the responsible body for implementing the training strategy is the Human Resource Development Authority (HRDA), which has the mandate to provide education, training and lifelong learning.

In order to ensure, however, a better functioning of the economy, there is an urgent need for more coordination of the different stakeholders and the social partners. There are diverse gaps to bridge, especially between school and labour market, between skills and available jobs, as well as between job seekers and job providers. In both countries these issues are being addressed, either through apprenticeship and post-secondary education programmes in the case of Malta, or through the Apprenticeship Scheme, training activities, and reforms of upper secondary education aimed at adjusting to the growing demand for mobility and flexibility in the labour market in the case of Cyprus.

As already outlined, atypical forms of employment are only gradually evolving in the two countries. This creates, however, the need for Labour Law to reflect such changes, and the adaptability of the labour structures to mirror the changes in the economy and in the labour market. The shift has occurred from lifelong jobs to jobs of a more temporary nature, from fixed to more flexible arrangements. These include fixed term contracts, part-time work, temporary agency work, apprenticeship, telework and the legal working time structure underpinning all types of jobs. These forms of employment – mainly part-time and temporary contract work, but also fixed term contract employment to an extent – are more likely to apply among younger age groups and women. People mostly choose to work part-time in order to balance work and family life, to secure additional income, or because other more permanent types of jobs are not readily available. As far as other forms of employment relations are concerned, there is little, if any, experience with temporary agency work, pools of workers (multisalarial), company networks, and on call work. Given also the size of the two countries and the short distances between places, telework has an arguably limited scope for expansion.

With regard to equal opportunities both Cyprus and Malta – being relatively small island societies – have traditionally shared a rather conservative background. Nonetheless, the traditional roles of men as the sole providers and breadwinners and that of women as house carers are shifting, as the pressures for additional income, affluence and improvement of living standards, require women to enter the labour force. This shift has serious economic and social implications in expanding the economy, creating more jobs, as well as establishing the proper childcare facilities and infrastructures, as women are no longer the sole traditional ‘housekeepers’.

In the light of the Lisbon Agenda and the targets that must be met by 2010, both countries adopted, in 2004, National Action Plans for employment. The Plans seek to address the issues of enabling people (irrespective of gender, age, religion or other personal characteristics and abilities) to enter the labour market and pursue career development through educational and training programmes. The plans make special provisions for sensitive groups, such as women, young people and mature people who are faced with career changes and explore atypical forms of employment in an effort to introduce flexibility in the labour market and increase employment.

In conclusion, one should note that, in spite of formidable challenges that are continuously exerting pressure towards the strong social bases of many countries, both Cyprus and Malta have responded effectively to the requirements of the European *Acquis* in the social sphere in general and in the Labour Law area in particular. The real challenge now is the full implementation of the *Acquis* – and it is still early to make conclusive judgements on this performance. Nonetheless, the harmonisation process in general has proved positive for both countries, as it has forced them to improve, and even enhance, their legal framework and give more strength to ‘hard law’ statutory regulation means. Whatever the degree of future success it cannot be denied that the process of adjustment has constituted a great step towards the direction of advancement in the Labour Law field.

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**Annex A for Cyprus**

**Labour Law Directives transcribed into National Law**

<b>Topic</b>	<b>EU Directive</b>	<b>National Law Reference</b>
Part-Time Work	98/23/EC	N. 76(I)/2002
Collective Redundancies	98/59/EC	N. 28(I)/2001
Fixed Term Contracts	1999/70/EC	N. 98(I)/2003
Posting of Workers	96/71/EC	N. 137(I)/2002
Information to Employees	91/533/EEC	N.100(I)/2000
Transfer of Business	2001/23/EC	N.104(I)/2000
European Works Council (Information and Consultation)	94/45/EC	N. 68(I)/2002
Organisation of Working Time	93/104/EC	N. 63(I)/2002
Young People at Work	94/33/EC	N. 48(I)/2001
Protection of Employees in the event of Insolvency	80/987/EEC	N. 25(I)/2001

## Annex B for Cyprus

### Gender Equality Directives transcribed into National Law

<b>Topic</b>	<b>EU Directive</b>	<b>National Law Reference</b>
Equal Pay for Men and Women	75/117/EEC	N. 177(I)/2002
Equal Treatment for Men and Women (Employment and Vocational Training)	76/207/EEC	N. 205(I)/2002
Protection of Maternity	86/613/EEC	N. 64(I)/2002
Parental Leave	96/34/EC	N. 69(I)/2002
Equal Treatment in Matters of Social Security	79/7/EEC	N. 51(I)/2001
Equal Treatment in Occupational Social Security Schemes	86/378/EEC	N. 133(I)/2002

## Annex A for Malta

### List of Legal Notices and Corresponding Directives

Legal Notice	Amendment of previous LN	Topic	Transposition of Council Directive
<b>Year 2002</b> 427 428 429 430 431 432 433		Part-Time Work Collective Redundancies Fixed Term Contracts Posting of Workers in Malta Information to Employees Guarantee Fund Transfer of Business	98/23/EC 98/59/EC 1999/70/EC 96/71/EC 91/533/EEC 2002/74/EC 2001/23/EC
<b>Year 2003</b> 224  225 247 296 306 439 440		European Works Council (Information and Consultation) Parental Leave Entitlement Organisation of Working Time Urgent Family Leave Org. of Working Time (Civil Aviation) Protection of Maternity Young Persons (Employment)	94/45/EC 96/34/EC 2003/88/EC 96/34/EC 2000/79/EC 92/85/EEC 94/33/EC
<b>Year 2004</b> 3 324 442 443 444 452 461	439 of 2003  428 of 2002 430 of 2002 432 of 2002	Protection of Maternity European Works Council Collective Redundancies Posting of Workers in Malta Guarantee Fund Employee Involvement Equal Treatment in Employment	92/85/EEC 97/74/EC 98/59/EC 96/71/EC 2002/74/EC 2001/86/EC 2000/78/EC and 2000/43/EC
<b>Year 2005</b> 413	432 of 2002	Guarantee Fund	2002/74/EC
<b>Year 2006</b> 10		Employee (Information and Consultation)	2002/14/EC

Source: Compiled from Ministry of Education (Malta) and EC Employment and Social Affairs.

## **Annex B for Malta**

### **List of Orders**

Agriculture & Allied Industries LN 99 of 1977  
Beverages Industries LN 29 of 1980  
Canning Industries LN 51 of 1977  
Cargo Clearance and Forwarding Agents (Burdnara) LN 45 of 1976  
Cinemas and Theatres LN 130 of 1976  
Clay and Glass Products LN 98 of 1977  
Construction LN 27 of 1980  
Domestic Workers LN 7 of 1976  
Electronics LN 55 of 1977  
Food Manufacture Industry LN 68 of 1991  
Hire Cars and Private Buses LN 124 of 1977  
Hospitals and Clinics LN 115 of 1977  
Hotels and Clubs LN 43 of 1990  
Jewellery and Watches LN 118 of 1997  
Laundries LN 111 of 1997  
Leather Goods and Shoes Industry LN 116 of 1991  
Paper, Plastics, Chemicals and Petroleum LN 97 of 1973  
Printing and Publishing LN 88 of 1977  
Private Cleaning Services LN 15 of 2001  
Private Schools LN 60 of 1977  
Private Security Services LN 264 of 2000  
Professional Offices LN 127 of 1975  
Public Transport LN 34 of 1969  
Seamen LN 100 of 1977  
Sextons and Custodians LN 6 of 1996  
Textiles and Allied Industries LN 117 of 1977  
Tobacco Industry LN 115 of 1991  
Transport Equipment, Metal and Allied Trades LN 101 of 1977  
Travel and Insurance Agencies LN 22 of 1978  
Wholesale and Retail LN 32 of 1989  
Woodworks LN 50 of 1977