

## Negotiation results on Social Policy and Employment

By Romina Rieck Zahra, MIC information officer

### Malta's negotiating requests in the area of social policy

During negotiations with the EU, Malta declared that upon membership, Maltese law will be in line with EU standards in the area of social policy and employment. In practice this means that Malta has committed itself to apply a set of around fifty different laws taking on board EU standards in areas ranging from conditions of work to health and safety at work and to gender equality and non-discrimination.

In taking on the obligation to apply higher standards in these areas, Malta adopted a plan of action not just to introduce these laws but also to set up or restructure a number of national structures, some of which are by now already operational. These structures should ensure that law and policy in this area are adequately applied in our country.

By way of exception, Malta made four requests for extra time before fully applying EU law. These are known as "transitional periods" and apply beyond January, 2003, which is the date that Malta has set to be prepared for EU membership. The following is a brief overview of Malta's requests and the outcome of negotiations in each case.

#### 1.1 First request: Use of Work Equipment

This EU health and safety law provides minimum requirements on the level of safety of the equipment that is used at work. It puts obligations on employers both with respect to existing equipment as well as with respect to new equipment.

Equipment must have warnings and markings as well as proper control devices installed for starting and stopping. Guards should be placed on the equipment where there is a risk of contact or where there are high or very low temperatures. Special provisions are made for equipment used for lifting guided and non-guided loads and mobile equipment. A number of other issues are included in this law including the obligation to provide workers with adequate information and training as well as the obligation on employers to regularly inspect and maintain equipment.

Malta requested a transitional period until the beginning of 2006 to apply this law to allow local industry sufficient time to phase in any investment needed to upgrade any equipment that is not in line with EU safety standards. In addition, the transition period would allow time for the necessary training that is required both within individual companies as well as within the national authorities that will be enforcing this law in Malta. This need was identified in an impact study commissioned by the Maltese Government. This study is available to the public either from the internet ([www.mic.org.mt](http://www.mic.org.mt)) or from the MIC.

Following discussions in which Malta presented its justification, the EU accepted this request.

**On Wednesday, November, 28, 2001, Malta closed negotiations on social policy and employment. Malta committed itself to apply all EU social policy standards by membership with the exception of four issues where it obtained transitional periods to raise standards over a longer time frame in order to allow for adjustment. In this article, MIC information officer, Romina Rieck Zahra, presents the key issues that were discussed.**



#### 1.2 Second request: Noise at Work

This EU health and safety law regulates the level of noise at the workplace. It aims to reduce the exposure of workers to noise because of the negative affect that this can have on their health. It does this, in the main, by addressing noise levels preferably at source. Moreover, it requires employers to provide workers with protective gear and also puts an obligation on the workers themselves to use such gear. Noise levels at work have to be assessed on a regular basis and when necessary measured. This is important to determine whether the maximum levels have been exceeded and whether any workers have been affected.

On this law, Malta requested a transitional period until the beginning of 2004 to allow sufficient time for adjustment both within individual companies as well as for the government agency that will be enforcing these standards. Again, this need was identified in an impact study.

This request was accepted by the EU.

**1.3 Third request: Temporary and Mobile Construction Sites**

The highest incidence of accidents at work occurs at construction sites. In this area, EU law sets out minimum safety standards at temporary and mobile construction sites, especially with respect to large building projects. In particular, it seeks to prevent risks by establishing a chain of responsibility linking all the parties involved.

Malta requested a transitional period until the beginning of 2004 to apply fully this law. However, the provisions concerning the responsibility of the employer to carry out risk assessments, to train employees and to give all the necessary information will be in place by 2003. As with the other two requests, Malta based its request on the results of an impact study that also identified the need of this transitional period to allow more time for industry to adjust and to strengthen the structures that will enforce this law in Malta.

This request was also accepted by the EU.

**1.4 Fourth request: Organisation of Working-Time**

This law provides a set of minimum workers' rights and covers the weekly working hours, daily and weekly rests, breaks, length of night work and annual leave. The law is flexible in the sense that it allows for certain sectors of workers to be excluded from all or parts of this directive. It also significantly enhances the role of the social partners by involving them directly in its implementation.

The most important provision of this law relates to the number of hours in a working week. On this point, it states that the working week should be of not more than 48 hours, including overtime, calculated over an average period of four months.

However, this does not mean that workers cannot work more than 48 hours a week if they wish to do so. This point has often been misunderstood in Malta and must be made clear. Workers may work longer hours if they agree to do so and provided that their health and safety and that of their colleagues is not put at risk. The employer must keep a record of those employees exceeding the 48 hours and the duration of their working week.

In simple terms, the practical effect is that workers cannot be obliged to work overtime over and above the 48-hour working week limit unless they agree to do so.

This has not been the position in Malta so far. In Malta today, workers can still be obliged to work overtime even in cases where they prefer not to. When the EU law is applied workers will no longer be obliged to work overtime. It would be up to individual workers to decide whether they want to work longer hours and not up to employers.

Nevertheless, on this law, Malta still sought to negotiate a transition period in order to allow the local industry sufficient time to adapt to any changes that could be necessary in their patterns or organisation of work. Malta initially requested a transition period of four years. However, following the outcome of an impact assessment study and after intensive consultations with all social partners in Malta, it was agreed that Malta's request should be modified in three ways. Firstly, it should apply only to the issue of the working week. Secondly, it should be limited to those sectors of industry where this law is directly relevant either because they are open to international competition or because they are currently undergoing restructuring. The sectors that were identified are food and beverage; textiles, clothing and footwear; transport equipment (ship-building, ship-repair); electrical machinery, appliances and supplies and the furniture sector.

**Malta's Negotiations on Social Policy and Employment**

|                     |               |
|---------------------|---------------|
| Screening of laws   | November 1999 |
| Negotiations opened | November 2000 |
| Negotiations closed | November 2001 |

| Transition Period                       | Requested  | Obtained  |
|---|--|---|
| Use of work equipment                   | A transitional period until January 2006 for the inspection and adaptation of work equipment and capacity-building to implement this law | YES   |
| Noise at work                           | A transitional period until January 2004 for the adaptation of workplaces, training and capacity-building to implement this law          | YES   |
| Temporary and mobile construction sites | A transitional period until January 2004 for inspections, skills acquisition and capacity-building to implement this law                 | YES   |
| Organisation of working time            | A transitional period until 2007 for the implementation of the 48 hour average working week  | PARTIALLY<br>Until<br>end 2004<br>at the latest |

Thirdly, it was also decided that Malta's request should be narrowed down in time to a transition period of nineteen months, that is until July 2004. However, in cases where a collective agreement is already in place and goes beyond this date, the transitional period would extend till the end of 2004.

This transition period would allow local industry to adapt to new changes in the organisation of work without, however, delaying the implementation of the law unnecessarily.

It was also decided that in some cases, the four-month period over which the average weekly working time is calculated should be extended. This is possible under the EU law and the period may be extended to six or even twelve months where this is justified. Of course, the longer the period, the easier it is to fit the 48-hour average in a flexible manner.

In fact, during a meeting of the Labour Board held in November, 2001, a resolution was adopted calling upon the Maltese Government to establish a reference period of twelve months rather than four months for calculating the average working week in the tourism sector (including catering) and in the manufacturing sector. The Labour Board is composed of all social partners and the decision was adopted unanimously.

After detailed negotiations between Malta and the EU on this law and after agreement reached among the social partners concerned even at MEUSAC level, it was agreed that Malta would agree on a transitional period until the end of July 2004 to conform with the 48-hour provision in the sectors identified. It was also agreed that in cases where a collective agreement is already in place and goes beyond this date, the transitional period would extend till the end of 2004. With respect to other sectors, this EU law will apply in full by January 2003 and Malta will issue the necessary laws to put it into effect.

This is the first time that Malta has reduced the length of a transitional period from what it had initially requested.

**A quick look at the EU's Employment and Social Policy**

Although the social aspect was ingrained in the EU from the start, real progress in this area was only achieved from the 1980s and more specifically during the last decade. EU countries increasingly accepted that economic integration, social inclusion and prosperity could not be achieved if the social aspect was not given prominence at EU level.

The European social model spans many areas ranging from training to employment, welfare and social protection, dialogue between the social partners, health and safety at work, conditions of work and the fight against racism and discrimination. In spite of all the laws and initiatives that have been adopted at EU level in all these areas, the EU does not have exclusive competence in the area of social policy. It is only in cases where a common EU solution is required that action is taken on a European level. As a matter of fact, in this area, the EU has only laid down minimum standards and minimum requirements, leaving it up to each individual EU country to do more if it feels the need to increase the level of social protection beyond EU levels.

**2.1 Labour Law**

In this area, EU law stresses the importance of informing and consulting employees about decisions taken at the workplace. This applies in cases where an enterprise goes bankrupt, in cases of merger or acquisition, collective redundancies or posting of workers to other countries.

EU law also sets minimum standards when it comes to workers on a fixed-term contract and on the removal of discrimination in treatment between full-time and part-time workers. Another EU law gives the right to both parents to take parental leave following the birth or adoption of a child.

Most EU laws in this area will be incorporated by amendments to our Conditions of Employment (Regulation) Act (CERA) and the Industrial Relations Act (Cap. 266) as well as through subsidiary legislation under these laws. Other changes, such as on the protection of young persons at work, will be made through the regulations under the Occupational Health and Safety (Promotion) Act.

Malta will raise its standards to EU levels in all these areas by the end of 2002.

The main responsibility for the enforcement of these laws lies with the Department of Industrial and Employment Relations, the Inspectorate and Enforcement Section within it as well as the State Labour Inspectorate.

**WHO SHOULD BE INTERESTED IN THIS AREA OF NEGOTIATIONS**

**WORKERS**

(in particular people working in the following workplaces or sectors)

- ★ Construction
- ★ Factories
- ★ Financial services
- ★ Media
- ★ Medical and para-medical
- ★ Offices
- ★ Postal services
- ★ Public sector
- ★ Security (army, police)
- ★ Shipbuilding/ship-repair
- ★ Telecommunications
- ★ Tourism
- ★ Transport (air, land & sea)
- ★ Water and electricity

**PROFESSIONALS**

**TRADERS**

**SELF-EMPLOYED**

**INDUSTRIALISTS**

**2.2 Health and Safety at Work**

Health and safety at the workplace takes up the bulk of EU law in the area of social policy. The main aim is to reduce occupational accidents and diseases. Despite the additional costs that these rules may place on employers, it has now also been established that the financial cost for companies are greater if they do not apply these standards and not if they apply them. Of course, applying these rules also has a positive effect on the country in terms of lower social protection and health costs as well as on the workers themselves.

A general EU law first set out guidelines to encourage improvements in the safety and health of workers at work. It also served as a foundation for various other more specific EU health and safety laws that followed. This law has already been incorporated into Maltese law through the New Occupational Health and Safety Authority Act as well as regulations issued under this Act.

The more specific EU health and safety laws either apply to all workplaces (such as personal protective equipment and manual handling of loads) or to specific workplaces (such as construction sites and quarries) or deal with specific categories of workers (young people and temporary workers). The rest deal with exposure to specific agents (noise, chemicals and biological agents).

All these laws will be introduced and applied in Malta by the end of 2002, except in those cases where a transitional period has been obtained as explained in the first part of this article. The enforcement of these laws will be within the responsibility of the Occupational Health and Safety Authority which is in the process of strengthening its capacity.

On its part, the EU set up a European Agency for Safety and Health at Work to encourage improvements in the working environment by providing the EU institutions, EU countries and those involved in health and safety at work with the technical, scientific and economic information. Malta is participating in the activities of this Agency.

**2.3 Gender Equality**

Equality between men and women or gender equality is a high priority for the EU and a number of EU laws have been adopted to ensure equal opportunities with respect to employment, training, remuneration, promotions, social security, occupational social security schemes as well as self-employment.

One of the more interesting EU laws in this area is a directive which shifts the burden of proof from the employee that is taking legal action on to the employer. This means that it would not be up to the worker to prove that there was discrimination but up to the employer to prove that there was no case of discrimination. Again, all these will enter into force in Malta in 2002 and most of them will be incorporated in a new Gender Equality Act.



Another EU directive covers pregnant women and nursing mothers, granting a minimum period of 14 weeks maternity leave without, however, specifying whether this should be paid or unpaid leave. This law was introduced in Malta in January 2001. In this area, the National Commission for the Advancement of Women will be the main national structure to enforce EU standards, whereas the Department for Women in Society will act as the executive secretariat of the Commission.

## 2.4 Discrimination

Equality does not only apply between men and women but also with respect to the prohibition of discrimination on the basis of race or ethnic origin, disability, religion or belief, age or sexual orientation. Recent EU law specifically addresses discrimination in these areas when it occurs in employment.

In Malta, acts of racial discrimination will be made a criminal offence through changes in our Criminal Code, with a penalty of up to eighteen months imprisonment. Malta will also participate in the activities of the European Monitoring Centre on Racism and Xenophobia.

On disability, we have the Equal Opportunities (Persons with a Disability) Act (Cap.413) which prohibits discrimination based on disability and gives an independent status to the National Commission for Persons with Disability.

## 2.5 Social Protection

Social protection systems play a major role in the EU, providing citizens with security while contributing to political, economic as well as social stability. The organisation of social protection is the sole responsibility of each Member State. At EU level, there is only co-ordination in the field of social security. In this area, Malta is undergoing a domestic process of welfare reform which also caters for the co-ordination that will be necessary after accession.

## 2.6 Employment and the European Social Fund

The EU does not have laws on employment or unemployment. However, EU countries did agree on a European Employment Strategy which is focused on investing in people. This is done through initiatives which can be divided into four categories: (i) employability of jobseekers, (ii) adaptability of businesses and employees to economic and technological change, (iii) entrepreneurship and (iv) equal opportunities. Each year the EU issues a set of employment guidelines for member states to take into consideration when planning their labour market action plan.

In addition, the EU also provides substantial financial assistance to employment initiatives through the European Social Fund which is one of the EU's Structural Funds. Assistance from this fund is only available to EU countries and is not available before membership.

Malta is in the process of updating its labour market policy in a bid to implement the employment strategy. Key priorities for our country include the need to increase the female participation rate in our labour market and to encourage life-long learning. A Joint Assessment Paper on Malta's employment policy priorities was signed in October 2001. The Maltese entity responsible for employment initiatives is the Employment and Training Corporation (ETC).

Malta is also setting up the necessary structures to be able to absorb and administer funding from the European Social Fund after membership.

## 2.7 Social Dialogue

Social dialogue has reached quite an advanced stage at the EU level, with social partners even becoming joint decision-makers in the adoption of certain EU social policy laws. This means that an agreement reached among social partners can be presented to the EU institutions for it to be transformed into EU law.

In Malta, social dialogue is now well established and it operates through various mechanisms. A new law recently strengthened the role of the Malta Council for Economic Development by widening its remit and transforming it into the Malta Council for Economic and Social Development (MCESD). In Malta sectoral social dialogue is also encouraged while representatives of social partners are often appointed on the boards of public institutions. Throughout the accession process, social dialogue was also encouraged in the adoption of Malta's negotiating positions through the direct involvement of representatives of all social partners and civil society in the Malta-EU Steering and Action Committee (MEUSAC) that oversees Malta's accession process.

After membership, Malta will have five seats in the EU's social dialogue forum known as the Economic and Social Committee (ECOSOC).



## 2.8 Public Health

Public health remains very much a national competence and the EU limits itself to encouraging co-operation and supporting initiatives such as research.

The two EU laws in this area both relate to tobacco. One deals with the labelling of tobacco products and the other with the maximum allowable tar yield of cigarettes. Another law banning advertising and sponsorship of tobacco products was struck off by the European Court of Justice and a new one is now being prepared. Maltese law will be fully in line with these laws by the end of 2002.

The EU also has a number of funding programmes under public health. Malta has been encouraged to continue the process of developing a health monitoring system comparable with that of the EU. It was also encouraged to co-operate with the EU network for epidemiological surveillance and control of communicable diseases.



**Malta's official negotiating position paper on this area is also available from MIC or from:**  
[www.mic.org.mt](http://www.mic.org.mt)

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