The State of Social Dialogue & Industrial Relations in Malta

March 2015

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Introduction

This position paper is the result of a number of concerns which many employers, members of MEA, are expressing with increasing frequency and intensity. It is a situation analysis of a number of issues reflecting trends that have gathered momentum over the years, but which, in some cases are approaching critical stage.

Over the years, Malta has developed solid social dialogue structures. We also have a long tradition of industrial relations, with the first trade unions being formed almost a hundred years ago. One of our attractions as an investment destination has indeed been a stable industrial relations climate. However, there are a number of developments and issues that are worrying employers, and the purpose of this position paper is to send a clear message to government, unions and civil society that the generation of productive employment cannot be taken for granted. **Malta clearly has one of the best performing economies in the Eurozone, and this is a call to action to prevent certain trends and issues from reaching boiling point and threaten the successful track record that the country has managed to achieve over decades of progress.**

1. Sensationalist Figures

There are instances where alarmist statements, at times backed by sensationalist figures tend to influence the opinions of the social partners and also government in the design of policies to address particular issues.

One recent example has been the outcry about precarious employment. A lot of pronouncements have been made about the topic, which has been often singled out as a social evil spread throughout the Maltese labour market. Yet the perception and

interpretation of the phenomenon resembles many fuzzy pictures of UFO sightings. Political parties, unions, civil society, and church authorities have raised alarm on precarious work, without agreeing on a definition of what is exactly meant by the term. Equally blurred has been measurement of the term, with some unions claiming that it is widespread, others having said that it covers two thousand employees, and the Prime Minister stating that it is restricted to the unethical or illegal practices of a handful of employers. Which of these views, if any, is correct? Wild allegations of precarious employment may lead to overregulation of labour markets, as happened with the legal notice on self-employed persons, and perhaps overlook the ones who are truly exploited, as happened at Leisure Clothing.

Another case is the matter of persons at risk of poverty. It is currently being claimed that 99k persons in Malta are at risk of poverty i.e. approximately 25% of the population. This of course raises pertinent questions among all social partners: Are wages too low? Are pensions inadequate? Is government spending enough on social welfare? Is there an inequitable distribution of wealth in Malta, like in many African countries? What can explain the fact that a country which boasts among the highest mortality age in the world has such a so declared poor standard of living?

Such exaggerated claims may be useful to attract public attention or else to score political points, but they also serve to derail social dialogue and social policy from the real issues and serve as a basis of wrong decisions or contradictory arguments. For example, if it is true that 25% of the population is at risk of poverty (which in the public mind equals actual poverty!), how can one justify making income taxes less progressive?

This lack of focus is at times detrimental to real disadvantaged groups, and can also result in waste of resources and ill-conceived social policy measures. Rather than focusing limited public finances on the marginal 10k persons who may be really in need of social assistance, policies aimed at targeting 99k persons will spread resources too thinly to make a difference to anybody.

2. High Employee Expectations

Many employees in Malta are oblivious to the external competitive challenges that we face. Malta is not a low cost country. There are cheaper destinations within the EU, in other European countries and also outside Europe. Our minimum wage compares well with that of many other developed countries, and we also have a relatively low percentage of people actually living on the minimum. Yet, in some cases employees are pushing unions into making unrealistic claims for improved working conditions which companies find difficult to entertain.

3. A Deteriorating Work ethic

This mentality is also reflected in what employers are referring to as a ‘deteriorating work ethic’. This does not bode well for the country’s economic future as one of the pillars of our competitiveness and attraction as an investment destination has always been our reputable work ethic, which is understandable in an economy which depends so much on its human resources.

There is a growing culture of entitlement and insufficient appreciation of the fact that, in many ways, the Maltese have it good. Our standard of living and quality of life is better than that of at least 80% of the world’s population. If we want better we have to work harder and smarter, as we have done in the past.

4. Union Membership Figures

According to the EIRA, the Registrar of Trade Unions is expected to keep a record of trade union membership. Malta is among the countries in the EU with the highest rate of trade union membership. Yet official figures are based on reported membership, and there is widespread belief (even trade unions accuse each other on this point) that the official figures do not reflect the actual rate of union membership. This could drive unions to be more aggressive in increasing members, even if they come from other unions, to match actual membership with reported figures.

5. Union Recognition and Verification Exercises

A recent shocking development concerning union recognition is the setting up of an independent board to conduct verification exercises which were previously performed by the Registrar of Trade Unions. The reasons for this action were that:

- Employees at the DIER who were involved in verification exercises became members of the Union Haddiema Maghqudin. This created a conflict of interest for these individuals and the Director put a stop to verification exercises until a solution could be found.
- In the meantime, the MUMN was applying pressure on the ministry about a verification exercise which was pending for a number of months, threatening with industrial action unless the exercise was conducted with immediate effect. This is what ultimately led the Ministry to seek an immediate solution and resorted to ‘outsource’ the verification exercises to arbitrarily appointed persons.

MEA has strongly protested against this measure and issued a directive to its members not to consult with this board. The main reasons for this position adopted by the Association are that:

- The changes were introduced without any consultation with the stakeholders.
- The changes are unnecessary as the existing legislation already provides solutions whenever there is a conflict of interest between union membership and an employee's duties.

Specifically:

EIRA Article 67. (1): *The holder of an office in the public service declared by the Prime Minister to be an office the holder whereof may not be a member of a trade union in respect of which he may be required to represent or advise the Government in industrial relations with the union or unions representing its employees, shall not become, and if he is shall cease to be, a member of that trade union; and the provisions of this subarticle shall be an implied term of his terms of service with the Government.*

(2) *Subject to the provisions of subarticle (3), in respect of a person employed in such managerial or executive post, in any corporation or other body established by law or in any company or other partnership or in any other body having a distinct legal personality (hereinafter referred to as a "corporate employer"), as will require the holder of that position to represent or advise the corporate employer in its relations with the union or unions representing its other employees or any part thereof, it shall be an implied term of the contract of employment of such person that he shall not, while occupying such position, be a member of any of the trade unions aforesaid.*

From the above extracts it is clear that Article 67 allows government to keep employees engaged in industrial relations from becoming trade union members. Therefore, rather than appoint independent persons to conduct verification exercises, Government should have exercised this right, which exists also for companies in the private sector, as stipulated in Articles 67.2 and 3 of the EIRA.

Moreover, the Public Administration Act Chapter 497 includes a Code of Ethics for public officials (Article 5 B8) which states that: *'A conflict of interest may be defined as a situation in which a public employee has a private or personal interest sufficient to*

influence or appear to influence the objective exercise of his or her official duties'. Shouldn't this preclude persons involved in conducting union recognition exercises from being themselves involved in trade union activity?

It is also noteworthy that the Employment Relations Board, which is the official tri-partite body appointed to deal with any changes in such procedures, was completely left in the dark on this issue.

This situation raises other questions. Will the DIER officials be barred from performing other duties that are in conflict with their status as union members, for example, being selective on which companies to conduct inspections to indirectly solicit employees to become members of their union? These are all legitimate questions which employers are asking.

MEA has made concrete proposals for a fast and objective process to determine union recognition based on the number of paid up members. The MEA is against ballots as they are not proof of membership. God forbid if there were to be meddling by political parties in ballot exercises, as has been reported by our members. Companies desire industrial relations stability and do not want to be drawn into such manipulative exercises. This is even more reason why recognition should be based exclusively on proof of membership.

6. Shifting loyalties

It is unfortunate that the culture of opportunism, fuelled by the political parties, is being transposed to the workplace and is affecting industrial relations. Employees are more likely to seek short term gains by switching union membership than previously. This is

causing pressure on union secretaries who are frequently negotiating under threat of resignations if they do not measure up to their members' expectations.

7. Upping the Ante

Union rivalry is raising stakes in collective bargaining. A leading trade unionist has recently (the Malta Independent on Sunday, 22nd February, 2015) defined the current rules of the game precisely when he stated:

'*Unions are ending up negotiating according to what other trade unions are offering, and not in accordance to what employees deserve. They also often attempt to reach out to members of the opposing union, rather than employees who are not registered with any of them*.'

It is evident that employers are being dragged into inter-union disputes and cannot negotiate under such conditions, facing claims that are unrelated to the business performance of their company, and with complete disregard to competitiveness. Unions are playing a very dangerous poker game, and it is their members who may end up among the losers. Employers will not become unwilling participants in this game.

8. Voting for Negotiated Outcomes

Another practice that is exerting pressure on union secretaries is when their members are asked to vote for a negotiated package. There is sharp trend in cases whereby a package that has been agreed to at the negotiating table is being turned down when it is put to vote. This is very destabilising as management can never be certain that the

negotiations have been closed. In some cases, management will hold back on conceding points in the collective agreement out of fear that the union will invariably come back with fresh claims even after negotiations have been supposedly finalised. Such situations are made worse when there is another union in the side-lines waiting to exploit employee dissatisfaction.

Management is finding it increasingly difficult to negotiate under such conditions. Union secretaries frequently share the same concerns and frustrations. Managers in companies with foreign owners report that the employers cannot understand or accept such situations.

9. Inter-Union Relations

A requirement of healthy social dialogue is that of mutual trust and understanding among the social partners. This statement applies equally, if not more so, within each respective camp. Employers are increasingly concerned about the aggressive rivalry, and conflict that at times borders on animosity, currently prevailing in the union camp. Contrary to what some may believe, this is very bad news to employers. The idiom 'divide and conquer' certainly does not apply in this case.

The situation has deteriorated to the point where the President, H.E. Marie Louise Coleiro Preca, has intervened through a worthy initiative, by setting up the Forum for Trade Unions through the Centre for Labour Studies, to get unions together to agree on matters of mutual interest and resolve their differences. In spite of this initiative and the President's enthusiasm, there are, as yet, no visible results.

There is a dire need for a code of conduct to lay down a set of ethical principles on the way unions conduct their business. The code of conduct could include consensus among unions on a number of issues including:

- Not approaching another union's members while that union is in the process of collective bargaining
- Not procrastinating negotiations with government in order to edge a settlement close to a general election
- Not to entice employees to switch unions with promises of benefits that cannot realistically materialise
- Not to place employees' jobs at risk by making demands driven by self-interest, rather than a reflection of company performance and employees' merits.

This could be an initiative that could be undertaken by the Trade Union Forum.

10. Shop Stewards

The role of the shop steward is a critical one that is meant to act as a communication channel between employees, the union and management. They are also the recruitment pool for unions to develop their section secretaries and officials. Although some of them are up to the task, employers report that an increasing number either take the post because of personal grudges against the company, or else are insufficiently prepared to be involved in industrial relations. It is known that unions do conduct training for shop stewards, but perhaps educational bodies like the Centre for Labour Studies can organise specific – and mandatory - courses for shop stewards to enable them to carry out their job responsibly.

Foreign employers fail to understand the presence of a large number of shop stewards in collective bargaining sessions – in some instances twelve shop stewards. It is high time to put a stop to this archaic practice if we want to project a positive image to foreign investors.

11. The legalistic input

Another worrying trend that is creeping in the practice of industrial relations is an overly legalistic approach. This is evident in the fact that lawyers have practically taken over the Industrial Tribunal, which defeats the purpose why the Tribunal was set up in the first place in 1975. Now, lawyers are being increasingly involved in conciliation sessions, and also in disciplinary cases. In most cases, their approach is procrastination and picking hairs in attempts to dissuade companies from taking legitimate actions. The latest fad is that of issuing prohibitory injunctions to block actions and processes that are run of the mill in industrial relations, such as disciplinary measures or verification of union membership. Such actions, when taken in bad faith, are sending very negative messages to employers.

12. The DIER

This overly legalistic approach has rubbed on the Department of Employment and Industrial Relations. In recent years, the DIER has become more inclined to adopt a rigid, fundamentalist interpretation of employment law which employers are finding unreasonable.

Example 1: an full-time employee returns to work following maternity leave and asks the employer to spread the compulsory post maternity work period over a year at 20 hours a week instead of six months at 40 hours as a family friendly measure. Employer agrees but the DIER says no because the law says specifically that the compulsory period is six months. Result: the employee will have to work a 40 hour week following maternity or else resign and pay back the wages received during the maternity leave period.

Example 2: Dier's position is that an employer cannot claim overutilization of vacation leave during the year if an employee resigns. Result: many companies are either not granting vacation leave which is more than the pro rata entitlement, or else giving it unpaid.

Example 3: DIER is pushing the idea that any hours worked over forty per week have to be paid at overtime rate, even for senior managerial positions (e.g. CEO). This is a very serious issue which will ridicule us with foreign investors if the DIER get their way.

There are more examples related to deductions in wages, sick leave and other matters which have prompted the MEA to propose changes in the Employment and Industrial Relations Act.

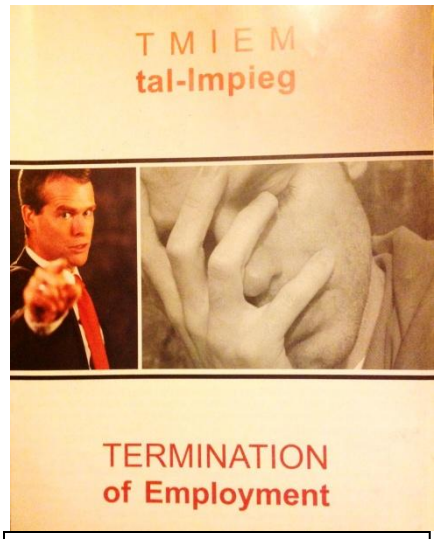
13. The Director of the Department of Employment and Industrial Relations

Most persons involved in human resources management and industrial relations would agree that the post of Director at the DIER is critical in maintaining harmonious industrial relations. The post requires a specific skills set which is not easy to come across or nurture.

As expected of his position, the incumbent director has not always been in everybody's good books all the time, but he certainly has the desired qualities required of the post. He was appointed after two years of shadowing the previous Director of Labour, ensuring a smooth transition in such an important post. His announced imminent removal from the post came as a surprise to many, and will occur at an inopportune time. The fact that there shall be no handover to whoever is taking up the

post does not bode well for industrial relations. The social partners were not consulted about developments in this post.

14. Perceptions of Employers



How the DIER perceives employers. Cover of a brochure distributed to DIER visitors

Media in general project a negative image of employers, giving prominence to any incidents of unethical or illegal practices – even minor ones - whilst ignoring the many positive experiences at the workplace.

The picture on the left is a typical case where the employer is projected as a tyrant, and reflects the mindset of the DIER. Termination of employment can occur for justified reasons as well. This is also reflected in the manner some government officials conduct work inspections.

15. The Blacklisting Regulations

Government has recently issued a set of blacklisting regulations to ensure that outsourced work in the public sector abides with established labour legislation. This is something which the MEA agreed to in principle, since unethical and at times illegal employment practices by a few employers were tarnishing the reputation of the vast majority of companies which provide decent working conditions to their employees.

MEA has been consistently outspoken about this in the past, and will continue in its efforts to ensure that employers respect legislation when they employ people.

16. Pegging of Wage rates for Outsourced Services to Public Sector Collective Agreement Wage Scales

The Association believes that, in respect of outsourcing, government should only insist that suppliers abide by legal obligations. Pegging contractors' wage rates to equivalent public sector salaries can be artificially inflationary and may affect wage determination in the private sector, either through labour market forces or through collective bargaining.

This linkage between wages in the public sector to those in the private sector sets a very dangerous precedent, and might upset wage relativities in many companies.

17. Inflating Qualifications

In some areas in the public sector, qualifications are being used as a pretext to inflate wages, and not because they are necessary to perform particular duties. This is being encouraged by some departments at University and MCAST as a matter of self-interest, and by unions to boost their membership in some segments of the workforce.

For example, initially, the requirements for the post of a Learning Support Assistant were quite basic to attract people to this post. Eventually, qualifications were introduced, together with a commensurate movement up the scales in the public sector. As the relativity between the LSA and a teacher – who, justifiably, has to be in

possession of a first degree in education – narrowed, there is now pressure to raise the qualification of a teacher to a Master's degree level, which will entail a movement up the public sector scales or else some sort of qualification allowance. These moves will affect the dynamics of the entire labour market, both in the public and the private sector. They will raise costs of private sector entities operating in the same sectors (e.g. private schools), and, equally importantly, distort relativities with other professions (nurses, doctors, care workers etc) who will also make claims to restore relativities. Such manipulations are inflating the public sector wage bill to dangerous levels, and resulting in a fall out effect on the private sector as well.

MEA is all in favour of training and development of employees, but finds that imposing qualifications that go beyond the level necessary to perform particular tasks is manipulative and inflationary. Paradoxically, such manoeuvres also diminish the value of qualifications.

18. The ERB Backburner

The topics of union membership and recognition have been brought up and discussed at the Employment Relations Board. Some nightmarish ideas were suggested and are now on the back burner, hopefully to remain. One proposal consists in imposing a 'union recognition fee' through a check-off on employees not belonging to the recognised trade union at a place of work with the resulting funds being passed on to the same recognised union. Employers feel in no uncertain terms that this idea violates the principle of freedom of association, which also entails the freedom of *dis*association. In addition, this will raise resentment and division among employees.

Another proposed innovation consists in the recognition of 'collective bargaining units'. Any number of employees more than seven in a category can be recognised as a separate bargaining unit, and thus opt for a separate collective agreement. Through

this measure, a company that employs 60 persons can theoretically be constrained to negotiate eight different collective agreements.

There is already an alarmingly high incidence of cases being heard by the Industrial Tribunal where unions are claiming representation on this basis. Unions are actively contributing to disruptive fragmentation of representation.

It is hoped that Malta Enterprise is aware of these disincentives that will keep away foreign direct investment!

19. The MCESD

The Association is also concerned about some aspects of the MCESD's operations. Firstly, the MCESD should live up to its name as a consultative body and be more than a venue for presentations by Ministers. Members need to be more proactive and set the agenda themselves. It is hoped that the restructuring report submitted by the social partners is given due consideration.

20. Consultation

MEA has been stating for years that there is a need to consult with stakeholders before implementing measures that will affect them. In the last budget speech, the Minister for Finance announced measures related to the employment of disabled persons which were never mentioned during the pre-budget meetings. Three months later, following repeated requests, employers are still in the dark about how these measures are going to be applied, yet ETC officials are doing the rounds to pressure them to comply. A similar situation prevails with regards to changes in the maternity

leave regulations. Social dialogue should have been conducted months in advance to have a smoother implementation of any agreed regulations.

21. Employment Legislation

The Association has made concrete proposals about the need to re-visit the EIRA to strengthen its effectiveness and address some of its shortcomings. The document has been presented to MCESD and the Employment Relations Board and one hopes for a mature and constructive discussion in the near future, which can include proposals even from the other social partners.

22. The Industrial Tribunal

A good section of the Association's proposals for changes in the EIRA deals with changes to the manner in which the Industrial Tribunal operates. The need to strengthen the Industrial Tribunal has been felt for quite some time, but became more pronounced after the chairpersons were arbitrarily removed following the last elections. As things stand today, employers are generally distrustful of the Industrial Tribunal, and many decisions taken by this institution recently are raising eyebrows. For example, an employee with an SME who was made redundant was given an award of €30k! Another was awarded €208k in a civil court case (Mario Gerada vs Onorevoli Prim Ministru et al 2012). Exhorbitant awards can jeopardise the continued existence of an SME. We should have a system, as they have in Germany, whereby the maximum award should be capped at a maximum of one week's salary for every six months of employment.

Conclusion

We are drawing attention to these issues to prevent an undesireable deterioration of social dialogue and industrial relations in Malta, which could have a negative impact on investment, on employment, on our way of living. **Some of these issues require immediate action, and the most urgent one is that of union recognition.** Employers are fed up of suffering the consequences arising from disputes in which they are not involved. Employers cannot sit around a negotiating table when the agenda of the union is not the welfare of its members and sustainability of the enterprise, but self-preservation by fending off rivals.

Industrial relations, and social dialogue are essential components that determine a country's competitiveness. The issues highlighted in this paper do not just place companies and employers at risk, but equally employees, their families and the rest of society whose standard of living depends on the output of the working population. It is known that many industrialised countries are facing chronic unemployment. What is less known and understood is that the unemployment is not arising because there is no work, but rather because employers are less inclined to take the risk of employing people. In some cases, the risk and pressure of employing people is even greater than that of accessing markets. MEA does not want Malta to end up in a similar state.