



Facilitating the Employment of Foreign Employees in Malta – Recommendations by MEA

Position Paper

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Introduction

This paper is being presented as an outcome of the discussions between employers and representatives from the Employment and Training Corporation, Identity Malta and the department of Police during a seminar entitled 'The Employment of Foreign Workers in Malta' which took place on the 16th March 2016. During this seminar a number of issues were raised by the employers present and in the concluding remarks it was mentioned that MEA will engage in further discussions with its members to present a set of recommendations to facilitate the processing of applications to employ third country nationals in Malta.

Background

An emerging characteristic of the labour market in Malta is the rise in the number of foreign employees. Over the past decade, there has been a consistent trend of an increased demand for labour which is being matched by a surge in female participation, later exit from the labour force, and an influx of foreign workers. Recent figures by ETC place the figure of foreign employees in Malta - from the EU and TCNs - at 27k, which would translate at approximately 13% of the total labour force. This represents a dramatic change over the years as the corresponding percentage a decade ago would have been in the region of 5%.

During the seminar of the 16th March, many employers stated that there is a shortage of labour in Malta, in spite of the increased activity rate. Another emerging factor is that whereas previously labour shortages occurred mostly in specific sectors, some of which are prone to seasonal fluctuations in demand for labour (e.g. tourism), currently the shortage of human resources has spread to practically all sectors of the economy. In fact, the participants for the seminar came from a wide cross section of economic sectors, ranging from construction to manufacturing to financial services.

Although freedom of mobility within EU countries provide many companies with automatic access to labour from EU countries, the demand for TCNs has also increased, although not by the same rate as that for EU nationals. Currently there are about 8k TCNs working in Malta, representing 4% of the labour force. In 2010, this figure stood at 3.7k. These are official figures, and the amount of TCNs engaged in the black economy is unknown.

Employers in general find that the process of engaging TCNs is too bureaucratic and is hindering them from accessing much needed human resources to achieve their organisational objectives. Although Identity Malta projects itself a being a one stop shop for employing foreign employees, the experience of many companies shows otherwise as they still have to consult with numerous government departments to be able to source foreign human resources. For example, employers in the hotel sectors mentioned that even the Malta Tourism Authority may be involved in the process.

MEA's Position

The Malta Employers' Association's position, as expressed during the seminar, is that there is a need to steer away from a protectionist approach to labour market policy. The general feeling among employers is that the process of employing TCNs is purposely bureaucratic to dissuade companies from seeking to employ TCNs in favour of Maltese nationals. The Association deems this to be counterproductive for a number of reasons.

Firstly, the economy stands to benefit from the input of foreign workers. This does not mean that we should be open to anyone seeking employment and citizenship in Malta, but *controlled migration* can contribute to economic growth directly through productive employment and additionally through the consumption of demand of goods and services in Malta. A number of sectors - e.g. property, entertainment - are

experiencing increased business because of the presence of foreign employees in our country.

Secondly, the perception held by some that foreign employees are taking jobs away from Maltese nationals is incorrect. Companies have constantly demonstrated that in the vast majority of cases, labour shortages abound in areas where there are no Maltese job seekers. This was the situation even during the years of international economic recession and it still prevails now to a greater extent than before. This results from a low unemployment rate and from the fact that many Maltese are not interested in working in certain sectors like construction and agriculture. In general, the unskilled segment of the labour force would much rather work in the public sector. This is evident by the fact that, in spite of the prevailing low unemployment rate, there are thousands of applicants for public sector posts, many of whom already have jobs in the private sector.

Thirdly, Malta's economic growth should not be limited by a scarcity of human resources. Our productive output depends on the efficient utilisation and availability of human resources. The expansion of some sectors, services sectors in particular, depends directly on accessing labour from other countries. The employment of foreign labour is not an option, but a need. At enterprise level, companies cannot manage their enterprises efficiently with labour shortages, and may actually lose business when this occurs to the detriment of Maltese employees as well.

Most employers want to employ foreign nationals legally. They want their employees to be registered and to be given jobs in accordance with national legislation. The Association and its members do not promote, nor support illegal employment practices, but in certain circumstances both companies and employees are not being left with other options due to the current cumbersome system. Illegal employment also results in lost revenue to government in terms of social security contributions and taxation. This is the main reason why the Association emphasises that there is a need

for simplification and faster processing of applications for TCNs' working permits to enable our economy to reach its full potential.

Objectives

The recommendations below are based on the following five objectives in the processing of employment permits:

1. **To reduce the average processing time to an average 4 weeks (plus or minus one week)**
2. **To establish a one stop shop for processing of work permits**
3. **To remove repetition of work in extension of VISAs**
4. **To simplify the labour market test to employ foreign employees**
5. **To minimise the administrative burden on employer and employees**

These recommendations are being submitted in full understanding that work permits for TCNs cannot be issued instantaneously, and that an acceptable level of bureaucracy is necessary for security and regulatory interests.

Objective 1: To reduce the average processing time to an average 4 weeks (plus or minus one week)

1.1 Establish cost of delays in issuing permits

Delays in issuing permits is resulting in considerable loss of revenue in terms of individual and corporate taxes, and it is forcing many to seek employment in the informal economy. It is proposed to conduct a study to determine the extent of lost revenue resulting from excessive bureaucratic procedures in issuing permits to TCNs.

1.2 Identify Skills Shortages in Different Industries

An analysis of skills shortages in the different local industries may justify the creation of an exemption list for industries so that will not need to go through the whole process, especially in areas where there is proven shortage of skills even within the EU. This will address areas in immediate need of human resources and free additional resources within Identity Malta to work on permits required by other sectors.

1.3 Role of Roaming Consuls

Identity Malta should explore the possibility of having Roaming Consuls to facilitate VISA permits in countries where either Malta is not represented or the sheer size of the country makes it impossible for individuals to reach consulates.

1.4 Use of Blue card

There should be full implementation of the Blue Card (Council Directive 2009/50/EC) in order to facilitate the immediate eligibility of TCNs to start working in Malta once they possess a blue card. Currently, employees have to wait for the identity card to be issued in order to work, even though they have the blue card. In some cases this process takes months, creating hardships for workers who would have to sustain themselves and, in some cases, their families without any income. This is one factor which is pushing such persons to work illegally.

1.5 Blacklisting companies making false declarations

MEA has consistently condemned abusive work and employment practices. Companies making false declarations or bypassing the system create unfair competition on legally binding companies. They also place extra work and pressure of the respective authorities which results in delays of permits on legal binding companies. Such companies should be blacklisted when applying for work permits.

1.6 Streamline Application Forms

Application forms should be revised and re-structured to avoid useless processes. There is no reason why a company duly registered with the VAT, IRD, MFSA, ETC etc... should need to present Memorandum and Articles, and other certificates for every application. The registration number with the MFSA should be sufficient to satisfy all these requirements.

1.7 Health Checks

Currently, it is reported that health checks for TCNs applying to work in Malta can only be held at the Qormi polyclinic. This service should be extended to other clinics to avoid delays.

1.8 Accommodation Address

Applicants should be allowed to state the company as a contact address, in agreement with their employer, as most would be staying in temporary accommodation, such as hotels, during the first four weeks of employment until they find adequate accommodation.

1.9 The Letter of Intent

Applicants seeking a work permit are frequently asked to produce an employment contract as part of the process, when such contracts cannot be issued before the permit is granted. This should be revised and a letter of intent will be sufficient for work permit processing purposes.

1.10 Employment Stability

Enable a more reasonable approach to permits. Once it is ascertained that a person joined the labour market to fulfil a proven local shortage, than the person should have peace of mind in regards to continuity for him/her and his/her family and not the annual suspense of renewal. This is preventing applicants to consider Malta as their base as they cannot afford such uncertainty in their career.

1.11 Number of applications

Currently employers may only submit applications for five employees at any one time. This practice should be removed and employers would be able to apply for any number of permits which in any case would still be up to Identity Malta to issue.

1.12 Provisional Permits

In special circumstances, for example the need for a highly specialised professional under short notice, Identity Malta should have the structure to grant provisional permits.

1.13 FAQs

The Identity Malta web-site should have a section with a list of FAQs to enable applicants to understand the process better and to avoid having different officials providing different answers to standard questions.

1.14 Health Insurance

Identity Malta should consider creating a health insurance structure to allow applicants to have a temporary insurance whilst their application is being processed. This will be stopped once the N.I. starts being paid, instead of having them pay the insurance for the whole year, as is currently the case.

Objective 2: To establish a one stop shop for processing of work permits

2.1 An Online Application System

The entire application process can be packaged into an online system whereby both employers and individuals interested to work in Malta may apply for a work permit and submit all documentation and payment required.

The online application should have guidelines for applicants indicating all documentation and timelines related to processing of applications.

Foreign applicants seeking employment in Malta would be able to use the online application to start the application process prior to leaving their country.

2.2 Tracking System

This system may include a reference number for each application which enables applicants to monitor the progress of their application. The tracking system could include an automatic notification process to keep clients informed.

2.3 Location of Services

Apart from the above it is being recommended that all ancillary services including Identity Malta, MQRIC, etc. should be located in one building. Although the online application process will reduce the need to visit physically the various departments, it would help to coordinate their activities better.

The same applies for web sites. Information related to work permits is fragmented and scattered among various departments. (ETC, Identity Malta, Home Affairs etc). The information should be collated on one website to serve as the sole point of reference for work permits.

2.4 Renewal of Work Permits

Renewal of work permits could also be done online and the process should be simplified once the necessary background checks have been done at initial application stage.

2.5 Sectoral Officers

Identity Malta may establish sectoral officers to cater for specific industries – e.g. Hospitality, Manufacturing, Financial Services. These will serve as a contact point for employers and may be changed from time to time depending on the prioritisation of different sectors. For example, if there is an urgent need to address labour shortages in the health sector, a desk would be set up for this purpose.

Identity Malta may consider allocating case officers for newly set up companies requiring considerable TCN workforce or existing companies with requirements of more than 30 persons. Needless to say, such cases will still be subject to the labour market test.

Objective 3: To remove repetition of work in extension of VISAs

3.1 Elimination of Duplication

Employers and employees are frequently confronted by duplicated work which lengthens the whole process. A clear example is that when a TCN is already in possession of a valid VISA (e.g. Tourist VISA) the same person would have to start afresh the security checks to become employed. If security checks are done before a person is allowed to transit into a country irrespective of the reason of visit, there is no need to repeat such procedures.

For renewals, a declaration from the employer, confirming that all information remains the same should suffice. Should any information relating to the individual have changed (e.g. home address), then this could simply be listed in the declaration.

The same applies on renewals of VISA permits. A person might be asked to provide a police conduct from Malta if he/she was residing in Malta but certainly there is no need for the security process to start afresh. If there are reports from international authorities (e.g. Interpol) about particular individuals, the police would not wait for a renewal but would take action immediately irrespective of whether they are TCNs, EU citizens or Maltese.

This would be facilitated through the online process.

3.2 VISAs for Dependants

Renewal of (visas) stay for dependants should be facilitated as much as possible when same dependant reaches the age of 18 years, particularly if already residing

with the main VISA (resident) holder. Needless to say all the security checks would still need to be verified.

3.3 Validity of VISAs

It should be considered to grant VISAs for a longer periods, e.g. 2 years or more. This reduces administration costs and unnecessary burdens on employers and their foreign employees, especially if employed by the company for a long time. In some countries (pilots in Germany), this is extended to three years and the VISA process is simplified significantly for renewals.

3.4 Change in Job Title

In cases where a TCN employee is changing job in Malta or given a promotion or change in designation, there should be no reason for a fresh application, given that most of the research would still be valid.

3.5 Foreign Students

Some Foreign (e.g. ITS) undergoing study in Malta find it extremely difficult to work locally after having studied here. In such cases the process should not start afresh as much of the information will already be available. There are cases where foreign students have accepted job offers but later refuse because of the complicated process.

There are reports of Maltese companies who have lost business opportunities by offering training to foreign employees because the processing of permits is excessively bureaucratic.

Objective 4: To simplify the labour market test to employ foreign employees

4.1 Reasonable Parameters

Labour market requirements have to be reasonable and need careful revision. For example, it has been reported that for a cleaner to work in Malta, three years' experience are required! Why is this necessary when many cleaning companies provide training locally?

4.2 The Wider Context

Labour market tests have to be considered within the overall prevailing context. It is reported that more than 200 persons applied for an IT job in a parastatal company, but companies in the private sector barely receive a handful of applications for similar positions. If the public sector is draining human resources from the private sector, companies have no option but to resort to foreign labour.

Some labour market shortages may emerge as a result of shortage of specific skills which are not being taught in our educational institutions. This carries the threat of structural unemployment in times of falling labour demand.

4.3 Facilitate MQF Processes

The accreditation of qualifications through the Malta Qualification Framework should also be simplified, although it is acknowledged that establishing recognition of professional qualifications is not always a straight forward process.

4.4 Exemptions

In sectors with an obvious and immediate shortage of labour, Identity Malta, in consultation with ETC, should issue temporary exemptions.

4.5 Abolish the 'Black Friday' at Identity Malta

Identity Malta should work towards better integration of all nationalities and abolish what is informally termed as the 'Black Friday', which refers to a system where migrants can only go to identity Malta on a Friday.

Objective 5: To minimise the administrative burden on employer and employees

5.1 Tax declarations

Employers have to fill in (by hand) 12 months' worth of tax information for both the employer and the employee, then get it signed by Inland Revenue, before submitting the renewal application. All this information should already be in the local authorities' system under the individual's tax number. There is no need for this part of the process.

5.2 Tax deductions

A serious disincentive for foreign workers is that those working for six months or less in Malta are subject to a 20% flat rate deduction. Many turn down jobs for this reason.

In addition, employers are being charged to pay outstanding balances to the IRD when employees who have left the country owe money to the tax man.

5.3 Consistency between Departments

Employers currently experience lack of consistency between departments, as well as people within the same department. For example, sometimes companies are told that paid adverts are a requirement, other times website advertising suffices. Such lack of consistency can be confusing and frustrating. As mentioned above, a well-manned website eliminates this grey area of uncertainty.

5.4 Changes in the Process

The process is constantly being updated without informing the stakeholders, and employers only get to know by chance when they re-submit an application, resulting in waste of time and effort. An example is the recent decision to replace the need for landlords to provide a copy of identity cards. This sort of information is crucial, as subsequent applications will get held up due to the lack of knowledge. This could easily be rectified by updating their website with such changes and informing current applicants. Ideally, identity Malta should have a database to notify employers of anything being uploaded to their web site. So, for example, if a new form is launched, or if there's a change in the process, the website is updated accordingly, and an email is automatically sent to all those registered, informing them of the change. It would only take 1 click of a button for Identity Malta, and save employers (employees) considerable wasted time.

5.5 Accommodation agreements

Due to the requirement of having a copy of the lease agreement (residential property), a person has to have rented out a place before application. This normally requires the employer to take the risk of a minimum 6 month rent. Employers should be able to provide alternative accommodation addresses for a temporary basis e.g. hotels.

5.6 The Blue Paper and Mobility

When an application is submitted, the applicant is provided with a receipt – also known as the blue paper which allows him/her to reside in Malta (and continue working in the case of renewals), until its expiry date.

Should it expire before the permit is issued, an extension is granted, and this keeps getting extended until the permit is finally issued. However persons who need to travel are not allowed to leave the island unless their permit (id card) is issued. This means that if the permit takes 3, 4, 6 months to be issued, these people are stuck in Malta. There have been cases where employees needed to leave to visit a dying relative and were marooned in Malta because their permit took more than four months to be renewed. In such circumstances they should be allowed to go back to their home country and return to Malta using this blue paper.

5.7 Identity Malta opening Times

Identity Malta should consider extending their opening times from the current half days to be more accessible to clients. However this may not be necessary if efficiency is increased through modern online accessibility.

5.8 The Appeals Board

The Appeals Board for declined work permits needs to meet more frequently to decide within a short time frame in order that employers may know their situation and plan accordingly. Employers report that appeals are taking months to be heard.

Conclusion

This position paper addresses the numerous concerns by employers when employing foreign workers, particularly third country nationals. In a country where economic growth depends on an increase in both demand and supply of labour, the management of a cosmopolitan labour force is a requisite for economic expansion. Management in this case implies being selective in the skills that are imported, safeguarding the security of our country and maximising efficiency and output of the labour force. In addition to the recommendations in this paper, it is of paramount importance that besides being more organised in attracting and processing applications to work in Malta, we have to be equally vigilant to ensure that the situation is under control, and that we do not end up with a segment of society that operates below the radar through illegal means. There is a need to keep track of the whereabouts of individuals who, for a number of reasons, may not have had their permit renewed and are still on the island. Illegal employment can be countered by adequate enforcement, but a more effective means of reducing it is through creating of an enabling infrastructure that prevents situations whereby companies and individuals are left with no other option than to break the rules. Identity Malta plays a critical role in the generation of such an infrastructure, and, in an economy where the number of TCNs is expected to increase, is expected to respond more to employers' needs for our country to realise its economic potential.