

MALTA EMPLOYERS' ASSOCIATION

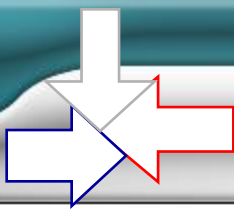
L.N.44 of 2012

Employment and Industrial Relations Act

Employment Status National Standard Order 2012

Presentation by
Mr. Joseph Farrugia
Director General
Malta Employers' Association

16th February 2012

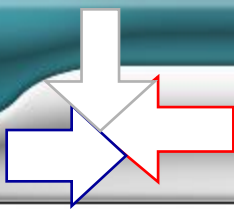


L.N. 44: A Background:

- Debate about dependent self employment at EU Level
- Concern about atypical work and precarious employment
- The 'two tier' labour market

Malta:

- Media blitz about precarious employment
- Unions, Civil Society, Political parties, Church authorities, opinion leaders
- A negative public image of employers



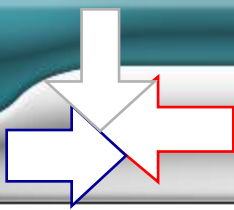
Definition of Precarious Employment:

ILO definition:

EU definition:

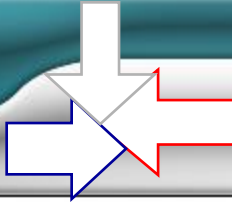
Hitch Hiker's Guide to the Galaxy Definition:

ANSWER : NONE



- Precarious employment is associated with: Atypical Work, Low paid Work, Illegal work practices, black economy, menial/obnoxious work, work done by illegal migrants – But what is it exactly?
- Different parties use the most convenient definition in particular circumstances to make a case for stricter labour market regulations. THIS IS WHAT HAPPENED WITH THIS LEGAL NOTICE
- Who is Fuelling this Hysteria ?

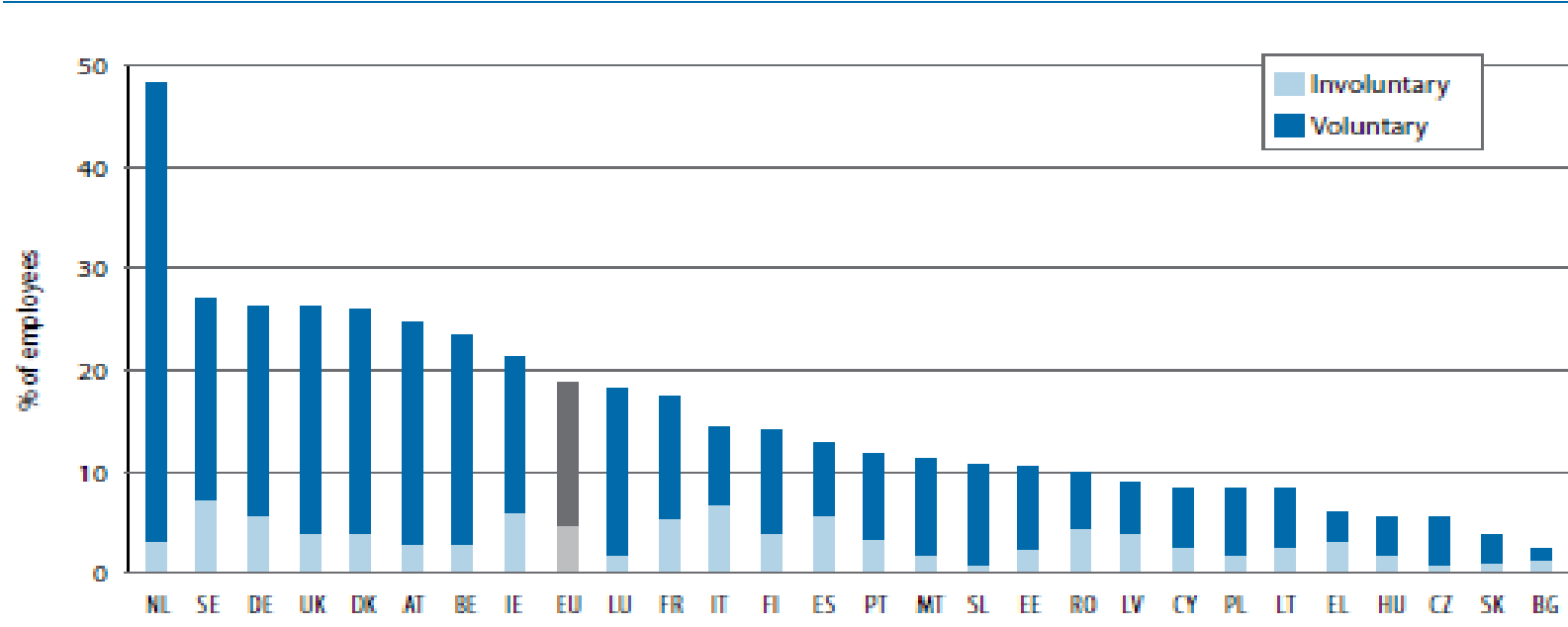
Answer: **EMPLOYERS**



The Maltese Labour Market – Some Facts

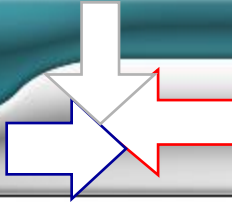
Fact 1: Part Time Employment

Chart 7: Part-time employment across Member States, 2009⁽¹⁾



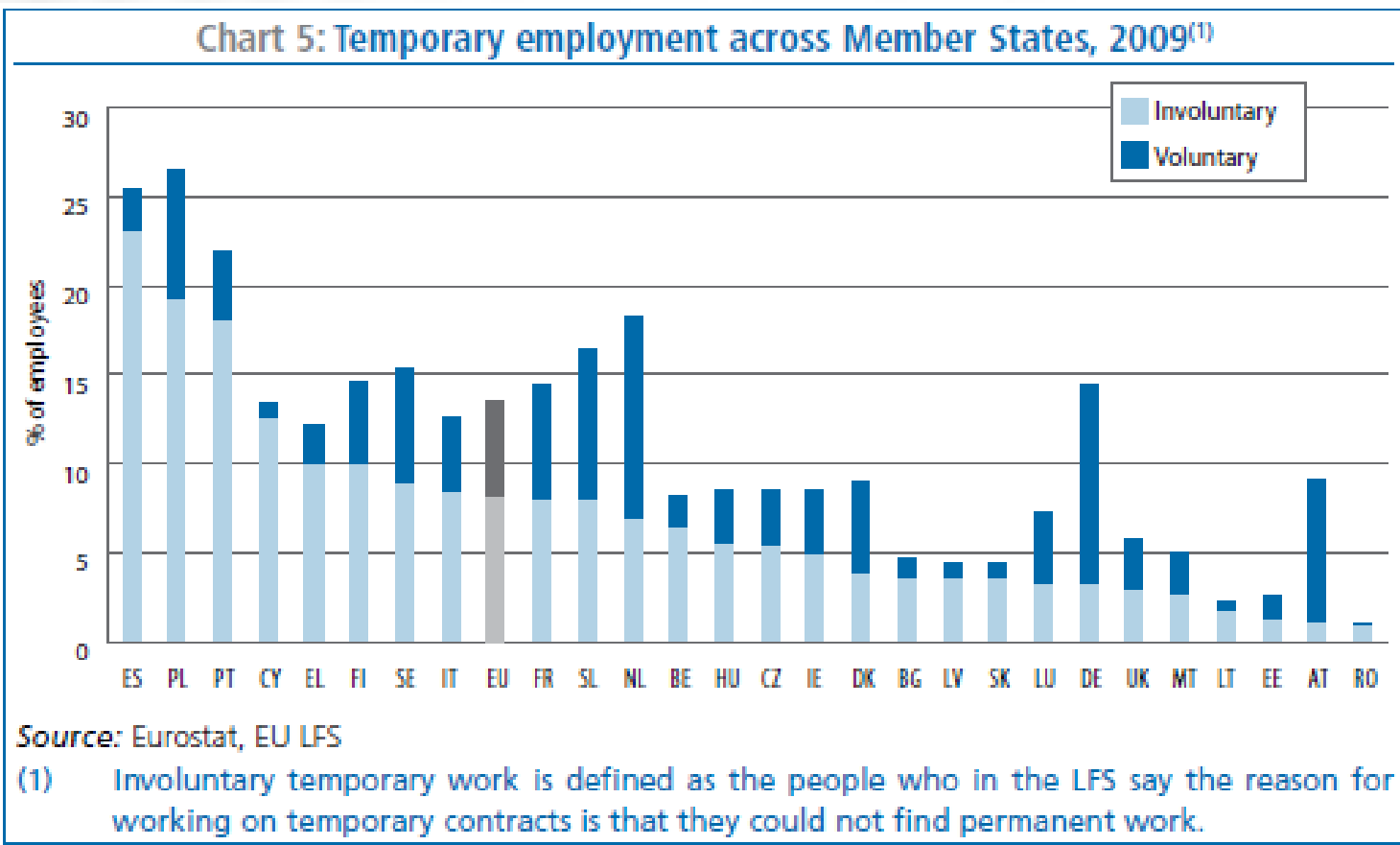
Source: Eurostat, EU LFS.

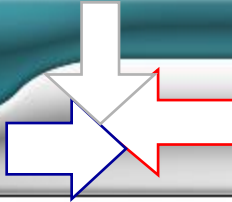
(1) Involuntary part-time work is defined as the people who in the LFS say the reason for working part-time is that they could not find full-time work, despite wanting to.



The Maltese Labour Market – Some Facts

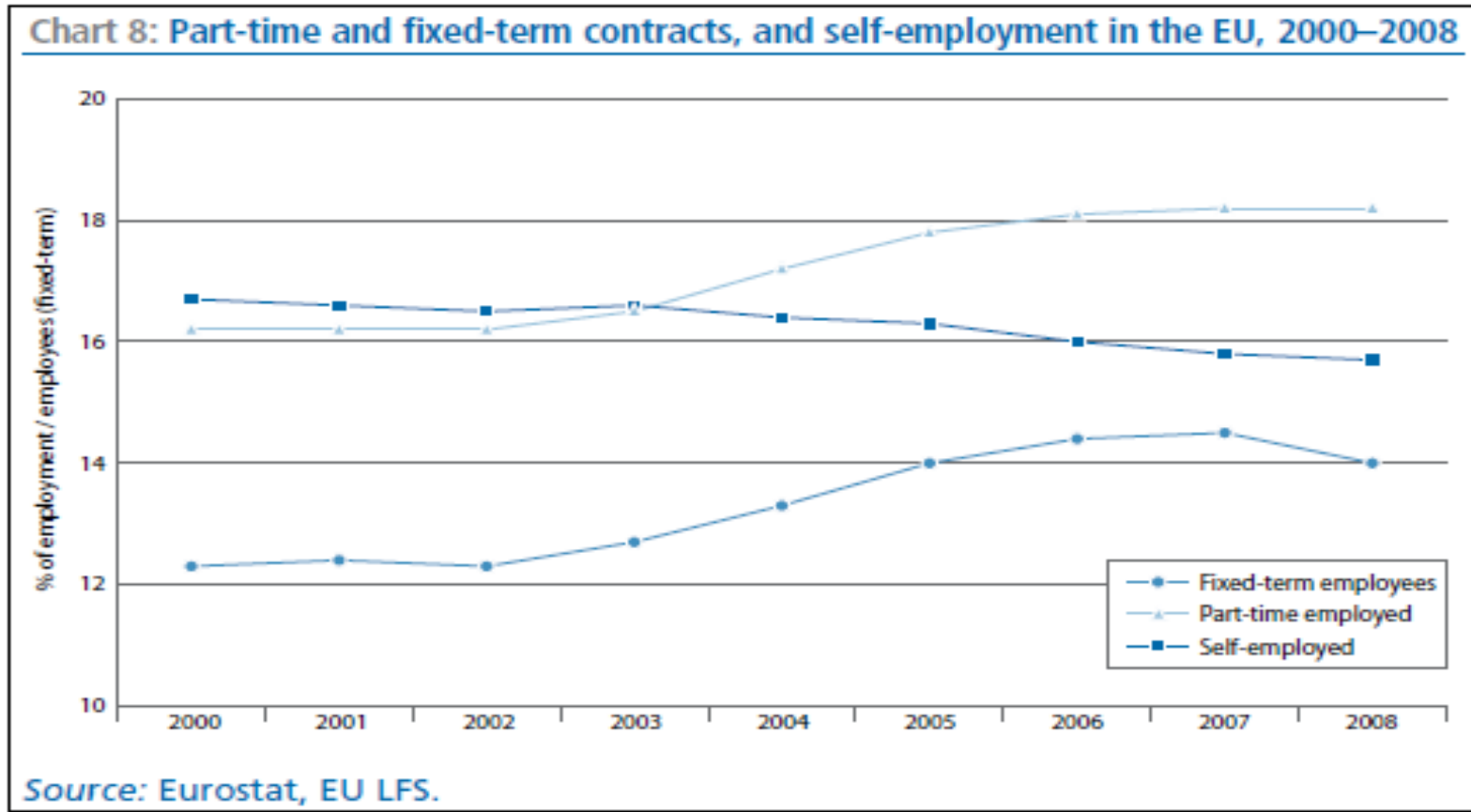
Fact 2: Definite Period Contract Employment

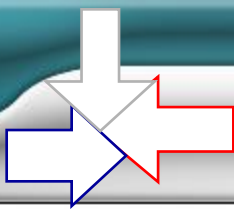




The Maltese Labour Market – Some Facts

Fact 3: Self Employment in Malta

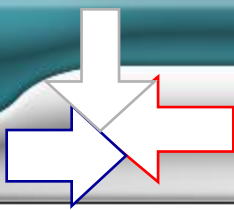




The Maltese Labour Market – Some Facts

Fact 3: Self Employment in Malta (2)

2000	11.8%	
2001	11.2%	
2002	11.2%	
2003	11.5%	
2004	11.8%	
2005	11.8%	
2006	11.8%	
2007	11.8%	
2008	12.0%	
2009	12.3%	Average EU 27: 16%

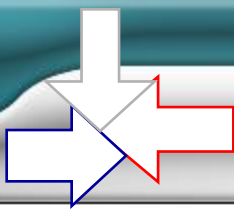


The Maltese Labour Market – Some Facts

Fact 4: Abuses by Employers DO occur

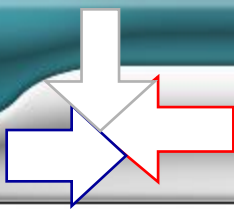
- Disguised self employment
- Black economy
- Allegations of kick backs
- Dodgy part time contracts
- Payment for overtime hours

- Correction: abuses by ***a small minority*** of employers do occur.
- There are NO STATISTICS that effectively measure the extent of abuse, nor has there been any attempt to derive any data on which to design a reasoned instrument.
- Legislation should not be based on anecdotal evidence.



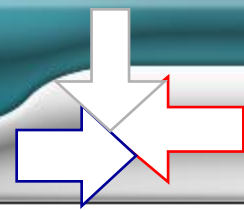
Salient Points of Legal Notice 44:

- It seeks to remove the grey areas between employment and self employment
 - It sets a list of criteria against which a self employed person can be considered to be an employee
 - Persons who are not deemed to be self employed will be considered to be 'whole time' employees with comparable conditions of employment
 - Director of Labour has discretionary powers to exempt a self employed person from being considered an employee
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- The legal notice is up for revision after 1 ½ years

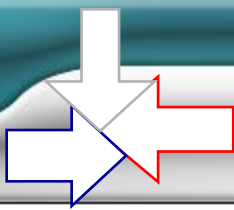


Art. 3.1

‘when considering the employment status of a person who is nominally self employed and is *prima facie* not considered as an employee, it shall be presumed that there is an employment relationship and that the person for whom the service is provided is the employer..’



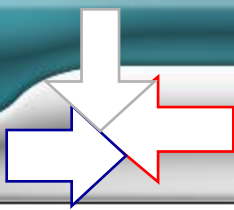
- The eight criteria:
- (a) he depends on one single person for whom the service is provided for at least 75% of his income over a period of one year;
- (b) he depends on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;
- (c) he performs the work using equipment, tools or materials provided by the person for whom the service is provided;
- (d) he is subject to a working time schedule or minimum work periods established by the person for whom the service is provided;



The Eight Criteria – Continued:

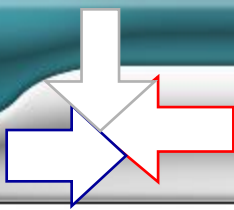
- (e) he cannot sub-contract his work to other individuals to substitute himself when carrying out work;
- (f) he is integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;
- (g) the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided, and
- (h) he carries out similar tasks to existing employees, or, in the case when work is outsourced, he performs tasks similar to those formerly undertaken by employees.

If 5 of these criteria apply, the person is considered to be an employee

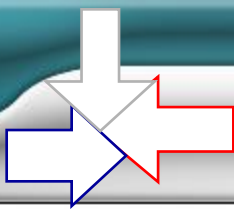


Exemptions:

...any person in a relationship which would by virtue of the presence of such criteria be automatically considered to be an employment relationship may, before entering into such a relationship, submit a written request to the Director to exempt such a relationship from being considered to be an employment relationship and the Director may exempt in writing that relationship if it is considered that there are particular grounds relating to that activity to exempt it from this requirement...



...in the case of relationships established before the coming into force of this Order, the person concerned shall have a **period of six weeks** from the said entry into force to make such a request in respect of such a relationship. (date of effect of L.N.: 31st January 2012)

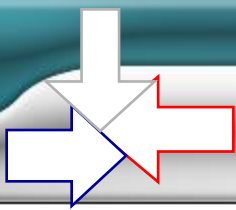


Article 4:

- Persons who are considered to be employees will have an indefinite contract period from the date of the initial continuous provision of services
- Date of employment shall be the date of the first contract unless there was a break of six months between successive contracts
- Unless proved otherwise, there shall be no probation
- Hours shall be considered to be comparable to that of a comparable whole time employee

Article 5:

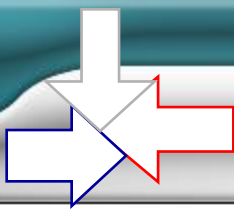
- Wages shall also be that of a comparable employee, or, in the absence of a comparable employee, the same wages provided as part of the self employed conditions
- Other conditions: comparable to whole time employees or as provided by the WRO



- Any penalty clauses in the self employed contract will be null and void if this is converted into a contract of employment

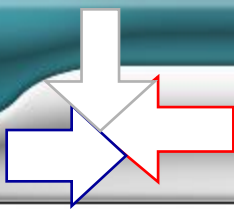
Art 7.: ... the employer shall be bound to give or send to the employee a letter of engagement or a signed statement, which shall include the information laid down in the Information to Employees Regulations 2002.

If there is disagreement and the employee leaves employment as a result, s/he can take the case to an Industrial Tribunal (within four months employee became aware of infringement : art.12)



Article 8: A contract of service or employment can only be turned into a contract for service after approval by the Director of Labour.

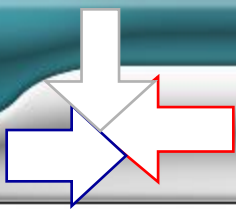
Art 9: Unless otherwise expressly stated, nothing in this Order shall be interpreted as conferring on employees the right to carry with this status benefits which are particular to their previous self-employed relationship.



Art 10: **Public sector employment:** ‘... nothing in this Order shall confer a right to any person to consider a relationship between a person providing a service and the public sector or service for whom the service is provided to be an employment relationship’. : *the intention is to prevent abusive employment practices by engaging self-employed persons to circumvent public sector employment procedures.*

But:

- matter may be taken to an Industrial tribunal
- Fine: a week’s wages for each year or part thereof

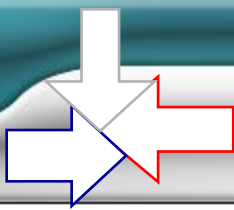


Article 11: self employed person has a right to a written statement to explain any differentiated treatment with regular employees.

- This has to be submitted within 21 days from request.
- Written statement shall be admissible as evidence in any proceedings

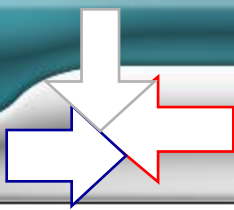
Article 12: Self employed person has the right to take the matter to an Industrial tribunal within four months since s/he became aware of any alleged infringements

Art13: FINE: not less than €1000 in respect of each contravention.



Conclusions:

1. There is no accepted definition for precarious employment
2. Malta has a lower incidence of part-time, fixed term contract workers and self employed than the EU average
3. Abuses by some employers are being used as a springboard by governments and unions to impose tighter labour legislation
4. If you have any cases of contracts with self employed persons who may satisfy the criteria mentioned above, contact MEA or the DIER



Thank you