

MALTA

Jean-Pierre Gauci²³²



Institutional and Policy Framework for Admission and Employment

Malta has adopted a restrictive policy with rather stringent conditions being applied for the issuance of employment licenses (work permits) to third-country migrant workers. The Ministry for Justice and Home Affairs is responsible for migration-related matters, and the issuance of employment licences and conducting of labour market tests are under the competency of the Employment and Training Corporation (ETC) under the Ministry for Education, Employment and the Family.

The employment license is issued upon application by and in the name of the prospective employers and upon the satisfaction of the labour market test by means of establishing the lack of Maltese or other EU Nationals²³³ capable and willing to take up the job.²³⁴ If a job-seeker was not deemed suitably qualified and/or experienced in the job, the ETC will not issue the licence. There are, however a number of exceptions to these criteria, and some of these apply to a large share of Malta's migrant population (Table I).

²³² Jean-Pierre Gauci is a Director of the People for Change Foundation. The report is based mainly on desk research and some qualitative interviews. Experiences collected by the People for Change Foundation for other purposes have also informed the drafting of this report.

²³³ While the EU Nationals still require a license, this is issued automatically and without delays. No labour market test is applied.

²³⁴ These vacancies are notified to all registered job seekers who might apply for the post. They are also displayed on the ETC's website (<http://www.etc.gov.mt/site/page.aspx?pageid=2008>) and on the EURES Malta website (<https://www.eures.com.mt/>).

Table 1: Main provisions on employment licences, by migration category.

Category	Subject	Duration
Non-EU workers		1 year
Asylum-seekers	Application and issuance to the employer	6 months
Rejected asylum-seekers		3 months
Refugees		
Temporary humanitarian protection	Application and issuance in the individual's own name	1 year
Subsidiary protection		

Source: Own elaboration based on the relevant legislation.

Refugees and people with temporary humanitarian²³⁵ or subsidiary protection²³⁶ are issued work permits in their own name, which are valid for up to one year and are renewable upon application. With regard to the latter group, the regulations make access to the labour market “subject to labour market consideration”.²³⁷ In practice, however, no labour market test is being applied.

Asylum-seekers and rejected asylum-seekers can receive work permits if these are applied for and issued to their employer. These permits are renewable issued for up to six months for asylum-seekers and for up to three months for rejected asylum-seekers. The labour market test is not being applied to these categories either.

Long-term residence status may be granted to the third-country nationals who have resided legally and continuously in Malta for five years immediately prior to the submission of the application. Such status ensures equal treatment with nationals in the labour market.

A number of categories of migrants are excluded from the possibility of being granted long-term residence status, such as foreigners who are in Malta to pursue studies or vocational training, or on the basis of some form of international protection (including refugees), and temporary migrants such as au pair or seasonal workers, or posted workers.

In practice, access to long-term residence is made difficult by restricting the number of possible renewals of working licences to three, which amounts to a maximum of four years, one year short of the five-year requirement. Afterwards, the process would need to start again, a new employment licence being issued, which complicates access to long-term residence. Moreover, excluding protected persons from the remit of the regulations implies that many people who would fulfil all other criteria are effectively denied the possibility of making their status permanent and ensuring that their integration efforts are not wasted.²³⁸

²³⁵ This form of protection does not emanate from the Law but is granted by means of a government policy. The policy document provides that beneficiaries thereof shall be entitled to the same rights as those enjoying subsidiary protection granted under the strength of the relevant legal provisions.

²³⁶ Definitions of these forms of protection are beyond the scope of the present research but may be found in Article 2 of the Refugee Act, Chapter 420 of the Laws of Malta

²³⁷ See in particular Article 14(b)(iii). This implies the requirement of undergoing the labour market test.

²³⁸ Proposals in this regard at a European Level found resistance from the Maltese government and were, in fact, shelved.

Family reunification is applicable if the sponsor is holding a residence permit valid for at least one year, and has reasonable prospects of obtaining the right to permanent residency. Hence, asylum-seekers and people under the temporary or subsidiary forms of protection are explicitly excluded²³⁹ from this provision. As a rule, a person must reside in Malta for at least two years before family reunification. Refugees must fulfil the same criteria as any other third country national to qualify. When family reunification is granted, the family members shall be entitled, in the same way as the sponsor, to inter alia access to education, employment and self-employed activities as well as vocational guidance, initial and further training and re-training.²⁴⁰ However, exemption from the labour market test does not apply to family members within the first 12 months of their arrival.²⁴¹ Children of migrant workers are entitled to free tuition in state schools.

Students with residence permits are given limited access to the labour market. Provided that they are in possession of an employment licence (which is to be issued only if the issuance thereof will not have adverse effect on the labour market), students are entitled to work for a maximum of ten hours a week.²⁴² This right, however, does not apply within the first year²⁴³ of residence and access to the labour market is therefore delayed.

In practice, migrant categories with the requirement of the employer's application are placed in a position where they are vulnerable to exploitation and irregular work, as employers find it easier and less bureaucratic to recruit people without the licences. Moreover, the fact that the employment licence in the case of asylum-seekers, rejected asylum-seekers and third-country nationals is linked directly to their employer and the particular job, severely restricts prospects of job mobility.

The concern for job security is especially felt among migrant workers. The employment licence is valid for one year and each year the labour market test needs to be repeated. In the case of a job loss, the employment licence and the residence permit are immediately terminated.

Institutional and Policy Framework for Integration

The institutional framework for integration in Malta remains weak and centres mainly on the Ministry for Justice and Home Affairs which is responsible for migration-related matters. The Employment and Training Corporation (ETC) under the Ministry for Education, Employment and the Family is responsible for labour market measures in general. The National Action Plan on Social Inclusion that provides for measures on the integration of third-country nationals is issued by the Ministry of Social Policy. The functions of the Agency for the Welfare of Asylum-Seekers include provision of information programmes to its clients in various spheres including employment and facilitating access to the relevant public entities, including the services of ETC.

²³⁹ Regulation 3(2)

²⁴⁰ Regulation 15

²⁴¹ Proviso to Regulation 15(b) quoted above.

²⁴² Limit set through Regulation 11.

²⁴³ First Proviso to Regulation 11.

Moreover, ETC has recently appointed a manager responsible for migration issues. Similar positions were also created within other bodies such as the Ministry of Health.

At the time of writing, Malta does not have an integration policy, neither do concrete plans for its adoption exist. However, there are several policy and quasi-policy instruments²⁴⁴ that refer to the integration of migrants into the Maltese labour market, but they are limited in scope and apply exclusively to beneficiaries of international protection.

The only formal policy document “Irregular Migration, Refugees and Integration”, acknowledges that allowing beneficiaries of protection access to the labour market is necessary in order to ensure integration and independent living. In order to achieve this, it proposes that those working with a valid work permit²⁴⁵ should have the same employment rights and obligations as Maltese nationals, and that the government and NGOs should collaborate in identifying suitable job opportunities.²⁴⁶

The Multi Annual Programme²⁴⁷ of the European Refugee Fund, on its part, recognizes the importance of integrating beneficiaries of protection into the labour market and acknowledges that many of the integration programmes organized within open centres have had this as their primary objective. Moreover, it supports the view that ‘vocational and language training is continuously required to facilitate access to the labour market’.²⁴⁸ It also acknowledges that the lack of child-minding facilities for women with children is proving to be a stumbling block for this vulnerable group.

At the same time, none of the operational objectives²⁴⁹ set out in the Programme deal directly with labour market integration. Some of the objectives, such as language training and facilitating informal integration have an impact on access to the labour market. However it is unfortunate that measures aimed directly at improving and promoting such access are not prioritised.

The National Action Plan on Social Protection and Social Inclusion²⁵⁰ for 2008-2010 identifies irregular migrants²⁵¹ as a target group at risk of exclusion and therefore proposes relevant measures, such as increasing the employability of refugees through the setting up of a refugee advisory service.²⁵² More effective use of detention periods²⁵³ by, inter alia, improving opportunities for vocational training and education (including English language courses) as well as the provision of information on rights

²⁴⁴ In this context, this term refers to instruments which are not formal policy documents but which can provide a clear indication of policy direction.

²⁴⁵ The wording of the policy excludes from this ‘equality’ of arms, issues of access to the labour market per se.

²⁴⁶ These are the elements of the policy document which remain valid and applicable as the rest of the provisions have become outdated due to changes in the ministerial portfolios.

²⁴⁷ Available at: http://www.mjha.gov.mt/eu/documents/erf_map.pdf

²⁴⁸ Page 14.

²⁴⁹ The MAP sets out 13 operational objectives.

²⁵⁰ Available at: http://www.msp.gov.mt/documents/msp_nap_inc_2008_2010.pdf

²⁵¹ This is a mistaken nomenclature considering that most of the provisions relate to beneficiaries of international protection.

²⁵² It is unclear whether the plan seeks to address only recognized refugees or whether this is simply a confusion of terminology.

²⁵³ Which can be of up to 18 months in the case of rejected asylum-seekers and 12 months in the case of asylum-seekers.

and obligations through the creation of an integration handbook to be distributed to migrants are also envisaged in the plan.²⁵⁴

Local councils in Malta have very limited legislative and administrative powers. The responsibilities assigned²⁵⁵ to the councils do not make any direct reference to migration and/or integration issues, or to the labour market. The legislation does however allow public bodies to assign tasks to the local councils, which could potentially apply to their engagement in integration activities.

The system is also supported by activities of a variety of NGOs and international organizations working in Malta.

Thus far, the Maltese trade unions have shied away from the issue of migration, and actions thereon have generally been underplayed and occasional. All migrant workers are entitled to join trade unions in Malta, but membership remains low. The Union Haddiema Maghqudin informed the author that in its record 'the number of migrants... is insignificant, so insignificant that it cannot be used as a solid basis for any serious study'.²⁵⁶ The General Workers Union refused to divulge the number of enrolled migrant workers.

Another persisting challenge in labour market integration is the recognition of foreign qualifications and accreditation of skills obtained outside of the EU. In terms of on-the-job skills, the ETC provides an assessment and certification service which is available for both Maltese and foreign nationals, and includes an examination by a trade board. The board may then issue a certificate of competence in that particular skill or trade. Moreover, the Malta Qualifications Recognition Information Centre is in the process of developing its own skills assessments and validation schemes. However, that many migrants and especially those in the asylum system are not aware of these possibilities. For instance, the trade-testing service of ETC is not publicised on their website.

Active Labour Market Measures

Measures aimed at achieving the employment goals set out in the National Reform Programme tend to focus on the employment of women and older workers. None of the measures addressed specifically the issue of migrant workers. Neither does Malta currently have an induction programme for migrants. The measures that have been put in place have largely addressed the needs of protected persons through the provision of language and skills training and other guidance. Having said this, some of the initiatives are, by their nature, broader and may be used to address the needs of migrant workers as well.

Language training (specifically English) is considered to be a pre-requisite to integration, and hence a number of NGOs and international organizations have developed initiatives in this regard. Moreover, at the time of writing, plans were under way by the Agency for

²⁵⁴ See National Strategy for Social Protection and Social Inclusion 2008-2010; page 22.

²⁵⁵ An exhaustive list of tasks is provided in Article 33 of the Act.

²⁵⁶ Informal e-mail exchange with Mr. Gejtu Vella, Secretary General.

the Welfare of Asylum-seekers to implement a long-term project on the provision of language training. However, these initiatives are relatively ad hoc, are not structured or coordinated in line with the national induction programme or integration curriculum. The number of hours is often insufficient to achieve a level of proficiency necessary to progress towards further training, education or suitable employment. Very often the courses fail to adequately address the needs and aspirations of the target group with respect to labour market access. Further efforts are necessary to link the language training to the labour market needs.

The project “Integration of Asylum Seekers into Maltese Society”²⁵⁷ sought to address the problems that migrants face in accessing and within the labour market. This three-year initiative with the total of 107 participants was managed by Agency Appogg²⁵⁸ within the Foundation for Social Welfare Services, and comprised of providing training to asylum-seekers, followed by an in-depth assistance and support in profiling and vocational guidance, and dissemination of results. Direct impact of the project is hard to assess, but it has addressed some of the most important concerns with respect to the barriers to labour market access, namely language and other skills and their recognition and formalization.

The COPE project²⁵⁹ ran within closed centres between 2008 and 2009, and provided language training²⁶⁰ as well as cultural orientation sessions for migrants in detention. It also included a 40-hour course, run by ETC which aimed at assisting job-seekers in their search for employment through the provision of basic skills, which included among others modules on communication, decision-making, problem-solving skills, teamwork, job-seeking, the ETC services and employment laws.

At the time of writing AWAS together with ETC, are planning to set up employment support offices for migrants, which should address the precarious situation of people waiting for temporary jobs on a daily basis outside the open centres. According to the plans, the offices would link employers and the protected person living in the open centres that are looking for short-term jobs in a legal and open manner and under the guidance of ETC.

The ESTEEM project which was managed by the Department of Social Policy and Social work at the University of Malta aimed at encouraging entry to tertiary or vocational education for people who have experienced social disadvantage. In this context, the project supported individuals in formalizing and advancing their skills in order to be able to access the labour market. Among the project outputs was a user-friendly and accessible system for assessing and formalizing skills. Participants were also provided with assistance in the compilation of their personal portfolio of experience.

²⁵⁷ See National Report on Strategies for Social protection and social inclusion 2008-2010; Pg. 57

²⁵⁸ At the time when the application for funding was made, the Agency was responsible for the management of one of the open centres hosting asylum-seekers. This experience led to the realisation of the need to offer training and facilitate integration of this category of persons into Maltese society.

²⁵⁹ Managed by IOM and AWAS.

²⁶⁰ Organized by the Foundation for Educational Services.

Discrimination in Employment

Discrimination on the basis of, inter alia, racial or ethnic origin and religion or religious belief in employment is prohibited. The National Commission for the Promotion of Equality is responsible for upholding equal opportunities. Combating racial discrimination in employment is enforced by the Department of Industrial Relations and the Industrial Tribunal. At the time of writing, no cases had been brought before the tribunal on the basis of racial discrimination. The People for Change Foundation contends that this remedy is neither well-known nor sufficiently accessible. There is also no independent body to support cases. Residual powers on their enforcement lie with the civil courts.

Despite the relatively strong legal framework, labour market and racial discrimination within persist. The Eurobarometer (EB) Survey of Discrimination in the EU 2009²⁶¹ found that 77 per cent of Maltese respondents believe that discrimination on the basis of racial or ethnic origin is widespread in Malta.

The National Commission for the Promotion of Equality published the “Racial and Ethnic Origin Equality Manual Toolkit”²⁶² that serves as a tool for employers and service providers to take up their responsibilities under the new equality legislation.

As a rule, employment relationships of migrants are characterised by informality and low job stability due to often temporary and seasonal nature of employment. The situation was summarized by ECRI as follows:

...a large number of these permit holders continue to be employed in the black economy, a circumstance that makes them more vulnerable to exploitation by their employers. For instance, not only is remuneration reported to be considerably lower for these workers, but in some cases employers also simply refuse to pay them. ECRI notes that there have been cases where the trade unions have had to intervene to secure such payments. Longer working hours, worse conditions of work and exposure to safety hazards have also been reported. Although ECRI understands that no formal complaints have been filed, there have also been allegations of racial discrimination in recruitment.²⁶³

The existing structures within open centres, and specifically the assumption that not registering within the centre for three weeks is taken as an indication of stable employment thus resulting in the loss of a state-provided per diem, fails to take account of the precarious and short-term nature of migrant employment. This has led to various problems including the placing of persons at the risk of destitution (mainly because re-admission into the open centres and the allowance system is done only in exceptional cases).

²⁶¹ Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_fact_mt_en.pdf

²⁶² Available at: <http://www.equality.gov.mt>

²⁶³ ECRI; Third Report on Malta; Pg. 30 Available at http://www.mjha.gov.mt/downloads/documents/ecri_report.pdf

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| Chapter 363 of the Laws of Malta | Local Councils Act |
| Chapter 420 of the Laws of Malta | Refugee Act |
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- 2008 Legal Notice 243 of 2008, Procedural Standards in Examining Applications for Refugee Status Regulations.
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Malta Department of Information, http://www.doi.gov.mt/EN/ministries_and_departments/portfolio08.asp

Malta Qualifications Council, <http://www.mqc.gov.mt/home>

Migration Integration Policy Index Malta, <http://www.integrationindex.eu/topics/2458.html>

National Commission for the Promotion of Equality, <http://www.equality.gov.mt/>

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