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JOB
BROKERAGE
OFFICES
CONSULTATION
DOCUMENT



MINISTRY FOR EDUCATION AND EMPLOYMENT



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01 DEFINITIONS

For the purpose of this document:

‘Casual migrant worker’ refers to all workers who are beneficiaries of international and national protection, including those holding a refugee status, subsidiary protection or any other humanitarian protection status granted by the Maltese Government, as well as asylum seekers and failed asylum seekers, to the exclusion of all others, including third country national employees who have obtained a specific work permit.

‘Service user’ refers to all the persons, including legal persons who engage a casual migrant worker for short term employment.

‘Service provider’ means a casual migrant worker who provides his service to a service user for not more than 600 hours per annum with the same service user.

‘Short term self-employment’ means a service user who makes use of a service provider for not more than 600 hours per annum.

‘Irregular worker’ refers to any person who is engaged in a work activity but who does not have the necessary permits and/or documents as stipulated by the Laws of Malta.

In this document words importing the masculine gender shall include females.

02

PURPOSE
OF THIS
CONSULTATION

2.1

In October 2015 as part of the Budget 2016,¹ Government proposed to set up *Job Brokerage Offices* in order to tackle the problem of irregular work and exploitation of workers.

2.2

It is believed that irregular forms of work are resulting in precarious conditions of work for both refugees, persons under international protection and failed asylum seekers, as well as, Maltese, EU and third country employees alike, which Government feels duty bound to address.

2.3

To ensure the above, following the introduction of such Offices, service users who require occasional labour market services from service providers for a period ranging from a few hours up to a maximum of 600 hours per annum, can do so in a regularised manner, whereby working conditions will be in accordance with the law as is being proposed in this document.

2.4

Through the introduction of these Offices, Government aims to make roadside loitering trends that have developed in particular areas, such as in Marsa a thing of the past.

2.5

Government wants to ensure that a level playing field and fair competition is created amongst all jobseekers to access the labour market and will therefore clamp down on irregular work through increased on-site inspections and revised financial penalties for service users who engage irregular workers.

¹ Budget 2016, p.51 available at:

https://mfin.gov.mt/en/The-Budget/Documents/The_Budget_2016/Dokument_Bagit_Final_2016_MFIN.pdf

STRUCTURE OF SUBSEQUENT SECTIONS

2.6

A brief summary of the matters covered by each section is provided below:

- » Section 3 explores the current context;
- » Section 4 gives an overview of comparable measures adopted in Europe;
- » Section 5 presents Government's proposal;
- » Section 6 sets out the way forward; and
- » Section 7 lists the questions pertaining to this consultation.

2.7

This consultation document invites interested parties from amongst the general public to submit their views through the online feedback form available through the following link www.education.gov.mt/jobbrokerageoffices, over a 6-week period, until Wednesday 25th May 2016.

2.8

The government welcomes views on the questions, set out in Section 7, which cover concerns and proposals related to tackling irregular employment and exploitation of refugees, persons under international protection, national protection and failed asylum seeking workers, and the knock-on effect on of such irregular employment on the working conditions of Maltese, EU and third-country employees.

CURRENT CONTEXT 03

MIGRANTS RESIDING IN MALTA

3.1

The United Nations High Commission for Refugees (UNHCR) Malta² estimates that circa 30 per cent of the around 19,000 migrants who arrived from Libya since 2002 remain in Malta – i.e. 5,700 migrants.

MIGRANTS IN THE LABOUR MARKET - ENGAGEMENTS

3.2

According to the Employment and Training Corporation (ETC) administrative data, it results that in 2014 there were 1,296 migrants in employment. Of these, 177 were refugees, 305 had subsidiary protection status, 280 were under temporary protection and 534 were asylum seekers. 98.4 per cent of the 1,296 were employees, with the remaining being self-employed.

EMPLOYMENT LICENCES – APPLICATIONS ISSUED

3.3

During 2014 ETC received 3,942 employment licence applications from migrants to work. Below is a summary table of the applications received and approved by migrant status:

MIGRANTS	RECEIVED	APPROVED	DECLINED
Refugee*	118	111	7
Subsidiary Protection*	1241	1202	39
Temporary Protection*	785	777	8
Asylum Seeker (Failed)†	1198	1192	6
Asylum Seeker‡	600	595	5
TOTAL	3942	3877	65

Note:

* annual renewal of employment licence

† quarterly renewal of employment licence

‡ biannual renewal of employment licence

2 United Nations High Commission for Refugees Malta statistical data available at: <http://www.unhcr.org/mt/charts/>
[Accessed online: 05/01/2016]

DISCREPANCY BETWEEN EMPLOYMENT LICENCES AND ENGAGEMENTS

3.4

According to the number of issued employment licences, the number of migrants who have a licence to work stands at around 3877. This means that, whilst holding an employment licence, circa 2581 migrants (3877 less 1296) do not have an engagement form filed with ETC. It is highly likely that most of these migrants are working in the informal economy. In addition it is very probable that there are other migrants who are working even though they have not applied for an employment licence.

According to a recent Special Eurobarometer report,³ entitled *Undeclared Work in the European Union 2014*, circa 23 per cent of Maltese respondents confirmed that they had purchased undeclared services. This highlights an increase of 6 percentage points, on top of the 17 per cent reported in 2007.

3 Special Eurobarometer, *Undeclared Work in the European Union*, 2014, pp. 17-18 available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_402_en.pdf

04

EUROPEAN CONTEXT

The following chapter presents case studies of relevant successful initiatives adopted by other EU member states, namely Italy, Belgium and Croatia.

ITALY: LAVORO ACCESSORIO / SISTEMA DEI VOUCHER NEL SETTORE AGRICOLO

4.1

The Italian framework contemplates an atypical form of employment contract, referred to as 'Buoni Lavoro occasionale accessorio' - marginal/supplementary employment vouchers. This form of work refers to that of a merely occasional nature undertaken by persons at risk of social exclusion or who have not yet entered the formal labour market or who are about to leave it.⁴

The scheme regulates occasional work in a number of sectors including: personal and household services, activities within the tourism, trade and services sectors as well as seasonal and agricultural activities. Payment is in the form of vouchers which are then exchanged for money. This form of work is characterised by an economic limit - in terms of the maximum amount of work that can be obtained under the scheme - and payment by vouchers. The maximum remuneration allowed per worker is that of €7,000 net (or €9,333 gross) per calendar year. In cases where the client is an entrepreneur, there is a limit of €2,000 per worker.⁵

Each voucher has a nominal value of €10, which is the amount paid by the employer when purchasing the vouchers. The employee is given the voucher for which he obtains payment of €7.50 per working hour.⁶ Vouchers may be purchased at a number of locations including social security offices, post offices and licensed banks. Vouchers are redeemed primarily at post offices.

Buoni Lavori vouchers are valid for twenty-four months and can be used only for casual employment, rather than long-term employment. Vouchers may be used by private individuals, non-profit organisations, the self-employed, family businesses, firms and public institutions.

4 <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/flexible-forms-of-work-very-atypical-contractual-arrangements>

5 <http://www.inps.it/portale/default.aspx?SID=%3b0%3b5481%3b5482%3b&lastMenu=5482&iMenu=1&iNodo=5482&p4=2&bi=22&link=Informativa%20generale>

6 <https://www.fiscoetasse.com/approfondimenti/11857-lavoro-accessorio-i-nuovi-limiti-per-il-2014.html>

There is a direct employment relationship between the worker and the user. A limited number of individuals are eligible for work under this scheme, including third-country nationals who have a residence permit. When work is carried out within the *Buoni Lavori* scheme, workers are provided with social security coverage and national insurance. Moreover, all revenues are tax-exempt and do not affect the worker's status as unemployed or a jobseeker.

Until 2015, the use of these vouchers were restricted to certain sectors, yet as of this year they may be utilised for any form of business.⁷ It is thus possible to use this voucher scheme in agriculture, trade, tourism and public administration. The only limitation is that provided by the maximum amount of remuneration to be received by the worker.

AGRICULTURAL WORK: A SPECIFIC EXAMPLE

Until 2008, voucher schemes were primarily reserved to the domestic help sector.⁸ Moreover, whilst the Buoni Lavori scheme was contemplated at law, it was only in 2008 that this was implemented. The Italian government introduced a pilot scheme meant to regularise the status of workers who supply labour on an occasional basis during the grape harvest. The aim was to encourage workers to move away from the informal economy, guaranteeing better conditions for service users and occasional workers.⁹

According to the scheme, each worker could work for up to a maximum of thirty days per annum, and be remunerated up to a maximum of €5000 (subsequently increased to €7000). The employer could use the voucher scheme for a maximum of €10,000 on an annual basis.

Workers are provided with a magnetic card which is credited with the vouchers. They then proceed to withdraw the amount payable to them from an ATM. The card contains information about the workers which is of use to both the Social Security Agency and the Workplace Accident Insurance

7 D.Lgs. n. 81 del 15 giugno 2015 available at: http://www.cliclavoro.gov.it/Normative/Decreto_Legislativo_15_giugno_2015_n.81.pdf

8 Confronting the Shadow Economy: Evaluating Tax Compliance and Behaviour Policies By Colin C. Williams at page 167.

9 <http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/voucher-scheme-for-seasonal-work-in-agriculture-italy>

Agency. This is because vouchers include both social security and insurance contributions. Due to its success, over the years the voucher scheme was extended to all agricultural activities.

BELGIUM: SERVICE VOUCHERS FOR LOCAL JOBS AND SERVICES (LE SYSTEME DES TITRES-SERVICES POUR LES EMPLOIS ET SERVICES DE PROXIMITE)

4.2

Belgium introduced an innovative labour market practice in 2001, through a measure intended to alleviate unemployment amongst low-skilled workers and transform undeclared work to regular jobs in the sector. In addition, the Belgian state hoped to help those subject to precarious work to get back into the labour market, giving vulnerable workers access to employment.

The service voucher system is operated by the Federal Unemployment Benefit Agency together with Sodexo, a company contracted to manage issuing of the service vouchers.

The system has been described as a wage cost subsidy for labour-intensive, low-skilled domestic work as it allows users to purchase household services which are subsidised by the state.

Belgian residents are able to buy service vouchers from the issuing company to obtain a number of services, mainly relating to help with domestic work. This can consist of house-cleaning, laundry and ironing, sewing and meal preparation. The activities which are remunerated through service vouchers are carried out by a company licensed as a service voucher company. Responsibility for allowing users to buy vouchers and processing the returned vouchers lies with the issuing company.

However, the Unemployment Benefit Agency remains responsible for managing the service voucher system.

A user who requires domestic help purchases the voucher and chooses

an accredited service provider company which assigns them a worker, or else chooses a worker who would have been already known to them. Nonetheless the worker must still sign up with the accredited company to perform work legally. As of 2014, the real cost of a voucher was stated to be €22.04 for each hour of work yet the service voucher costs €9.¹⁰

The user of the voucher i.e. the person for whom the employee performs the required tasks is not considered as the employer. It is the service voucher firm that fulfils this role.¹¹

The service voucher worker is paid one service voucher for every working hour. This is passed on to the licensed company, responsible for collecting the vouchers. These vouchers are then reimbursed by the issuing agency (in this case, Sodexo). The difference between the amount reimbursed by the issuing agency and the earnings on behalf of the user is paid by the Federal Unemployment Benefit Agency to the issuing agency.¹² This subsidy is used to cover charges such as wages, supervision and training of workers.

The service voucher scheme is considered a success, to the extent that the Belgian government recommended the introduction of a work voucher proposal which would be a wage subsidy for labour-intensive, low-skilled activities. This would cost the user €10 per hour of work, with the cost being partially tax deductible. Certain restrictions apply relating to the employee's age, education and jobseeker status.

OTHER EU MEMBER STATES

4.3

Other initiatives have been put in place in other EU Member States. In 2014, a survey indicated that service vouchers have been put in place in 7 EU

10 New work voucher scheme under scrutiny, 24 March 2014, <http://www.eurofound.europa.eu/de/observatories/eurwork/articles/other-working-conditions/new-work-voucher-scheme-under-scrutiny>. The €9 voucher is available for the first 400 vouchers. Subsequent vouchers (a max of an additional hundred) cost €10 each.

11 http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_220717.pdf

12 Info obtained from: <http://ec.europa.eu/social/PDFServlet?mode=mlpPractice&practiceId=16>

Member States.¹³

In 2012, Croatia introduced seasonal work vouchers geared towards facilitating the employment of seasonal workers in agriculture.¹⁴

Service users pay seasonal workers using vouchers, which include social contributions and taxes. The aim of the scheme is two-fold: regularising undeclared activities as well as facilitating employment. The initiative in question targets work in the agricultural sector, which is highly seasonal. Service users are to remunerate employees through a daily coupon for each recorded day of work. Any unused vouchers are eligible to be exchanged for cash in the office in which they were purchased. Social security contributions are then only paid for the actual number of days worked.

Worker protection is envisaged through the setting of a minimum daily wage (set at €9.40 in 2013) and a maximum of 12 working hours a day. A seasonal worker can be employed for up to 90 days per annum. This is a cumulative amount as the worker can be employed intermittently throughout the year. Sanctions are contemplated in cases where the provisions of the Act regulating the sector are violated.

The merits of the scheme also lie in the seasonal worker still being registered as unemployed and registered with the Croatian Employment service as unemployed. The seasonal worker can then be employed for this short-term form of work without this impinging on his possibility of securing alternative longer-term employment, should he so desire.

Whilst the scheme is in its infancy, having been introduced only in 2012, the Croatian government seems willing to extend it beyond the agricultural sector. There is scope for extension to household services, tourism and other seasonal activities.¹⁵

13 <http://www.grey-project.group.shef.ac.uk/wp-content/uploads/2014/09/Undeclared-Work-in-Croatia-final.pdf>

14 http://ec.europa.eu/europe2020/pdf/nd/swd2013_croatia_en.pdf at page 18.

15 <http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/seasonal-work-vouchers-croatia>

05

THE PROPOSAL

5.1

Irregular work negatively impacts the labour market because it gives rise to precarious work. Additionally, precarious conditions suppress fair competition in the labour market and may put law abiding service users and employees at a disadvantage.

“Currently, the majority of migrants who work are employed through the black market across manual sectors such as construction. This allows for exploitation of such workers who usually get paid a meagre compensation for their work. In turn, this leaves jobseekers in the formal market at a disadvantage.”¹⁶

In view of the Government’s commitment to curb irregular and precarious work, it is being proposed that the Job Brokerage Offices are set up. The role of the Job Brokerage Offices is set to act as an intermediary between service users and service providers seeking short-term self-employment as and when the need arises.

Two Job Brokerage Offices are being proposed – one at the Marsa Open Centre and another at the Ħal-Far Hangar Open Centre.

JOB BROKERAGE OFFICES – ADMINISTRATION

5.2

It is being proposed that the Job Brokerage Offices operate on the basis of a Public Private Partnership (PPP), with a private service provider responsible for the overall administration and maintenance of these offices.

Service users interested in purchasing short-term labour services can meet their needs by sourcing such service providers from one of the two Job Brokerage Offices. Furthermore, the service users will also be able to purchase payment vouchers directly from the Job Brokerage Offices. There is also the possibility that these can be purchased from a dedicated online

¹⁶ Ministry for Education and Employment, National Employment Policy (Malta 2014) p.72. Available at: <https://education.gov.mt/en/resources/Documents/Policy%20Documents%202014/EMPLOYMENT%20POLICY%20DOC%20sml.pdf>

platform which may be developed in due time. These will be administered by these Offices. Such vouchers shall be received by the service providers in exchange for their labour services. Finally, service providers shall cash in their vouchers at the Job Brokerage Offices. The offices will be responsible for the payment of N.I. on behalf of the labour market service providers.

In addition, the Job Brokerage Offices shall be responsible for the registration of service providers interested in providing short-term labour services. Furthermore, these Offices will keep updated records of the service providers including, but not limited to: records showing names and surnames, addresses, identification document numbers, qualifications and job experiences as well as maintaining a database of engagements including information related to the length of the service being provided, service description, full details of the service users including Company Registration Number, Value Added Tax (VAT) registration number and Income Tax registration number as and when applicable, as well as details of service users making use of these short-term labour market services.

It is projected that the Job Brokerage Offices will handle some 1,500 individuals per annum, but the numbers may increase¹⁷ if the service proves successful.

JOB BROKERAGE OFFICES – VOUCHER SYSTEM

5.3

It is being proposed that the vouchers will be priced as follows:

- » Individual hours: €6/hr
- » 10 – 20 hours: €5.75/hr (multiple vouchers of 5 hours each)
- » 21 – 40 hours: €5.50/hr (multiple vouchers of 4 hours each)

Each voucher will be date and time stamped according to when the service user intends to make use of the service provider's services.

¹⁷ In the event of untenable increases, the Government reserves the right to redress the operation of the Job Brokerage Offices.

The minimum payment of €5.50 per hour is equivalent to the minimum wage in 2016 which is expected to be of €4.20 per hour. Over and above the national minimum wage an additional 10% of €4.20, which is the equivalent of the social security contributions paid by the service user, the cost of 24 days leave and 10 days sick leave, as well as the statutory bonus, have been factored in the rate per hour. All this amounts to €5.50 per hour. This rate takes into consideration that self-employment does not take precedence over regular full-time engagement of the service provider.

Nonetheless, it is being guaranteed that service providers will receive a net income of €3.80 per hour, as stated above. An individual may not work more than 600 hours per annum for the same service user.

Service users shall be liable for any liabilities arising out of negligence or non-observance of Health and Safety Regulations or any other employment related matters regulated by law.

ETC recognises that due to seasonality certain industries may require ad hoc arrangements. In such cases ETC will be open to discuss other arrangements with the relevant stakeholders.

JOB BROKERAGE OFFICES - PARALLEL MEASURES

5.4

In order to ensure the success of the proposed Job Brokerage Offices and to eliminate irregular work, it is being proposed that the following actions are put into place and run in parallel:

ETC is in the process of revising the provisions of the Employment and Training Services Act (Cap. 343).¹⁸ Consequently the penalties imposed by law for service users caught employing a person or otherwise utilising the services of someone irregularly, shall be increased.

The existing ETC inspectorate department, which is currently made up

¹⁸ Employment and Training Services Act (CAP. 343) available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>

of 8 inspectors will be doubled to a total of 16 inspectors. The role of this department is to ensure, through regular spot checks at the place of work, that both service users and service providers are lawfully engaged.

The provisions of the Employment Status National Standard Order (SL 452.108)¹⁹ shall not be applicable to persons working under this scheme.

¹⁹ Subsidiary Legislation 452.108, Employment Status National Order, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11844&l=1>

WAY
FORWARD 06

6.1

This consultation document invites interested parties from amongst the general public to submit their views by not later than Wednesday 25th May 2016.

6.2

The government welcomes views on the questions set out in Section 7. Furthermore, respondents are encouraged to include any additional information they feel is relevant to this consultation, in their responses.

6.3

Responses to this consultation are to be submitted via the dedicated electronic feedback form, which may be accessed through the following link www.education.gov.mt/jobbrokerageoffices

6.4

It is pertinent to note that all the feedback received will become publicly available in a document summarising responses to this consultation.

6.5

The Ministry for Education and Employment would like to take the opportunity to thank all contributors in advance for their participation in the consultation process.

DATA PROTECTION ACT (CAP.440)

6.6

The Data Protection Act, 2001 regulates the processing of personal data whether held electronically or in manual form. The Ministry for Education and Employment collects only information which is necessary for it to perform its intended functions and is set to fully comply with the Data Protection Principles as set out in the Act. Verification of the ID number provided will take place as deemed necessary. All personal data provided will be processed according to the Data Protection Act (Cap 440).

FREEDOM OF INFORMATION ACT (CAP.496)

6.7

As we are a public authority all documents we hold, including documents related to this public consultation process, may be released following a request to us under the Freedom of Information Act (Cap. 496), unless such request may be subject of an exemption arising from the same Act.

07

CONSULTATION QUESTIONS

Q1.

To what extent do you agree with the setting up of the Job Brokerage Offices as outlined in this document?

Q2.

Do you agree with the proposed voucher prices?

- » Individual hours: €6/hr
- » 10 – 20 hours: €5.75/hr (multiple vouchers of 5 hours each)
- » 21 – 40 hours: €5.50/hr (multiple vouchers of 4 hours each)

Q3.

Do you have any options or suggestions other than those proposed in this Consultation Document?

