

Malta Labour Migration Policy Consultation Document

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Feedback submitted by:

Malta Chamber of SMEs

January 2025

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Introduction

Following a thorough consultation exercise between the members, Malta Chamber of SMEs is bringing forward its position following the consultation document published by the Ministry for Home Affairs, Security and Employment titled 'Malta Labour Migration Policy'.

While we recognise the importance of improving the efficiency and fairness of the labour market, we believe there are critical aspects of the proposals that require further clarification or revision. The below proposals, recommendations and concerns do not seek to benefit / impact only one sector but are aimed at widening the scope to most sectors.

Through its position, the SME Chamber seeks to identify concerns and suggestions, received from members, aimed to ensure that the policy changes are not only legally compliant but also practical, reasonable, and beneficial to the sustainable growth of businesses in Malta. As SMEs play a pivotal role in the economy, it is vital that any regulatory adjustments promote a supportive environment that balances the needs of employers, employees, and the workforce in general.

This policy document is even more significant given the findings of the latest SME Barometer, published by the Malta Chamber of SMEs in collaboration with Misco. When businesses were asked to identify the two most pressing issues

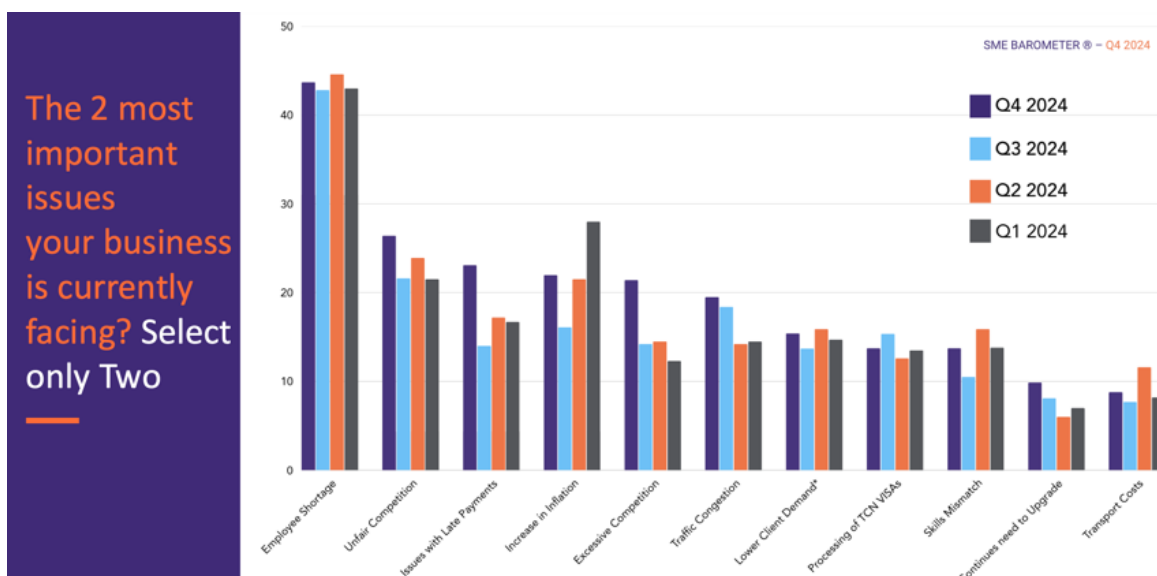


Figure 1

they currently face, the top concern was employee shortages, amounting to 44%¹ of respondents in this quarter (Figure 1).

This trend persisted throughout the past year, with four quarterly surveys (Q1–Q4) consistently highlighting employee shortages as the primary challenge for businesses, with over 40% of respondents identifying it as a key issue in each

survey (Figure 2). This highlights the high importance of ensuring that the policy does not restrict access to employment for TCNs. This paper will not be going into all aspects of the policy published but covering areas which we believe need changes which members foresee might impact directly or indirectly.

Each section highlights the areas where further dialogue and improvements are required, together with the evolving needs of the labour market. Together with the feedback provided the SME Chamber is also proposing ways how the proposed recommendation can be adapted to better find a balance between the needs of the labour market vis a vis ensuring and maintaining quality.

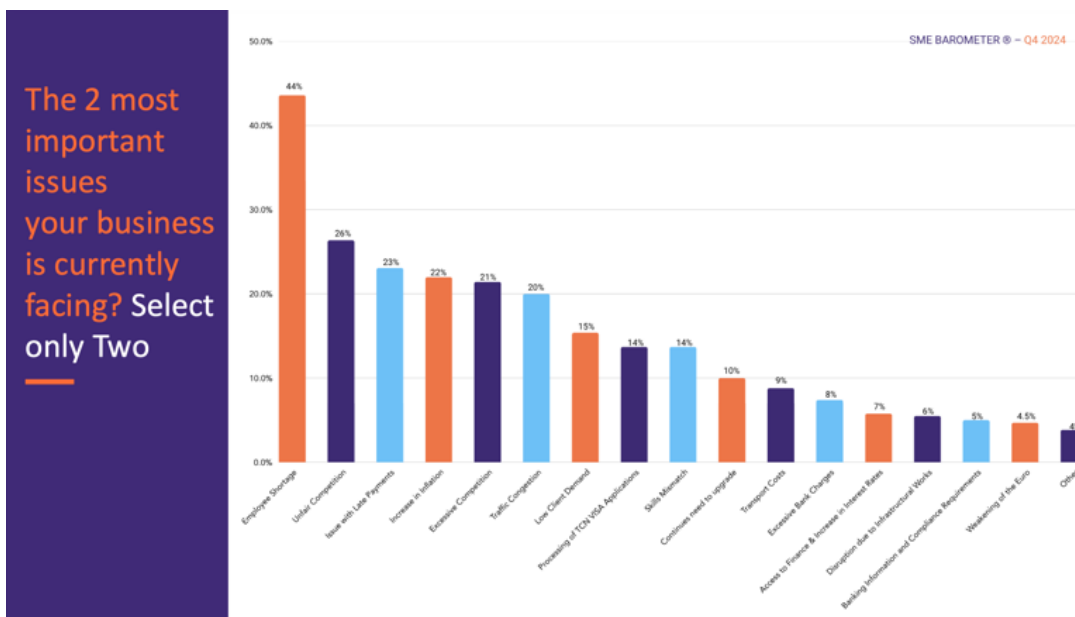


Figure 2

By addressing these points, the Malta Chamber of SMEs aims to contribute to a more transparent, inclusive, and efficient employment framework that supports both businesses and the workforce.

¹ //www.smechamber.mt/wp-content/uploads/2025/01/Business-Performance-Survey-2024.pdf
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Representation

The Malta Chamber of SMEs represents a diverse array of industries and sectors that are vital to Malta's economy. It serves as a voice for the interests of all economic sectors in Malta, representing over 90 different sectors, - with a particular focus on micro, small, and medium-sized enterprises, which form the backbone of Malta's business community, amounting to 98% of the nation's enterprises. These include (but not limited to):

- Retail and Wholesale & Distribution
- Hospitality and Tourism
- Manufacturing and Crafts
- Construction and Real Estate
- Technology and Innovation
- Transport and Logistics
- Health and Wellness
- Professional Services
- Education & Training

As part of this consultation process, the Malta Chamber of SMEs organised an information session together with Ministry for Home Affairs, Security and Employment which had over 300 attendees. Additionally, the SME Chamber further consulted with members and received numerous individual feedback submissions from members.

Recomendations

Recommendation 1: Minimum Termination Rates Prior to Application

The Malta Chamber of SMEs fully understands the need to clamp down abuse, this said termination is not always a result of negligence from the employer's and should therefore not be penalised for terminations, due to external factors.

Members highlighted that in instances, TCNs arrive in Malta with the plan to flee to other EU countries. In such instances it is the employer's obligation to report these individuals to revoke these work permits. In such instances these revocations should be exempt from the quota imposed.

Another important aspect to be taken into consideration is the probationary period imposed by law under Cap 452 of the Employment and Industrial Relations Act Article 36² where minimum probation periods are imposed for both definite and indefinite contracts. This right which protects both Employers and Employees, should not be undermined with these minimum termination rates and should therefore apply following the end of the minimum probation period imposed by law.

Finally, the SME Chamber believes that in cases of grave nature, where as a result the employee is terminated, such cases should also be exempt from such quotas.

The SME Chamber also believes that not only the health sector should be exempted but should also include occupations as specified under the skilled occupation list which by nature are necessary.

² <https://legislation.mt/eli/cap/452/eng/pdf> - Page 24

Recommendation 2: Redundancies

The approach to redundancies should be fully aligned with existing Employment Law legislation to ensure coherence and legal compliance.

In particular, consideration should be given to the possibility of re-employing an individual who has been made redundant. The SME Chamber recommends that in instances where the employer would have offered the reinstatement of the

employee that would have been made redundant, with no success, the employer would be able to employ individuals irrespective of their nationality i.e. including TCNs. This is to be in line with the local legislation.

Recommendation 3: Renewal period up from one to two years

The SME Chamber fully agrees with this proposal as it gives the rest of mind for both employers and employees alike. Extending the renewal period gives an added sense of belonging to TCNs.

The Malta Chamber of SMEs notes that in cases of low skilled workers, if the employer can demonstrate that the individual received on the job training, this should also be accepted as accepted training to qualify for longer renewal periods.

Recommendation 4: Higher Fees for First-Time Permits, Lower Fees for Renewals

New Work Permits: For businesses in their early stages or those expanding their workforce, the current fee structure, which imposes higher fees for initial permits, may unintendedly penalise them.

This is particularly problematic for companies still in the growth phase, who may be more financially constrained and struggling to meet the higher initial costs. The Chamber believes that the higher fees should be only imposed in

instances where employees are being replaced rather than expansion of the workforce (increase in the full-time equivalence).

A revised fee structure that offers discounted rates for first-time permit applications and new hires would help create an environment conducive to business growth. It is crucial to recognise the potential financial burden this policy places on new businesses and business seeking growth.

It is crucial to emphasise that, in instances where employed Third-Country Nationals (TCNs) flee the country, the financial burden of applying for a first-time single permit should not be placed on the employees. Requiring workers to pay the EUR 600 fee for the application under such circumstances is both unjust and unreasonable.

Change in Employer Applications: In line with the spirit of this recommendation i.e. 'to further encourage retainment by making it more financially viable for the retainment of TCNs.' the SME Chamber believes that it is the fundamental right of everyone to be able to move from one job to another. This can be either as a result of a career progression or due to better conditions of work. In this regard, the SME Chamber proposes that in the case of a change of employer, the fee requested should be equivalent to that of a permit renewal. This is also in line with the notion that the TCNs acquired skills, and experience will not be lost but rather shifted from one workplace to another.

Through our feedback, it has become evident that many business owners encounter individuals who hold work permits but are not provided with any working hours by their current employers. As a result, these workers are often compelled to submit Change in Employer applications to secure new job opportunities. The proposed increase in application fees would place a significant financial burden on individuals already in precarious situations, effectively trapping them in jobs that fail to provide a living wage.

One should also take into consideration the fact that a change of employer can happen because of possibly change in service provider following a competitive call (public tenders) or a company merger etc.

Finally, this proposal goes against the notion and promotion of job mobility as a career prospect. This is even more unjust in the case where a change of designation occurs within the same group of business. The SME Chamber believes that a change in designation with the same employer should not be

treated as a new application in terms of the applicable fee and no fees should be applicable.

Recommendation 5: Enhancing Direct Access to TCN Recruitment

The Malta Chamber of SMEs strongly believes that further transparency is required regarding the various recruitment programs for Third-Country Nationals (TCNs). Continuous updates on the latest developments and available resources are crucial. By ensuring businesses are regularly informed, we can ensure that employers are adequately prepared and able to engage with TCN recruitment processes effectively.

This said, it is also important to keep in mind that local third-party service providers (such as recruitment and outsourcing companies), also play an important role in the recruitment process and should therefore not be undermined or penalise those who opt to make use their services.

Clear communication will allow companies to better align their workforce needs with the available skills.

Recommendation 6: Desk Investigations and Potential Disqualifications

6.1 - There is a need for more precise definitions of terms such as "disqualification mechanism" and "administrative penalties." To ensure compliance and avoid any confusion, clear definitions should be provided. Businesses need a comprehensive understanding of what constitutes a disqualification or penalty to manage their operations in full compliance.

6.2 - Payments upon termination fall under contract law both when it comes to define notice periods and also definite contracts penalties as outlined under the Fixed Term definite contracts as defined under S.L.452.811. It is important to clarify how this aligns with the proposed measures. A detailed explanation is necessary to ensure businesses understand their legal obligations and the

consequences for non-compliance. Additionally, it is important to ensure streamlining between different legislation.

6.4 - Employers who have been found in breach at tribunal level will already face repercussions and consequences as defined by law. In this regard, the SME Chamber believes that imposing an additional ban on application is unjust in the sense that the employer in breach would be penalised twice for the same offence.

6.5 - As mentioned under the previous section, the SME Chamber believes that any individual should not be penalised twice for the same offence. This continues to discriminate also and drawing different standards between Maltese / EEA national vis a vis TCNs.

6.6 - It is important to understand why TCNs appear to be disproportionately affected in this situation. The rationale behind this needs to be clarified to avoid unjust treatment with regards to TCNs and employers having the right to operate in Malta.

Recommendation 7: Consistent Compliance with Existing LMNT Policies

The Chamber of SMEs agrees with this recommendation. However, further clarification is needed concerning the status and treatment of Third-Country National (TCN) employees under the current policy framework. A guidance on the measures that will be implemented to ensure that TCNs' rights and protections are fully upheld in accordance with existing laws is required. Clear guidelines should be established to ensure that businesses can confidently stick to the policy while safeguarding the interests of all employees.

It is also being proposed that such policy would be sensitive onwards different scenarios, such as with the case of Temping and Outsourcing where job posting may vary from time to time depending on the role.

Recommendation 8: Salary Payment method for newly engaged TCNs

Although the SME Chamber understands the spirit behind this recommendation, one must ensure that any policy introduced, can be

implemented. In this regard, the SME Chamber notes that businesses still encounter issues with the opening bank accounts and in certain cases would not be able to operate a corporate bank account as a result. Additionally, members also note that although the directive on payment accounts is in place, employees still encounter issues with the opening of bank accounts.

Recommendation 9: Extension of grace period for TCNs whose employment has been terminated

The SME Chamber believes that this measure will give more flexibility for a TCN to move from one job to another. The SME Chamber however notes that TCNs whose job has been terminated, needs to adequately be monitored to ensure compliance with their respective stay in Malta, to ensure that TCNs are either re-employed or leave the country legally.

Recommendation 13: Establishing a High-Risk Country List for Employment Applications

It is crucial to clarify what is defined as a high-risk country and whether a high-risk country list for Malta, currently exists. Moreover, if so, how employers can access and utilise it effectively. A transparent and structured process for conducting case-by-case assessments is necessary to ensure businesses understand how decisions are made. This process must be clearly defined to facilitate business compliance and avoid ambiguity, ensuring that employers are equipped to meet the guidelines without undue complexity or risk of non-compliance. Moreover, the SME Chamber believes that adequate

Transitional period with a clear cut-off date needs to be implemented to ensure that the system is not shocked, and ongoing processes are not interrupted.

Recommendation 16: Strengthening the Vacancy Requirement

The SME Chamber believes that two months preceding the application for a single permit might impose an administrative strain on HR and businesses. In this regard it is being recommended vacancies up to 3 months from application should be accepted instead.

Additionally, with reference to the student workers being exempted from this measure, the SME Chamber emphasises in the fact that higher institutions accepted are Malta Further and Higher Education Authority (MFHEA) licensed institutions and are included in the list of JobsPlus together with other public institutions.

Recommendation 17: Suitability Check

The Chamber of SMEs does not agree with point 4 regarding the use of testimonials as part of the suitability check process. Testimonials, while sometimes useful, should not be a primary criterion, as they may not always reflect objective qualifications or skills.

It would be helpful if clear guidelines are provided regarding the expectations for language fluency (Maltese or English). Given that language requirements can vary significantly depending on the role and level of responsibility, clear definitions will help businesses align their recruitment practices with legal standards and ensure fair evaluation of candidates.

Recommendation 18: Workforce Application Limits

The proposal is not yet clear how it will work in reality, particularly when businesses increase their workforce and shift from one employee level to another (example from a Micro Firm to a Small Firm which percentage should they use, the 200% for the Micro or 100% for the Small?). It is often unclear which threshold should be referred to. To mitigate this risk, it is recommended that clear, transparent, and easily accessible guidelines be established regarding workforce application limits. This will help businesses navigate the regulatory framework with confidence and ensure compliance.

It is important to note that in cases where Third-Country Nationals (TCNs) flee the country, there should be a clear and explicit exception to the rule, ensuring that in such situations are not counted towards the overall percentage of the employer.

When a TCN flees, this is often a result of circumstances beyond the employer's control. This exception would ensure that employers are not unjustly burdened or penalised for situations outside their control and would help maintain fairness and accuracy.

Recommendation 19: Newly-Registered Businesses

This recommendation does not fully consider the potential limitations in the labour market. In some sectors, especially where TCNs are the only available workforce, businesses may struggle to find Maltese employees.

Therefore, it is essential to explore the possibility of providing greater flexibility for newly registered businesses, particularly in sectors where the demand for skilled labour is high and local talent is insufficient.

The Malta Chamber of SMEs also believes that any policy is not counterproductive to other policies, particularly that of attracting FDI coming into Malta.

In this regard, the SME Chamber proposes that the proposal is implemented without limiting access to newly formed businesses and start-ups including foreign businesses or implementing additional bureaucratic steps for these businesses to operate in Malta, thus ensuring that Malta remains attractive.

Recommendation 20: First Employment

In situations where no Maltese employees are available to work and in situations where certain roles are proven that they cannot be filled with either Maltese or EU nationals, does not make sense and will create a huge barrier for entry for local businesses wishing to scale and grow their business.

This recommendation is discriminatory and impinges on the rights of individuals operating a business. The SME Chamber therefore proposes that Micro businesses are completely exempted while for the rest this proposal is re-thought to ensure that businesses are not restricted nor discriminated and reflect the actual market needs. This can be possibly implemented by way of imposing the minimum number of Maltese or EU nationals by the time the business would have reached the maximum amount per threshold.

Recommendation 21: Minimum Number of Maltese/EU Nationals Prior to Application for TCNs

This proposal, which mandates a minimum percentage of Maltese/EU workers in a company before allowing additional TCN employment is discriminatory. This recommendation places a significant burden on businesses as they transition between size thresholds. For instance, if an employer has 9 employees—comprising 2 Maltese or EU nationals and 7 third-country nationals (TCNs), in line with the minimum requirement for a micro-enterprise—and plans to expand into a small firm (10–50 employees), they will face additional obligations. Specifically, the 10th and 11th employees would need to be Maltese or EU nationals to comply with the small firm requirement of having "at least four employees from Malta or EU nationals." This could hinder the growth of businesses and add complexity to their expansion efforts.

The Malta Chamber of SMEs believes that requiring a minimum number of Maltese/EU nationals before applying for TCNs imposes an inflexible restriction that fails to reflect the realities of the labour market. Many sectors are experiencing a severe shortage of local and EU talent, and restricting access to skilled TCN workers hinders business growth and competitiveness, particularly in industries struggling to fill critical roles.

The SME Chamber recommends that rather than focusing on a one-size fits all approach in-depth research is conducted to understand better the sectors which encounter labour shortage and struggle to attract and recruit local and EU nationals.

Recommendation 22: Renewal Verification

The SME Chamber believes that where possible verifications are done inter-authorities and ministries without subjecting employers to submit additional paperwork and documentation. Although the aspect of verification is important, it should not be done at the expense of added bureaucracy and processes.

Recommendation 24: Skilled-Occupation List

It is important to ensure that the list of skilled occupations is regularly updated to reflect the changing needs of the labour market.

Continuous updates are essential to keep the list relevant and useful for businesses.

Recommendation 25: Reviewing the Salary Benchmarks for KEI and SEI

It is important to clarify whether this review will affect all sectors. If only certain specific sectors are impacted, it should be clearly communicated to avoid confusion and ensure transparency.

Moreover, one needs to also ensure that any benchmarks set are reachable and reflect the actual labour market trends and rates. Additionally, it is important to note that gross salaries are sometimes split into different line items such as fixed allowances etc., which in cases should also contribute towards the global gross salary benchmark.

Recommendation 26: Integration Courses Prior to Arrival in Malta

If not well implemented, this process can be seen as unjust to TCNs wishing to reside in Malta, as it may place unnecessary burdens on them before they are even granted approval to enter Malta. In this regard, it is being recommended that the course would be required once the approval in principle is issued and not prior. This will ensure a certain level of filtering and also reduce any foreseen backlogs.

This is being recommended to ensure that any new process introduced is efficient and smooth. The SME also recommends that the Integration course is offered free of charge, not to add any additional financial costs on prospective future applicants.

Recommendation 27: Upskilling and Integrating the Foreign Workforce

Clear outcomes for upskilling programs should be outlined. Additionally, the specific skills or competencies are expected to be gained from such training.

Without clear objectives, businesses may find it difficult to gauge the effectiveness of these programs.

The SME Chamber also proposes that where possible; training can also be given by licensed private education institutions if these meet the course outcomes and key components. This is to ensure a level playing field in the educational sector.

Recommendation 28: Lowering Fees for Occupations within the Health and Care of Persons with Disabilities and the Elderly

The SME Chamber agrees with this recommendation and suggests that apart from the health Sector, other essential sectors, such as education are also considered to benefit from lower fees. If not, it should be clarified which other sectors or occupations are eligible for these fee reductions.

Recommendation 29: Skills Card Expansion

The SME Chamber believes that details of the sectors being considered should available under the expanded skills card should be provided.

The Malta Chamber of SMEs also believes that ongoing consultation with the relevant social partners is essential to ensure effectiveness. Additionally, the SME Chamber strongly advocates that MFHEA licensed institutions are included in this model to ensure a level playing field and also to ensure that the process is efficient.

Recommendation 31: Strategic Partnerships

The SME Chamber agrees that strategic partnerships will improve the job matching mechanism, reduce bureaucracy and elevate quality. In this regard, the SME Chamber would need more information on how such partnerships will be structured and how these will function in practice.

Recommendation 32: Register of Exemplary Employers – Longer Renewal Periods

The SME Chamber believes that employers following good practices should be rewarded. This helps in promoting good practices and adds value to those who comply.

The SME Chamber believes that any form of certification or list should be accessible and reachable for everyone irrespective of the size of the business. In this regard, employers following complying with local legislation should be eligible. A clear list of criteria should be outlined to ensure that businesses understand the requirements for being listed as an exemplary employer.

The SME Chamber also proposes that any measure is implemented proportionately.

Home-grown initiatives such as in-house training which would not have benefitted from schemes such as the skills development scheme (ME) or the investing in skills should also be eligible and contribute towards this measure.

Other Recommendations

Seasonal Work

Members operating within sectors directly impacted by seasonal work, expressed that since the current legislation (S.L 217.20 - which sets rules for non-EU workers doing seasonal jobs) encompasses specific sectors, namely; hospitality, agriculture, marine and aquaculture. Other sectors which demands goes hand in hand with these sectors, are often not taken into consideration. The SME Chamber believes that where possible the scope of seasonal work should be expanded to include more industries affected by seasonal changes as a spill over (e.g. Car Rental Companies).

In this regard, it is recommended that sectors directly impacted by seasonal sectors are also included and considered within the scope. Currently the limited exclusivity on seasonal work for TCNs does not seem to stem from an obligation under the EU Directive, while seasonal sectors, as explained, significantly impacts other businesses as well.

Final Remarks

The proposed recommendations aim to address key labour market challenges while supporting businesses and ensuring fairness. The SME Chamber believes that some overarching themes require attention for these policies to be practical and effective and compliment, without conflicting current employment law provisions.

Clarity and transparency are essential. Clear guidelines and accessible frameworks will help businesses comply while minimizing confusion and administrative burdens. Similarly, fairness and consistency must be reinforced, ensuring equal treatment for Third-Country Nationals (TCNs), Maltese nationals, and businesses across all sectors.

Policies should also allow flexibility for growth and sector-specific needs, particularly for businesses in transition, newly established entities, and industries facing labor shortages. Additionally, supporting business expansion through reduced fees, aligned timelines, and simplified recruitment processes will foster sustainable growth.

The SME Chamber believes that any policy, as a principle, should aim to reward and simplify the process for high quality standards, while penalising making it difficult to those wanting to abuse the system for their own personal gains. The SME Chamber therefore maintains its position that a one-size approach is neither sustainable nor fair.

By addressing these priorities and the foreseen challenges highlighted by businesses, the SME Chamber believes that a more balanced and proportionate approach can be achieved. Based on the feedback provided we can ensure that the interests of businesses, employees, and regulatory authorities are aligned, creating a fairer, more dynamic labor market. This will ultimately safeguard economic stability, competitiveness, and social equity while fostering a business environment that supports long-term growth and resilience.