

2018

A Proposal For Rent Regulation in Malta



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ENDORSEMENTS

This document is endorsed by seventeen organisations:

Moviment Graffiti
Alleanza Kontra il-Faqar
Forum Komunita' Bormliza
Malta Tenant Support
Malta Humanists Association
The Millennium Chapel
Żminijietna – Voice of the Left
aditus Foundation
Malta Gay Rights Movement
The Critical Institute
Spark 15
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Women's Rights Foundation
African Media Association Malta
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INTRODUCTION

This document outlines a model for rent regulation in a context where property and rent prices have spiralled out of control.¹ This situation is placing thousands of people in Malta in an extremely precarious situation as they face the constant risk of being left without a roof over their head. This reality is hitting vulnerable groups the hardest, such as the elderly and low-income groups². However, it is also increasingly affecting other groups, such as the youth, some of whom have no other option but to live in rented places due to unaffordable property prices. As property prices continue their steep rise, the number of Maltese people living in rented places is destined to increase at a fast pace.

Unlike most European Union countries, Malta has no effective rent regulation system in place.³ This means that tenancies are unstable and rent prices increase without any consideration to the impact on individuals, society and the economy.

We find ourselves in this situation due to the lack of a comprehensive Housing Policy that aims at ensuring the availability of affordable housing, including both affordable properties and affordable rent prices. Rent regulation, which is the focus of this document, should only constitute one dimension of such a strategy. Affordable housing depends also on other factors, such as the availability of social housing and the overall strategy with regards to property and construction. Thus, it is being suggested that rent regulation is placed within a broader National Action Plan on property and affordable housing.

The rent regulation model in this document has been developed by looking at rent regulation laws in other European countries. In fact, Malta is one of the very few EU countries where rent is almost not regulated at all. The type of rent regulation present in European countries ranges from controls on initial prices (present in countries such as the Netherlands, Austria, Denmark, Sweden and France) to regulating contract length and rent-price increases (present in countries such as Belgium and Germany).⁴ Whilst the model in this document was

¹ Times of Malta, 18th January 2018, *Property price increases in Malta are second highest in EU* <https://www.timesofmalta.com/articles/view/20180118/local/property-price-increases-second-highest-in-eu.668261>

² The Malta Independent, 30th October 2016, *Decent housing opportunities 'is a national priority'* <http://www.independent.com.mt/articles/2016-10-30/local-news/Decent-housing-opportunities-is-a-national-priority-6736165886>

³ Centre of European Law and Policies and Universitat Bremen, 2015, *TENLAW: Tenancy law and housing policy in multi-level Europe* <http://www.tenlaw.uni-bremen.de/>

⁴ Information about each country can be found in the TENLAW Report (2015) here: <http://www.tenlaw.uni-bremen.de/>. With regards to France and Germany, there have been major changes to their rent regulation

developed by taking various elements of rent regulation present in a number of different European countries, this was done bearing in mind the local context and its specificities.

PRINCIPLES

The model outlined here is based on the following underlying principles:

- The fundamental human right of persons to adequate housing and to have a place they can call home.
- Enhancing stability and peace of mind for tenants and landlords, and avoiding situations of precariousness.
- Establishing rights and obligations for both tenants and landlords.
- Increasing the availability of long-lets for people who want to settle in a particular unit as tenants. One must bear in mind that, due to exorbitant increases in property prices, the number of people who will be forced to rent throughout their life will rapidly increase in the coming years.
- Retaining the landlords' right to both set an initial price as well as increase the rent-price over the years, whilst ensuring that this happens in a regulated manner.
- Incentivising the placement of empty properties on the rental market.

The model envisages that a **state registry of properties on the rental market** would be created, as well as the establishment of a **public entity responsible for rent regulation**.

TAX ON LEASES

Under our proposed rent regulation model, it is being proposed to have four types of leases with varying taxation. This would include the possibility of short and medium-letting, whilst incentivising the availability of longer lets for people who want to settle in a particular unit.

- **Short-lets:** 0 to 2 years - taxed at 25%⁵

framework which are not included in the TENLAW Report, but are reflected in the information given in this document.

⁵ This should not include short-lets that fall under the Malta Travel and Tourism Act. However, the impact of renting out to tourist on the overall rent-prices and the availability of affordable housing should be carefully studied and more rules should be introduced if necessary.

- **Medium-lets:** 2 to 5 years - taxed at 20%
- **Long-lets:** 5 to 10 years - taxed at 15%, minus 1% for each additional year over 5 years up to 10 years. Hence, down to 10%. Staggering the taxation bracket would avoid situations where landlords give, for example, 6-year contracts simply to fall into a different tax-bracket.
- **Longer-lets:** More than 10 years - taxed at 10% minus 0.5% for each additional lease-year, up to a reduction of 5% tax (for example, a lease of 14 years would be taxed at 8%). Thus, the degree of a lower tax-regime would again be proportional to the number of lease-years in addition to 10 years, up to reaching the minimum point of a 5% tax-rate.

CONTRACTS

The crux of our proposal lies in the creation of a legal framework regulating the drawing up of contracts and the prices set therein. Strong dissuasive measures and sanctions should be implemented to deter landowners from renting without a valid contract. Tenants who report landowners for not providing a contract, or for contract irregularities, should be protected from eviction. For example, in those cases where it is established that a contract had not been provided by the landlord, a tenant would be guaranteed a three-year tenancy at a favourable rate set by a public authority.

- **Registration and initial price:** A state registry of properties on the rental market would be set up. Following enactment of legislation, registration will be carried out for every existing property on the rental market, and for every property that is newly placed on the rental market then onwards. This would apply to all types of lets – short, medium, long and longer-lets. Landowners will register properties that are up for rent, and the first price set in the first contract will be considered “the initial price”. For every rent payment, landlords should provide a receipt to the tenant.

The public entity responsible for rent regulation should provide a standard contract template.

- **Price increases:** During the duration of the contract, a landlord can annually increase the rent price. However, the percentage of this increase should not exceed the cost-of-living-increase percentage, established by the competent authorities.⁶

- **New contracts:**
 - Once a contract expires, the landlord would be allowed to draw-up a new contract with the same, or a different, tenant. However, in either case the price set in the new contract cannot be higher than 10% of the last monthly rent paid under the previous contract. This is aimed at preventing exorbitant increases in rent-prices following the expiry of contracts.

 - Besides the 10% limit, the law should also state that the price set in any new contract cannot exceed a 25% increase over five years, that is, the price cannot be more than 25% higher than it was five years earlier. The reason behind setting this 25% limit is to avoid having landlords entering into short-term contracts in the knowledge that following each contract they would be able to increase the rent by 10%.

 - In cases where a new contract is drawn-up before the five-year period of the entry of the property into the rental market elapses, the maximum price allowed should be calculated pro-rata on the basis of 25% increase over five years i.e. 5% per year (for example, if a property has been on the rental market for 3 years, the price in a new contract should not exceed 15% of the initial price in the first contract).

 - The downside of this model is that landlords might feel pressured to always make use of the maximum price-increase allowed by law, since this will continue affecting future prices (as in the proposed model increases are calculated over previous prices paid). This may be addressed through calculating the maximum price-increase allowed (both with regards to the 10% increase over the previous contract as well as the maximum 25% increase over five years) not on the actual prices paid by the tenant, but on what the price would have been if the maximum increase had always been adopted, even if it wasn't the case in reality. This would give more space to landlords to consider new contract prices which are below the maximum allowed, knowing

⁶ Belgium and Austria, among other countries, adopts this model.

that this would not affect their ability to increase prices to the maximum percentage allowed in the long-term.

- The law should also allow for properties to be withdrawn from the state registry and then re-introduced at a later stage. In such cases, the initial price in the first contract after reintroduction cannot exceed a 5% increase (over the last rent price) for every year the property has been outside the rental market. The percentage increase would be calculated as follows: *No. of years outside the market * 5* (for example, the rent price of a re-introduced property that has been outside the rental market for 3 years could increase to a maximum of 15% over the last price it was rented for). This would be in line with the principle that property prices should not increase by more than 25% over five years, or its pro-rata equivalent.
- An exception to the outlined limits in price increases for new contracts can be applied in those cases where the landlord carries out extensive refurbishment or structural upgrades to the property. The percentage increase in the price should be reflective of the changes carried out and will be determined by means of an inspection of the property by a Government representative. The onus of providing proof of the upgrades carried out would lie on the landlord.
- **Rent Price Index:** A risk inherent in this model is that, since price increases will be calculated on the initial price, landowners might do a first “fictitious” contract (for example, with a family member or a friend) with an unrealistically high price that doesn’t even reflect market prices. Setting an unrealistically high price would then allow them to, first, lower the price in following contracts in order to make it viable on the rent-market, and then have steep price increases over the years that would be allowed due to the very high price that had been set in the first contract.

To partly avert this scenario, and to better regulate the rent-market in general, landowners should input in the state registry of property on the rental market specifications pertinent to their property. They would fill information in pre-established categories such as:

- the area where the property is located
- the size of the property

- the quality of the property, including furnishing and access to outside spaces such as balconies and the roof.

Government would establish a Rent Price Index that lists prices in 1) different areas and 2) for different classes of property according to their size and quality. Each inputted property will fall under a specific category within this Index (for example, property in Area 5, Class B).⁷

There would be a rule stating that an initial price should not exceed 10% of the price listed for that particular category within the Rent Price Index.

This would still give landowners ample leeway in setting initial prices, since the Rent Price Index would in itself reflect market prices, and the initial price can even be 10% higher. Such a rule would simply reduce the risk of having landowners setting unrealistically high initial prices so as to avoid rent regulation.

All information should be publicly and easily available, especially to tenants and potential tenants. Thus, the list of property on the rental market is to be accessible to all potential tenants and the list should indicate the location of the property and its classification within the Rent Price Index. Tenants or potential tenants who deem that the landlord has inputted wrong information about the property in the registry would be able to report the landlord and, if their claim is found to be true, sanctions would apply.

- **Deposits:** Deposit money could be deposited at the public entity responsible for rent regulation. Landlords who want to take all, or part of, the deposited money would have to file a request with this entity, providing justification for the request and relevant proof.

An inventory of items present in the place being rented-out, with details about their condition, is to be included in the contract.

- **Utility bills:** Law should regulate the procedure for payment of water and electricity charges. It should state, for example, that tenants have a right to see a copy of the

⁷ Indexes exist in countries such as France, Germany and the Netherlands. However, in their case, the index establishes the rent-price, which is different from the system being proposed in this model.

bills and have access to their account. Where there is an agreement between the tenant and the landlord for the payment of a fixed monthly price to cover these charges, this amount should be reasonable and should not be included in the amount that increases annually.

- **Termination of contracts:** Law should stipulate how long in advance a tenant should inform the landlord if s/he wants to terminate a contract as well as the fees to be paid to the landlord when the tenant does not respect this timeframe (on the same lines of notice-periods established in employment law). Moreover, the tenant should be obliged to rent the place for a minimum period of time, (for example, for the duration of at least 50% of the contract period), and law should establish the amount that should be paid by the tenant if s/he decides to leave the place before the established minimum period of time.

A landlord can only terminate a contract in exceptional cases, such as significant damage to the property by the tenant or repeated failure to pay the monthly rent. It should always be ensured that the tenant will not become homeless.

- **Upkeep of property:** Law should outline the responsibilities of the tenant and landlord respectively with regards to the upkeep of the rented property. It shall also state that all property on the rental market should be fit for human habitation and outline minimum standards in this regard.
- **Registration of contracts:** All contracts, regardless of whether they are short, medium, long or longer-lets should be registered and follow this legal framework. Only in cases of short- and medium-lets can landlords rent by room instead of a whole unit, providing separate contracts for each tenant and respecting all other rent regulations. This is to cater for situations like renting out to students and temporary workers.

EXISTING LEASE AGREEMENTS

Tenants with existing lease agreements, whether formal or informal, should be protected since they run the risk of being forced to leave the property following enactment of such a

regulatory framework. Landlords might rush to set a high initial price, since from then onwards, increases in this price will be regulated.

Thus, in case of existing agreements, landlords should still register their property as being on the rental market as well as register the current contract (or create one where it doesn't exist), but will be allowed to postpone setting an initial price until the current lease agreement ends. Still, increases during this time period shall be regulated so that landlords do not use such lease agreements as a loophole to avoid regulation.

Moreover, in those cases where a formal contract (indicating, amongst others, an end date) does not exist at the point of enactment of rent regulation legislation, landlords should be obliged to let tenants continue living and paying rent for a reasonable period of time following enactment, proportional to the time they have been living in the unit (i.e. the longer one has been renting, the longer s/he should be able to continue the lease agreement). In cases where the landlord refuses to continue with the lease agreement, tenants should be able to bring any material to prove their tenancy, including signed (but not necessarily registered) documents showing payment of monthly rent. This would legally oblige the landlord to extend the lease agreement for a reasonable period of time.

TENANTS' UNION

Law should provide a legal standing to a tenants' union that will be included as one of the social partners.

AGENCIES

Law should regulate property agencies and their role during the renting process. Any abuse by such agencies, such as providing incorrect or incomplete information, should be sanctioned. Tenants should also have the right to claim back the money given to the agency if problems during their tenancy arise, and if these problems are related to negligence or deception on the part of the agency during the renting process.

PROVISIONS ON DISCRIMINATION

People should be legally protected from discrimination based on personal characteristics such as disability, race, gender, age, sexual orientation, religion or belief, etc. in any part of the renting process. Sanctions should apply to any discriminatory practice such as discriminatory clauses in contracts and evictions, or refusal to rent, based on discrimination.⁸

TAX ON EMPTY RENTABLE PROPERTY

Under the proposed model the State would introduce an annual tax on:

- Property that can be rented (rentable) but is not placed on the rental market. A separate registry of non-rentable property should be created in which owners will have to choose from a set of reasons as to why their property is not rentable. This should be done according to clear rules to prevent abuse, such as a rule stating that a property owner cannot have more than one summer residence.
- Property which is placed on the rental market but is left empty for the largest part of the year (for example, more than 6 months over a year)

This tax would not be applicable to properties which cannot be rented such as summer residences, dilapidated buildings and properties caught up in inheritance issues. Such cases would be placed in the registry of non-rentable property.

A tax on empty rentable property would:

- Incentivise landowners to place their property on the rental market, thus enhancing the available housing stock as well as reduce pressure on the environment
- Discourage rent on the black market

This measure would be part of a National Action Plan on property that would, first of all, assess and record the state of property/ownership in Malta and conduct a study on demographic development in our country.

⁸ This is already partly covered in Maltese Equality Legislation (LN181/2008 and LN85/2007). However, the characteristics covered in this legislation are only gender and race, and there are no established sanctions.