

# MALTESE RENT REGULATION

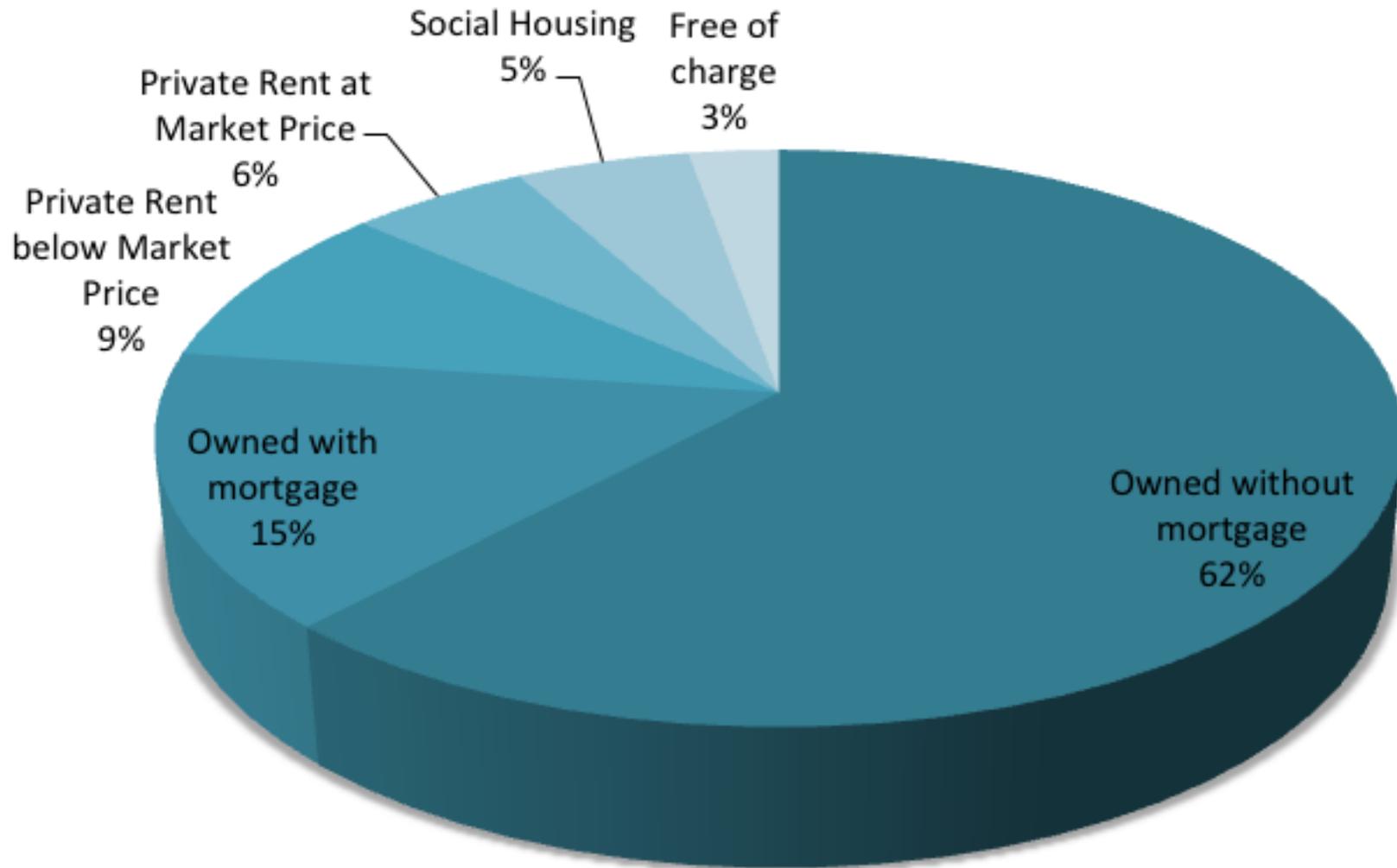
## A Case of Extremes



L-Università  
ta' Malta

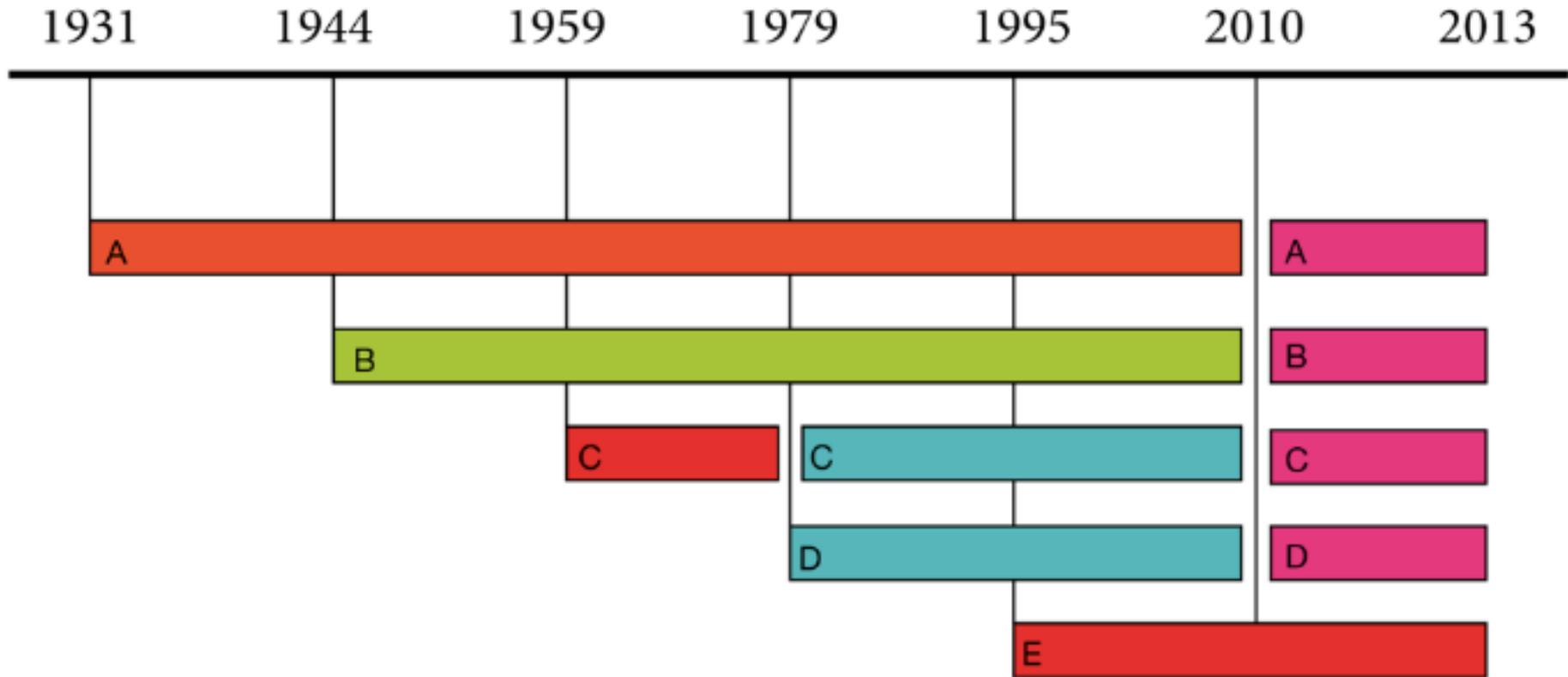
Department of Civil Law  
Faculty of Laws

# Housing Tenures in Malta

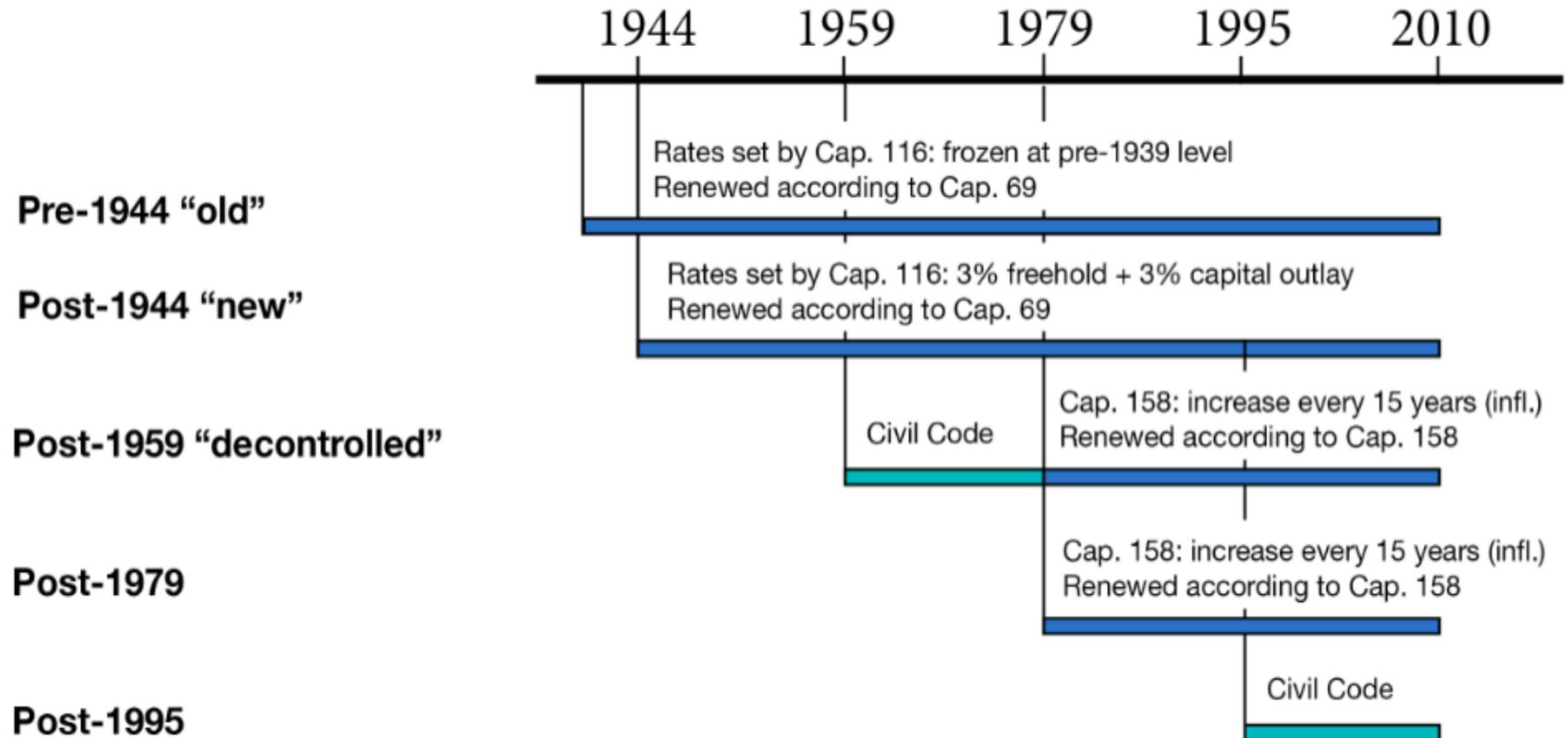


National Statistics Office, 2011 Census on Population and Housing (2014)  
National Statistics Office, SILC Survey (2014)

# Succession of Tenancy Laws in Malta



# Succession of Tenancy Laws in Malta





# ECHR jurisprudential evolution in the field of housing

## **Mellacher v. Austria (1989)**

*“The Court observes that, in remedial social legislation and in **particular in the field of rent control, which is the subject of the present case, it must be open to the legislature to take measures affecting the further execution of previously concluded contracts** in order to attain the aim of the policy adopted”*

Reduction of up to 80% of the applicant’s potential rental income was held to fall within the State’s margin of appreciation

## **Hutten-Czapska v. Poland (2006)**

The impossibility of receiving a return that was at least “*reasonably commensurate*” with the general costs of maintenance was found to “***impair the very essence of the applicant’s right of property***”.

No such burden could be placed on one particular social group “*however important the interests of the other group or the community were as a whole*”. Even more remarkably, in recommending the mechanism that would be capable of safeguarding the landlords’ interests the Court made reference to their “***entitlement to derive profit from their property***”.

## Cases relating to Malta

CASE	% of market rent fixed by statute
<i>Ghigo</i>	1.9% (in 2005)
<i>Fleri Soler and Camilleri</i>	1.6% (in 2006)
<i>Edwards</i>	11.6% (1976-1996) 11.4% (1997-2006)
<i>Amato Gauci</i>	6.3% (in 2002) although if rent had been challenged in front of RRB it would have been raised to an equivalent of <b>12.5%</b>
<i>Aquilina</i>	2.25% (until 2010) 6.4% (following reform)
<i>Zammit and Attard Cassar</i>	12.3% (until 2010) 15.8% (following reform)
<i>Apap Bologna</i>	16% (in 1987) 6.5% (following reform)

States could not subject landlords to “*minimal profits*”

State was found to have shifted onto the applicants “*most of the social and financial costs of supplying housing accommodation*” to the housing beneficiaries and their families.

# Points criticised by the ECHR in the Maltese rent law cases

1. Low amount of rent which did not **reflect the market value** of the property
2. The compulsory **once-every-fifteen year increase** (or complete rent-freeze)
3. Method in which the increase would be calculated was solely **based on the index of inflation** without one considering the value of the property as a relevant factor
4. The state of uncertainty in relation to when the owner would have **the right to regain possession of the dwelling**
5. The **lack of procedural guarantees** in cases where he would need the premises for his personal use or that of any family member or where the emphytheuta would not deserve that protection



MINISTRY FOR SOCIAL POLICY



**RENT LAWS**  
THE NEED FOR REFORM

*“If the level of an annual rent of € 116.5 (Lm50) base 1946 is placed at 2007’s inflation base of 712.68; the value of the rent would increase to **€830.27** (Lm356.34). The report argues that such an aggressive approach is not to be considered as this will give rise to social and economic negative impacts. Following various modelling, the report proposes that with effect from 1st January 2009, the minimum rent level for a property, unless otherwise agreed to by the parties, would be on the basis of the 1960:158.80 inflation base: which would establish the annual minimum rent level to **€185.**”*

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**National minimum pension** for single persons in 2010 (assumably the category that would be worst-hit by the reform): €101.40 per week Minimum annual rent of €830.27 would have implied a **15.7% household effort rate in the worst of cases)**



***Ethel Baron et v. L-Avukat Generali et.***

Civil Court Const. Jur. (First Hall), 4 July 2018, Rik. Kost. 56/2015 MH

There is no doubt that in view of the fact that the applicants are suffering a disproportionate burden, since they were deprived of the enjoyment of their property due to the application of Article 12 of Cap. 158, they have suffered a violation of their fundamental right. They must, therefore, be provided with an adequate remedy.

In the Court's opinion:

**The first remedy** is that since Article 12 of Chapter 158 violates the fundamental right to the peaceful enjoyment of the property, this article can no longer be applied against the applicants, therefore the defendants or their successors in title may no longer avail themselves of the protection granted by the said law in case of an eventual application for their eviction from the premises.

**The second remedy** is the granting of compensation .... In the light of the above the Court is of the opinion that the amount given in just satisfaction is that of ten thousand euros (€10,000)





***AIC Joseph Barbara v. Avukat Generali et***  
Civil Court (First Hall), 26 April 2018, 471/2005/LSO

In the light of the above, the Court agrees with the applicant [landlord] that the only provision that could be invoked by the defendant [tenant] is Article 12A of Chapter 158 – an article which cannot be relied on as a consequence of the Constitutional Court judgment.

... the Court decides to reject the pleas of the defendant [tenant] and uphold the applicant's [landlord] request for eviction. The defendant is being ordered to leave the premises within the period of one month, since he is occupying it without any valid title at law.



## **ACT No. XXVII of 2018**

### *An Act to amend the Housing (Decontrol) Ordinance, Cap. 158*

**12B.** (1) Where a person is in occupation of a dwelling house under title of lease created by virtue of a previous title of emphytheusis or sub-emphytheusis which commenced before the 1<sup>st</sup> June 1995 ...

(2) The owner shall be entitled to file an application before the Rent Regulation Board demanding that the rent be revised to an amount not exceeding two percent per annum of the open market freehold value of the dwelling house ...

(3) (iii) at the initial stage of the proceedings the Board shall conduct a means test of the tenant which shall be based on the means test provided for in the Continuation of Tenancies (Means Testing Criteria) Regulations ...

(4) Where the tenant does not meet the income and capital criteria of the means test the Board shall .. Give judgment allowing the tenant a period of five years to vacate the premises ... [at] double the rent which would have been payable

(5) Where the tenant meets the income and capital criteria of the means test the Board shall ...

(6) In establishing the amount of rent payable ... give due account to the means and age of the tenant and to any disproportionate burden particular to the landlord and it may determine that any increase in rent be gradual.



# Construction Boom

“ In contrast to the cautious economic recovery elsewhere, economic growth in Malta remained robust, with real GDP growth standing at 6.6% in 2017. The expansion remained largely underpinned by the services sector, although the manufacturing and construction sectors also posted an increase in gross value added.

## PERMITS ISSUED FOR THE CONSTRUCTION OF DWELLING

	2012	2013	2014	2015	2016	2017
Apartments	2,489	2,062	2,221	3,019	6,316	8,513
Maisonettes	298	350	414	471	706	919
Terraced houses	202	209	204	342	297	277
Other	75	84	90	115	189	113
<b>Total</b>	<b>3,064</b>	<b>2,705</b>	<b>2,937</b>	<b>3,947</b>	<b>7,508</b>	<b>9,822</b>

Source: Planning Authority.

# Impact of the I-gaming Industry

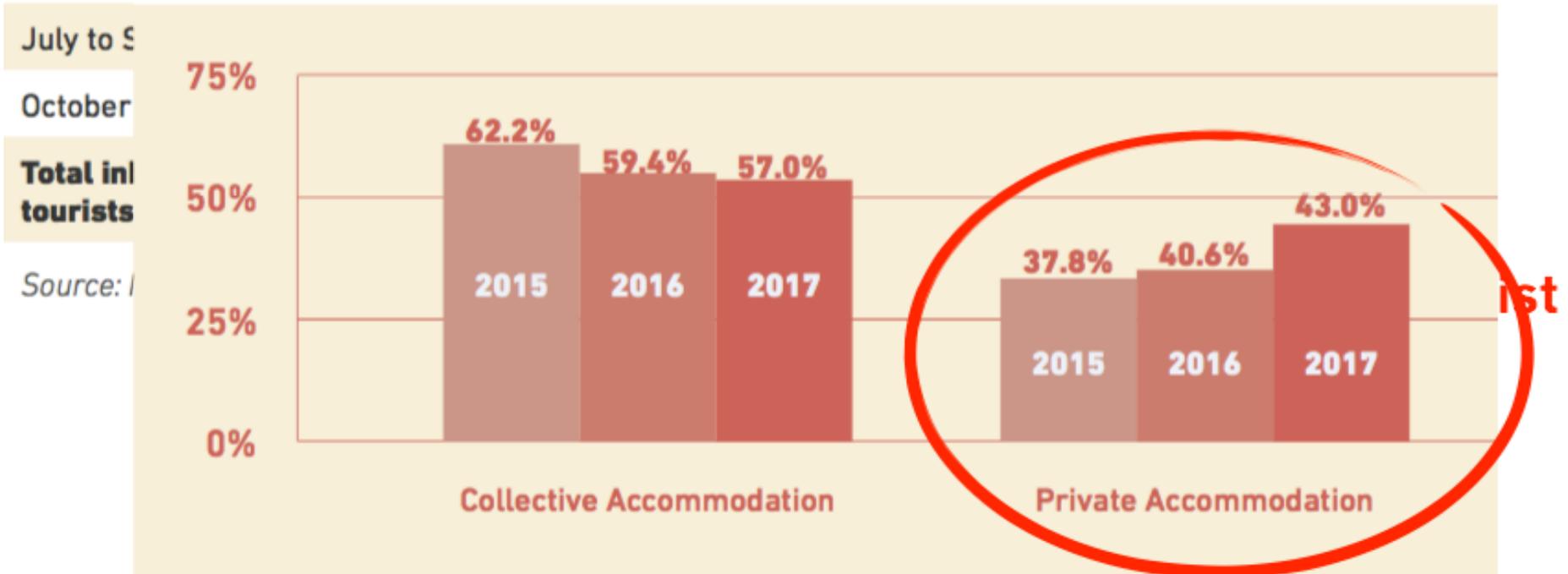
As Malta's iGaming industry continues to boom, its employees are dominating the residential rental market. At ██████████ up to 29% of properties are being rented by people working in the sector. Co-living is also a growing trend, and we are seeing an increase in professionals in the gaming industry choosing to share rental properties.

As the increase in demand for properties from the iGaming industry has continued to increase at a rapid pace, Maltese investors have discovered the opportunity of buying properties for the sole reason of letting them out. Now, we are even seeing an increase in professionals in the gaming industry choosing to share properties between them.

# Main Indicators of Inbound Tourism to Malta

	2015	2016	2017	Change 2017/2016
January to March	249,629	281,341	348,890	24.0%

## Share of Guest Nights by Type of Accommodation



# Impacts on Household Income

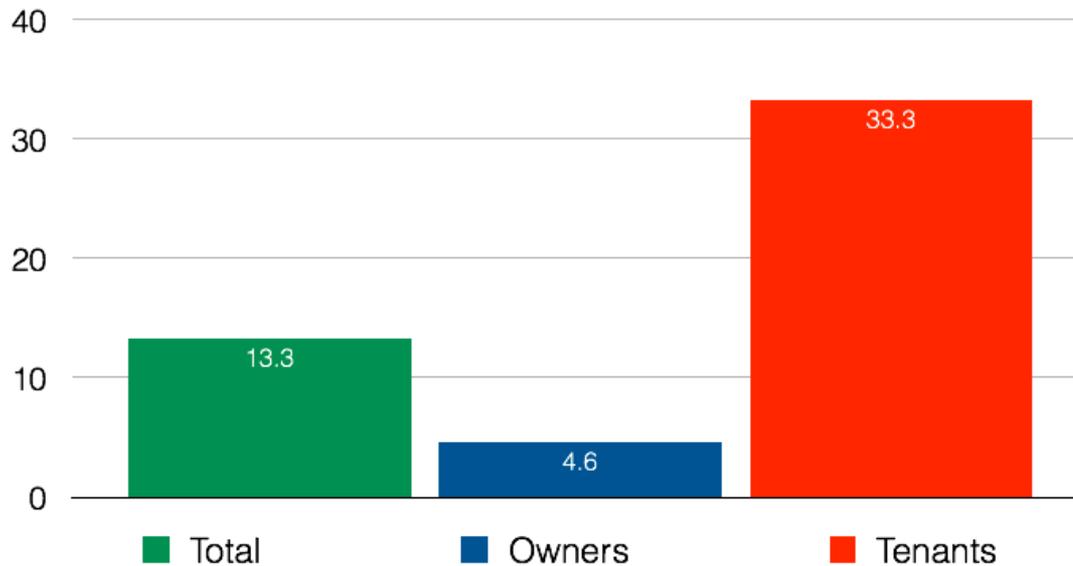
**maltatoday**

7 August 2018, 7:30am

## Households' income from rent grew 132% in just four years

Households have made hay from rising rents, precisely €85 million in 2017 – while income from employment stayed relatively the same

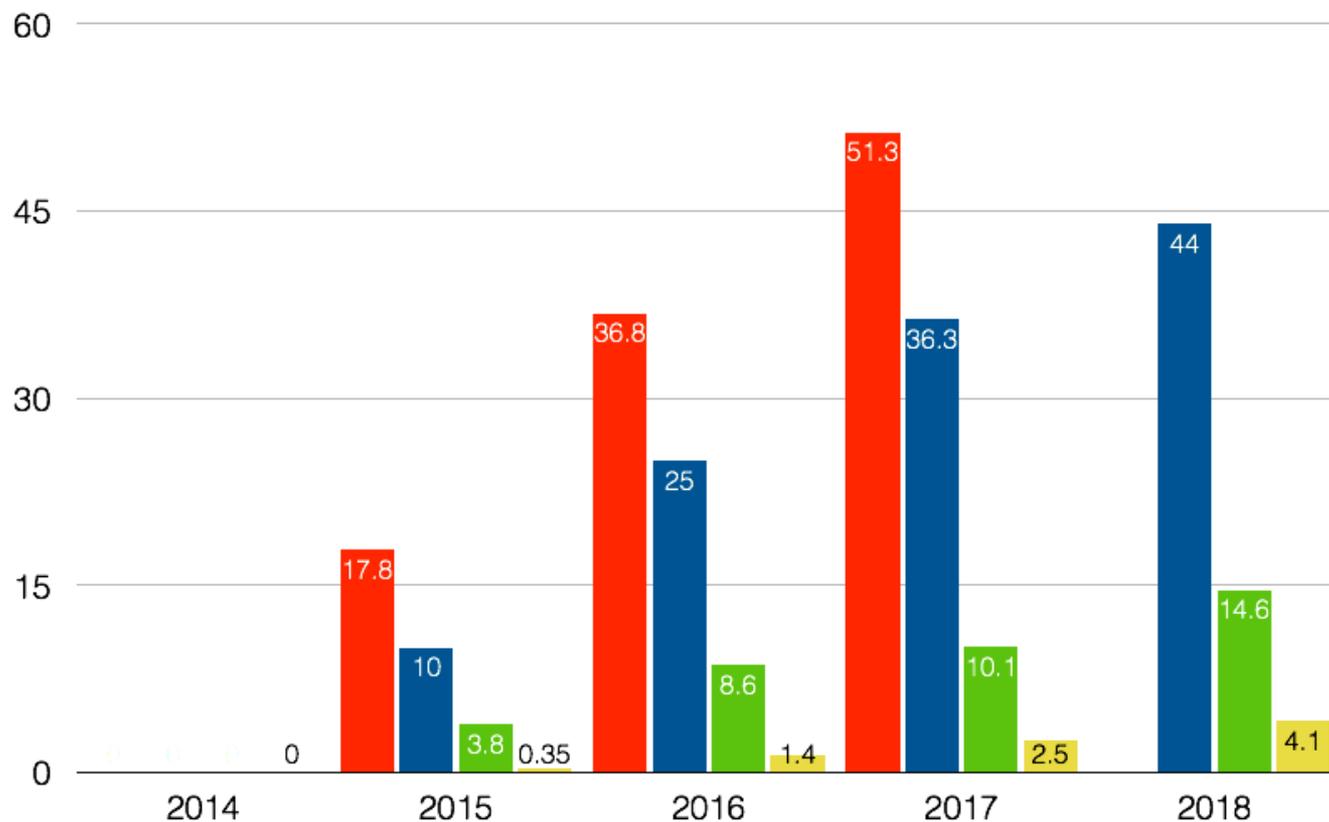
### 'At Risk of Poverty' (ARP) by tenure status: 2012, 2016



Source: NSO, EU SILC

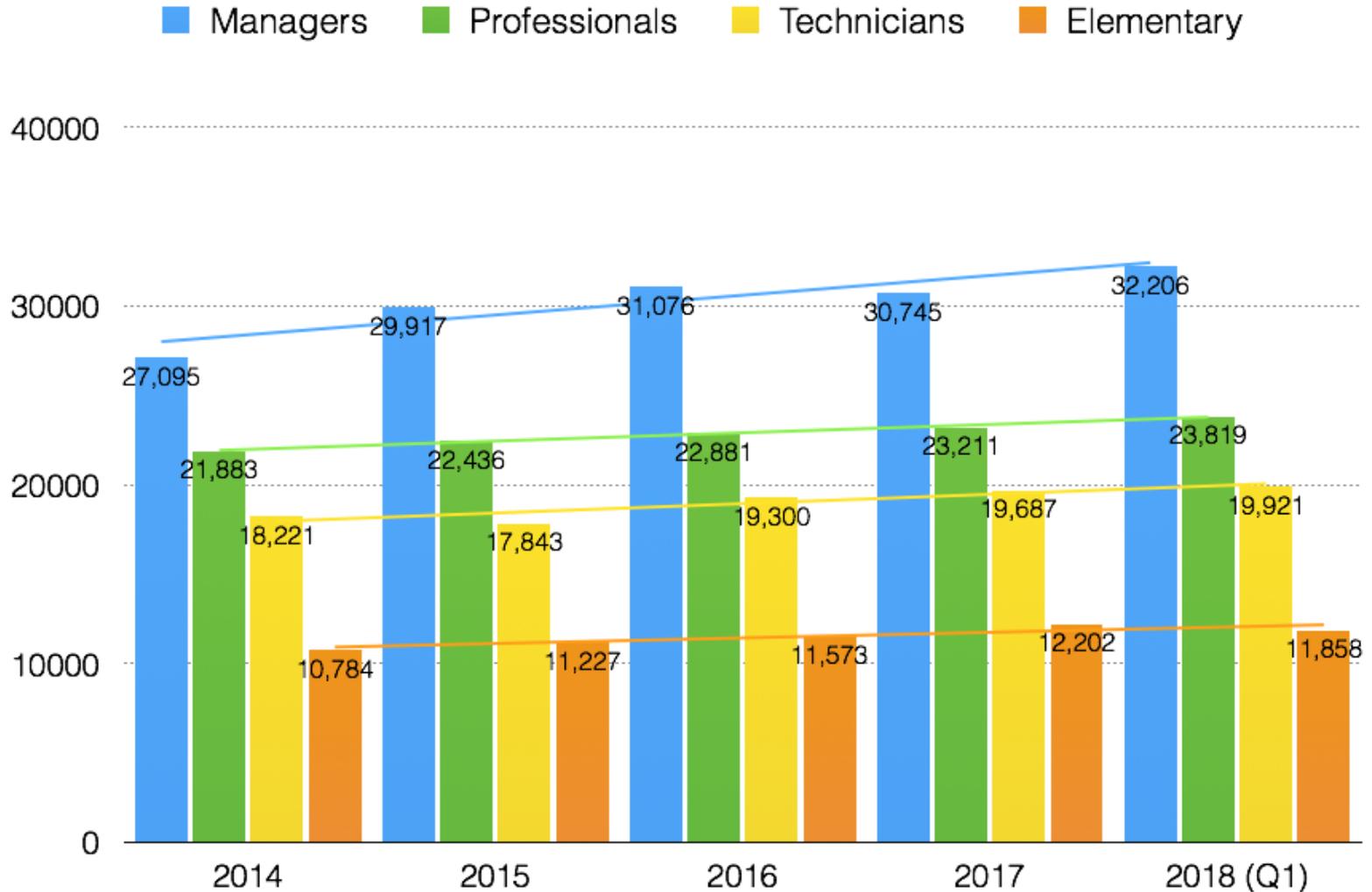
# Rental/Property prices and Wages (base = 2014)

■ Rental Prices (2-bedroom) ■ Property Prices ■ Average Wage ■ Minimum Wage



Source: NSO, DIER

# Average Wage by Occupational Group (€) (2014-2018)



Source: NSO (Labour Force Survey)

# Implications on Homeownership Affordability



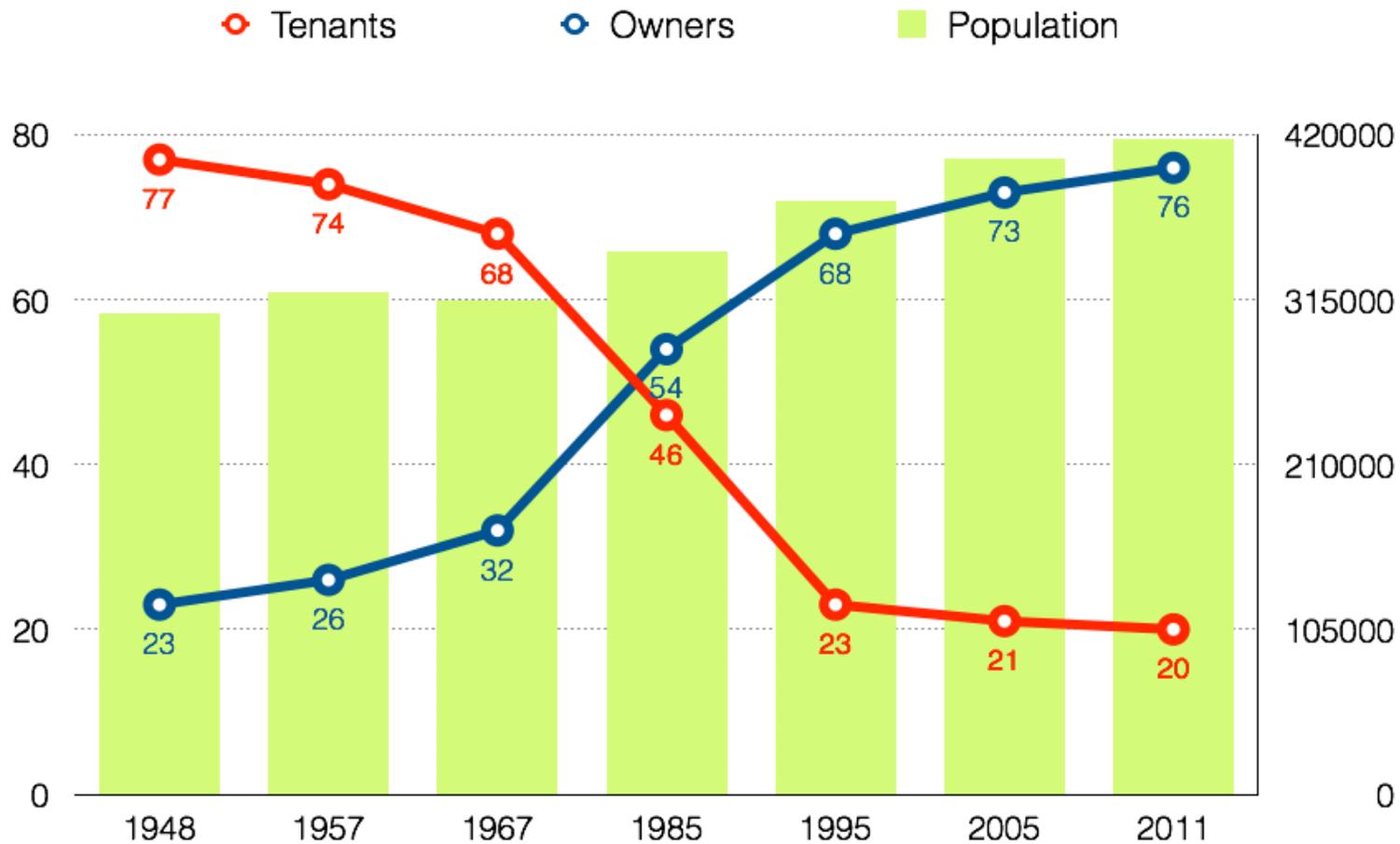
LOKALI

## Irid ikollok mill-inqas dhul ta' €20,000 biex tkun tista' tixtri propjetà fl-izjed postijiet irħas ta' Malta

Imtella' April 20, 2018 - Agġornata 20 Ta' April, 2018 2:49pm

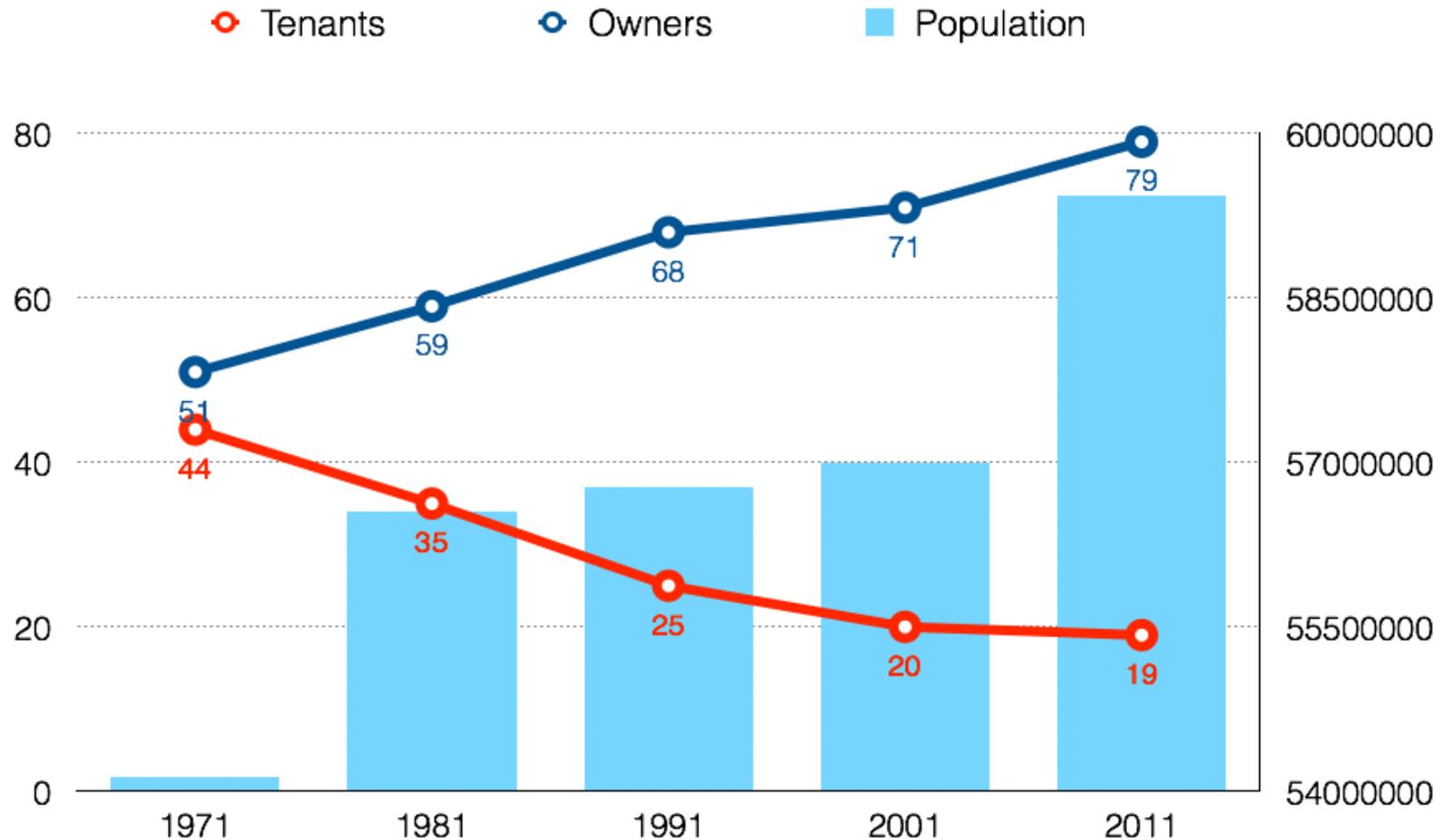
Is-Segretarju Parlamentari għall-Akkomodazzjoni Soċjali, Roderick Galdes, qal li minn riċerka bi tnejn għal White Paper dwar is-suq tal-kera u minn riċerka tal-Bank Ċentrali joħroġ li individwu għandu bżonn dhul ta' mill-inqas €20,000 biex ikun jista' jixtri propjetà fl-izjed postijiet irħas ta' Malta. Qal li għalhekk hemm bżonn li s-suq tal-housing iwieġeb għal dawn it-tibdiliet u bżonnijiet tas-soċjetà.

# Forms of Tenure and Population in Malta (1948-2011)



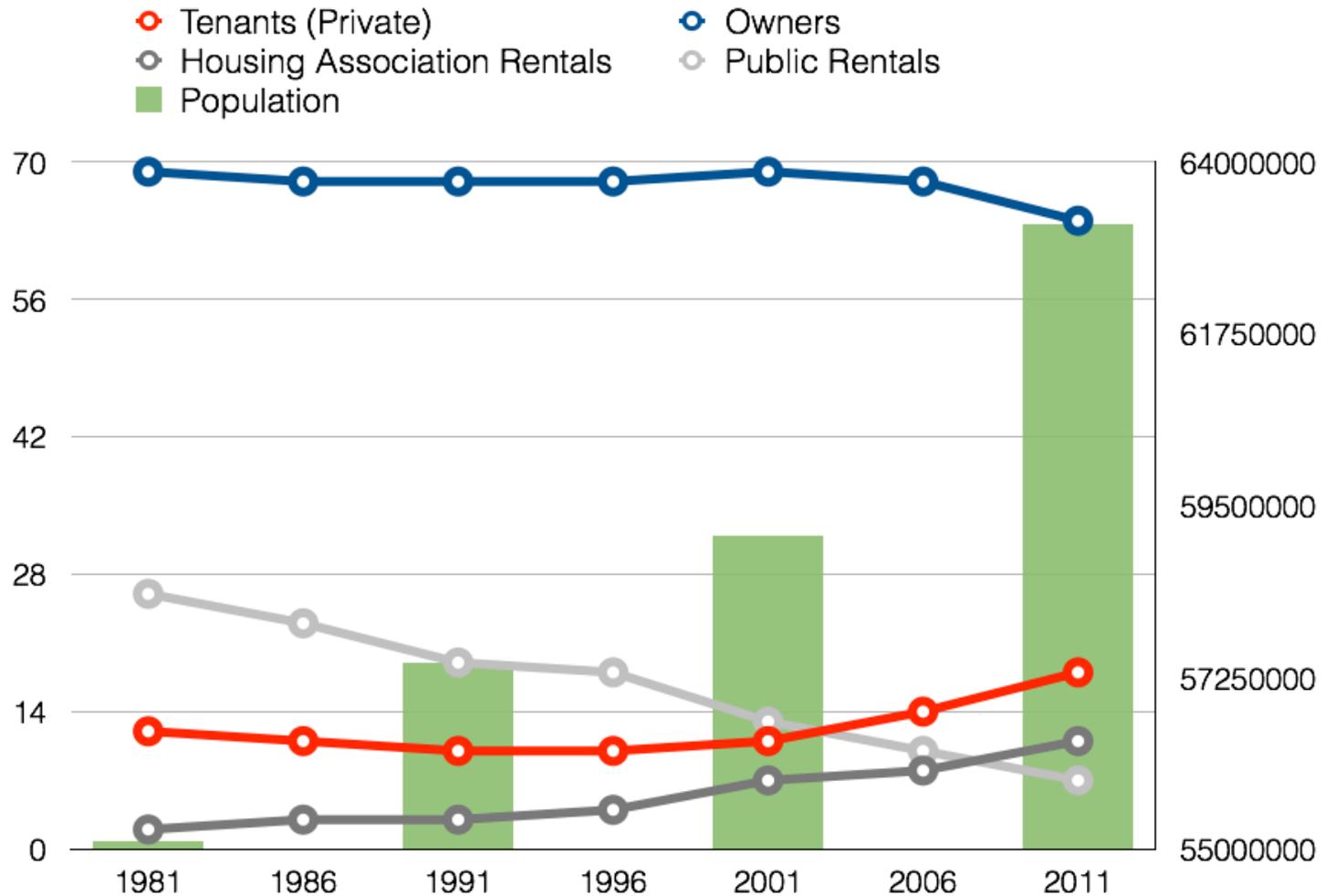
Source: NSO

# Forms of Tenure and Population in Italy (1971-2011)



Source: ISTAT, Politecnico di Milano

# Forms of Tenure in England (1981-2011)



Source: Office for National Statistics

# Conclusions

## 1. Fate of letting market linked to FDI

In this respect, foreign direct investment (FDI) has spelt the country's economic success, but such activity has proven to be, on the one hand, extremely vulnerable to exogenous shocks and, on the other, intrinsically footloose in nature.

*J. Borg, The impact of the global economic slowdown on two small island states of Europe, Iceland and Malta, 2011, p. 44.*

# Conclusions

## 2. Changing role of rental market

Acknowledge the role that rentals play in contemporary society:

- Tenants no longer necessarily economically vulnerable individuals
- Rentals as a longer-term solution – individuals seeking to establish themselves in Malta for the medium term/locals priced out of ownership market

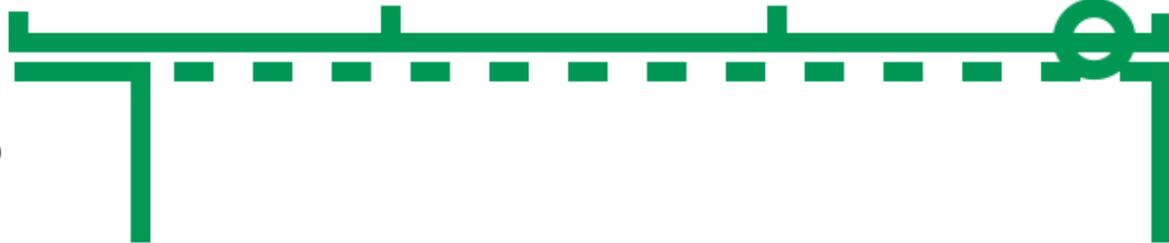
Pegged to Property Price Index although increases cannot exceed x % per year



LL bound to give notice x months from expiration, otherwise contract renewed for a further term



Landlords free to fix initial rents



First x months compulsory for T

T free to terminate provided x months' notice

### 3. New methods for providing affordable housing

Need for stronger government involvement in providing affordable housing (as distinguished from social housing) since private market seemingly incapable of providing for demand among lower-income households