



Media Release

OHSA's General Comments on the NAO Report

OHSA takes note of the report prepared by the National Audit Office and will be evaluating its observations, conclusions and recommendations to see whether they can be taken on board.

This notwithstanding, OHSA would like to state at the outset that a number of principles which it upholds, philosophies to which it subscribes and strategies which it implements are not negotiable since they reflect current international approaches and shared European values.

The OHSA regrets that this was a missed opportunity at analysing objectively the current situation and to issue meaningful recommendations to ameliorate the current state of play.

Significantly, the conclusions of the report seem to recommend an all-present regulatory entity, which on its own is responsible for everything that happens everywhere at all times.

“Apart from being a non-starting concept if one understood the dynamics of why accidents happen, this would ignore the paradigm shift that has occurred in Malta and elsewhere, which requires duty holders to be held accountable for their actions and/or inactions, and which has led to a situation whereby a balance has to be achieved between regulation and the provision of advice, between enforcement and education, between strict regulation by the regulatory entity and self-regulation, Dr Mark Gauci”, the OHSA’s CEO said.

There is a clear link of responsibility when it comes to occupational health and safety, and particularly so in the construction industry. This is a basic concept that is agreed upon and endorsed at the international, European and local level – and is the only sure way how to increase OHS standards in the long-term. It would seem from the report that this fundamental concept has been misunderstood – and will remain a point of respectful contention between NAO and OHSA.

In the case of accidents and fatalities, the report seems to omit that the construction industry, by its very nature, organisation, dynamics and economic features, is considered a high risk sector worldwide. With its feet firmly on the ground, OHSA is aware that even if all legislation and safety standards are adhered to, a zero accident rate is unattainable. OHSA has however never used this fact as a means to justify slack behaviour or attitudes or to rest on its laurels when positive results are achieved.

To this effect the OHSA respectfully holds a different stance to the conclusion that only heat is strongly correlated with the occurrence of occupational accidents in the construction industry. In this case, when one analyses the gainfully occupied population, one has to keep in mind that in the construction sector, statistical data does not reflect the actual situation on the ground and hence cannot permit a deep, meaningful analysis. One has to keep in mind that most irregular workers and undeclared work occur in this sector, and therefore the gainfully occupied population cannot be used as the denominator – it can be used to obtain broad indications, especially when the statistics are collected over a long period of time.

Secondly there are other factors which need to be considered, but which were ignored by NAO.

“If one were to look at the injury data concerning self-employed and part-time work over a period of time, one can notice that the number of injuries sustained by these workers is significantly higher during the third quarter than at other times of the year. This is a clear indication that there is a higher percentage of small project construction work being carried out between July and September than in other months,” Dr Gauci explained.

While taking on board some recommendations, the OHSA feels that it would indeed be extremely simplistic to even consider the possibility that there are any easy solutions, especially where this concerns an implied regulatory deficit, or as mentioned in the report, through the negation of the right if the social partners to be involved. OHS is considered as a subject dependent on meaningful tripartite involvement and participation as guaranteed by the EU Treaties.

This links to the fact that the conclusions of the report seem to indicate that a detailed review of the OHSA’s operational environment might have been overlooked. Indeed, the OHSA operates within a European dimension and most obligations, particularly in the construction industry, stem from principles and requirements enshrined in EU directives, which in this particular sector, are already complex and unnecessarily bureaucratic in nature. OHSA feels

that creating more bureaucracy would be detrimental in nature and goes against evidence-based international good practice procedures.

Clearly OHSA has three complimentary roles (apart from others arising out of the Act) – the establishment of regulatory standards, the provision of information and enforcement. These roles are what the legislator saw fit to assign to OHSA through the enactment of the OHS Authority Act (2000), and OHSA is duty-bound to find the right balance in fulfilling these roles, without assuming responsibilities which by law have been assigned to other named duty-holders.

The mix of how best to achieve the objectives in these three areas is based on an established general OHSA strategy covering a period of six years, which was developed following wide consultation. The objectives of this strategy fully respect those included in the Community-wide strategic framework for OHS, which Malta is required to observe and implement.

Hence OHSA is not working sporadically or on the basis of ad hoc assessment but rather on the basis of a coherent strategy that we believe will achieve the OHSA's objectives. It should be underlined that behavioural patterns can be changed in a sustainable manner only over time. That is why many regulatory authorities such as the OHSA rely increasingly more on advocacy.

Moreover, OHSA works in collaboration with other entities on a daily basis both at an administrative as well as a practical level on the ground. OHSA always fosters a culture of cooperation and has been the forerunner in instigating a number of cooperation initiatives with various entities, both governmental as well as civil society.

“Indeed, even with regards to media communications, the OHSA's preferred approach is that of informing rather than alarming. Thus, telling duty holders about their legal responsibilities is an obligation. OHSA provides facts not simply perceptions or mere opinions. People are and will continue to be provided with facts that will help them to arrive at informed decisions. We want people to change their long-term behaviour because they see the value in changing such behaviour. Our objective, rather than an alarmist approach, has a higher possibility of success to positively influence behaviour sustainably over time,” Dr Gauci continued.

On the subject of administrative fines, OHSA reiterates that these were never meant to replace judicial proceedings, which OHSA strongly believes provide the only real deterrent.

The Act in fact provides for penalties amounting to a maximum of €11,646 for each breach of legislation and up to two years imprisonment. In this area, the OHSA has encountered a number of problems. Given that the OHSA is only assigned one or two court sessions annually, it has become very difficult to prosecute without creating a huge bottleneck.

OHSA is moreover aware that it has a perennial limited resources problem, however it does not feel that having an overly-large complement of staff would be the real solution.

“The only way forward in the area of occupational health and safety is to endorse the OHSA strategy and implement it over a period of time. This is why OHSA strongly advocates the implementation of management systems, since it is through the implementation of such systems that ohs levels can be improved, and not by having OHSA assume more responsibilities. OHSA does not favour ad hoc solutions without the involvement of the social partners, or focus on what is not within its remit, as some may think. For this reason, OHSA will continue to work with others to attain safer workplaces across the Maltese Islands”, concluded Dr Gauci.

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