



# **Peer Review on “The efficient transposition, implementation and enforcement of EU OSH legislation”**

**Copenhagen, Denmark, 19-20 June 2018**

**Peer Country Comments Paper - Malta**

## **Two thousand kilometres away from the Danish model: transposition, implementation, and enforcement of EU OSH legislation in Malta**

DG Employment, Social Affairs and Inclusion



**EUROPEAN COMMISSION**

Directorate-General for Employment, Social Affairs and Inclusion

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## **1 Introduction**

This paper has been prepared for the Peer Review on "The efficient transposition, implementation and enforcement of EU OSH legislation". It provides a comparative assessment of the policy example of the Host Country (Denmark) and the situation in Malta. For information on the host country policy example, please refer to the Host Country Discussion Paper.

## **2 Peer country background**

### **2.1 The situation in Malta**

The number of occupational injuries per annum in Malta has reduced steadily up until 2011. Since then, injury numbers have been relatively consistent. A closer analysis of the numbers indicates that injury rates in males continue to decline slowly, whereas those in females appear to be increasing (National Statistics Office [NSO], 2010 - 2018). These trends appear to be largely explained by increasing employment rates, particularly in women. In fact, when corrected per capita, accident rates have continued to decline from 2,912 injuries per 100,000 workers in 2002 to 1,261 per 100,000 workers in 2016, a notable improvement (Occupational Health and Safety Authority [OHSA], 2017). The industries with the highest injury rates in 2017 included manufacturing (16.9%), construction (15.2%) and transport and storage (14.1%) (NSO, 2018). Whilst occupational injuries are thought to be under-reported, reporting of occupational diseases is so infrequent that meaningful statistics do not exist. This situation is not unique to Malta (OHSA, 2017). The OHSA attributes this lack of reporting to several factors including a lack of awareness and incentives for doctors to report, including the absence of legal obligations for medical practitioners to report such diseases, whilst a lack of compensation and fear is believed to discourage employees from reporting (OHSA, 2017).

Whereas injury statistics are comprehensive, limited national research has been conducted on the state of OSH in Malta. One large such study (OHSA, 2011a) found that OSH levels were better in larger organisations, whilst indicating that progress needed to be made to increase the prevalence of competent persons, workers health and safety representatives, OSH training and risk assessments in workplaces in Malta. A more recent snapshot of health and safety in Malta is provided by ESENER-2 statistics (EU-OSHA, 2016). When comparing Malta to the EU-28, positive findings as well as areas which require improvement emerge. For example, Malta scored above the EU-28 average in OSH visits by the labour inspectorate; the availability of bullying, violence, and/or stress policies; the reorganisation of work to reduce the predictors of stress; confidential counselling for employees; and the set-up of conflict resolution procedure, amongst others. Malta, however was reported below the EU-28 average in categories which included: the number of enterprises that conduct risk assessments regularly; the perceived availability of information on conducting psychosocial risk assessments; the provision of psychosocial risk training; procedures to support workers returning to work following sick leave; and documents explaining responsibilities and procedures on OSH available to workers, amongst others. As ESENER-2 showed that OSH levels were generally better in larger organisations, the high density of micro and small companies in Malta is likely to have biased these results (European Commission, 2017).

### **2.2 The Occupational Health and Safety Authority and relevant social partners**

The Occupational Health and Safety Authority (OHSA), established via the Occupational Health and Safety Authority Act (Act XXVII of 2000) is responsible for ensuring the physical, psychological and social wellbeing of workers in Malta is promoted and safeguarded by duty holders. Whilst the OHSA is the national governmental entity

responsible for OSH in Malta, matters related to fishing vessels are regulated by Transport Malta (Borg, 2013; EC, 2017).

The OHSA's set up, regulated by the OHSA Act, involves various stakeholders. Its members include: a Chairperson appointed by the Minister; a Deputy Chairperson, who is the Director of Industrial and Employment Relations, *ex officio*; a person with competence in occupational health and, or safety; a person responsible for health; an individual responsible for economic affairs; two members who represent the interests of workers, usually representatives of Malta's two largest unions; and two individuals who represent the interests of employers, usually representatives of Malta's largest employer associations. By its very nature therefore, the tripartite Authority is inclusive of Government, employee and employer interests (Act XXVII of 2000). The OHSA also has an executive arm, which is headed by its CEO and overseen by the Board which is responsible for implementation, monitoring and enforcement of the relevant regulations (Borg, 2013). The OHSA falls under the responsibility of the Ministry for European Affairs and Equality.

The OHSA has several functions established by law (Act XXVII of 2000). It is to: establish strategies to implement the general national OSH policy; advise the responsible Minister regarding the formulation of OSH-relevant regulations; monitor compliance with OSH law and to take enforcement action; to promote, maintain and protect OSH via the preparation of regulations or codes of practice; disseminate information relevant to OSH, including relevant methods; promote relevant education and training; collate and analyse statistics on injuries, ill health and deaths; maintain registers on items such as equipment and substances which pose a serious risk to OSH; conduct investigations on OSH matters, including occupational accidents, diseases and deaths, as well as those to analyse the level of OSH within workplaces; promote and, or carry out, scientific research which improves OSH; and maintains registers of individuals competent in OSH.

The OHSA also collaborates with various other public entities to tackle OSH in Malta via relevant boards. The Civil Protection Department (CPD) contributes to matters of occupational emergency and disasters and works with the OHSA via the *Civil Protection Scientific Committee* (OHSA, 2017), as well as the *COMAH (Control of Major Accident Hazards) Competent Authority*, which is made up of the OHSA, CPD, and the Environment and Resources Authority (ERA, Ministry for Sustainable Development, the Environment and Climate change) (OHSA, 2018). The *Radiation Protection Board* features members from the OHSA, Department for Environmental Health (Ministry of Health), the Environment Protection Directorate (within ERA) and CPD. Finally, the OHSA also participates within the *Building Industry Consultative Council (BICC)*, which is a forum that discusses all matter relevant to the construction industry (OHSA, 2018). Other governmental entities relevant to OSH in Malta include the Department of Industrial and Employment Relations, which falls under the Ministry for European Affairs and Equality, which is responsible for employment conditions. The Department of Social Security, which falls under the Ministry for the Family and Social Solidary, administers the provision of welfare benefits. Additionally, public healthcare, provided by the Ministry for Health, provides care for those experiencing occupational illness, disease and injuries.

Relevant social partners include employee and employer bodies. Malta's largest worker unions include the General Workers Union (GWU) and the Union *Ħaddiema Magħqudin* (UHM), whilst the largest employer bodies include the Malta Employers Association (MEA) and the Malta Chamber of SMEs (GRTU). As described above, all four bodies are represented on the OHSA's tripartite board. Finally, the Centre for Labour Studies, University of Malta offers an undergraduate diploma and degree in Occupational Health and Safety as well as conducting research relevant to the labour market.

In an effort to continue reducing injury statistics and tackle the issue of traditional and 'emerging' occupational diseases, the OHSA undertakes several initiatives including

workplace visits, the organisation of training and information sessions, and the provision of guidelines. It has also contributed via the promotion and development of software to support SMEs in meeting their legal obligations, mobile phone applications that allow for reporting of infringements, and a framework for the control of work-related stress, amongst others. Many of these initiatives reflect the OHSAs philosophy that it does not want to be solely viewed as a controlling body; rather it aims to involve and collaborate with other stakeholders including employers, workers, constituted bodies, and other countries. Underpinning this is the belief that workplace OHS levels are most likely to advance if the process is self-regulating (OHSAs, 2017). The Authority suffers from a lack of funds and human resources, in fact the number of inspectorate staff are below the benchmark established by the International Labour Organisation (National Audit Office [NAO], 2016). Despite this, following an evaluation by representatives of the Senior Labour Inspectors Committee (SLIC) whilst confirming the need for greater resources, they praised the OHSAs for the effective management of the limited available resources (OHSAs, 2016b). Amongst the initiatives taken by the OHSAs to understand the level of occupational diseases in Malta and to tackle them, a centre for the recognition of occupational diseases has been set up. This centre allows employees to self-refer when suspecting an occupational disease. Referrals can also occur via employers or doctors (OHSAs, 2017).

### **3 Transposition and implementation of the EU OSH legislation in the peer country**

#### **3.1 The health and Safety Authority Act**

Malta reactivated its application to become a member of the EU in 1998. This required the European Acquis to be transposed into Maltese legislation. The Act for the Promotion of Occupational Health and Safety (Act VII of 1994) was repealed and the Framework Directive was transposed by the OHSAs Act (Act XXVII of 2000) (Borg, 2013). This established the OHSAs and was brought fully into force in the beginning of 2002. The Act, which has been revised several times since, also provided for the establishment of an Occupational Health and Safety Appeals Board, and for the exercise of regulatory functions and provisions related to OSH. The Act enshrines the principles of protection of OSH in Maltese law and is applicable to all sectors of activity, all workplaces and work activities, both public and private. It however does exclude certain activities conducted by the armed forces, police force and civil protection (EC, 2017).

The Act empowers the Minister responsible for OSH to appoint the members of the Authority's board (worker and employer representatives are to be selected in consultation with relevant bodies), its Chief Executive Officer (in consultation with the Authority) and to formulate regulations regarding any OSH matter. The responsible Minister must consult the Authority during the regulatory process, however if advice from the Authority is not received within a predetermined period of time, the Minister may proceed without the input from the Authority (Act XXVII of 2000). The legal principles found within the OHSAs Act apply to all subsidiary legislation. Most EU OSH directives are transposed as a specific piece of legislation, usually a legal notice, adopted on the basis of the OHSAs Act, with the exception of two directives (Directive 92/29/EEC and Directive 93/103/EC) related to vessels (EC, 2017).

#### **3.2 Transposition of EU OSH legislation in Malta**

The Danish paper describes an 'inter-ministerial Implementation Committee of eight Ministers' that discuss transposition of EU law. Whilst Malta does not have an identical set up, proposed and finalised EU law is discussed via: (i) Representatives of the OHSAs, employer and employee bodies who participate in the Advisory Committee on Health and Safety at Work (ACSH), which allows these entities to provide the European Commission with feedback on any draft proposals for new legislation, amongst others. (ii) The transposition process of EU OSH law into the national law ensures that all

relevant parties have a say within the process. The OHSa prepares the draft legislation which is passed on to the Authority's tripartite board for feedback. Once discussed and amended, this and any contrasting view-points are passed on to the Minister; upon satisfactory revision of the draft legislation the Minister will request approval by the cabinet of Ministers. Following approval by the cabinet, the draft law is opened to wider public consultation to the general public, duty holders and social partners. This may be conducted via the OHSa's website, the government portal, via press releases and consultation meetings. Once feedback has been received, the draft is re-considered by OHSa's board and amended if necessary. The impact of the legislation on micro and SMEs is then considered, and this is followed by approval by the Attorney General, parliament and lastly by the cabinet of Ministers, who provide final approval. When legislation is believed to impact upon SMEs, prior to sending the legislation to the Attorney General, the OHSa complete an SME Test report as endorsed by the Small Business Act Implementation Unit, whilst also preparing explanatory notes in English and Maltese and user guidelines to support SMEs.

### 3.3 Common Processes and Mechanism (CPMs)

As highlighted in the Danish document, the EU Evaluation of the Practical Implementation of the EU OSH Directives in EU (IOM, Milieu, COWI, 2015) highlighted the importance of 'Common Processes and Mechanisms' (CPMs). These can be found in the OHSa Act and subsidiary legislation, as below:

- **Preventative and protective services** – Employers have a duty to ensure the OSH of all persons who may be affected by their work, including if competent external services or persons are enlisted (Act XXVII of 2000). Legal Notice 36 of 2003 (S.L. 424.18) states that employers and self-employed individuals must conduct risk assessments or ensure that these have been carried out. When five or more individuals are employed, employers have a duty to keep these in writing or retrievable electronic copies, employers must also designate competent individuals to assist them in implementing OSH measures, and if such measures cannot be implemented due to a lack of competent persons within that organisation, external competent persons or services are to be enlisted. Furthermore, the law states that the OHSa may determine the '*capabilities, aptitudes and level and type of training required by designated persons for the... implementation of this regulation*'.
- **Information to workers** – The Act states that employers are required to provide information, instruction, and training regarding OSH. Legal Notice 36 of 2003 specifies that workers and their representatives need to be provided information on the known OSH risks, required preventative and protective measures, and procedures to be followed in the event of serious and imminent danger at work. Informational signs are also to be used where appropriate. In practice, information is passed on via various methods including informational meetings, internal written communications, signs, and via OSH representatives amongst others. Due to the small size of most of Malta's companies, unlike in Denmark safety committees are not common.
- **Training of workers** – In contrast to Denmark, the OHSa Act places the duty of the provision of OSH training on the employer. The law specifies the provision of information and instruction specific to the workers' workstation and tasks, and provides information on when this should be carried out. The provision of training for workers' representatives is also specified (LN 36 of 2003). As in Denmark, the law also specifies that only those who have received appropriate training should use lifting devices, installations, machinery and equipment used in construction (LN 281 of 2004 / S.L. 424.29) and work with chemical agents (LN 227 of 2003 / S.L. 424.24).
- **Worker consultation** – Employers have a duty to consult employees and/or their OSH representatives on OSH matters. Worker representatives are to be chosen by the workers, however should they fail to do this, representatives are

to be appointed by employers. When organisations have an insufficient number of workers, such representatives do not need to be appointed and instead the employer allows for all workers to be consulted directly.

- **Health surveillance** – Unlike in the host country, Maltese legislation states that employers are to ensure that workers are provided with regular health surveillance. This surveillance is to be carried out when risk assessments link disease or adverse health conditions to the work involved. Subsidiary legislation, for example that on carcinogens and mutagens (LN 122 of 2003 / S.L. 424.22) make practical recommendations for the health surveillance of workers.

Following discussions with social partners, the OHSa participated with the Management Efficiency Unit (MEU) in a review of regulations to reduce administrative burdens without compromising safety. This led to the OHSa amending various pieces of legislation which fall under the OHSa Act. For example, following this exercise, whereas fire drills previously had to be performed every six months, employers could now seek the advice of an individual competent in fire safety and reduce their frequency (OHSa, 2013).

#### 4 Enforcement of EU OSH legislation in the peer country

Enforcement and compliance related to OSH in Malta is conducted by the OHSa, which considers this one of its core functions (OHSa, 2018). Like in the Danish example, the use of force (inspection and prosecution), benefits (incentives) and knowledge transfer (information and training) is evident. In fact, in the OHSa's enforcement policy and procedures document, enforcement is defined as all interactions between the Authority and duty holders and/or other people who may have an important role in safeguarding OSH. Therefore enforcement is not limited to punitive action, but can also include the provision of advice, information, or the issuing of a warning or order by an OSH officer (OHSa, 2016a).

The OHSa's preferred method of compliance and enforcement is via increasing awareness and knowledge. Where possible, the OHSa would rather foster self-regulation via increasing awareness and involving stakeholders including employer and worker bodies. This follows the principle of aiding employers to control the risks that they themselves have created. Whereas the host country document notes that whilst Danish employers prefer self-regulation, employee bodies favour sanctions, Borg (2013) found that in Malta improving knowledge and awareness in workers and employers was considered a priority not only by the OSHA, but by employers and workers themselves. OHSa produces and provides various guidance material via their website, including videos and software which can aid compliance. They also conduct awareness raising campaigns, education and training events, often in conjunction with social partners. This approach could be seen as one that supports micro and SMEs, however larger companies in Malta, as often occurs around Europe, appear to take more proactive health and safety measures than smaller organisations (OHSa, 2011a). ESENER-2 (2016) findings support the approach taken by the OHSa however; 'maintaining the organisation's reputation' and 'meeting expectations from employees or their representatives' both scored as the most frequent drivers for addressing OSH in establishments in Malta. Avoiding fines was the fourth most common reason, with only 'maintaining or increasing productivity' scoring lower (EU-OSHA, 2016). It has been suggested however, that many smaller organisations in Malta only take OHS action when faced by inspections and/or fines (Borg, 2013). The OHSa acknowledges this problem and believes cultural change can be fostered via awareness, regulation and enforcement; however cultural change is a slow process (OHSa, 2015).

Whereas in Denmark individual organisations appear to be targeted for interventions depending on their risk profile and their willingness to tackle the issues, inspections in Malta appear to be primarily driven by complaints received by the Authority regarding

possible infringements. Such complaints are generally received by telephone or email, however the OHSA also has a social media account and has just introduced a mobile phone application through which anonymous complaints can be received. The Authority also organises campaigns where specific sectors are targeted and all enterprises in the sector are visited. During these campaigns, when shortcomings are identified, employers are notified in writing and follow-up visits are carried out to ensure that the necessary changes have been implemented. Spot checks can also be carried out, with the construction industry targeted most frequently, both due to its risk-profile (Borg, 2013) and because most received complaints regard this industry. In fact, official guidance by the OHSA states that enforcement should focus on work activities that give rise to the greatest risk, or where hazards are less well managed (OHSA, 2016a). According to interviews conducted by Borg (2013), the Authority considers this approach as flexible but does not compromise on standards. During inspections, priority is given to CPMs compliance, with the Authority favouring awareness building and education over a prescriptive approach. In addition, risk assessment compliance is prioritised during inspections (Borg, 2013).

Based on Maltese legislation, non-compliance with OSH requirements can result in both criminal and administrative sanctions. Criminal sanctions include fines and imprisonment (European Commission, 2017). Administrative fines were introduced in 2012; OSH officers can impose a fine upon individuals who are in breach of law (L.N. 36 of 2012). If this is paid and the necessary remedial action is taken, no judicial proceedings are initiated by the OHSA. OSH Officers are provided with guidance as to when such a fine is appropriate, however prosecution is considered a last resort (OHSA, 2016a). In situations such as repeat offenders, where fines are not paid, and occasions where Officers are obstructed from carrying out their duty, judicial proceedings are immediately initiated (OHSA, 2016a). These administrative fines were introduced following difficulties encountered by the OHSA during enforcement. These fines allow for a rapid deterrent for tackling legal infringements and also reduce the Authority's dependence on judicial proceedings (OHSA, 2011b). They have also reduced the burden on organisations which prior to the introduction of this measure had to seek legal representation in order to defend their case in court. Consequently, the burden on courts has also been reduced.

Finally, a number of incentive schemes are present in Malta. A scheme entitled 'Microinvest' which is run by the Malta Enterprise, provides tax credits for SMEs investing in their organisations. Via this scheme, investments that aid companies to comply with regulations, such as the purchase of PPE, can result in a tax credit. The OHSA also offers a small sponsorship fund for social partners for initiatives which improve OSH in any workplace in Malta. The OHSA has also held award ceremonies for organisations that have illustrated 'best practices' in OSH, which may incentivise positive behaviour.

## **5 Interlinkages between transposition, implementation and enforcement**

### **5.1 Evaluating performance at the OHSA**

The OHSA's strategic plan (2014-2020) lists five key objectives: (i) Legislation, compliance and enforcement. The OHSA aims to continue developing legislation via consultation with stakeholders, to develop a consistent and transparent model of enforcement, and to support duty-holders, particularly SMEs to aid them to achieve compliance, whilst also fostering an environment where duty holders are less dependent upon the Authority's services. (ii) Capacity building of the Authority's staff via recruitment, training and information provision. (iii) To communicate the benefits of OSH via stakeholder partnerships, awareness raising, training, and the dissemination of information. (iv) Taking and promoting action against traditional and emerging risks, including via improving both health surveillance and OSH service providers' quality of

service. (v) Evaluating the effectiveness of the authorities' actions. These five points suggest that as is the case in Denmark, the Maltese entity is not only interested in transposing legislation and enforce it, but also aims to improve on these, continue building relevant partnerships, and evaluate the impact of their actions (OHSA, 2015).

The Authority evaluates its performance via a system of Key Performance Indicators (KPIs) (OHSA, 2015), thus providing a tangible method to analyse the effectivity of its work. Examples include injury rates; workplace visit numbers; the number of administrative fines issued and money collected; number of judiciary proceedings initiated; and hours spent on fostering awareness by OHSA officials. Generally, these statistics reveal that the Authority's efforts are working with findings such as lower injury rates and more frequent inspections occurring (OHSA, 2017).

The Authority also determines if legislation, its implementation and enforcement are working via more practical methods, through analysis of inspections and court cases. This appears similar to Denmark's use of 'realistic evaluation'. An example of this are the updating of the Construction Safety Regulations (Legal Notice 281 of 2004), which transposed Directive 92/57/EEC. Analysis of enforcement and court cases revealed several regular shortcomings in the legislation. A few examples include clients, for whom the construction work was being undertaken, intentionally failing to appoint a project supervisor, preferring to pay the fines. Sometimes the responsibility to appoint such a supervisor was being transferred to other individuals. Furthermore, project supervisors were sometimes being threatened with legal action for stopping work when this was deemed too unsafe. In view of such shortcomings the OHSA drafted amendments to the legislation, these included that: a) failing to appoint a project supervisor would result in this responsibility being automatically shifted to the client, b) the obligation to appoint a project supervisor could not be shifted to another individual, and c) unless a project supervisor acted negligently, no proceedings for damages could be instituted against such supervisors. The proposed regulation was then uploaded to the OHSA's website and feedback was solicited by the general public via email. The process of updating these regulations is now complete and as described in the previous section ensures the contribution of duty-holders and the social partners. The updated regulations will come into force in August 2018.

## **5.2 Challenging areas**

The Danish example also referred to challenging areas including targeting SMEs, impact of WEO, the competence of OSH experts being employed by companies, precarious work, and psychosocial risks. These challenges appear relevant throughout Europe and beyond, and are also challenges in Malta.

In Malta, the OHSA's preference for awareness and training is in-part to support micro and SMEs, as these organisations almost form all of the enterprises in Malta, dropping injury rates suggest that interventions are proving effective for these companies. Regarding WEOs, companies in Malta are not obliged to form committees but, as mentioned earlier organisations with a sufficient number of employees must appoint OSH worker representatives. With regards to competence, the OHSA keeps a register of individuals that the Authority has determined are competent in OSH. This list can aid organisations to determine if individuals they intend to hire (internally or externally) are competent. To be entered into this list, individuals must be in possession of the University of Malta's Diploma in Occupational Health and Safety or an equivalent qualification as well as proven experience in the field. In practice, the OHSA also determines the competence of individuals during inspections. For example, when unfit project supervisors are identified at construction projects, by the documentation they provide (or fail to provide) and the poor level of measures they implement, the Officer orders for a competent project supervisor to be appointed. The impact of precarious work has received limited research in Malta, whereas ESENER-2 (2016) statistics provided a mixed picture of the impact of, and measures to tackle psychosocial risks in

Malta. Following a period of consultation with the social partners, a framework for the management of stress was introduced by the OHSA.

## **6 Assessment of the success factors and transferability of the host country example**

As highlighted earlier in the document, the tripartite nature of the OHSA ensures that within the Authority the social partners, namely the major worker organisations and trade unions, have the opportunity to impact upon the Authority's functions and policies, including the implementation of regulations and the way it approaches its work. In fact, the Chairperson of the OHSA noted that a further advantage of the Authority being tripartite is that its actions are 'endorsed by the Government and the social partners, having gone through a process which involves dialogue and consensus reaching' (OHSA, 2018).

Beyond the work of the Authority, the OHSA has encouraged the social partners to take a more active role in fostering health and safety within workplaces. In fact, the OHSA's chairperson states '*Despite improvements in the field, there is still much more required to be done. There remains a lot of scope for more meaningful and practical involvement by the social partners*' (OHSA, 2018). The Minister responsible for the OHSA echoed these sentiments in a recent parliamentary debate, stating that 'the OHSA could not be the be-all and end-all, and that employers also had to invest in occupational health and safety, unions had to educate their members on their rights and employees themselves had to co-operate with safety measures' (Costa, 2018). It is worth noting that trade unions in Malta have been involved in various initiatives to promote OSH, most visible are the organisation of relevant conferences and training sessions, often in association with the OHSA. In 2017 for example, the General Workers' Union (GWU), Malta's largest Union, held a large international conference on workplace cancer. Unions are also known to argue for better levels of OSH during collective bargaining (in Malta collective bargaining is carried out between individual employers and unions; Unlike in Denmark, sectorial collective bargaining is a rarity). Employer associations have also held similar training events and made resources available for their members. It however would be in the country's benefit if there was a more sustained OSH drive on behalf of the social partners. In view of this, 'orchestration', as proposed by the Host country is needed in Malta, however for this to be successful, social partners would first have to dedicate more time to OSH and in a more sustained way. In view of the limited resources of many of Malta's social partners this is likely to be difficult. One area that orchestration may be more fruitful is within the government in general, as part of its strategy, the OHSA aims to work more greatly with other government department to avoid the duplication of work and foster cooperation. Potential synergies with other public policies to ensure coherence are to be sought by the OHSA, such as those for education, environment, research, public health, industrial policy and public procurement (OHSA, 2015).

## **7 Questions**

- Could you provide more information about the systematic surveys to monitor the status of OSH at company level – what is collected, how is it analysed?
- How are the members of a WEO chosen?
- The Danish document suggests that worker OSH training and consultation is the responsibility of the safety committee (in larger companies) – do the management of these companies therefore have no level of responsibility if these are not carried out? Are individual members of the safety committee held responsible and fined if this isn't carried out?
- Are there any initial indications on how musculoskeletal disorders and psychosocial issues could be tackled in view of their increasing prevalence? Why do they think these have actually increased?
- Further details of the Risk Based Inspection (RBI) would be interesting.

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## Annex 1 Summary table

The main points covered by the paper are summarised below.

### Peer country background

- The Occupational Health and Safety Authority (OHSA), is responsible for ensuring the physical, psychological and social wellbeing of workers in Malta is promoted and safeguarded by duty holders.
- The OHSA is tripartite and regulated by the OHSA Act.
- Social partners include Malta's largest employer and employee bodies.
- Occupational injuries appear to be decreasing in Malta, little data available about occupational diseases.

### Transposition and implementation of the EU OSH legislation in the peer country

- The Framework Directive was transposed by the OHSA Act (Act XXVII of 2000).
- The Act empowers the responsible Minister to formulate regulations on OSH matters in consultation with the tripartite OHSA. Most EU OSH directives are transposed as a specific piece of legislation, usually a legal notice, adopted on the basis of the OHSA Act.
- The process of transposition in Malta ensures consultation with social partners, both within the tripartite OHSA and via external consultations. Special considerations are given to SMEs.
- 'Common Processes and Mechanisms' (CPMs) can be found in the OHSA Act and subsidiary legislation.

### Enforcement of EU OSH legislation in the peer country

- Enforcement and compliance related to OSH in Malta is conducted by the OHSA, which considers this one of its core functions
- The OHSA favours awareness and knowledge raising and training, but also uses sanctions, legal action and incentives.
- Complaints regarding possible infringements, awareness campaigns and spot-checks in high-risk sectors drive inspections
- Non-compliance with OHS requirements can result in both criminal and administrative sanctions

### Interlinkages between transposition, implementation and enforcement

- OHSA intends to continue developing legislation and enforcement as well as evaluating the impact of their actions.
- OHSA measures its performance via a system of KPIs, however it also aims to identify 'what works' via court cases and inspections.
- Many of the challenges identified in the host country document are also relevant in Malta.

### Assessment of success factors and transferability

- The tripartite nature of the OSHA ensures that social partners are involved in the decisions that affect them.
- Orchestration appears needed in Malta, but the focus should currently be on encouraging social partners to be more involved on a more regular basis.

### **Questions**

- Could you provide more information about the systematic surveys to monitor the status of OSH at company level – what is collected, how is it analysed?
- How are the members of a WEO chosen?
- The Danish document suggests that worker OSH training and consultation is the responsibility of the safety committee (in larger companies) – do the management of these companies therefore have no level of responsibility if these are not carried out? Are individual members of the safety committee held responsible and fined if this isn't carried out?
- Are there any initial indications on how musculoskeletal disorders and psychosocial issues could be tackled in view of their increasing prevalence? Why do they think these have actually increased?
- Further details of the Risk Based Inspection (RBI) would be interesting.

## Annex 2 Example of relevant practice

Name of the practice:	Ongoing review of OSH regulations
Year of implementation:	2018
Coordinating authority:	OHSA
Objectives:	To update regulations on the basis of lessons learned from inspections, litigation, and received feedback. The process also aims to reduce unnecessary administrative burdens.
Main activities:	<p>One recent example of this process is the review and amending of the Construction Safety Regulations (Legal Notice 281 of 2004) following various issues being encountered during inspections. An amended regulation was thus drafted and once approved by Authority's tripartite structures was presented for public consultation.</p> <p>Issues highlighted during inspections/litigation included but were not limited to: a lack of clarity regarding the definition of certain terms in the regulation; clients intentionally failing to appoint a project supervisor; clients transferring the duty to appoint a project supervisor to others; project supervisors being threatened with legal actions when they stopped works due to OSH concerns; clients not taking into account the reports issued by the project supervisors.</p>
Results so far:	The new regulations, L.N. 88 of 2018 are to come into force in August 2018. These include various interpretations not originally provided in Council Directive 92/57/EEC; a provision that when a client fails to appoint a project supervisor, the client will be deemed the project supervisor; a provision that clients cannot transfer their obligation to appoint a project supervisor to any other person; that action or other proceedings for damages cannot be instituted against the project supervisor for an act done in pursuance of the construction regulations unless they acted negligently; that the client will take account of written reports by the project supervisor, amongst others.



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