Bill on the Health & Safety at Work, Act, 2024

The Views of the Malta Employers' Association

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Preamble

The Malta Employers' Association (MEA) has considered the Health and Safety at Work Bill 2024.

It recognises that the leading points of discussion in the Bill rest on

a) The Role of the Governing Board of the Authority, and

b) The obligation for the mandatory appointment of a Health and Safety Reporting Officer.

At the outset, the MEA acknowledges the Bill as a step in the right direction in terms of addressing risk and avoiding accidents at work however, the MEA emphatically notes that in so doing:

a) The authorities appear to be transferring the administrative burden and financial cost of enforcement on companies by way of imposing the mandatory appointment of a Health and Safety Reporting Officer (HSRO) on certain employers

b) The criteria to establish which undertakings would be legally bound to appoint an HSRO is still unclear as are various other aspects of the Bill

c) The ultimate objective of the Bill may not be met if the criteria referred to in (b) above do not efficiently capture those operators which are small in terms of employment size but which are “high-risk” because of (i) the nature of their operation/sector and (ii) their internal levels of governance and standards

d) Continues to side-step important considerations directly related to the H&S risk and employer liability as outlined in Section D below.

The MEA’s position on these points is further elaborated below.

A. Health and Safety Reporting Officer

With reference to the above, the MEA notes various instances which remain vague and unclear to the extent that the Association fails to understand how this important Bill is being presented for a vote in Parliament with crucial elements still to be studied and decided upon. The purpose of a law is to provide certainty and in its current form this Bill is certainly not reaching this objective.

The MEA fails to understand how the legislator intends to proceed with a Bill that contemplates the mandatory appointment of a HSRO without the necessary accompanying regulations to determine, amongst others:

a) the criteria to establish which companies will be obliged to appoint such HSROs,

b) the minimum professional qualifications of an HSRO,

c) whether the HSRO can also perform other duties within the company.

The MEA appreciates that the position of a HSRO plays a key role in reducing risk. The position of a HSRO may serve to derive a stronger understanding of an employer's H&S risks and responsibilities and, in the process, to gradually drive H&S higher up the agenda of employers whose business entails high-risk to workers and other stakeholders – both internal and external. Above all, the MEA believes that, if correctly implemented, the appointment of an HSRO should serve to increase the levels of standards and professionalism in terms of H&S amongst the commercial community at large.

The main concern, however, is as always, that this legislative change needs to be implemented properly, consistently and in a targeted manner. The MEA expects this imposed nomination of an HSRO to lead to mitigation in the main high-risk areas and in turn, the reduction of harm and fatalities. The MEA is full square behind any well-executed plan to eradicate abuse whilst inculcating proper engagement, risk-

management procedures, adequate training and investment in safety equipment with a view to minimise injury and innocent loss of life.

On the other hand, the MEA does not expect this law to be used merely to increase burdens indiscriminately on companies which have relatively lower risk eg office work.

For this reason, it believes that if the criteria for (a) above would be solely based on the employment size of a company, then the Bill would not be addressing the priority problem areas it is seeking to address because most undertakings of a large size are already adequately organised and resourced to assess and mitigate H&S risk and the onset of occupational accidents. On the other hand, the legislator cannot impose an obligatory overhead of significant magnitude by way of the appointment of an HSRO on small companies indiscriminately. Such imposition would be (a) unsustainable and (b) create untenable supply shortages of HSROs. The MEA believes that due weight must be given to the level of risk associated with operators (whether companies or self-employed persons) which operate in high-risk sectors and which manifest scant regard towards governance, ethical and professional standards.

Besides, it is noted that the role of the HSRO is similar to that of a Compliance Officer, at management level, who, though employed by a commercial undertaking acts ‘independently’ of the employer and has direct access to the Authority. While this may appear simple and straight forward on paper, it may become much more cumbersome to implement in practice with the possibility of limited overall success in terms of clamping down on potentially critical H&S shortcomings and the avoidance of serious accidents and injuries.

B. The Role of the Governing Board

The MEA notes the clear lines of demarcation between the functions of the Governing Board of the Authority and those of the Executive.

The Bill is unclear in terms of reporting lines of the CEO. On the one hand, Article 10.1.c makes the CEO responsible to carry out duties assigned by the Minister. On the other hand, Article 7.2 holds the Governing Board responsible for reviewing and overseeing "that the Executive reaches the targets set out for the Authority by the Minister or which the Executive itself proposes in relation to the various duties of the Authority under this Act."

Besides, the MEA is concerned by the fact that a direct reporting line between the Minister and the CEO could lead to risk of political interference in the work of the CEO. In this regard, Article 11.1.b obliges the Authority to "afford to the Minister facilities for obtaining any information with regard to the … activities of the Authority and for this purpose the Authority shall furnish the Minister with returns, accounts and other information with respect thereto ....". The MEA contends that such "activities" may not include confidential information on registers of commercial companies' plant, machinery, and the like.

Clearly, the MEA would recommend that the CEO reports solely to the Governing Board in order to be able to function more objectively and independently.

C. Other Comments

The MEA is surprised to note that in this Bill regulating a highly sensitive aspect as is H&S, the only reference to confidentiality is that regarding the processing of personal data. This should be extended to a confidentiality pledge, subject to dismissal and criminal proceedings, to be undertaken by all the Authority employees who have access to data on assets of employers.

Article 25.2 holds employers guilty if they are in breach of any OHS EU legislation. The MEA contends that no employer or citizen should be found guilty of this or any other legislation which has not been transposed into Malta's laws.

D. MEA's proposal to add to Part X of the Bill entitled Miscellaneous

In the wider context of H&S risk mitigation and employer liability under this Law, the MEA continues to make the following proposals which it notes are absent in the Bill under consideration.

1. For the employer to fully comply with Article 12 of the Act and be in stronger position to ascertain H&S at the workplace, employees, for their own protection, should be legally obliged to inform their employer of any physical or mental impairment they may have (whether visible or otherwise) and which may affect their health and safety at work and/or that of their co-workers and/or third parties. Failure to do so will signify that if the employee becomes injured through no fault of the employer, who was fully compliant with health and safety regulations, then this omission on the employee's part will exonerate the employer from any liability whether criminal or civil in nature.

2. Similarly, employees who get injured at work or in the course of their duties and are found to be under the influence of any psychoactive substance (whether decriminalized or otherwise) which may affect their health and safety at work and/or that of their co-workers and/or third parties at the time of the occurrence of the injury will be deemed to have contributed to the injury and therefore exonerates the employer who was fully compliant with health and safety regulations, from any liability whether criminal or civil in nature.

E. Conclusion

The Malta Employers Association has taken note of the ambitions behind the proposed legislative changes to the Health and Safety Act which it considers positive. It believes that the measures contemplated in the Bill should serve to drive Health and Safety higher up the agenda of those employers where the business entails high risk to workers and other stakeholders – both internal and external. The MEA believes that, if correctly implemented, the new provisions included in the Bill should serve to instill a better balance for H&S considerations with respect to other commercial and compliance priorities in local companies as well as higher levels of standards and professionalism in terms of H&S amongst the commercial community at large.

Nevertheless, the MEA believes that for these objectives to be attained, the Bill needs to provide full clarity to the business community which has a right to know, a priori, which companies are going to be in scope of nominating a HSRO and according to which criteria. Companies need to know at the outset what background, position, academic qualifications and terms of reference such persons need to have before being given such nominations with such onerous responsibilities. The MEA has also raised concerns with respect to the reporting lines of the Executive and the need for the CEO of the Authority to operate with full political independence.

The MEA is not convinced that the legislative changes can truly address the priority problem areas it is seeking to address unless the above points are made amply clear.

Finally, to ensure full benefit in terms of minimizing occupational hazards and H&S risks, the MEA continues to insist on employee disclosure clauses which it notes are absent in the Bill. To this end, it continues to insist that employers have a right to know of any physical or mental impairment that their employees may have (whether visible or otherwise) and which may affect health and safety at work. Furthermore, the MEA contends that employees who get injured at work and are found to be under the influence of any psychoactive substance (whether decriminalized or otherwise) will be deemed to have contributed to their own injury (or that of their co-workers or third-parties) and an employer who was fully compliant with health and safety regulations should be exonerated from any liability.