



Doctors for Road Safety

A response to the White Paper issued in December 2022 on the establishment of a Transport Safety Investigative Commission

January 2023

Response of Doctors for Road Safety to the White Paper issued in December 2022 by the Ministry for Transport, Infrastructure and Capital Projects on the establishment of a Transport Safety Investigative Commission.

Preamble

The Ministry for Transport, Infrastructure and Capital Projects (MTIP) on 22nd December 2022 published a White Paper on the establishment of a Transport Safety Investigative Commission for feedback from stakeholders by 15th February 2023. The MTIP is the Ministry responsible for road safety in Malta mainly through its structures Transport Malta and Infrastructure Malta.

Doctors for Road Safety (D4RS) is a voluntary non-governmental organisation (NGO) with a mission to place Road Safety firmly on the National agenda by raising awareness, educating peers and public and advocating with relevant stakeholders. D4RS was established in 2017 (VO 1172), and has been very active with education, advocacy and events aimed towards its vision of zero deaths on Maltese roads.

Introduction:

It has long been felt and understood that one of the very important missing tools in the road safety sphere in Malta is data and information. D4RS had noted this unmet need from its inception and communicated this to the Road Safety Council¹ as well as the Ministry in its advocacy meetings^{2,3}, as well as published this concern as from our first interview to the local media⁴, in subsequent media releases and articles⁵, and more recently in peer-reviewed medical journals⁶.

Indeed, D4RS had been proposing in the abovementioned interactions an authority or an agency with a wider remit than just investigating fatal incidents, but to encompass all that a road safety assurance portfolio entails. Echoes of this concept were expressed in speakers' presentations in a recent National Conference on Road Safety entitled 'How do we reach Vision Zero?', organised by D4RS under the distinguished patronage of HE Dr George Vella, President of Malta⁷.

It is thus with satisfaction that D4RS welcomes the proposal by the Ministry to establish a Transport Safety Investigative Commission (TSIC) which will include also a Bureau investigating road fatal crashes, besides those agencies already established which investigate air and maritime. With this positive outlook in mind, D4RS is hereby providing feedback on the white paper published for this reason⁸.

Doctors for Road Safety feedback on White paper⁹

D4RS now refers directly to the White paper annotated sections to commend as well as make observations and respectfully suggest changes or offer alternatives.

Text quoted directly from the White paper is shown in italics with a green background, while the response by D4RS is shown directly below it, with a specific annotated reference number.

Section 1.0: Introduction

“The Maltese Government is committed to making transportation, whether by land, air, or sea, as safe as possible.”

1a. D4RS commends this statement and commitment by the Government and augurs that the proposed structures will have robust quality assurance processes to ensure that what is stated is delivered.

1b. There is an opportunity here to define what one means by road safety. The choice of words can be debated but a good start could be along the lines: *‘ensuring road safety means putting in place methods and measures aimed at reducing the likelihood or the risk of persons using the road network getting involved in a crash that may cause damage to property, serious injuries or death.’*

“The Maltese Government subscribed to ‘Vision Zero’ whose goal is to reduce road deaths to zero by 2050. “

1c. this statement directly echoes the theme of the National Road Safety Conference 2022⁷. Such a bold statement brings with it the responsibility of bold actions. The proposed Commission is one such action, which should lead to other similar innovative solutions, even if unpopular.

1d. Additionally, D4RS would like to refer to the European Commission Staff Working Document from which this statement is taken, EU Road Safety Policy Framework 2021-2030 – Next steps towards “Vision Zero”¹⁰, which followed the Valletta Declaration on Road Safety of March 2017, endorsed by the Council of the European Union¹¹. This working document offers bolder, realistic, and shorter-term gains on the road to vision zero. The target is 2030 and the aim is to halve both road fatalities as well as grievous injuries.

“Thus, the scientific approach of giving a meaning to decisions taken by people before the onset of accidents will be introduced in fatal road accident investigations through the establishment of the Bureau of Road Safety Investigation “

1e. In this context, D4RS recommends that the statement above should be changed to also include investigation of road crashes resulting in actual or potential serious injuries such as those leading to an *‘imminent danger of loss of life’* which are also usually investigated by the magistrate.

Indeed, such crashes could be seen as a precursor of road crashes with the same dynamic resulting in fatalities in the same area. There is a strong argument here that this is an even more efficacious preventive exercise than investigating only *after* a fatality has occurred.

Section 2.0: Motivation

“The proposed approach is aimed at introducing a national paradigm shift in transportation safety from ‘safety being a priority’ to ‘safety becoming a national value’.”

2a. This statement is highly lauded and endorsed by D4RS. Indeed, this proposal should be followed up strongly as it has repercussions beyond road safety. In a nation which has difficulty even finding a word in Maltese which translates directly into the word ‘safety’ (we must borrow the Italian *‘sigurta’* which incidentally is not the best translation, *‘sicurezza’* being more appropriate, and is the one used in official EU documentation¹²), this value needs to be highly advertised and promoted in all educational campaigns and governmental activities.

All the proposals in this document as well as those which are yet to be proposed need to embed this value in both wording as well as eventual solid actions.

Section 3.0: International character of safety investigations

“Transport safety is achieved proactively through a strict regime of safety inspections, surveys, and other enforcement activities to ensure that the prescribed standards are met and maintained. ”

3a. Standards are a keyword in this context and all interventions should be aimed to meet the prescribed standards.

“Complementing enforcement activities, investigations remain a key function for transport safety. Therefore, whereas the (proactive) enforcement approach is aimed to address risk and mitigate it, the (reactive) investigative approach is activated when risk materialises into an accident.”

3b. D4RS agrees with this statement, in particular that the reactive investigative approach is there to complement the proactive enforcement approach. The latter is essential to keep in check those road users who have yet to react to road safety educational interventions, and breach even those systemic interventions which are put in place by the investigative bodies using the safe systems approach.

3c. It is recommended that in the spirit of looking for systemic causes of road fatalities and grievous injuries, the term ‘*accident*’ is avoided, and the term ‘*crash*’ is used instead. This helps to emphasise that with the right safe systems approach, these adverse events do not happen by ‘*accident*’ but are entirely avoidable.

Furthermore, the use of the word ‘*crash*’ should also be carefully explored and, in our view, favourably considered, in the proposed legislative instruments, so as to reflect the stated and accepted approach to Vision Zero¹³. The use of either of these words should be properly defined in the proposed legislative instrument/s to ensure consistency and legal certainty.

Section 3.1: Civil aviation safety investigations

“The Regulation further provides a safety investigation standard, regulating networking and coordination with other states, confidentiality and appropriate use of information, assistance for victims and relatives, and the publication of safety investigation reports.”

3d. This statement refers to civil aviation safety investigation standards. D4RS recommends that the same standards are used in road crash investigations. It is worth noting that the need for assistance of victims and relatives is an aspect which became starkly apparent in our recent National Road Safety Conference. Relatives often seek explanations and not merely to apportion blame, but also to make sure their pain and anguish is not replicated in similar repeat crashes. This is one of the important aspects of a grieving process which tries to make sense of the experience of loss.

In this regard, the bureau investigating road safety needs to have robust confidentiality and disclosure procedures, such that explanations offered would not be used in the legal domain but are then accompanied by a plan of action by the Bureau to prevent similar crashes from reoccurring.

3e. The Bureau needs to have the ability to communicate appropriately and effectively with victims and their families as well as with 3rd parties submitting information to the Bureau.

Section 3.3: Road safety investigations

“Furthermore, the EU has agencies for air, maritime, and rail safety but an agency for road safety has not yet been established. ”

3f. It is commendable that the Ministry is spearheading this white paper even if it is not yet directed by the European Commission. This initiative reflects the serious approach the Ministry has

apportioned to this issue from our experience both during as well as after our Conference, which was well attended by Ministry officials, other civil servants, and the Minister himself. D4RS recommends that the Ministry and the Maltese Government take this one step further and pioneer this initiative through its European representatives and make representations at European Union (EU) level such that these investigative bodies become mandatory within the EU. This would send out a strong statement both locally as well as within the EU that Malta finally means business when dealing with road safety.

Section 4.0: National safety investigation set-ups

“Unlike safety investigations, the main purpose of police investigations and magisterial inquiries is to apportion blame and determine civil/criminal liabilities. The wealth of information gathered during the course of magisterial inquiries is normally used for prosecution purposes only. As will be explained further on, it is being proposed that a Bureau will be set up such that it may have access to this information, thereby avoiding duplication of efforts in order to analyse the data gathered during such inquiries in terms of road safety.”

4a. As explained in the paper, the aims of the two investigative bodies are ultimately different. It is thus anticipated that the questions asked by the two bodies would be expected to differ. The Bureau cannot thus rely solely on the magisterial inquiry but will need to take initiatives of its own and have investigative protocols of its own.

4b. The paper does not explore the legal status which will define and bind the processes of the Commission and the Bureaux in Malta. D4RS will be able to comment on this when this is discussed if given the opportunity.

Section 5.0: Issues requiring intervention

“a. Although both the Bureau of Air Accident Investigation (BAAI) and the Marine Safety Investigation Unit (MSIU) are meeting their safety investigation obligations, emanating from ICAO, IMO treaty instruments, and European requirements, and notwithstanding that safety investigations in the aviation and maritime domains share a similar philosophy, these two safety investigation entities are unable to share their experiences and maximise on their knowledge.”

5a. The Ministry is correct in seeking to streamline this service across all transport modalities. The efficient functioning of these units should be proactively analysed such that the proposed structures will not suffer from inabilities to execute their role either because of structural and procedural inefficiencies, or worse because of the lack of legal backing.

“b. Malta has a significant knowledge and data gap on the immediate causes and related underlying causal factors of road accidents.”

5b. D4RS and its individual members had highlighted this on multiple occasions as already explained above¹⁻⁶ and agrees wholeheartedly with this statement.

Section 6.0: Safety investigations in practice: key concepts

“To ensure that safety investigations are sound and credible, several key concepts need to be adhered to.”

A list of these concepts is then outlined as below:

“...permanent safety investigation set-up... operational readiness whenever an occurrence is reported...”

...autonomous and independent safety investigation structure...

...safety investigations will neither apportion blame nor determine civil / criminal liabilities...

...conducting systemic safety investigations...

... publishing safety investigation recommendations when the safety investigation is completed...

...contributing to educational campaigns and research studies on transport safety...”

6a. The **permanent nature and operational readiness** of the Bureau implies that it will have its own appropriate technical and human resources to actually proceed to the site of the crash on its happening and carry out an on-site assessment of its own.

6b. The **publication** of safety investigation reports as well as any recommendations made as a result of the safety investigation is of paramount importance to meet the standards required of accountability, good governance and transparency.

6c. In addition to the above, D4RS recommends that other key concepts should include:

- i. The investigative bureau should have processes which ensure anonymity and confidentiality both at source of collection as well as on subsequent analysis of the collected data. This is important to help counteract the prevailing culture that any investigations are usually done to apportion blame. In a small country such as Malta, ensuring absolute confidentiality will need to be addressed as a priority.
- ii. The Achilles heel of magisterial inquiries is usually the time interval to reach their conclusion. Fast-tracking of the investigations by this Bureau should be a priority, possibly with defined timelines, especially when systemic causes are evident. This approach also highlights the importance that investigations by this Bureau should not rely solely on the magisterial inquiry.
- iii. It may indeed be the way forward that the Bureau conducts its investigations which then the magisterial inquiry could take into consideration, if it deems fit.
- iv. As explained in 1e. above, the Bureau should have broader responsibilities than just investigating fatal road crashes. Indeed, it should be able to start investigations on its own initiative, based both on guidelines and defined criteria.
- v. It should also have the ability to receive information from stakeholders or other third parties regarding road safety hazards and respond to these concerns with timely investigations and reports which should also be accessible at least to the stakeholder/third party, but ideally also to the public.

Section 7.0: Explaining the scope of safety investigations: the importance of learning from accidents and incidents

“Safety science within the context of safety investigation of transport accidents is critical as it is the most (if not the only) effective way of understanding system safety and accident dynamics. “

The Paper then identifies the five main disciplines which guide this science:

“Social science

Psychology

Population health

Physical sciences

Engineering

... human error is no longer seen as a cause of accidents but a consequence of deeper systemic issue."

7a. This exposition on the way investigations will be conducted is a breath of fresh air and it is hoped that what is being proposed will be implemented.

7b. As explained in 3c above, the last statement can be misleading when a systemic failure, and hence in its nature preventable, is termed an accident. The term crash is thus preferable.

Section 8.0: Proposals

"It is the aim of the Government to establish a single permanent entity with the necessary legal remit and resources to link theoretical aspects of system safety with transport accident data from all three domains: air, maritime and land transport. The entity will be responsible for making recommendations where necessary, addressed to the appropriate hierarchical levels to enhance transport safety in the respective domains. "

8a. This entity should be enabled not just to make recommendations but also to make key and mandatory requirements, and also to execute orders on other entities which are responsible to effect the necessary systemic or physical changes.

In **Proposal 1:**

"It is being proposed that the TSIC is established as a permanent safety investigation entity. Safety investigations will be carried out by three Bureaux within the TSIC - the Bureau of Air Safety Investigation, the Bureau of Maritime Safety Investigation, and the Bureau of Road Safety Investigation ."

"It is proposed that primary legislation is enacted to establish the TSIC and the Bureaux."

8b. D4RS fully agrees that this Commission is established on a permanent basis backed by the necessary legal framework and resources.

The proposed primary legislation will inevitably require subsidiary/secondary legislation for the setting up of the new Bureau of Road Safety Investigation, its remit, functioning and powers. D4RS as well as other stakeholders, should be given the opportunity to submit further remarks once draft legislative proposals are available, *before* legislative proposals (Bill and Subsidiary Legislation) are presented to Parliament.

8c. It is not clear how the TSIC will interact with TM or Infrastructure Malta, separate legal entities, on matters of road safety responsibilities and actions. This has to be clarified in any future legislative proposals to avoid overlapping of competencies and work, as well as to facilitate implementation of the Bureau's recommendations and requirements.

8d. We suggest a minimal name change in the titles of the Bureaux to better reflect their aim and intention to *Bureau for Investigation on Air Safety, Bureau for Investigation on Maritime Safety, and Bureau for Investigation on Road Safety.*

Two of the five main responsibilities which will be assigned to the TSIC are:

"co-ordinating and approving specific safety studies and scientific research on matters pertaining to transport safety and environment protection in the maritime domain..."

8e. In this spirit, it would be commendable if this is extended to also make sure that environmental protection on land is also taken into account with the need to fulfil its obligations on road safety.

“co-operating and co-ordinating with local and foreign stakeholders to ensure that the duties of the Commission are effectively and efficiently discharged.”

8f. D4RS considers itself established as a significant local stakeholder and welcomes this invitation to co-operate and participate in ensuring that the functioning of this Commission is carried out in the best way possible.

“It is being proposed that the TSIC and its three Bureaux are autonomous and independent.”

8g. Autonomy and independence are crucial to be maintained in these institutions. As outlined previously, D4RS would include the importance of being authorised to enforce the execution of recommendations and requirements.

In **Proposal 2:**

“It is important to make best use of resources, and in particular make better use of the data collected during the course of magisterial inquiries. During the course of such investigations, experts appointed by the magistrate are provided with the necessary resources. At present this data is normally used for prosecution purposes only.”

8h. It is understood from the description of the Safety Science in section 6, that the Bureau will go beyond the input of court experts and conduct its own investigations.

In **Proposal 3:**

“In the short-term, the Bureau of Road Safety Investigation is expected to complete its familiarisation and commence with the safety investigations of fatal road accidents.”

8i. As outlined in comment 1c above, D4RS is recommending that this Bureau will also investigate potential and actual injuries.

Conclusion:

This is an important fundamental step forward for the active holistic management of road safety in Malta. Doctors for Road Safety is pleased to provide preliminary feedback on this initial document establishing this important entity. We hope that our comments and considerations are evaluated in the positive way that they are intended and that they form a valid platform for further discussion. D4RS remains open and prepared to clarify and discuss further as necessary.

Doctors for Road Safety Council

January 2023

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