



## **The implementation of the Community Health and Safety Directives in the Member States**

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L-2920 Luxemburg

This conference focuses on standards compatible with the European "New Approach" which can guarantee the maintenance of the high level of protection of health and safety at work in Europe.

My topic is closely related to this issue, as there are of course close links between the new approach product directives, for example the Machinery Directive, and the health and safety Directives on the use by workers of such products, which I am going to treat.

It should be borne in mind that the legal basis for the two groups of Directives is different. Whereas the health and safety Directives are based on the Treaty's social policy provisions, the product Directives are based on the provisions the internal market. However, they are linked through the fact that workers use the products. The design of equipment, as for example machines and personal protective equipment, is thus very important to safety.

### **Community Health and Safety Directives**

There is a very wide range of Community health and safety Directives.

The most important one is the Framework Directive 89/391/EEC, which lays down the principles for the introduction of measures to encourage improvements in the safety and health of workers.

The principles of the Framework Directive are further developed in 18 individual and other directives, mainly on:

1. work places;
2. work equipment;
3. personal protective equipment;
4. manual handling of heavy loads;
5. Visual Display Units;
6. carcinogens;
7. biological agents.
8. construction sites;

9. safety and health signs;
  10. pregnant and breast-feeding workers;
  11. drilling;
  12. mines;
  13. fishing vessels;
  14. chemical agents;
  15. explosive atmospheres;
  16. vibrations;
  17. noise;
  18. electromagnetic fields;
- and asbestos.

Today I am not going to treat some health and safety Directives under the responsibility of other departments of the Commission, as working time, young workers etc.

There are those who claim that high health and safety standards can reduce competitiveness. However, studies show that the most competitive countries are also the safest. Clearly, competitiveness and on-the-job safety go hand-in-hand. Health and safety is not only about the tragic loss of human life and suffering. Injuries and sick leave also generate huge costs for companies. The ILO has estimated that four per cent of the world's GDP is lost to work-related accidents and illnesses. Most of these are preventable.

The prevention culture is a corner stone of the Framework Directive and its "daughter" Directives. The Directives lay down minimum requirements, which provide a level playing field for businesses operating within the large European domestic market.

The Commission, acting as the watchdog of the Treaty, controls that Community Directives are correctly transposed into national legislation in the Member States.

However, a specific national legislation, which superficially may seem fully satisfactory and maybe even copy-pasted from a Directive, does not give a true picture of the situation on the factory floor in a country. Thus, Member States, and in this field in particular the labour inspections, also have the duty to ensure effective control and supervision of the national legislation transposing a Directive.

This contribution will not concentrate on legislation, but rather on the practical implementation of the relevant provisions, based on some of the information that the Commission has access to in this regard.

## Implementation in the 15 "old" Member States

As regards the 15 "old" Member States, there are several sources of information as to the practical implementation of the Health and Safety at Work Directives. Most important is the evaluation report "On the practical implementation of the provisions of the Health and Safety at Work Directives, the Framework 89/391/EEC directive and the first five of its individual directives" from February 2004.

This report examines how the Community health and safety legislation has been transposed into national law and applied within the Member States. In general terms, these measures have improved the working conditions, stimulating, at the same time, productivity, competitiveness and employment.

There are, however, problems in certain areas which will be mentioned hereinafter.

- Several Member States underline themselves a need to step up information and advice activities to extend the application of the legislation.
- The need for specific and comprehensible information and guidance as well as for easy access to specific and adequate technical assistance is particularly relevant for all types of enterprises, in particular SMEs.
- A major innovation in the legislation consisted of the introduction of systematic risk assessments. The report underlines that the tasks of risk assessment, documentation and supervision are not universally spread. At the same time, there are concerns about the incomplete and superficial nature of the execution of the above mentioned tasks.
- Despite the possibility created to work with internal and external protective and preventive systems, the evidence shows that there is not yet a general and adequate access of all enterprises across the European Union to protective and preventive services. Furthermore, given the fact that the aptitudes and competencies are not defined by EU legislation, but have been left up to the Member States, such services, in particular the external ones, lead to a great variety of quality provided.
- For a preventive strategy to be successful, constructive participation of all actors is required. This implies that without the commitment of workers, the risk prevention potential remains unfulfilled. Despite the strong emphasis on information, consultation, participation, and training further support to extend the involvement of workers is required. Specific attention is needed for workplaces with workers from different enterprises.
- Increasingly complex work processes and changes in working conditions create new risks, coexisting with the traditional ones, or changing types of hazard that call for occupational health and safety to form part of the overall management of enterprises. The report points to a deficit in the organisational structures for the improvement of health and safety in many enterprises.

In particular, in SMEs, evidence shows a much greater rate of accidents in comparison with big companies and a large number of employers who are not well informed.

Specific problems were also highlighted for the public sector, where the improvement of the conditions for occupational safety and health is not considered to be a task that needs to be worked on continuously.

There are also problems in industrial sectors with a high number of temporary workers or other so called 'atypical' employment contracts.

### **Implementation in the 10 "new" Member States**

As far as the 10 new Member States are concerned, it has first to be noted that these 10 States are very different from each other. As regards these States, the Commission naturally has access to less information than as regards the 15 "old" Member States, due to their recent accession. They are for example not included in the practical implementation report, as it dates from 2004. However, there are some other studies which show specific implementation problems.

In general, it can be said that the new Member States suffer from higher levels of traditional safety and health risks at work compared to the EU-15. For example, one study which let the workers themselves appreciate their working conditions, showed that while 27% of workers in the "old" Member States considered their safety and health at risk because of their work, the figure was as high as 40% in the new Member States (at the time "candidate countries").

As in the "old" Member States, there are certain "risk sectors". All over the EU, the construction sector has a higher than average death rate among workers. According to Eurostat figures from 2001, 13 workers per 100,000 were killed, compared to an all sector average of 5 per 100,000. In the new Member States, the figure is even higher for this sector, 24 workers per 100,000. There are particular problems connected to e.g. unsafe scaffolding and asbestos contamination.

Other "risk sectors" are public works, agriculture and forestry, due to a high level of risks and weak risk-management in the undertakings. Industries often specialise in sectors that are traditionally high risk.

One study, carried out for the Commission by an external contractor in 2002, has shown other problems.

- Culture of prevention

It is very important that the prevention culture, which is the corner stone of the Framework Directive, still has to be more deeply rooted in many of the countries. In some countries, there was in the old days and still is, in some cases, a culture of "risk premiums" rather than of prevention.

A certain culture of prevention is said to exist; a culture of safety is seen mostly in the training of employees or the existence of structures such as safety commissions within the enterprises. Often, however, the accent seems to be put on the respect of safety rules and not on prevention of accidents.

- Risk awareness

Whereas the controlling authorities seem to have a correct perception of risks regarding occupational accidents, there seems to be less understanding of questions regarding occupational illnesses and health issues.

In some of the countries, it would seem like the approach to the notion of "risk" is still to a great extent coloured by the perspective that prevailed under the old system. Then, detailed rules regulated every aspect at work. Thus, accidents were considered only to be the result of non-respect of the rules. This is expressed in the report in the following way: "there is no accident, there is no complaint, therefore there is no risk". This perspective also has consequences for the risk evaluations, where the evaluation often is limited to an identification of non-compliances with rules on health and safety.

An insufficient number of workplaces has a systematic risk assessment. This is particularly the case with SMEs. Systematic risk assessment hardly exist at all in the public sector. There also often lacks continuity in the assessments and supervision. The scope, which often is too narrow, is limited to legal obligations and easily observable risks. There are no long term effects, no psychosocial effects, no global approach.

#### - Competent authorities in the field of Occupational Safety and Health

A division of competencies between for example the Ministry for Labour and the Ministry for health makes a global approach to occupational safety and health difficult, especially as regards preventive measures and control, as inspections are organised by the Labour Inspection as well as by sanitary inspections that answer to the Ministry for health. There are often few contacts between the competent authorities, and when there is some cooperation, this is carried out at national level only.

The problems due to this division of competencies were pointed out also by the SLIC evaluation groups during their visits in each acceding country. The division of competencies and lack of coordination at the operational level entail serious difficulties for the multidisciplinary approach to OSH-inspections.

### **Promoting improvement**

Different ways to improve the situation may be envisaged as regards all the 25 Member States.

In the Commission Communication "Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006", it is suggested to consolidate a culture of risk prevention, to combine a variety of political instruments - legislation, the social dialogue, progressive measures and best practices, corporate social responsibility and economic incentives - and to build partnerships between all the players on the safety and health scene.

The Commission for its part, together with the Advisory Committee and the social partners, has started to produce non-binding guidelines on how to apply the directives, for example concerning chemicals, scaffolding and explosive atmospheres.

Subject to the powers bestowed on it by the Treaty, the Commission will continue to ensure that directives are properly transposed and the law is properly applied.

It will also be cooperating closely with the national authorities to find ways of ensuring that Community directives are implemented correctly and equivalently.

As this conference deals with coordination and sharing of work at European level, it is particularly worth mentioning that the Senior Labour Inspectors Committee (SLIC) is a good example of encouraging exchanges of information and experience (best practices) and organising mutual cooperation and assistance. There must be practical encouragement for common inspection objectives as part of an annual action plan, common principles for labour inspection in the field of health and safety at work, and ways and means of evaluating national inspection systems by reference to these principles. Know-how has already been transferred through twinning projects between "old" and "new" Member States.

The checks carried out by the inspection services must give rise to uniform sanctions which are dissuasive, proportionate and effectively applied.

I will not here touch upon the important role played by the European Agency for Safety and Health at Work in Bilbao as regards dissemination of information, as this will no doubt be treated by Dr. Konkolewsky tomorrow.

The European Commission is launching a publicity campaign in the 10 new EU Member States highlighting the need for safety in the construction industry. The campaign will be accompanied by inspections of construction sites across these countries, pinpointing possible dangers and showing how to prevent them. This type of campaign has proven to be very successful in the old Member States by raising awareness etc.

Experience has shown that a strong safety culture is good for workers, employers and governments alike. And prevention techniques that are backed up by health and safety legislation and labour inspections, reduce accidents at work, and improve business performance. In addition to legislation, we also need to promote best practices, encourage corporate social responsibility and provide economic incentives. But most importantly, we need to build partnerships between all the players in the field of health and safety.

Safe work is not only sound economic policy, it is a basic human right. And by combining efforts Europe will be a safer and healthier place in which to live and work.

Thank you for your attention.