

## Special Issue

ETUC-TUTB conference  
Joint OSH strategy  
for the enlarged Europe

# NEWSLETTER



# Editorial

**John Monks**

General Secretary of the ETUC



**Marc Sapir**

Director of the TUTB



Since the fall of the iron curtain, the membership of the European Trade Union Confederation (ETUC) has opened up to a range of organisations from the Central and Eastern European countries. Enlargement represents above all a unique opportunity to bring together the peoples of Europe on the basis of fundamental democratic values. It is a means of ensuring peace and political stability in Europe, and of contributing to economic and social progress and to the improvement of living and working conditions for all.

The European trade union movement well knows the challenge it faces from those who complain that membership of the EU means the imposition of rules. But it needs to be remembered who it is that benefits from the absence of rules – the strong who bully the weak ; the rich who can patronise the poor ; the powerful who can dictate through force.

The European Union, for all its faults and irritations, must be a vehicle for solidarity, for checks on the strong, for help to the weak.

It is workers that pay the highest price for the lack of proper regulation of health and safety. If there is a red line to be drawn in any negotiation, anywhere, then workers' health and safety is it. The accession countries have made tremendous efforts to incorporate the *acquis*. But there is still work to be done in some areas, and we would wish to see transition periods, particularly on health and safety measures, reduced to the minimum.

No country will, in the longer run, be able to build its competitiveness on the basis of low-wage, poor-standards production sites. If Europe is to compete, it will be by taking the high road that creates good jobs in a safe environment.

New countries and existing Member States have many problems in common. The fragmentation of the workforce, precarious forms of employment, systematic subcontracting of activities at the lowest costs, are creating a negative context for health and safety. Everywhere in Europe precarious workers, and in particular temporary agency workers, are suffering more accidents than the other workers. So it is not just up to the accession countries to catch up. We all need to move forwards together.

Under the conditions of a globalised economy, national-level regulation is no longer adequate. Globally accepted rules must be developed and standards should be raised worldwide.

Europe must give a lead. And to lead, Europe itself needs a clear strategy.

In June 2001, the ETUC called for a new impetus in health and safety.

The Commission subsequently adopted a communication called "a new strategy in OSH 2002-2006". We support its description of the situation, but it did not take account of the new context resulting from an enlarged Europe.

Our own overall assessment, based on the preparation and outcome of the conference, is the following : the legal implementation of directives is not enough. It is a precondition of possible improvements. In the last ten years, the European Foundation surveys on working conditions and Eurostat statistics on industrial accidents show that no serious improvement has been achieved.

The burden of poor working conditions, excessive working time and precarious forms of employment is very high for Europe's workers. We need a strong commitment from the public authorities to change that situation : more resources for labour inspection, for OSH research, for working environment funds.

We also need to look at ourselves as social partners. The European social dialogue is a determinant of modernisation and transformation of European industry. The social partners must be involved in the implementation of policy at all levels.

To underpin social dialogue, we need a strong system of industrial relations based upon the recognition of the crucial role of trade unions. That is why the cooperation between our unions is so important to revitalise health and safety policy.

Our conference is just one element of a cooperation initiated about ten years ago. It helps to frame a joint strategy between the unions and with the commitment of all actors. ■

## IN THIS ISSUE

**2** Editorial  
*John Monks and Marc Sapir*

**4** Introduction  
**European trade unionism  
in an enlarged Europe**, *Marc Sapir*

**8** Regulation of the working environment  
in the new accession States of the  
enlarged Union, *Charles Woolfson*

### NATIONAL CASE STUDIES

**14** What next for OSH in the Czech  
Republic ?, *Milos Palecek*

**20** Health and safety protection of workers  
in Poland, *Iwona Pawlaczyk*

**26** Occupational safety and health in  
Germany pre European law reform -  
status and shortcomings,  
*Marina Schröder*

**32** Occupational health policies in Spain :  
problems, actions and priorities,  
*Joan Benach, Marcelo Amable,  
Maria Menéndez, Carles Muntaner*

### THE WORK ENVIRONMENT IN AN ENLARGED EUROPE

**42** Developments in preventive systems  
across the European Union,  
*Laurent Vogel*

**50** The state of play. Trends and needs in  
the accession countries, *Viktor Kempa*

### WORKSHOP REPORTS

**54** Analysis of national occupational health  
and safety policies, *Andrew Watterson  
and Corneliu Constantinoia*

**56** Analysis of preventive OSH services,  
*Miroslav Cikrt*

**57** National arrangements for workers'  
health and safety representatives,  
*Claudio Stanzani and Viktor Kempa*

### BUILDING OSH KNOWLEDGE

**61** Paving the road to enlargement,  
*European Foundation for the  
Improvement of Living and Working  
Conditions*

**62** The European Agency's work with  
Acceding and Candidate Countries,  
*Eusebio Rial-González  
and Brenda O'Brien*

### REFLECTIONS AND REACTIONS

**64** The New Member Countries :  
problems or catalysts ?,  
*András Békés*

**66** Beyond transposition :  
Challenges for safety and health  
at work in the enlarged Europe,  
*Charles Woolfson*

# Introduction

## European trade unionism in an enlarged Europe

EU enlargement, now almost upon us, raises many questions about social / employment rights in an expanded Europe, and the whole future of the European social model.

Against that background, it is important to understand where European trade unionism stands in an enlarged Europe, especially on health and safety at work - the backbone of the Community social *acquis*.

This gradual shaping of the social actors and labour relations enables knowledge to be developed about real-life social conditions across Europe.

### From transition to membership

It is important to remember when looking at the scope of countries covered, that the choice of countries for inclusion in the enlargement process was dictated by relations that had developed between the European Union and what in the early 1990s were called the "new democracies". After the political and economic upheavals of 1989 in central and eastern European countries (CEECs), and the shift from planned to market economies, diplomatic relations were established between the Union and the CEECs. The EU countries immediately put in place a programme of financial assistance (PHARE) with some countries. "European Agreements" like those that had existed with Turkey since 1963, with Malta since 1970, and with Cyprus since 1972 were signed in the early 1990s with the CEECs.

In 1993, the Copenhagen European Council decided that countries with which the Union had agreements could join if they met three criteria :

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities ;
- the existence of a market economy as well as the capacity to cope with market forces within the Union ;
- the ability to take on the obligations of the Community *acquis*, including adherence to the aims of political, economic and monetary union.

From this time on, the Commission published regular reports on how these countries were moving (or not) towards these requirements. The first stage of this process will result in 10 new countries joining on 1 May 2004.

### From the Trade Union Forum to ETUC membership

The ETUC first set up a trade union forum in 1990 as a setting for member organizations to meet with organizations from the CEECs and Balkans. Later, at its 7<sup>th</sup> Congress in Luxembourg, it created an observer status for ten central confederations from Poland, the Czech Republic, Hungary, Bulgaria and Romania. In 1994, the ETUC opened up to trade unions from countries that had agreements with the Union. Its 8<sup>th</sup> Congress, in Brussels, made arrangements to enable trade unions from these countries to join it.

The Trade Union Forum continued to operate with trade unions that have observer status and the countries of the former Yugoslavia, becoming an arena to swap information and experiences, and develop common projects. Through it, the ETUC coordinated trade union projects developed under the PHARE-Democracy Programme.

On the institutional front, the ETUC called for a social dimension to be included in instruments put in place, particularly the PHARE Programme. It demanded trade union recognition from the governments of countries involved in the programme, with which relations had been established. The European institutions would refuse to set up consultative structures under "European Agreements".

It was increasingly borne in upon the ETUC<sup>1</sup> that the enlargement process would radically alter the European Union's agenda. Enlargement would create opportunities to strengthen democracy and respect for human rights, security and stability, economic prosperity and consolidate the social model in Europe, but it would bring with it challenges both for the institutions and the common policies. The social and institutional differences between the member countries and candidate countries were massive in both quantitative and qualitative terms.

The ETUC constantly argued that the process was too market-focused. It called for the social dimension to be made a full part of the negotiation process, for trade union participation, and for the Commission to make it clear to the candidate countries that social partner consultations were part and parcel of the European social model. A joint conference of the European social partners reaffirmed this principle in Warsaw in 1999, and an ETUC / UNICE joint project to promote the Social Dialogue was launched in 2000<sup>2</sup>.

To support trade unions in the candidate countries, the ETUC from 1997 promoted the setting up of standing trade union committees to collect and analyse information to inform a national trade union policy position in negotiations with the Union. These committees, which came to be known as "integration committees", operated in all the candidate countries except Bulgaria.

Member organizations worked on a range of issues together :

1. Firstly, **free movement of workers** which was and still is a focus of concern in the member countries. The compromise reached in the ETUC in 2000 was to call for the shortest possible transitional periods and a "flexible" approach. In 2001, UNICE came out for free movement from day one of joining the Union. But it admitted that it was a vexed problem, and recognized the need for "flexible" solutions and special measures in frontier zones.
2. Secondly, **Social Dialogue**. The ETUC pointed out that relations between public authorities and social partners were nowhere near meeting the European criteria in many countries. Also, collective bargaining was not widely practised, as the Commission and Dublin Foundation pointed out in various reports<sup>3</sup>.
2. Thirdly, **labour law**, which has undergone impressive development in several countries. A meeting organized by the NETLEX network of trade union lawyers in 2002<sup>4</sup> heard that central and eastern Europe was suffering a chronic serious failure to implement legislation in practice, and that governments were the worst for flouting their legal obligations. Developments show they are moving away from rather than closer to the European social model. The closing of the social chapter of negotiations actually quickened the pace of deregulation !
4. Fourthly, **social protection**. In 1999, the ETUC published a White Paper on social protection in the CEECs, a working document written with trade unions in the countries concerned and the integration committees. It shows how social protection has changed with the development of a market economy. The aim was to get trade unions to take ownership of the issue by focusing on the challenges faced by existing schemes and providing tools with which to hold out against attempted privatization, especially of health care, promoted by the Bretton Woods institutions.

## Health and safety: a trade union priority

What was the state of play in the working environment after the 1989 upheavals ? At the first meeting organized on this issue by the ETUC<sup>5</sup>, in 1994, the President of the Czech Confedera-

<sup>1</sup> R. Langewiesche and A. Toth (Ed.), *The Unity of Europe: political, economic and social aspects of the EU Enlargement*, ETUI, 2001.

<sup>2</sup> *Report of the Conference on Social Dialogue in Candidate Countries for accession to the European Union, Bratislava, 16 and 17 March 2001*, UNICE, UEAPME, ETUC, Brussels, 2001.

<sup>3</sup> *Industrial relations in the EU Member States and Candidate countries*, EIRO, Dublin, 2002 and *Industrial relations in Europe 2002*, DG Employment, 2002.

<sup>4</sup> ETUC Conference : "Fighting the deregulation of the labour code in Eastern European Countries", Brussels 2002.

<sup>5</sup> ETUC Seminar : "EU standards for the protection for the working environment and health – frame of reference for central and eastern Europe", Bratislava, 1<sup>st</sup>-4<sup>th</sup> June 1994.



tion's Health and Safety Council argued that health and safety were sideshows to the social and economic changes under way. Responsibility for safety and health protection had been taken away from the different industry Ministries, the protection system had been weakened and was out of date on a number of counts :

- changes in the production system had created a sharp rise in service industry employment (doubled over two years) and in SMEs. But the latter were unready to address health and safety issues, and the labour inspectorate lacked the resources to tackle the situation ;
- the legislation was inappropriate for changes in progress and the change in ownership systems ;
- there was no organized Social Dialogue at sectoral level ;
- people felt powerless in the face of these changes, and especially at risk of unemployment ;
- workers and employers were conditioned by the system that had prevailed for 40 years : advances on the legislative front were marred by serious exceptions and inconsistencies that stopped the aims of the economic and production plan from being delivered.

### Enlargement central to TUTB activities

The trade unionists from the 16 European countries at the meeting stressed the importance of continuing to exchange information in order to develop a shared knowledge base. The TUTB was tasked with handling this, and proposed that cooperation should centre around four things :

1. appointing a health and safety coordinator on each national integration committee to create the linkage with TUTB activities ;
2. an organized collection of information on national situations in inspection services and the role of tripartite bodies ;
3. systematic monitoring of the national debates on Directive 89/391 ;
4. identifying company-level trade union experiences with information, consultation and participation.

In 1997<sup>6</sup>, the ETUC Executive Committee pledged to step up cooperation on health and safety. The ETUC Secretariat, in cooperation with the TUTB, organized visits in three countries to meet representatives of the social partners and governments, brief them on the ETUC's priorities, but also to sound out the view of the actors involved. The same year, the ETUC and TUTB hosted a joint seminar on a trade union strategy for health and safety at work<sup>7</sup>, attended by trade unions from most European countries. Presentations were given on the first assessments of the application of the Framework Directive in the Union countries, and the findings of the Dublin Foundation's second survey of working conditions. Union representatives from several countries described their national situations and developments. The clear fact was that just transposing the Community directives was not enough ; the conditions in which they were implemented were decisive. Simply laying down employers' obligations did not ensure that they were carried out.

The first tripartite European meeting on health and safety took place under the Austrian Presidency in 1998. The debates and reports presented<sup>8</sup> showed that national reports alone are not a sufficient basis on which to establish dialogue ; there was a strongly-felt need for a Commission report on the application of the directives. Various States' first assessments of the application of the Framework Directive gave a patchy picture, focusing on the cost of preventive services to business and the need for freedom of means to achieve the ends. The candidate countries mainly focused on the legislative work being done, and projects supported by the Union, but not a word about problems arising, the role of the social partners, etc.

What this first tripartite European conference mainly showed was the need for internal dialogue and knowledge pooling within each group, and a desire by the Commission and Member States not to allow the European social partners a say in the ongoing negotiations.

After this conference, the trade union representatives on the Luxembourg-based Advisory Committee also voiced their need for a more in-depth knowledge of the situation in the candidate countries and for a pooling of experiences with transposition of the directives. The Committee

<sup>6</sup> ETUC resolution of March 6-7, 1997.

<sup>7</sup> Bucharest 8-10 September 1997.

<sup>8</sup> European Week for Safety and Health at Work "Vienna Workshop" Abstracts, Vienna 21-23 October 1998.

called for the tripartite delegations from these countries to be included in its different interest groups as soon as possible.

### A clearer picture of national situations

From 2000, enlargement rose up the TUTB's work programme agenda. Each national ETUC member organization was invited to second a trainee from each candidate country to the TUTB for 6 months to write a report on the situation in their country. This has resulted in reports being written on the situation in Romania, Slovakia, Bulgaria, the Czech Republic, Estonia, Lithuania, and Poland.

The TUTB stepped up its cooperation with the European industry federations. New meetings have been held involving the trade union members on the Advisory Committee and representatives of trade unions in the candidate countries. The idea was not just to share and discuss the reports written by the TUTB on national situations, but also gain a better understanding of trade union strategies, including on training for workers' representatives. So, at a Prague meeting in October 2002, the inter-branch trade union training strategies in Denmark, Spain, Italy and Portugal were presented and considered in detail.

These trade union meetings have been continued. Beyond the presentation of reports, they have enabled issues of common interest and areas of cooperation to be identified, and especially to lay the groundwork for integrating the new colleagues into the Workers' Group of the Advisory Committee from May 2004.

### Strengthening the Social Dialogue

The Swedish Presidency sponsored<sup>9</sup> the development of implementation projects on the working environment in each of the 13 candidate countries. The TUTB and UNICE therefore developed a joint project to support the Social Dialogue on health and safety to facilitate an exchange between actors from the social partner organizations. Two meetings with participants from the candidate countries were set up in 2003 and the feedback from these highly productive exchanges will be presented in April 2004. These meetings gave an opportunity to exchange, compare and contrast national experiences, identify points of similarity between the different countries, but also challenges that employers' organizations and trade unions must address in terms of both representativeness and abilities to support their members.

Arguably, the work done prompted the Commission and Dublin Foundation to brief themselves more fully on the situation in the new accession countries, and to lay the bases of a debate between all the European actors on the strategy needed in an enlarged Europe.

The materials produced, the links forged between trade unions, the exchanges of experiences, and the - admittedly still cursory - knowledge developed through the activities carried out informed the discussions at our eve-of-enlargement Conference. The work done enabled us to gain critical insights into all the national situations, to identify the challenges and difficulties that trade unionists have to face, and to lay the foundations of a *common health and safety strategy for an enlarged Europe*. ■

**Marc Sapir,**  
Director of the TUTB

<sup>9</sup> Lena Skiöld (Ed.), *A look into modern working life*, NIWL, Stockholm, 2000.



## Regulation of the working environment in the new accession States of the enlarged Union

### Introduction

This article attempts to explore the “politics of regulation” in the context of post-accession Central and Eastern European States. It examines the prospects for the transposed European social *acquis*, especially in the area of occupational health and safety (OHS) - or working environment - for employees in the new accession States. It is suggested that resistance exists on a number of fronts at both domestic and European levels, which may compromise the effective harmonisation of working environment standards with broader European directives and norms. The advent of the new Central and Eastern European members may test the application of innovative regulatory strategies deployed by the Commission to achieve harmonisation in an enlarged Union, at a formative juncture, and in a key area of social policy – the working environment.

As such, they find a ready audience among entrepreneurial classes in the accession States, as well as incoming foreign investors. At a national level, therefore, support among CEE business and political elites for European labour protection regulation, especially in the area of OHS, is often limited.

In the third part of the article, European Commission strategy is examined in more detail by assessing the Commission strategy document for 2002-2006 on OHS, as well as the results of the recent final monitoring reports on the accession States. In the final part of the article, it is argued that there is a gap between the more optimistic estimates provided by the Commission at a macro policy level in the context of completing the accession process, and wider contextual industrial relations factors. These are discussed in terms of providing the contexts which may make the effective implementation of newly-adopted OHS legislation in the accession States problematic. Accordingly, it is suggested that prospects for sustainable harmonisation in the area of working environment in the accession States, and for OHS improvements in particular, look uncertain.

### A worsening working environment ?

The massive economic changes that have taken place in Central and Eastern Europe since the early 1990s have been well-rehearsed many times over. These have included the dissolution of State enterprises, emergent foreign and joint ownership patterns, as well as the massive growth of domestic small and medium-sized entrepreneurial concerns. In 1999 the total number of SMEs in the 13 candidate countries for EU membership was estimated at almost 6 million. The total number of SME employees amounted to nearly 30 million people, accounting for 72% of the total workforce in those countries, a significant percentage of them (40%) employed in micro enterprises with fewer than ten workers (2). In general, SMEs are more dangerous to work in than bigger firms (50+ employees) in terms of average fatalities in the EU per 100,000 workers in 1999, the fatality rate being around double in micro (1-9 employees) and small-sized enterprises (under 50 employees) (3). Rates in the accession and candidate countries can be expected to equal, if not vastly exceed, those of the member States.

These developments have made both industrial relations and health and safety practices increasingly

### Charles Woolfson

Marie Curie Chair, EuroFaculty,  
University of Latvia, European  
Centre for Occupational Health,  
Safety and Environment  
(ECHOSE)

At European level, in recent years, there has been something of a retreat from securing employee rights, in favour of promoting growth and competitiveness, and a consequent downplaying of the social dimension of European integration. The loss of momentum in social policy initiatives at European level applies also in the sphere of workplace safety and health. This may be further intensified by the advent of the new member States (1). In the first part of this article, evidence is presented suggesting that the working environment in new accession State workplaces has worsened when compared to existing member States. This has huge implications for any future regulatory strategy towards health and safety in the enlarged Europe.

In the second part of the article it is argued that regulatory authorities in new CEE member States may be subject to “regulatory fatigue” in the area of occupational safety and health. They have completed the enormous task of legislative transposition, but now face the equally huge job of implementation with limited administrative resources and capacities. Meanwhile, external agencies such as the IMF, appear to favour differentiated standards of OHS protection in Central and Eastern Europe (CEE), as compared to EU member States. Neo-liberal-inspired ideas can be seen as a key ideological component of the current process of wider European integration. A number of “home-grown” policy forums exist in CEE which amplify neo-liberal policies for domestic consumption, and are often hostile with respect to labour protection regulation.



complex in the accession States. The transition to market economies has been accompanied by privatization, bankruptcies, restructuring and the growth of unemployment, underemployment and a radical flexibilisation of the workforce. All of these factors have created an imbalance in power between employers and employees at the workplace which inevitably impacts on safety and health.

The evidence pertaining to the working environment in the accession States takes both qualitative and quantitative forms. Unfortunately, neither can be said to be entirely adequate. Therefore, only the most general observations can be made as regards their implications for future implementation strategy in occupational safety and health. A broad comparison of aggregate fatality rates in the EU-15 member States with the eight Central and East European accession States gives an approximate idea of the "order of difference". The relatively short time-series for the data below makes any analysis of longer-term trends premature. Nevertheless, the comparison is interesting.

Comparing accession country averages with the EU, only in three cases (Estonia, Hungary and Slovakia), is there an observable secular decline in fatality rates mirroring that of the member States. In the remaining five countries - the Czech Republic, Poland, Slovenia, Lithuania, and particularly Latvia - fatal accident rates appear to be rising moderately or even sharply. For the accession States as a whole, by 2001 fatality rates are diverging from EU averages. Comparisons between individual accession States, and between the accession States taken as a group and the EU of 15, are fraught with dangers due to the differing industrial composition between the various countries. So, for example, those countries with a legacy of high hazard heavy industry and mining are likely to see greater fatality rates than those with a developing service sector. Future analyses of accident statistics, to be worthwhile, must take account of these differing compositional and sectoral factors, both within individual countries and between new and older member States. Nevertheless, even taking account of the rather differing overall composition

of industrial activity in the Central and Eastern European countries, the growing divergence in fatality rates with the EU is noteworthy, as is the position of Latvia, Lithuania and Slovenia as the front-runners. Data from the International Labour Organisation would tend to support this view. According to the most recent figures from the ILO, the incidence rate of work-related fatalities in the accession countries (not including Cyprus) is almost three times higher than in the EU-15 (9.6 per 100,000 persons in employment compared to 3.4 per 100,000 in the EU-15). The fatal accident data suggest therefore that in the new member States, there may well exist what Theo Nichols has previously called, heightened "structures of vulnerability" (5).

In terms of the quality of working life, survey evidence from the European Foundation for the Improvement of Living and Working Conditions would also seem to point to significant differences between the existing member States and the accession and candidate countries (6). It suggests that workers in the accession and candidate countries "are more exposed to vibrations, noise, heat, air pollution, and, to a lesser degree, to working in painful or tiring positions, than in the EU". Differences are also reported with regard to working time, suggesting that working hours are considerably longer than in the EU and that atypical forms of work such as night work or shift work are more widespread. The survey findings indicate that information / consultation is also less well developed in the accession and candidate countries than in the EU, especially when it comes to discussing organisational changes. It is observed that "consultation in the EU-15 leads to improvements at all levels more so than in the acceding and candidate countries". This again raises important issues with respect to future social dialogue and the implementation of EU directives on consultation.

The most interesting data from the survey deal with perceptions of whether or not work undertaken is harmful to an individual's health. The survey reports that the perception that health and safety are at risk because of work is more widespread in the accession and candidate countries than in the EU (40%

**Accidents at work; fatal - Index of the number of fatal work accidents per 100,000 employees (1998=100).  
EU-15 and 8 CEE accession States compared**

	1994	1995	1996	1997	1998	1999	2000	2001
EU (15 Countries)	115	109	106	100	100	85	82	79 <sup>(p)</sup>
Czech Republic	110	103	112	116	100	76	96	96
Estonia	na	120	102	114	100	79	56	78
Hungary	106	117	101	97	100	107	95	71
Lithuania	na	98	102	83	100	91	78	105
Latvia	na	na	na	na	100	115	90	140
Poland	na	na	na	109	100	83	96	92
Slovenia	90	118	118	130	100	88	83	105
Slovakia	na	96	109	81	100	89	71	71
CEE (8 Countries)					100	85	81	94

Source : Eurostat available on the Cronos database (4)

report that their work does affect their health or safety, compared to 27% in a survey of working conditions in the EU in 2000). The problems most often reported are, in descending order: overall fatigue (41%), backache (34%), stress (28%) and muscular pains. The findings would seem to reflect the much higher overall intensity of work experienced by employees in these countries in the period since the introduction of the market economy, with countries in the Baltic region and Romania and Bulgaria performing particularly poorly.

In terms of the immediate politics of enlargement, the evidence would seem to point to particular issues of concern regarding employee health and safety at work, both in terms of “objective” indicators such as accident rates, and more “subjective” survey responses. This poses an acute policy dilemma as to the most appropriate forms of intervention and influence in order to stimulate improvements in the working environment.

### Regulatory fatigue and regulatory resistance

For nearly a decade, overworked civil servants in the post-communist accession State administrations have been responsible for replacing previous Soviet-derived or national legal frameworks governing OHS by the transposition of EU directives and regulations. The sheer effort of transposition, meeting the strict requirements of Brussels, has presented a major challenge to internal domestic administrative capacities. With respect to post-accession regulatory implementation of legislation, in the general area of working environment, one likely outcome is “regulatory fatigue”.

In part, this derives from the difficult adjustment process to regulatory implants from the EU, which may run counter to previous Soviet-style OHS regulation. Philosophically, regulatory agencies are more often dominated by a strict external compliance and control mentality. This runs counter to broader EU approaches of internal control and self-regulation within goal-setting frameworks of risk assessment. The process of absorbing the huge body of *acquis* legislation has not been assisted by the prioritisation which has been given to promoting business enterprise as a means of developing the new post-transition societies. It had been suggested, for example, that if the EU requirements fail to correspond with “the domestic reform fit”, for example because domestic consensus is inspired by different ideas, or because there is no consensus on reform, the new “imported” rules are likely to be contested and even changed, once candidates are EU members (7). In the accession States, arguably, domestic preferences do indeed often lack a credible “reform fit”, despite the shift in EU policy towards more flexible and even neo-liberal directions.

The power holders in the new accession States of Central and Eastern Europe, encouraged by the IMF and other international agencies, have largely embraced such neo-liberal approaches, encapsulated in the notion of “reducing labour market rigidities”, in which concern with the social dimension of Europe has been secondary to the goal of economic growth (8). Current de-regulatory thinking in Central and Eastern Europe is a direct result of the desire to create a free-market arena in the post-socialist economies. The IMF and associated right-wing US think-tanks, such as the Cato Institute, have provided the detailed road-map for political and economic transition. IMF staff reports for individual countries, based on policy dialogue with national governments, typically admonish accession State actors in terms of “further removing red tape and other regulatory obstacles to private sector activity (which) would encourage the development of small and medium-sized companies and hence job creation”.

The influential Washington-based Cato Institute, for example, argues that “excessive regulation” emanating from within the EU will reduce flexibility and impose an economic burden on business that will produce sub-optimal growth (9). In particular, it is suggested, “overregulation of conditions of employment will diminish the comparative advantage that CEE workers enjoy over their more highly-paid western counterparts”. According to the Cato Institute, “the EU explicitly rejects the possibility of different levels of safety and health protection of labour within the Union”. It warns that the EU advocates “the need to harmonize health and safety standards *irrespective of the different needs of the member States*” (italics added). The imposition of such regulatory uniformities in OHS, it is argued “do not contribute to alleviation but to worsening of the workers’ lot, by creating an artificial increase in labour costs”. One of the key policy objectives of the Lisbon European Council of March 2000, was also “to reduce the administrative burden on business” (10).

Not only are domestic administrative and regulatory capacities depleted, therefore, but the internal political will and external EU-level stimulation to revive them is qualified by redefined policy priorities. The notion of an enlarged “social Europe” with “corporate social responsibility”, “balanced stakeholder participation” and “social dialogue” between labour and capital, holds little attraction for the new elites of post-communism.

Such elites have fully embraced the rhetoric of free market philosophy in which competitive advantage lies in a deregulated low-cost low-wage economy, where labour (preferably union-free) is comprehensively subordinated to the needs of capital, both domestic and foreign. The social and employment *acquis*, is thus uniquely vulnerable in the post-accession implementation phase, nowhere more so

than in regard to safety and health in the workplace. What then is current EU strategy in terms of the working environment?

## European Commission Strategy for the working environment in the accession States

The expectation of senior policy actors in the Commission is that the advent of the new accession States will be accompanied by the further loss of momentum in regulatory standards and a general slowing down in the initiation of social legislation. A survey of 30 senior Commission officials involved in the enlargement process predicts that environmental action and social and employment legislation are set to suffer loss of momentum, as the new States fight any initiatives that impose extra costs on their economies while they struggle to qualify for the euro (11). Commission officials speak of “a lowering of ambition” as the new members oppose “initiatives seen as a drag on competitiveness” and the “brake” upon, or even a “blockage of Social Europe” after accession. The cumulative impact of the accession of the new member States may therefore be a further slowing down of European-level initiatives in OHS, and instead of a levelling-up of standards in an enlarged European Union, the initiation of a new “race to the bottom”.

In two areas of its activities the Commission addresses the situation regarding safety and health in the accession States. First, the Commission's Communication outlining a general strategy for occupational safety and health for 2002-2006, also discusses the accession countries (12). There is an acknowledgement of the average frequency of occupational accidents as being “well above the average for the EU”. While the Commission concedes that the accident rate figures “call for heightened vigilance”, it is not clear what forms this might take. It is admitted that the accident and illness figures indicate that the preventive approach set out in Community directives “has not yet been fully understood and taken on board by the various players, nor applied effectively on the ground”, and this is “particularly true of the candidate countries”. One section of the strategy document on *Preparing for enlargement*, contains a single paragraph's worth of proposals that are less than groundbreaking.

The proposed Commission strategy has been criticised by policy actors and researchers for its lack of concrete measures, especially in the area of future implementation. Laurent Vogel of the ETUC's Trade Union Technical Bureau has been particularly forthright, suggesting “the practical proposals are weak, very vague in parts and clearly fearful of provoking opposition from the employers and governments with the most free market attitude towards any form of social legislation” (13). Community strategy

appears to be at a crossroads and uncertain which direction to take so far as the accession States are concerned. The issue revolves around the question of whether the admitted differences between the older and newer member States in OHS are merely quantitative or, in some sense, qualitative. If the latter, then new approaches and stratagems would seem to be required.

This makes the Commission's detailed assessments in its periodical reports on individual candidate countries' progress towards accession even more relevant. Although the progress reports have dealt with transposition of the *acquis*, they have also had an eye toward future implementation. The 2002 assessment provides the prospective new members with a broad endorsement, but nevertheless points out that “in the area of *social policy and employment*, while alignment with the *acquis* is well advanced, most countries still need to strengthen their administrative capacity, in particular, in the areas of public health and health and safety at work”. However, the November 2003 final *Comprehensive monitoring report of the European Commission on the state of preparedness for EU membership* no longer mentions these concerns (14).

Barring politically unforeseeable disaster, ten new States will join the European Union on schedule (the eight from Central and Eastern Europe, together with Malta and Cyprus) in 2004. Only a few outstanding items remain with respect to the closure of the *acquis* chapters, none of which, including health and safety at work, are seen as a barrier to formal accession. Against the policy-driven aspiration of the Commission, and the political necessities of the pre-accession final monitoring reports, it is useful to present a view of the current evidence regarding the working environment in Central and Eastern Europe. This is the benchmark against which any successful future programme of regulatory intervention will have to be judged.

## Regulatory renewal, harmonisation and enlargement

At a regulatory policy level, the Commission has embarked upon a programme of “updating” and “simplifying” the *acquis* under the banner of “Better regulation” (15). Whether such regulatory review, conducted at a pan-European level, creates conditions for more effective and rationalised regulatory structures, or whether it serves to promote future deregulation, has been a matter of debate. Existing legislative areas where “potential problems” are identified, including health and safety at work, are being “subjected to a detailed scrutiny for their simplification potential”. The Commission has suggested that “where the legislative approach may no longer be appropriate”, it could be replaced “by more efficient, flexible and proportionate instruments

(for example, framework directives, new approach directives or 'softer' regulatory alternatives)". The use of so-called "reflexive" strategies in the process of harmonisation can be seen to offer a pathway for avoiding outright deregulation.

With regard to occupational safety and health and its specific framing within wider industrial relations, reflexive law induces "second order" effects on the part of social actors. Here, law underpins and encourages "autonomous processes of adjustment" and "confers rule making-powers on self-regulatory processes". It basically offers a fallback position which provides incentives for more powerful parties to enter into negotiations and find arrangements which suit local conditions (16). The approach has been termed "reflexive harmonisation". As a programme of regulatory renewal this has re-ignited an intense debate between pro- and anti-regulatory proponents over the appropriate form of regulatory environment within Europe, especially with respect to general issues of social protection and employment. So far, however, the particular characteristics of the accession States have not been taken into account in this debate. It is assumed that these are equally amenable to regulatory innovation and experimentation.

Such regulatory initiatives follow on the adoption at the Lisbon summit of the so-called Open Method of Coordination (OMC), endorsed as an important tool of EU governance in achieving social and employment policy goals (17). Central here are notions of benchmarking and best practice as a way of securing a flexible and decentralised approach to policy creation and implementation. The principle of subsidiarity that the OMC embodies also implies that the devolving policy inputs at the regional and local levels will spread horizontally outwards to the social partners and civil society representatives. These will be "actively involved" in the policy process "using variable forms of partnership". In this context it is significant that "a special appeal" is made to "companies" corporate sense of social responsibility regarding best practices, *inter alia* on such matters as work organisation, equal opportunities and social inclusion. The question remains as to how viable and realistic an approach based on "soft law" is in respect to the accession States.

There is a conventional wisdom in OHS management circles, suggesting that the rooting of safety cultures, risk awareness and best practice in health and safety can be most effectively secured by comprehensive employee participation and consultation in the safety process. It was, for example, a fundamental tenet of the regulatory reconstruction of the safety regime in the UK offshore oil industry following the Piper Alpha disaster. Studies of concerted industry-wide interventions, such as have occurred in the post-disaster oil and rail industries, suggest that even where there is strong political support and

close regulatory scrutiny, generating safety cultures may be difficult to achieve, a problem compounded as we move from larger to smaller enterprises. Although hard to measure in precise terms, in general, it is suggested that a working environment in which employee representation and participation is encouraged via the involvement of employee trade unions, may produce better outcomes in terms of health and safety performance. Such environments may also create the necessary embeddedness within which experimentation in best practice and its diffusion have a role to play alongside more traditional forms of regulatory control. However, so far, there is no indication that most employers in the accession States are in a position to adopt best practice, or take on board arguments embracing wider concerns about corporate social responsibility towards employee involvement in the working environment.

Best practice (and voluntary self-regulation), if they are to succeed at all as stratagems for enhancing the working environment, would seem to emerge most successfully in the context of a system of industrial relations in which social actors are empowered, preferably through collective bargaining. They then meet each other as counterparts in the bargaining arena. In this way, some notion of equality between social partners can inform social dialogue in the workplace discussion agenda. While safety and health are not necessarily adversarial issues *per se*, as between management and labour, nor can the cosy assumption be made of their implicit consensuality and agreement. This is especially so in the accession state context, where for many employers "good health and safety" is not necessarily "good business". As in other aspects of the employment relationship, there is a danger that joint health and safety committees, even where they exist, will be dominated by a managerial agenda, making independent worker demands difficult to assert. On the other hand, by playing an active role in defending workplace safety and health conditions, trade unions do have an opportunity to demonstrate their relevance and effectiveness.

Employers have focussed on profitability, and workers have prioritised employment security and wages over concerns regarding their health and safety. Where employee-elected safety representatives and committees are mandated in accession States, the evidence suggests that there is a low level of workforce awareness of their functions and powers. This suggests that in terms of any developing wider social dialogue between social partners on safety and health, especially at enterprise level, much remains to be done before any real degree of workforce involvement can be spoken of, particularly in small and medium-sized establishments (18).

Currently, however, in the absence of an emerging system of viable collective bargaining, and the empowerment of employees at the workplace, the



scope for regulatory experimentation of the kind proposed by the Commission may therefore be rather limited in the accession States. It may be necessary, at least for an intermediate period during which alignment with European norms and best practice on risk assessment and employee involvement and workplace consultation can take hold, to consider strengthening more traditional regulatory instruments and forms of compliance. However, as matters currently stand, in order to guarantee at least minimum adherence to European standards, a sea-change in attitudes will be required in the accession States, accompanied by a resourcing of social partners and regulatory authorities on an entirely new scale.

## Conclusion

Over forty million new members of the European workforce will eventually join the existing labour force of 161 million, roughly as much as one quarter again. They bring with them different experiences, different expectations and different responses to the world of work. The outlook for the creation of a modern European working environment in the enlargement process, based on harmonised standards, is therefore unclear at best and potentially compromised at worst, by the failure to properly acknowledge the very special problems of the accession States.

This, in turn, raises more fundamental questions as to the appropriateness of current innovative alternative regulatory Community strategies in achieving longer-term goals of integration. This paper has suggested that there are insufficient social and political resources to make new, softer forms of law a realistic implementation option in the accession States. Crucially, it leaves unresolved the issue of what prevents a “downwards spiralling” of health and safety standards. Evidence so far suggests that there are neither the resources, nor the political will, to implement the existing measures to bring about improvements in the working environment in the new member States. The familiar and oft-predicted prospect of regulatory “regime competition” between newer and older member States, with differentiated working environments, is now an unpalatable but imminent possibility. ■

## References

(1) Vaughan-Whitehead D., *EU Enlargement vs. Social Europe: The Uncertain Future of the European Social Model*, Williston, VT: Edward Elgar Publishing, 2003.  
 (2) European Commission, SMEs in Europe, including a first glance at EU candidate countries, *Observatory of European SMEs*, 2/2002. Available at <http://www.asme.bg/en/publications/SMEs%20in%20Europe%202002.pdf>.  
 (3) Eurostat, *European Social Statistics: Accidents at work and health-related problems*, Data 1994-2000. Available at

<http://europa.eu.int/comm/eurostat/Public/dashop/print-product/EN?catalogue=Eurostat&product=KS-BP-02-002-3A-N-EN&mode=download>.  
 (4) Eurostat, *Accidents at work; fatal - Index of the number of fatal accidents at work per 100 thousand persons in employment (1998=100)*. Available at <http://europa.eu.int/comm/eurostat/Public/dashop/print-product/EN?catalogue=Eurostat&product=1-em062-EN&mode=download>.  
 (5) Nichols T., *The Sociology of Industrial Injury*, London and New York: Mansell, 1997.  
 (6) Paoli P. and Parent-Thirion A., *Working conditions in the acceding and candidate countries*, Dublin: European Foundation for the Improvement of Living and Working Conditions. Available at <http://www.eurofound.ie/publications/EF0306.htm>.  
 (7) Dimitrova A., Enlargement, Institution-Building and the EU's Administrative Capacity Requirement, *West European Politics*, Vol. 25, No. 4, 2002, pp. 171-190.  
 (8) IMF (2003a), *World Economic Outlook: Growth and Institutions – A Survey by the Staff of the International Monetary Fund*, April 2003. Available at <http://www.imf.org/external/pubs/ft/weo/2003/01/pdf/chapter4.pdf>.  
 (9) Tupy M.L., EU Enlargement Costs, Benefits, and Strategies for Central and Eastern European Countries, *Policy Analysis*, No. 489, September 18, 2003, Washington: Cato Institute. Available at <http://www.cato.org/pubs/pas/pa-489es.html>.  
 (10) European Council, Presidency conclusions. Lisbon European Council, March 23-24 2000. Available at <http://ue.eu.int/Newsroom/LoadDoc.asp?BID=76&DID=60917&from=&LANG=1>.  
 (11) Burston Marsteller, *Enlargement 2004 – Big Bang and Aftershocks*, Washington, 2003. Available at [http://www.bmbrussels.be/files/news\\_2.pdf.p](http://www.bmbrussels.be/files/news_2.pdf.p).  
 (12) European Commission, *Adapting to change in work and society: A new Community strategy on health and safety at work 2002-2006*, Communication from the Commission, COM(2002) 118 final, Brussels: European Commission. Available at [http://europa.eu.int/systems/strategies/future/com2002\\_en.pdf](http://europa.eu.int/systems/strategies/future/com2002_en.pdf).  
 (13) Vogel L., “Long on ideas, short on means”, *TUTB Newsletter*, March 2002, no. 18. Available at <http://tutb.etuc.org/uk/newsletter/newsletterTheme.asp>.  
 (14) European Commission, *Comprehensive monitoring report of the European Commission on the state of preparedness for EU membership the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia*. Available at [http://europa.eu.int/comm/enlargement/report\\_2003/pdf/summary\\_paper2003\\_full\\_en.pdf](http://europa.eu.int/comm/enlargement/report_2003/pdf/summary_paper2003_full_en.pdf).  
 (15) European Commission, Communication from the Commission to the Council, the European parliament, the European Economic and Social Committee and the Committee of the Regions: Updating and simplifying the Community acquis, Brussels, 11.2.2003, COM(2003) 71 final. Available at [http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003\\_0071en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0071en01.pdf).  
 (16) Wilthagen T., Reflexive Rationality in the Regulation of Occupational Safety and Health, in Rogowski, R. and Wilthagen, T. (eds) (1994), *Reflexive Labour Law*, Dordrecht: Kluwer, pp. 345-376.  
 (17) European Commission, Communication from the Commission to the Council, the European parliament, the European Economic and Social Committee and the Committee of the Regions: Strengthening the social dimension of the Lisbon strategy: Streamlining open coordination in the field of social protection, Brussels, 27.5.2003, COM(2003) 261 final. Available at [http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003\\_0261en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0261en01.pdf).  
 (18) Walters D. and Frick K., Worker Participation and the Management of Occupational Health and Safety: Reinforcing or Conflicting Strategies?, in Frick, K., Langaa Jensen, P., Quinlan, M. and Wilthagen, T. (eds), *Systematic Occupational Health and Safety Management – Perspectives on an International Development*, Pergamon: Oxford, 2000.

## What next for OSH in the Czech Republic ?

Safety and health protection at work, work organization and humanisation have a comparatively long history in the Czech Republic. Their roots can be traced as far back as to the Austro-Hungarian Empire, of which the Czech Crown Lands were the most developed part, and especially under the Czechoslovak Republic.

These historical roots dating back to the 19th century may also make it easier for the Czech Republic to preserve the occupational accident and disease rates it achieved close to those of the EU member states despite the big political and economic changes of the Nineties. The Czech Republic's occupational accident frequency rate falls about mid-way between those of the industrially more- and less-developed EU member States.

### The state of play in the Czech Republic

The post-1989 political and economic changes that occurred in the Czech Republic significantly affected developments in the labour field, not least safety and health protection at work. Increasing globalisation, labour market diversification and the spread of new technologies hampered efforts to achieve collective organization and representation. Technologies are geared towards smaller production units, accelerate the trend towards outsourcing and often require a re-evaluation of the employee / subcontractor distinction. Agency work is also on the rise, characterised by hiring self-employed staff to perform key business activities. It is very hard to enforce compliance with OSH requirements in such circumstances.

Fragmentation of the organization of production and continuous changes in work organization are other obstacles to organizing workers in the new economy. The need to protect workers has clearly not gone away, and may even be more acute in light of the worrying changes under way. Trade unions need to overhaul their attitudes and strategies to deliver an active response to changes in the market, labour and the law on labour relations.

In the Czech Republic and worldwide, spreading globalization is not a spur to the creation of giant multinationals, but also to the creation of small and medium-sized enterprises (SMEs). In 1989, there were approximately 7,000 economic units operating in the Czech Republic. The changes caused that number to spiral, and there are now more than 700,000 private undertakings, including sole traders, carrying on business. Success in the market depends on the ability to respond flexibly to changes in economic conditions. Whence the "chunking-down" of many big companies and the creation of smaller, more flexible units. SMEs become significant partners of big companies but are also increasingly dependent on them. The issue of SMEs in the Czech Republic is looked at in a separate section.

### Occupational accidents

In 2002, there were 4,466,699 employees in the Czech Republic, and 90,867 reported cases of occupational injury resulting in incapacity for work. Reported occupational injuries resulted in 3,788,076 days' work absence. Compared to 2001, there were 2,413 fewer cases of occupational injury, i.e., a 2.59% decrease.

In all, 88,523 occupational injury cases led to more than 3 days' incapacity for work. Nearly 25% and 0.2% of the reported occupational injuries were caused to women and young people, respectively.

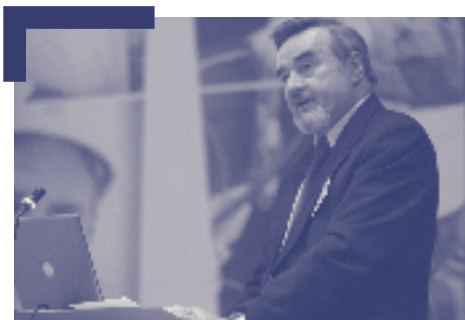
Most occupational injuries consistently occur in manufacturing industry, which employs nearly 24% of the workforce. Agriculture and forestry, and the building industry, both trail significantly far behind. Both industry employ approximately equal shares of the labour force (3.4% and 3.6%, respectively). The highest rate of injuries is connected with materials handling and transport. Most occupational injuries involved materials, loads and objects (37.0% of work injuries).

In 2002, a total of 206 work-related fatalities were recorded in the Czech Republic, 9 of them involving women. This total is 25, or under 11%, fewer fatal accident cases than in 2001. More than 74% of work-related fatalities occurred in companies in the following sectors of industry : manufacturing industry, construction, transport, storage and communications, agriculture, hunting, game-keeping and forestry.

Unfortunately, the average length of occupational accident-related absence from work rose from 40.61 days in 2001 to 41.69 days in 2002. This is an alarming increase from 1990, when the indicator stood at

**Milos Palecek**

Occupational Safety Research  
Institute, Prague, Czech Republic



21.9 days, and represents nearly 87% growth. On average, 10,378 employees are off work each day as a result of work accident incapacity. The steady rise in the indicator of average work accident incapacity is clear.

### Occupational diseases

In 2002, a total 1,600 cases of work-related diseases were reported in the Czech Republic, of which 1,531 were occupational diseases and 69 exposures to occupational diseases. There is a long-run decline in the number of occupational diseases, and the total for 2002 was down by 96 cases or 5.9% on 2001. The incidence of occupational diseases has fallen by 1.7 cases per 100,000 employees.

Most diseases in 2002 were caused by the adverse effects of physical factors (35.5%), followed by skin diseases (22.6%) and diseases of the airways, lungs, pleura and peritoneum (19.9%). In 2002, no occupational disease was reported in the group of diseases caused by other factors and agents. The sharpest fall compared to 2001 was among skin diseases (by 54 cases, i.e., 13.5%).

### Working conditions

Any comparison of the level of particular factors of working conditions must bear in mind that this is a subjective assessment given by respondents in work and working conditions satisfaction surveys. In the new accession countries, including the Czech Republic, that assessment may be affected by a phenomenon hitherto unknown in society – the threat of unemployment. The conscious or subconscious fear of social insecurities, including job insecurity, may overrule demands for improved working conditions. The findings of the analysis performed by the Occupational Safety Research Institute reveal that the fundamental shift in attitudes to issues involving perceptions of job security in the Czech Republic occurred about 1997 / 1998.

The “Our Society 2002” survey shows that workers are most dissatisfied with job and wage prospects, job security and how companies take care of their employees. Dissatisfaction rates reached or substantially exceeded not just 35% but even 50%. The findings also suggest that the ongoing transition to the market economy and market environment causes employees to express their dissatisfaction more in terms of life-situation factors like pay, job security, future prospects. Looked at from this angle, they may tend to cast a less exacting judgement on other working conditions.

### Work hazard level

The Czech Republic set up the “Central Register on the Health Risks of Working Conditions and their Impacts” to monitor workforce exposure to particular work hazards. It includes the current numbers of men and women workers in separate job categories and workplace hazard levels. The Register indicates that most workers are exposed to noise damage.

It is estimated that up to 10% of tumoral lesions have their origins in working conditions ; over 11% of the working population are exposed to stressors at work, and two thirds of them suffer from a range of health problems.

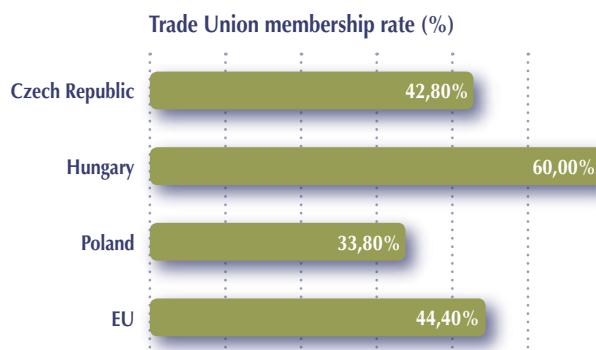
Approximately 25% of the labour force work shifts, and suffer from provable health problems like gastrointestinal disorders, sleep disorders and heart and vascular diseases. This situation can only be changed through legal measures and developing the broadest possible health support programmes, which in practice have been shown to deliver benefits in terms of improvements to workers’ health, the labour relations climate and work productivity.

There is clearly less labour flexibility in terms of fixed-term and part-time contracts in the Czech Republic and other new accession countries. There are also differences in working hours. The work week in the Czech Republic is 40 hours compared to the EU average of 38.2 hours a week. Shift and night work, Sunday and holiday working are more common in the Czech Republic.

This situation is clearly due to the fact that, as things stand, workers in full-time permanent jobs enjoy better legal protection than those with fixed-term contracts. A comparison of social protection levels in the Czech Republic and the EU average shows that while a worker in a standard employment relationship is probably better-off in the Czech Republic, there are significant differences as regards workers on fixed-term contracts.

Employees in big companies have better protection – e.g. against compulsory redundancies - because of the higher trade union membership rate and resulting greater bargaining power. Trade union membership in SMEs (typically, the service and building industries) is lower, which reflects in lesser union bargaining power. Undesirable “forced” flexibility is also common in SMEs (dishonest practices, abuse of non-standard employment contracts, work systems, succession of fixed-term contracts, illegal work, off-the-books work with no basic social and legal protection, etc.).

Generally, trade union membership is falling (averaging around 40% in the Czech Republic) ; trade unions have not yet found a proper role and way of working. The graph shows trade union membership in the selected countries compared to the EU average.





## Strengths and weaknesses of the Czech OSH system

### Strengths of the Czech OSH system

The positive aspects of the Czech statutory OSH systems were the detailed regulations and standards, which have in the past contributed enormously to work safety, safety of technical equipment and working conditions. Much has been done to bring the Czech OSH regulations into line with EU legislation as part of the preparations for the Czech Republic's accession to the EU. The Government Council for Health and the Environment was set up in 2000 under Government Resolution No. 706 to implement obligations adopted at the 3rd Ministerial Conference on the Environment and Health held in London in June 1999, although its members are not experts in work and technical equipment safety, working conditions and environment.

On the positive side, there is an effective system for planning and managing occupational safety inspections. The Czech Occupational Safety Office and its inspectorates have an operating information system that circulates through the system information on issues arising during inspections. This is used to design the methodology of planned controls, and in other activities, especially education and awareness campaigns.

Some Czech employers are highly OSH-conscious, as is evidenced by such things as the growing participation in voluntary programmes like "Safe Enterprise" or "Safely Together" (focused on improvement of working conditions in the building industry). As yet, only 45 mostly big and medium-sized companies are involved in this programme, but this nevertheless benefits 50,000 employees.

### Weaknesses of Czech OSH system

Forty years of the old regime had such a deeply adverse impact on people's minds and attitudes that it will not be possible to overcome them within the space of a generation.

More specifically, this involves :

- Persistent flouting of legal requirements including safety duties, attempts to circumvent them and a generally low level of law enforcement and implementation.
- A continuing high degree of reliance on the state and its institutions, combined with low personal initiative and drive. It is also reflected in neglect of one's own health, abuse of social support and higher unemployment.
- An enduring high degree of intolerance by most people, particularly rural and small urban communities, to ethnic cultural and other differences, leading to xenophobia in some areas. This is set to worsen under the effects of spreading globalisation and the opening-up of the labour market. Such attitudes are more prominent in SMEs.

These features of current Czech society are also reflected in OSH and are, to a substantial degree, reinforced by :

- The economic and social situation in the Czech Republic. In high unemployment areas, this is extensively abused by employers, especially smaller business owners, to pressure employees into condoning breaches of regulations and the flouting of safety and health protection at work obligations and requirements, especially relating to working conditions, overtime, work systems, abuse of fixed-term contracts. Astoundingly, these trends are also found in multinational chain stores owned by big-name foreign companies.
- Loopholes in legal regulations allow companies to outsource responsibility for key business activities to individual independent contractors, e.g. a building firm becomes an agency and transfers its responsibility for OSH to individually hired independent contractors.
- A continuing lack of education in OSH, producing a persistent shortage of high-level skills in labour inspection and business.

The facts and findings of many studies confirm that company managements, entrepreneurs and business owners in the Czech Republic continue to undervalue and treat OSH as marginal. It is neither adequately promoted nor enforced by the state authorities. Much of this is due to the high cost of campaigns and educational activities, and the very reduced state budget allocated to them. Unlike in the EU member states, these activities cannot be funded by the industrial accident insurance companies because it is not part of the accident insurance system's remit. It is also proving very difficult to get business directly involved as managements have still to grasp that a proactive approach to safety and health protection at work reflects on the company's image.

Generally, the failings fall into the following areas : *Law.* Here, there is a basic lack of legal regulations to make comprehensive provision for the safety of work systems and the work environment, especially for preventing health damage caused by work activity, including the provision of services. Comprehensive legal regulations should both join up the existing piecemeal OSH regulations and respect the irreplaceable role of the Labour Code by being made part of it, while at the same time addressing fundamental issues around the content of labour law relations.

The Czech OSH system also fails to allocate responsibilities properly (under the Competencies Act) to ensure proper compatibility of law and institutions after the Czech Republic joins the EU. A lack of legal support and properly-defined conditions means that both the occupational health services and other professional OSH services are under-developed. Closely linked to this is the issue of creating an efficient quality assurance system for service delivery, including control mechanisms.



*Economics.* The Czech OSH system is characterised by low levels of safety, health and working environment protection in which short-term economic and business goals take priority over care for employees, or the working and living environment. Some economic instruments used - e.g., hazardous or dirty work bonuses - are at odds with OSH requirements and counter-productive. Low pay differentials are also a contributory factor.

Employees are prepared to put up with even unsafe working conditions to get or to keep a job; the criminal law is not used to the full extent of its possibilities, and the "one workplace, one inspector" principle followed in the EU is not applied.

Lack of funding or impetus to the accident insurance system or other means of increasing employer involvement in and support for workplace prevention (e.g. tax breaks, penalties, etc.) is another failing.

*Education and advice.* OSH promotion and education are under-valued and under-funded. Ministry of Labour and Social Affairs and Ministry of Health agencies, as well as the labour inspectorate provide free OSH advisory services, but the end results are unsatisfactory. It has not raised awareness among employers, employees, the self-employed and others of their legal rights and duties as regards health and safety.

This is because health and safety barely features on school curricula, including in vocational streams, although practice and research in many countries has shown that secondary school education shapes future attitudes to OSH. Unlike in EU member countries, the post of safety officer is not highly-rated in companies.

This parlous situation is also due to workers not being properly acquainted with or informed about regulations governing their work, a lack of proper training provision, too big a focus on law rather than basic hazards, too little policing of employers and compliance with rules when working in the workplace, insufficient provision of counselling and advisory services including occupational health services.

*Policing and enforcement of obligations.* There is virtually no coordination of the activities of individual agencies responsible for the labour inspectorate's policing and enforcement of OSH rules and obligations in the Czech Republic. Responsibilities are divided between various executive agencies. There is almost no consultation on approaches to inspection, or central planning and management of inspections; coordination and communication are very poor, which does not provide a sound basis for the kind of integrated inspection services that are recommended in ILO Convention Labour Inspection Convention C81 and are found in all EU

member countries. Fragmentation of approaches and interests of individual inspection agencies works against effective controls and labour market participants' engagement with the issues. Public health protection agencies mostly focus on monitoring workplace health hazards, and classifying and categorising hazardous jobs, while inspectors focus on making health and safety improvement recommendations to employers and enforcing the relevant regulations.

## The prospects for improvement

The development of workplace health and safety since 1989 has resulted in the national OSH policy brought in by the Czech government in May 2003. It kick-started reforms to the OSH system designed to bring workplace safety and health up to the same levels as the most far-advanced European countries. The national OSH policy is intended to be updated on an ongoing basis, and is implemented through the National Action Plan.

### The national policy for occupational safety

The main aim of the national OSH policy is to create a comprehensive working system to address OSH issues including work environment comfort and a new labour inspection set-up which creates the conditions for ensuring workers' and employers' constitutional rights, supports responsibility-sharing for one's own health and that of others which might be harmed by work activity or service provision, limits the scope for "social dumping", strengthens elements of work culture, and helps promote the return of people with a disability into the labour market. The model will also include risk analysis, assessment and prevention through essential sharing of databases compiled through the consistent detection and logging of all work-related health damage. The system requires active cooperation from all labour market participants, unions and employers at all levels (national, regional, local, workplace), and will involve educating and motivating workers to play an active part in improving health and safety at work. It will create the conditions for the development and implementation of good practices.

The national OSH policy has set the following aims based on an analysis of the state of OSH in the Czech Republic:

#### ■ Law

*Aim: To simplify and bring greater certainty to the law, to increase awareness of regulations.*

Framing rules to enable consistent policing, implementation and enforcement of technical regulations on equipment safety and use of equipment as a part of an integrated approach to labour inspection.

Facilitating the development of good quality, external professional occupational safety and health services, implementing the system of notifications,

authorisations and personal certifications for the provision of OSH services.

#### ■ Financial support

*Aim : To make the system of natural economic incentives work.*

Providing efficient and effective economic means for creating health and safety awareness among employers, employees, other work performers or service providers, especially through tax incentives and accident insurance, by reference to health and safety levels in individual companies.

Helping to promote the return of people with a disability into the labour market.

#### ■ Promotion, development, advice, research and education

*Aim : To strengthen the development of know-how in hazard prevention and training for private business.*

Developing an efficient OSH educational system from primary to higher education, including the lifelong learning system, and quality expertise for services, private business and state administration.

Developing an information system in all OSH matters accessible to all labour market participants, that enables an efficient use of OSH information and environmental improvement, with a special focus on distinct target groups.

Waging campaigns for the prevention of work-related accidents and diseases, improved working conditions and enforcement of the system approach to OSH, support through advisory, information, publication and documentation services and a new approach to OSH, building awareness about potential hazards and enforcing the conditions that create environmentally comfortable workplaces for employees.

#### ■ Implementation and enforcement of regulations

*Aim : To ensure coordinated and consistent control of the application and observance of regulations.*

Ensuring coordinated preparation and consistent performance of controls, implementation and enforcement of compliance with regulations for the protection of life, health, property and the environment. Performance control and monitoring will be an integral part of all OSH and environmental targets and tasks. Re-evaluation and consistent application of policing and penalties at all levels of management and control.

Strengthening and rationalising the activities of the State Occupational Safety Supervisory Agency (Labour Inspectorate) through highly qualified experts, integration of approaches and simplification of processes in all areas related to the protection of workers at work. Cost-benefit assessment of the OSH inspectorate's performance by other (departmental) bodies.

#### ■ OSH management at national level

*Aim : To address fragmentation between departments by having a single state agency to coordinate activities.*

Implementing basic OSH monitoring standards. Set-

ting up and enforcing a set of status and development assessment criteria in individual spheres of safety and health at work.

Implementing a coordinated and integrated system for the collection, maintenance and assessment of data and information on the status and development of OSH, the existence and causes of OSH hazards and undesirable occurrences, the status and development of legislation, outcomes of policing activities, impact of economic instruments and the situation and developments in other spheres of OSH.

The national occupational safety policy also provides for increased international cooperation and active participation by state agency representatives and experts in international institutions and programmes.

### The national action programme

The National Action Programme (NAP) is based on the national OSH policy. It comprises the measures intended to support continuing improvements in work safety and health at the individual, industry and other levels through :

- more efficient coordination of activities ;
- more consistent use of existing resources like law and regulations, bodies and institutions, the expertise of research centres, institutes and staff, and limiting duplication and overlap between activities, and any resulting conflict of interests ;
- increased private and public sector focus on work hazard prevention and contributing to preventive measures designed to cut occupational accidents and diseases ;
- cooperation and partnership between individual entities involved in OSH at the company, local, regional and national levels ;
- designing, setting rules for and adopting a company hazard prevention performance assessment system. Implementation and ongoing efficiency control of measures to ensure sustainable development ;
- further harmonisation of Czech OSH regulations related to new EC and amended EC directives, and active enforcement of key EU documents like the *New Community Strategy on Health and Safety at Work, 2002 – 2006*.

The degrees of responsibility for individual areas within these spheres are divided between the state and employers on the basis of material capacity. The criteria for the period 2004 – 2006, therefore, are social importance, real probability of occurrence of the particular problem, and the financial capacities of the state and employers to address the priorities :

1. **Improved safety protection and quality in work,** based on social and economic changes in post-1989 Czech society and the need to address issues related to existing and new work hazards. This particularly concerns psychosomatic risks (e.g. stress, depression, violence, alcohol and drug abuse, and non-standard work patterns

– part-time working, non-standard hours, etc.) which cause work-related health damage and reduce work comfort in physical, psychological and also social terms. Added to this are hazards stemming from work population changes as other population groups enter the employment process (rising share of female and older worker employment) which may adversely affect safety and health at work.

**2. Enforcing a culture of work hazard prevention, especially in SMEs** in a variety of ways, including educating employers, employees and the wider public in safe methods of working and individual health protection. This involves running campaigns, including through media coverage, and the promotion of good practice and safety-mindedness, health-protective behaviour and conduct. Cooperation with EU experts delivered greater effectiveness in achieving project objectives.

**3. Setting up an education and information system on OSH** to provide business with up-to-date information on prevention, the causes and occurrence of work-related health damage, its impacts on the economy, competition, the corporate image and other related issues in a clear and accessible form. Improving the availability and quality of information, especially for SMEs (using the Internet as an information channel, setting up a call centre and regional contact points to provide information on safety and health issues, etc.). On education, setting up an integrated system for lifelong learning in safety and health at work by having the principles of safe, healthy work and hazard prevention taught as part of general education, integrated education and training (training programmes including the use of animation and simulation techniques for practical preparation) for OSH experts, production of supporting materials and forms of preparation and education in OSH (distance learning, e-learning, etc.).

The above areas allow considerable scope for implementation of research projects, cooperation and transfer of experiences between the Czech Republic, EU member and candidate states. The Phare projects have already opened up wide-ranging possibilities for the exchange of experiences and transfer of know-how. A long series of practical training sessions, workshops, information meetings, study tours and exchanges of experts were organised.

It is clear that SMEs are and will long remain one of the biggest problems in terms of providing a safe and healthy work environment. Arguably, initiatives under the “European Charter for Small Businesses” programme to create economic, administrative, legal, and other conditions conducive to the development of SMEs offer one way to address this issue, through the EC’s annual comparisons and informa-

tion supplied on the best measures and projects (based on national reports on implementation of the Charter). Safety and health at work should be incorporated into the Charter programme because the standard and level of OSH in SMEs is a serious issue in the EU, accession and candidate countries.

As well as augmenting the statutory system of safety and health at work, we see a need to :

**1. Develop the network of OSH information and advisory services for SMEs.** Small entrepreneurs mostly lack the background and experience needed to search out and process important safety and health information. The issue is to map entrepreneurs’ needs in this area, identify the best ways and means, and most user-friendly forms of transferring information and experiences (call centres, internet, self-service boxes, written information packages, personal contact and basic counselling, etc.). The knowledge and experience of other countries in these issues should be used to maximise the impact on SMEs. There are at present many different entities working at different levels in the Czech Republic to provide forms of support to SMEs, but not enough has yet been done to properly address the OSH issue.

**2. Establish and implement the systematic teaching of OSH across all general education and in vocational schools.** Attitudes and approaches to OSH are formed at young ages. Experts need to be prepared to ensure further development of this area. The current lack of experts is already adversely affecting the performance of OSH policing and inspection bodies.

**3. Establish and implement an operational monitoring system** for developing indicators on the level of safety and health in companies, economic sectors and at national level, as well as performance indicators for approaches, methods, measures, etc., which are the prerequisite for efficient and successful OSH management at both national and company level. ■

# Health and safety protection of workers in Poland

## The legal framework

### Legal status

The sources of ordinary law in Poland are the Constitution, statute law, ratified international agreements and regulations. The Polish Constitution guarantees everyone the right to safe and healthy working conditions. The means of enforcing that right, and the employer's rights and duties, are laid down in the code of labour laws or Labour Code.

The Labour Code and associated delegated legislation govern the rights and duties of both sides in the employment relationship (employer and employee), liability for breaches of health and safety regulations, supervision of working conditions, procedures for dealing with accidents at work and occupational diseases, and benefits and payments. The Labour Code confers delegated powers to issue administrative measures laying down detailed duties in respect of health and safety at work.

The health and safety regulations and administrative measures contained in the Labour Code are mandatory, and so cannot be excluded by agreement between the employer and employee. The Labour Code places a duty on the employer to ensure compliance, and on the employee to comply, with health and safety rules and regulations in the workplace. Section X of the Labour Code was written so as to be readily accessible to everyone - employers, employees and their representatives.

The employer has legal responsibility for work safety and hygiene and a duty to protect the health and life of employees by appropriate use and application of scientific and technological means.

While the Labour Code and regulations do much to promote health and safety, they are deficient in some respects, not least in addressing biological hazards in the workplace.

Recent changes in Polish labour law bear the imprint of economic and political change, integration with Western European countries, and the economic situation. Flouting and evasion of labour regulations are becoming widespread.

For some years, the labour market has been witnessing a growth in "bogus self-employment", whereby employees leave to become self-employed and then do the same work as before, very often using the former employer's equipment. This is foisted on workers by employers in a bid to cut labour costs

and is now commonly found in the building and transport sectors, manufacturing industry, health care institutions and educational establishments. Obviously, the new "business entities" lack any of the protection they had as employees.

Polish law, especially on health and safety at work, is not yet properly harmonized, enforced, or brought into line with EU standards and current knowledge and technology.

### Observance of labour regulations

Solidarność filed an addendum to the National Labour Inspectorate's work programme for 2002 on detailed inspections of compliance with labour regulations in small companies conducted according to standardized inspection checklists. The unsatisfactory state of compliance with the rules in small companies is mainly due to ignorance of the regulations and fundamental duties of the employer, and in some cases deliberate flouting of regulations.

A flagging economy, high unemployment and constant changes to labour regulations do nothing to improve matters. Even so, some Polish employers find that it pays to invest in occupational health and safety, because their bottom line and market competitiveness reveal the benefits of health and safety-mindedness. Investing in workers' health and safety becomes a marketing strategy. Decent working conditions not only add to workers' health and safety protection, but also help create an image of quality and efficiency, which in turn enhances the competitiveness of goods or services.

In 2002, changes to the Labour Code making health and safety services compulsory only for employers with more than 100 employees led to much existing in-house health and safety provision being dismantled and bought in from outside specialists. Since 2002, only workplaces with more than 250 workers need to set up health and safety commissions.

Health and safety commissions had been on Solidarność's agenda as far back as 1996, long before they became a statutory requirement. Solidarność believes that the Labour Code requirements on the setting-up and running of health and safety commissions were and are too incomplete and fail to regulate many crucial issues, like :

- how health and safety commissions should work in large businesses with very often up to several thousand employees ;
- the size of health and safety commissions ;
- members' time off for their commission duties on





**Iwona Pawlaczyk**  
NSZZ, Solidarność, Poland

full pay ;

- access for commission members to work stations and employees ;
- participation in training for their official duties ;
- protection of commission members from dismissal and other discriminatory practices by company management, etc.

In 1996, Solidarność joined with the Swedish trade unions LO and TCO in a project to draw up a training manual and training programmes for health and safety commission members (who were then still candidate members), provide training for trade union instructors and those standing for health and safety commission membership. One big benefit delivered by the project was joint training for all health and safety commission members on both the employer and employee sides. The programme met with immense interest among participants and subsequent training courses have been given according to its guidelines.

A word should be said about the current trend in collective bargaining in Poland. The process is clearly stalled, with the numbers of new collective agreements and additional protocols declining. Recent new provisions in agreements have very rarely conferred wider rights than those of generally binding labour regulations. The general trend is to limit the scope of employees' rights. Changes that actually reduce some of the benefits guaranteed by collective agreements have been added in additional protocols. Added pay components, if maintained, tend to be in the form of incentives for quality and productivity gains. Straitened company finances are the reason why collective agreements limit rights and cut back on additional pay entitlements. As a result, there is a growing industry-wide trend to conclude agreements that suspend application of all or part of collective agreements. The provisions most often suspended relate to length-of-service rewards, bonuses, retirement bonuses, pay supplements, reimbursed commuting costs, and higher write-offs for company social benefits funds.

The main reasons given by employers for the decline in collective agreements are :

- under-representation of the social partners – mainly employers, at both company and industry levels - but also trade unions, especially in the private sector ;
- the inflexibility created by very detailed Labour Code regulations that set a rigid framework of collective agreements ;
- the added cost burden of collective agreements, especially industry-wide ones, when companies find themselves in a declining economic situation.

## Summary

The National Labour Inspectorate's inspection findings suggest a number of reasons why labour laws are being flouted in Poland. Solidarność argues that the main reason for breaches of the law is employers' attempts to cut down on labour costs, either from a shortage of cash, or to turn a quick profit. Other reasons for disregarding labour law and safety at work are :

- rising unemployment ;
- unregulated company ownership ;
- ignorance of regulations in force ;
- misunderstanding of legal regulations ;
- ignorance of workplace risks ;
- disregard of regulations by employers and health and safety services ;
- disregard of regulations by employees ;
- lack of effective supervision ;
- poor work organization ;
- outdated technologies ;
- long years of neglect ;
- reluctance to learn new working methods.

Not all employers are fully aware of the effects of dangerous, harmful and arduous working conditions, and the costs of inadequate working conditions are still high. The total volume of one-off compensation payments and occupational accident pensions paid in Poland in 2002 amounted to 4 billion zlotys, while analyses done by the Central Occupational Safety and Health Institute and the experience of EU member states suggest that the total cost of occupational accidents and diseases may have topped 16 billion zlotys in 2002.

There is no doubt, however, that the main condition for achieving significant improvements in workplace health and safety is stronger economic growth. High unemployment makes many workers ready to work on almost any terms to get and keep a job on even a minimum living wage.

## Oversight of working conditions

State oversight of working conditions in Poland is the purview of the National Labour Inspectorate, National Health Inspectorate, Technical Inspection Agency, mining offices, other public supervisory bodies and the state prosecution service under Penal Code provisions governing flagrant breach of duty by persons responsible for occupational health and safety, that exposes a worker to a direct risk of death or serious bodily harm.

## The National Labour Inspectorate

The National Labour Inspectorate has the widest statutory powers of oversight on working conditions in Poland. It operates under the auspices of the Polish Sejm (parliament) and its work is monitored by the Labour Protection Council, on which trade union representatives also sit.

The National Labour Inspectorate carries out its work through cooperation with trade unions, employers' organizations, workers' self-management bodies and social labour inspectors (akin to employee health and safety reps). At the request of trade unions, the National Labour Inspectorate may provide training or instruction and help with training social labour inspectors, as well as actions to improve and increase the effectiveness of social labour inspectors' activities. General Labour Inspectors may also meet with national trade union and national employers' organization officials to discuss and share information on work health and safety. These meetings tend to discuss such issues as changes to the Labour Code, especially on working time and new forms of employment, as well as issues around company restructuring in different branches of industry, most recently health services and transport. Similar meetings and discussions also take place at regional labour inspectorate level.

Inspections requested by trade unions and social labour inspectors are another key form of cooperation with the social partners. The number of such inspections has for long been stable at between 1.2% and 1.5% of all inspections conducted by the National Labour Inspectorate.

In 1996, Provincial Labour Protection Commissions composed of representative trade union officials, representatives of employers' organizations, health and safety service staff and social labour inspectors, were set up as discussion forums on work protection issues in particular regions. The make-up of these Commissions has now changed to include representatives of regional institutions, associations and organizations for whom local labour protection issues are of the utmost importance. While the Commissions' work is now done by representatives of many groups connected with work protection, trade union and employer representatives still dominate. In some provinces, these Commissions are genuinely engaged and proactive forums for identifying and getting to grips with work protection issues, while elsewhere, they are merely talking shops with no visible effects.

## Union oversight of working conditions

Trade unions exercise oversight of occupational health and safety in Poland under the Trade Union Act of 23 May 1991 (as amended). The powers of workplace trade unions extend to :

- controlling company compliance with labour law,

especially occupational health and safety rules and regulations ;

- administering the social labour inspectors scheme, and cooperation with the National Labour Inspectorate.

The social labour inspectorate system was established by the Social Labour Inspectorate Act of 24 June 1983. It is a trade union service set up and performed by employees themselves. Social labour inspectors supervise compliance with the law on :

- occupational health and safety ;
- working time and leave ;
- protection of work by women, young adults and people with disabilities ;
- occupational accident and disease benefits.

The social labour inspectorate system comprises :

- corporate social labour inspectors for the entire enterprise ;
- branch, departmental and workplace social labour inspectors for individual branches, departments and workplaces ;
- group social labour inspectors for divisions.

Social labour inspectors must have the necessary knowledge of social labour inspection issues and sufficient job seniority in the company. Social labour inspectors have the right to inspect workplaces, request data and information from management and workers, and bring breaches of labour protection regulations to the employer's notice. Their findings are recorded in a special remarks and recommendations book, and the company manager / employer then has a duty to rectify the situation. Company social labour inspectors also have the right to issue written improvement recommendations, which the company manager / employer must act on within a specified time. The company manager may appeal against the social labour inspector's recommendations to the relevant National Labour Inspectorate service inspector.

Social labour inspectors work with the National Labour Inspectorate and other agencies responsible for supervising and inspecting working conditions. The National Labour Inspectorate must :

- help social labour inspectors perform their duties, especially through legal advice and training ;
- conduct inspections and institute legal proceedings for violations of workers' rights at the request of company social labour inspectors agreed with company-level trade unions, where there is a risk to workers' health and life.

Company social labour inspectors have the right to take part in inspections conducted by inspectors of the National Labour Inspectorate. Participation in these inspections has for years been a vexed issue and a regular topic of discussion at National Labour Inspectorate meetings with trade unions. There have been complaints from social labour inspectors about National Labour Inspectorate inspectors' failure to

contact them when on workplace visits. There are many reasons why this may happen, and the issues are raised as they arise with National Labour Inspectorate management, who are deeply sympathetic about the problem.

The company must provide appropriate conditions for them to perform their duties. The operating costs of the social labour inspection system are borne by the employer.

The Social Labour Inspectorate Act provides for financial penalties on any person acting on the company's behalf who contravenes the Act's provisions and prevents a social labour inspector from carrying out his duties. There are also financial penalties for failure to implement the social labour inspector's recommendations.

The Social Labour Inspectorate Act prevents an employer from dismissing or otherwise terminating the employment contract of a worker who is a social labour inspector during and up to a year after his / her term of office except in circumstances justifying summary dismissal. In such a case, the employment contract can be terminated with the prior agreement of the relevant company-level trade union. Nor may the employer reduce a social labour inspector's working conditions or pay except as part of new pay rules affecting the entire workforce or category of workers to which the inspector belongs, or due to impaired working ability proved by a medical certificate, or non-culpable loss of skills needed to perform the work.

Under the Collective Redundancies Act, the social labour inspector's employment relationship is protected during and up to a year after his / her term of office in the same way as company-level trade union officials. The SLI Act stipulates that social labour inspectors' duties should normally be carried out outside working hours, but may be performed in working hours (at no loss of pay for the time not worked) in cases of necessity. The Act also provides that the company-level trade union may request a social labour inspector to be paid a flat-rate monthly allowance where the post entails a significant burden of duties, regardless of whether the post is that of company or branch social labour inspector.

The amount of the social labour inspector's flat-rate monthly allowance may not exceed the pay for 30 hours' work, or in some specially justified cases, 60 hours' work. In companies with particular and potentially fatal health hazards, where working conditions must be monitored on an ongoing basis, company-level trade unions may request the company manager to release the company social labour inspector from his work obligations at no loss of pay.

Under the Social Labour Inspectorate Act of 24 June 1983, the social inspection system can operate only

in companies where there is trade union representation. Post-1989 social and economic changes have also produced a situation where several trade unions may be present in a workplace and cannot agree on the joint administration of social labour inspectors. Also many new business entities have come and are still coming into being where there is no trade union representation, and so the social labour inspector system cannot operate. In 1993, therefore, based on its day-to-day activities, and after numerous social consultations, Solidarność drew up and submitted to the Labour Protection Council and the Sejm (lower house of Parliament) **draft amendments** to the Social Labour Inspectorate Act. The proposals were :

- to allow social labour inspectors to be elected in companies where there is no trade union representation ;
- to allow trade unions to run social labour inspection by letting them appoint union inspectors (social labour inspectors acting alone are not yielding the hoped-for results) ;
- to protect social labour inspectors from dismissal as part of collective redundancies ;
- to facilitate the proper operation of social labour inspection by allowing paid time off for the performance of duties ;
- to scrap the length-of-service requirement for the position ;
- to introduce a requirement that social labour inspectors be given training.

The draft was sent to the Sejm in 1993, but the bill did not complete its passage through parliament. As a result, social labour inspection in Poland is still governed by the SLI Act of 24 June 1983 and can operate only in workplaces where there is trade union representation. The main problem with monitoring of working conditions is the growing decline in social labour inspection activity, as confirmed by the National Labour Inspectorate that monitors compliance with the Social Labour Inspectorate Act. Social labour inspectors operate mainly in state-owned companies or enterprises run by local government, and rarely in private companies.

## Improving workers' health and safety in Poland

Since regaining legal status in 1989, the independent trade union Solidarność has been putting forward proposals for the protection of workers at work which have lost none of their relevance. These focus on the need for an effective legal and organizational framework for the protection of workers' health and safety.

That framework should comprise :

- good, enforceable legal regulations ;
- financial mechanisms that impose the provision of healthy and safe working conditions ;
- properly functioning oversight of working conditions ;

- health protection of workers ;
- high quality training and education in health and safety at work.

Work on the preparation and rapid implementation in practice of legal solutions has brought diverse results. While successive legislative amendments to the Labour Code have introduced new provisions that bring Polish law into line with EU directives, pressure from different political groups has produced solutions that run counter to workers' interests. One example is the amendments to the Labour Code that entered into force on 29 November 2002, making significant changes in employers' duties as regards setting-up health and safety commissions. The pre-amendment Labour Code required such commissions to be established in companies with over 50 workers – that level has now been raised to more than 250 workers. This means that commissions which were active and working well in a large number of businesses will now be scrapped, and members of our union at different levels have reported that this is already happening. It is also worth noting that the overwhelming majority of companies in Poland have fewer than 50 workers.

Another significant amendment to the Labour Code which is also bad for workers is the change in the employer's duty to set up a company health and safety service. Pre-amendment, such a service was required where more than 10 workers were employed – now, the threshold is more than 100 workers. Admittedly, an employer who is not obliged to establish such a service must himself take responsibility for it, or he may enlist a competent external service or entrust it to a worker performing another type of work ; however, the general situation and way in which a permanent, in-company health and safety service operates differs significantly from the on-call service of an outside specialist.

Solidarność has repeatedly voiced its opinion on this issue. Our union has taken a public stand against proposed changes to limit the rights of company-level trade unions to co-determine with the employer :

- jobs in which employees with their consent can use their own workwear that meets health and safety standards ;
- the type of personal protective measures and workwear required by some jobs, and the foreseeable duration of their use.

Those proposals were withdrawn in the face of trade union opposition.

Solidarność has observed a similar trend as regards **financial mechanisms** to enforce decent working conditions. Since 1989, the size of fines imposed by the National Labour Inspectorate on employers in breach of labour protection regulations has risen from 500 zlotys to 5000 zlotys, and has now fallen

again to 1000 zlotys. Solidarność's National Commission spoke out against cutting the size of fines, but unfortunately the measure went through and so financial leverage is no longer being exerted on employers. Another financial incentive to provide healthy and safe working conditions is occupational accident and disease insurance contributions graduated by work-related risks and their effects.

The regulations establish risk categories for different types of activity for risks defined by frequency indicators :

- the total number of personnel injured in accidents in the workplace ;
- the number of personnel injured in fatal and serious accidents at the workplace ;
- the number of occupational diseases diagnosed ;
- the number of personnel employed in hazardous conditions.

The differential contribution rate will be phased in up to 2009, so it is as yet hard to say how this mechanism, long pressed-for by Solidarność and a source of hope for improvement, will work in practice. What makes it uncertain is the situation identified by our trade union and confirmed by the National Labour Inspectorate, that there is a lack of full and proper identification of occupational risks in individual workplaces. The National Labour Inspectorate confirms that this will cause problems in recognizing the real situation and identifying the elements necessary to set the level of accident insurance contributions.

Examination and measurement of work-related health hazards are governed by one statute, while the list of hazards and allowable concentrations are laid down in a separate enactment. The lack of joined-up legislation means that where employers may not record all hazards and may omit limit values or at least those not tested for. Failure to log all factors to which an employee is exposed may result in a subsequent occupational disease not being recognized. Labour inspectors frequently find that employers have hazard measurements performed only on some and not all jobs exposed to those hazards. In many cases, labour inspectors' hands are tied by the regulations, preventing them from taking appropriate steps. It has been found in practice the National Health Inspection bodies are not fulfilling their legal duties. This effectively leaves it to the employer's discretion whether to conduct examinations and measurements of hazards at a particular work station. This significantly impedes identification of occupational hazards in particular workplaces or jobs, resulting in incomplete identification and documentation of particular work-related occupational risks. This frustrates the purpose for which the regulations were introduced, and undermines their effectiveness in the workplace. Solidarność has repeatedly spoken out against this.



Regulations, however good, are not self-enforcing. The legal solutions have to be implemented, which means having compliance overseen by accredited supervisory and inspection agencies. Oversight of working conditions in Poland is exercised by both state institutions and labour organizations. Our trade union has repeatedly pointed out the failings of this supervision, which does not reach many economic entities, especially smaller firms, and is not delivering the expected results, despite some recent signs of improvement.

One issue still very much on the agenda is whether supervisory agencies should focus more on advising or sanctioning employers, and in what proportions. In small and medium-sized enterprises, where possible and appropriate, supervision and inspection agencies should focus more on advising employers in how to fulfil their health and safety at work obligations. In Poland, however, in a typical period of change, the National Labour Inspection service must concentrate on supervision and inspection plus, if the situation demands, and human and financial resources permitting, prevention measures, including advice and promotion of labour protection. The supervisory agencies also need to work together and coordinate their activities to avoid duplicated inspections in workplaces.

Solidarność supports this approach. **Promotion of labour protection** is particularly important in that only 8% of all companies subject to National Labour Inspectorate oversight are inspected in any year. Promotion of labour protection is also an issue high on Solidarność's agenda, as reflected in the annual celebrations for International Workers' Memorial Day (28 April) which has been held since 1991. Solidarność marks the Day by holding occasional seminars, conferences, events to commemorate victims of accidents at work and occupational diseases, and radio broadcasts. Holy Masses are also occasionally celebrated. These events, organized for many years by Solidarność, have led to the Polish Sejm declaring 28 April the Day of Health and Safety at Work (Resolution of the Sejm of the Republic of Poland dated 9 July 2003). The Resolution reads : "The Sejm of the Republic of Poland resolves that 28 April shall be declared the Day of Health and Safety at Work. The Sejm decides to pay special attention to the need for ongoing, comprehensive actions in favour of improving the health and safety of workers and thereby to commemorate those citizens who have lost their lives as a result of work-related accidents and occupational diseases. By this resolution, the Sejm of the Republic of Poland contributes to the international action for the improvement of working conditions taken by the International Labour Organization through symbolic celebrations of International Workers' Memorial Day."

Protection of workers' health is one of the key elements of the labour protection system, but neither

binding legal regulations nor national practices in Poland are satisfactory.

Another element of any effective system of protecting workers at work is education and training in occupational health and safety. Both the Labour Code and administrative measures place appropriate duties on employers and employees in this respect. But teaching safe working methods and behaviours should start as early as primary school, or even nursery school.

The National Labour Inspectorate argues that the market for training has not yet been brought under control, and that problems still remain. Possible ways of improving the quality of training provided by employers and specialized health and safety training providers include :

- introduction of a qualifications recognition system for health and safety training bodies and registration with approved state administration bodies ;
- inspection of commercial training providers to check their competencies, teaching staff evaluation procedures and teaching methods.

Solidarność strongly supports training for social labour inspectors and trade union activists provided by National Labour Inspectorate inspectors. The aim must be to **change the way labour protection issues are perceived by society and to develop safety-mindedness in and outside work**. Putting labour protection issues on the public agenda is crucially important in this respect.

Solidarność also believes that existing regulations and national practices cannot be considered as a proper national policy on health and safety in Poland. ■

## References

- Report of the Central Labour Inspector on operation of the National Labour Inspectorate in 2002 – Warsaw, 2003.
- Evaluation of the state of health and safety at work in 2002 – Warsaw, June 2003.

## Occupational safety and health in Germany pre European law reform – status and shortcomings

Germany's long-standing tradition of occupational safety and health is reflected in the country's mature, firmly established institutions and structures.

The figure below gives a simplified explanation of the system devised to guarantee occupational safety and health both within and outside companies.

The key players in Germany's dual OSH system are the government and statutory accident insurers. Statutory health insurance organisations and a wide range of other agencies, standards bodies and technical surveillance also play a role along with other bodies like PPE producers and universities.

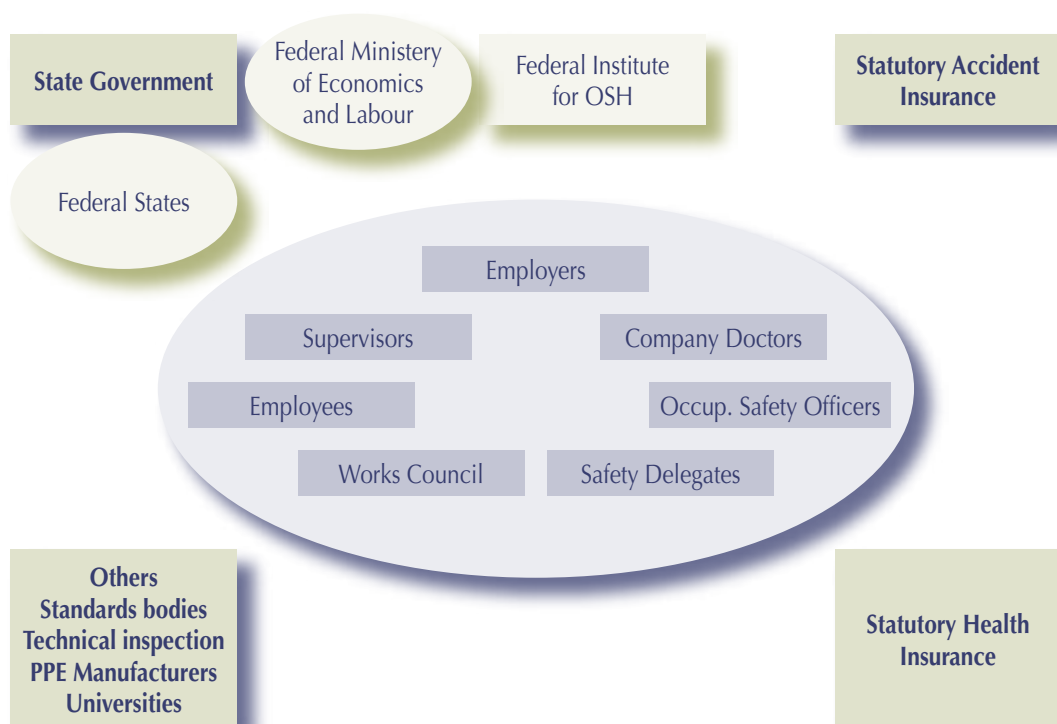
The federal government – or more accurately the Federal Ministry of Economics and Labour – has legislative powers and is supported by an authority that is answerable to the Federal Ministry for OSH. Whilst only the federal government has the power to introduce legislation, the individual federal states are responsible for checking that government regulations are being implemented.

Employers have a duty to provide their employees with statutory accident insurance cover. This has two aims : prevention, and the organisation and funding of medical, occupational and social rehabilitation for victims of occupational accidents and diseases,

as well as providing compensation through pension payments to beneficiaries. Statutory accident insurers also act in a legislative and monitoring capacity, run their own training and research institutions, and have enjoyed considerable success, particularly with respect to sector-specific prevention.

While statutory accident insurance is funded solely from employers' contributions, the key policy decisions are reached by way of joint self-management (equal voting rights for employers and the representatives of insured parties).

Statutory accident insurance underwriters must work closely together with the statutory health insurance provider in sharing information on working conditions and occupational diseases. Statutory health insurance providers have a similar legislative duty to devise comprehensive measures aimed at promoting health within companies. In areas that are not governed by laws and ordinances, standards bodies continue to play a major role, as do technical inspection agencies, particularly those responsible for dangerous plants and installations. PPE producers, e.g. protective clothing manufacturers, have also come to play a role in external OSH provision, and universities have various faculties dedicated to safety technology, ergonomics or OSH-related matters in the natural sciences.



A number of players are involved in in-company OSH, which is based on and legitimised by legislation. Generally, all OSH provisions are aimed at employers, and it is they who are responsible for the safety and health of their employees in the workplace. Employers may delegate some of this responsibility to supervisors, but ultimately, they bear the overall responsibility.

Also, employers have been required by law since the mid-1970s to take advice on OSH-related matters from company doctors and occupational safety officers. The requirements of both company doctors and occupational safety officers, their job descriptions, and their duty to cooperate with various other parties are also laid down by law. Furthermore, employers must appoint safety delegates with responsibility for monitoring OSH in their company unit or department, and supporting employers in fulfilling their OSH obligations.

Company workforces elect a works council every four years. The works council is responsible for dealing with all company-related problems. Depending on its size, one or more works council members may be responsible for OSH, i.e., making sure that OSH regulations are observed and putting forward proposals on how to improve OSH. They even have a direct right of co-determination in some areas. Naturally, employees also form part of the in-company OSH system.

## Union tasks and responsibilities

The German Confederation of Trade Unions (DGB) and its affiliates operate at various levels of both the in-company and external OSH system, participating in a wide range of different committees and advisory bodies set up by the Ministry of Economics and Labour. The main emphasis here is on establishing a comprehensive body of technical regulations. The unions are also represented on the Advisory Council of the Federal Institute for Occupational Safety and Health (FIOSH), helping to plan work programmes and design research programmes. Such cooperation is generally governed by ordinances, while cooperation with the respective OSH authorities in the federal states usually runs along informal lines. Almost all federal states have working groups that include representatives from the relevant federal state agencies, and deal primarily with issues specific to that state.

Well over 1,000 union affiliates are involved in the self-governing bodies that form part of the statutory accident insurance system. The practice-oriented OSH committees comprise active, experienced members of works councils. The Boards of the individual accident insurers are likewise made up of committed, full-time union officials, whereas the bodies within the umbrella organisations also include Executive Board members from individual

unions and designated social policy specialists. The same applies to the bodies set up for statutory health insurance.

By and large, cooperation with standards bodies, technical inspection agencies and PPE producers is not legislated for. Instead, there is a wide range of voluntary forms of reasonably close cooperation and projects, e.g. joint OSH fairs and conferences.

At company level of course, unions are mostly involved in informing and training union members and, to some extent, those works council members with OSH responsibilities. The same applies to safety delegates, who are very often also union members. At institutional level, cooperation is nurtured between professional associations of company doctors and of OSH specialists, who often have common interests and engage in positive cooperation.

Compared with the international situation, significant successes have been scored, especially as a result of trade union efforts on the safety of machinery, equipment and workplaces, the expanded scope of chemicals and hazardous substance legislation, workplace design and companies' safety regulations and the occupational health care they provide. This has led to steadily falling accident statistics.

However, the German system was characterised by serious failings in occupational safety and health legislation and its application in the workplace, and badly under-resourced company and public law provision for the investigation, identification and assessment of health risks in the workplace and the broader working environment. Germany's safety and health at work legislation was outdated, fragmentary in its protective provisions, piecemeal, hedged around with enforcement exceptions that eroded the underlying protective aim, and was often unfathomable and user-unfriendly for company and external experts alike. German occupational safety and health legislation was constructed on a paragraph in the 1869 Industrial Code (*GewO*) that subordinated health to economic interests, whereby employers had only to protect the life and health of their workers to the extent "permitted by the nature of the respective business activities". This allowed employers to take on workers for work that was harmful to their health.

In 1995, the DGB highlighted the following particular shortcomings after the first attempt to transpose the European directives into national law had failed :

- Millions of workers, especially in the public sector, remain outside key provisions of occupational safety and health legislation.
- There are no - or only inadequate - safety regulations covering many well-known health risks (like the handling of loads, mental and informational stresses, exposure to heat and especially multiple stressors in the workplace).

**Marina Schröder**  
Head of Health and  
Safety, DGB, Germany



- Workers are expected to put up with much higher health risks than the population generally. Furthermore, legal provisions to tackle health risks stemming from the interactions between the general and working environments are fragmented.
- Catch-all occupational safety and health provisions are hard to implement because they are too non-specific. This often prevents the necessary protective measures from being taken within the company, leaving the supervisory bodies unable to issue orders.
- The enforcement of occupational safety and health legislation is usually not well coordinated, is not done jointly due to the lack of a corresponding statutory obligation, and responsibility for it is split between the federal states (*Länder*) and German accident insurers.
- All in all, occupational safety and health has no solid, legally binding footing in all aspects of company business, especially in management and decision-making processes.
- Small and medium-sized firms receive hardly any assistance or advice on preventive work organisation, and in the past there has been virtually no systematic or comprehensive support policy.

### Transposing EU directives into German law

European directives, especially the EU Framework Directive on health and safety of 12 June 1989, were supposed to be transposed into German law by 31 December 1992 at the latest. The German federal government of the time long seemed reluctant even to make a start. It was only enormous pressure from those clamouring for reform, especially also at European level, and the threat of being taken to the European Court of Justice, that prompted the federal government to start the legislative process rolling.

A detailed recital of the years of confrontation over this issue is outside the scope of this paper, but a brief word about the protagonists' respective positions may be in order :

- The advocates of reform – trade unions, federal state policymakers, employers' liability funds and other occupational safety and health institutions – as well as the Social Democratic Party (SDP), were agreed on the need for a comprehensive reform of occupational safety and health measures and on the great importance of the European Union taking a lead in it. But the pro-reform camp pinned too much faith in the federal government's readiness to comply with European legislation, and futile infighting stopped them from developing sufficient forceful outwardly directed arguments.
- Those opposed to reform, namely industry, the craft sector, segments of the Christian Democrats and Christian Socialist Unionists (CDU/CSU) and Liberals (FDP) were far more united and worked together to secure the smallest possible, non-binding reform,

put the focus on the employers' cost burden, and ensure the lightest possible government hand on the tiller. Fuelled by ideology, ignorance and polemics, a campaign against the law turned into a veritable "crusade" against alleged red tape and in favour of deregulation, privatisation and radical market reform. This camp even went so far as to spread false reports in the tabloid press to discredit allegedly "excessive" EU regulatory interference.

Against the backdrop of the ongoing *Bundestag* (i.e. general) elections, and to prevent the conflict within the coalition from escalating further, the legislative procedure to transpose the European OSH directives was suspended in mid-1994. This put Germany at the bottom of the class in transposition terms, and the German government had to "play" the European Commission to gain time. For example, the federal government did not shrink from trying to throw dust in the Commission's eyes with what we consider to be misrepresentations in its correspondence with the European executive.

As a result, the DGB called on the European Commission in July 1994 to take Germany to the European Court of Justice for treaty violation. The federal government quickly realised that 1996 would be the Commission's final deadline for filing the complaint. Decisive momentum was also given by a joint appeal from the DGB and the Union of German Employers' Federations (BDA) to the *Bundestag* and the prime ministers of the federal states to implement the core objectives of occupational safety and health reform, endorsed by a consensus between the social partners, by transposing the various European directives.

The European Framework Directive was finally transposed in mid-1996, therefore, via a brand new Health and Safety at Work Act (*ArbSchG*) and amendments to the laws governing preventive health and safety measures in Social Code VII.

Most of the separate sets of guidelines fleshing out the general provisions duly followed after a further delay of several months following the adoption of the Health and Safety at Work Act :

- Decree on safety and health protection when using personal protective equipment at work (4 December 1996).
- Decree on safety and health protection when using working substances at work (11 March 1997).
- Decree on safety and health protection when working with visual display units (4 December 1996).
- Decree on safety and health protection when manually handling loads at work (4 December 1996).
- Decree on places of employment (4 December 1996).

At the time, the DGB criticised a number of shortcomings in this implementation, which prevented a complete, all points transposition of EU provisions



into German law. The criticisms centred on the tendency to interpret the EU Framework Directive restrictively, but also applied to the implementation of the individual directives, especially the deeply vexed issues of work with visual display units and load handling. As with the Health and Safety at Work Act, where the decrees it had enacted were concerned the federal government could not bring itself to put more detail on the arrangements set out in its framework guidelines.

Nevertheless, these new legal bases did constitute progress.

The main core provisions of the Health and Safety at Work Act (ArbSchG) are :

- For the first time ever, Germany has a uniform legal basis applying to all areas of activity and all groups of workers, including therefore public sector workers.
- For the first time ever in German occupational safety and health legislation, all employers have the same high level of obligations. So, Article 3.1 of the Health and Safety at Work Act requires employers "to adopt the necessary occupational safety and health measures taking account of any circumstances affecting the safety and health of employees in the workplace. The employer must assess the effectiveness of such measures and, if need be, adjust to changing circumstances. In so doing, his goal must be to improve employees' safety and health protection".
- The benchmark is now a modern understanding of occupational safety and health, namely one involving measures to prevent industrial accidents and occupational health risks, including socially-acceptable work organisation.
- Occupational safety and health must be integrated into companies' decision-making processes, and this must be done systematically on the basis of risk assessments, the planning, implementation and evaluation of measures. Assessment must take account of the kind of activity involved, and any plans must consider and create appropriate linkages between all relevant company-related factors, specifically technology, work organisation, other working conditions, social relations and the influence of the environment on the workplace.
- There is a general duty on all employers to seek advice. The range of duties of company doctors and occupational safety officers was expanded with respect to the duty to support employers in performing risk assessments.
- When they have specific grounds of complaint, workers now have a right of appeal to the competent authority where measures taken and resources provided by the employer are insufficient to guarantee safety and health protection at work, and the employer fails to take remedial action following such complaints.
- Government inspectors and employers' liability funds must work together on enforcement.

## Consequences for German social policy

The new section VII of the Social Code (SGB) on preventive legislation is the biggest advance in authority for statutory accident insurance since Bismarck's social legislation.

Article 14 states :

"(1) Accident insurers must take any appropriate measures to prevent industrial accidents, occupational diseases and work-related health risks and ensure that effective first aid is available. At the same time, they should investigate the causes of work-related hazards to life and health.

(2) Accident insurers shall work together with health insurance funds to prevent work-related health risks."

Further passages of section VII of the Social Code contain provisions that flesh out these fundamentally new rules, in particular with regard to prevention :

- The scope of accident prevention regulations is expanded to the prevention of all work-related health risks. In performing their new, more extensive range of duties, accident insurance funds must monitor companies and provide advice to employers and the insured workers alike.
- The powers and duties of supervisors are expanded in the same way.
- Accident insurers and the *Länder* occupational safety and health authorities have a duty to work closely together in supervising companies and encourage exchanges of experience.
- Insured workers must comply with all measures to prevent industrial accidents, occupational diseases and work-related health risks that they are able to, and follow any instructions to that effect issued by the employer.
- Safety delegates should go beyond their traditional duties and also call the employer's attention to accident risks and health hazards to which workers are exposed.
- Accident insurers must ensure that the necessary basic and advanced training is provided.
- Either through their own research or participation in research by others, they should help to clarify the causal link between incidences of illness and unhealthy work-related factors.

The practical implementation of the new Safety and Health at Work Act was the policy priority in subsequent years.

Back in 1997, the DGB summed up the main strategic issues as follows :

1. Creating an efficient occupational safety and health system operating on a multidisciplinary basis and geared towards participation and cooperation, which uses all appropriate means to maintain, protect and promote the health of workers and also organises work in a socially acceptable manner.

2. Bringing the full force of law and political means to bear on companies that flout basic provisions of the law.
3. Developing effective mechanisms, especially at company level, that also help to strengthen companies economically.
4. Initiating and promoting innovative technical, organisational and social solutions and cooperation with policy on technological development and innovation.
5. Using occupational safety and health as an instrument of preventive social policy to avert health risks and reduce social costs both within and outside companies.
6. Developing occupational safety and health as a cornerstone of general environmental protection.
7. Integrating occupational safety and health into basic, continuing and advanced vocational training.
8. Occupational safety and health must become a fixed component of employment policy.
9. Occupational safety and health must be emphasised and further developed as part of a humane work culture.
10. It must contribute to harmonising working conditions worldwide in accordance with basic humane issues of occupational safety and health and in line with the state of development of our economy.

These points are still valid today !

As well as these underlying conditions of occupational safety and health policy and social policy, trade union activities focused on the new core element of in-company occupational safety and health : risk assessment, including the adoption, further development and documentation of occupational safety and health measures.

The new occupational safety and health legislation and its underlying modern concept of occupational safety and health protection also affects all areas and levels of trade union and workforce representation.

- The new legal bases have provided works councils and staff councils with a firmer footing on which to monitor and enforce occupational safety and health measures. In many respects, the scope of workforce representation has extended to include such things as taking up workers' individual health-related complaints, integrating occupational safety and health into broader company life and management concepts, cooperating with occupational safety and health authorities and institutions, as well as accident insurers, and helping individual workers to look after their own health concerns within the company. This means that workforce representatives must have more extensive support from their trade unions, especially in the form of training, advice and their integration into company, multi-company or regional networks.
- The same also applies to their trade union colleagues and members of the self-administering bodies of accident insurers. The task here was for our colleagues to take the initiative in creating and further developing health and safety committees. Short-, medium- and longer-term prevention principles had to be framed and developed, while another key task was to promote correct and appropriate further development of employers' liability funds and their staff to bring them in line with the new requirements.
- Support for colleagues was initiated by local or inter-regional trade union working groups, while consultancies and training agencies were set up either within or in conjunction with trade unions, or their function as multipliers was exploited.

### Assessment of companies' practical implementation

Trade unions were strongly committed to the occupational safety and health reform, but there proved to be major difficulties with the way companies put it into practice.

The DGB pointed out significant shortcomings in a series of assessment reports on the EU directives :

- "All except a few of the small and medium-sized firms that employ most of the German workforce have so far failed to implement the Health and Safety at Work Act in practice" (March 1999).
- "Bearing in mind the mere two years it has taken to transpose the EU Framework Directive into German law and in light of companies' resistance to implementing its provisions in practice, the DGB has to conclude that at present only the rudimentary bases for effective implementation exist" (March 1999).
- In its March 2001 evaluation of the transposition of the VDU Directive, the DGB cited a survey done by the Institute for Industrial and Social Hygiene Foundation (IAS) which found failings in 90% of 14,000 VDU workplaces investigated : in fact, 38% of VDUs were incorrectly set up, and 21% of workplaces displayed organisational failings. The survey also criticised the lack of training in safe working procedures. 13% of workplaces also suffered from problems with inappropriate lighting and glare.
- The implementation report on the German manual handling of loads decree (*LasthandhabV*) found that the failure by smaller firms to implement the decree, incomplete or non-existent risk assessments, inadequate government inspections, and the continued absence of indicators for assessing effectiveness, meant that even greater efforts were needed in future if the decree's substantive provisions and the delivery of its aims were truly to help organise work in a socially acceptable manner.
- Again, in April 2003, the DGB had to report that employers in several sectors were simply not complying with the new provisions. In other areas, the

new laws did help to get occupational safety and health protection increasingly seen as management duties and organisational tasks. So, general awareness of the complexity of prevention-related tasks was most probably heightened. However, work-related health risks have not yet been universally taken on board as new challenges and tackled from a multidisciplinary approach.

Looking at these failings and the continuing scale of work-related health risks, the current situation on occupational safety and health protection cannot by any means be described as satisfactory. Even so, it was - and still is - right, important and indeed imperative that European legislation should create momentum and serve as an important benchmark and target for social organisation, regulation and social policy initiatives.

### **The occupational safety and health protection situation in Germany**

The situation in Germany has changed dramatically over the last few months. The union thrust has shifted away from developing and refining the modern approach to reform and towards fighting what are felt to be defensive battles, at least to some extent defending the foundations of gains made, opposing the deregulatory push and fending off attempts to downgrade conditions. The social policy of the welfare state that has existed up to now is being deflected against the backdrop of economic difficulties and chronic mass unemployment, a crisis in public budgets and an offensive waged by conservative and free market forces. Overall, there is a gradual turning away from the principle of solidarity and equality, and the focus is shifting increasingly towards the so-called "personal responsibility" of the individual, social justice is being redefined as equal opportunity in competition, and there is a loss of social solidarity, not to say a measure of opposition to these values. Occupational safety and health protection is seen as a cost burden that undermines competitiveness.

The pressure on occupational safety and health protection is growing enormously with moves to cut red tape and promote deregulation. This trend is being driven by the opponents of OSH reform.

- The core idea of deregulation is "lean" framework provisions. Detailed rules and regulations are to be eliminated as far as possible, and specific local arrangements are left up to individual employers.
- Safety regulations and occupational health care requirements imposed on small and medium-sized firms are to be relaxed even further, even though that this has been found to be the area with the worst failings. As a result, workers in these companies will be permanently downgraded to the rank of second-class employees.

- Constant staff cuts and austerity measures, as well as restructuring, means that the occupational safety and health authorities in the various federal states will gradually become increasingly less able to perform their statutory advisory and supervisory duties.
- The status and structure of accident insurance will undergo a far-reaching review, possibly with a view to restricting or immediately privatising the legislative and supervisory powers of employers' liability funds, reducing them to pure personal liability insurance providers, with no preventive duties.

The trade unions and the DGB are actively fighting these threats of deterioration, not least with a public relations campaign: "Accident and health protection are no luxury! We must protect ourselves against the dismantling of the OSH system" (text available in English on <http://tutb.etuc.org/uk/newsevents/news.asp>).

We will be drawing on our political resources at European level in a bid to see that the reform of occupational safety and health and the positive gains made through the EU directives are not reversed.

Part of this effort must also be to promote ILO Conventions, especially Convention 81 (labour inspection) and Convention 155 (health and safety and the work environment), and to support the ILO's drive to establish a worldwide culture of occupational safety and health. ■

# Occupational health policies in Spain: problems, actions and priorities



**Joan Benach**

Dept. of Experimental Sciences  
and Health, Occupational Health  
Research Unit, Universitat Pompeu  
Fabra, Barcelona, Spain

## **Marcelo Amable**

Dept. of Experimental Sciences  
and Health, Occupational Health  
Research Unit, Universitat  
Pompeu Fabra, Barcelona, Spain  
Dept. of Occupational Health,  
Ministry of Public Health,  
Argentina

## **María Menéndez**

Dept. of Occupational Health,  
The Workers' Commissions of  
Catalonia (CONC), Spain

## **Carles Muntaner**

Dept. of Behavioral and  
Community Health and  
Department of Epidemiology and  
Preventive Medicine, University  
of Maryland-Baltimore, US

## **Introduction**

After four decades of fascist dictatorship, the Franco regime in Spain came to an end in 1977, starting off a political transition which culminated in a democratic constitution in 1978. Spain has undergone intense political decentralization over the last twenty years, creating 17 regions enjoying high degrees of legislative and political autonomy, including responsibility for health issues, but with a potential for generating inter-regional differences in public policies. In the 1980s, the Spanish economy became more closely linked into the European and international economies, and stable welfare policies increased social spending, establishing universal access to educational and health services, and expanding social security, employment and social protection benefits (1). In spite of these remarkable changes, Spain's socio-economic indicators are still below those of more developed EU-15 countries. Since 1996, there has been a modest economic upturn, a freeze on public sector wages, and the government has met the Maastricht low inflation, low debt criteria by swinging cuts in social welfare spending (2).

The main trends in the sweeping changes that have shaped the labour market over the past two decades include employment growth in the service sector, relative shrinkage in the industrial sector (shedding half a million jobs between 1977 and 1992), and a steady contraction in agricultural employment. Increased female labour force participation, high unemployment, and steady decline in the quality of employment are other salient features of the Spanish labour market. Although women's labour force participation has significantly increased, there is still a clear gender divide of women and men into two separate workforces, as well as clear segregation in male-dominated management and administration posts. Time use is also still ruled by traditional gender divisions. The available evidence leaves no doubt about the unequal gender division: 85% of women but only 25% of men assume domestic responsibilities. Women spend an average 4 hours 12 minutes more a day on housework, while men spend 1 hour 36 minutes more on paid work and 42 minutes more on leisure (3).

Unemployment was one of Spain's biggest social problems in the 1980s (21.5% in 1985) and 1990s (22.7% in 1995), with figures consistently about

double the European Union average. Unemployment rates have decreased significantly in recent years, but the country is still plagued by unemployment (11.1% in 2003) with high levels of female (15.8% in 2003) and youth unemployment (19% male and 26.7% female under-25s respectively in 2003). One of the most significant labour market changes of recent decades has been the spread of new forms of work organisation and flexible job markets, with the emergence of new forms of non-standard employment, contingent work and various types of underemployment, including involuntary part-time employment and insecure employment (4). Additionally, the underground economy accounts for about 21% of Gross Domestic Product (GDP) (5) with a large share of the active population working in precarious conditions. Spain has the highest temporary employment rates, with a much higher proportion than the EU-15 (31.3% versus 13.4% in 2002). In 2001, 91% of the 14 million new contracts were temporary contracts, with more than two thirds of workers on contracts shorter than six months (6). These levels of short-term employment - double or triple the EU-15 average - are very unevenly distributed by occupation, gender and age (7).

This paper sets out to review Spanish occupational health policies and their ability to respond to new occupational health challenges. First, we identify the major occupational health problems both in terms of traditional occupational diseases and injuries as well as in terms of emerging workplace hazards like precarious arrangements and workplace inequalities. We also review some occupational health policy successes, but also emphasize big issues that have yet to be addressed, presenting the main legislative and research interventions, and the main actions and initiatives of key players in this process, namely, labour unions, employers and government. Finally, we point out key occupational health policy priorities that might help to overcome problems and improve health at work among Spanish workers.

## **Problems**

### **Working conditions and occupational risk factors**

At the beginning of the 21<sup>st</sup> century, the workplace is still a dangerous place for the majority of Spanish workers. Many traditional working conditions and occupational risk factors are still in place, especially in those economic sectors that face the burden of



hazardous industrial work. Thus, many physical, chemical, and ergonomic hazards still form a huge threat to workers. For example, the overall percentage of Spanish workers probably exposed to carcinogens has been estimated at 25%, and this figure rises to 52% in the most dangerous sectors of activity (8). However, major occupational health problems not only include such traditional concerns as unemployment and physical, chemical and biological hazards, but also modern risk factors due to new types of flexible employment, working time deregulation (variability, unpredictability), work pressure, increase in shift and night work, and job insecurity that are likely to increase work-related illness and mental health problems among other issues.

In Spain, information with which to analyse working conditions, occupational risk factors and work inequalities is fairly scant, and the main sources of information have important limitations. In this review, most analyses rely on data from the last two Spanish National Working Conditions Surveys (1997 and 1999). Comparisons with other European countries have been drawn from the European Surveys on Working Conditions. Additionally, information from the last Barcelona Health Survey (2000) makes it possible to analyse other specific risks and work-related health inequalities by gender and social class.

Work organization-related psychosocial risk factors, such as work that places high attention demands, working at high speed, or lack of participation are the most threatening risk factors. Other important factors are related to ergonomic considerations, like protracted position-holding or repetitive hand or arm movements. By and large, occupational risk factors increase in larger companies, but are independent of economic sector. When compared with average data from the EU-15, it is clear that self-perceived working conditions are worse in Spain. Differences are markedly higher in terms of monotonous work (63% in Spain versus 39% in the EU-15) and repetitive tasks (58% and 47%, respectively) (Table 1). According to the 2000 *European Survey of Working Conditions*, work-related dissatisfaction in Spain is above the EU average (23.6% vs 14.3%), and temporary employees are more dissatisfied than permanent staff (20.3% and 13.6% in EU-15, and 32.8% and 19.9% in Spain respectively).

### Work-related health problems

Injuries from occupational accidents have an enormous impact on the health of workers and the economy in general, which is reflected in the death, disability and personal suffering of workers (approximately one in eight workers suffers some kind of accident every year, and three workers die every day), as well as time off and loss of productivity (over 2,700 work absence injuries a day). The trend in non-fatal injuries has levelled-off in recent years after a steady rise between 1993 and 1999. For the period 2000-2002, very high non-fatal incident rates have been

reported in a number of economic sectors, like the extractive and construction industries, as well as in high-risk occupations like both un-skilled and skilled building trades. Although fatal injuries declined from 1989 to 2002, Spain has the highest incidence in the European Union of occupational injuries resulting in more than three days sick leave, and one of the highest incidences for fatalities. Compared to the EU-15 average, for example, Spain had a 71% excess of injuries with more than 3 days of leave and 35% excess of fatal injuries (Figure 1, p. 34) in 1999 (7). As will be seen later, these data bear out a lack of enforcement of the Prevention of Occupational Hazards Act.

The distribution of injuries by occupation reveals wide differences. For fatal injuries caused by occupational accidents on a working day, for example, the occupations with the highest incidences were unskilled and skilled construction workers and iron / steelworkers. Type of employment contract is a key factor associated with the incidence of occupational injuries. Temporary employees are three times more likely than those with permanent contracts to suffer non-fatal injuries, especially in the construction industry, and twice as likely as permanent employees to suffer a fatal accident (7). A more fine-tuned recent analysis by gender and occupation confirms these findings (9).

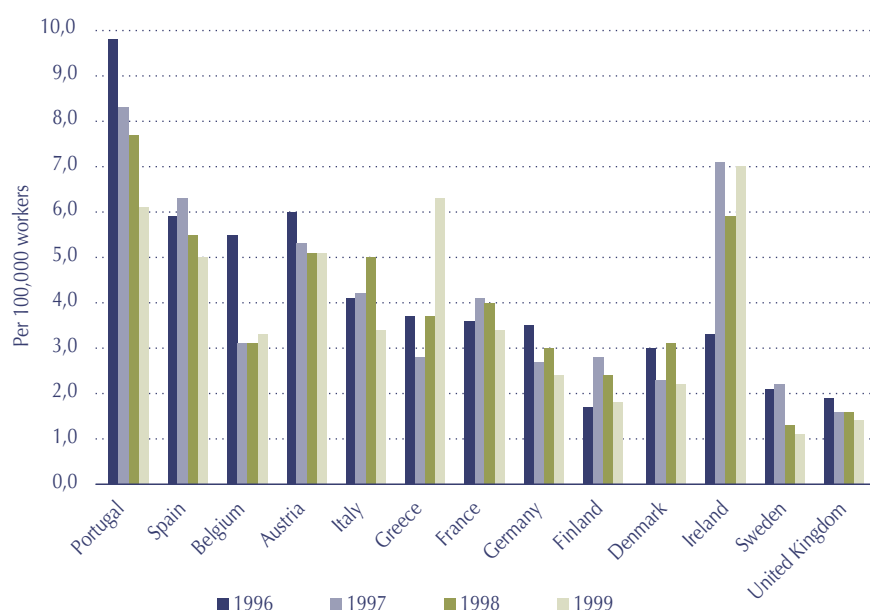
**Table 1 : Self-perceived working risk factors (percentage of respondents) in Spain and the EU-15**

Working conditions risk factors	Spain	EU-15 average
	(n=1,500)	(n=16,052)
<b>Environment</b>		
Loud noise	30.7	28.9
Exposure to fumes, dust and fibres	26.9	21.1
Vibrations	27.6	20.5
Handling noxious or toxic substances	15.6	13.6
Uncomfortable temperature	16.6	10.0
Radiations	6.1	5.7
<b>Physical activity</b>		
Repetitive hand or arm movements*	67.5	58.7
Long periods in awkward or unmoving postures*	48.0	44.6
Heavy lifting*	36.5	34.5
<b>Organization</b>		
Maintaining a sustained fast pace*	44.7	59.5
Repetitive tasks of short duration	57.9	47.0
Monotonous work	62.8	38.9
No control over (job) breaks	47.9	43.9
Unable to vary the order of tasks	44.8	36.3
No control over the pace of work	38.5	32.8
No control over methods of work	44.4	32.7
No control over work organization	31.7	21.0

\* More than 1/4 of the working day.

Source : European Working Conditions Survey (2000)

**Figure 1 : Incidence of fatal injuries caused by occupational accidents per 100,000 workers in the European Union countries, 1996-1999**



Source : Eurostat, European Social Statistics, Accidents at work and work-related health problems, Data 1994-2000

Reported occupational diseases have risen steadily from 1998 (32.2 per 100,000 workers) to 2002 (171.3 per 100,000 workers) (7). This exponential growth is likely to be due to improvements in the occupational health registry system. But, it is important to realize that occupational diseases are heavily underreported. Medical doctors lack the knowledge to diagnose work-related diseases, the registry system is very inefficient and there is an absence of epidemiologic studies.

### Work-related inequalities

In Spain, the probability of reporting occupational diseases, injuries and other health outcomes is not equally distributed across social groups, occupations, genders, and firms. Studies have evidenced higher mortality in males between 30-64 years of age among the more disadvantaged occupational social classes for most causes of death, and the gaps have widened over the period from 1980-82 to 1988-90 (10). A study on trends in socio-economic differences in the economically active male population grouped in four categories (professional / managerial, clerical / sales / service workers, farmers, and manual workers) aged 25-64 years in Spain has shown mortality differences from ischaemic heart and cerebrovascular diseases (11). On the other hand, the more deprived social classes present poorer self-perceived health status. It has been found that 40% of those in manual classes and 27% in professional classes in 1995 reported deficient self-perceived health status and those differences increased in the period 1987-95 (12). Additionally, another study showed that poor self-perceived health status increased in the low-income regions in the period 1987-93 (13). In the last national health survey conducted in 2001, in both men and women the percentage of people reporting poor self-per-

ceived health increases gradually by social class (14), with a steeper gradient among women. It is a fact that the occupational and social conditions of working class women in Spain are very poor : they have less access to employment, are more often unemployed, and have demanding family responsibilities - child- and elder-care - with little public welfare support. For example, a study in the Catalonia region has shown that working class cleaning women have between two and three times worse health than non-manual women (15).

Many wide occupational inequalities can be found among workers (manual vs non-manual) and type of employment relationship (permanent vs temporary) with regard to exposures to unhealthy and damaging working conditions. Examples include physical, chemical, ergonomic and psychosocial risk factors. Results from the 1999 *Spanish National Survey on Working Conditions* show that physical risks are in most cases higher among male manual workers (Table 2). For example, almost 52% of male manual workers are exposed to noise (30.5% for females) as compared to 32% of non-manual workers (20.5% of females). Where psychosocial or organisational working conditions are concerned, job demands are higher among manual workers, while gender differences are small (Table 2). In the city of Barcelona, a sharp social class gradient on physical risk factors was found for both men and women. For both genders, manual workers (Classes IV and V) show a higher prevalence of physical and chemical risks. In particular, working class men are more exposed to physical hazards than their non-working class counterparts (16). Results also show a higher rate of exposure to musculoskeletal disorders among working classes (classes IV and V) and women. Psychosocial risk factors increase in the lower occupational social classes especially for classes IV and V, and particularly among women.

Comparing 1997 and 1999, there is an overall increase in risk factors among both permanent and temporary workers, especially for the latter. Prevalence rates for all risk factors are higher in temporary workers. In 1999, for example, 5.8% of permanent workers worked on unstable surfaces whereas that figure doubled for temporary workers (11.6%). Differences between contracts are more evident in work organization exposures. For example, having no control over task schedule or schedule was reported by 18.4% of permanent employees but 31.6% of temporary employees (7). It is important to consider the vulnerable conditions of many workers, that are often little discussed, unrecognized or unstudied. For example, although workers have legal protection from hazardous conditions, temporary workers may be particularly reluctant to assert their rights for fear of losing their jobs (17). With regard to illegal immigrants, unions and immigrant rights groups have reported that they often work for meagre wages in sub-standard working conditions,

subcontracted mainly in agriculture and construction. Finally, women tend to be more exposed to less-recognized risks than men. Women work in different sectors to men and are given less responsibility, with contracts which offer them less job security. Greater exposure to repetitive tasks, more front-line contact with the public (e.g., customers), and higher risks of workplace violence are just three examples of risk stressors. An analysis of gendered workplace health inequalities between married and co-habiting couples in the Catalonia region shows that any study of gender health differentials should consider not only paid work and household work but also the interaction between gender and social class (18). Thus, among women manual workers, family demands are linked to reported ill-health, long-term restrictive illnesses, and chronic disorders.

### Occupational Health Prevention Services

Since the approval of Preventive services Regulations (Act 39/1997), Spain has predominantly had

two-track provision comprising company preventive services and external preventive services. So, companies that do not set up an in-house preventive service most frequently sign up to an external preventive service set up by an insurance company (*Mutua*) responsible for compensating work accidents and diseases. This results in large-scale outsourcing of preventive services.

Although data on the situation of occupational health prevention services in Spain is scant, the poor coverage of workers is revealed by different sources. According to the most recent *National Working Conditions Survey* (1999), only 7% of firms had an in-house preventive service, whereas an external service was reported by 39% of firms. The employer assumed responsibility in 27.6% of firms, covering about 13% of workers. This is particularly significant where small- and medium-size companies are concerned. It is important to note that about 15% of medium-size companies (between 6 and 249

**Table 2 : Selected physical, chemical, ergonomic and psychosocial risk factors by manual and non-manual workers and gender in the Spanish working population (25-64 years) (%)**

	Non manual			Manual		
	Male (N=831)	Female (N=695)	P	Male N=1241	Female N=468	P
<b>Physical risks</b>						
Uncomfortable temperature in summer	21.7	19.1	NS	36.6	24.3	< 0.0001
Uncomfortable temperature in winter	20.9	18.3	NS	27.0	16.3	< 0.0001
Uncomfortable humidity	18.4	14.2	0.03	17.2	10.0	< 0.0001
Noise	32.2	20.5	< 0.0001	51.8	30.5	< 0.0001
Vibrations	5.4	2.5	0.003	12.1	5.2	< 0.0001
Toxic products	11.4	9.4	NS	25.4	17.8	< 0.005
<b>Musculoskeletal risks</b>						
Painful or tiring positions more than half of the day	6.9	7.2	NS	9.7	11.5	NS
Staying in the same position more than half of the day	29.8	36.1	0.02	25.1	36.0	< 0.0001
Carrying heavy loads more than half of the day	3.2	0.9	0.001	7.3	4.3	0.02
Making an important effort more than half of the day	2.2	0.7	0.02	4.8	2.6	0.01
Repetitive hand or arm movements more than half of the day	29.2	28.2	NS	34.4	46.3	0.0001
<b>Psychosocial risks</b>						
Working with high demand of attention more than half of the day	66.2	64.7	NS	57.5	42.9	< 0.0001
Working with high speed more than half of the day	43.7	40.1	NS	31.3	28.8	NS
Repetitive tasks more than half of the day	28.8	27.9	NS	32.2	43.2	< 0.0001
Excessive workload	19.4	19.3	NS	10.5	15.8	0.02
Unpaid overtime on normal working day	32.2	29.2	NS	18.1	23.5	0.007
Poor relations with superiors	7.5	5.1	0.03	8.8	8.0	NS
Poor relations with colleagues	2.4	2.6	NS	2.4	2.0	NS
Unable to vary task order	9.2	8.8	NS	28.9	30.0	NS
Unable to vary methods of work	16.9	21.3	0.03	39.5	39.9	NS
Unable to vary pace of work	15.7	20.1	0.02	35.4	35.9	NS
Unable to vary order of breaks	17.7	17.5	NS	36.7	36.7	NS
Lack of opportunity to develop own skills	3.6	5.8	0.05	13.7	22.8	< 0.0001
No promotion since working in the company	41.4	51.8	< 0.0001	42.7	65.7	< 0.0001

Source : IV Spanish National Survey on Working Conditions, 1999

employees) that reported only the employer assuming the preventive responsibilities are breaking the law. Finally, 26% companies reported that they did not have a preventive service (16% of workers). A more recent nationwide survey that looked at the situation in workplaces with the highest reported work accident rates (19), (i.e., mid-size companies that must have preventive services under Spanish law), found that 31% of them had not set up a preventive service and that in 3% of them, the employer performed its functions (20). A conservative estimate has recently been made of the number of preventive services that should be operating in Spain under present legislation. Available information suggests that one in four companies has no occupational health service (7). This means not only that many companies are breaking the law, but also that the government is not policing and enforcing compliance with the legislation. On the other hand, even where preventive activities are organized, they are often of dubious quality and mainly concerned with simply achieving paper compliance. In the Navarre region, for example, only 17.5% of workplaces inspected had done a satisfactory assessment, nearly 40% had an inadequate one or none, in 13.5% it had not been updated, and in 18% of cases it did not cover all jobs (21).

## Actions

Among the many actions that may play a significant role in improving the work environment and tackling work-related health inequalities, some of the most relevant include the production and dissemination of knowledge, the development of legislation, and the political initiatives and actions taken by key social players. We particularly consider here the key issues of information, training and research, recent legislative changes and political agreements reached by the most important political actors, as well as some initiatives and specific policy interventions developed by public administrations, companies, and trade unions.

### Information, training, research

Although knowledge on a number of traditional occupational health problems is already available in Spain, and data on occupational injuries and sickness absence are fairly comparable with other EU-15 countries (22), the lack of comprehensive and reliable data is still a major limitation. Thus, in spite of the valuable information generated in the last decade in Spain, there is a lack of high-quality data on many workplace risk factors and health outcomes. For example, one of the most important sources of information for understanding the work environment and occupational health in Spain is the *National Surveys on Working Conditions* (1983, 1993, 1997, 1999). Given their significant limitations, however (e.g., small sample sizes, questions not always standardised, and a design that does not

guarantee that respondents were randomly selected), their data and findings should be interpreted with caution (23). Indeed, many occupational problems in Spain remain “invisible” or unknown because they are overlooked, undiagnosed or unreported by current information systems. For example, available data on psychosocial, ergonomic and chemical risk factors do not provide sufficient knowledge to implement evidence-based policy interventions.

A second big issue to consider regarding knowledge is that in Spain, a lack of proper education and training for most occupational health professionals (i.e., occupational physicians, occupational hygienists, safety engineers, ergonomics and psychosociology specialists) is an important limitation on improving surveillance and implementing effective preventive activities at the workplace. A simple example is that the official approval at the national level of studies for hygienists, ergonomists, psychosociologists, health and safety technicians and occupational nurses has yet to be implemented.

The situation as regards occupational health research is very poor. For one thing, there are very few occupational health research groups or scientific studies. In the period 1998-2002, only 91 papers on occupational health were published where the lead author was Spanish (62% were published in international journals). PhD dissertations are very scarce, and more concentrated in such fields as occupational medicine, occupational law, and social and industrial psychology. Only in 2003 did the National OSH Institute (INSHT) begin to promote its own research projects (7). On the other hand, Spain exemplifies a country that has moved rapidly from having no monitoring of social inequalities in health in the 1980s to one with a small but active programme in a handful of research centres in the 1990s. Overall research on social inequalities in health can be said at present to be in a “denial / indifference phase (1), while research on work-related inequalities is in a “need for measurement” phase (24). Indeed, it is only recently that the very first study on occupational health inequalities has been published in the Catalonia region (15) as part of a Catalonian Black Report (25), and that the first review on work-related inequalities in Spain has been done (16).

### Legislation and political agreements

Because the country lived under a dictatorship for 40 years of the 20<sup>th</sup> century, a system of labour legislation took shape in Spain much later than in other western European countries. The basic modern rules governing health and safety at work containing an extensive list of regulations and requirements were laid down only in 1971, later supplemented by other regulations directed specifically at certain industries, occupations or types of work, many of them implementing European Directives and Regulations. The Prevention of Occupational Hazards



Act (Law 31/1995) of November 1995 established a modern, general framework for health and safety at work that regulated, among other things, the general obligations or duties of employers, employees and the manufacturers and suppliers of machinery, toxic substances and equipment in regard to the prevention of risks, and the consultation and participation rights of workers and employee representatives. This law on the prevention of occupational risks and its corresponding regulations theoretically ushered in a near-universal legal protection of health at work and the integration of prevention into company management structures.

The implementation of this legislation, however, was accompanied by two negative circumstances. First, the Spanish Occupational Hazards Act was basically approved as a result of the need to transpose European Framework Directive 89/391/EEC on health and safety rather than as a consequence of social demand or political pressure to change the work environment and improve workers' health (26). Second, and even more importantly, the law came in as labour market flexibility was gaining ground, bringing a social climate adverse to workers with firms seeking more flexible forms of organization and casualization. Moreover, the Spanish government was unable to enforce legislation properly and to ensure that market deregulation did not push health into second place. Thus, a far-reaching reform of labour legislation took place in 1994. This extensive reform, which saw the amendment of many of the precepts of the major labour laws (e.g., the Workers' Statute, the Labour Procedure Act or the Labour Offences and Sanctions Act), included the adoption of a number of new laws, such as an Act on temporary employment agencies, and the revision of regulations on temporary / fixed term contracts, training contracts and redundancy procedures that established the foundations for a revised regulation of the collective bargaining system. As a result, an increasing number of often previously illegal situations were brought into the fold of legality. By and large, these changes led to the progressive segmentation of the labour force, with a core of permanent workers and a group of precarious workers with greater job insecurity (16).

Mainly in response to trade union pressure, recent years have seen a spate of initiatives brought forward by government, employer's organizations and the main trade union confederations for joint agreements to improve occupational health and address major problems. A first failed attempt at so-called "Social Dialogue" was made in November 1998 after a steady rise in work-related injury totals. While a number of occupational health needs and insufficiencies were detected and several agreements reached, the proposals did not deliver effective solutions. New agreements reached in the "Social Dialogue Forum on Occupational Health Risk Prevention" in December 2002 paved the way for wide-ranging reforms to the Prevention of

Occupational Hazards Act in December 2003 (Law 54/2003). Among the main changes are : integrating prevention into corporate lines of responsibility, with the need to frame a detailed prevention plan with appropriate internal resources for preventing risk situations ; a package of measures to implement inspection, policing and enforcement mechanisms ; to adapt legislative changes to the new forms of work organization, improving the employer's coordination ; and ensuring compliance and enforcement of legislation on infringements and penalties.

### **Interventions and perspectives of key players**

#### ■ Government agencies

Government health and occupational safety agencies have responsibilities for ensuring the health and safety of workers at the national and regional levels. Health agencies have focused their main activities on setting the minimum level of resources needed to implement the health activities of preventive services, working out the occupational health information system and drawing up health surveillance protocols. But, public agencies have failed to address a number of crucial issues. Two examples are the lack of governmental compliance activities and enforcement of regulations and penalties, and the very weak linkages established between occupational health and other social and public health policies. The occupational health inspectorate is clearly under-resourced to deal with the many occupational health problems (traditional and emergent) in an increasingly segmented labour market. In fact, the number of workplace inspections has fallen in recent years (7). This is particularly important in small- and medium-sized companies, where implementation of occupational health preventive actions is difficult to monitor. The National OSH Institute (INSHT) is the biggest national institution specialized in occupational health. Although its main functions are promotion, technical support and research, it has only very partially delivered these objectives.

#### ■ Employers, companies and insurance companies (*Mutuas*)

Since the Prevention of Occupational Hazards Act (Law 31/1995) was passed, laying the ultimate responsibility for occupational health risk prevention on the employer, employers' organisations have become more open to discussion and change on a range of occupational health issues. Mostly, however, employers have tended to oppose the proposals made by government agencies and pressure brought to bear by trade unions. This defensive approach can be seen, for example, in their participation in the "Social Dialogue Forum", where employers have seldom initiated new proposals for risk prevention, or their common tendency simply to go through the motions. The preventive services market is clearly developing along oligopolistic lines, where a small number of external services enjoy a dominant position. In 2002,

just six insurance companies (*mutuas*) covered about 71% of workers against work-related harm (7).

The externalization of preventive services in general reflects an abdication of company responsibilities (19). Thus, the outsourcing of prevention activity often leads to prevention being seen as a product and an activity divorced from the company, requiring neither commitment nor involvement from the employer, where worker participation is lacking and prevention is an officialistic activity that disregards emerging risk factors (27). On the other hand, Spanish regulations refer to a range of disciplines, from which employers can choose just two to comprise a preventive service. Several issues need to be considered in relation to the role of *mutuas* in prevention. First, it is the employer's choice which *mutua* to use, so that *mutuas* are under the "control" of employers. Second, in financial terms, it is estimated that workplace prevention is little more than a marginal activity for mutual insurance organisations (i.e., most of the budget goes to compensating incapacity and only a very small percentage goes to prevention). In short, prevention is not a priority. Third, in recent years, *mutuas* have been trying to move into new markets in the public health system. Privatization of certain social security activities, therefore, has recently led to growing *mutua* involvement in the management of incapacity for work due to non-work related diseases.

#### ■ Trade unions

In Spain, the two main labour federations are the Workers' Commissions (*Comisiones Obreras*, CC.OO) and the General Workers Union (*Union General de Trabajadores*, UGT), which tend to describe themselves as class trade unions. As in other southern European countries, trade unions in Spain are weaker than in many northern European countries. Although no official figures are available, estimates from several sources suggest that between 18 and 20% of the Spanish employed labour force is unionized (about 2.6 million people out of 13.1 million) (28). The highest rates of unionized workers are found in the industrial sector (21%), where the lowest percentages are found in construction (11.2%). Traditionally, Spanish trade unions have been mainly concerned with wages, earnings and employment issues; working conditions, welfare policies and occupational health issues have only more recently come onto their agenda. Even so, a number of valuable actions and interventions in recent years have helped to improve the work environment for the majority of workers, which may also have benefitted the most vulnerable workers. First, the new Prevention of Occupational Hazards Act and its implementing regulations have increased worker participation through the action of trade union representatives and delegates who can play a specific role in the implementation of occupational health prevention plans. Second, given the high incidence of occupational accidents and hazardous working conditions, trade unions have heavily criticized the government

for devoting insufficient resources to inspection and enforcement. In particular, trade unions have underlined the poor application of prevention legislation, the extent of subcontracting and temporary employment, and the increasing instability of the labor market as the main factors behind occupational accidents. Third, given the lack of trade union representatives in many small and medium-sized firms, and in sectors like construction, with a largely contingent workforce, trade unions have called for the creation of "regional safety delegates" to operate as a prevention delegates (29). Finally, in Spain, collective bargaining agreements are widespread in both the public and private sectors; in the latter they covered some 83 percent of workers in 2003, notwithstanding the relatively low private sector union penetration. Collective bargaining is a key means of regulating and improving working conditions that help promote workers' rights, gender equality and occupational health for all workers.

Work-related inequalities in health have not been specifically addressed by any of the Spanish trade unions. In fact, specific references or discussions on this subject are rarely found in trade union publications. However, it is important to note the efforts made by the Trade Union Institute for Work, Environment and Health (ISTAS), an independent non-profit technical foundation set up by the Workers' Commissions (CC.OO), to promote occupational health and environmental protection serving the interests and needs of all workers. In addition, development of regional trade union occupational health activities may play an important role in spreading a new culture of risk prevention. For example, the Workers' Commissions' strategy on work-life balance has been successful in framing demands and achieving actions focused on gender equality in the workplace and work-related health, which is regrettably far from common in trade union practice (3). However, it is not yet possible to give an overall assessment of the degree to which these processes may have had an impact on reducing such health inequalities.

#### Priorities

Today, work-related health problems in Spain place an enormous health and economic cost burden on workers, companies and society as a whole. The high level of occupational injuries, for example, reflects major failings in the prevention systems that a developed country cannot afford to have. Rules and regulations on prevention of occupational hazards have been only partially applied, occupational health interventions are limited and no appropriate policies and budgets have so far been implemented (7). The economic cost of occupational accidents has been estimated at € 12,000 million in 2002, a year in which the penalties handed out totalled only € 103 million (30). Simply assessing occupational health hazards does not imply that proper strate-

gies will be developed. Similarly, technical reports with exhaustive lists of strategies and actions do not necessarily signify effective prevention, and the implementation of occupational health legislation, although necessary, is not sufficient to increase prevention at the workplace.

Occupational needs like those described in this study call for a radical change in occupational health prevention, policies and services. In Spain, as in many other European countries (31), legislative changes have not produced much improvement in small and medium-sized enterprises, many workers, like the self-employed, are not covered, there are significant shortcomings in the extent and functions of occupational preventive services, major limitations on current data collection, and an effective occupational health agency is still needed to provide the specialized research background required to support evidence-based policy. Some improvements in legislation, knowledge, education and research have produced an as-yet very limited reaction in terms of effective health policies and interventions. Moreover, many interventions implemented for white male permanent workers in medium-to-large firms, and targeting traditional occupational hazards, are unlikely to meet the demands of the new flexible work environment. Indeed, the spread of unequal precarious working conditions is one of the main obstacles to improving the work environment and closing work-related health gaps (16). Thus far, occupational health needs and the health of the working population has yet to move to the top of the Spanish policy agenda.

Policies or interventions to improve the work environment have not been formulated as a main goal of national and regional health strategies. Moreover, no specific national or regional policies or interventions seeking to reduce social and work-related health inequalities have been conducted (16-31). Main reasons for the lack of official reaction include both the weakness of public health groups, trade unions, and other social groups, as well as the lack of political will of the national conservative government and many regional governments. If work-related inequalities in health are to be reduced, it is essential both to increase our knowledge and to carry out a wide range of interventions and policies implemented and evaluated at all levels. The labour movement, labour-based political organizations, social organizations, and, especially, governments at the national, regional and local levels, have the responsibility to frame and be accountable for occupational health policies that enforce legislation and compliance that leads to occupational health for all. Indeed, one of the biggest policy issues today is to put the need to understand and reduce work-related health inequalities on the agenda of governments, unions and other social institutions. The main general challenges lying ahead are to establish the priority of occupational health over economics, to improve knowledge of all

occupational health problems, to implement more efficient forms of intervention, to increase worker participation and to properly enforce and assess policy interventions (7-31).

The most important specific priorities are :

1. In an increasingly deregulated labour market, a key challenge is *to develop social policies that help to improve the conditions of the labour market structure and labour participation*. Policies to tackle the high level of unemployment, underemployment and precarious employment (in particular among youth, women and migrants), some of whom work in the black market, should be the highest priority.
2. *To expand and improve occupational health information and data systems* as a means to implement action on evidence-based knowledge. Current sources of information do not provide high-quality registries and indicators on which to base a proper assessment of occupational health risks and problems.
3. There is an essential need to *increase research on poorly-known occupational hazards and new occupational risk factors*. Most occupational health research resources should be oriented toward the most important risk factors and neglected health problems. Special attention should be given to the interactions of social class and gender-based work-related health inequalities, and especially to the most vulnerable workers. Workers suffering from a range of social risk factors and health problems will not be fully understood if studied separately or if risk factors are isolated from the work organization.
4. It is necessary *to develop integrated occupational policies that improve work environment and strengthen workers' participation, opportunities and rights*. A high priority is to focus on risk-factor oriented policies (rather than just health problems) that address the situation of high-risk companies, small companies, self-employed workers and domestic staff. Workers have the right to organize a work-life balance that does not depend on the employer's good will.
5. *Reform of occupational preventive services is urgently needed*. The number of company occupational prevention health services must be expanded until universal coverage is achieved. Small firms and self-employed workers must not be left out. Occupational health services should have more disciplines to make them genuinely multidisciplinary, and must be more integrated and of higher standards. Company preventive services should be expanded, leaving external expertise for specific issues. There is a big need for an open social debate on the need to mod-

ernize national insurance companies (*mutuas*). Finally, public agencies should carry out regular monitoring of occupational health services to see whether they are delivering proper health protection for workers in practice.

6. The *implementation and proper enforcement of interventions that go beyond current legislation in protecting workers' health* is crucial. While the development of the current legislative framework is an important step, the enforcement of effective interventions that go beyond a tick-box exercise is crucial. For example, far-reaching reforms to inspection services, including better resourcing, the coordination of national and regional activities, more enforcement and imposition of penalties, are sorely needed. Incentives should be given to those companies that meet regulatory requirements and have better outcomes.
7. *High priority should be given to interventions that address the needs of the most vulnerable workers.* The problems of women (i.e., balancing family and job demands), migrants, insecure and manual workers, as well as those of small enterprises, deserve special attention. More resources should be provided to help poorer families, and for the integration of people with disabilities into the workplace.

## Concluding remarks

The working conditions endured by many workers in Spain are taking a massive toll on their health, and are a major source of health inequalities. Hundreds of thousands of workers each year suffer work-related injuries and illnesses, and more than 1,000 workers die annually from work-related events. But, the paucity of available data masks the real scale of the occupational health problems. Today, we are just seeing the tip of the iceberg of the many risk factors and health problems Spanish workers are facing. Together with "traditional" unresolved problems like physical risks, there is a rise of "emerging" risks like work intensification and job insecurity, which often are invisible or little discussed, that lead to musculoskeletal disorders, mental health problems and job dissatisfaction. Moreover, working conditions are getting worse for many groups of workers and work-related inequalities are widening. The low de facto priority given to occupational health problems is even more remarkable in view of the fact that occupational health hazards are massive and preventable, that workers have the legal right to work in a healthy and safe workplace, and that poor occupational health and worker disability may cause large economic losses. To address the emerging health problems created by the spread of contingent and precarious employment, integrated policies which account for technical, economic, cultural and political factors are needed. Formidable obstacles remain

to improving the occupational health of Spanish workers. Action on the most important occupational health hazards, however, should not be addressed as "technical" or "economic" value-free problems. The implementation of a new occupational health agenda will inevitably get to grips with the issue of power and conflict of interests. Differences in the distribution of political and economic power have a profound influence on the work environment and health- determining key issues, like which health regulations will be approved, what kind of work conditions will be considered acceptable, who will be exposed to risks, what is considered an acceptable risk, and what priorities will be set. Occupational health policy in Spain is at a critical stage. Although deaths, diseases, injuries and suffering caused by occupational exposure to dangerous working conditions are today major problems, occupational health remains very low on the policy agenda. Most of the national and regional authorities are not providing the right scientific knowledge or occupational health interventions needed to protect the health of Spanish workers. The challenge of achieving an efficient and equitable occupational health policy will depend very much on the effective implementation of the priorities outlined above. ■

## References

- (1) Benach J, Borrell C, Daponte A, Social and economic policies in Spain with potential impact on reducing health inequalities, in Mackenbach JP, Bakker M (eds), *Reducing inequalities in health: A European perspective*, Routledge, 2002:262-273.
- (2) Navarro V, Quiroga A, Políticas de estado de bienestar para la equidad [Welfare State policies to reach equity], in Borrell C, García Calvente M<sup>a</sup> del Mar, Vicente J (eds), Informe de la Sociedad Española de Salud Pública y Administración sanitaria (SESPAS) 2004, *La salud pública desde la perspectiva de género y clase social*. Gac Sanit (in press).
- (3) Munar Suard L, Spain: achieving the work-life balance, in Vogel L, *The gender workplace health gap in Europe*, European Trade Union Technical Bureau for Health and Safety, 2003:277-289.
- (4) Muntaner C, Benach J, Hadden W, Gimeno D, Benavides FG, *A Glossary for the social epidemiology of work organization*, (submitted).
- (5) Alañón A, Gómez de Antonio M, *Una evaluación del grado de incumplimiento fiscal para las provincias españolas*, Instituto Estudios Fiscales. <http://www.minhac.es/ief/principal.htm> [Page visited 19-11-03].
- (6) Ministerio de Trabajo y Asuntos Sociales (MTAS), *Anuario de estadísticas laborales y de asuntos sociales 2002*, [page visited: 08-01-04]. Accessible in: <http://www.mtas.es/Estadisticas/anuario00>.
- (7) Durán F, Benavides FG, coords., *Informe de salud laboral. Los riesgos laborales y su prevención. España, 2003* [Occupational risks and prevention in Spain, 2003], Barcelona: Zurich (2004).
- (8) Kogevinas M, Maqueda J, De la Orden V, Fernández F, Kauppinen T, Benavides FG, Exposición a carcinógenos laborales en España: aplicación de la base de datos CAREX, *Archivos Prevención Riesgos Laborales* 2000; 3:153-159.
- (9) Benavides FG, Benach J, DelClos G et al., *Temporary employment and risk of traumatic occupational injuries* (submitted).
- (10) Regidor E, Gutiérrez-Fisac JL, Rodríguez C, Increased



socioeconomic differences in mortality in eight spanish provinces, *Soc Sci Med*, 1995;41:801-7.

(11) Lostao L, Regidor E, Aiach P, Dominguez V, Social inequalities in ischemic heart and cerebrovascular disease mortality in men: Spain and France, 1980-1982 and 1988-1990, *Soc Sci Med* 2001;52:1879-87.

(12) Urbanos RM, *Análisis y evaluación de la equidad horizontal interpersonal en la prestación pública de servicios sanitarios. El caso español, 1987-1995* [Analysis and evaluation of horizontal equity in public provision of health services. A case study of Spain, 1987-1995], Madrid: Universidad Complutense, PhD Dissertation, 1999.

(13) Navarro V, Benach J and the Scientific Commission for the study of health inequalities in Spain, *Desigualdades sociales en salud en España* [Social Inequalities in health in Spain], Madrid: Ministerio de Sanidad y Consumo, 1996.

(14) Daponte A, *Socioeconomic environment and trends in inequalities in health in Spain (1987-2001)*, PhD Dissertation (in press).

(15) Artazcoz L, Cortes I, Benach J, Benavides FG, Les desigualtats en la salut laboral [Occupational health inequalities], in Borrell C, Benach J (coords), *Desigualtats en salut a Catalunya* [Health inequalities in Catalonia], Barcelona: Mediterrànea, 2003;251-282.

(16) Benach J, Amable M, Muntaner C, Artazcoz L, Cortés I, Menéndez M, Benavides FG, *Work-related health inequalities in Spain* (in press).

(17) Amable M, Benach J, González S, La precariedad laboral y su impacto sobre la salud: conceptos y resultados preliminares de un estudio multi-métodos, *Arch Prev Riesgos Laboral*, 2001;4:169-184.

(18) Artazcoz L, Borrell C, Benach J, Gender inequalities in health among workers: the relation with family demands, *J Epidemiol Community Health*, 2001; 55: 639-647.

(19) Vogel L, Spain: preventive services well below par, *TUTB Newsletter*, No. 21, June 2003: 32.

(20) Instituto Nacional de Seguridad e Higiene en el Trabajo (INSHT), *Plan nacional de seguimiento de empresas con alta siniestralidad*, Madrid, 2001.

(21) Boletín Oficial del Parlamento de Navarra, Declaración política sobre siniestralidad laboral en Navara, No. 36, 31 March 2001:9-16.

(22) Benavides FG, Delclos GL, Cooper SP, Benach J, Comparison of Fatal Occupational Injury Surveillance Systems between the European Union and the United States, *Am J Industrial Medicine*, 2003;44:385-391.

(23) Artazcoz L, Encuesta sobre condiciones de trabajo: reflexiones y sugerencias [Working Conditions Survey: reflections and suggestions], *Arch Prev Lab*, 2003;6:1-3.

(24) Whitehead M, Diffusion of ideas on social inequalities in health: A European Perspective, *The Milbank Quarterly*, 1998;76:469-92.

(25) Borrell C, Benach J (eds), *Desigualtats en salut a Catalunya* [Health inequalities in Catalonia], Barcelona: Mediterrànea, 2003.

(26) Boix P, Sprint o carrera de fondo. Reflexiones para un balance de situación acerca de la prevención de riesgos laborales, *Cuadernos de Relaciones Laborales*, 1999;14:17-32.

(27) García Jiménez J, Report presented in a conference organized by the Greek general confederation of labour, Piraeus, april 2003.

(28) Bonet X, Centre d'Estudis i Recerca Sindicals (CERES) [Trade Union Research and Studies Centre], Personal communication, January 2004.

(29) Miguélez F, Strike over accidents and subcontracting in construction sector, 2000. Accessible in: <http://www.eiro.eurofound.eu.int/2000/04/word/es0004282fes.doc>. [page visited: 08-01-04].

(30) García J, ¿Quién paga la no prevención? [Who pays the lack of prevention], *Por experiencia*, No. 23, January 2004:8.

(31) Benach J, Muntaner C, Benavides FG, Amable M, Jódar P, A new occupational health agenda for a new work environment, *Scand J Work Environ Health*, 2002;28:191-6.



## Developments in preventive systems across the European Union

It is clearly not possible to give a full picture of all the changes in preventive systems across the entire European Union in a few short pages. They differ materially from one country to the next, and the causes of what can be seen to be happening are many and complex.

If I had to sum up the situation in a few words, it would be that preventive systems have gone through a cycle of patchy and incomplete reforms. The first substantive changes and innovations raised expectations to a high level. Substantive progress has been made in many countries. The opportunity offered by the directives to reform under-performing preventive systems has met with a varying response in different countries. But the job has been left half-finished, leaving worrying signs of stunted development and shortcomings. The danger in this is that it may give rise to indifference and acceptance of the inevitable.

### Unimpressive results

Why stunted development and shortcomings? It is a judgement based on an analysis of two things. Most important is the disturbingly poor performance of preventive systems. But also, we now have the distance needed to identify the failings of the strategies pursued.

How can we judge the changes that have occurred in preventive systems? The question goes to a complex set of arrangements, how each works, how they all work in concert and how far they can really address needs that are themselves changing. It is clear that simply "adding up the numbers" derived from a set of quantitative indicators will only give a small part of the answer. Two kinds of indicator are used to performance-check preventive systems: indicators of outcomes, which give an approximate measure of the extent of work-related health damage, and indicators of resources - essentially, prevention provision.

Each type of indicator has its own specific limitations that must be analysed before any conclusions can be drawn. Occupational diseases are a telling case in point. With an all-EU range of nearly one to fifty in the number of recognized new cases per 100 000 covered workers, the data on occupational diseases give a very distorted picture of the real health impact of working conditions (Eurogip, 2002). Counter-intuitive as it would be to deduce from this that the

countries which recognize fewest diseases are probably those that put the least focus on work-related illnesses, the flagrant failure of Community attempts to harmonize recognition of occupational diseases allows of no other conclusion (Vogel, 2001).

However, the failings of conventional performance indicators must not be allowed to conceal the fact that working conditions have declined generally, and this is a contributory factor to social inequalities in health.

Available indicators of resources are few and far between. This is a key weakness of the changes in train at both Community and national level. Not many countries have made systematic attempts to performance-check the provision set up to safeguard workers' health. There is an almost total lack of this at Community level, but the odd source at national level.

- In Italy, the coordinating committee of regions and autonomous provinces recently published a survey of preventive provision in over 8 000 firms with at least six employees (Coordinamento..., 2003). It is the biggest such survey conducted in the European Union in recent years. The findings paint a mixed picture. There has been some progress made in setting up some forms of prevention provision, and employee representation is found in a growing number of firms. But many firms are just going through the motions and sticking to the letter of the law, and failing to properly programme preventive activities. The general finding is that prevention is still very much a "side-car" activity, fairly marginal to the company's management and work organization choices. Many employers are content just to set up a preventive service without creating a real prevention system.

- In Spain, surveys of working conditions also provide evidence that preventive provision is often a matter of lip service, and that prevention activities only rarely form an integrated and rounded whole<sup>1</sup>. These surveys also reveal the gender impact of failure to apply the rules - women workers tend to have less access than men to all preventive provision. The national findings are borne out by different surveys done in the Autonomous Communities (INSL, 2000).

- For a number of years now, the Dutch Ministry of Social Affairs has been publishing an "Arbobalans"

<sup>1</sup> IV Encuesta Nacional de Condiciones de Trabajo: [http://www.mtas.es/insh/estadistics/enct\\_4.htm](http://www.mtas.es/insh/estadistics/enct_4.htm).



report on different aspects of preventive provision and some performance indicators for occupational health (MSZ, 2002). Material progress has been made on some indicators (especially the number of workers covered by preventive services), but other findings give far more cause for concern. Prevention is mainly geared to cutting sickness absences. It disregards long-term health issues, and opts for immediate individual or technical solutions rather than changes to work organization.

These are just three examples. Other, often less systematic, data to be found in most other member States (DRT, 2003 ; HSE, 1999 ; Marklund, 2001) bear out the assessment that application of the Framework Directive and the measures transposing it into national law is often a tick-box exercise. The employer's safety obligation, which should address all aspects of working conditions that affect health, is generally flouted. In some countries, flouting this obligation is made easier by legal obstacles like the "reasonably practicable" clause kept by the United Kingdom which considerably weakens the scope of the safety obligation (James and Walters, 1999). Coverage of workers by health and safety representatives as well as preventive services is patchy. In some countries, very large numbers of workers are completely excluded from provision.

It is safe to say that the substantive aims of the Framework Directive have not nearly been delivered. The TUTB will publish a report later this year giving a more detailed analysis of this assessment.

Preventive services were dealt with in a *TUTB Newsletter* special report in 2003 (Vogel, 2003). What seems clear is that 50% of workers in the EU have no access to preventive services. Most existing services are not fully multidisciplinary. The activities of many do not reflect the hierarchy of preventive measures laid down in the Framework Directive and some have little to do with prevention (in particular, the sickness absence control which is a central focus in the Netherlands). The capabilities and aptitudes required are not always defined in detail in some countries, while in many countries, health surveillance is not necessarily done by occupational health doctors. Women workers seem to be less well-covered than men by good quality preventive services.

## The Commission report on the application of the Framework Directive

The Commission finally published its report on the application of the Framework Directive and five individual directives on 5 February 2004\*. A more detailed analysis will be posted on the TUTB website shortly. Meanwhile, a brief general assessment can be given.

- The report's main plus point is that it attempts to assess how the directives are being applied in the workplace rather than just giving a general description of the transposing legislation. The report's description of the situation is acceptable, barring some reservations and differences of opinion on particular aspects.
- While it is right to focus most of the report on practical application, it would be wrong to assume that compliance of transposing legislation no longer needs to be checked and monitored.
- The analysis comes up with no real practical prospects for Community action. The report re-enacts the failings of the Communication on the strategy for 2002-2006, even though the analysis highlights a string of shortcomings. It ought to be backed up by proposals for action, therefore. The report gives the impression of a Commission on the defensive, looking for ways to justify the existence of occupational safety and health directives against continuing deregulatory pressure from employers and governments.
- Worker participation is one issue on which trade unionism and the Commission most part company. We agree with the assessment that the present levels of participation are far from satisfactory in terms of the Framework Directive's objectives and prevention needs. But the Commission's description is cursory and its analysis superficial. The major point of difference is that we believe that organized forms of worker representation in health and safety are a precondition for active and effective participation. The existence of specific bodies is certainly never sufficient by itself. Other factors - like information, training, ability of trade unions to support the daily activities of workers' representatives, etc. - also play into it. The Commission is against organized bodies and participation. The following passage gives a flavour of its viewpoint : *"In Member States with a clearly defined culture in co-management, a negative trend has been observed concerning the institutionalised representation of interests. The more clearly defined employment relationships and the higher the number of institutions and committees dealing with occupational safety and health, the less likely workers themselves actively participate in the definition of the prevention policy in the enterprise"*. It is a stance that is contradicted by shopfloor evidence. The situation in firms that have no institutional form of representation for workers in health and safety is markedly worse than in firms that do.
- The report deals only patchily with two points that we see as fundamental to an assessment of the situation. One is the growth of contingent employment. The other is about framing coherent national prevention policies based on an overall strategy. This is among the key lessons to be learned from the transposition of the Framework Directive. The precondition for effective application of the Directive is for the public authorities to frame an overall policy on occupational health and allocate the resources with which to implement it.

\*The full version can be found at :

<http://europa.eu.int/eur-lex/fr/com/cnc/2004/com2004-0062en01.pdf>.



Employee representation in health and safety is central to any workplace health policy. But in most European countries, a large number of workers have no such representation. The TUTB is currently surveying this issue, and the initial findings are that not much progress has been made, and in some countries like the United Kingdom and Denmark, things are actually even worse than before.

Structured representation for workers is the precondition for any worker participation in health and safety. Obviously, just having such a representation body is not necessarily enough to ensure effective participation, but experience in all the European Union countries shows that where such representation is lacking, the forms of direct participation sometimes propounded by employers are just a smokescreen. In some EU countries, regulations have been brought in to organize this kind of "direct participation" in firms with no mechanisms for representation. The United Kingdom and Belgium are cases in point. These regulations have delivered no benefits. Their sole purpose is to avoid possible irregularity proceedings.

Italian and Spanish data point up the very strong connection between worker representation and the establishment of a prevention system in the workplace (INSHT, 2001 ; Coordinamento, 2003). In Spain, a survey of firms with the highest work accident rates shows that 76.2% of firms that had undertaken no preventive activities did not have prevention reps, whereas 76% of those that had undertaken all the preventive activities covered by the survey did have. In Italy, the survey done by the regional coordinating committee highlights the same direct link between worker representation and the quality of company prevention policy.

What is harder to say is how employers are living up to their safety obligations. How far are they setting up planned prevention aimed first at eliminating risks ? How good is their risk assessment and what does it mean in terms of a coherent action plan ? Are the long-term risks to health going ignored ? The general impression is that for most employers, prevention is still a sideshow, often a tick-box exercise with no bearing on business policy options. In a significant minority of cases, even paper compliance with obligations may not be guaranteed. Employers tend to have one of two attitudes towards worker participation, both equally bad for prevention. One is to see worker participation as a consensus-shaping tool, a way of drawing workers' representatives into the business management system, co-opting them for "mini-resource person" jobs, even as part of a disciplinary control system. The other is simply to go through the motions. In Italy, for example, Ministerial circulars and pressure from the health and safety inspectorate were needed to bring home to employers their duty to consult workers' representatives in the risk assessment process.

In most countries, public involvement in the working of the prevention system has not been attuned to the new needs created by the partial reforms made and changing patterns of work. This is one main reason why the reforms made do not hang together.

States have tended to downplay enforcement and penalties. Health and safety inspection system resources have not been increased or have been cut at a time when the complexity of inspection duties and fragmentation of work mean that resources should be increased. In some countries, the justice system has played a slightly increased role through the criminal and civil courts. But the criminal law remains a weak tool with which to address the scale of damage to health. Employers escape liability virtually scot-free, even for fatal accidents or exposure to chemical substances that cause fatal illnesses. Right across the European Union, harsher punishment tends to be meted out to migrant workers without the right paperwork, like residence permits or entry visas, than to employers who have not taken preventive measures and caused workers to die in accidents or as a result of work-related illnesses.

In most cases, there is very little linkage between occupational health and other public policies, like environmental protection and public health. Italy's public prevention services have built up a wealth of experience over a quarter of a century in joining up occupational health and public health. For several years now, that empirical knowledge has been put at risk by the uncontrolled development of an unregulated market in private prevention and consultancy services and the undermining of the national health service.

Other functions like research, collectivization of experiences, information and support to workers' representatives tend to be disregarded by the public authorities.

On a more general note, questions arise as to whether the legislative reforms that have taken place are backed by real national strategies for occupational health. Debates designed to frame such strategies that have taken place in some EU member States (Walters, ed., 2002) have not led on to a coherent prevention system. Nowhere have the public authorities had the courage to stand firm against employers' demands for self-regulation, and the policies pursued have often been spun on the false premise that occupational health is no longer a vexed issue.

Recognition that a conflict of interests exists, however, is key to putting in place an effective occupational health policy. Were the profit motive to be inherently consistent with a high level of health and safety, the public authorities would not need to be much involved. A string of recent studies have shown that unhealthy working conditions are not inconsistent with high productivity and profit levels. In the



United States and France alike, flexibility, new quality management systems and multitasking have been found to be implicated in higher work accident rates (Askenazy, 2000 ; Hamon-Cholet, 2002 ; Askenazy & Caroli, 2003). Where musculoskeletal disorders and stress are concerned, there is a clear link between damage to health and work intensification.

An occupational health policy does not actively increase business profits, competitiveness or productivity. Its purpose is to place limits on employers' dominion - the power that they have to set working conditions. It is effective only if it takes on board workers' demands that life and health should come before private economic interests.

### Changing patterns of work are not being addressed

Reforms have broadly disregarded the ways in which employment is changing. The growth of contingent employment, the fragmentation of production activities, not least through subcontracting in various guises, and flexibility policies, have led to a situation where the application of labour law is under serious pressure from commercial discipline. This has put one of the elements that drives occupational health law on the line - a body of laws to some extent created to stop employment relations being regulated purely by commercial dictates.

Temporary agency employment exemplifies this. The Directive of 25 June 1991 says that temporary agency workers should as a general rule have the same occupational health rights as other workers. But this paper equality is impossible to achieve, since the Directive fails to lay down specific mechanisms to make the principle workable in practice.

There are no aggregate data on the application of the statutory health and safety provisions for temporary agency workers. The European Commission has never really turned its mind to the problem. But the available evidence from different countries all points the same way. Most of the provisions are going broadly ignored. A Spanish trade union study done in 2001 (Estébanez Tello, 2001), for example, reports a trade union service set up in Madrid in 1998 to handle the problems of temporary agency staff. In not one single case of the 4 000-plus agency staff seen by this service had the user firm complied with its legal duty before setting them to work, to check that the temporary employee had been given a medical check-up and the information and training required for the job they were being employed to do.

The big gap commonly found between law and practice in occupational health becomes a yawning chasm where temporary employment is concerned. Checks done by Belgium's health and safety inspectorate between February and May 2000 found

that 20 of the 23 temporary employment agencies inspected - 87% - did not have half the medical examination records demanded. Ten of the 23 agencies were unable to produce half the employment records requested, and even those that did exist were mostly sketchy at best. The study written by a health and safety inspector concluded that in these records, "Detailed job descriptions are often lacking. The results of the risk assessment are only very rarely included, which suggests that no risk assessment has been done" (Doumont, 2001).

Such a situation has parlous results for health. Here, I shall deal only with work accidents.

In France, the 1998 DARES working conditions survey pointed to a significantly higher work accident rate among temporary agency workers than permanent employees. The all-worker accident rate stands at 8.5%, but 13.3% for temporary agency staff. Only apprentices have higher rates (15.7%).

All obtainable work accident data for Spain points to a close connection between contingent employment and high accident rates. Most data does not distinguish between short-term employment on fixed contracts and temporary agency work. A systematic study of work accident statistics for the period 1988 to 1995 reveals a steady trend : in the eight years under review, the accident incidence rate per thousand workers was 2.47 times higher for temporary than permanent workers. The fatal accident incidence rate was 1.8 times higher (Boix *et al.*, 1997). Research has shown that temporary agency staff have significantly higher accident rates than other types of temporary worker, but the National Institute of Occupational Safety and Health does not keep specific statistics for temporary agency staff. A study done in 2003 on statistics for the period 1996-2002 (UGT, 2003) found that the situation is getting worse - the work accident frequency rate is rising much more sharply among temporary and short-term workers than permanent workers. Between 1996 and 2002, the temporary worker rate rose from 101 to 121 per thousand workers, compared to from 42 to 45 per thousand for permanent workers.

In Belgium, too, temporary agency employees have a significant excess work accident rate. Figures for 2002 report a work accident frequency rate for manual workers of 61.7 compared to 124.56 for temporary agency manual workers. For white-collar staff, the rate is 7.25, but 15.03 among clerical staff sent out by temporary agencies. Approximately the same one-to-two ratio is found in the real severity and overall severity rates.

There are no systematic occupational health data for temporary agency workers outside of the reported accident statistics. This omission itself says much about the failings of public prevention policies. But there is a body of research which supports the view

that the sector's high excess work accident rate is only the tip of the iceberg and that the broad mass of temporary agency workers are exposed to harmful working conditions which are damaging to their health.

Subcontracting also brings in commercial pressures that work against collective control of work. The AZF disaster which occurred in Toulouse on 21 September 2001 is an object lesson in how this works. As in many other chemicals plants, management made extensive use of subcontracting, escalating competition between subcontractors and removing all responsibility for work organization with subcontractor firms from its own authority structure. This is far from being a one-off case. The explosion that occurred on 14 August 2003 in the REPSOL refinery at Puertollano (Spain) had the same hallmarks of a disaster associated with use of subcontract workers pushed to extremes.

Legally-speaking, there is no real technical reason why employers' legal liability should not be extended to all work situations over which a firm exercises a measure of control, just as it would be possible to extend the forms of employee representation to worksite representation for all employees of different firms working on the site.

The real problem is a political one of government deregulation policies that allow significantly greater scope for getting around safety obligations. Changing that means changing the balance of power. Trade unions have a key role to play in delivering that aim.

## Work intensification

Not all work-related health problems can be put down to the growth of casualized and contingent employment. In some instances, there is a direct and obvious link, such as when temporary workers are used to do particularly dangerous work, or when casual staff lack the necessary training, etc. In other cases, the linkages between casualization and wors-

ening working conditions can only be explained away as insecurity seeping into all working conditions, including those of workers with more protection on paper.

This seepage occurs in a range of ways, many of which interact :

- The job content of permanent workers has changed. Their control of the entire production cycle has been weakened, especially when parts of it have been contracted out.
- The informal handing-on of knowledge within workforces is much less the norm.
- Competitive work practices destroy some of the relations of cooperation. Ken Loach's film *Navigators* about a work accident on the privatized railways in Great Britain is a prime example of this.
- Fear of unemployment and insecurity create very strong pressures, making it harder to work out collective strategies to protect health. A Swedish survey showed how youth unemployment acted to worsen the health and working conditions of an entire generation, including those still in work (Novo, 2001).

Spreading casualization goes a long way to explaining how, over the past twenty-five years, employers have managed to respond to declining profit margins by forcing employees to step up the pace of work without meeting massive head-on resistance.

Work intensification cannot be divorced from the introduction of new forms of work organization which have seriously undermined the effectiveness of workers' strategies for resistance.

One good illustration of creeping work intensification is offered by the data from French surveys of working conditions (Cartron and Gollac, 2003). Between 1984 and 1998, the share of workers who reported being subject to constraints of different types rose from 4% to 27%. The combination of industrial and commercial constraints is affecting a growing number of workers in industry and the service sector alike.

Is your pace of work imposed on you by... (you may give more than one answer)	1984	1991	1998
The automatic movement of a product or a part ?	3 %	4 %	6 %
The automatic pace of a machine ?	4 %	6 %	7 %
Other technical constraints (event-driven constraint) ?	7 %	11 %	16 %
Immediate dependence on the work of one or more colleagues ?	11 %	23 %	27 %
Output targets or deadlines to be met within an hour ?	5 %	16 %	23 %
Output targets or deadlines to be met within a day ?	19 %	38 %	43 %
External demand (customers, public) requiring an immediate response ?	28 %	46 %	54 %
External demand (customers, public) not requiring an immediate response ?	39 %	57 %	65 %
Permanent (or at least daily) checks or monitoring by superiors ?	17 %	23 %	29 %

Source : Working Conditions Surveys, 1984, 1991 and 1998 (Insee/Dares). Taken from Cartron and Gollac, 2003.

Specific data which would benefit from being systematized seems to suggest that women's working conditions have worsened more sharply than men's (Vogel, 2003-b).

## **Perversely, in 2004 market rules will be the main playing field**

The interaction between employment rules on occupational health and marketplace rules continues to dog the functioning of preventive systems. Neither the situation regarding work equipment nor that on chemical substances and preparations is good enough. Prevention principles mean that the selection of the material factors with which work is done play a key role.

A proper selection can only be made if a number of key boxes are ticked :

- health and safety requirements must be integrated before goods are placed on the market. That means that inherently unsafe equipment and products must be eliminated from the market ;
- that can only be done through the exercise of effective public controls ;
- it is essential that workers' experience be taken into account so as to improve the design of equipment and products. This involves making the resources available to arrange the feedback of information ;
- there must be detailed information based on a thorough risk assessment on which to base the firm's choices.

Trade unionism has for years put much effort into issues around work equipment and personal protective equipment. But still trade union participation in standardization activities remains vanishingly small. Market controls are patchy and wanting. Much CE-marked equipment fails to satisfy all the essential health and safety requirements. I shall not dwell further on this issue, which was the subject of a TUTB seminar in June 2002 (Tozzi, 2003).

The situation as regards chemicals is more disturbing still. The system as it stands is incomplete and not working properly. It is a three-legged stool :

- Rules on the classification, packaging and labelling of dangerous substances and preparations.
- Rules on restrictions on the marketing and use of certain dangerous substances and preparations.
- Rules on the evaluation of existing and new substances, and drawing up European lists of products.

These rules have been worked out over time from 1967. The main driving force was the chemicals industry's aim to rid itself of barriers to the establishment of a single market for chemicals in the European Union. These commercial considerations outweighed health and environmental protection.

Also, the dozens of Directives passed to amend the basic Directives ended up creating a daunting and complex body of rules - but one riddled with major holes. It fails to address a string of long-term immunological and endocrinological effects on neural development and reproduction, for instance.

The system put in place gives a big advantage to chemicals manufacturers, who have to produce an initial risk assessment on the basis of which they must classify their product and follow a certain number of rules related to the stated risks.

Notification of this initial assessment and its findings is sent to the public authorities, and goes into a Community information system. If no objections are received within a 45-day waiting period, the substance can be put on the market. In practice, public authorities rarely object to a product being placed on the market.

This means that, in many ways, the safety of chemicals is entirely up to the firms that make them. In theory, the drawbacks of this system could be offset by ex-post controls done by the public authorities, who should themselves check chemical substances to see whether they comply with the Community legislation. But there is a huge backlog of such official risk assessments compared to the quantity of substances coming onto the market, which leaves manufacturer assessment as the only benchmark for most substances. The initial risk assessment offers no guarantees of independence. It is done by firms who evidently want to sell what they produce, and results in what may not always be an appropriate classification. An evaluation of surveys done in a range of sectors, published by the European Commission in 1998, reported misclassification in 25% of cases and mislabelling in 40% of cases. Also, manufacturers are putting new substances on the market and not declaring them as dangerous even though they are rightly suspected of being so.

The future regulation of the chemicals market is the focus of fierce ongoing controversy at Community level<sup>2</sup>. The Commission's proposals for reform of the existing system are coming up against systematic lobbying from chemical industry employers, channelled through some governments. While failing to address all the issues<sup>3</sup>, the Commission proposals do at least highlight the importance of information feedback. They tighten up the chemicals industry's obligations, and aim to put an end to the downplaying of the problems created by chemicals that are persistent and bioaccumulative pollutants, as well as by endocrine disruptors.

The systematic disinformation campaign run by the chemicals industry has already had some success in getting different heads of state and government (President Chirac, Chancellor Schroeder and Prime Minister Blair) on board. The Commission proposal

<sup>2</sup> The course of this debate can be tracked on the website of the TUTB (<http://tutb.etuc.org/uk/dossiers/dossier.asp>) and the European Environmental Bureau (<http://www.eeb.org>).

<sup>3</sup> The shortcomings of the Commission's proposed reforms include not lifting the veil of secrecy over key aspects of chemicals industry production, and the failings of policies to have dangerous products replaced by products which are not, or are less, dangerous.

put out in October 2003 falls well short of the initial reform proposals. 2004 will be a turning point. The debates playing out are far and away the most important for workers' health and safety since the 1989 Framework Directive. The problem is that they are all about the Community's commercial policy, and the social aspect of the proposals under discussion is not getting the priority it should do.

It is vital for trade unions to speak with a consistent voice in this debate which affects all workers, not just those in the chemicals industry. Experience shows that the Directives on the use of chemical substances and the prevention of work-related cancers are not being properly applied, largely because of failings in the market rules. Today, the death rate from exposure to dangerous chemicals outstrips that of work accident-related deaths in industrial countries. Health problems are particularly rife in user industries like the building, textiles and metalworking sectors, not to mention service industries like cleaning and health.

For that reason, the fundamental principles of proactive union activity in this area should be :

- Standing up for trade union independence in face of strong pressure from chemicals industry employers through hugely overplayed scaremongering about jobs. In point of fact, any improvement in working conditions has always come with predictions of the direst economic disasters. The experience of asbestos shows the appalling price paid by workers when governments gave in to this kind of blackmail.
- Standing up for solidarity between all categories of workers. The reason is that the worst health damage from exposure to dangerous chemicals is not necessarily found in the basic chemicals industry, but is often suffered by workers in user firms in such things as the textile, building and cleaning industries. More specifically, there is evidence to suggest that women workers are concentrated in sectors and activities where the long-term effects of dangerous substances are less studied and less well-policed.
- Forging alliances with environmental lobbies, feminist groups and public health institutions to ensure that the interests of health and the environment come before the all-out drive for profits.

### **Conclusion : working together within an independent trade union strategy**

Social inequities have widened in all European Community countries over the past twenty years. Resource owners are getting a bigger share of the wealth creation cake than wage earners. Health inequalities have widened, too (Costa, 1998 ; INSERM, 2000). Declining working conditions are a part of this, due in particular to escalating competition created by the globalization of capital. The enlargement of the EU is a major challenge for trade unions. It

widens their sphere of activity, forces them to seek out more effective forms of solidarity, and frame a common strategy for preserving workers' health.

EU enlargement will not automatically bring progress or regression. The European Union provides a general regulatory framework for occupational health. Overall, it is a framework which - though in need of amendment and development in different areas - does offer a means of improving existing preventive systems. But it is not an automatic recipe for an effective prevention strategy, as can be seen both at EU level and in individual member States. Not only that, but it actually contributes to undermine working conditions in other areas. The focus on privatization of public services, employment policies that encourage casualized and contingent working, free movement of capital in an area where there is little by way of a level social playing field are just some of these factors. Arguably, there is a growing gap between the avowed aims of workplace health policies and the outputs of other policies that also shape working conditions. A preventive strategy is about setting priorities, allocating resources to create the means for prompting, supporting, controlling and evaluating the policies adopted. It means looking at preventive systems with a critical eye to see whether they are up to the challenges of changes in work. And the big issue is how they work in practice. The existing rules and knowledge about prevention would enable much health damage to be prevented. The ability of trade unions to marshal rank-and-file energies around workplace health issues is arguably the defining factor in giving a new impetus to public policies in this area. This is because "top-down" reforms tied up with the need to carry the Community directives over into law have largely run out of steam. In this struggle, cooperation between trade unions in the old and new States of the European Union, and in the applicant countries, will be of make-or-break importance. ■



## References

- Artazcoz L, Cortès I, Benach J, Benavides F (2003), Desigualtats en salut laboral, in: Borrell C, Benach J (ed.), *Les desigualtats en la salut a Catalunya*, Barcelona: Mediterrània, pp. 251-282.
- Askenazy P (2000), *The consequences of new workplace practices in the United States*, Paris: CEE-CEPREMAP (full version: [http://www.cee-recherche.fr/fr/sem\\_intens/seance02/Askenazy%202.pdf](http://www.cee-recherche.fr/fr/sem_intens/seance02/Askenazy%202.pdf)).
- Askenazy P, Caroli E (2003), Pratiques "innovantes", accidents du travail et charge mentale: résultats de l'enquête française "Conditions de travail 1998", *Pistes*, Vol. 5, No. 1, pp. 20-25.
- Benach J, Gimeno D, Benavides F (2002), *Types of employment and health in the European Union*, Dublin: European Foundation for the Improvement of Living and Working Conditions.
- CFDT (2001), *Le travail en questions. Enquête sur les mutations du travail*, Paris: Syros.
- Boix P, Orts E, López MJ, Rodrigo F (1997), Trabajo temporal y siniestralidad laboral en España en el período 1988-1995, *Cuadernos de Relaciones Laborales*, No. 11, pp. 275-319.
- Cartron D, Gollac M (2003), *Intensité et conditions de travail*, Quatre Pages (EEC), No. 58, July 2003.
- Costa G, Cardano M, Demaria M (1998), Torino, *Storie di salute in una grande città*, Turin: Città di Torino, Ufficio di statistica.
- Coordinamento (Coordinamentotecnico interregionale della prevenzione nei luoghi di lavoro) (2003), *Rapporto conclusivo del progetto di monitoraggio e controllo dell'applicazione del DLgs 626/94*, Bologna.
- Daubas-Letourneux V, Thébaud-Mony A (2002), *Organisation du travail et santé dans l'Union Européenne*, Dublin: European Foundation for the Improvement of Living and Working Conditions.
- Doumont F (2001), *Protection de la santé et de la sécurité du travailleurs intérimaires. Etat de la question dans le cadre de l'évaluation de l'application du Code sur le bien-être au travail*, Brussels.
- DRT (Direction des relations du travail) (2003), *Conditions de travail. Bilan 2002*, not for sale.
- Estébanez Tello I (2002), *Las empresas de trabajo temporal*, Madrid: Comisiones Obreras, Federación de servicios financieros y administrativos.
- Eurogip (2002), *Occupational diseases in Europe – Comparative study on 15 countries*, Paris: Eurogip.
- European Commission (1998), *Report on the operation of directive 67/548 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances; Directive 88/379 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous preparations; Regulation 793/93 on the evaluation and control of the risks of existing substances; Directive 76/769 on the approximation of laws, regulations and administrative provisions of the Member States relating to the restrictions on the marketing and use of certain dangerous substances and preparations*, Brussels: European Commission.
- Goudswaard A, Andries, F (2002), *Employment status and working conditions*, Dublin: European Foundation for the Improvement of Living and Working Conditions.
- Hamon-Cholet S (2002), Accidents, accidentés et organisation du travail. Résultats de l'enquête sur les conditions de travail de 1998, *Premières synthèses*, DARES, No. 20.1.
- HSE (Health and Safety Executive) (1999), *The costs to Britain of workplace accidents and work-related ill health in 1995-96*, s.l.: HSE books.
- Inserm (2000), *Les Inégalités sociales de santé*, Paris: Editions La Découverte.
- INSHT (2001), *Plan nacional de seguimiento de empresas con alta siniestralidad*, Madrid.
- INSL (Instituto Navarro de Salud Laboral) (2000), *Diagnóstico de Salud Laboral en Navarra*, Pamplona.
- IPL (Istituto per il Lavoro) (2001), *Salute e sicurezza in Emilia Romagna*, FrancoAngeli, Milan, 2001.
- James P, Walters D (1999), *Regulating Health and Safety at Work: The Way Forward*, London: Institute of Employment Rights.
- Lehto A-M, Sutela H (1999), *Efficient, More Efficient, Exhausted. Findings of Finnish Quality of Work Life Surveys 1977-1997*, Helsinki: Statistics Finland, Labour Market.
- Marklund S (ed.) (2001), *Worklife and Health in Sweden 2000*, Stockholm.
- MSZ (Ministerie van Sociale Zaken en Werkgelegenheid) (2002), *Arbobaalans2002. Arbeidsrisico's, effecten en maatregelen in Nederland*, The Hague.
- Navarro V (2002), *The political economy of social inequalities: consequences for health and quality of life*, Amityville: Baywood Publishing Company.
- Novo M, Hammarström A, Janlert U (2001), Do high levels of unemployment influence the health of those who are not unemployed? A gendered comparison of young men and women during boom and recession, *Social Science & Medicine*, vol. 54, No. 8, pp. 1243-1254.
- Tozzi GA (2003), The Machinery Directive, gains and challenges for the New Approach, *TUTB Newsletter*, No. 21, pp. 3-7.
- UGT (Unión General de Trabajadores) (2003), *Evolución de la siniestralidad en España 1996-2002*, Madrid.
- Vogel L (2001), De l'indemnisation à la prévention: ambiguïtés et impasses dans le régime juridique des maladies professionnelles en Europe, in: Actes du colloque organisé par la Faculté de Droit de Clermont-Ferrand "Améliorer la prise en charge des maladies professionnelles", special issue of *la Revue juridique d'Auvergne*, pp. 73-100.
- Vogel L (2003), Preventive services, special report, *TUTB Newsletter*, No. 21, pp. 19-41.
- Walters D (ed.) (2002), *Regulating Health and Safety Management in European Union. A Study of the Dynamics of Change*, Brussels, P.I.E.-Peter Lang.

## The state of play.

### Trends and needs in the accession countries

#### Introduction

Occupational health and safety (OHS) is declining throughout the European Union and in accession and candidate countries<sup>1</sup> as a result of factors that vary from country to country. The main contributors in current member States are new forms of employment relationship and changes in work organization. In the past, firms were responsible for the health and safety of their workers at work and broadly tended to live up to their obligations. Things began to change from the 1980s as a result of company restructuring. Firms were "chunked down" into smaller autonomous units, which were subcontracted by their owners. A long chain of subcontractors makes it easy to lose track of who is accountable. This eventually leads to poor OHS conditions, poor training and in many cases, to a lack of OHS awareness.

**Viktor Kempa**  
TUTB Researcher, Brussels



Many economic and political changes have taken place in the new countries since 1989. These countries have gone from a planned economy to a market economy and almost all state enterprises have become private firms. The transfer of ownership was a rapid, often uncontrolled, process. Rampant corruption which went unpunished caused a loss of confidence in the system. Also, the transition period had a negative impact on GNP growth and living standards. Unemployment rose and the informal sector expanded substantially. The populace was left footing the bill for transition.

In most new countries, the new entrepreneurs had the capitalist mentality, but little experience of how to run a business, and OHS was totally disregarded. When profit is the overriding aim, OHS takes a back seat, and this was acknowledged by most governments. OHS was seen as a curb on business. Moreover, the previous rapid switch to a market economy, also described as "uncontrolled capitalism", destroyed elements of the OHS system – like occupational health services – that had been working well.

The trend in the new countries mirrored that in the EU. The company base expanded significantly. For each existing enterprise, fifty new ones were created, averaging a 500% increase in the number of enterprises. This meant there were too few labour

inspectors to go round. Trade unions, as traditional defenders of OHS, lost power and influence as their memberships declined.

#### Trade union project on evaluation

The TUTB has been keeping the national confederations in the new countries briefed on developments in the EU since the early 90s. Their representatives were invited to take part as observers and/or participants in various training courses and working groups. At the beginning of 2000, the TUTB launched a project centered mainly around the writing of national reports as a means for national trade union confederations in the new countries to supply the TUTB with detailed information on developments in the field of OHS. Trade union priorities, like social dialogue, are also evaluated in these reports. So far, reports have come in from Estonia, Poland, the Czech Republic, Bulgaria, Slovakia and Romania. That on Lithuania is in preparation. Although the project has not yet been completed, the main trends that have emerged from the reports are as follows.

#### The overall picture is not very encouraging

##### Context diversity

Different historical, political and economic backgrounds are factors that shape the pace of changes: it is why some countries undergo rapid change, while others do not.

Some countries, too, have transposed EU legislation into their own systems without heed for their own laws. This has produced paper changes only, when EU legislation sets objectives to be met and evaluated by means of a follow-up. The gap between theory and practice remains enormous in many cases. Countries have been reporting full harmonization with EU legislation when their legal systems still permit dangerous working conditions. It is even common practice in some countries to encourage workers to accept such conditions by bonuses or other incentives.

##### Economic aspects

A country's economic situation determines the standard of its OHS. The job market is also an indication of the working conditions people have to endure – job insecurity is higher in the new countries than in the existing EU.

<sup>1</sup> Referred to as "the new countries" in this article.

The structure of the economy is also significant. The new countries have a much higher proportion of workers in sectors with a higher level of work-related risks. Agriculture is a case in point. More than 18% of the new countries' workforce is employed in agriculture, nearly four times that of EU countries (1). Its characteristics make it a very problematic sector in terms of work-related risks as well as the structure of its workforce. But so-called "traditional risks" such as noise, vibrations or manual handling are also common in other sectors which are the backbone of many economies in the new countries.

### **Rebuilding law and structures**

Poor protection has in the past been a cause of accidents at the workplace, resulting in absenteeism and long-term illnesses which incur huge financial losses to enterprises and consequently to the state. The ILO estimates the work-related fatality rate as twice to three times higher in many new countries than in EU countries (2). Similarly the Commission Strategy on health and safety at work describes these situations as follows : "What is more, the new countries have an average frequency of occupational accidents which is well above the average for the EU, mainly because of their higher degree of specialization in sectors which are traditionally regarded as high-risk" (3).

Before EU legislation can be applied satisfactorily and the quality of work and OHS regulations monitored, the first and most important thing to do is to rebuild legislation and institutions. They form the framework within which OHS regulations can be successfully implemented under EU law. A preventive approach to OHS also requires a stable framework.

This procedure should have been completed over the past ten years, but has not been. Measures are now needed to see that deadlines can be met, and this process must be monitored step by step to see that they are.

### **Implementation**

In most cases, the standard of harmonized legislation is unsatisfactory and its implementation is even worse. It is a long-term process which has to be monitored every step of the way, from a prevention approach to an evaluation of the quality of work. Trade unions have tended to be on the back foot during the transition period. Occupational health and safety remains sidetracked while other structural, financial and institutional issues have been given priority (4). It is clear that new, improved wide-ranging strategies are required in this field. Health and safety representatives should be given multilevel training. Implementation of effective tools and procedures would also enable trade unions to be actively involved.

### **Transposing and implementing : a heavy workload**

Mountains of paperwork are being generated to implement and in some cases to adapt legislation

to fit in with existing legislation. Those involved are experiencing what is known as "harmonization fatigue" because of the time-frame. The changes had to be all completed within ten years. So, adaptation and implementation cannot be expected to be a total success right from the start. Some adjustments may be necessary at a later stage.

### **Social dialogue and poor communication**

In most new countries, the historical background has had a big influence on the work hierarchy. The scope of the social dialogue was limited under the old regime, and also not of the same kind as that in EU countries.

The social dialogue has not been a priority in the new countries in the past decade, because employers have not tended to see it as relevant. Although there have been positive signs of change in recent years, governments must give their full backing to the implementation of procedures to foster a working social dialogue.

By and large, company infrastructures do not foster adequate communication between employers and employees. Employees tend not to discuss problems with their employer and put up with poor working conditions for fear of losing their job.

Improved communication helps to :

- Encourage an extensive social dialogue
- Promote better worker representation in OHS
- Work towards a better economy

Positive results will become noticeable when progress is achieved in these three spheres.

### **State viewpoint**

The implementation of OHS standards is often a costly business. A country in financial straits tends not to see OHS as a priority. This is the case with the new countries, and even some "low-cost" measures may not be being implemented. Authoritarian regimes encourage passivity and a lack of accountability and responsibility. Changing mentalities is a gradual process because it is not easy to switch overnight from one system to another. But the process cannot operate on its own and must be supported by the state.

The old approach believed it was enough to comply with established legally-binding standards and regulations, whereas the European approach requires risk assessment and places more emphasis on individual involvement and responsibilities – meaning owners, management and all workers. This requires everyone to have an in-depth knowledge of procedures. From this viewpoint, relevant legislation in the new countries can be judged as being too weak or vague. Health and safety training for workers and their representatives is of the utmost importance.

### Lack of coordination

In the past, authorities with responsibility for OHS in many countries have tended to operate independently without regard for what others are doing. This results in a lack of joined-up working on OHS. Labour inspectors have had to change their approach and work methodology in the last decade. More emphasis must be placed on the full application of OHS (e.g., technical, medical, etc.) including interaction between all work-related spheres. The OHS knowledge of labour inspectors also has to be developed and extended for them to fulfill their advisory role. Nevertheless, the recent reports indicate, that in this field, there is still much to do : "Another point to emerge was that some labour inspectors accept very serious risk situations or caution an employee in a risk situation directly" (5).

The appointment of a public body is vital from a coordination point of view. Its functions would be to oversee the application and coordination of :

- Legislation
- Social dialogue
- Phased-in measures
- Best practices which act as guidelines
- Economic incentives

In other words, a public body would build a partnership among all those involved in OHS.

### Enterprise level and the role of employers

OHS is not a priority for companies for two reasons: firstly, they lack the funds to develop it, and secondly, many employers are unable to understand the complexity and the importance of adequate health and safety at the workplace.

Employers generally should be made to understand that failure to take preventive actions to improve OHS will incur them significantly higher insurance contributions, because most insurance funds are running a deficit as a result of high workplace accident and occupational disease rates.

How do employers assume greater responsibility for OHS, especially in countries where they used to act on behalf of the state and took no interest in employees' complaints ?

Change could be brought about through state health and safety authorities' enforcement action, and with help from employers' organizations and trade unions. Activities and training could motivate, as well as inform and educate them and eventually help them develop a sense of responsibility and accountability. Training is of the utmost importance in resolving key issues between employers and employees.

### Danger of deregulation

Many employers are advocates of deregulation in order to rid themselves of as much legislation as possible. Deregulation would have an adverse effect

on an enlarged Europe because it would drive down production costs, and OHS conditions. Trade unions want to enforce existing legislation as being essential for the effective running of business. The main objective of a proper legal framework, however, must remain the protection of workers.

### New risks

Where stress-related illnesses are concerned, it is a known fact that the new countries have more problems than EU countries (6). To avoid the negative side-effects of these problems, employees should be given more autonomy and control over their work. Their issues should be resolved through social dialogue. On average, only 25% of the workforce in new countries is covered by collective agreements. Approximately the same percentage of workers is covered by representation in OHS.

### Proposed measures

One basic problem with enforcement is the lack of reliable data on OHS in the new countries. An accurate description of situations, a database of comparable indicators and reports from workplaces are essential before meaningful work can be undertaken. At present, this information is not available.

Valuable as it is to source information from the workplace, it is even more important to correct the system so as to improve it. This is why training and education should become a priority. Building people's awareness and knowledge makes the workplace social dialogue an effective tool for delivering positive and hence more meaningful changes.

What is to be done about OHS in the new countries, most of which are in a parlous economic state, given that the economic framework affects the quality of OHS for good or bad ? Excellence in OHS cannot be expected in poor countries struggling with high unemployment, low wages and old-fashioned technologies. What are required are steps to remedy this situation before tightening up enforcement of health and safety at work.

Health and safety requirements need to be spelled out and set as a long-term priority by governments in the new countries. Society, work and the economy will all benefit from an improved OHS system. The social partners must have a central role in all decision-making. Economic incentives need to form part of the policy, along with specific OHS legislation. Legal requirements should be implemented and checked by means of a reliable verification system.

The State bears particular responsibility for implementing and operating the OHS system in a country. Inadequate implementation causes accidents, which are not acceptable for trade unions. This is one reason why trade unions must be involved directly in



decision-making and especially in measuring the effectiveness of a system.

The OHS outlook in the new countries is not promising, because only a small minority of enterprises are living up to the fundamental principles of the Framework Directive, leaving the appropriate preventive environment still to be created.

- Efficient risk assessment procedures are not widely applied.
- Preventive and protective service provision for workers is found only in a very few of the hundreds of thousands of firms now in existence.
- The social dialogue on OHS in the form of information, consultation and participation is not a standard procedure in workplaces.

### Network building

What can trade unions do when economic factors are arguably such a daunting obstacle? One essential trade union activity in the new countries should be to set up networks of experts at branch/territorial and national levels to support workers' health and safety representatives. Most representatives in the new countries are trade unionists. Therefore, trade unions have to create stable networks and other representatives, such as from work councils or similar forms of representation, should also be included.

These networks need to be created to provide a tool for the exchange of information and dissemination of examples of good practice. They would also in part act as training providers. It is clear that national trade union confederations have to be active in this area.

The support given to workers' health and safety representatives is cardinal important. The factors examined so far clearly show that the quality of OHS needs to be considerably improved. The trade unions should reconsider how to mobilize their human and financial resources, build new capacities in OHS, and reinforce trade union policy in this area through the involvement of more and better trained workers.

### Potential to implement changes and develop capabilities

Trade unions can leverage change (4) (7). But whatever their influence in the workplace, they need to be backed by institutions and political structures. As yet, this is not happening, which makes their job difficult. Trade unions could play a key role in OHS by further developing the knowledge and skills of trade union representatives. But experience tells that trade unions also need cooperation and support from the state in OHS matters.

European trade unions need to develop systems of multilevel training. They also need to frame and implement a training agenda, while the European Commission should also give this project its support as being an effective way to make use of trade union

representatives or other systems of workers representation in order to develop an in-depth knowledge of OHS.

Trade unions face a tremendous challenge. They are expected to become involved in the extensive training of worker representatives as well as improving the social dialogue, which needs to be more structured. It would be difficult to improve OHS without achieving these objectives. In the future, trade unions will have a significant role to play. ■

### References

- (1) *Working conditions in the acceding and candidate countries*, European Foundation for the Improvement of Living and Working Conditions, Dublin, 2003.
- (2) J. Takala, Global estimates of Fatal Occupational Accidents, Special Supplement, *ILO-CIS Bulletin*, No. 1, Vol. 13-1999.
- (3) *Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006*, Commission of the European Communities, Brussels, 11 March 2002, COM(2002) 118 final.
- (4) A. Rice and P. Repo, *Health and safety at the Workplace - Trade Union Experiences in Central and Eastern Europe*, ILO-CEET, Budapest, 2000.
- (5) *Evaluation of health and safety at work in 12 candidate countries*, EUROGIP, 2003.
- (6) Overall fatigue 41%, stress 29%. *Working conditions in the acceding and candidate countries*, European Foundation for the Improvement of Living and Working Conditions, Dublin, 2003.
- (7) K. Frick, P. Jensen, M. Quinlan and T. Wilthagen, *Systematic Occupational Health and Safety management*, Elsevier Science, 2000, pp. 45-50.

## Analysis of national occupational health and safety policies

Contributors to the workshop came from Bulgaria, Finland, Lithuania, Romania, Slovenia Sweden, and UK.

The workshop provided insights into and discussion of a diverse range of national occupational health and safety policies from old and new/candidate member States, large and small countries, countries that were international leaders in the field and those countries just embarking on the EU path. All countries had histories of health and safety at work activities and different traditions and strengths to draw on and the session papers revealed how in some instances, effective structures in pre-accession States may have been dismantled or downgraded and their replacements sometimes not fully tested.

The workshop was also provided with a valuable over-arching perspective on the EU's framework health and safety directive and the tensions between non-prescriptive and prescriptive, centralised and decentralised approaches to that directive. In this context, governments "fixated on business friendly policies" eager to deregulate and self-regulate and those with a greater commitment to social justice and public sector strategies typified some of the nation-specific approaches that the workshop covered.

The challenges and opportunities facing an enlarged Europe are many and diverse, yet as the workshop demonstrated, the fundamental issues in occupational health and safety across not only Europe but the world often remain the same or remarkably similar for policy makers and policy analysts. These often relate to basic problems. They include issues surrounding hazard identification and impacts of hazards on employees which may or may not be modified by complex or crude strategies surrounding risk assessment and risk management. The role and significance of the technical and engineering knowledge base available to remove or reduce those hazards. The development and application of wide skills of employers, managers and their staff to apply that knowledge base to hazard identification, removal and reduction. The capacity of companies and organisations to reject, resist or reduce demands for hazard removal. The commitment of governments and the EU to hazard removal and reduction and hence to determine the power, activity, resources and capacity of the labour inspectorates to carry out effective regulation and enforcement of hazard removal or reduction linked to support,

information and advice to employer and employee organisations to achieve the highest occupational health and safety practices possible in all organisations. The power of organised labour to press effectively for best practice in workplace occupational health and safety. The ability of those media and NGOs linked to occupational health and safety, to raise worker, trade union, public and community awareness of hazards.

A central and long-running debate in addressing such problems relates to the capacity and desire of "managements" to ensure effective hazard removal or incorporate employee and other organisations into systems and practices that fail to resolve major health and safety problems. Linked to this is the debate about the impact of consensus on European health and safety and the ability, capacity and power of worker organisations to affect workplace health and safety standards and practices if they are not involved in risk assessment and risk management structures.

Many studies in recent years have explored occupational health and safety standards and practices in the EU. The impact of EU directives has been a particular focus for research activity. These studies often confirm the assessment that there is little uniformity and no homogeneity in OHSE practice in member States. This often relates to diverse political, economic and cultural reasons more than technical differences. The latter may be addressed by the sharing of work within the EU across member States and hence pooling of knowledge and expertise. The accession countries have produced similar variety both in practices and moves to adopt OHSE directives. In Hungary, for instance, OHSE standards in some petrochemical plants may compare with those now in the EU. Yet all plant maintenance workers at one stage in such plants were placed in sub-contractor categories and no plant managers were able to provide OHSE data on this workforce : a familiar Western European industry tactic. In Slovenia, OHSE standards in some pharmaceutical plants have far exceeded those in the UK. In Romania, oil refinery standards fell far short of those in Western Europe. In the Czech Republic, OHSE conditions in several hospitals exceeded those in the UK but wages, conditions and job security did not.

It should additionally be noted that economic and political developments outside the EU and accession States may have a major impact upon OHSE within the EU. The role of the WTO is self-evidently

**Andrew Watterson**

University of Stirling, United Kingdom

**Corneliu Constantinoia**

CNSLR Fratia, Romania

very influential in this respect and the capacity of the international chemical industry to blunt the REACH proposals also illustrates the same point. In this context, the power of the USA to wreck major environmental initiatives that link to work environment questions is critical. Poor OHSE accountability of multi-national companies in the EU in some senses also still prevails, despite the smoke screens put up by companies involving risk management techniques. This has been demonstrated by the OHSE failings of Swedish companies in Spain, Danish chemical companies in developing countries, Swedish and Canadian companies in the UK and so on.

### Infrastructure and coordination

The EU has country-wide organisations and institutions that deal with occupational health and safety and related environmental issues. Bodies such as the ETUC, TUTB, EASH and EEA will contribute to the development of a fuller and more widely-disseminated knowledge base and understanding of good and best practice.

The role of labour inspectors concerned all countries and the prevalent view was that, especially where other partners were weak and economic development slow, such inspectors would play a critical role in maintaining or at least preventing serious declines in OHSE. To what extent this would be the case is a matter for debate and whether there was an over-reliance on such inspectors was also undecided. In Lithuania, the integrated working of inspectors was questionable.

### Social partners

In Lithuania, companies had a poor record, and old equipment and poor conditions were to be found in several sectors. Also, SMEs did not respond to regulation in ways that larger companies could and did – a view endorsed by observations from Czech representatives who thought OHS standards had slipped in that country, especially in SMEs. Often, appropriate expertise was lacking.

In countries like Finland, the problems of ageing workers and older workers needing to work longer is major occupational health and safety challenge, as are the psychosocial challenges of work organisation and relative neglect of gender issues in the workplace.

In Slovenia, there is evidence that in the early 1990s, partners like occupational physicians were effectively privatised and hence captured by employers with a concomitant decline in effective occupational health surveillance and occupational disease diagnosis in workplaces. Compensation for occupational diseases had plummeted in the 1990s. Only from 1999 did laws start to redress the position on occupational health.

In Sweden, which in many respects was an exemplar of good occupational health and safety practice, employers still presented significant threats to workers' health, especially in terms of musculoskeletal diseases, stress (also a major problem in Finland), absenteeism and early retirement. As social partners, some employers still left much to be desired and had neglected work organisation problems in the 1980s, as had government. How to achieve the ideal of "continuous OHSE improvement" was still a challenge.

In Bulgaria, the role of the media, not an orthodox partner, in promoting occupational health and preventing employer inactivity, was stressed.

### Unions

Unions have either been unable to recruit in many countries, sometimes linked to threats of violence, or unable to achieve improved OHSE standards. Paradoxically, some sort of consensus approach for these beleaguered unions may prove to be a major advance. Consultation of employers with non-unionised workers on OHSE under the EU directive has often been a sham.

The Swedish paper highlighted the critical importance of trade unions in the process of driving up occupational health and safety standards and protecting standards in recession, although the presence of trade unions still does not guarantee the best health and safety practice. Worker participation and work organisations had become focal issues since the 1970s with the work environment system but it was still a struggle to take forward the OHSE agenda, especially as trade unions weakened in the 1990s.

In Bulgaria, the problems of ensuring effective trade union action are more extensive and require major efforts. Minimum legal OHSE rights for workers have been exceeded in Sweden. In Lithuania, there were growing concerns about worker training and information on occupational health and safety and a significant reliance on a tripartite approach which in the UK, for instance, has recently been challenged in some respects as being ineffective and stifling. Yet in Bulgaria, tripartism offers an important route into the OHSE system and a means to monitor the EU directives that have been widely adopted but which may not be properly implemented with a lack of risk assessments and action on them.

The impact of tripartism on improving OHSE, or at least preventing further decline, has not been thoroughly researched, but national factors may well explain successes and failures: successes in Sweden and failures in some Southern European countries. What is clear is that trade union representatives can provide a major means of checking on OHSE standards, disseminating information and ensuring the most meaningful consultation mechanism on OHSE across the EU and accession countries.

### EU-specific programmes and international agencies

In addition to the extensive work of the TUTB and ETUC on such matters as WRULD and recently gender, there have been real if limited successes in some sectors. For instance, work on print industry solvents produced much useful information that could be readily used by well-organised skilled and usually unionised workers across Europe. The ILO has produced an enormously successful handbook

on participatory action research for trade unionists dealing with occupational health and safety. However, the extent to which bodies such as the WHO and IARC have been able to take forward OHSE is debatable. Smaller activities may have had greater impacts. Examples that demonstrate this are the Danish labour inspectors and their charter, Hazards groups across Europe and EWHN : grass roots workplace and community groups that pool their knowledge and experiences across Europe. ■

### WORKSHOP REPORTS

## Analysis of preventive OSH services : organization and coverage of workers

Miroslav Cikrt

National Institute of Public Health, Czech Republic

The working group comprised representatives of trade unions, employers' and employees' organizations, research institutions, governmental and non-governmental bodies from several countries. Dr. L. Vogel (ETUC) and Prof. M. Cikrt (Czech Republic) gave overviews of the analyses of the situation in preventive services in EU and accession countries and acted as discussion moderators. Five countries (Estonia, Denmark, Italy, Cyprus and Hungary) presented their country reports. The situation varies widely between countries, but the working group identified no truly substantial differences between the member states and accession countries in regard to structures, models and the operation of preventive OHS.

The discussion centred on the following key elements :

- Organization and coverage.
- Strategies of different actors (public authorities, employers, employees, etc.).
- Employers' position on risk assessment.
- Multidisciplinary, role of occupational physicians and other specializations.
- Local trade union activities, powers and responsibilities.

The discussions were well-conducted and highly productive. The group came to the following conclusions and recommendations :

- There are no substantial differences between the coverage structure, models and objectives of OHS in accession countries and existing member States.
- The new countries can play a positive role in the

EU as catalysts (or activators) in the development of a new OHS strategy, which is urgently needed.

- There is no one-size-fits-all model of OHS that can be recommended, and no reason to do so. But there are some basic requirements for the development of OHS.
- Multidisciplinary is not about lumping different professions together, but rather cooperation between specialists and a participatory approach that promotes the knowledge and expertise of employers and workers themselves.
- Equity is a crucial issue. Many SMEs, and sometimes whole sectors like agriculture and services, are completely excluded from preventive OHS coverage at present.
- The role of medical doctors in multidisciplinary teams was discussed. Despite some participants overestimating and others underestimating the role of physicians in preventive services, there was basic agreement that transformation of the workplace is the main objective of the new strategy for all professionals.
- There is a great need for training, education and research in order to disseminate the information and experiences of preventive services.
- Trade unions should define a strategy for the consolidation of preventive services that takes into account the weakness of unions in many sectors and accession countries.
- Implementation and enforcement of legislation are the most important steps to avoiding a merely bureaucratic application of the law.
- Decision makers, employers and employees must be made more aware of the importance of OHS. ■



# National arrangements for workers' health and safety representatives : transposition and implementation of the Framework Directive

**Claudio Stanzani**  
SindNova, Italy

**Viktor Kempa**  
TUTB researcher, Brussels

The accession countries will before long have to address the issue of the application of appropriate legislation and the lack of trade union involvement in worker representation in OHS. There must be comprehensive legislation supported by trade union strategies. The current legislation needs to be added to and filled out in guidelines and/or codes of practice. The same focus should be put on support for reps, especially through training. The workshop discussions on this brought input from trade unionists, labour inspectors, OHS practitioners and inspectors from insurance companies.

The workshop opened with an overview of the situations in the EU and accession countries. This was followed by presentations from representatives of six countries - the Netherlands, Belgium, Latvia, the Slovak Republic, Spain, and Malta. Several examples based on the TUTB's 2003 survey on worker representation in health and safety were developed in the opening speeches and are explained below.

The legal system in the **Czech Republic** points up the importance of trade unions. The Labour Code lists a series of rights, including the right to interrupt work. The rights of information, consultation and participation are clearly laid down. But, there are no legal requirements on health and safety committees. While there is legislative provision for workplaces where no trade union is established, it is unrealistic to expect non-unionised workers to play an active role in electing their health and safety representatives. Also, the law applies only to firms with at least 10 employees. Trade unions must have more specific statements of their policy and involvement in enterprises. They should also cover as many non-unionized workers as possible and be involved in their training.

The **Lithuanian** system is lacking in clarity. Some paragraphs of the Framework Directive seem to have been transposed too vaguely. Some bodies of legislation - the Labour Code and Health and Safety of Workers Act - contain general requirements on this, many of which can be bargained in collective agreements. Other OHS legal rules are set within a legislative framework. In practice, these legal provisions may be a source of conflict between the two sides of industry. The system of worker representation in

health and safety operates both through works OHS committees and/or health and safety reps.

At least 50 employees are required for the formation of health and safety committees, or if requested by more than 50% of the workforce in any enterprise, or where authorized by government recommendation to reduce the level of risk factors inherent in certain sectors.

Lithuanian legislation does not stipulate a minimum workforce size for the appointment of health and safety reps. However, there must be at least one rep per shift in an enterprise. This applies to all firms regardless of status (private, public, state,) and in all sectors, regardless of their size. Reps and health and safety committees have information, consultation and participation rights. Trade unions are the main actors in worker representation. No other form of representation exists in Lithuania because as yet, legislation on work councils is only in the draft stage.

In **Bulgaria**, there are Working Conditions Committees (WWC) and Working Conditions Groups (WCG). There is no other form of representation. Committees are set up in firms with 50 or more employees.

Working Conditions Groups are set up in firms with fewer than 50 employees. Five worker representatives can sit on Committees and one representative is allowed to be a member of the Groups. Reps are entitled to initial training followed by annual refresher training. The evidence suggests that representation is most effective where trade unions are involved. In the case of Committees or Groups in non-unionised workplaces, involvement by worker representatives is virtually non-existent because it is only "on paper", a mere administrative formality. There are approximately 180 000 enterprises in Bulgaria. About 12 000 WCC and WCG with over 42 000 workers' representatives are operating, 80% of whom are trade unionists. Trade unions also estimate that 40% of the workforce is covered by one of the two forms of representation.

An unusual situation obtains in **Poland**, where so-called social enterprise inspectors such as workers' representatives have a key role which has traditionally had specific legal backing. The problem is that these inspectors deal only with public and/or state owned enterprises.

**Romania** reported huge differences between law and practice. Although the law provides a basic framework for health and safety reps, it is applied properly only in enterprises with strong trade union representation. Surprisingly, a trade union estimate reports that 50% of the workers are covered by reps, more than the average in other accession countries. Health and Safety Committees are established in enterprises with more than 50 employees but there is no penalty for employers who flout their obligation.

In **Estonia**, trade unions are workers' only representatives in OHS. Where there is no trade union, the workers have a legal right to elect a workers' "trustee". Trade unions report representation as being divided equally between trade union representatives and non-unionised workers, with an estimated 90% of all workers being covered! The minimum workforce size is ten employees. Reps are elected by all workers in the firm. The employer is responsible for the election and training of reps. Apart from information and consultation rights, reps can call a temporary halt to work if there is a danger to workers' life or health. An OHS Council can be set up by the employer in workplaces with more than 50 employees.

In **Slovenia**, the situation differs between the private and public sectors. In the private sector, a Works Council is set up in workplaces with more than 20 employees. In firms with fewer than 20 employees, health and safety reps are appointed as well as in the public sector. Although all workers are covered by this system in theory (1 employee is the minimum size of an enterprise), that is not borne out in practice for small enterprises. As in other accession countries, trade union estimates report 90% of unionised reps. While there are legal rights of information and consultation, there is no right of co-decision. Slovenian law lays down clear provisions on the election and number of reps, training and the rights of Works Councils.

**Hungary's** Safety at Work Act allows both trade unions and non-unionised workers to delegate representatives. Trade union estimates suggest that 40% of workers are covered by reps, but only about 60% of reps are trade unionists. There is no difference between public and private companies in terms of worker representation in OHS. There are rights of information and consultation in all areas of OHS, but co-decision in matters relating to safety regulations. The Health and Safety Committee has set the minimum qualifying workforce size at 50. The maximum number of reps that an enterprise can have is 11. Reps undergo 32 hours of specific training after election. In Hungary, reps have no right to stop work which they consider to be unsafe. Trade unions in Hungary have recently launched new initiatives in health and safety rep training.

The workshop set papers mainly addressed the various aspects of worker representation in health and safety.

Jan Popma from the TNO (**the Netherlands**) analysed the impact of self-regulation in companies and the participation of workers and Works Councils aimed at improving working conditions.

The Dutch system of self-regulation in occupational health and safety, based on "enforced" cooperation between employers and employees, was established in the early 1980s when the Working Conditions Act (Arbowet) came into force. The act was amended in 1994 and 1998. But monitoring of developments in OHS since 1997 (physical load, mental burden, noise, dangerous substances, MSD) has shown that self-regulation has not worked that well.

Dutch Works Councils have adequate statutory OHS rights but do not exercise them sufficiently. This has resulted in too few OHS Committees, low training uptake rates and occasional reliance on external expertise by councils. None of this makes Works Councils' OHS tasks any easier. But nor do they always use their statutory powers. Surveys of Works Councils reveal that four main codetermination rights have not been used properly in many cases, which may suggest "that Works Councils do not therefore assess OHS risks when using their advisory powers". When a subjective assessment was sought, 31% of employers and 36% of labour inspectors thought that Works Councils had a big influence on OHS.

There is a clear link between the presence of a Works Council and the quality of risk assessment. An action plan was drawn up on the basis of objective indicators like the quality of OHS policy, working conditions at the workplace and their consequences. Works Councils had a positive impact which was not limited to working conditions, but extended to work attendance issues, like absenteeism, while co-determination was found to have both positive and negative side-effects.

Various factors work against the success of this method. Worker representation is found in only about 17% of Dutch workplaces, and some firms that should have a works council do not. Some employers are also disinclined to work in partnership with work councils, and there are no clear indications of the positive overall effect of self-regulation.

The negative aspects of self-regulation taken together with patchy codetermination have produced unequal protection and some injustice. It is important for government to regulate and take a lead in this field. Popma suggested that the "introduction of prevention officers in all Dutch enterprises would be a first step in the right direction". Other essentials for effective worker representation in OHS are roving safety reps for SMEs and a greater impetus from trade unions.

The Labour Code provides the legislative framework for workers' health and safety representatives in **Latvia**. Additional practical measures have been enacted in the recent ministerial regulations on procedures for the election and activities of trusted representatives. Trade unions have also reached an agreement with the labour Inspectorate on assistance in disagreements between reps and employers.

Broken down by branch / sector, the highest number of health and safety reps are to be found in central government, the energy sector, social services and manufacturing. The steady growth in the number of trade union health and safety representatives is seen as a positive development. Numbers have risen from 1 351 in 1998 to 2 528 in 2002. Trade union reports show that health and safety reps who are also members of a workplace trade union are more effective and goal-oriented.

Trade unions organise two-tier training for reps – a basic 40 hours training, and more advanced training specific to trade union needs. Under the recent training and labour protection legislation, the basic training will be extended to 50 hours.

Latvian trade unions are preparing new training programmes for health and safety reps designed to address issues and obstacles posed by poor employment conditions in enterprises.

In **Belgium**, the FGTB introduced the RISE (Inter Trade Union Network for Raising Environmental Awareness) project<sup>1</sup> which extends the scope of worker representation into the environmental sphere in response to trade union and public demand. The Walloon regional government also supported the project.

The project set up a network of trade union delegates and officials across all sectors with a view to stimulating social dialogue on the environment in workplaces, boosting delegates' ability to intervene on environmental issues and raising the environmental awareness of workers and their representatives. It was implemented through training and a range of information sources, pilot projects in workplaces and industry branches, and the development of technical support tools designed to facilitate trade unions reps' access to information and their work on the environment.

The project was extended as RISE II in 2001 adding, at the Walloon Region's request, four additional strands on changes in legislation, environmental management systems, monitoring of compliance with regulatory provisions and the NIMBY phenomenon. This project is expected to extend cooperation between the Walloon region and trade unions and could possibly extend to the Flemish region and the Brussels-Capital region.

In **Malta**, one of the smallest European countries, health and safety representation of workers is a rela-

tively new concept. As in other spheres, the transposition and implementation of European directives has added a new dimension to health and safety at work. The trade union assessment is that it has been a partial but positive success.

Trade union density in Malta is about 62% - a high percentage that reflects a long-standing tradition of elected union representatives – the shop stewards. Trade union research has found that trade unionists have a good awareness of OHS, but workplace health and safety reps (within the Framework Directive's meaning) are fairly uncommon. Management is usually opposed to the idea of reps and only a small percentage of employers provides workers with training. Most training is provided by trade unions.

Employers often undervalue reps' suggestions and proposals. Few reps get paid for their workplace duties. In some cases, reps are not elected, but appointed by the employer. Communication between trade union shop stewards and health and safety reps is poor because they have different interests. Shop stewards are more concerned with the company's interests, whereas reps act in the interests of the workers.

Among the new initiatives to have emerged recently in Malta is training for elected public sector health and safety reps run by the Health and Safety Authority. Trade unions see the gap between standard practice and the theory embodied in the Framework Directive, and believe that enforcement and especially promotion of education in this field will produce better results.

**Spain's** OHS strategy is focused on information, training and networking activities of trade unions. The Trade Union Institute for Work, Environment and Health (ISTAS) provides services for trade unions in this field<sup>2</sup> in the form of guidance and other documents for trade union delegates. The ISTAS' website and regular publications are focused on prevention and intervention strategies for trade union delegates, between 5 000 and 6 000 of whom attend ISTAS CC.OO basic, intermediate or advanced training courses each year.

Spain has more than 276 000 health and safety delegates, but there are also small workplaces that lack any trade union representation. Nevertheless, trade unions have an influence in these firms through their participation in the social security general prevention programme run by the mutual insurance agencies. Delegates also have the right to visit subcontractors and communicate with all the stakeholders involved. Regional agreements are also concluded between the social partners and the government to provide for direct cooperation between the social partners by allowing trade union inspections of plants with high accident rates or no union representation. Non-unionized firms are

<sup>1</sup> <http://www.rise.be/>.

<sup>2</sup> <http://www.istas.ccoo.es/>.

setting up agreements as a basis for the exchange of information and unimpeded access to their various subcontractors.

CC.OO has also developed a new service for delegates and members – the Trade Union Advisory Network, supported by a new foundation for OHS. The network has improved the quality of technical information and served as a tool for the dissemination of experiences in workplace intervention as well as an indicator of delegates' and members' needs in all sectors. ISTAS has organised courses for advisors in such things as work accident investigation, psychosocial risks and trade union interventions.

The **Slovak** contribution was presented from a specific labour inspection viewpoint. The Framework Directive's principles on worker representation were transposed by new Slovak legislation in 1997, but the situation still leaves much to be desired due to employers' reluctance to cooperate with workers and their reps in OHS. Also, reps may be unwilling to assert themselves, making their appointment little more than a formality.

The labour inspection service estimates that reps are appointed in 75% of companies, and about 50% of them are trade unionists. It argues that while a trade union presence in the company provides employees with support and advantages, it is not enough. It has therefore put together a programme to develop and promote employer awareness of the need for worker reps' involvement in OHS. It is accepted that reps should accompany labour inspectors on inspections and be present in discussions on inspection findings. Another initiative – "labour inspection on safety management" – examines how workers and their reps are involved in workplace health and safety management systems.

The Slovak Labour Inspection Service says that worker participation is seen as a key element in the OHS management system. A new campaign for 2004, called "Safe enterprise", aims to promote the implementation of a coherent OHS management system, and will also be targeted on support for worker participation in all stages of the system.

The labour inspectorate also acts as a training provider. Some time ago, it ran an international project on worker involvement in safety and health (WISH) aimed at developing appropriate training methods to extend reps' skills and capabilities in areas like bargaining, assertiveness, case-building, legal awareness and social skills. During the project, 11 pilot trainers were trained and each pilot trainer trained a further 50 trainers. Trainer training material was also produced. Since then, several hundred training programmes for reps have been provided by certified WISH trainers.

The final discussion of the workshop centred around the key issue of trade unions' ability to change or recast their strategies to address new developments at the workplace. The growing number of small and medium enterprises has led to the creation of new forms of worker representation in EU countries, based either on regions or sectors, or operating as advisory services. This is a departure from the past tradition of mainly shop-floor representation.

A range of forms of worker representation are to be found in the EU and accession countries. There is no doubting the crucial supporting role played by trade unions as providers of expertise, training, information and a solid grounding for reps. Innovative trade union strategies must be developed in this field if they are to sustain that role. ■



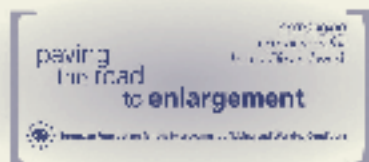


## Paving the road to enlargement

Workers in the acceding and candidate countries work longer and report a higher level of risk to their health and safety than their counterparts in the EU, according to the latest working conditions survey by the European Foundation for the Improvement of Living and Working Conditions, the Dublin-based EU-agency. The survey is part of a series of report wide-ranging new data and analysis on living and working conditions in the current EU Member States and in the acceding and candidate countries (ACC) made available by the Foundation in the run-up to enlargement in May 2004.

According to the *Working conditions in acceding and candidate countries* survey, workers in the ACC work longer hours in less service-related industries than in the current EU Member States. They also suffer higher exposure to various physical risk factors such as dangerous substances, fumes and noise.

"The survey provides a first comprehensive overview of working conditions in the 13 acceding and candidate countries, using the same methodology as in the previous European working condition surveys carried out by the Foundation in 1990, 1995 and 2000," says **Willy Buschak**, the Foundation's Acting Director. "The results provide a solid benchmark on the situation in these countries as ten of them move towards membership in May 2004."



Despite convergence in recent years, one of the principal conclusions of the report, *Working conditions in acceding and candidate countries*, is that there exist significant differences in terms of workforce structure and working conditions between the old and new EU Member States.

### Measuring living conditions and quality of life in Europe

Before enlargement, and in collaboration with the European Commission, the Foundation will also provide wide-ranging data and analysis on living conditions in the acceding and candidate countries. The living conditions survey will focus on quality of life and personal satisfaction, social exclusion, income, deprivation and economic strain, as well as work and quality of work, healthcare and access to services, family aspects, and fertility and migration trends. The analysis of living conditions will be followed by the publication of the Foundation's *Quality of Life in Europe* monitoring initiative. It will focus on employment, economic resources, family life, community life, health and education. In short, it measures the

### Summary of main findings of the working conditions in acceding and candidate countries survey

- Working hours are longer, less gender differentiated (incidence of female part-time work is low) and unsocial hours (such as shift and night work) more frequent. Part-time work is less frequent in CCs (7%) than in EU (17%).
- Self-reported work-related health problems are higher in the CCs, in particular overall fatigue and musculoskeletal disorders.
- More workers consider their health and safety at risk because of work (CCs 40%, EU 27%).
- Work organisation is:
  - less client driven ;
  - less decentralised (workers have less responsibilities and autonomy) ;
  - more hierarchical.
- Exposure to physical risk factors (such as noise, extremes of temperatures, noxious fumes etc.) is higher.
- Work is less client-oriented than in the EU and relies less on computer technology.
- Job demands, although of a different nature, are high and job control (the autonomy workers have to regulate their work) is lower. However support provided by colleagues is higher.
- The dual workload (the combination of paid work and unpaid household / caring work) is more gender balanced, although still far from being evenly balanced.
- More workers over 40 are in employment.
- Fewer workers receive training and work does not provide as many learning opportunities.

Note : The conclusions above are based on average figures. They can, therefore, hide significant differences, in particular between countries. This means that some of these conclusions might not always reflect the particular situation of a country within the ACC group. The same remark also applies to any national comparisons between EU Member States.

quality of life in the 15 Member States and 13 acceding and candidate countries.

### Levels of collective bargaining high in Europe

According to the recent annual overview industrial relations released by the European Industrial Relations Observatory (EIRO), the levels of collective bargaining coverage is on average almost four times higher in the European Union than in the USA and three times higher than in Japan. "It's the single most marked difference between the EU and its two competitors" says Willy Buschak. "The recently published annual overview *Industrial relations in the EU, Japan and USA* shows that, on average, 67% of the workforce in the new enlarged European Union is covered by collective bargaining, i.e. agreements in which workers - partially or fully - have their pay and conditions set."

Collective bargaining levels are lower in the new than in the current EU Member States. Still, taking into account the differences between union and non-union sectors, workers' pay and conditions across Europe of 25 are agreed collectively to a much greater extent than in Japan and the USA, reflecting a difference in the nature and extent of employment and labour law between three competitors.

### A road map to labour peace

By combining social dialogue and tripartite concertation with the foresight model of establishing scenarios for the future, the Foundation-led project *Social dialogue and conflict resolution mechanisms* has produced national development plans outlining effective industrial relations systems in all 10 candidate countries. The project, which is based on previous European Foundation projects on social dialogue and EMU in the current and new EU Member States, will come to an end on 31 March 2004 with a conference in Ljubljana, Slovenia.

"The workshops on conflict resolution have led to real dialogue between participants," says **Frank Pullicino**, Director of the Department of Industrial and Employment Relations in Malta. "For us in Malta, the project will contribute to a wider use of tripartite concertation, leading peaceful industrial relations."

More information is available at  
<http://www.eurofound.eu.int>.



European Foundation for the Improvement of Living and Working Conditions

## BUILDING OSH KNOWLEDGE

# The European Agency's work with Acceding and Candidate Countries

**Eusebio Rial-González  
and Brenda O'Brien**

European Agency for Safety and  
Health at Work, Bilbao, Spain

The European Agency for Safety and Health at Work is based in Bilbao, and its main role is to "provide the Community bodies, the Member States and those involved in the field with the technical, scientific and economic information of use in the field of safety and health at work"<sup>1</sup>. This article aims to explain briefly how the Agency has been working with the Acceding and Candidate Countries to achieve a smooth transition into their full membership of the Agency network and also to facilitate the exchange of knowledge and good practice across the EU25.

### Preparing for EU enlargement : sharing knowledge and good practice

Over the last five years, the Agency has been preparing to ensure that the Acceding and Candidate Countries (ACCs) would be able to participate as full members of its network from May 2004. The Agency has a "Focal Point" in each Member State and EFTA

country to act as its reference centre. The relevant national OSH authorities in all the ACCs appointed a Focal Point during 2000.

They have been involved in Agency activities and developed their own websites with support from the Agency's PHARE programmes.

<sup>1</sup> Article 2 of the Agency's Founding Regulations : <http://agency.osha.eu.int/agency>.

The Agency has also expanded its network of "Topic Centres": these are consortia of OSH-expert institutions that provide the Agency with reports and other products to fulfil its Work Programme. A "Topic Centre Good Practice - Candidate Countries", funded by the PHARE II programme, was launched in 2003 and has been working to collect, analyse and disseminate examples of good practice in the four areas identified by the ACCs as priorities for action: construction, agriculture, dangerous substances and psychosocial issues<sup>2</sup>. This consortium will be replaced in May 2004 by a new "Topic Centre New Member States", which will continue to cover the same four key topics, and also prepare a report on the impact of socio-economic changes on OSH issues in the workplace. A new generation of Topic Centres will be in place by the end of 2005, with a mixture of members drawn from the EU25.

The Agency has also participated in the "Work Life and EU Enlargement" project, which aims to build and exchange knowledge within the field of working life in order to facilitate the enlargement of the European Union. All Candidate Countries have participated in this project run by the Swedish National Labour Market Board<sup>3</sup>.

### Raising awareness : European Weeks on Safety and Health at Work

One of the Agency's main tasks is to raise awareness about OSH problems and to identify practical solutions to address them. The *New Community strategy on health and safety at work 2002-2006*<sup>4</sup> has emphasised this role: "The European Agency for Safety and Health at Work should act as a driving force in matters concerning awareness-building and risk anticipation." To fulfil this obligation, each year the Agency organises EU-wide campaigns known as "European Weeks". Many of the ACCs have already taken part in these campaigns, whose previous themes include musculoskeletal disorders (2000), accident prevention (2001), psychosocial issues (2002) and dangerous substances (2003).

The European Week 2004 focuses on construction, with the slogan "Building in Safety". Statistics from the EU15 illustrate why it is important to focus on this topic: construction activities take place beyond the construction sector itself, and some estimates suggest that the industry may employ more than 12 million workers – possibly up to 16 million if undeclared workers are taken into account. There are around 1,300 fatal accidents each year. Construction workers are almost twice as likely to have accidents as employees in other sectors: every year, nearly one million construction workers have accidents resulting in the loss of more than three working days. There are also many other problems, such as musculoskeletal disorders, with upper limb problems reported by 28% of construction workers (twice the EU average).

The European Week 2004 will be the biggest ever OSH campaign, with more than 30 countries taking part and information available in 20 languages. It is backed by the Irish and Dutch EU Presidencies, with a launch in Dublin on 30 April 2004 under the auspices of the Irish EU Presidency and the European Parliament.

As in previous European Weeks, the 2004 campaign wants to emphasise prevention, by 'designing out' risk even before workers arrive on the building site: studies have shown that many accidents are due to decisions taken before any building work has started. The European Week's publications and activities will identify the major hazards in construction work and disseminate tried and tested practical solutions.

To maximise the impact of the campaign, this year's European Week will not only address its message to intermediaries, but also target workplaces directly. To this end, the Agency will be working with the social partners and co-ordinating activities with the Senior Labour Inspectors Committee's (SLIC) construction campaign<sup>5</sup>.

Everyone can get involved in the European Week 2004: construction companies, trade unions, clients, architects, suppliers, etc. You will find more information (in 20 languages) on the website launched on 30 April 2004: <http://ew2004.osha.eu.int>, where you can also sign up to our European Week Campaign Charter.

### Future developments

The Community Strategy clearly indicates that "to ensure that the *acquis communautaire* is being properly applied, there must be an effective transfer of experience and knowledge". One of the Agency's main goals over the coming years will be to facilitate this exchange of expertise among the EU25. This will be reflected in the rolling Work Programme 2005-2008 to be agreed in November 2004, at the first meeting of the Agency's Board where all 25 countries will be present as full members.

The main challenge for the Agency is to continue to provide information that is relevant and practical in all 25 Member States. In the case of good practice materials such as our factsheets<sup>6</sup>, the Agency has already started to publish them in the 20 official languages so that they can reach their intended target audience at the workplace.

The Agency takes full advantage of the Internet as a cost-effective means to disseminate information, and all our publications are available freely for download from <http://agency.osha.eu.int>. We encourage you to visit our website and send us your feedback. ■



**BUILDING  
IN SAFETY**

<sup>2</sup> See the Agency's good practice pages : [http://europe.osha.eu.int/good\\_practice](http://europe.osha.eu.int/good_practice).

<sup>3</sup> WLE website at <http://www.ams.se/wle>.

<sup>4</sup> [http://europa.eu.int/comm/employment\\_social/news/2002/mar/new\\_strategy\\_en.html](http://europa.eu.int/comm/employment_social/news/2002/mar/new_strategy_en.html).

<sup>5</sup> See [http://europe.osha.eu.int/good\\_practice/sector/construction/slic](http://europe.osha.eu.int/good_practice/sector/construction/slic).

<sup>6</sup> Available from <http://agency.osha.eu.int/publications/factsheets>.

## The New Member Countries : problems or catalysts ?

It would be an impossible task even to attempt a summary of all the major contributions given to the two days of this conference, so I shall merely offer a few personal conclusions and thoughts.

There appears to be some inconsistency between actual and perceived working conditions in the Member States and accession countries.

The Commission representative first gave the conference a detailed list of occupational safety and health failings in the accession countries, including the lack of a prevention culture, the replacement of prevention and risk management by personal protection, inadequate worker representation, under-resourcing of labour inspection etc. The conclusion was that the accession countries would have to "shape up" to the high level of occupational safety and health prevalent in the existing Member States.

After this, different Member States' experts gave detailed presentations focusing on such things as the frequent lack or incompleteness of risk assessments, inadequate government inspection, deregulation and unemployment undermining occupational safety and health, every fourth worker exposed to carcinogens, the lack of economic incentives for safety and health, the widening "health divide" and so on.

In later discussions, however, it was emphasized that the occupational safety and health record of several accession countries was actually better than that of some Member States. There was also agreement that Member States and accession countries have fairly similar problems in this area, although levels of implementation differ and are patchy, and that implementation will be the big occupational safety and health issue of the years to come for the existing and new Member States alike.

Day two of the Conference heard a comparative presentation by the Dublin Foundation representative of the findings of the survey of working conditions in the accession countries and in the Member States. The most striking feature was the lack of any dramatic differences other than a few attributable to different economic structures (e.g. the larger agricultural labour forces in the accession countries). In all other important respects, similarities outweighed dissimilarities.

What all this boils down to is that although average occupational safety and health levels may well be higher in the present than the future Member States, the between-country differentials both inside and

outside the European Union are so great – in other words, the pattern is so mixed – that a simplistic comparison of "average situations" is meaningless. If a dividing line must be drawn, then arguably, it is not a West – East one.

One recurring theme of the discussions on both days was a need to initiate reforms of occupational safety and health. Arguably, the accession of the new members will be an ideal opportunity for a fresh take on the realities, to look again at the occupational safety and health situation and the resources and means for improving it in the new European Union. This could be summed-up as : "We are not a problem, but your long-awaited catalyst."

On a more rhetorical note, the discussions dwelt at length on the risk of economic priorities pushing occupational safety and health considerations aside ; there was even some talk of good occupational safety and health being a luxury in boom periods which goes by the board in a downturn. This scenario, it was said, is already playing out in formerly healthy EU economies. The question is, therefore, whether occupational safety and health is high enough up the European Union and Commission's agenda ? If not, what will put it there ? And what will keep it there ?

Another issue closely related to the first is that of trade union priorities, which traditionally centre around values of job security, pay, workloads, non-discrimination and the like. I am unaware of any significant trade union action either in the accession countries or in the Member States where the main focus lies on improving occupational safety and health. One explanation may be that trade union memberships, workers generally and even public opinion get less exercised over occupational safety and health than pay, working hours, etc. This is not to exclude other reasons, of course. The question here is whether occupational safety and health is high enough on the trade union agenda ? If not, what will put it there ? And what will keep it there ?

Arguably, there is a belief that labour inspection systems are the cure for all occupational safety and health ills. It is a mistaken belief. That is not to say it is not understandable : labour inspectorates are usually well-organized, hierarchically structured and centrally managed ; labour inspectors have broad powers, including authority to issue improvement notices and apply a range of sanctions ; they have firsthand information about occupational safety and health on the shop floor ; and, last but not least, they actually inspect workplaces. Their strength lies in being there.



Justified as this view of labour inspection may be, it often places unreasonable demands on inspectors. The caveat is that very few countries, even highly industrialized countries, rarely have more than a few hundred inspectors to every several hundred thousand employers. This means that labour inspectors can never inspect more than a small percentage of employers or workplaces in any given year. Small wonder, then, that labour inspection authorities have begun to pay more attention to new, “non-invasive” methods, emphasizing information, training and awareness-raising by which they hope to reach more targets than by traditional inspection.

The workplaces inspected should be those that most need it, either because of the high-risk technologies used or because of failings in workplace safety and health management. The problem is that the more serious problems are usually found in small and medium-sized companies, where labour inspection can do no more than scratch the surface.

Labour inspection is an essential tool, but not a cure-all. To compare it with road safety might not be stretching the point : traffic police are needed to enforce compliance with the rules of the road, but they can do nothing without a good road network, a sound traffic flow system, and a good driving culture which includes real incentives for safe driving. Arguably, the tendency may be to substitute responsibility for all these with over-reliance on inspection. That is not good enough. Using labour inspection as the main solution is no answer to the problem.

The time-frame of policy-making is usually shorter than that needed for occupational safety and health. For obvious reasons, the policy timescale is seldom more than four years. Occupational safety and health, on the other hand, is a longer-term business, requiring commitments that span over decades. So, a broad political consensus is needed on them both at national and European level to avoid the risk of falling victim to political expediency and short-term – mostly economic - considerations. What will deliver that broad political consensus, putting occupational safety and health at the forefront of longer-term decision-making ?

Economic considerations and pressures were a running theme in the discussions. All occupational safety and health professionals believe that “Good health is good business” ; but if it is so self-evident, why are we constantly having to preach it to others ?

The fact is that this is only a self-evident truth revealed at national level and among comparatively large employers through the statistics on occupational accident and disease rates. Many small firm and micro-enterprise employers, by contrast, feel that neglecting occupational safety and health is a risk worth running, hoping that the odds lie in their favour. The sad truth is that, from a strictly economic

viewpoint, it is a rational risk to take, particularly in the case of short-lived enterprises.

One key question for the future, therefore, is whether direct economic incentives can be offered to small and micro-enterprises to encourage proper occupational safety and health measures, including risk assessment and management. Hungary is in the process of setting up a separate occupational accident and disease insurance system, where contributions will be more or less proportional to the actual risks present at the workplace. Economic incentives get a very reserved and diplomatic, not to say cautious, mention in the Commission document on occupational safety and health as “practices that would seem to warrant more systematic application”. The question is what if anything can be done to strengthen and speed up the process of identifying and applying economic incentives for occupational safety and health at a European level. ■

#### Dr. András Békés

Director General,  
Hungarian Labour Inspectorate  
Rapporteur to the Conference



# Beyond transposition : Challenges for safety and health at work in the enlarged Europe

## Introduction

To say that this conference on a joint OHS strategy for the enlarged Europe comes at a timely moment with the accession of ten new member States only three months away, would be an understatement. The opportunity for a stocktaking which it offered is, if anything, long overdue and the organisers - the ETUC and its OSH research agency, the TUTB - are to be commended. This project, drawing in those with a stake in occupational safety and health at a pan-European level, was no small achievement in its own right.

What, then, has actually been achieved in terms of forward momentum? Did this event meet its aims? European-level initiatives on safety and health in the area of enlargement have assumed very specific forms, so far, mainly addressing issues of transposition. The question of practical implementation in the workplace has been somewhat in the background, perhaps understandably so, given the large body of Directives and associated instruments that provide the European context. This conference has had the issue of "on-the-ground" implementation as one of its key pre-occupations, and by implication, the development of appropriate trade union strategies that would ensure their proper realisation in social dialogue. Inevitably, achieving this aim in the course of a few days was not going to be easy.

How far the voice of ordinary workers has been heard in the conference hall is a much better test, and here the criterion is relevance first, and balance, second. In this regard, the three days of non-stop talk and debate may be judged at least a qualified success. Issues were identified and some searching discussion took place, in which the independent interests and values of workers found expression. Balance and objectivity were present in the papers that were given. But the knowledge and debate that ensued was directed and defined in a context that had the protection of *workers'* interests as its primary focus, rather than working towards a soft consensus between all sides. Occupational health and safety may be a common good, requiring a joint strategy, and convincing arguments can be made for its mutual benefits to both sides of industry. Its realisation, however, remains a matter of dispute, and necessarily so, in the context of the market economy.

The papers presented are informed to a greater or lesser degree by these concerns. In some cases, they map the existing state of occupational safety and health, a too-often neglected task which has immense value in its own right. In others, they present genuinely new thinking on strategies for safety and health. Cumulatively, they add to the emerging European picture, an increasingly complex jigsaw of regulatory regimes, national specifics and, in the case of the new accession States, a contentious difference of degree if not of kind, in the nature of the issues to be addressed. If there was difficulty in reaching overarching recommendations and conclusions, it was no more than a reflection of the fragmented state of the art. This conference was not about empty resolutions, but more than most, requires to be reconvened, in whatever appropriate forums, and at periodical intervals.

## In place of a conclusion

Whether by accident or design, the short period between the ETUC/TUTB Brussels conference in January and the date of accession in May, has been punctuated by the European Commission's eagerly-awaited and long-delayed review document on safety and health. The review of the application of the Framework Directive (89/391) points to difficulties of creating adequate implementation and compliance, even within the member States, particularly in respect of mandated information and consultation

### Charles Woolfson

Marie Curie Chair,  
EuroFaculty, University of  
Latvia, European Centre for  
Occupational Health, Safety  
and Environment (ECOHSE)



## Conference overview : some observations

The success of any event of this nature is not the number of the "great and the good" who graced the proceedings and delivered set-piece contributions, only to rush off to address other urgent business of "high affairs". Success lies in the degree to which the collective knowledge and understanding of ordinary workers and their representatives is mobilised to address an issue which directly affects the daily lives of working people - the working environment, with all its seen and unseen harm and hazards to health and well-being. It is appropriate that the chief "risk bearers", the primary victims of industrial neglect and indifference, should be able to meet without regard to any artificially imposed requirements of balance in the form of "multi-stakeholder participation". There are other forums for those kinds of discussions.

of workers, described as "one of the cornerstones" of EU prevention policy<sup>1</sup>. The review of the Directive further concedes that "EU enlargement will bring in countries in which the prevention culture still has to be rooted", suggesting that while many of the same features are present, the scale of the problems is qualitatively greater in the new member States. Here, readers of the conference proceedings will have to judge for themselves whether the case for this is made or not.

The European "social model" traditionally implied a social contract between labour and capital which would provide legitimacy and cohesion in the European project based on a "social market" economy. What is clear is that this vision of a balance of social interests with the State performing an effective mediatory role, is now threatened as the regulatory corrective function in the market economies itself comes under attack from what John Monks has called "the American way", rampant de-regulation (in whatever guise). Whether the broad European project, and more particularly its incarnation in the latest round of enlargement, has sufficient institutional and ideological resilience to resist de-regulatory currents, is very much an open question. It seems more likely that the advent of the new accession countries will intensify a general crisis in the European social model, and in the goal of a socially cohesive Europe in particular. Health and safety protection is only one, but nevertheless a significant, part of an unrealised social policy agenda. The current outlook at the Commission level is therefore cause for concern, since its priorities clearly do not match those of the delegates to this conference.

Such concerns are therefore appropriately highlighted in the European Trade Union Confederation's call for a European-wide day of action by its national affiliates and industry federations in the Spring of 2004 to protest against the failure of member State governments to include "adequate safeguards for Social Europe" in the proposed new European Constitution. The language used is a significant indicator of the depth of the concern over current weaknesses in the Convention proposals. Thus, while formally welcoming the accession of ten new countries, the ETUC argues that it should be "on the condition that a strong social platform of workers' rights, social dialogue, collective bargaining, decent welfare States and high quality public services and services of general interest are put in place to help people handle change". This, it adds, "is not happening" and calls for "early action to agree a Constitution with a strong social dimension", otherwise "the prospect of social advances will recede still further"<sup>2</sup>. Ultimately, the legitimacy of the European Community in the eyes of its ordinary citizens will rest upon the evidence before them of Europe's capacity to bring about meaningful change in their lives. A good starting point would be a high level of social protection in the sphere of safety and health at work. ■

<sup>1</sup> European Commission, 2004, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment), Brussels, 05.02.2004 COM(2004) 62 final, 20-21.

<sup>2</sup> ETUC (2004) Call for day of action. Available at <http://www.our-europe.org>.

**THE EUROPEAN TRADE UNION TECHNICAL BUREAU FOR HEALTH AND SAFETY** was established in 1989 by the European Trade Union Confederation (ETUC). It provides support and expertise to the ETUC and the Workers' Group of the Advisory Committee on Safety, Hygiene and Health Protection at Work. The TUTB is an associate member of the European Committee for Standardization (CEN). It coordinates networks of trade union experts in the fields of standardization (safety of machinery) and chemicals (classification of hazardous substances and setting occupational exposure limits). It also represents the ETUC at the European Agency for Health and Safety in Bilbao.

**TUTB** - Bd du Roi Albert II, 5  
B-1210 Brussels  
Tel.: +32-(0)2-224 05 60  
Fax: +32-(0)2-224 05 61  
E-mail: [tutb@etuc.org](mailto:tutb@etuc.org)  
Internet: <http://tutb.etuc.org>

The TUTB is financially supported by the European Commission.



**TUTB Newsletter** No. 22-23 April 2004  
Special issue produced in association with the ETUC.

The **TUTB Newsletter** is published three times a year in English and French.

**Responsible Publisher :**

Marc Sapir, Director of the TUTB  
Bd du Roi Albert II, 5  
B-1210 Brussels

**Editor :** Janine Delahaut  
([jdelahau@etuc.org](mailto:jdelahau@etuc.org))

**Production assistant :**  
Géraldine Hofmann

**Contributors :** András Békés, Joan Benach, Mirosław Cikrt, Corneliu Constantinoia, Viktor Kempa, John Monks, Brenda O'Brien, Iwona Pawlaczyk, Miłosz Palecek, Eusebio Rial-González, Marc Sapir, Marina Schröder, Claudio Stanzani, Laurent Vogel, Andrew Watterson, Charles Woolfson

**Photos :** Bob Van Mol

**Translation :** Glenn Robertson

**Reference material :** Jacqueline Rotty

**Circulation :** Géraldine Hofmann

**Graphic design :** Coast

Check out the new  
TUTB website at:

<http://tutb.etuc.org>

and subscribe to **TUTBmail**  
to be regularly updated  
on TUTB activities and  
European occupational  
health and safety news



The ETUC-TUTB conference was financially supported by the European Commission.