



ETUC response to the consultation on reports concerning the application of health and safety directives

1. ETUC is in favour of rationalising the demands concerning the reports on the application of the various health and safety directives.

The current system is inadequate. On the one hand, it provides for the publication of reports at different intervals; on the other, it does not allow the interaction between the directives to be taken into account. Moreover, the relatively large number of health and safety directives (over 20) is likely to prompt Member States to produce fairly superficial reports on each individual topic instead of conducting an overall evaluation of the health and safety strategy pursued. We think the key mechanisms set out in the framework directive (prevention services, worker participation, risk assessment, health surveillance, enforcement of regulations by the Labour Inspection and other public agencies, and so forth) are fundamental elements for implementing each directive. Many individual directives contain provisions about the information and consultation of workers or health monitoring. It goes without saying that the ability to apply these provisions very largely depends on structural elements in the framework directive.

2. However, ETUC is concerned by the political context within which this discussion is taking place. The Commission Communication on the strategy on health and safety for the period 2000-2006 suggested drafting a single report on health and safety. ETUC has already indicated its support for this proposal.

Until the end of 2004, nothing was done to achieve this. During the second half of 2004, at the initiative of the Dutch EU Presidency, some political initiatives were adopted in a bid to 'simplify' the Community directives on health and safety which were presented as imposing intolerable financial burdens on companies. The campaign in question was based on unsubstantiated arguments and, in particular, highly questionable calculations of the estimated administrative costs. The Competitiveness Council, which met in Brussels on 25 and 26 November, identified a certain number of directives the simplification of which appeared to be a top priority. Its list included the 1989 framework directive. The reason advanced for its inclusion showed that the Council of ministers had not read the framework directive carefully enough and that its decision was based on inaccurate rumours rather than an objective legal analysis. The reason why the Competitiveness Council included the framework directive on the list of directives requiring legislative simplification was as follows: "Yearly information requirements with regard to all of the individual measures impose a disproportionate burden

on the Member States"¹. The solution to this problem would be to set a limit of one synthesis report every six years. A ready response to this would be to ask how on earth a government could implement a prevention strategy without regularly monitoring the situation in detail. More importantly, if we compare the Competitiveness Council's analysis with the real measures set out in the framework directive, we see that annual reporting by the Member States is a total fiction. In actual fact the framework directive requires a report every five years (see Article 18.2).

This is why we need to make it clear that ETUC's support for the rationalisation of reports is the result of a very different line of thinking to that expressed in the majority of calls for legislative simplification or for better regulation. ETUC would like to reiterate that the framework directive is a key legal text in the Community *acquis*, that its provisions are relatively simple and that their implementation is essential if we are to protect the lives and health of workers. The managerial requirements it imposes on employers and, to a very minor extent, public authorities are fully justified and in proportion to the desired objectives. ETUC believes there are no real reasons for drawing up a programme designed to simplify health and safety legislation.

In particular, ETUC is anxious to express its disagreement with the following passage in the Commission document that was submitted for consultation. The Commission states that "the burdens and costs often result from national legislation and not from the European directives. Here it is up to the different players to take measures at national level with a view to identifying superfluous requirements and supplementary demands which do not improve the level of protection afforded by the national legislation by comparison with the minimum requirements enshrined in the European directives on health and safety at work".

For the following three reasons, we believe that such a position is hardly in keeping with the general thrust of the Community's strategy on health and safety at work:

i) It is irresponsible to view health and safety measures merely as burdens and costs. The improvement of health and safety conditions entails clear advantages for workers and society as a whole. Furthermore, it has potential positive effects on a whole range of other factors, such as better conditions for public health, enabling workers to keep their jobs, and promoting gender equality. From a strictly economic perspective, it is very unlikely that the companies making the least effort in the health and safety domain will be the most competitive.

ii) Community directives are only one way of achieving a minimum level of harmonisation. A transposition process that only involved adopting requirements set out in the respective directives would be totally unable to guarantee a high level of health and safety protection. Moreover, many directives refer to national legislation and practices. The Commission's point of view in effect transforms the minimum requirements of directives

¹ See: Council Document 14687/04 (Press: 323), p. 14.

into a maximum objective, and reproaches Member States for taking national measures that go beyond that objective. If this approach were accepted, current levels of health and safety protection would be drastically reduced in many Member States. For example, Community legislation makes no provision for maternity leave for domestic workers, yet most Member States have guaranteed such leave subject to various conditions. The Commission should not call such choices into question in the name of cutting costs!

iii) There's no proof whatsoever of the link between more favourable national provisions and excessive costs cited by the Commission. On the contrary, whenever Community directives invoke national legislation and practices, if directives are to be properly implemented, Member States must embellish the general provisions of Community law. If national provisions on health and safety departments and worker representation in health and safety matters were nonexistent, EU directives would probably only have a very limited effect on workplaces. Similarly, if we had to wait for the European Union to harmonise compulsory limit values, the prevention of illnesses caused by chemicals would be considerably undermined.

3. Our answer to the two first questions put forward in the consultation is as follows.

Yes, we believe that there is cause to rationalise the provisions in force as regards the reports produced by Member States on the application of health and safety directives. In our view, the single report required in the area of environmental protection is a positive example worth bearing in mind². In other words we need to seize the opportunity to define the structure, content and methods used to compile such reports. This would essentially entail drawing up a table providing an overview of the various national strategies on health and safety, indicating the means in place, listing any results obtained and involving trade unions and employers' organisations at every stage of the production of the report. The drafting of such reports should be made easier by a questionnaire devised by the Commission after consulting the Advisory Committee on Health and Safety.

Although the description of national transposition measures remains a key element in this type of report, it needs to be supplemented by information on the strategy adopted to achieve the objectives of the directives. Moreover, a series of indicators would both enable a more accurate evaluation of the results of EU harmonisation and allow the progress made in each Member State to be measured. These indicators should cover the results with regard to health (accidents at work, recognised and compensated occupational diseases, work-related illnesses and so forth); the possibilities for taking action within companies and the number of workers benefiting (prevention services (health and safety departments), workforce representation in the area of health and security, health

² See Directive 91/692 of 23 December 1991 standardising and rationalising reports on the implementation of certain directives relating to the environment.

monitoring, evaluation and so on); possibilities for action by the public authorities (labour inspection, research, legal proceedings and so forth); and also exposure to risks.

One of the advantages of having a single report would be to enable the presentation of data not linked exclusively to the application of a single directive. For example, data on musculo-skeletal disorders is significant for more than merely evaluating the directive on the manual handling of loads. By the same token, it could also prove useful to address the organisation of health evaluation based on an overview rather than dividing up the issue between at least 15 directives containing provisions for carrying out health evaluations.

Nonetheless, specific questions should remain linked to individual directives, to prevent overly general answers. The single report could consist of two parts, one covering elements that structure all health and safety policy and of course including the application of the framework directive and an evaluation of the overall results obtained, and the other covering specific questions linked to the application of each individual directive and setting more precise indicators for the issues addressed.

The single report could also cover areas that are currently covered by recommendations (e.g. the recognition of occupational diseases, or the health and safety of self-employed persons). Whenever a European collective agreement concerns a health and safety issue, we find it only logical that its application should also be covered in the single report.

4. As for the third question, ETUC believes this raises a real problem. In many Member States, the drafting of reports on the application of health and safety directives is far from satisfactory in terms of the respect shown for the principles of tripartite concertation. In many instances, government authorities draw up a draft report that is only submitted to the trade unions and employers' organisations in the final phase. Such an approach does not allow the social partners to contribute to the report in any significant way.

We believe there is a need to establish a procedure that provide for national authorities to consider the results of negotiations between the European social partners on harmonising the procedures affecting their contribution to national reports.

5. ETUC is calling on the Commission to step up the resources earmarked for drafting its own synthesis reports on the application of health and safety directives. So far huge backlogs have built up, and some of the reports drawn up have only provided a very superficial overview (as is the case with the report presented in 2000 on the directive on the protection of pregnant workers or with the report presented in 2004 on the directive on the health and safety of workers with a fixed-term contract or temporary workers, to cite but two examples). Such a situation does not encourage the Member States to write precise, in-depth reports whilst respecting the deadlines set out in the directives. Moreover, the Commission should also make sure that when such synthesis reports are

written, the principles of tripartism are respected. The Advisory Committee on Health and Safety should be involved in the drafting and discussion of these reports. To this end, arrangements should be made to systematically pass on national reports to the Luxembourg Committee.

6. Finally, ETUC believes that the national reports on the application of directives should be considered within a much broader context. The link between EU strategy and national strategies on health and safety necessitates a regular, systematic exchange of information. Consequently, ETUC believes that, instead of being regarded as bureaucratic obligations, these reports should be seen as constituting an opportunity to identify common problems and thereby make EU and national policies complement each other better. On their own, the reports in question are not sufficient to evaluate health and safety problems at work in the EU Member States. If health and safety policy is to be made more effective, it may be useful to specify the role of each information mechanism and identify any deficiencies. Both the Dublin Foundation and the Risk Observatory recently created within the Bilbao Agency have important roles to play here. As regards information on national regulations, ETUC would like to point out that the Commission has taken no action to implement its decision of 24 February 1988 creating a Community information exchange mechanism.

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