

PREVENTION

Union action across Europe

The European Trade Union Confederation (ETUC) through its Trade Union Technical Bureau (TUTB) joined with the magazine *Santé et Travail* published by the French mutual insurance organization Mutualité Française to mark ten years of the framework Health and Safety at Work Directive. *Santé et Travail* published a jointly-produced special report in October 1999 reviewing good prevention practice sponsored by workers' representatives across Europe.

The short introduction to the report, and an interview with Marc Sapir, Director of the TUTB, are reproduced below.

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The commitment to involve workers in framing policies for safer and better working conditions was one of the framework directive's key advances by anyone's reckoning. The case histories described in this report show not only how employee representatives are gaining ground, but also the odds stacked against them in taking ownership of that aim. Let alone the fierce lobbying from some quarters for a restricted and qualified transposition of the framework directive and its individual directives into national law, the transition from law to practice has been an equally bumpy ride.

But the report also shows how working conditions are getting worse in different ways pretty much all over Europe. Not only have traditional hazards become "entrenched", but increased productivity demands, spreading job insecurity and enforced flexibility are sapping the preventive arrangements really designed with permanent workers in mind. And where workplace relations are worsened by non-standard employment contracts and multi-tier subcontracting, the chances of improving workers' health are next-to nil.

The response to this worrying turn in public health must be mainly political. The fact is that health and safety cannot just be ordered by consensus between employers and unions any more now than before. At Community level, too, there is a great temptation to put workers' health second after the competitive interests of business and jobs. Hopefully, this European Commission will take a more proactive line than the old one, whose hands-off attitude in this area has held back the harmonization required by article 118 A of the Treaty of Rome. But for health to be put back on the agenda above competitive interests, the impetus must come from the European Parliament, the Council of Ministers and the two sides of industry themselves.

INTERVIEW Marc Sapir, Director of the TUTB

Santé et Travail: It is ten years since the framework Health and Safety at Work Directive was passed. What do you see as the net result of its application in the different EU countries?

Marc Sapir: Sadly, the very first thing to say is that the European Trade Union Confederation's Trade Union Technical Bureau is the only body to have taken a comparative look at how the Directive is being implemented. That is unfortunate. While the specific trade union angles on such an approach are obvious, we'd no desire to occupy the ground alone. It shows how far the European Commission has walked away from its job of giving information and stimulating debate on the transposition and application of the Directives. It puts the future and the relevance of Community legislation in this area at risk. So a detailed survey of how this health and safety legislation is being implemented in the workplace, to identify potential problem areas and needs for new legislation, is overdue. We also think that the European Parliament must not be sidelined in this debate, which is why we are calling for a parliamentary committee of inquiry to be set up with a brief to take a look at national situations.

Bearing that in mind, the whole trade union approach taken since the 70s of getting the trade unions a say in framing directives, working out common views on certain guidelines, clearly had to be carried on into the negotiations on transposing the directives at national level. So what was needed was a tool to give the unions benchmarks to develop harmonized rules while maintaining the improvements made, which was the thrust of article 118A of the Treaty of Rome.

To work out the net result of the directives, you have to distinguish three things: what the directives have achieved, how they are incorporated into national law, and how they are being applied by the Member States. On the first of these, there is no doubt that the framework directive introduced levers for achieving an upwards harmonization of working conditions. Aspects which we identified as ground-breaking developments back in 1989 included widening the traditional ambit of prevention policies to include all health-related factors, like work organization, the commitment to giving workers a say in prevention, the wording of the employer's safety obligation, introducing what was then the new concept of risk assessment, the requirement for multidisciplinary occupational health services, and jettisoning the "reasonably practicable" principle espoused by the UK. Some element of the framework directive was always a step up on national law everywhere across the Community, north and south, east and west - including in those countries with the most advanced OSH rules.

The record on transposition of the directives into national legislation is patchier. The broad consensus which prevailed when the framework directive and its subsequent "daughter" directives were drawn up degenerated into quite widespread opposition when the time came to transpose them. It has to be said that, in order to get them through - i.e., qualified majority support in Council - the directives were often drafted in vague terms, leaving Member States wide discretion as to how to interpret them. Their hope was that they could get away with minimal changes to their legislation. Obviously, during the national discussions, various interests seized on these ambiguities to try and force through the most restrictive possible interpretation of Community legislation. And the same thing happened with every individual directive under the framework directive. Add to that the fact that not all Member States stand

equidistant from the objectives set by the directives, that national prevention systems are vastly different and characterized by different scientific, medical and social cultures, and the end result is significant disparities in national transpositions. To simplify, you could say that all the big three States - France, Britain and Germany - wanted to minimize the impact of the directives, but each went about it in different ways. Britain was a stickler for meeting deadlines, but brought in the most restricted and qualified possible transposition, which in some cases was borderline unlawful; Germany dragged its feet for ages, and ended up by changing little about its system. France took a stepwise approach, each time “overlooking” something - first the civil service, and now occupational health services, which are still not in place. The Scandinavian countries could get away with slight changes, mainly because existing laws already broadly satisfied the directives’ requirements. Other countries, by contrast - Spain, and to a lesser extent, the Netherlands, Austria and Italy - took the opportunity for a root and branch reform of their preventive set-ups. For these countries, the question now will be how these decisions are put into practice. Belgium lies somewhere in-between, with reforms in dribs and drabs. Portugal was the first country to transpose the framework directive, but the regulations on worker participation have still not been brought in more than five years after the transposing legislation came into force.

As regards the concrete application of the transposing legislation in the workplace, it is too soon to be able to come up with anything like a consistent assessment, not to mention the methodological difficulties it presents. On the available evidence, however, the transition to practice is turning out more of an uphill struggle than expected.

S et T: Can you give us a brief run-down on the main changes in working conditions in Europe?

M.S.: Thanks to the Dublin Foundation’s regular surveys (1), we now have a “European” take on working conditions. The 1991 and 1996 surveys clearly show that the traditional, regulated, risk factors have not gone away. Exposure to noise, dust, chemicals, physical stressors, this whole range of physical and chemical hazards which we have been trying to prevent for years are still there. That should give every Community country pause for thought about the effectiveness of their preventive systems.

The other key feature of changing working conditions is the very sharp rise in problems connected with the way production is organized, the increasing time pressure of work and the spread of casualisation and enforced flexibility. The rosy view of a decade ago that productivity gains and higher profits would lead to improved working conditions has been belied by developments. In fact, the Commission Green Paper on work organization itself admits the need for stronger legislation to address these upheavals in many workers’ situations through increasing time pressure of work and job insecurity. But that requires a real political will, especially in the Council of Ministers. Demonstrably, that will is still lacking today. The Community guidelines on employment focus on yet more flexibility and concessions to employers. Not only are such policies unlikely to bring down mass unemployment, but will almost certainly create job insecurity and working conditions which will seriously affect health and safety.

S et T: The unions aren’t being very vocal about these occupational health issues either, are they?

M.S.: I don’t think you can pigeonhole or generalize trade union attitudes independently of the wider context of industrial relations in Europe. Obviously, the unions are a bit on the defensive over health and safety, not least because jobs and internationalization are such potent issues. If push comes to shove, you might possibly say that there is a fairly general difficulty in working out a coherent, inter-branch policy in this area. That said, it would be

doing a disservice to brush aside the practices in countless firms which, although varying in quality and extent from one country to another, are no less real for that.

S et T: What about the ETUC's aims for the next ten years?

M.S.: I won't go back over what I've already said about the need to put occupational health at or back at the centre of Community policy, i.e., bring home to the Commission, but also the Council of Ministers and Parliament, the importance of taking these issues back in hand. If we can move this political context on, the next thing then would be to revisit the received interpretation of article 118 A of the Treaty, which has restricted the directives to rules governing the relations between workers and employers. But occupational health is not confined to the workplace. Levelling the playing field between men and women, bearing down on job insecurity, making working conditions a public health objective, all perforce go beyond the factory gates.

The framework directive's focus on regulating occupational safety and health at workplace level sidelined the role of government. Nowhere does it mention the state's obligations in respect of policing and socialization. And while it is clear that many health and safety problems can and must be solved in the workplace, it is just as much a fact that some fundamental health principles cannot be ordered through the employment contract.