The BEST report: employment law deregulation moves one step closer

This autumn's Vienna European Council could take another step along the road to dismantling employment laws. The Council agenda includes measures to implement the BEST - Business Environment Simplification Task Force - recommendations. The BEST report, which is already in the Commission's hands, reviews ways of simplifying the business environment - which could include unpicking workplace social dialogue procedures, more casualisation and labour flexibility. Battered by legislative simplification, impact and socio-economic assessment statements, occupational health and safety is unlikely to survive the tide of deregulation unscathed.

Last April, DG XXIII - Enterprise Policy, Distributive Trades, Tourism and Cooperatives - published a report on business environment simplification produced by its BEST[1] task force for the June '98 Cardiff Summit. The report to the Commission pinpoints three priority areas: leaner government, a new approach to education and training, labour flexibility, improved access to sources of financing, and aid to innovation.

The task force makes recommendations on employment and working conditions: it calls for direct dialogue between employers and workers, glossing over employees' rights to representation and the existence of trade unions in silence; and it suggests that this "dialogue" should be able to exclude the employment and working hours terms of collective agreements.

On health and safety, the report follows the "Molitor"[2] Group in calling for a SLIM review of existing regulations (see below), and an impact assessment of future proposed legislation. The task force is not saying that legal requirements should be flouted, but wants assistance for SMEs and for factory/labour inspectorates to be more an advisory than enforcement agency. The Commission will put its proposals for implementing the proposed recommendations to the Vienna Council.

The 'BEST' task force was set up in the wake of the Amsterdam (June 97) and Luxembourg (November 97) European Councils on employment. Both stressed the importance of a European policy on legislative simplification in the single market to lighten the burden on business, especially SMEs.

On from the Luxembourg Jobs Summit

The Heads of State and Government adopted a set of recommendations on drawing up national employment action plans for discussion in Cardiff and then at the Vienna Summit at year-end. Some of those recommendations relate to developing entrepreneurship as a source

[1] Chaired by Chris Evans, chairman of Medin Ventures UK. The task force consists mainly of businessmen, national government officials with responsibility for SMEs, officials from national units for the simplification of administrative procedures, and the president of the German craftworkers' federation.

[2] See TUTB Newsletter No. 1, October 1995.

of jobs. Recommendation 8, for instance, says that Member States will significantly reduce the financial and administrative burden on business. The Commission has already published a Communication setting out a raft of proposals to encourage entrepreneurship[3], mainly by encouraging individual entrepreneurship and creating a business-friendly environment, especially for SMEs.

The Commission has also analysed[4] the national employment reports, and finds that all the national action plans accept that the administrative burdens on new business creation must be reduced.

What may be most important is the Commission's progressive introduction of new measures to effectively "lighten the burden" of legislation.

So far, single market Directives based on article 100A of the Treaty have borne the brunt of the Commission's streamlining drive. In March '98, Commissioner Mario Monti (DGXV, Internal Market) launched a pilot project to set up a business panel to analyse the costs of adaptation and administrative burdens created by the Commission's legislative proposals. The panel will cost-out the proposals, and look for alternative ways of achieving the same end. The pilot project as announced will be purely voluntary, and will not replace consultation procedures. Belgium and Denmark's national action plans both foreshadow the creation of business panels to assess the administrative impacts of proposed new legislation.

There is as yet no way of telling whether the panels' findings will be made available to the Commission alone or opened-up to public debate, identifying who said what.

DG XXIII (Enterprise Policy, Distributive Trades, Tourism and Cooperatives), which is responsible for business impact assessment statements recently published a compilation of "significant" assessment statements[5], showing that few recent legislative proposals have had a significant impact on business!
Even so, the European Parliament[6] has asked the Commission to give the system a legal and official standing and establish a system which gives a more detailed analysis of the impact of proposed regulations on the costs and benefits of business. At present, assessment statements contain:
1. A description of the proposal and its aims;
2. Identification of the industry segments affected;
3. Details of what firms must do in order to comply with the proposal;
4. An estimate of the economic impact;
5. The impact on SMEs;
6. A description of the consultation process.

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[3] COM (1998) 222 final.

[4] Commission document 05-1998-00985-02-00 "From Guidelines to Action: the National Action Plans (NAPs) for Employment 1998", available on the DGV Internet site (http:// www.europa.eu.int/comm/dg05).

[5] The European Commission's Business Impact Assessment System, European Commission, DG XXIII, Brussels, 1997.

[6] Report on the strengthening of the business impact assessment system (Doc. A4-0413/96).

SLIM - simplifying single market legislation

In 1996, Commissioner Mario Monti (Internal Market) launched a simplification programme based on a new multi-stage procedure. The European Commission puts together anonymous panels of users affected by existing laws, government agencies and Commission officials with a remit to identify within a matter of weeks what measures are needed to simplify legislation. Four areas will be looked at in the first phase: the collection of business statistics, construction products, mutual recognition of diplomas and ornamental plants. The Commission will then put forward to the Council proposed legislation based on their work[7].

In line with the Amsterdam Summit, the Council will use this approach to develop an action plan for the single market and the Commission will open new fronts in its campaign - phase two of the programme - to simplify VAT, fertilizers, external trade nomenclatures and banking services. The third phase, announced by the Commission at the "Better government: more effective regulation" conference[8], will examine electromagnetic compatibility, coordination of social security systems for migrant workers, and the insurance sector. The BEST Task Force has proposed a wider list covering legislation on the working environment.

Health and safety in the deregulation firing line

Last year, DGV (Employment and Social Affairs) brought forward proposals for the social and economic assessment of proposed health and safety legislation using national cost/benefit analyses by at least 5 countries providing the necessary information under contracts with the Commission. A European report summarizing these analyses will be published.

The Luxembourg Advisory Committee is likely to issue an opinion on this by year-end. Apart from the contentious matter of methodology (a key issue which will be looked at in a forthcoming issue of the Newsletter), there is also the question of procedures: who will get to see the information collected? Will the two sides of industry be consulted on intended and proposed legislation, or just the Commission and Council? At what point in the drafting procedure will the information be collected? And above all - will extra resources be found, or will existing - already tight - resources be siphoned off from the risk assessment agenda to fund cost/benefit analyses?

When the Community health and safety Directives were being passed, the battle-lines of debate were drawn on risks, preventive provision and workers' rights, but also what resources firms and governments should allocate to preventing risks and coherence between social and economic policies, especially on the establishment of the single market, and the free movement of goods, services, capital and persons.

Since the earliest proposals for Directives in the '70s, the nature of the link between Community policies on protecting workers' safety and health and the market have been the focus of debate. In fact, the very first Directives on safety and health protection for workers in

[7] These proposals are currently on the Council table.

[8] Manchester, 9-10 March 1998.

1980 are based on article 100 of the Treaty of Rome, which allows the Council to adopt Directives to harmonize common market matters by unanimous vote. So, the recitals of Directive 80/1107/EEC of 27 November 1980 stressed the differences between Member States' provision for protection of workers and their impact on the common market. Article 118A of the Treaty, amended by the Single Act, dropped this reference to the aims of the common market and replaced it with a requirement to improve the working environment and harmonization while maintaining the improvements made. But article 118A, para. 2, imposed an economic condition by stipulating that Directives must avoid imposing constraints on the creation and development of SMEs. Directives must no longer relate directly to the establishment and functioning of the common market, but must avoid imposing constraints on the creation and development of SMEs - increasingly seen as the epitome of entrepreneurship and risk-taking. In the first Directive adopted under the article - the 1989 Framework Directive - the Council took this provision on board, as it were, by giving the Member States clearly delimited scope to define categories of undertakings in which the employer himself could fulfill the function of the protective and preventive services, for example (article 7). The Council certainly accepted that improvements to the working environment cannot be dictated by purely economic considerations, but signally failed to say what sort of economic considerations would be acceptable. With the Single Act in force, the Commission set up a system to evaluate the impact of its proposals on SMEs. But with neither criteria nor evaluation methods, the system was to have little effect.

An attempt to tighten the economic constraints on Commission proposals was made in Declaration No. 18 of the Maastricht Treaty[9], in which the Commission "*undertakes (...) by strengthening its system for evaluating Community legislation, to take account (...) of costs and benefits to (...) public authorities and all the parties concerned*". This meant the Commission having to produce an SME impact assessment statement for all proposed legislation. It was an impossibly huge task, so the system was changed. From 1990, only proposals likely to have a significant impact on SMEs would be examined.

The first attempts to roll back Community health and safety legislation on the grounds of competitiveness date from 1995, when the Molitor group report[10] equated legislation with added costs. The very first issue of the *TUTB Newsletter* (October 1995) reported on this in an article entitled, "*Molitor Group: deregulation assault on health and safety*". The Molitor Report, ordered by the Commission, was in a direct line with the White Paper on Competitiveness and Employment, and the Sutherland Report on the operation of the Internal Market after 1992. It laid out a set of recommendations based on the creation within the Commission of a culture of simplification, leading if necessary, to deregulation (....) which stimulates competitiveness and employment. The report said that all health and safety Directives should be revised, recast and simplified, and that Directives should not be passed under article 118A where there were existing article 100A measures. This ignored the fact that article 100A-based Directives related only to placing new equipment on the market, whereas most workers were using equipment already on the market when the Directives came into

[9] It was the debate on impact assessments of the proposal for a Working Time Directive which moved the Council to include this Declaration, see DG XXIII report, The European Commission's Business Impact Assessment System, Brussels, 1997, p. 2.

[10] Report of the Group of Independent Experts on Simplification of Legislation and Administration COM (95) 288 final/2 of 21 June 1995.

force on 1 January 1993. Not only was there no consensus within the group of experts, but the Cannes Summit bringing the French Presidency to an end failed to approve proposals to create a permanent structure within the Commission to be responsible for deregulation.

Implications beyond Europe's borders

Throughout the 1980s, European integration often boiled down to bringing legislation into line to complete the internal market. It was an aim which led the Council to legislate by the cart-load, including some social legislation on promoting the health and safety of workers under article 118A of the Treaty. Since the December '92 Edinburgh Summit[11] - the only Summit at which the Commission has scrapped planned legislation - both the Commission and the Council have been questioning their legislative role in the light of "subsidiarity" (the Community takes action only if and in so far as the objectives of the proposed (public) action cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community) and proportionality (action by the Community shall not go beyond what is necessary to achieve the objectives). Both principles are entrenched in the Maastricht Treaty.

The new Amsterdam Treaty incorporated the Edinburgh Summit conclusions on subsidiarity and proportionality in a separate protocol, raising fresh barriers to new legislation and fuelling the debates. It is likely to further cut down the Commission's powers of initiative and create a long lull in regulation. The Commission must now report each year on the application of article 3B, the Council and European Parliament must include the impact statement in their discussions of proposed legislation, and the Council must justify its common position in the light of article 3B of the Treaty.

These brakes on the developing role of European governance are part of a wider debate on the role of legislation in a globalizing economy. In 1997, the OECD Council addressed a set of recommendations to Member States to reform their regulations to improve competitiveness by reducing the charges on business, promoting entrepreneurship and measures to facilitate market entry.

In recent years, ways and rules have progressively been introduced to minimize the Commission's powers to initiate legislation. No new health and safety legislation has been brought forward for several years. The conference staged by the TUTB in 1997 showed the urgent need for action by the Commission

- to address the deterioration in working conditions,
- to set up controls on transposition,
- to frame non-legislative documents to promote the application of preventive principles,
- to organize feedback on experiences and schemes,
- to establish a three-cornered debate, and
- to collect information to enable the Community authorities to continue doing their job of promoting the health and safety of workers through legislation in particular.

Legislation is the main way to ensure that all workers benefit from a minimum core of rights.

[11] Edinburgh European Council, 11-12 December 1992, Conclusions of the Presidency - Overall approach to the application by the Council of the subsidiarity principle and article 3B of the Treaty on European Union.

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