

Controversial incorporation of Framework Directive in Finland

On 11 February 1998, the Commission sent an official letter to the Finnish government pointing out a series of failings in the legislation transposing the Framework Directive. It listed 14 points, among them that fact that the employer's safety obligations have been qualified by a requirement that the measures taken should be "reasonably necessary".

This sort of proviso throws into question the strict nature of the safety obligation as formulated in the Framework Directive. It is akin to the "reasonably practicable" clause found in some Community Directives dating from the Eighties, which was dropped from the Framework Directive onwards. The "reasonably practicable" clause, in fact, is a major source of inconsistency between United Kingdom legislation and Community law, and the British authorities are using the Finnish case as an argument for keeping it in their own legislation. The problem with this type of clause is that it leaves the door open to cost and organizational arguments for refusing to take all technically possible preventive measures.

Also at issue is the operation of the preventive services, especially the official definition of the expertise necessary, protection for safety representatives against employers' reprisals, the disclosure of certain information, etc.

The Finnish government accepted the validity of some of the Commission's charges and told it that legislative changes would be made; other remarks it feels are unfounded or matters of linguistic hair-splitting. It has also accepted others, but says they have no practical importance because case law and practice would comply with the Framework Directive requirements even where legislation or regulations might be less comprehensive or specific. Overall, the Finnish government's reply tended to play down the significance of the matter.

Trade union organizations do not share the Finnish government's view. They argue that some of the points raised reflect real failings in the preventive system. They want the "reasonably necessary" clause jettisoned. More particularly, they see this as an opportunity for a root-and-branch reform of all the legislation passed in 1958 (amended time and again) to take account of new needs and plug established loopholes. They do not share the government's rose-tinted view of case law and practice. Recent examples have shown that significant ground could be lost, and that an overhaul of legislation was essential to create sufficient certainty in the law.

There is nothing out of the ordinary about Commission's censuring of the Finnish government over the application of the Framework Directive: many other Member States have also failed to transpose the Directive's minimum requirements properly. What is unusual is that we are able to tell you about it, because of the Commission's blanket refusal to inform trade union organizations about progress with its monitoring of national transpositions. Nor are the European Union institutions which have a role to play in the matter (European Parliament, Luxembourg tripartite Advisory Committee on Safety and Health, Economic and Social Committee) any better briefed. The only information put out is statistical on the number of Member States who have failed to notify the Commission of national measures incorporating the different Directives.

In Finland, at least, there has been some public debate - a policy of openness by the national authorities whose lead should be followed in the other Member States and at Community level.

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