

Long on ideas, short on means

The Commission has just unveiled its Communication on a new Community strategy on health and safety at work for 2002-2006¹. It is a long-awaited document adopted at the outcome of countless debates² and a generally rocky passage. It was late in being published due to the fault lines which emerged within the Commission. The original version drafted by DG Employment and Social Affairs was amended by other Commissioners. The majority view wanted it less ambitious or less specific on certain points (especially on psychological harassment and violence at work). This article gives a general assessment of the strategy document without going into all the specifics.

A new strategy was needed - of that there is no doubt. The health and safety directives have not delivered the goods. Since 1992, the Commission seems to have been at a loss for a proper strategy. Faced with strong deregulatory pressures, it has tended to aim low for one-off measures. The Commission's own resources for health and safety have been cut to the bone. And changing patterns of work have thrown up new issues which the directives did not properly address.

The Commission Communication contains much interesting analysis. It is possible to agree with its findings in many places where the analysis could have done with being clearer and better-developed. But 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. In short, it gives the impression of a clear-sighted but not too-responsive Commission whose hands are virtually tied.

Positive but only partial or unclear opportunities

The openness to a gender perspective is certainly positive. It is a wholly welcome breakthrough in the Commission's thinking on workplace health and safety³. But the Communication takes a fairly defensive approach. It makes workplace health and safety too passive a matter which must "take account" of the gender division of labour, when it should arguably play an active role and help work against job segregation. This objective appears only once, in a paragraph on fisheries policy. There are no concrete proposals, other than on developing research, and a very general suggestion that prevention services must have a gender perspective. To our way of thinking, it should also have addressed the issue of indicators, and come out in favour of harmonizing the systems for declaration and recognition of occupational diseases to put an end to current discriminatory practices. The gender perspective should also have been used to underpin clearer proposals on violence in the workplace and musculoskeletal disorders.

The Communication rightly says that musculoskeletal disorders are a priority of workplace health and safety. We do not believe that existing directives address this issue effectively, since they are limited to specific risks (work with display screen equipment, manual handling and, shortly, vibrations). A general directive on musculoskeletal disorders laying down essential ergonomic requirements would be a significant advance in this area, where the value of a Community contribution is beyond all doubt. The Nordic countries aside, no Member State has managed to bring in regulations specifically to address these issues. The difficulty is more political than technical: tackling musculoskeletal disorders at source means acting on work organization, and, in particular, bearing down on work intensification⁴. The Communication contains two passages on Community initiatives in the field of musculoskeletal disorders, announcing a Communication which will look into their causes and will propose amendments or new legal provisions in fields in which coverage is still incomplete. This is an equivocal statement: work could already have been started in both areas by revising existing individual directives to improve failings, and preparing a new, more general directive on essential ergonomic requirements for the prevention of musculoskeletal disorders.

The Communication also notes a rise in psycho-social problems and illnesses, singling out psychological harassment and violence at work. The version drafted by DG Employment and Social Affairs announced preparations for a directive on both issues. The version finally adopted by the Commission is less clear-cut. The Commission will "examine the appropriateness and the scope of a Community instrument on psychological harassment and violence at work". One of the underlying issues in the debates is: do psychological harassment and violence at work constitute working environment problems which are detrimental to health? If so, the Treaty makes provision for adopting directives (old article 118A, subsumed into current article 137). In some quarters, the view is that psycho-social factors and working time issues are not really objective components of working conditions

¹ Document COM (2002) 118 final of 11 March 2002.

² The trade union line adopted in June 2001 is set out in the TUTB and ETUC publication: *A New Impetus for Community Occupational Health Policy*.

³ Which makes some clumsy expressions ("an increasingly feminised society") and woolly claims - "men accounted for 93% of musculoskeletal problems and haematological illnesses" - the more regrettable. On what basis these two illnesses are lumped together, and where these far-fetched figures come from, is beyond imagining.

⁴ A political difficulty thrown into sharp relief in the United States. After years of debates and protests, ergonomics regulations were finally enacted in 2000. President Bush led a campaign which resulted in the federal regulations being revoked by Congress in March 2001 on the excuse that they would prove too costly to employers. US trade unions report that 600 000 workers a year suffer injuries or accidents which could have been prevented by applying the federal Occupational Safety and Health Agency (OSHA) rules.

which should be addressed by workplace health and safety policies, and Community jurisdiction has been challenged on this very issue. This was the UK position on the Working Time Directive. The ECJ may have ruled clearly in favour of a wide construction of the notion of “working environment”⁵, but the Commission seems to be divided on the matter. The debate is clearly more a political than legal one: the more free market-minded Commissioners do not want to see the exercise of employers’ powers officially regulated.

The Communication rightly addresses two key pillars of any preventive system: prevention services and the labour inspectorate. On prevention services, it says that they “should be genuinely multi-disciplinary, embracing social and psychological risks, and the gender factor”. This is a perfectly proper approach. Sadly, it puts up no concrete proposals for delivering this objective, which is far from reflecting the facts as they are. The labour inspectorate gets a more detailed analysis. The Communication stresses that it must be capable of appraising all the risks, combining their inspection role with a prevention function, and be open to audit, using result and quality indicators. The checks carried out by the inspection services must give rise to uniform sanctions which are dissuasive, proportionate and effectively applied. That is all said in so many words, but the Commission seem to envisage no other initiatives than exchanges of experiences and the organization of different forms of cooperation, assigning the Senior Labour Inspectors Committee (SLIC) a fundamental role. This is far from the Community setting a minimum level for Member States’ control responsibilities as is the case in environmental matters. Finally, the Communication is completely silent on a third pillar of prevention systems: employee representatives. Is this because the Commission considers it a secondary issue, or that the situation is satisfactory in this area?

Other positive opportunities deserve to be pointed out, notwithstanding that the proposals for actions are not always clear. These include, among others:

1. The Communication starts off the discussion on a more effective way of dealing with infringements in “transnational” situations, where a firm is operating in a state other than that in which it is established.
2. The role of the European Social Fund in terms of promoting a safe and healthy working environment will be “analysed”. This would be a crucial initiative were it to lead on to specific programmes for improving the working environment in the Community.
3. The Communication refers to the importance of collaborating with the ILO, but regrettably fails to address the issue of Member States’ ratifying the Conventions already adopted where there is already a serious backlog building up!
4. The Communication suggests that Member States should produce a single report on their implementation of the directives. This is clearly patterned

on the scheme introduced in the environmental sphere.

5. The proposal to integrate stress-related complaints and illnesses into the employment guidelines is highly positive. But the final version of the text is significantly qualified: the Commission will “examine the appropriateness of proposing the integration” of the problem. This officialese does not bespeak overwhelming enthusiasm. Other than that, stress issues would be referred to the social dialogue between employers and trade unions.
6. The linkage between workplace health and safety and market rules is addressed. The proposals are good as regards feedback of experiences, but completely gloss over the other key strategic factor of market regulation.
7. The Communication takes up the issue of EU enlargement to new Member States, stressing that the *acquis communautaire* must be properly applied. The ideas put forward are not without interest, but shy away from the fundamental point that a Community programme is needed to fund the development of national workplace health and safety policies. Transfers of experiences and twinning will not be enough.
8. Drawing up guides on how to apply the directives in conjunction with governments, the trade unions and employers’ organizations should certainly improve the way the directives are being applied.
9. A “risk observatory” is to be established. An excellent idea, but not so easy to deliver. The Communication says it will be based on examples of “good practice” collected from firms or specific branches of activity - a method that might be more suited to a registry of impeccable behaviour.

Major failings

The Communication does not address the existing scope of Community directives which exclude self-employed workers and domestic staff. This is a major flaw in the existing set-up. As things stand, for example, an employer who wishes to disregard asbestos or noise exposure limits merely has to bring in independent contractors. We have repeatedly pointed out that the domestic service exclusion indirectly discriminates against women, who make up the overwhelming majority of domestic help. Under existing Community provisions, women domestic workers are not even entitled to maternity leave!

The Communication’s purported analysis of the relationship between insecure employment and workplace health and safety is bankrupt not say distasteful. It comes up with the idea that “lack of motivation” may be a cause of the higher work accident frequency rate among such workers. What next - research into suicide trends among temporary workers?

The Communication says nothing about harmonizing the declaration and recognition of occupational

⁵ Judgement of 12 November 1996, United Kingdom v Council. See *TUTB Newsletter*, No. 5 (1996).

diseases, which makes the proposal for coordinating national policies on the basis of comparisons ("benchmarking") between declarations of occupational diseases ludicrous. The occupational disease declaration rate per 100 000 workers currently varies between 1 and 30. This discrepancy has nothing to do with objective differences in working conditions or the effectiveness of prevention, but is due to the systematic concealment of countless diseases as work-related by obstacles in declaration and recognition systems.

The Communication skirts round chemical risk and environmental protection issues, which feature only in a very piecemeal way (extending the scope of the "carcinogenic agents" directive, a reference to improving the linkage between market and environmental rules - set out in a series of other policies). This is little enough! The prevention of chemical risks is fraught with complex problems. The very first thing should be to give a new impetus to the policy of setting exposure limits and draw up lists of priority substances for which binding exposure limits are needed. A policy of replacing dangerous substances wherever they can be should also be put in place. Market rules are set to undergo radical changes in the coming years, so it is vital to frame a strategy for the workplace which takes them into account. The recent disaster in Toulouse threw two key factors into stark relief: the lack of effective employee representation, and the dire consequences of multi-tier subcontracting⁶. Neither of these issues are addressed by the Seveso major industrial hazard directive, and the latter appears nowhere in the health at work directives.

Integrating people with disabilities into a healthy and, if need be, adapted work environment is not really touched on. The only reference is to the role of the Bilbao Agency in connection with the European Year of Disabled People 2003. There is no mention of the fact that the only proposal for a directive intended to facilitate access to employment for people with disabilities (adaptation of transport) has been deadlocked for more than 12 years past.

The role of the public authorities

The Communication says far too little about the responsibility of governments. Apart from the possible adoption of a Community instrument on national reports on how the directives are being applied, everything else is a matter for the states' discretion (especially the minimum criteria for inspections). It could have drawn on the Community experience with environmental protection to go further and lay down a minimum framework for public authorities' responsibilities.

The Communication opens up the prospect of convergence in national policies on the basis of comparable indicators ("benchmarking"). Quantified

national objectives should be set for reducing the rates of work accidents and prescribed occupational diseases, and the number of days lost as a result of both. The scope of these indicators will not be looked at here other than to say that the second (and, therefore, the third which stems directly from the other two) makes no sense until there is a harmonized system for the recognition of occupational diseases at Community level. Also, from a gender perspective, the effect of these three indicators would be to greatly underestimate the damage to women's health. Comparability of the structural indicators of prevention systems (prevention services, employee representatives, percentage of workers actually covered by them, etc.) is not addressed. The Communication glosses over the key role played by the Dublin Foundation's Europe-wide survey of working conditions as an invaluable addition to the official work injury and occupational disease figures.

The consolidation conundrum

The Communication says that the existing legislation needs to be consolidated. Although it is less complex and copious than in other areas (the chemicals market, for example), consolidation *per se* is not an idea to be dismissed lightly. In the current political context, setting this as an objective is to set oneself a conundrum. Three different scenarios are possible.

Consolidation could simply be a screen for deregulation. There will certainly be enough pressure for it. Some will want to hold it down to "the essentials", putting the focus on employers' self-regulation and "corporate social responsibility".

Consolidation can just be a simple technical operation to coordinate all existing provisions, neither repealing nor adding anything. It would simply combine the different articles in a simplified presentation. So, instead of having provisions on worker information in each directive, there would be one general provision applicable to all areas. On the surface, this is an appealing solution since it would sidestep political difficulties. But its practical scope would be minimal. The Member States have already transposed the directives. Coordinating them would not affect the national legislation. And the national rules is what end-users (be it the labour inspectorate, employers or workers) refer to. The only benefits of this arrangement would accrue to new Member States (provided they have not yet transposed the directives) and teaching the subject.

Consolidation can be part of an exercise to evaluate the consistency of existing provisions, in which case it would go beyond simple coordination of provisions. It could, for example, be used to spell out the roles of the stakeholders (especially the public authorities), take account of the ILO conventions, clarify what health surveillance should do and how

⁶ The same factors are also present in many other "disasters": the Mecnavi fire in Ravenna, Italy (13 fatalities in 1987), the explosion on the Piper Alpha offshore drilling rig off the coast of Scotland (167 dead in 1988).

(dealt with in a fragmented and inconsistent way across different directives), bring in a full gender perspective, etc. Should the Commission choose to go down that road, it would get our full support.

Context and prospects

The Commission Communication is likely to be debated by the Council of the Ministers under the current Spanish Presidency, probably resulting in a Council resolution setting out its own position. It could come down behind the Commission proposals, or winnow out selected ones it wishes to support.

There are already growing voices for halting the development of social Europe in favour of more flexibility and labour market reform. The joint declaration adopted on 15 February 2002 by Messrs Blair and Berlusconi reflects that approach, which is endorsed by the Spanish government. Other governments would prefer to see a new impetus for Community action on workplace health and safety,

knowing that Community developments would help buttress improvements at national level. Closely-run elections are looming in Portugal, France, the Netherlands, Germany in particular. All of this suggests that we should not expect a Council resolution which goes beyond the Commission Communication, notwithstanding that a long series of national debates show the clear need for a new impetus for workplace health and safety policies.

Once the Council has adopted its resolution, the Commission will have to spell out its strategy through a work programme, laying down the different initiatives and setting a timetable. Trade unions will have an essential job to do in safeguarding the new elements in the Commission Communication, getting the Commission to turn them into workable proposals, and getting the necessary support from the European Parliament and Member States. ■

Laurent Vogel, TUTB Researcher
lvogel@etuc.org