

National arrangements for workers' health and safety representatives : transposition and implementation of the Framework Directive

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The accession countries will before long have to address the issue of the application of appropriate legislation and the lack of trade union involvement in worker representation in OHS. There must be comprehensive legislation supported by trade union strategies. The current legislation needs to be added to and filled out in guidelines and/or codes of practice. The same focus should be put on support for reps, especially through training. The workshop discussions on this brought input from trade unionists, labour inspectors, OHS practitioners and inspectors from insurance companies.

The workshop opened with an overview of the situations in the EU and accession countries. This was followed by presentations from representatives of six countries - the Netherlands, Belgium, Latvia, the Slovak Republic, Spain, and Malta. Several examples based on the TUTB's 2003 survey on worker representation in health and safety were developed in the opening speeches and are explained below.

The legal system in the **Czech Republic** points up the importance of trade unions. The Labour Code lists a series of rights, including the right to interrupt work. The rights of information, consultation and participation are clearly laid down. But, there are no legal requirements on health and safety committees. While there is legislative provision for workplaces where no trade union is established, it is unrealistic to expect non-unionised workers to play an active role in electing their health and safety representatives. Also, the law applies only to firms with at least 10 employees. Trade unions must have more specific statements of their policy and involvement in enterprises. They should also cover as many non-unionized workers as possible and be involved in their training.

The **Lithuanian** system is lacking in clarity. Some paragraphs of the Framework Directive seem to have been transposed too vaguely. Some bodies of legislation - the Labour Code and Health and Safety of Workers Act - contain general requirements on this, many of which can be bargained in collective agreements. Other OHS legal rules are set within a legislative framework. In practice, these legal provisions may be a source of conflict between the two sides of industry. The system of worker representation in

health and safety operates both through works OHS committees and/or health and safety reps.

At least 50 employees are required for the formation of health and safety committees, or if requested by more than 50% of the workforce in any enterprise, or where authorized by government recommendation to reduce the level of risk factors inherent in certain sectors.

Lithuanian legislation does not stipulate a minimum workforce size for the appointment of health and safety reps. However, there must be at least one rep per shift in an enterprise. This applies to all firms regardless of status (private, public, state,) and in all sectors, regardless of their size. Reps and health and safety committees have information, consultation and participation rights. Trade unions are the main actors in worker representation. No other form of representation exists in Lithuania because as yet, legislation on work councils is only in the draft stage.

In **Bulgaria**, there are Working Conditions Committees (WWC) and Working Conditions Groups (WCG). There is no other form of representation. Committees are set up in firms with 50 or more employees.

Working Conditions Groups are set up in firms with fewer than 50 employees. Five worker representatives can sit on Committees and one representative is allowed to be a member of the Groups. Reps are entitled to initial training followed by annual refresher training. The evidence suggests that representation is most effective where trade unions are involved. In the case of Committees or Groups in non-unionised workplaces, involvement by worker representatives is virtually non-existent because it is only "on paper", a mere administrative formality. There are approximately 180 000 enterprises in Bulgaria. About 12 000 WCC and WCG with over 42 000 workers' representatives are operating, 80% of whom are trade unionists. Trade unions also estimate that 40% of the workforce is covered by one of the two forms of representation.

An unusual situation obtains in **Poland**, where so-called social enterprise inspectors such as workers' representatives have a key role which has traditionally had specific legal backing. The problem is that these inspectors deal only with public and/or state owned enterprises.

Romania reported huge differences between law and practice. Although the law provides a basic framework for health and safety reps, it is applied properly only in enterprises with strong trade union representation. Surprisingly, a trade union estimate reports that 50% of the workers are covered by reps, more than the average in other accession countries. Health and Safety Committees are established in enterprises with more than 50 employees but there is no penalty for employers who flout their obligation.

In **Estonia**, trade unions are workers' only representatives in OHS. Where there is no trade union, the workers have a legal right to elect a workers' "trustee". Trade unions report representation as being divided equally between trade union representatives and non-unionised workers, with an estimated 90% of all workers being covered! The minimum workforce size is ten employees. Reps are elected by all workers in the firm. The employer is responsible for the election and training of reps. Apart from information and consultation rights, reps can call a temporary halt to work if there is a danger to workers' life or health. An OHS Council can be set up by the employer in workplaces with more than 50 employees.

In **Slovenia**, the situation differs between the private and public sectors. In the private sector, a Works Council is set up in workplaces with more than 20 employees. In firms with fewer than 20 employees, health and safety reps are appointed as well as in the public sector. Although all workers are covered by this system in theory (1 employee is the minimum size of an enterprise), that is not borne out in practice for small enterprises. As in other accession countries, trade union estimates report 90% of unionised reps. While there are legal rights of information and consultation, there is no right of co-decision. Slovenian law lays down clear provisions on the election and number of reps, training and the rights of Works Councils.

Hungary's Safety at Work Act allows both trade unions and non-unionised workers to delegate representatives. Trade union estimates suggest that 40% of workers are covered by reps, but only about 60% of reps are trade unionists. There is no difference between public and private companies in terms of worker representation in OHS. There are rights of information and consultation in all areas of OHS, but co-decision in matters relating to safety regulations. The Health and Safety Committee has set the minimum qualifying workforce size at 50. The maximum number of reps that an enterprise can have is 11. Reps undergo 32 hours of specific training after election. In Hungary, reps have no right to stop work which they consider to be unsafe. Trade unions in Hungary have recently launched new initiatives in health and safety rep training.

The workshop set papers mainly addressed the various aspects of worker representation in health and safety.

Jan Popma from the TNO (**the Netherlands**) analysed the impact of self-regulation in companies and the participation of workers and Works Councils aimed at improving working conditions.

The Dutch system of self-regulation in occupational health and safety, based on "enforced" cooperation between employers and employees, was established in the early 1980s when the Working Conditions Act (Arbowet) came into force. The act was amended in 1994 and 1998. But monitoring of developments in OHS since 1997 (physical load, mental burden, noise, dangerous substances, MSD) has shown that self-regulation has not worked that well.

Dutch Works Councils have adequate statutory OHS rights but do not exercise them sufficiently. This has resulted in too few OHS Committees, low training uptake rates and occasional reliance on external expertise by councils. None of this makes Works Councils' OHS tasks any easier. But nor do they always use their statutory powers. Surveys of Works Councils reveal that four main codetermination rights have not been used properly in many cases, which may suggest "that Works Councils do not therefore assess OHS risks when using their advisory powers". When a subjective assessment was sought, 31% of employers and 36% of labour inspectors thought that Works Councils had a big influence on OHS.

There is a clear link between the presence of a Works Council and the quality of risk assessment. An action plan was drawn up on the basis of objective indicators like the quality of OHS policy, working conditions at the workplace and their consequences. Works Councils had a positive impact which was not limited to working conditions, but extended to work attendance issues, like absenteeism, while co-determination was found to have both positive and negative side-effects.

Various factors work against the success of this method. Worker representation is found in only about 17% of Dutch workplaces, and some firms that should have a works council do not. Some employers are also disinclined to work in partnership with work councils, and there are no clear indications of the positive overall effect of self-regulation.

The negative aspects of self-regulation taken together with patchy codetermination have produced unequal protection and some injustice. It is important for government to regulate and take a lead in this field. Popma suggested that the "introduction of prevention officers in all Dutch enterprises would be a first step in the right direction". Other essentials for effective worker representation in OHS are roving safety reps for SMEs and a greater impetus from trade unions.

The Labour Code provides the legislative framework for workers' health and safety representatives in **Latvia**. Additional practical measures have been enacted in the recent ministerial regulations on procedures for the election and activities of trusted representatives. Trade unions have also reached an agreement with the labour Inspectorate on assistance in disagreements between reps and employers.

Broken down by branch / sector, the highest number of health and safety reps are to be found in central government, the energy sector, social services and manufacturing. The steady growth in the number of trade union health and safety representatives is seen as a positive development. Numbers have risen from 1 351 in 1998 to 2 528 in 2002. Trade union reports show that health and safety reps who are also members of a workplace trade union are more effective and goal-oriented.

Trade unions organise two-tier training for reps – a basic 40 hours training, and more advanced training specific to trade union needs. Under the recent training and labour protection legislation, the basic training will be extended to 50 hours.

Latvian trade unions are preparing new training programmes for health and safety reps designed to address issues and obstacles posed by poor employment conditions in enterprises.

In **Belgium**, the FGTB introduced the RISE (Inter Trade Union Network for Raising Environmental Awareness) project¹ which extends the scope of worker representation into the environmental sphere in response to trade union and public demand. The Walloon regional government also supported the project.

The project set up a network of trade union delegates and officials across all sectors with a view to stimulating social dialogue on the environment in workplaces, boosting delegates' ability to intervene on environmental issues and raising the environmental awareness of workers and their representatives. It was implemented through training and a range of information sources, pilot projects in workplaces and industry branches, and the development of technical support tools designed to facilitate trade unions reps' access to information and their work on the environment.

The project was extended as RISE II in 2001 adding, at the Walloon Region's request, four additional strands on changes in legislation, environmental management systems, monitoring of compliance with regulatory provisions and the NIMBY phenomenon. This project is expected to extend cooperation between the Walloon region and trade unions and could possibly extend to the Flemish region and the Brussels-Capital region.

In **Malta**, one of the smallest European countries, health and safety representation of workers is a rela-

tively new concept. As in other spheres, the transposition and implementation of European directives has added a new dimension to health and safety at work. The trade union assessment is that it has been a partial but positive success.

Trade union density in Malta is about 62% - a high percentage that reflects a long-standing tradition of elected union representatives – the shop stewards. Trade union research has found that trade unionists have a good awareness of OHS, but workplace health and safety reps (within the Framework Directive's meaning) are fairly uncommon. Management is usually opposed to the idea of reps and only a small percentage of employers provides workers with training. Most training is provided by trade unions.

Employers often undervalue reps' suggestions and proposals. Few reps get paid for their workplace duties. In some cases, reps are not elected, but appointed by the employer. Communication between trade union shop stewards and health and safety reps is poor because they have different interests. Shop stewards are more concerned with the company's interests, whereas reps act in the interests of the workers.

Among the new initiatives to have emerged recently in Malta is training for elected public sector health and safety reps run by the Health and Safety Authority. Trade unions see the gap between standard practice and the theory embodied in the Framework Directive, and believe that enforcement and especially promotion of education in this field will produce better results.

Spain's OHS strategy is focused on information, training and networking activities of trade unions. The Trade Union Institute for Work, Environment and Health (ISTAS) provides services for trade unions in this field² in the form of guidance and other documents for trade union delegates. The ISTAS' website and regular publications are focused on prevention and intervention strategies for trade union delegates, between 5 000 and 6 000 of whom attend ISTAS CC.OO basic, intermediate or advanced training courses each year.

Spain has more than 276 000 health and safety delegates, but there are also small workplaces that lack any trade union representation. Nevertheless, trade unions have an influence in these firms through their participation in the social security general prevention programme run by the mutual insurance agencies. Delegates also have the right to visit subcontractors and communicate with all the stakeholders involved. Regional agreements are also concluded between the social partners and the government to provide for direct cooperation between the social partners by allowing trade union inspections of plants with high accident rates or no union representation. Non-unionized firms are

¹ <http://www.rise.be/>.

² <http://www.istas.ccoo.es/>.

setting up agreements as a basis for the exchange of information and unimpeded access to their various subcontractors.

CC.OO has also developed a new service for delegates and members – the Trade Union Advisory Network, supported by a new foundation for OHS. The network has improved the quality of technical information and served as a tool for the dissemination of experiences in workplace intervention as well as an indicator of delegates' and members' needs in all sectors. ISTAS has organised courses for advisors in such things as work accident investigation, psychosocial risks and trade union interventions.

The **Slovak** contribution was presented from a specific labour inspection viewpoint. The Framework Directive's principles on worker representation were transposed by new Slovak legislation in 1997, but the situation still leaves much to be desired due to employers' reluctance to cooperate with workers and their reps in OHS. Also, reps may be unwilling to assert themselves, making their appointment little more than a formality.

The labour inspection service estimates that reps are appointed in 75% of companies, and about 50% of them are trade unionists. It argues that while a trade union presence in the company provides employees with support and advantages, it is not enough. It has therefore put together a programme to develop and promote employer awareness of the need for worker reps' involvement in OHS. It is accepted that reps should accompany labour inspectors on inspections and be present in discussions on inspection findings. Another initiative – "labour inspection on safety management" – examines how workers and their reps are involved in workplace health and safety management systems.

The Slovak Labour Inspection Service says that worker participation is seen as a key element in the OHS management system. A new campaign for 2004, called "Safe enterprise", aims to promote the implementation of a coherent OHS management system, and will also be targeted on support for worker participation in all stages of the system.

The labour inspectorate also acts as a training provider. Some time ago, it ran an international project on worker involvement in safety and health (WISH) aimed at developing appropriate training methods to extend reps' skills and capabilities in areas like bargaining, assertiveness, case-building, legal awareness and social skills. During the project, 11 pilot trainers were trained and each pilot trainer trained a further 50 trainers. Trainer training material was also produced. Since then, several hundred training programmes for reps have been provided by certified WISH trainers.

The final discussion of the workshop centred around the key issue of trade unions' ability to change or recast their strategies to address new developments at the workplace. The growing number of small and medium enterprises has led to the creation of new forms of worker representation in EU countries, based either on regions or sectors, or operating as advisory services. This is a departure from the past tradition of mainly shop-floor representation.

A range of forms of worker representation are to be found in the EU and accession countries. There is no doubting the crucial supporting role played by trade unions as providers of expertise, training, information and a solid grounding for reps. Innovative trade union strategies must be developed in this field if they are to sustain that role. ■

