

## Regulation of the working environment in the new accession States of the enlarged Union

### Introduction

This article attempts to explore the “politics of regulation” in the context of post-accession Central and Eastern European States. It examines the prospects for the transposed European social *acquis*, especially in the area of occupational health and safety (OHS) - or working environment - for employees in the new accession States. It is suggested that resistance exists on a number of fronts at both domestic and European levels, which may compromise the effective harmonisation of working environment standards with broader European directives and norms. The advent of the new Central and Eastern European members may test the application of innovative regulatory strategies deployed by the Commission to achieve harmonisation in an enlarged Union, at a formative juncture, and in a key area of social policy – the working environment.

As such, they find a ready audience among entrepreneurial classes in the accession States, as well as incoming foreign investors. At a national level, therefore, support among CEE business and political elites for European labour protection regulation, especially in the area of OHS, is often limited.

In the third part of the article, European Commission strategy is examined in more detail by assessing the Commission strategy document for 2002-2006 on OHS, as well as the results of the recent final monitoring reports on the accession States. In the final part of the article, it is argued that there is a gap between the more optimistic estimates provided by the Commission at a macro policy level in the context of completing the accession process, and wider contextual industrial relations factors. These are discussed in terms of providing the contexts which may make the effective implementation of newly-adopted OHS legislation in the accession States problematic. Accordingly, it is suggested that prospects for sustainable harmonisation in the area of working environment in the accession States, and for OHS improvements in particular, look uncertain.

### A worsening working environment ?

The massive economic changes that have taken place in Central and Eastern Europe since the early 1990s have been well-rehearsed many times over. These have included the dissolution of State enterprises, emergent foreign and joint ownership patterns, as well as the massive growth of domestic small and medium-sized entrepreneurial concerns. In 1999 the total number of SMEs in the 13 candidate countries for EU membership was estimated at almost 6 million. The total number of SME employees amounted to nearly 30 million people, accounting for 72% of the total workforce in those countries, a significant percentage of them (40%) employed in micro enterprises with fewer than ten workers (2). In general, SMEs are more dangerous to work in than bigger firms (50+ employees) in terms of average fatalities in the EU per 100,000 workers in 1999, the fatality rate being around double in micro (1-9 employees) and small-sized enterprises (under 50 employees) (3). Rates in the accession and candidate countries can be expected to equal, if not vastly exceed, those of the member States.

These developments have made both industrial relations and health and safety practices increasingly

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At European level, in recent years, there has been something of a retreat from securing employee rights, in favour of promoting growth and competitiveness, and a consequent downplaying of the social dimension of European integration. The loss of momentum in social policy initiatives at European level applies also in the sphere of workplace safety and health. This may be further intensified by the advent of the new member States (1). In the first part of this article, evidence is presented suggesting that the working environment in new accession State workplaces has worsened when compared to existing member States. This has huge implications for any future regulatory strategy towards health and safety in the enlarged Europe.

In the second part of the article it is argued that regulatory authorities in new CEE member States may be subject to “regulatory fatigue” in the area of occupational safety and health. They have completed the enormous task of legislative transposition, but now face the equally huge job of implementation with limited administrative resources and capacities. Meanwhile, external agencies such as the IMF, appear to favour differentiated standards of OHS protection in Central and Eastern Europe (CEE), as compared to EU member States. Neo-liberal-inspired ideas can be seen as a key ideological component of the current process of wider European integration. A number of “home-grown” policy forums exist in CEE which amplify neo-liberal policies for domestic consumption, and are often hostile with respect to labour protection regulation.

complex in the accession States. The transition to market economies has been accompanied by privatization, bankruptcies, restructuring and the growth of unemployment, underemployment and a radical flexibilisation of the workforce. All of these factors have created an imbalance in power between employers and employees at the workplace which inevitably impacts on safety and health.

The evidence pertaining to the working environment in the accession States takes both qualitative and quantitative forms. Unfortunately, neither can be said to be entirely adequate. Therefore, only the most general observations can be made as regards their implications for future implementation strategy in occupational safety and health. A broad comparison of aggregate fatality rates in the EU-15 member States with the eight Central and East European accession States gives an approximate idea of the "order of difference". The relatively short time-series for the data below makes any analysis of longer-term trends premature. Nevertheless, the comparison is interesting.

Comparing accession country averages with the EU, only in three cases (Estonia, Hungary and Slovakia), is there an observable secular decline in fatality rates mirroring that of the member States. In the remaining five countries - the Czech Republic, Poland, Slovenia, Lithuania, and particularly Latvia - fatal accident rates appear to be rising moderately or even sharply. For the accession States as a whole, by 2001 fatality rates are diverging from EU averages. Comparisons between individual accession States, and between the accession States taken as a group and the EU of 15, are fraught with dangers due to the differing industrial composition between the various countries. So, for example, those countries with a legacy of high hazard heavy industry and mining are likely to see greater fatality rates than those with a developing service sector. Future analyses of accident statistics, to be worthwhile, must take account of these differing compositional and sectoral factors, both within individual countries and between new and older member States. Nevertheless, even taking account of the rather differing overall composition

of industrial activity in the Central and Eastern European countries, the growing divergence in fatality rates with the EU is noteworthy, as is the position of Latvia, Lithuania and Slovenia as the front-runners. Data from the International Labour Organisation would tend to support this view. According to the most recent figures from the ILO, the incidence rate of work-related fatalities in the accession countries (not including Cyprus) is almost three times higher than in the EU-15 (9.6 per 100,000 persons in employment compared to 3.4 per 100,000 in the EU-15). The fatal accident data suggest therefore that in the new member States, there may well exist what Theo Nichols has previously called, heightened "structures of vulnerability" (5).

In terms of the quality of working life, survey evidence from the European Foundation for the Improvement of Living and Working Conditions would also seem to point to significant differences between the existing member States and the accession and candidate countries (6). It suggests that workers in the accession and candidate countries "are more exposed to vibrations, noise, heat, air pollution, and, to a lesser degree, to working in painful or tiring positions, than in the EU". Differences are also reported with regard to working time, suggesting that working hours are considerably longer than in the EU and that atypical forms of work such as night work or shift work are more widespread. The survey findings indicate that information / consultation is also less well developed in the accession and candidate countries than in the EU, especially when it comes to discussing organisational changes. It is observed that "consultation in the EU-15 leads to improvements at all levels more so than in the acceding and candidate countries". This again raises important issues with respect to future social dialogue and the implementation of EU directives on consultation.

The most interesting data from the survey deal with perceptions of whether or not work undertaken is harmful to an individual's health. The survey reports that the perception that health and safety are at risk because of work is more widespread in the accession and candidate countries than in the EU (40%

**Accidents at work; fatal - Index of the number of fatal work accidents per 100,000 employees (1998=100).  
EU-15 and 8 CEE accession States compared**

	1994	1995	1996	1997	1998	1999	2000	2001
EU (15 Countries)	115	109	106	100	100	85	82	79 <sup>(p)</sup>
Czech Republic	110	103	112	116	100	76	96	96
Estonia	na	120	102	114	100	79	56	78
Hungary	106	117	101	97	100	107	95	71
Lithuania	na	98	102	83	100	91	78	105
Latvia	na	na	na	na	100	115	90	140
Poland	na	na	na	109	100	83	96	92
Slovenia	90	118	118	130	100	88	83	105
Slovakia	na	96	109	81	100	89	71	71
CEE (8 Countries)					100	85	81	94

Source : Eurostat available on the Cronos database (4)

report that their work does affect their health or safety, compared to 27% in a survey of working conditions in the EU in 2000). The problems most often reported are, in descending order: overall fatigue (41%), backache (34%), stress (28%) and muscular pains. The findings would seem to reflect the much higher overall intensity of work experienced by employees in these countries in the period since the introduction of the market economy, with countries in the Baltic region and Romania and Bulgaria performing particularly poorly.

In terms of the immediate politics of enlargement, the evidence would seem to point to particular issues of concern regarding employee health and safety at work, both in terms of "objective" indicators such as accident rates, and more "subjective" survey responses. This poses an acute policy dilemma as to the most appropriate forms of intervention and influence in order to stimulate improvements in the working environment.

### Regulatory fatigue and regulatory resistance

For nearly a decade, overworked civil servants in the post-communist accession State administrations have been responsible for replacing previous Soviet-derived or national legal frameworks governing OHS by the transposition of EU directives and regulations. The sheer effort of transposition, meeting the strict requirements of Brussels, has presented a major challenge to internal domestic administrative capacities. With respect to post-accession regulatory implementation of legislation, in the general area of working environment, one likely outcome is "regulatory fatigue".

In part, this derives from the difficult adjustment process to regulatory implants from the EU, which may run counter to previous Soviet-style OHS regulation. Philosophically, regulatory agencies are more often dominated by a strict external compliance and control mentality. This runs counter to broader EU approaches of internal control and self-regulation within goal-setting frameworks of risk assessment. The process of absorbing the huge body of *acquis* legislation has not been assisted by the prioritisation which has been given to promoting business enterprise as a means of developing the new post-transition societies. It had been suggested, for example, that if the EU requirements fail to correspond with "the domestic reform fit", for example because domestic consensus is inspired by different ideas, or because there is no consensus on reform, the new "imported" rules are likely to be contested and even changed, once candidates are EU members (7). In the accession States, arguably, domestic preferences do indeed often lack a credible "reform fit", despite the shift in EU policy towards more flexible and even neo-liberal directions.

The power holders in the new accession States of Central and Eastern Europe, encouraged by the IMF and other international agencies, have largely embraced such neo-liberal approaches, encapsulated in the notion of "reducing labour market rigidities", in which concern with the social dimension of Europe has been secondary to the goal of economic growth (8). Current de-regulatory thinking in Central and Eastern Europe is a direct result of the desire to create a free-market arena in the post-socialist economies. The IMF and associated right-wing US think-tanks, such as the Cato Institute, have provided the detailed road-map for political and economic transition. IMF staff reports for individual countries, based on policy dialogue with national governments, typically admonish accession State actors in terms of "further removing red tape and other regulatory obstacles to private sector activity (which) would encourage the development of small and medium-sized companies and hence job creation".

The influential Washington-based Cato Institute, for example, argues that "excessive regulation" emanating from within the EU will reduce flexibility and impose an economic burden on business that will produce sub-optimal growth (9). In particular, it is suggested, "overregulation of conditions of employment will diminish the comparative advantage that CEE workers enjoy over their more highly-paid western counterparts". According to the Cato Institute, "the EU explicitly rejects the possibility of different levels of safety and health protection of labour within the Union". It warns that the EU advocates "the need to harmonize health and safety standards *irrespective of the different needs of the member States*" (italics added). The imposition of such regulatory uniformities in OHS, it is argued "do not contribute to alleviation but to worsening of the workers' lot, by creating an artificial increase in labour costs". One of the key policy objectives of the Lisbon European Council of March 2000, was also "to reduce the administrative burden on business" (10).

Not only are domestic administrative and regulatory capacities depleted, therefore, but the internal political will and external EU-level stimulation to revive them is qualified by redefined policy priorities. The notion of an enlarged "social Europe" with "corporate social responsibility", "balanced stakeholder participation" and "social dialogue" between labour and capital, holds little attraction for the new elites of post-communism.

Such elites have fully embraced the rhetoric of free market philosophy in which competitive advantage lies in a deregulated low-cost low-wage economy, where labour (preferably union-free) is comprehensively subordinated to the needs of capital, both domestic and foreign. The social and employment *acquis*, is thus uniquely vulnerable in the post-accession implementation phase, nowhere more so

than in regard to safety and health in the workplace. What then is current EU strategy in terms of the working environment?

## European Commission Strategy for the working environment in the accession States

The expectation of senior policy actors in the Commission is that the advent of the new accession States will be accompanied by the further loss of momentum in regulatory standards and a general slowing down in the initiation of social legislation. A survey of 30 senior Commission officials involved in the enlargement process predicts that environmental action and social and employment legislation are set to suffer loss of momentum, as the new States fight any initiatives that impose extra costs on their economies while they struggle to qualify for the euro (11). Commission officials speak of “a lowering of ambition” as the new members oppose “initiatives seen as a drag on competitiveness” and the “brake” upon, or even a “blockage of Social Europe” after accession. The cumulative impact of the accession of the new member States may therefore be a further slowing down of European-level initiatives in OHS, and instead of a levelling-up of standards in an enlarged European Union, the initiation of a new “race to the bottom”.

In two areas of its activities the Commission addresses the situation regarding safety and health in the accession States. First, the Commission's Communication outlining a general strategy for occupational safety and health for 2002-2006, also discusses the accession countries (12). There is an acknowledgement of the average frequency of occupational accidents as being “well above the average for the EU”. While the Commission concedes that the accident rate figures “call for heightened vigilance”, it is not clear what forms this might take. It is admitted that the accident and illness figures indicate that the preventive approach set out in Community directives “has not yet been fully understood and taken on board by the various players, nor applied effectively on the ground”, and this is “particularly true of the candidate countries”. One section of the strategy document on *Preparing for enlargement*, contains a single paragraph's worth of proposals that are less than groundbreaking.

The proposed Commission strategy has been criticised by policy actors and researchers for its lack of concrete measures, especially in the area of future implementation. Laurent Vogel of the ETUC's Trade Union Technical Bureau has been particularly forthright, suggesting “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” (13). Community strategy

appears to be at a crossroads and uncertain which direction to take so far as the accession States are concerned. The issue revolves around the question of whether the admitted differences between the older and newer member States in OHS are merely quantitative or, in some sense, qualitative. If the latter, then new approaches and stratagems would seem to be required.

This makes the Commission's detailed assessments in its periodical reports on individual candidate countries' progress towards accession even more relevant. Although the progress reports have dealt with transposition of the *acquis*, they have also had an eye toward future implementation. The 2002 assessment provides the prospective new members with a broad endorsement, but nevertheless points out that “in the area of *social policy and employment*, while alignment with the *acquis* is well advanced, most countries still need to strengthen their administrative capacity, in particular, in the areas of public health and health and safety at work”. However, the November 2003 final *Comprehensive monitoring report of the European Commission on the state of preparedness for EU membership* no longer mentions these concerns (14).

Barring politically unforeseeable disaster, ten new States will join the European Union on schedule (the eight from Central and Eastern Europe, together with Malta and Cyprus) in 2004. Only a few outstanding items remain with respect to the closure of the *acquis* chapters, none of which, including health and safety at work, are seen as a barrier to formal accession. Against the policy-driven aspiration of the Commission, and the political necessities of the pre-accession final monitoring reports, it is useful to present a view of the current evidence regarding the working environment in Central and Eastern Europe. This is the benchmark against which any successful future programme of regulatory intervention will have to be judged.

## Regulatory renewal, harmonisation and enlargement

At a regulatory policy level, the Commission has embarked upon a programme of “updating” and “simplifying” the *acquis* under the banner of “Better regulation” (15). Whether such regulatory review, conducted at a pan-European level, creates conditions for more effective and rationalised regulatory structures, or whether it serves to promote future deregulation, has been a matter of debate. Existing legislative areas where “potential problems” are identified, including health and safety at work, are being “subjected to a detailed scrutiny for their simplification potential”. The Commission has suggested that “where the legislative approach may no longer be appropriate”, it could be replaced “by more efficient, flexible and proportionate instruments



(for example, framework directives, new approach directives or 'softer' regulatory alternatives)". The use of so-called "reflexive" strategies in the process of harmonisation can be seen to offer a pathway for avoiding outright deregulation.

With regard to occupational safety and health and its specific framing within wider industrial relations, reflexive law induces "second order" effects on the part of social actors. Here, law underpins and encourages "autonomous processes of adjustment" and "confers rule making-powers on self-regulatory processes". It basically offers a fallback position which provides incentives for more powerful parties to enter into negotiations and find arrangements which suit local conditions (16). The approach has been termed "reflexive harmonisation". As a programme of regulatory renewal this has re-ignited an intense debate between pro- and anti-regulatory proponents over the appropriate form of regulatory environment within Europe, especially with respect to general issues of social protection and employment. So far, however, the particular characteristics of the accession States have not been taken into account in this debate. It is assumed that these are equally amenable to regulatory innovation and experimentation.

Such regulatory initiatives follow on the adoption at the Lisbon summit of the so-called Open Method of Coordination (OMC), endorsed as an important tool of EU governance in achieving social and employment policy goals (17). Central here are notions of benchmarking and best practice as a way of securing a flexible and decentralised approach to policy creation and implementation. The principle of subsidiarity that the OMC embodies also implies that the devolving policy inputs at the regional and local levels will spread horizontally outwards to the social partners and civil society representatives. These will be "actively involved" in the policy process "using variable forms of partnership". In this context it is significant that "a special appeal" is made to "companies" corporate sense of social responsibility regarding best practices, *inter alia* on such matters as work organisation, equal opportunities and social inclusion. The question remains as to how viable and realistic an approach based on "soft law" is in respect to the accession States.

There is a conventional wisdom in OHS management circles, suggesting that the rooting of safety cultures, risk awareness and best practice in health and safety can be most effectively secured by comprehensive employee participation and consultation in the safety process. It was, for example, a fundamental tenet of the regulatory reconstruction of the safety regime in the UK offshore oil industry following the Piper Alpha disaster. Studies of concerted industry-wide interventions, such as have occurred in the post-disaster oil and rail industries, suggest that even where there is strong political support and

close regulatory scrutiny, generating safety cultures may be difficult to achieve, a problem compounded as we move from larger to smaller enterprises. Although hard to measure in precise terms, in general, it is suggested that a working environment in which employee representation and participation is encouraged via the involvement of employee trade unions, may produce better outcomes in terms of health and safety performance. Such environments may also create the necessary embeddedness within which experimentation in best practice and its diffusion have a role to play alongside more traditional forms of regulatory control. However, so far, there is no indication that most employers in the accession States are in a position to adopt best practice, or take on board arguments embracing wider concerns about corporate social responsibility towards employee involvement in the working environment.

Best practice (and voluntary self-regulation), if they are to succeed at all as stratagems for enhancing the working environment, would seem to emerge most successfully in the context of a system of industrial relations in which social actors are empowered, preferably through collective bargaining. They then meet each other as counterparts in the bargaining arena. In this way, some notion of equality between social partners can inform social dialogue in the workplace discussion agenda. While safety and health are not necessarily adversarial issues *per se*, as between management and labour, nor can the cosy assumption be made of their implicit consensuality and agreement. This is especially so in the accession state context, where for many employers "good health and safety" is not necessarily "good business". As in other aspects of the employment relationship, there is a danger that joint health and safety committees, even where they exist, will be dominated by a managerial agenda, making independent worker demands difficult to assert. On the other hand, by playing an active role in defending workplace safety and health conditions, trade unions do have an opportunity to demonstrate their relevance and effectiveness.

Employers have focussed on profitability, and workers have prioritised employment security and wages over concerns regarding their health and safety. Where employee-elected safety representatives and committees are mandated in accession States, the evidence suggests that there is a low level of workforce awareness of their functions and powers. This suggests that in terms of any developing wider social dialogue between social partners on safety and health, especially at enterprise level, much remains to be done before any real degree of workforce involvement can be spoken of, particularly in small and medium-sized establishments (18).

Currently, however, in the absence of an emerging system of viable collective bargaining, and the empowerment of employees at the workplace, the

scope for regulatory experimentation of the kind proposed by the Commission may therefore be rather limited in the accession States. It may be necessary, at least for an intermediate period during which alignment with European norms and best practice on risk assessment and employee involvement and workplace consultation can take hold, to consider strengthening more traditional regulatory instruments and forms of compliance. However, as matters currently stand, in order to guarantee at least minimum adherence to European standards, a sea-change in attitudes will be required in the accession States, accompanied by a resourcing of social partners and regulatory authorities on an entirely new scale.

## Conclusion

Over forty million new members of the European workforce will eventually join the existing labour force of 161 million, roughly as much as one quarter again. They bring with them different experiences, different expectations and different responses to the world of work. The outlook for the creation of a modern European working environment in the enlargement process, based on harmonised standards, is therefore unclear at best and potentially compromised at worst, by the failure to properly acknowledge the very special problems of the accession States.

This, in turn, raises more fundamental questions as to the appropriateness of current innovative alternative regulatory Community strategies in achieving longer-term goals of integration. This paper has suggested that there are insufficient social and political resources to make new, softer forms of law a realistic implementation option in the accession States. Crucially, it leaves unresolved the issue of what prevents a “downwards spiralling” of health and safety standards. Evidence so far suggests that there are neither the resources, nor the political will, to implement the existing measures to bring about improvements in the working environment in the new member States. The familiar and oft-predicted prospect of regulatory “regime competition” between newer and older member States, with differentiated working environments, is now an unpalatable but imminent possibility. ■

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