TUTB

NEWSLETTER OF THE EUROPEAN TRADE UNION TECHNICAL BUREAU FOR HEALTH AND SAFETY

N°26 DECEMBER 2004

NEWSLETTER

IN THIS ISSUE

ISSN: 1027 - 4693

EDITORIAL

Revitalizing Community occupational health policy

This issue of the TUTB Newsletter sounds a wake-up call. In two years, the deadline set for the Community health at work strategy 2002-2006 to be implemented runs out. But well past the half-way mark, it is clear that delivery is falling well short of what was wanted and needed. This confirms our initial fears. The analysis behind the Community strategy was generally right, but still much too hazy on practical measures and the timetable. Instead of being a firm work programme, the strategy was over-heavy on general pronouncements about the need to combine many different approaches and instruments. It is a failing that reflected the fear, reinforced by past experience, of a head-on battle with the employers and the most anti-worker governments.

Community health at work policies must be revitalized - and now. It is no time for resting on laurels, but for recognizing the gap that is growing between what is really being done and the actuality of worsening working conditions and growing risks in some areas. The only way to make up the lost ground is to bring in new measures without delay. All the Community institutions have a big responsibility. The Commission must frame the proposals and adopt the instruments that are within its powers to do. It also needs to boost its own internal capacities in the specific area of occupational health. This means reversing a trend that has been going on for over 10 years and finding sufficient resources for the Luxembourg-based unit in charge of occupational health. The many challenges of enlargement demand a big push on this if Community action is not to forfeit all credibility. The Council of Ministers and Parliament must legislate in different areas and fight off the repeated assaults by

the advocates of deregulation and a "rest from legislation". The Member States must frame national prevention strategies and help improve the practical implementation of Community rules, not least by tightening up labour inspectorate enforcement.

The trade unions can do their bit by helping to improve the identification of needs. They are the link between daily workplace life and Community policy-making. The signing of a European agreement on stress in October 2004 showed that the European Trade Union Confederation takes its responsibilities seriously. The European Transport Workers' Federation campaign in defence of the safety of dockers shows what trade union action can achieve. In companies, an active trade union policy on occupational health generally means the difference between tick-box application of the rules and effective prevention. This contribution obviously depends on what rights are given to workers' health and safety reps, their access to the information and training they need, and the quality of the support that trade unions provide them with. Trade unions expect the other players not to systematically try and dodge difficult issues.

The years 2005-2006 will be a crunch time in many respects, and a litmus test of whether post-enlargement Europe will be more than a simple single market governed by the undercutting pressures of market forces, sacrificing workers' lives and health, or whether the development of a social Europe will bring better living and working conditions. ■

Marc Sapir, Director of the TUTB

Goodbye and good luck, Janine!

The TUTB was started up fifteen years ago to provide the ETUC and its members with expertise and information on health and safety in order to strengthen the trade union input to framing European rules and common standards of protection against the risks and situations faced by Europe's workers. As the TUTB developed, it started producing a Newsletter - now up to its 26th issue. It has published books and brochures - thirty-odd to date. It has staged a series of international conferences for trade unionists and experts, launched and built up a website that provides information on its own activities, and on key developments in European policy as well as national occurrences and events.

All during this time, the TUTB has been setting up networks of experts and trade unionists to focus the examination of workplace health and safety issues, but also, and especially, to give a voice to all those working every day in firms, industry branches, preventive services and public services to forge the link between employment and work standards.

If there is one person in the TUTB who has played a key role in all that time, that person is Janine Delahaut, who was in charge of the TUTB's information and publications department. She has now decided to steer her career path in a different direction. We wish her the same success and satisfaction in her new working life. We know that her information resource work will leave its indelible mark on the TUTB's future output, and that it will continue to grow with the support of her successor, Denis Grégoire, the other colleagues on the staff, and the trade union experts.

Improving REACH, the future European chemicals policy

Exposure to dangerous substances: a deeply disturbing situation

Thousands of chemicals have been developed and put on the market in the last fifty years. They are used in many consumer goods, and have been marketed with little regard for their potential impacts on human health or the environment.

There is also a steadily rising incidence of cancers, allergies, and hormonal system disorders, especially in children[1]. While contact with dangerous substances can obviously not be blamed for all these multi-factorial diseases, increasingly close links between the development of some of these conditions and exposure to chemicals are now well established[2]. Swedish research, for instance, has shown that compounds like PBDEs (polybrominated diphenyl ethers) can accumulate in the food chain, ending up in breast milk[3]. These compounds, which are used in the manufacture of textiles, electronic equipment and polyurethane foam for their fire-retardant properties, have a structure and toxicology akin to that of PCBs (polychlorobiphenyls) which were long used in electrical equipment before being banned in the late 1970s, after the discovery of their accumulation in the environment and toxicity to humans.

It is now clear that current chemicals legislation is not working, and unable to give proper protection to human and environmental health. The sad fact is that over 99% of the total volume of chemicals on the market has undergone no comprehensive human and environmental health risk assessment[4], despite many being present in consumer goods (cleaning products, cosmetics, clothing, computers, etc.).

The situation is just as worrying for the millions of workers across Europe who are exposed to chemicals not just as consumers, but also because they are engaged in manufacturing them (chemical industry workers) or as users (workers in downstream sectors, like building, textiles, farming, motor manufacture, personal care, etc.).

A 1998 survey by the Finnish Institute for Occupational Health and Safety found that some 32 million workers in the European Union - nearly a quarter of the labour force - are exposed to carcinogens[5], while in another study done by the Dublin-based European Foundation, 16% of workers in Europe reported handling dangerous substances, and 22% were exposed to fumes and vapours for at least a quarter of their working time[6]. From the Eurostat EODS[7] survey findings for reference year 2001, the TUTB estimates that between 18 and 30% of all cases of occupational diseases recognised in Europe are related to exposure to chemicals[8]. Dangerous substances are clearly therefore to blame for a very large proportion of the occupational diseases that affect some 7 million Europeans[9].

Why is current chemicals legislation not working?

The first reason is that the current Community legislative system, dating back over 20 years, makes an arbitrary distinction between "existing" and "new" chemical substances. The 100,000-odd substances which were on the market pre-1981 - the "existing substances" - can be used with virtually no safety testing, while "new substances" (put on the market since 1981) have to undergo extensive testing before they can be marketed. This makes it easier (and cheaper) for industry to continue using untested or little-tested existing chemicals than to develop new ones. As a result, only about 3,700 new substances have undergone in-depth testing and been put on the market since 1981.

Another flaw in the current legislation is that the public authorities must prove an existing substance to be dangerous before they can impose marketing restrictions. This system is so cumbersome that only a few dozen existing substances or selected uses have so far been banned in Europe (PCBs, asbestos, phthalates in toys, mercury and lead in electronic appliances, etc.).

The European legislation on protecting workers from the risks of exposure to dangerous substances in the workplace doubles up with that on the marketing of chemical substances, and lays down specific obligations for employers. Two directives (one on carcinogens, the other on chemical substances) require them to perform a risk assessment and take the necessary prevention and protection measures (elimination, substitution with less dangerous substances, reduction of exposure levels, compliance with exposure limit values, etc.).

But there are still problems with implementing these laws in the workplace, and most of the time they are only partially enforced, especially in small and medium-sized firms.

One key reason for this must be the lack of information about chemical substances (risks that are unknown are unmanageable). Other reasons include: failings in conveying product safety information to

[1] *Children's health and environment: a review of evidence*, WHO/EEA, 2002.
[2] *Strategy for a future Chemicals Policy*, White Paper, COM(2001) 88 final, European Commission, 27 February 2001.
[3] Norén, K., Mieronyté, D., Contaminants in Swedish human milk. Decreasing levels of organochlorine and increasing levels of organobromine compounds, *Organohalogen Compounds*, 35:1-4, 1998.
[4] European Commission, White Paper, *op. cit.*
[5] Occupational exposure to carcinogens in the EU 1990-1993, Carex, international database on occupational exposure to carcinogens.
[6] *Third survey on European working conditions*, Dublin, European Foundation for the Improvement of Living and Working Conditions, 2000.
[7] Occupational Diseases in Europe in 2001, *Statistics in Focus*, No. 15, Eurostat, 2004.
[8] Musu, Tony, *REACHing the workplace. How workers stand to benefit from the new European policy on chemical agents*, Brussels, TUTB, 2004, 36 p.
[9] Eurostat data for 1998/1999.

the different users, lack of controls (insufficient labour inspection and market surveillance activities), but also the lack of collective representation of workers in small firms to uphold their interests.

REACH, the future European chemicals legislation

To address the failings of Community chemicals legislation, the European Commission adopted on 29 October 2003 a draft regulation which will abolish the distinction between new and existing substances, and will apply to the 30,000 chemicals produced or imported into the territory of the EU in quantities of more than one tonne per year. This draft legislation, known as REACH (Registration, Evaluation and Authorization of Chemicals)[10] has two main aims: one is to ensure a high level of protection for human health and the environment; the other is to ensure that the internal market operates efficiently and enhance the competitiveness of the European chemical industry.

The 30,000 substances concerned will have to be registered with a future European Chemicals Agency before being manufactured in or imported into the European Union. For this, a manufacturer or importer will have to supply information on their toxicological and ecotoxicological properties, describe their possible uses, and carry out a chemical safety assessment of the risks to human health and the environment[11].

The centrepiece of the reform therefore lies in shifting the "burden of proof" onto industry, which will now have to supply the information needed for its products to be used safely before they can be marketed. The other big change is that the use of the most dangerous products (e.g., carcinogens or PBTs[12]) will require authorization. The European Commission will also have the power to prohibit certain uses or substances if she deems the risks "unacceptable". A measure of transparency will also be introduced, in that non-confidential information on all registered substances will be available to the public.

A highly contentious reform

This proposed reform is important in many respects. Firstly, it will be a regulation (rather than a European directive), which will make it directly applicable in the 25 Member States as soon as it enters into force. REACH will replace forty-odd existing directives, and affect numerous branches of industry. The new system will create obligations not only for manufacturers (chemical industry) but also for the countless downstream users of chemicals (the building, woodworking, motor manufacturing, textile and computer sectors, etc.).

REACH has the potential to improve the legislation that protects workers exposed to dangerous substances in the different branches of industry by providing the missing information on their properties, making chemical safety data publicly available, requiring the effective circulation of information to users, and encouraging replacement of dangerous products through authorization and restriction procedures.

Since the publication of its draft (White Paper on Chemicals) in 2001, two opposing camps have been locked in a bitter battle for supremacy around this proposed reform. It has pitted industry against environmental NGOs, consumer groups and many trade unions who argue that economic considerations should not come before health and safety.

Industry clamours about the reform creating excessive cost burdens, raising the spectre of a backlash by undermining competitiveness in the many industries affected, the risks of industry relocations outside the EU, job losses and a collapse in GDP.

The latter argue that industry has responsibility for the safety of the products it markets, demand the right to know what risks people and the environment face, and call for dangerous substances to be banned or replaced. They also point to the major potential benefits of the reform, not just in health and environmental terms, but also in terms of innovation for industry.

Where does REACH stand today?

As a result of intense lobbying of the European Commission by industry and some Member State governments, the draft REACH regulation finally adopted by the Commission in late October 2003 is a very watered-down version of the initial text published for the public consultation procedure in May 2003: polymers have been excluded from the scope of the reform, the amount of information to be supplied has been revised drastically downwards (companies will now be required to supply chemical safety reports for only a third of the 30,000 substances initially foreseen) and the authorization procedures for the most dangerous substances have been eased.

The proposal for a regulation as adopted by the Commission has been sent to the European Parliament and Council, who must agree on the final version in a co-decision procedure.

As the result of a jurisdiction dispute in the European Parliament between the Environment Committee and the Industry Committee, each claiming substantive responsibility, the text had still not gone through its first reading at the end of the five-year legislature, despite the tabling of a preliminary report with proposed amendments in January 2004 by the Italian Socialist MEP Guido Sacconi, the Environment Committee's rapporteur on the matter.

[10] Text available at http://www.europa.eu.int/comm/enterprise/chemicals/index.htm.
[11] For substances manufactured or imported in quantities of more than ten tonnes/year per manufacturer or importer.
[12] Persistent, bioaccumulative and toxic substances, i.e., toxic substances which could accumulate irreversibly in the body and the environment.

Once a new Parliament including MEPs from the 10 new Member States had been formed after the June 2004 European elections, the Environment Committee was given leadership of the dossier and the re-elected MEP Guido Sacconi was confirmed as principal rapporteur for the Parliament. He will have to work in close cooperation with Ms Lena Ek (Sweden, ALDE) for the Industry Committee and Mr Hartmut Nassauer (Germany, EPP-DE) for the Internal Market Committee. Six other Parliamentary committees - Employment and Social Affairs, Economic and Monetary Affairs, Legal Affairs, Budgets, Women's Rights and International Trade - are less directly involved, but will still be able to express an opinion. The first reading is scheduled for autumn 2005.

Within the Council, the Heads of State assigned responsibility for REACH to the Competitiveness Council composed of the national trade and industry ministers, rather than to their colleagues in the Environment Council. An ad hoc working group on REACH, consisting of representatives from the different ministries (industry/trade and environment) was nonetheless set up in November 2003 under the Italian presidency to assist the Council in working out a common position.

At the various meetings of this working group held under the Irish presidency in the first half of 2004, a number of amendments were put forward by the Member States: the OSOR (one substance, one registration) system, the reintroduction of the duty of care, additional powers for the Chemicals Agency, a strengthening of the substitution principle, etc.

The working group has taken its discussions forward since July 2004 under the Dutch Presidency, which has set itself the task of scrutinising the first three chapters of the regulation - on registration and data sharing - with a view to putting forward specific proposed amendments by year-end. The Dutch Presidency also held a workshop in late October 2004 to analyse, and draw conclusions from, the findings of the various impact studies available on REACH[13].

In the Commission, DG Environment and DG Enterprise are handling the dossier jointly and are currently working on the practical implementation of REACH (based on the October 2003 text). The main elements of this interim strategy are developing new software to manage the REACH system, drawing up guidelines to help Member States and industry meet their obligations under REACH, getting strategic partnerships going to test certain aspects of the reform and establishing the European Chemicals Agency in Helsinki.

The Commission, by agreement with UNICE (Union of Industrial and Employers' Confederations of Europe) and CEFIC (European Chemical Industry Council), has also set up a working group to oversee three further studies to assess the impacts of REACH. The first two studies, financed and carried out by industry, assess the impacts of REACH on trade throughout the supply chain, and on innovation. The third study, financed and carried out by the Commission's Joint Research Centre (JRC), addresses the impacts in the new Member States. The ETUC and some environmental NGOs are members of this working group. The results of these microeconomic studies are awaited for early 2005. Other impact studies, begun in 2004, are likewise expected to present their findings in 2005: an additional Commission study on the environmental benefits of REACH and one by the ETUC on the benefits of REACH for workers' health.

The Commission's reckoning is that the Parliament-Council co-decision procedure could be concluded in 2006, with the REACH system entering into force in 2007.

Figures that put the claims in perspective

According to the Commission's own economic impact assessment of REACH [a]:

- The direct costs to the European chemical industry, arising mainly out of the registration and testing of substances, are estimated at € 2.3 billion over a period of 11 years (between € 2.8 and 5.2 billion in total over 15 years including the indirect costs borne by downstream sectors).
- The health benefits are estimated at € 50 billion over a 30 year period, due chiefly to the fact that 4,500 lives will be saved every year, corresponding to the number of fatal work-related cancers that will be avoided by improved knowledge of the properties and effects of chemical substances.
- Environmental benefits are also anticipated but have not yet been quantified by the Commission.

The chemical industry has done its own impact studies, which predict overall costs 30 to 100 times higher, and foresee the loss of hundreds of thousands of jobs and a sharp fall in GDP in Germany and France [b-c].

In the opinion of the Commission [d] and independent economic experts [e], these unrealistic estimates of the macroeconomic effects of REACH should be given little credence. The methodologies used in them are judged to lack transparency and the extrapolations made are based on errors and exaggerations.

Another study assessing the economic impact of REACH, commissioned by the Nordic Council of Ministers, confirms the approximate direct and indirect costs estimated by the European Commission [f].

Finally, it is interesting to note that the amount of € 2.3 billion represents approximately 0.04% of the annual turnover of the European chemical industry (€ 556 billion for the EU-25 in 2003).

[a] http://www.europa.eu.int/comm/enterprise/reach/eia.htm.
[b] Arthur, D., *Little GmBH, Economic effects of the EU Substances Policy*, 2003.
[c] *Study of the impact of the Future Chemicals Policy*, Mercer Management Consulting, 2003.
[d] DG ENTR, presentation at the workshop "Impacts of Chemicals Policy - How to measure it?", Laulasmaa, Estonia, 11-12 November 2004.
[e] *Methodological Problems of assessing the Economic Impacts of EU Chemicals Policy*, UBA, 2003.
[f] Ackerman, F., Massey, R., *The true costs of REACH*, TemaNord 2004:557, Nordic Council of Ministers, Copenhagen, 2004. See: http://www.norden.org/pub/miljo/miljo/sk/TN2004557.pdf.

[13] Overview of 36 studies on the impact of the new EU chemicals policy (REACH) on society and business. See: http://tutb.etuc.org/uk/dossiers/files/EU2004REACH.pdf.

Conclusions

While the need for the REACH system is now beyond question, the battle to shape the final content of the reform, and hence the cost-benefit balance, continues unabated. Looking at the different versions of the regulation as it has gone through the drafting process, there is no denying that the requirements made of manufacturers, importers and users of chemical substances have been revised downwards, reflecting an unrelenting attempt to slash the cost to industry. This trend, if continued, will inevitably affect whatever benefits REACH may bring.

It might have been thought after the joint letter sent in late September 2003 by President Jacques Chirac of France, Chancellor Gerhard Schröder of Germany, and Britain's Prime Minister Tony Blair asking Commission President Romano Prodi "not to undermine the international competitiveness of European industry", that little improvement was to be expected from the Council. But if the German delegation's statements to the ad hoc working group on REACH[14] are anything to go by, a better cost-benefit balance could be achieved by requiring more data on chemicals in the 1 to 10 tonnes a year bracket (including reintroduction of the chemical safety report), and a minimum level of information on intermediate substances.

MEPs could also insist on putting deleted provisions back in order to stop the dilution, and raise back the sights of this REACH legislation which, provided it is not emasculated, could materially improve the protection of environmental and human health (including that of workers) from dangerous substances. All hope of improving REACH is not yet lost. ■

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[14] Council of the European Union, document 8396/04 of 15/04/04.

TUTB Publication

REACHing the workplace
How workers stand to benefit from the new European policy on chemical agents

Tony Musu

The Trade Union Technical Bureau has decided to focus in this brochure on the health and safety benefits inherent in the REACH legislative reform for the millions of European workers who are exposed to chemicals in the workplace on a daily basis.

In order to better understand in what way the REACH reform represents a real opportunity to reduce the number of occupational diseases related to exposure to dangerous substances, this publication begins by examining the reasons why a reform is needed; it then describes the content of the REACH reform and the changes it will make to the existing legislation. It concludes by explaining the state of play in the legislative process underway at the European Parliament and the Council, which should result in the adoption of the REACH Regulation.

The purpose of this brochure is to feed into the REACH debate so as to provide convincing evidence of the urgent need for such a reform. A European conference is to be held by the European Trade Union Confederation on 11 and 12 March 2005, at which the trade unions have every intention of making a constructive contribution to the process of drawing up this reform.

TUTB, 2004, 36 pages, 17 x 24 cm
ISBN : 2-930003-53-7, 10 €

Published in French as : *REACH au travail. Les bénéfices potentiels de la nouvelle politique européenne sur les agents chimiques pour les travailleurs*

Czech, Danish, Dutch, Estonian, Hungarian, Latvian, Polish and Slovenian versions of the brochure will be published in early 2005.

Further information and orders on the TUTB website: http://tutb.etuc.org > Publications

Liberalisation of the market in services: a threat to workers' health and safety

The proposed Bolkestein Directive[1] sets out to lift all restrictions on the provision of services. In a big departure from the traditional Community law approach of harmonizing existing national legislation to create common rules, this proposal actually aims to perpetuate differences between national rules so as to fuel undercutting competition. Centrally, the draft directive will authorize businesses in one Member State to provide services in the territory of another provided they comply with the rules in their country of origin. Also, Community checks on the provisions in the state where the service is being provided will be tightened up. Some provisions are prohibited, while others are "questionable" and can only be maintained if the Member State can show an overriding reason like protection of occupational health (necessity), that they are non-discriminatory and are proportional to the objective pursued. This latter requirement brings in value judgements of political expediency. Employers could attempt to have many national provisions struck down by claiming that the rules are too stringent and that more limited measures would be more in line with the proportionality principle.

Spin-offs on health and safety

The proposed Bolkestein Directive will not directly change the way national health and safety law applies to employees from third countries providing services, because the proposal's country of origin principle does not apply to matters covered by Posting of Workers Directive 96/71. Even so, the proposed Services Directive's attempt to foist on Member States a general rule that service providers should be subject only to the national provisions of their country of origin poses a serious indirect threat to the enforcement of health and safety rules. Also, the requirements that are prohibited by the directive will make it very hard to carry out inspections and checks to enforce the Posting of Workers Directive.

The problems involved can best be illustrated by a number of practical examples:

- All the Community States have widely-differing provisions on preventive services[2]. In Belgian law, for instance, they must be formed as non-profit-making organizations with a management set-up which combines trade union participation with elements of public oversight. To ensure that prevention activities are run in a coherent and planned manner, employers must as a rule enlist the services of only one preventive service, and company-service relations are governed by detailed statutory provisions. In France, the provisions on health surveillance require individual health checks to be combined with collective preventive activities

The international dimension of the Bolkestein Directive

A great many Member States have voiced disquiet about the Commission's approach. They see that the Bolkestein directive will significantly impair their ability to regulate the services market. Whole swathes of the economy (public services, health, temporary agency work) would be sucked into a downward spiral of competition.

The Commission's ultra free-market approach is partly to do with the international dimension of the Directive. The Commission is trying to strengthen its own hand in the World Trade Organization's General Agreement on Trade in Services (GATS) talks. The GATS is setting out to open up 160 sectors of activity, including health ($ 3 500 billion worldwide) and education ($ 2 000 billion) to completely unfettered competition. It is a project to commercialize virtually every area of human activity (apart from the armed forces, law enforcement, justice and a few other odd areas by rights reserved to States). The end result would be to dismantle public services and tie States' hands in passing rules to protect social and employment rights, health or the environment. The disastrous liberalization of the water industry in some Latin American countries is a practical illustration of what consequences these negotiations could bring.

In a European Parliament hearing held on 11 November 2004, Mr Raoul Marc Jennar, a researcher with Oxfam-Solidaire (Belgium), analyzed the linkages between the Bolkestein directive and the GATS, pointing up the many similarities between the Commission proposal and the GATS. The proposal for a directive, if adopted, would bring an automatic transfer of Member States' responsibilities to the Community institutions. The Commission would no longer have to involve Member States in framing Community strategy in the GATS negotiations. Seen from this angle, the reasons for the very radical character of the proposal and the Commissioners' backing for it are not hard to divine.

The full text of Mr Jennar's submission is available on the European Parliament's website: http://www.europarl.eu.int/hearings/20041111/imco/contributions_en.htm.

[1] Proposal for a directive on services in the internal market. Although the proposal is referred to in shorthand as the "Bolkestein Directive", it is, like all proposals for directives, an initiative adopted by the European Commission as a body, headed at the time by Mr Romano Prodi. Former Competition Commissioner Bolkestein clearly does not bear the full political responsibility for this proposed measure alone.

[2] See the special report in *TUTB Newsletter* No. 21, June 2003. Sharp differences are also found in the rules on coordination of mobile and temporary construction sites, where lack of Community-level harmonization means that the proposal for a directive could well open the door to uncontrolled competition.

in the workplace (the "tiers temps" - one-third of the occupational doctor's time spent on workplace activities) by a preventive service. Other States (like the United Kingdom) have almost no provisions on preventive services, but instead a "free market" in consultancy services that escapes all public or trade union surveillance.

- Requirements on the use of scaffolding vary between countries. Some turn a relatively blind eye to the use of suspended or flying scaffolds, while in others it is tightly controlled. Legislation and regulation here tend to be backed up by other requirements: labour inspectorate specifications, provisions of collective agreements, requirements of joint prevention bodies, terms in public works contracts, etc.
- Some Community countries allow asbestos removal to be done only by approved firms that meet strict requirements on the training of workers, the equipment used, and working methods. In some countries, the type of employment contract may be a relevant factor in these requirements (e.g., temporary workers not to be employed in asbestos stripping)[3].

Provisions that will encourage social dumping

Commissioner Bolkestein's proposal for a directive could undercut existing levels of protection.

- Article 9 limits States' ability to set up authorization schemes. More specifically, the State must show that the objective pursued cannot be attained by means of a less restrictive measure. This kind of test is fraught with uncertainty, since there may be reasonable differences over how far to err on the side of safety in order to ensure effective protection of workers' health.

- Article 15 sets out a list of requirements that would have to be evaluated, a number of which could impact health and safety rules. The requirements cited in points 2 (b); 2 (d); 2 (f); 2 (g) and 2 (j) are of the essence of how preventive services operate in several Member States, for example (see box below). They are designed to enable preventive services to do their job by balancing the conflict between the interests of the "direct client" (employer) and the protected interests (workers' health and public health) which requires preventive services not to be purely market-driven but governed by a set of rules that foster a coherent, planned approach to prevention. For example, a number of countries have requirements that go beyond the individual professional qualifications of prevention experts and stipulate that services must possess multidisciplinary capabilities (which involves having a minimum number of different staff). Here again, the underlying justifications of such requirements may be evaluated in very different ways. Point 2 (j) is particularly important in making the obligation on the provider to supply other specific services jointly with his service a requirement "to be evaluated". Many countries' laws attempt to avert fragmentation of prevention activities by requiring delivery of bundled services, e.g., individual health surveillance must be combined with an evaluation of collective working conditions.

- Article 15.5 is more restrictive still in making any new requirement (after the Directive has come into

Some of the article 15 questionable requirements

Article 15 sets out a long list of requirements that must be evaluated by reference to three principles: non-discrimination, need and proportionality. While there are no issues with the first of these principles, the second is largely informed by different perceptions of the interests that need protecting, and the third effectively subjects national regulation of service activities to Community control, including in all areas where no Community harmonization measure exists. Anything that hampers the free play of market forces could be put in doubt regardless of the kind of service. Health care and advertising, services to disabled persons and pet grooming are all lumped together in the same boat!

Point 2 (b) concerns requirements that place an obligation on a service provider to take a specific legal form, like a non-profit-making organization. This is clear evidence of how the proposal is not limited to tackling prospective protectionist measures, but aims to impose for-profit-based competition in all service sectors.

Point 2 (d) concerns access to service activities being reserved to particular providers by requirements other than those concerning professional qualifications or provided for in Community instruments. This poses a threat to any requirement that addresses potential conflicts of interest. For example, in most Community countries, employers may not require occupational health doctors to police sickness absences.

Point 2 (f) deals with requirements that fix a minimum number of employees. A number of European Union countries require preventive services to be comprised of a minimum number of individuals so as to bring together the different areas of expertise needed for multidisciplinary intervention.

Point 2 (g) refers to compulsory minimum and/or maximum tariffs. This, again, is a requirement made in several Community countries to avoid completely unregulated competition that would undermine quality.

Point 2 (j) concerns an obligation on the provider to supply other specific services jointly with his service. This is a frequent requirement to avert fragmentation of prevention activities.

[3] The example of asbestos removal work can be extrapolated to many other high-risk jobs, where national legislation and practices do not simply lay down rules on job qualifications but also many other requirements on business organization, working methods, equipment, supervision of activities, etc.

Foiling the total liberalization of dock work
How can trade union action help produce better Community legislation ?

It is easy to get lost in the maze of Community institutions. The decision-making bodies are not in touch with ordinary people's concerns. This often prompts feelings that little can be done about it. Even at national level, it is not easy for individuals to have an active say in politics. But there are some encouraging precedents to show that trade union mobilization can make a difference and shape policy options. The example briefly outlined here relates to legislation that could have done serious damage to living and working conditions.

The attempt to forcibly liberalize dock work would have created serious risks to health and safety. Transport workers' unions began an all-out campaign immediately the proposed liberalization was announced by the European Commission. One of the most dangerous aspects of the reform was what was called the self-handling principle which would have allowed ship owners to have vessels loaded and unloaded by personnel of their own choice, which could be casual labour hired for the purpose, or ship's crew lacking dockers' skills. This principle put dockers' jobs and safety at risk, and created competition which would undercut wages and working conditions. Below is a short timeline of the events.

- **13 February 2001.** European Commission publishes its proposal for a directive on market access to port services.
- **25 September 2001.** First action day called by the European Transport Workers' Federation. Protests by British, Spanish and Belgian dockers.
- **14 November 2001.** European Parliament amends the Directive, but leaves the self-handling principle intact.
- **13 December 2001.** Several thousand dockers join the ETUC demo at the Laeken European Summit (Belgium), getting a big public focus on their demands.
- **19 February 2002.** European Commission brings forward a new proposal, which ignores the changes called for by Parliament.
- **14 March 2002.** Dockers are prominent in the ETUC's Barcelona European Summit demo.
- **June 2002.** First strikes in six different countries (including Norway) against the European Commission's proposals.
- **25 June 2002.** Council of the Ministers adopts a common position, which includes even worse self-handling provisions.
- **January 2003.** Second action day with 24-hour strikes across 17 countries.
- **17 February 2003.** 500 dockers in 13 European countries respond to the European Transport Workers' Federation's call to protest their demands outside the European Parliament building in Brussels.
- **18 February 2003.** European Parliament's Transport Committee works out a compromise that limits the Directive's most dangerous aspects, but still accepts self-handling on certain conditions.
- **20 February 2003.** 250 dockers demonstrate in Antwerp against the visit of European Transport Commissioner Loyola De Palacio.
- **10 March 2003.** 3,000 dockers from five countries demonstrate outside the European Parliament building in Strasbourg beneath the slogan "Leave it to the specialists. It's our job".
- **12 March 2003.** European Parliament votes through the Directive on second reading, with the requirement that self-handling should be subject to prior authorization.
- **15 April 2003.** Council of Ministers rejects the European Parliament's amendments. Conciliation procedure initiated.
- **9 September 2003.** Strike actions in Belgian and Dutch ports.
- **29 September 2003.** Rotterdam sees a protest by 9,000 dockers from nearly a dozen countries (including a delegation from the United States). Work stoppages in Belgian, French and Dutch ports. Dockers from southern European countries hold a protest march in Barcelona.
- **30 September 2003.** Conciliation procedure results in a text which allows self-handling in certain conditions. Voting is very close-run in the European Parliament delegation. The very same day, the European Transport Workers' Federation rejects the outcomes of the conciliation procedure. It announces further action by dockers against the Directive, which still has to be approved by Parliament in plenary session.
- **17 November 2003.** A petition of 16,000 signatures is handed in to the President of the European Parliament protesting against the conciliation procedure compromise text. In Belgian ports, workers start each break an hour ahead of time. Massive email campaign to MEPs.
- **20 November 2003.** European Parliament rejects the conciliation procedure directive by 209 votes for, 229 votes against and 16 abstentions. This is only the third time in 10 years that a conciliation procedure text has been voted down in Parliament's plenary session.

force) subject to meeting an additional criterion: proof that new circumstances exist. Article 15.6 makes the adoption of new requirements subject to a Community notification and control system. Unlike the situation in other areas (technical standards, for example), such a system would not be operating within a framework harmonized by Community legislation. It would significantly restrict Member States' ability to introduce improved levels of protection for workers, and poses a challenge to the national responsibilities recognized under article 137 of the Treaty.

- Article 16 of the proposed directive lays down the country of origin principle which leaves service providers subject only to the rules of their country of origin. Where occupational health is concerned, such rules may conflict with national provisions. Article 16.3, in particular, prohibits a number of requirements. Point (h) prohibits any "requirements

which affect the use of equipment which is an integral part of the service provided". A requirement in a collective agreement for the construction industry, for example, stipulating that only a certain type of scaffolding was to be used in order to guarantee a high level of safety would be in breach of the provisions of the Bolkestein proposal. Similarly, requirements for the equipment to be used on an asbestos removal site could be called into question if the country of origin had different requirements. This is anything but pure speculation: the matter has never been completely harmonized by the Community Directives on health protection for workers exposed to asbestos. Point (h) throws open to question the exercise of national responsibilities for the use of work equipment resulting from Directive 89/655 of 30 November 1989, which provides for a minimum level of harmonization and leaves States free to introduce or maintain provisions that guarantee a better level of protection for workers. Also, regulation of periodic controls on special-risk work equipment is still largely a national responsibility. Here, too, national rules could be thwarted in the case of a service provider whose country of origin has less stringent rules.

In short, the proposed Bolkestein directive seriously undermines the application of health at work rules which in many cases involve the definition of requirements for service providers who may have a direct role in prevention (preventive services, organization of health surveillance, construction site coordination, etc.) or as economic operators whose activities may affect the health and safety of workers (e.g., building contractors, temporary employment, etc.). Far from bringing about a harmonization consistent with the protection of safety and health, the proposal restricts Member States' abilities to introduce rules that guarantee quality of work by what may be key players in health and safety. This would also affect many non-state actors, since the "requirements" that are prohibited or constrained by the proposal for a directive may be collective rules laid down by professional bodies or associations. By listing prohibited and questionable requirements ("to be evaluated"), the proposal for a directive far overshoots its professed aim. It does not stop short at tackling whatever discriminatory requirements might prospectively be laid down purely to protect a national market, but sharply curtails States' abilities to continue regulating the market in services. This would have very dire consequences for workers' health and safety. ■

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Social/employment gains at risk: the revision of the Working Time Directive

The current Working Time Directive falls well short of workers' expectations. But the European Commission's proposal for its revision will actually make the situation worse. That would set a very dangerous precedent of forcing the standards of worker protection down.

A real need for harmonization

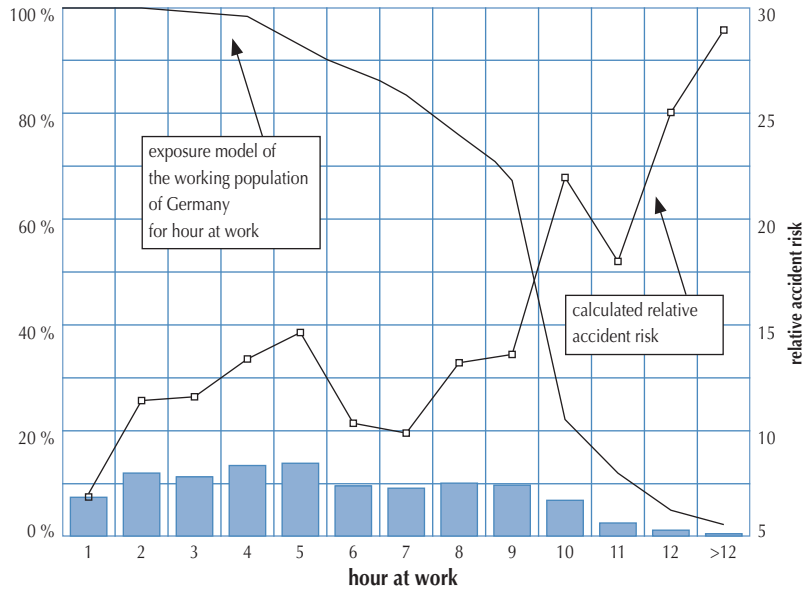
There are big differences between European Union countries as regards working hours. In the United Kingdom, the very widespread practice of individual exemptions from the maximum weekly working hours rules effectively forces people to work very long hours. That is damaging to their health and safety. The British government reports that 3,742,000 workers work longer than a 48-hour week. That amounts to approximately 20% of all full-time employees. When questioned, 69% of these workers said they would like to work shorter hours. This dissatisfaction with working over-long hours is shared by 56% of all full-time workers[1].

This is not a problem unique to the United Kingdom. The Dublin Foundation's survey on working conditions found that, in the Europe of Fifteen, 14% of workers were working more than 45 hours per week in 2000, and approximately one in three workers had long working days (more than 10 hours per day). Average working hours in the new Member States are above those for the Europe of Fifteen.

Length of hours is not the only relevant factor in the working time-health equation. Daily working hours cannot be ignored. Research, for instance, has found that work accident rates rise significantly after an eight-hour working day, and exponentially from the ninth working hour onwards[2] (see figure). How well the hours of work fit in with the individual's other non-work activities is also a major consideration. Some non-standard working hours (night work, week-end work) can reduce social life, and interfere with work-life balance. These work schedules are also incompatible with human beings' biorhythms. Night work in particular is implicated in sleep and digestive disorders, cardiac diseases, etc. Where women are concerned, various epidemiological studies point to a possible causal link between disrupted biorhythms as a result of night work, and the development of breast cancer[3].

Having regular, predictable work schedules is also important. Frequently changing work schedules, switching from spells of long-hours to short-hours working and, especially, not knowing work schedules for the weeks and months ahead, have calami-

Exposure model of the working population, accident frequencies, and accident risk by hour at work (■ accidents in %)



Source: *Scand J Work Environ Health* 1998, vol 24, suppl 3

[1] Source for British data: *Working Time – Widening the Debate*, Department for Trade and Industry, London, June 2004. Consultable on http://www.dti.gov.uk/consultations/files/publication-1252.pdf.

[2] Hänecke *et al.*, Accident risk as a function of hour at work and time of day as determined from accident data and exposure models for the German working population, *Scandinavian Journal of Work Environment and Health*, 1998, 24 (suppl. 3), p. 43-48.

[3] Cf. Swerdlow, A, *Shift work and breast cancer: a critical review of the epidemiological evidence*, London, HSE, 2003.

tous effects on health. Such situations are becoming increasingly common as a result of flexible working time policies that make people an adjunct to immediate production needs. So, periods in which an employer requires a worker to be available cannot be equated with free time in terms of the quality of rest, organization of domestic duties, choice of leisure pursuits, etc. Among the worst forms of flexibility are "on-call" or "part-time zero-hours" contracts. These allow workers to be called out at any time to work for their employer without any guaranteed minimum working hours. A recent judgement of the European Court of Justice has legitimized this kind of practice[4].

There is a clear link between work hours flexibility and work intensification. By allowing employers to operate a wide spread of working hours, legislation lets them treat workers like any other form of "just-in-time" managed commodity by micro-varying the staff at work such as to achieve continuously optimized labour force use. Recovery and relay times dwindle and disappear and, with them, irreplaceable opportunities for handing on information, discussion and informal management of problems and contingencies. This adds to work accidents and much other damage to physical and mental health.

The 1993 Directive: a stopgap fudge

The 1993 Working Time Directive included a few minimal gestures towards improving health and safety (see box). It was probably the only Community Directive to give a bigger place to a long and complicated series of flexibility, opt-out and exception clauses (articles 16 to 18) than to substantive measures. In many ways, it was not unlike Penelope's Web - everything put together by the legislation to ensure health and safety could be unpicked later by States or employers. Some of the opt-outs and exceptions had been provisionally included at the request of the United Kingdom, on the understanding that a more coherent directive would be put forward after a seven year transitional period. The political agreement reached in Council in 1993 was built on a shoddy compromise won through a promise to improve the situation within a reasonable time[5].

The most appalling feature of the Directive was to introduce a system of individual exemptions whereby employers could "negotiate" a worker's agreement to exceed the 48-hour maximum week. It allows workers' jobs and pay to be held to ransom in order to deprive million of people of a guarantee which is essential to preserving life and health. Individual opt-outs have been widely applied in the United Kingdom, where they affect about a third of full-time workers. Two of the new Member States have introduced similar rules (Cyprus and Malta), while other states have rules that permit individual opt-outs in specific sectors (Luxembourg, France, Germany and Spain).

The Directive was beset by controversy from the very start. The United Kingdom tried to have it declared void by the Court of Justice, but failed[6]. A series of questions for a preliminary ruling gave answers to problems of how different provisions should be interpreted and penalized failures to transpose it properly. Although well aware of the countless abuses that individual opt-outs had led to in the United Kingdom, the Commission failed to bring any irregularity proceedings whatsoever against it.

The only significant advance was the gradual extension of the scope of the Community provisions to jobs and sectors excluded from the original Directive[7].

The Commission's totally unacceptable proposal!

In September 2004, the Commission put forward proposals for a revision of the Directive.

Companies are allowed more flexibility in regard to the maximum 48 hour weekly working time. The reference period used to calculate weekly working time can be increased to a year.

The proposal still allows individual derogations (or "opt-outs") for employers, but with some limitations. They must be in writing and cannot be given at the beginning of the employment relationship. In some cases, but not all, opt-outs will require prior collective agreements. The proposal is already so clear that such abuses will take place, that it feels com-

Key provisions of the 1993 Directive

- Maximum (average) weekly working time: 48 hours.
- Daily rest: 11 consecutive hours (any time which is not worked is regarded as rest time, which may therefore include time spent travelling, doing unpaid housework, etc.).
- Weekly rest: an uninterrupted period of 24 hours once a week.
- Paid leave: at least four weeks a year.
- A compulsory break (of unspecified duration) in any working day longer than six hours.
- Special rules for night work, including health assessment in particular.

These measures are offset by a string of provisions that allow longer periods of calculation to be used (e.g., the 48-hour maximum is not an absolute limit, and much longer work weeks can be set provided the average 48 hours is complied with over a period of not more than 4 months). There is a long list of exemptions and derogations.

[4] Wippel v Peek & Cloppenburg, judgement of 12 October 2004, case C-313/02.

[5] Regrettably, occupational health abounds in unsatisfactory compromises which are described as provisional but never seem to get revised (like exposure limits for lead dating from 1983, or the Protection of Pregnant Workers Directive 1992).

[6] Judgement of 12 November 1996, commented on in *TUTB Newsletter*, No. 5, February 1997, p. 2-5.

[7] The various amendments to the 1993 Directive were codified in Directive 2003/88 of 4 November 2003 (*OJ* L 299 of 18 November 2003).

pelled to set a second maximum weekly working time of 65 hours. This is not a mandatory maximum: opt-outs will be possible by employer-worker agreements or collective agreements.

The proposal contains a definition of "on-call work", which allows employees to be forced to be present in the workplace at the employer's disposal, without having to count that time as working time. This provision violates international labour standards as laid down by the International Labour Organization as far back as 1930! ILO Hours of Work (Commerce and Offices) Convention No. 30 provides that "the term hours of work means the time during which the persons employed are at the disposal of the employer[8]".

If a supermarket check-out operator has to be in the workplace from 9.00 am to 8.00 pm, but only actually performs work activities for 5½ hours of that time, the new proposals will mean that she can be said to have worked for only half the time that she actually has to spend in her workplace at her employer's disposal. Workers could end up shouldering the whole burden of irregular work organization stemming from customer demand or production flow.

The debate on working time is therefore a litmus test of the shape of Community social policy to come. The basic choice is between deregulation which will further widen social inequalities, or improved living and working conditions for everyone. That is why the European Trade Union Confederation is pressing for a rejection of the Commission's proposal for a revision in its present form[9]. ■

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The hospital sector: a shabby excuse

The Commission's pretext for revising the definition of working time is the specific difficulties encountered by the hospital sector as a result of Court of Justice case law which holds that on-call duty performed by a doctor when he is required to be physically present in the hospital forms part of working time. Such difficulties could be resolved without bringing the working time rules into question. Specific provisions could have made through collective agreements.

Also, the Commission's concern for hospital budgets underestimates the public health problems caused by overworked hospital staff. A recent American study shows that eliminating extended work shifts in intensive care units led to a substantial reduction in medical errors, especially non intercepted medical errors with the most serious adverse consequences on the health and life of patients. The study of 2,203 patient-days found that doctors committed 35.9% more serious medical errors during extended work shifts than during shorter work shifts, and 5.6 times more diagnostic errors.

Source: Landrigan *et al.*, Effect of Reducing Interns' Work Hours on Serious Medical Errors in Intensive Care Units, *The New England Journal of Medicine*, vol. 351, No. 18, 28 October 2004, p. 1838-1848. (The study defines extended work shifts as a work schedule of 24 hours or more.)

[8] This Convention No. 30 definition was broadly re-enacted in Hours of Work and Rest Periods (Road Transport) Convention No. 67 (1939).

[9] The ETUC position can be found at http://www.etuc.org/en > Press > Archives (press release of 22 September 2004).

New Machinery Directive soon on track?

After four years of discussion under seven presidencies (Sweden, Belgium, Spain, Denmark, Greece, Italy, Ireland, The Netherlands), the Competitiveness Council of 24 September 2004 reached a political agreement on the proposal for a directive on technical harmonisation of machinery and amending Directive 95/16/EC[1]. Once the text has been finalised, the Council will formally adopt its common position at a forthcoming meeting, and forward it to the European Parliament for second reading.

This article looks at the new published text[2] against current Machinery Directive 98/37/EC, and what if any progress has been made over the Commission's first proposal issued in 2000[3].

Confirmations and extensions

The **scope** of the Directive has been extended to construction site hoists (intended for lifting persons or persons and goods) and portable operated impact machinery designed for industrial purposes only (marking guns, fixing tools, stunning pistols). Safety components are now designated as "machinery" and regulated through a series of definitions and an annexed *indicative* list that the Commission can update, whereas the initial proposal provided an *exhaustive* list for safety components. The Directive is also clearly now applicable to partly completed machinery. A new set of definitions clarifies the meaning of *placing on the market, manufacturer, authorised representative, putting into service*, and *harmonised standard*.

Market surveillance is referred to by name for the first time in the Machinery Directive. Recital 8 underlines its importance by requiring a new legal framework to be put in place for it. The new article 4 re-visits article 2 of Directive 98/37/EC and supplements it with the requirement that in order to be placed on the market and put into service, machinery must *satisfy the relevant provisions of the directive*. Three new sub-paragraphs address the need to take into account *partly completed machinery*, and make sure that authorities monitor conformity of machinery through *dedicated bodies* with *defined tasks, organisation and powers*. Finally, there are new provisions on *confidentiality* in the treatment of information covered by professional secrecy, and *cooperation* between Member States in exchanging information and experience to ensure that the Directive is applied uniformly.

The need to distinguish between **actions against machinery and standards** is introduced in Recital 9. The two distinct procedures – now dealt with in article 10 (standards) and article 11 (machinery) – have changed little from Directive 98/37:

- Member States will now take action against *machinery* that is likely to compromise the health and safety of persons not only when used in accordance with its intended purpose, *but also under conditions which can reasonably be foreseen* [Art. 11, (1)].
- A Member State that takes action (against *machinery*) must immediately inform not only the Commission, *but also the other Member States* [Art. 11, (2)].
- Where a Member State has taken action against *machinery* on the basis of alleged shortcomings in harmonised standards, the Commission – in the light of the opinion of the 98/37/EC Committee – will now *decide* (and not *inform*) what action to take against the harmonised standard(s) involved (Art. 10).

A new article (9) describes the action to be taken against **potentially hazardous machinery.** If a harmonised standard does not entirely satisfy the essential health and safety requirements (EHSRs) it covers, the Commission or a Member State may ask for measures to be taken at Community level against all machinery designed in accordance with the defective standard(s). If the Commission thinks that the action taken by a Member State against a machine is justified, the Commission or a Member State may ask for measures to be taken at Community level against all machinery that presents the same design risk(s). The Commission can adopt the necessary measures at Community level on the basis of consultation with the Member States and other interested parties about what measures it intends to take against potentially dangerous machinery.

Actions to be taken before **machinery is placed on the market and put into service** are now drawn together in a new article (5) that introduces *conformity assessment* and condenses the existing provisions of Directive 98/37 in particular concerning:

- The need to satisfy the EHSRs in Annex I.
- The need to ensure the availability of the Technical File.

Article 5 also underlines the need to supply *instructions*.

Further information:

- The ETUC calls for a revision of the Machinery Directive. Consultable on: http://tutb.etuc.org/uk/newsevents/files/Machinerydirective.pdf.
- Tozzi, Giulio Andrea, The Machinery Directive, gains and challenges for the New Approach, *TUTB Newsletter*, No. 21, June 2003, p. 3-7.
- Boy, Stefano, Revision of the Machinery Directive, *TUTB Newsletter*, No. 17, June 2001, p. 5-11.

All *TUTB Newsletters* are consultable on : http://tutb.etuc.org > TUTB Newsletter.

[1] European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts.
[2] Council of the European Union, Doc 12509/04, ENT 123, CODEC 1017, 17 September 2004.
[3] COM(2000) 899 final.

On **conformity assessment,** the procedure for machinery **not listed in Annex IV** remains the same, but changes have been made to that for machinery **listed in Annex IV.** More especially, where such machines are designed to harmonised standards that cover all the applicable EHSRs, the manufacturer can declare the machine as compliant with the Directive *without having to submit a copy of the Technical File to a Notified Body.* And yet, the Commission's first proposal did require the Technical File for Annex IV machinery to be checked by Notified Bodies in every instance. In all other cases, manufacturers of Annex IV machines can follow a *full quality assurance procedure,* as an alternative to EC-type certification.

The **EC declaration of conformity** must now contain the *name and address of the person authorized to compile the Technical File,* who must be established in the Community, as well as *where and when the declaration was made.*

Annex V of Directive 98/37 (the EC declaration of conformity) has now gone, and its main content – the description of the **Technical File** – has become part a) of the new Annex VI, with the following added particulars:

- *Operational* issues must be carefully explained.
- Risk *assessment* must be documented: in particular, *residual risks* must be indicated.
- The reports and results from the manufacturer's research and tests – to determine the safe design for his product – must be *included in the Technical File.*

Significantly, the new text not only no longer requires the Technical File to be kept available for inspection on the manufacturer's premises for inspection, it makes clear that it does not even have to be located in the territory of the European Community.

The duties of Notified Bodies (NBs) when carrying out the **EC type-examination** (new Annex X) have also been clarified. In particular, they are now required to distinguish those design solutions that are in accordance with harmonised standards from those that are not, and in the latter case, to take special care over the examination. Validity of the EC-Type examination certificate is dealt with in a new paragraph (9) of new Annex X. For one thing, NBs are reminded of their responsibility for ensuring that certificates remain valid when modifications and/or the state of the art might imply that a certificate is no longer valid. But also, manufacturers must ensure that machinery *meets the state of the art:* they must ask the NB to *review the validity* of the certificate every five years. If the certificate is not renewed, the manufacturer can no longer place the machine concerned on the market.

There are new provisions on the **Notified Bodies.** The Council has gone further than the Commission's first proposal – which clarified elements like *staff, means* and *access to equipment* as pre-conditions when assessing the competence of NBs – by adding provisions for *suspending or withdrawing* certificates, and announcing Community initiatives for the exchange of experience between notified bodies and the national authorities in charge of their appointment, notification and monitoring. Two new paragraphs have been introduced in the minimum criteria to be taken into account by Member States for notifying bodies. One stresses the importance of NBs participating in *co-ordination* activities, and in European *standardization,* the other the need to ensure that customers' files and dossiers do not go astray if an NB ceases its activities.

Two new recitals (17 - 18) reaffirm the *significance* of **CE marking,** the prohibition on *misleading* third parties with similar marking, and the need for CE marking to be affixed next to the name of the *person* who has taken responsibility for it.

The presumption of conformity has undergone only minor rewording in the Council text; an intermediate text (September 2003) which came out of the debate in the Council Working Party on Technical Harmonization included the *conditions* on which the references of harmonised standards would have been published in the *Official Journal.* These required the list of EHSRs relevant to the machine concerned, those fully covered by the standard (and by which paragraph) and those only partly covered or not at all.

The new text addresses some major concerns voiced by the European trade union movement

The TUTB levelled a number of criticisms[4] at four main changes made by the Commission's first proposal concerning *partly completed machinery, ergonomics, controls, instructions,* and *risk analysis.* The new Council text seems to address these concerns of the European trade union movement.

The provisions on **partly completed machinery** introduced by the Commission proposal have been tightened up to make it subject to a specific *procedure.*

The TUTB said that the Commission proposal lacked a clear obligation to carry out a risk assessment even on partly completed machinery, to make the job of final assemblers responsible for the overall risk assessment of complex machinery easier. The improvement made is that manufacturers of partly completed machinery must now compile the *technical documentation* described in part B of the new Annex VI, especially on risk assessment. This closely resembles the *Technical File* for machinery. Also, partly completed machinery can only be placed on the market if accompanied by a *declaration of incorporation* indicating, among other things, *what EHSRs*

[4] Cf. *TUTB Newsletter,* No. 17, *op. cit.*

have been applied and fulfilled, and by detailed *assembly instructions,* now considered so important that they are dealt with in a separate annex (V).

The **Annex I** changes made by the Commission proposal appear to be endorsed. Provisions on machinery *handling,* for example, have been expanded with a focus on *transportation* hazards, while provisions on *stability* have been finessed. Interestingly, the need to avoid *overturning, falling or uncontrolled movements* has been extended to transportation, assembly, dismantling, scrapping and any other action involving machinery. By contrast, some modifications criticized by the TUTB have been revisited. The new paragraph on **ergonomics** has been enriched with references to the *work rate,* operators' *concentration, space of movements, man-machine interface.* The paragraph on **controls** has reinstated the deleted paragraphs on *errors in the control system logic,* while a number of new provisions have been introduced. The express references to *hardware & software faults, human error, unexpected start-up, changes in machinery parameters, stopping, pieces ejection, efficiency of protective devices, coherency* of control systems of *assembly of machinery, cableless* control are cases in point. The need to avoid machinery starting up when persons other than the operator acting on the start command are in the danger zone has also been underlined. The provisions on **instructions** have been supplemented and clarified. On top of what was required by Directive 98/37/EC, instructions must now include a general description of the machine, with descriptions and explanations, details on assembly, installation and connection, details on stability during the whole machinery life-cycle, details on the operating methods to be followed in case of accidents or breakdowns, and details of how to safely carry out maintenance tasks. Finally, the Council text removes the uncertainties of the Commission's first proposal concerning the role of *risk analysis,* by making *risk assessment* central to the manufacturer's duties. Significantly, paragraphs 1 and 2 of the General Principles of Annex I introduce *risk assessment* and *risk reduction,* taking advantage of the fundamental harmonised standard EN ISO 12100 *Safety of machinery,* published in 2003.

Other important improvements over the first Commission proposal include:

- *Principles of safety integration* have been added, with express references to *operability* and *reasonably foreseeable misuse.*
- Provisions concerning *noise* and *vibrations* have been incorporated, with a suggestion that machinery emission be assessed by reference to comparative emission data for similar machinery. This concept is re-introduced in the provisions on instructions. This does justice to the activities promoted by KAN and INRS in support of European research on quantifying machinery emissions.

Finally, the recital stating that the *EHSRs must be complied with to ensure that machinery is safe* has been reinstated (Recital 10-b), thus providing an adequate introduction to Recital 19 requiring manufacturers to carry out a risk assessment for machinery they wish to place on the market.

The TUTB's general view

Generally, the Council text consolidates most of the *directions* introduced by the first Commission proposal, with a focus on ensuring legal certainty for users. Positive aspects include the focus on the needs of *consumers,* included for the first time in the Machinery Directive. These are now to be found in Recital 3, reminding Member States about their responsibility for ensuring health and safety on their territory, and in Recital 11, emphasizing the need to take consumers into account when designing and constructing machinery.

Also positive is the recognition given that *traceability* of documentation is important. Manufacturers must keep the EC declaration of conformity and declaration of incorporation for a period of at least 10 years from the last date of manufacture. Also, Member States must take steps to see that affected customers' files and dossiers do not go astray if NBs cease their activities.

A third positive aspect is the focus on the whole lifecycle of machinery, with special emphasis on *operational* health and safety issues: significantly, the Directive's provisions now address *purposes which can reasonably be foreseen* in addition to the purposes intended by the manufacturer.

Finally, the Council text reflects a desire for better communication among all stakeholders affected by the Machinery Directive, as envisaged in the recent publications concerning the improvement of the implementation of the New Approach Directives and the Community strategy on health and safety at work. ■

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SPECIAL REPORT

The community strategy at mid-term

In March 2002, the European Commission adopted a Communication on the Community strategy on health and safety at work for the period 2002-2006 (see *TUTB Newsletter*, No. 18, March 2002, p. 1-6).

What is the score sheet half-way through? What has it achieved? Where are the road blocks? And above all, what does it tell us for the future?

This brief report card shows that advances have been made in some areas (asbestos, physical agents, implementing the legislation in the new Member States, European collective agreement on stress). But elsewhere, there has been much foot-dragging, and implementation of the Community strategy has been held back by a dangerous failure to act. Situations currently stalled include: adopting exposure limits for chemicals, recognition of occupational diseases, the revision of the Pregnant Workers Directive, etc.

Where it is mainly falling down is in framing preventive strategies that take full account of labour relations / gender assumptions and labour market changes. Failure is not too strong a word to use on three particularly big issues:

- Despite the pledge to mainstream the gender dimension across occupational health measures, the policies pursued in practice have not moved on, and the linkages between equality and occupational health have gone largely ignored.
- The spread of casual hire and fire has not been addressed as a priority. The proposal for a Services Directive (the "Bolkestein Directive") would seriously undermine working conditions in the service sector in Europe (see p. 7).
- The treatment of working time has reflected employers' demands for extreme flexibility. For the first time ever in Community social / employment law, the revision of a directive has been approached not as a lever for better working conditions, but as a means of forcing standards down. The European Union also looks very close to throwing International Labour Organization Conventions into question (see p. 11).

The overall prevention strategy for chemical risks is also under great threat from the chemical industry employers' stiff opposition to any attempt to improve the existing rules. Systematic pressure is being exerted in many forms on a vast array of issues: market rules (REACH), the setting of both indicative and mandatory exposure limits, tackling reproductive health hazards, strengthening the rules on protection against carcinogens, etc.

But the EU's enlargement to 25 countries demands a fresh impetus for workplace health policies. The diversity of situations has increased. There are real risks of a competition that will force working conditions down. It is a situation in which any break or moratorium on Community activities would have disastrous consequences. This makes it essential for trade unions to step up the pressure and build awareness in the new European Parliament, so that issues on the agenda in 2005 and 2006 will lead on to better working conditions.

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Scoreboard of Community legislation
Some steps forward, many stalled issues and question marks

Steps forward

There have been advances on two fronts - asbestos and physical agents.

- Directive 2003/18/EC of 27 March 2003 revising the existing provisions on the protection of workers exposed to asbestos materially improves the legislative framework, but has equally big failings (see p. 22).
- The physical agents saga which began in 1992 has dragged on too long, but is nearing its end. Various States had initially piled on the pressure to break down a proposal for a directive covering all physical agents[1] into a series of specific directives. A first directive on vibration adopted on 25 June 2002[2] was followed on 6 February 2003 by a directive on noise[3], and a third on electromagnetic fields on 29 April 2004[4]. A directive on optical radiation is in the works. Negotiations on each of these directives have been fairly hard going and have not always produced the best solutions. That said, these directives do add to the body of Community legislation in key areas for workers' health, and can bring real improvements for most Member States.

Also worth noting is the European agreement on stress concluded by unions and employers' organizations on 8 October 2004 (see p. 33).

Sticking points

There have been many of these, largely due to the political context. The onslaught against any development of Community occupational health legislation has come in successive waves: the Aznar-Blair-Berlusconi joint declaration against social Europe in early 2002; highly vocal employer opposition and pressure from many sides (including the Bush Administration) against the REACH project in 2003; the Dutch Presidency's systematic assault on Community health at work laws in the second half of 2004; the Commission's outrageous proposal on working time in September 2004. A close reading of the Council of Ministers' resolution on the new Community strategy reveals some disinclination for new legislation. This resolution was adopted under the Spanish Presidency on 3 June 2002[5], and the Aznar government did not try to hide its opposition to more legislation. The resolution is ambiguously worded, but to seasoned Community-watchers it signalled the Council of Ministers' intention to warn the Commission against going too far down the occupational health road. In many areas, the Commission has preferred to sit on its hands rather than risk a showdown.

Matters still in the in-tray include:

- Drawing up indicative exposure limits. The Commission adopted an initial list of 62 indicative exposure limits in its Directive of 8 June 2000[6]. A second list has been ready for over two years. Various substances have been pulled out of the initial list. A list of 34 substances[7] was finally approved in September 2003 by the Member States represented on the Technical Progress Committee. Even so, the indicative limit value of nitrogen monoxide (No), a substance that causes respiratory disorders, was lobbied against by chemical[8] and mining industry employers. Other Commission Directorate-Generals gave a helping hand to employer lobbies who wanted the exposure limit set at 1 ppm rather than 0.2 ppm. The whole matter is now in the in-tray of the new Social Affairs Commissioner, Mr Špidla. It would be out of order for the Commission to let the chemical industry veto values set by the competent, independent experts that sit on SCOEL (Scientific Committee for Occupational Exposure Limits).
- The development of compulsory exposure limits faces the same problems. At present, compulsory exposure limits are the exception in Community legislation. The Council of Ministers pointed out a clear gap in the protection of workers against carcinogens. The adoption of a compulsory exposure limit for crystalline silica is a big test. Crystalline silica has been recognized as carcinogenic to humans by the International Agency for Research on Cancer since 1997. The SCOEL studied the available data and proposed an exposure limit of 0.05 mg/m³ to improve protection. Employer lobbies are trying to block the adoption of this exposure limit.
- The general situation on chemical risks is made worse by the rank under-staffing of DG Employment and Social Affairs' Health at Work Unit, which has just one Community official and two national experts to handle the huge chemical risks caseload. It is clear that this structural undermining of Commission departments is a gift to the highly active chemicals industry lobby.
- The revision of the Pregnant Workers Directive. This was provided for in the Directive, which was the product of a fudge. It should have happened in 1997. It was called for again by a European Parliament resolution in 2000. The Commission has turned a deaf ear and has yet to put forward any proposals.

[1] The Commission's original proposal for a directive on all physical agents was published in *OJ* C 77 of 18 March 1993, p. 12.
[2] Directive 2002/44/EC, *OJ* L 177 of 6 July 2002, p. 13.
[3] Directive 2003/10/EC, *OJ* L 42 of 15 February 2003, p. 42.
[4] Directive 2004/40/EC, *OJ* L 184 of 24 May 2004, p. 1.
[5] *OJ* C 161 of 5 July 2002, p. 1.
[6] Directive 2000/39/EC, *OJ* L 142 of 16 June 2000, p. 47. Previous lists had been adopted in 1991 and 1996 under a 1980 Directive. Some of the substances covered by the previous directives were included in the list of exposure limits adopted in 2000.
[7] Some substances included in the original draft were dropped, most notably nitrogen dioxide, despite a study and recommendation on it by SCOEL (Scientific Committee for Occupational Exposure Limits).
[8] The most vocal opposition to the SCOEL proposals came from the fertilizer manufacturing industry.

Question marks

There are question marks over other areas:

- The Commission has launched the first phase of consultation of the trade unions and employers' organizations on a revision of the Carcinogens Directive[9]. The scope of this directive needs to be widened to include reprotoxins. Employers' lobbies are adamantly opposed to this.
- The framing of a directive on musculoskeletal disorders. Not until November 2004 did the Commission launch a first consultation of trade unions and employers' organizations on what should long have been a top priority. The document put out for consultation is unspecific, offering no clues as to where the Commission may be taking this issue.
- Developments on violence in the workplace could be seen in two areas. The Commission has announced forthcoming consultations of trade unions and employers' organizations on what measures are needed. The issue is also on the agenda of union/employer European social dialogue meetings.
- The Commission has put forward a proposal for a revision of the Working Time Directive which is an unprecedented attempt to turn back the clock (see p. 11).
- The employers have for years been clamouring for the health and safety Directives to be simplified. The Dutch government has recently reignited the debate with proposals for a simplification of the Framework Directive and some individual directives (see p. 25).

Mainstreaming: words and actions

The scaling down of Community occupational health action has sometimes being excused away by "mainstreaming", i.e., integrating health and safety requirements into legislation that covers other areas. That is obviously a good thing. Priority areas for this include the organization of the labour market, environmental protection, chemicals and work equipment manufacture and marketing, gender equality, and so on. But embedding safety requirements in these different areas has not been an unqualified success.

- On work equipment, the revision of the Machinery Directive is likely to be finished soon. The Council reached a political agreement in September 2004. The key issues of market surveillance by the national authorities, and oversight of the work of the notified bodies that certify the most dangerous types of equipment, remain unresolved.

- The reforms first proposed to the production and marketing of chemicals included principles that could have materially benefited workers' health. The Commission's proposal has been watered down in some respects, but could still be a lever for progress provided the campaign against REACH does not wreak fresh damage. The European Parliament could beef up the proposal if it sticks to the criteria it framed when scrutinizing the 2001 White Paper on chemicals (see p. 3).

- The ongoing negotiations on a proposal for a directive on temporary agency work are not addressing the big health and safety issues that pervade the sector. Community Directive 91/383 which deals with these matters is severely wanting, and the Commission report on its practical implementation glosses over it, simply sketching the outlines of national transposing measures without examining the real extent of practical implementation[10]. It takes no account of the remarks submitted to the Commission by the European Trade Union Confederation on these issues.

- In other areas, there has been no mainstreaming of health at work issues. The proposal for a directive on services in the internal market (sometimes called the "Bolkestein directive") exemplifies the total disregard for occupational health in a Commission economic proposal (see p. 7).

- In a sectoral area, too, the Commission's proposals on port work were driven purely by an aim to open the sector up to more competition. The proposal met with fierce opposition from dockers and their unions, and was fortunately knocked back by the European Parliament (see p. 9). ■

[9] Directive 2004/37/EC of 29 April 2004 (*OJ* L 158 of 30 April 2004, p. 50) which is a codification of Directive 90/394/EEC of 28 June 1990 and the amendments made in 1997 and 1999.
[10] The report - called a Commission staff working paper - was adopted on 18 May 2004 (document SEC(2004) 635).

TUTB Publication

Occupational health
Eight priority action areas for Community policy

Laurent Vogel

EU enlargement raised many questions about the future of health at work policy. There has been progress in cutting work accident rates, but elsewhere what has been done generally falls well short of what is wanted and needed.

The years 2005-2006 will be a crunch time for future policy decisions. Will we move towards a revitalization of health at work policies, or spiralling competition that will force working conditions down?

The TUTB picks out eight specific areas where health at work strategies need beefing up. Looked at through the prism of a core concern - reducing social inequalities in health while improving working conditions - these workplace health issues arguably reflect hard choices about society.

This brochure is for trade unionists, policy officers and anyone involved with safety and health organization at Community level or in any country of the European Union.

TUTB, 2004, 32 pages, 17 x 24 cm
ISBN : 2-930003-55-3, 10 €

Published in French as : *Santé au travail. Huit terrains d'action pour la politique communautaire*

Czech, Danish, Dutch, Estonian, Hungarian, Italian, Latvian, Polish and Slovenian versions of the brochure will be published in early 2005.

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Better protection for asbestos-exposed workers

Keep up with European and international developments on asbestos issues through our special report on the web: http://tutb.etuc.org > Main topics > Asbestos

Directive 2003/18 of 27 March 2003[1] is a clear step forward. The new wording of article 5 to all intents and purposes bans any further manufacture of asbestos-containing materials or products for export. Other welcome developments include the reduction in the occupational exposure limit value to 0.1 fibre/cm^3 and the extension of the Directive's scope to some previously-excluded categories of workers.

How exposure limits for workers exposed to asbestos have changed in Community directives

	Commission's initial proposal in 1980	1983 Directive	1991 Directive	2003 Directive
Crocidolite	0.2 fibre/cm^3	0.5 fibre/cm^3	0.3 fibre/cm^3	0.1 fibre/cm^3
Chrysotile	1 fibre/cm^3	1 fibre/cm^3	0.6 fibre/cm^3	0.1 fibre/cm^3
Other kinds of asbestos	1 fibre/cm^3	1 fibre/cm^3	0.3 fibre/cm^3	0.1 fibre/cm^3

Priorities on asbestos

- Ratify ILO Convention C162. Only 8 of the EU's 25 States have so far done this.
- Extend the protection rules to independent contractors.
- Draw up a register of asbestos-containing buildings.
- Improve the recognition of asbestos-related occupational diseases.
- Stop exporting asbestos-containing waste to developing countries. In particular, ban the sending of asbestos-laden ships to breakers yards in India and East Asia.

The exposure limits set in the new directive are no reason not to take preventive measures to reduce exposures to lower levels wherever technically possible. The point is that no exposure limit offers total protection from carcinogens, so the aim must be to achieve the lowest exposure limit value technically possible.

The Directive is badly flawed in many worrying respects, which could throw its practical implementation into doubt. The final compromise proposal put up by the Danish Presidency made too many concessions to deregulatory governments, not least:

- The revised directive does not cover self-employed workers, so employers can get round its provisions by having independent contractors do the work without needing to take the required preventive measures. And there is no shortage of lump labour in the building industry.
- All demolition work on asbestos-containing buildings or installations, as well as asbestos removal work, must only be done by specialized contractors approved on the basis of appropriate criteria (training for workers, proper protection equipment, experience in this type of worksite, etc.). The Directive's provisions as they stand are too vague on this point (article 12b) and national practices reveal widespread abuse in the asbestos removal market. The use of casual hire-and-fire labour (agency workers, micro-enterprises involved in multi-tier subcontracting, etc.) is very disturbing. The Community directive's provisions on demolition and asbestos removal are a step back from ILO Convention 162 (1986), article 17 of which requires such work to be undertaken only by employers or contractors who are recognized by the competent authority as qualified to carry out such work and are empowered to undertake it. ILO Convention 162 has been ratified by only seven of the fifteen States in the European Union when the Directive was adopted (Germany, Belgium, Spain, Finland, the Netherlands, Portugal and Sweden). Only one of the new Member States has ratified it (Slovenia). This is despite the fact that the issue of controlling the qualifications of asbestos removal contractors was brought up in the Council Conclusions of 7 April 1998 which provided the basis for drawing up the Directive of 27 March 2003. The wording of article 12b was considered lacking by both the Economic and Social Committee and the European Parliament.
- The requirements on notification of work involving exposure to asbestos need tightening up. A register of individually identifiable exposed workers should be kept so as to enable effective checks to be made and to bring health surveillance systems into action. This is particularly important given the serious failings in the registers of asbestos-exposed workers in most Community countries. A link between the works notification procedure and registers of exposed workers would help improve matters.

But the really big issue is less the Directive's failings – those could be put right by national implementing legislation - than actual compliance with the provisions adopted. The building industry is one of the main problem areas here, where health at work provision typically has little effect. It is rarely covered by multi-disciplinary preventive services, workers' health and safety reps cover only part of the sector. It is a sector typified by a very large number of fragmented small and micro-enterprises and much multi-tier subcontracting. Member States must face up to their responsibilities to improve on the structural arrangements provided for by the Framework Directive. This is an absolute must for the enforcement of any regulations dealing with a specific risk like asbestos. Probably no more than 50% of all workers are currently covered by a preventive service in Europe[2], and coverage by employee health and safety representative schemes is short of what is needed in many countries. Governments must also give labour inspectorates the added capacities needed to see that the new rules are properly enforced. The SLIC (Senior Labour Inspectors' Committee) initiative to make asbestos the theme of a future enforcement campaign across all European Community countries in 2006 is a welcome move. ■

[1] *OJ*, L 97 of 15 April 2003.
[2] See the special report on preventive services in *TUTB Newsletter* No. 21, July 2003, p. 19-37.

New Recommendation on occupational diseases: some progress, but no harmonization in sight

On 19 September 2003, the Commission adopted a new Recommendation on occupational diseases1 which replaces that of 1990. The new Recommendation is structured broadly like its predecessor. It is based on two schedules. The first schedule (annex I) contains occupational diseases that should be recognized in all Member States. The second schedule (annex II) contains a list of diseases suspected of being occupational in origin which should be subject to notification and which may be considered at a later stage for inclusion in the first schedule.

Generally, the new Recommendation is in line with the Commission's earlier 2001 proposals. While most of the suggested improvements put forward by the European Trade Union Confederation were rejected, some were taken up:

- national statistics on occupational diseases should be broken down by sex (which does not currently happen in some countries like France, for instance);
- an active role for national health care systems and medical staff in the reporting of occupational diseases;
- new musculoskeletal disorder-related conditions expressly included in the schedule of occupational diseases: carpal tunnel syndrome and three categories of bursitis (new categories 506.10, 506.11 and 506.12).

The original proposals have been "toned down" on some points as a result of employer pressure backed by certain governments. The most appalling piece of backpedalling relates to cancer of the larynx caused by exposure to asbestos. The original plan was to include it in the occupational diseases that should be recognized by Member States, but it has been downgraded to the list of diseases suspected of being occupational in origin. There is no reason for this when cancer of the larynx caused by asbestos exposure is a recognized occupational disease in several European Union countries.

No such thing as back strain

Another serious step backwards relates to spinal column problems caused by carrying heavy loads. The Commission has seemingly forgotten about the Manual Handling of Loads Directive! This clearly established the link between load lifting and spinal column problems - a connection to which hundreds of thousands of sufferers in the building industry, hospital work, and other sectors can testify. The Commission does not even see such diseases as suspected of being occupational in origin. The economic stakes are clearly high: the huge costs will be paid by health care systems and the sufferers themselves rather than the occupational disease compensation schemes.

In terms of actual numbers, the differences between the initial proposal and the Recommendation as adopted are:

Annex I (recognized occupational diseases): of six diseases caused by chemical agents, four have been included in the final version, one was dropped and one was included in Annex II. Of the six diseases caused by the inhalation of substances and agents, five have been included. The other has been listed in Annex II (cancer of the larynx following the inhalation of asbestos dust). Neither of the two diseases caused by physical agents has been included in Annex I (both are listed in Annex II). On the other hand, four trade union proposals not included in the initial proposal have been accepted (the most significant advance being carpal tunnel syndrome).

Only three of the six diseases that were to have been transferred from Annex II into Annex I actually have been; the other three stay in Annex II.

Four new diseases and agents were proposed for Annex II, of which three have been included. Disc-related diseases of the lumbar vertebral column caused by the repeated handling and carrying of heavy loads were left out.

The Recommendation has dropped any threat of the future adoption of a Directive, previously mentioned in article 7 of the 1990 Recommendation.

The general verdict, then, is "could do better". Progress on some points, but an overall approach that leaves slim chances of any harmonization of systems for the recognition of occupational diseases. On that basis, hoping to set hard targets for reducing the rates of recognized occupational diseases seems like a pretty sick joke.

There is no real convergence to be seen between national systems either in the aggregate data summarized in the table (see p. 24), nor as regards the main diseases. The gap between the extremes has remained virtually unchanged over ten years, discounting Sweden.

[1] *OJ* L 238 of 25 September 2003.

The failure of a Community policy in figures

A Eurogip study published in 2002 illustrates the wide gaps between national systems for the reporting and recognition of occupational diseases, and the scale of the social inequalities they create.

The EU States covered by the study range from a low of 3.3 recognized occupational disease per 100,000 workers in Ireland to a high of 177 in France.

Reported and recognized occupational diseases in 12 European Union countries, 1990-2000

	New cases of reported occupational diseases per 100,000 workers			New cases of recognized occupational diseases per 100,000 workers (% of cases accepted)		
	1990	1995	2000	1990	1995	2000
Austria	151	133	103	78 (51.8 %)	52 (39.3 %)	42 (41.7 %)
Belgium	431	336	277	186 (43.2 %)	204 (60.9 %)	112 (40.5 %)
Denmark	549	669	545	90 (16.4 %)	131 (19.6 %)	124 (22.8 %)
Finland	320	331	238	160 (50 %)	110 (33.1 %)	64 (27 %)
France	63	103	237	44 (70 %)	76 (73.8 %)	177 (75 %)
Germany	192	235	211	35 (18.3 %)	66 (27.9 %)	49 (23.1 %)
Greece	–	5.3	4.5	–	4.7 (90 %)	3.5 (78.1 %)
Ireland	4.4	6.4	7.5	2.3 (52 %)	5.5 (87 %)	3.3 (44 %)
Italy	354	211	160	93 (26.2 %)	39 (18.5 %)	33 (20 %)
Luxemburg	113	49	82	8 (6.7 %)	15 (30.9 %)	14 (16.9 %)
Portugal	–	57	55	–	42 (73.1 %)	27 (48.9 %)
Sweden	1 524	642	309	1 242 (81.5 %)	258 (41.3 %)	138 (45 %)

Source : Eurogip, 2002

The gender issues in under-recognition of occupational diseases are important. They amount to systematic discrimination that waters down prevention policies as respects diseases more common among women workers and that affect women more than men. In most European Union countries, women fall within a bracket of 25% to 40% of recognized occupational diseases. In the United Kingdom, the proportion is under 10%. In Belgium, it is around 15%.

And yet, expressed in full-time equivalents, the adjusted aggregate data for the European Union collected by Eurostat for the 1999 labour force survey indicate that, in all the countries surveyed apart from Greece, work-related diseases are actually more prevalent among women[2]. ■

[2] See Dupré, Didier, "The health and safety of men and women at work", *Statistics in Focus, Population and Social Conditions,* Theme 3-4, Eurostat, 2002.

Soft law and voluntary measures: the deregulator's new clothes

The Netherlands is in the driving seat of the European Union for the second half of 2004. Governments usually try to use their Presidency to intermediate, intercede and broker compromises. Not so the Dutch Presidency, which has taken a stance firmly on the right of the political stage in Community occupational health debates. Its choice may well be prompted by domestic politics. The Balkenende II government's (see Box) policy stall set out in spring 2004 was an all-out assault on labour. The results are a matter of record: autumn 2004 was marked by mass demonstrations and rashes of strikes not normally seen in the country.

The Balkenende II government

The Balkenende I government was formed in 2002 as a coalition of Christian Democrats (CDA), right-wing liberals (VVD) and the Pim Fortuyn list, an ultra-free-market, islamophobic grouping which won over 16% of the votes in a context marked by the killing of its leader just days ahead of the 15 May elections. It was a short-lived administration. October 2002 saw the coalition plunged into crisis as a result of political in-fighting in the Pim Fortuyn list. New general elections were called for 22 January 2003. The Balkenende II government was again formed as a coalition, this time of Christian Democrats with right-wing liberals and a centre liberal party (D66). It adopted an austerity policy with social security payments in the firing line, and decided to take part in the military occupation of Iraq. Its policy has met with fierce opposition from both the labour and anti-war movements.

Context and challenges

The consequences of the Dutch Presidency's approach are not to be lightly dismissed. The presidency is taking place against a singular set of circumstances, not least:

- It is the first post-enlargement presidency, and the political proposals and spin will to some extent set the tone for the coming years.
- It is the first presidency to follow the election of a new European Parliament in June 2004.
- One core theme was the preparation of the new social action programme for the enlarged EU.

There was no shortage of things to work on for improving prevention. The logical next step on from the Commission's review of the practical implementation of the 1989 Framework Directive and five other directives would have been to discuss what that review told us. The unsatisfactory situation with preventive services; the fact that many workers have no form of representation in health and safety; States' seeming inability to frame coherent preventive strategies - all these should have been debated. Other big issues were on the agenda, too. The debate around the proposed reform of market rules (REACH project) makes a critical look at preventing chemical risks a live topic. The failings of Community legislation in relation to musculoskeletal disorders could have been tackled. The Community strategy for an enlarged EU of 25 countries should have been spelled out.

Open season on legislation

All these are hot topics, but the Dutch government had its mind set on tackling health at work purely from the employer's angle. The gist of its contribution to the debate can be summed up in two obsessive delusions:

- Prevention costs much too much.
- Legislation "bad", soft law and voluntary measures "good"!

The informal Social Affairs Council meeting in Maastricht on 8 to 10 July 2004 set the tone. The Balkenende II government showed no interest in the substance of workplace health policies. It was all about setting an all-out campaign going for deregulation. The Dutch Presidency's workshop document dismissed occupational health in a single sentence as just one aspect of policies of investment in human capital and productivity gains. It said "In order to increase the level of productivity at the workplace, special importance has to be paid to effective health and safety policies as well as to the introduction of innovative and flexible forms of work organisation". It is a throwaway sentence that holds out no practical perspectives. Above all, it does not add up in a context where flexibility and work intensification (stemming directly from productivity drives) are major causes of health damage. Putting productivity before occupational health puts the focus on action to reduce risks with immediate tangible costs to employers: work accidents and ill-health leading to time off. Long-term risks, like work-related cancers, burn-out and damage to reproductive health barely get a look-in.

The Dutch Presidency hosted a major health and safety conference in Amsterdam from 15 to 17 September 2004[1]. It was boycotted by all Dutch trade unions as a worker-bashing exercise.

[1] The conference documents are available at: http://www.arbo.nl/news/conferentie.stm

The Amsterdam conference is worth detailed consideration for the insights it gives into the substance and techniques of deregulation strategies.

Basically, the Amsterdam conference's contribution to the debates on occupational health can be summed up in a few words. Legislation is an old-fashioned instrument that puts too big a cost burden on business. Any non-legislative option is virtually a magic bullet. The European Union has to do a U-turn and revise the 1989 Framework Directive and individual directives downwards.

This is "deja-vu all over again". Employers and right-wing governments regularly set this particular hare running. Think of the Molitor Group's activity in 1994-1995[2].

The spin bears closer examination, however.

From mantras...

In Hinduism and some branches of Buddhism, the mantra is a key element in the quest for salvation. It is a formula taken from sacred texts which when repeatedly intoned produces a beneficial effect simply in and of itself. To some extent, this was the pattern to which the Dutch government's representatives' speeches went. They contained a ritual refrain of keywords in place of a strategy: soft law, voluntary measures, Social Dialogue (preferably coupled to the adjective "sectoral"), legislative simplification, economic incentives, business case, cut the red tape, etc. The Dutch Presidency presented any alternative thinking to its own in such crude terms as to make it seem impractical[3]. At no point was any analysis brought to bear to explore what each instrument could contribute, its limitations, and where it made sense.

... to statistics

Nowadays, magic words are not confined just to incantations. Statistics hold a central place. Presenting his statistics, Secretary of State for Work van Hoof had the air of making the decisive case for "simplification" of the Framework Directive. He claimed that statutory health and safety provisions represented a cost of 1.15 billion euros in administrative expenses to Dutch business (on which, see the article on p. 28). 60% of these costs were laid at the door of international regulations, i.e., mainly Community directives. A labour inspector from an Eastern European country sitting next to me burst out, "For the past five years, the European Union has been pushing us to transpose directives, saying that they would be good for our economies. Only now are we being told that they cause financial disaster". Mr van Hoof's figures may have been questionable, but his message got across very clearly...

The analysis of the administrative costs claimed by the Dutch government is informative. All occupational health management, planning and communication activities are treated as a cost. The litany of activities includes:

- risk assessment;
- information and training for a worker using dangerous machinery;
- choosing work equipment;
- warnings to workers in the event of serious and imminent danger;
- building stability inspections.

Singling out all these activities as red tape to be cut at any cost raises a big political issue. For over thirty years, there has been a fairly wide consensus that health at work is not to be dealt with purely reactively on a risk by risk basis; that it is important to put in place across-the-board management that mainstreams health and safety across business policy choices. It makes no sense to want businesses to carry out across-the-board management of problems that impact health and safety, but to skimp them.

An approach that sees every management activity as an administrative cost to be cut can lead to two kinds of political proposals:

- a return to risk-by-risk regulation (clearly not the Dutch government's option of choice);
- a call for full-on deregulation that leaves employers free to choose what they do by way of prevention.

Behind the economic analysis (based on a bluff) lies a power issue. It is not costs as such that the liberal right cannot stomach. Even assuming total deregulation, big costs would still remain if only for fear of the legal consequences of a lack of prevention, or for evident practical reasons. In fact, any employer with a smidgin of common sense can see the folly in setting a worker to work on dangerous machinery without giving him instructions. However little he may care for the worker's life, production interests will give the necessary prompting. Likewise, the third-party certification of firms so heavily sold by the Dutch government usually involves high administrative costs. What it cannot buy, therefore, is the idea that public or social control can dictate any of an employer's activities, the fact of limiting the exercise of the employer's power by conditions set by society. It betrays a vision that the market will provide, that it will strike a balance between the sum total of individual self-interests and the general good. It is a profoundly tub-thumping approach which disregards the fact that the market is structured precisely by social institutions. It holds out the administration of business (described as "management" to give it a positive spin) as completely distinct from the administration of the State (dubbed "bureaucracy" to give it a negative spin).

[2] See: Molitor Group: deregulation assault on health and safety, *TUTB Newsletter,* No. 1, October 1995, p. 2-3.

[3] To illustrate this offhand treatment of the other options, in a document which claims to summarize the contribution made by the Amsterdam conference, the Dutch Presidency writes: "The next Action Programme on Occupational Safety and Health should explicitly allow for other methods of intervention in addition to legislation" (SZW, *Conference "A Social Europe: Let's Deliver", Workshop Documentation,* 8-9 November 2004). The assumption is that this is not happening at present, otherwise what is all the talk about? A simple glance through the various Community action programmes on health and safety is enough to show that they invariably refer to the need to combine different methods of intervention.

Skimped concrete proposals

But this general spin should have led on to policy proposals, and here, the Dutch government had little to say.

The only concrete proposals lie in three points:
- a rest from legislation (on which the Dutch government is backed by the European employers' confederation, UNICE);
- "simplification" of the 1989 Framework Directive (which seems not to have been taken up by UNICE or at least not as a priority);
- transforming the individual directives (or the first five, at least) by turning their annexes into simple non-binding recommendations[4].

Broadly, this bears all the hallmarks of the "will this do?" school of policy formulation. More well-developed and original proposals might have been expected.

The idea of a rest from legislation does not say what will be done about unresolved issues. Will setting up a "sectoral social dialogue" be enough to address the problems of musculoskeletal disorders or work-related cancers? What is the Dutch government's thinking in areas as different as developing occupational exposure limits for dangerous chemicals or the serious health and safety problems of casual hire-and-fire work? These are "details" which bore looking at in a bit more depth at least...

Simplification of the 1989 Framework Directive appears as the centrepiece of the agenda. Let us not mince words. The text of the Framework Directive is simplicity itself. Compared to the Dutch legislation in force at the time when it was adopted, its wording is clear, precise, and not over-complex. "Simplification" is actually a codeword for deregulation. But, here again, the Dutch government has made no effort. What bits of the Framework Directive are to be deregulated? Preventive services? The right of workers to stop work in the event of serious and imminent danger? Consultation of workers and their representatives? Health surveillance? The Dutch government's intentions are unfathomable. Available information suggests that it would particularly like to scrap the employer's obligation to perform a risk assessment. This would be the kiss of death for one of the key elements of any systematic management of workplace health problems. Most of the individual directives would be weakened, too, as they assign a key role to risk assessment.

Turning the annexes of the individual directives into simple recommendations would have devastating consequences. For some directives, it is only the annexes that put a practical gloss on the general terms of the main provisions, which are mainly procedural. The Workplaces and Use of Work Equipment Directives are cases in point - which would be crippled without their annexes. The same also applies to a lesser extent to other individual directives, like the Manual Handling of Loads and VDU Directives. Only the Personal Protective Equipment Directive would be under threat. Such a drastic reform would leave Community legislation in tatters.

A European "Competitiveness" Council of Ministers held on 25 and 26 November 2004 adopted a list of directives to be partially deregulated ("simplified"). The Dutch Presidency managed to get the 1989 Framework Directive included in it. It is more a symbolic than real victory. The inclusion of the Framework Directive (and the REACH project) in the list of texts to be "simplified" is a worrying development, but the decision was taken on extremely chaotic bases with practical proposals nearly devoid of any significance.

The decision to slim down the Framework Directive was explained away by a gross manipulation of the facts. The analysis of the problem comes in just one sentence, "Yearly information requirements with regard to all of the individual measures impose a disproportionate burden on the Member States"[5]. The answer to this awful problem is to cut back to a summary report every six years. The easy reply is that it is not readily obvious how a government could implement a preventive strategy without carrying out a regular and detailed follow-up of the situation[6]. But comparing the "Competitiveness" Council's analysis to the Framework Directive's actual provisions, it is clear that the "Member States' annual report" is pure fiction. The Framework Directive actually requires a report every five years (article 18.2). The conclusion has to be that none of the twenty-five Ministers present at the meeting had bothered to read the Directive they were consigning to the "simplification" process. Likewise, none of the twenty-five ministers was aware of the Commission's plans for a single report for all the health and safety Directives[7]. This shows that handing the "Competitiveness" Council of Ministers a general supervisory brief in areas for which the Ministers concerned have neither a scrap of knowledge or interest is little short of shooting oneself in the foot. ■

[4] In his closing address to the Amsterdam conference, Secretary of State van Hoof muddied the waters with this requirement by calling for "clarification" of the status of the annexes to Directives. But he cannot be unaware that that status has long been clear both in the intentions of the legislature and the case law of the Court of Justice - the provisions of the annexes have the same binding value as the body of the directive.

[5] See: Council Document 14687/04 (Press 323), provisional version, p. 13.

[6] Which is precisely what the Dutch Ministry of Work does with its annual "ArboBalans" report (detailed review of working conditions), which is not a requirement of any Community directive!

[7] Flagged up in the Commission Communication on the Community health and safety strategy for the period 2002-2006.

Counting the costs

With Ronald Reagan's presidency of the United States in 1981, costing became a big gun rolled out by diehard deregulators[1]. At the very start of his term, President Reagan set up a Task Force on Regulatory Relief, whose output had a great influence on the international debates. Government and industry calculations are often more like a game of Poker Bluff. A figure is put out, taken up by the press and trotted out in political debates as if it were provable fact. A critical look at the assessed cost of occupational health legislation makes for informative reading.

A broad definition of administrative costs

The Dutch government put a figure of 1.15 billion euros on the annual administrative cost burden of occupational health legislation to business. How did it come up with that figure?

"Administrative costs" means the cost of all management operations in any way connected with statutory health at work requirements. A catch-all definition like that allows 90 different activities to be treated as "administrative costs". These range from recording work injuries through checking electrical systems, putting danger zone warning signs in workplaces, and choosing work equipment to keeping lists of workers exposed to asbestos. Looking at all the operations concerned, it is clear that any kind of communication - written, oral or signs - and any kind of instruction directly or indirectly related to occupational health is caught in the net.

Having compiled such a long list, the cost estimates are based on the following assumptions:

- That all employers will apply the legislation in full.
- Mixed operations - i.e., those that partly address health and safety and partly the firm's operational requirements - are classed as exclusively "administrative costs" of health and safety.
- Any benefits that a firm may derive from an operation are to be discounted from the calculations.
- A duration is allocated to each operation. The corresponding wage cost for that time is calculated using the average wages for the skill level required. If the operation is repeated several times a year, the cost is multiplied by the number of annual operations.
- The calculated duration is the same for all firms in the same size class, and corresponds to a sample-derived average.

Each of these methodological principles is open to discussion. Taken together, they reflect a political will to play the situation up into a scare story and portray the management of occupational health as an intolerable burden to firms.

Unverifiable average costs

Estimating an average duration per firm is among the most ridiculous aspects of the methodology. It is quite clear that a risk assessment or choosing personal protective equipment are not at all the same thing for a commercial firm and a petrochemicals factory, even if they fall in the same category by size of workforce. The methodology could be defensible in other areas where an approximate average cost can be suggested. Where a firm has to serve notice of dismissal on a worker by registered letter, for example, the average administrative cost of a dismissal can be approximated.

The sample deemed capable of yielding an average estimate comprises just 56 firms, 34 of which were visited, and 22 contacted by phone. These firms are of varying levels of risk and size. Also, 26 specialists were interviewed (11 during visits, 15 by telephone).

The firms were then split into four groups by size of workforce. By way of example, the calculation for the risk assessment considered as the main "administrative cost" for firms, because it represents over half the total cost attributed to health and safety legislation, is shown on p. 29.

On a side note, it is interesting that the costs calculated for small firms are quite low, giving the lie to the argument often brandished by right-wing politicians that the "administrative cost" burden of occupational health will weigh heaviest on small firms.

The Dutch Ministry for Work's cost draftsmen themselves admit that the complexity and extreme variability of health and safety tasks makes any form of averaging highly uncertain. The sample used is so small as to completely exclude some sectors. Even so, the authors optimistically predict an error margin of approximately 20%, but offer no detailed substantiation.

The enemy from without

60% of the costs are claimed to arise from international sources (chiefly Community directives,

[1] Cf. McCaffrey, David, *OSHA and the Politics of Health Regulation*, New York, Plenum Press, 1982.

Estimated cost of risk assessment to business

Group	Administrative costs per firm in euros	Number of firms	Aggregated administrative costs for the group (millions of euros)
Large firm (over 100 FTE workers*)	26 422	6 630	175
Medium-sized firm (from 10 to 100 FTE workers)	3 570	54 450	194
Small firms I (from 1 to 10 FTE workers)	755	184 355	139
Small firms II (less than 1 FTE worker)	254	107 135	27
Total		**352 570**	**535**

* FTE : full-time equivalent

Source: SZW, 2002 , p. 34

but also 7 International Labour Organization Conventions), 15% from mixed sources and 25% from exclusively Dutch sources.

The method used for this calculation is no more persuasive than the rest of the exercise. Generally, a requirement laid down by a Community directive is treated as an administrative cost of Community origin. Where the Community provision is supplemented by a more exacting requirement in Dutch legislation, it is treated as "mixed". Where the requirement arises exclusively under Dutch legislation, it is treated as "national". This method of classification is flawed in two respects:

- Many Community requirements merely overlay provisions that already exist in Dutch law. Regular checks on dangerous machinery or hoisting equipment are cases in point.
- Workplace prevention activities do not distinguish between the paper origins of existing rules. An employer who performs a risk assessment does not do so just to address the requirements of the Framework Directive, it is also essential to comply with Dutch regulatory requirements. For example, the cost of providing information to workers (section 8, Arbowet) is assigned in full to the Community directives, when it is clear that the content of that information deals with risks governed by national regulations as much as by the Community directives. A magic stopwatch would be needed to measure prevention activities by distinguishing "international source" minutes from "national source" minutes.

Need it be said that the estimates made on such questionable methodological bases have not been third-party validated? They are purely Dutch government estimates, and no independent specialist has been asked for an opinion on the methodology and results.

Three-thousandths of national wealth

The bottom-line figure of 1.15 billion euros might seem a clinching argument in the rough-and-tumble of an electoral debate or a TV show, but actually represents less than 0.3% of gross domestic product. There is nothing outrageous in employers having to spend about 3 thousandths of the country's total generated wealth to protect the lives of its wealth-creators, anything but. The temptation is to say "is that all!". But the Dutch government has set the target of cutting the total administrative cost burden on business by 25% in the period 2003-2007. The grounds for such an arbitrary requirement are not known. Each Ministry had to set up a specialized cost-cutting task force. The Ministry of Work and Social Affairs is the third biggest source of the costs to business (after the Ministry of Finance and Ministry of Health).

This evaluation of "administrative costs" illustrates the bluffing that generally typifies costing exercises. Often, it is enough to ask "who is paying for the evaluation?" to know ahead of time what the findings will be. A first-class review of evaluations produced by the chemicals industry to fend off environmental protection can be found in the Chemical Secretariat publication *Cry Wolf* (April 2004)[2]. ■

Sources:

- Dutch Ministry of Social Affairs and Work (SZW), *Administratieve lasten Arbowet- en regelgeving*, May 2002.
- SZW, *Rapportage over de international component van de administratieve lasten voor het bedrijfsleven*, January 2004.
- Correspondence with Mr Fekkes of the Dutch Ministry of Work in October and November 2004.
- More information (or propaganda?) can be found on the Dutch Ministry of Finance website: http://www.administratievelasten.nl.

[2] *Cry Wolf* is available for downloading from the TUTB website: http://tutb.etuc.org/uk/files/lines/wolf.pdf.

Dickens on deregulators

Charles Dickens' book *Hard Times* gives an ironic statement of the deregulator's case. Little, it seems, has changed since 1854.

"The wonder was, it was there at all. It had been ruined so often, that it was amazing how it had borne so many shocks. Surely there never was such fragile china-ware as that of which the millers of Coketown were made. Handle them never so lightly, and they fell to pieces with such ease that you might suspect them of having been flawed before. They were ruined, when they were required to send labouring children to school; they were ruined when inspectors were appointed to look into their works; they were ruined, when such inspectors considered it doubtful whether they were quite justified in chopping people up with their machinery; they were utterly undone, when it was hinted that perhaps they need not always make quite so much smoke. Besides Mr. Bounderby's gold spoon which was generally received in Coketown, another prevalent fiction was very popular there. It took the form of a threat. Whenever a Coketowner felt he was ill-used - that is to say, whenever he was not left entirely alone, and it was proposed to hold him accountable for the consequences of any of his acts - he was sure to come out with the awful menace, that he would 'sooner pitch his property into the Atlantic.' This had terrified the Home Secretary within an inch of his life, on several occasions.

However, the Coketowners were so patriotic after all, that they never had pitched their property into the Atlantic yet, but, on the contrary, had been kind enough to take mighty good care of it. So there it was, in the haze yonder; and it increased and multiplied." (Dickens, *Hard Times*)

Danger money: new and candidate countries still falling short?

The European Union, International Labour Organisation and other international organisations have criticised the ongoing practice in new and candidate countries to pay danger money for hazardous and health-damaging work. The new EU Member States claimed to be fully harmonized with EU health and safety legislation at the time of enlargement in May 2004. But, the law in many countries allows workers to be paid a supplement for hazardous work. Instead of bringing the working environment up to standard, employers simply offer extra pay and/or benefits, and frequent medical check-ups. Workers understandably are not complaining. Firstly, they fear for their job if they do, and secondly, the cash incentive is reasonably high, even though living standards remain low. Even so, the Framework Directive requires workers' health not to be put at risk. For many years, developed countries have been working towards the same solution: moving away from compensation and towards preventive health and safety. But it is also about better legislation, stronger enforcement and constantly improving health and safety awareness among both employers and workers.

The crux of the issue is the lack of national strategies to implement gradual improvements in working conditions without harming workers' incomes or causing job losses. An effective social dialogue on this topic is still not on the agenda despite the pressing need to gather data and analyse the problem. Can the enlarged Europe accept double standards and social dumping? Is adequate information available on the situation in SMEs and similar practices in old EU countries? Is information available about the impact that such practices have on national health insurance systems?

In 2001, the Dublin Foundation carried out a survey on working conditions in what were then ten acceding countries plus two candidate countries - Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia. Turkey was also included in 2002. The survey addressed a wide range of issues around the quality of work and employment, like physical risk factors, working time patterns, work organisation, social relations and work-related health problems. Among other things, the survey found that more workers in New Countries feel at risk because of work (40% against 27% in the EU), and that there is greater exposure to physical risk factors like noise, vibrations and uncomfortable and painful postures. Both these aspects acknowledged the existing divide between two parts of the EU in the field of health and safety, or quality of working conditions generally. But there have been no real reactions to this survey from relevant national or European authorities. Once again, comprehensive strategies in this field are emphatically missing.

Unfortunately, bureaucratic solutions cannot improve the existing situation, and workers will pay the ultimate price for unhealthy working conditions. Some countries are trying to simplify their legislation and shift all responsibilities in this area onto collective bargaining. This could weaken overall protection of workers, as fewer than 50% of workers are covered by collective agreements. Significant improvements in workers' health and safety cannot be achieved without national authority involvement and national strategies through things like detailed analyses, long-term rolling plans of action, clear and harmonised exposure limits, cooperation by both sides of industry, and regular performance assessments. The TUTB means to explore these areas, which have not yet been addressed in new and candidate countries. In the longer term, it hopes to help inform harmonisation of health and safety in the countries of the enlarged EU. ■

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Slovenian workers are paid compensation for working in hazardous conditions. It is not a statutory entitlement. Traditionally, most pay supplements - including danger money - are set by collective agreements.

The framework (or general) collective agreement for the private sector determines how hazardous working conditions are accounted for. Article 43 defines basic pay as the wage paid for full working time, for work results determined in advance done in normal working conditions. Normal working conditions are also defined as those in which work is usually done. So, if some work is usually done in arduous or even hazardous working conditions, compensation must be included in the basic wage. Such wages should be higher from the start.

Article 46 of the framework agreement, however, also provides for pay supplements for workplaces where hazardous working conditions are not usual but recurrent. The supplement is paid only for working hours when work was actually done in arduous or hazardous working conditions, and is calculated as a percentage of basic pay.

Supplements are paid for:
- Exceptionally strenuous work
- Arduous working environment
- Hazardous work
- Unsocial working hours

But the framework agreement only set the percentage supplements for unsocial working hours. The supplements for hazardous and arduous working conditions are fixed by branch and company collective agreements. They average 2% to 8% of basic pay, but only for the hours worked in such conditions. About 15% of the workforce is entitled to these supplements.

The framework agreement also set indicators of arduous and hazardous working conditions. Whenever they are identified, the supplement must be paid. Since 2001, every employer in Slovenia must have a "Risk Assessment" document containing these indicators.

The indicators are:
- Dirty, hard work done in arduous working conditions (e.g.: smoke, soot, hot ashes, dust, moisture, high temperature, noise, harsh artificial light, work in dark or in light other than white)
- Use of personal protective equipment
- Special hazards (fire, water, explosion etc.)

In **Hungary**, work in hazardous workplaces is compensated not by extra money, but a shorter work week, 36 hours in general. Depending on the conditions, extra paid holidays – averaging an extra six days – may be granted.

The situation in the health sector is different. Depending on the type of workplace - laboratories, x-ray rooms, etc. – staff also receive a percentage of income supplement.

The general tendency in all sectors is to improve working conditions, introduce preventive measures, provide better protection and reduce working time.

Shorter working hours must be provided for workers where the concentrations of hazards in the working environment exceeds the acceptable statutory safety and health limits, and it is technically or otherwise impossible to reduce these concentrations to acceptable levels not hazardous to health. Working time must be set taking into account the working environment, but may not exceed 36 hours a week.

Special breaks must be provided when work is performed out of doors or in unheated premises, in temperatures below -10oC, and when performing hard physical work involving severe mental strain or work involving exposure to other health-damaging effects.

In **Poland**, employers must provide employees who work in particularly hazardous conditions with adequate free meals and drinks where required by preventive considerations. Employees, through their representatives, may negotiate pay arrangements, which may include danger money for work in particularly unhealthy or hazardous conditions or where the occupational risk is more than minimal.

The working day is limited to 8 hours in conditions that are identified as harmful. Employees retain their entitlement to pay for the time not worked due to working shorter hours in dangerous circumstances. The reduction of official working hours may be achieved by adding breaks included in the working time, or by reducing official working time. The list of jobs covered by shortened working time when conditions exceptionally arduous or harmful to health prevail should be specified in the collective agreement or works rules.

In **Lithuania**, extended annual leave up to 58 calendar days must be granted to some categories of workers whose work involves greater nervous, emotional and intellectual strain and occupational risk, and those who work in specific working conditions. A Government -approved list of categories of workers entitled to the extended leave must be drawn up, which also defines the specific period of extended leave for each category of worker.

Extra annual leave may be granted to employees whose working conditions do not classify as normal.

The pay for work in abnormal conditions will be higher than that for normal working conditions. Specific pay rates are to be laid down in collective agreements and contracts of employment.

Different forms of compensation are granted to employees working in harmful and extremely harmful conditions (based on lists of occupations). These include extra holidays, danger money for work in harmful conditions (4 to 12% of the tariff wage), and extremely harmful conditions (12 to 24% of the tariff wage), preferential pension allowance, special food supplements and free milk for employees working in extremely harmful conditions.

Abnormal working conditions are defined as at least one harmful factor in the working environment that exceeds the permissible limit values set by health and safety regulations (hygiene standards) and other occupational health and safety laws. The Labour Code provides for wage supplements to be paid for abnormal working conditions, but does not stipulate the exact amounts.

The **Czech Republic's** Salary and Average Wage Act provides that: "In the case of work in difficult and unhealthy working conditions, and night work, pay and benefits must be in accordance with the Governmental decree. Collective agreements may provide for other compensation amounts".

The Decree on minimum rates, compensation for work in difficult and unhealthy working conditions and night work, defines the conditions and stipulates the amount of pay. Generally, difficult and unhealthy conditions exist if:

- Maximum chemical and dust exposure limits are exceeded
- The standards on maximum exposure per shift to vibrations, ionizing radiation, electromagnetic fields, etc., or other general hazards, are exceeded
- There is a risk of infection; contact with allergens, raised air pressure, chemical carcinogens, etc.

Difficult and unhealthy conditions are listed in an annex to the decree.

In **Bulgaria**, compensation and prevention principles for hazardous workplaces are stipulated by law. The forms of compensation for work in hazardous conditions are:

- Extra annual paid leave
- Shorter working hours
- Free (complementary) protective food and antitoxins
- An early retirement scheme
- Extra pay

In **Romania**, there are various forms of compensation for hazardous work, the main five being:

- Extra pay
- Shorter working day
- Extra holidays
- Food supplement to increase resistance
- Early retirement

Only the retirement and shorter daily work time schemes are statutory. ■

WORK-RELATED STRESS

How to make the European work-related stress agreement a practical step forward?

The new framework or autonomous agreement[1] signed on 8 October 2004 by the EU social partners reflects a compromise reached after lengthy negotiations: depending on where you stand, therefore, it has good points which could be drawbacks, and vice versa...

Whatever else, the number of complaints about stress[2], the big problems it creates for workers and the firms that employ them, mean that the good points outweigh the bad.

The agreement is not law, but a binding contract on its signatories and their members to use every effort to put what they have signed into practice[3]. Unfortunately, it contains no appropriate machinery for applying penalties for a breach of its undertakings.

It contains no definition of stress, so the concept remains vague and complex! The question is, whether a definition of stress is really that vital. At some months' distance from the negotiations, and looking at the text of the agreement, it arguably has little importance in operational terms, because the main health and safety thrust of the agreement is on screening mechanisms and tackling the causal factors of work-related stress.

A big focus is put on these causal factors[4] which play into the development of endogenous stress[5]

[1] Autonomous because entered into voluntarily by employers and unions.
[2] The last available study by the Dublin Foundation found that 30% of workers reported suffering from stress.
[3] Although a stand-alone agreement is by definition "voluntary", that does not mean, as some might wish, that the parties are free not to apply it!
[4] Also known as "stressors".
[5] The agreement recognizes the existence of exogenous stressors, so imported stress, but what purchase do they offer workers and employers in terms of a preventive approach?

in the workplace: they include work organization, work environment, work content, and communication issues. This mechanistic, cause-and-effect approach to stressor-induced stress is what prevention experts are most concerned with. The so-called dynamic risk management approach to prevention is what lets prevention experts identify and more effectively eliminate stressors: that dynamic approach is central to the agreement through a clear reference to Framework Directive 89/391/EEC, of which the mechanism is a cornerstone.

Experience and daily events show how these prevention mechanisms often stop short at the diagnostic phase - "Yes, we note that a particular risk is present in the workplace" -, official report writing, and, occasionally pointing out very general ways forward for damage-limitation. Where psychosocial processes like work-related stress are concerned, the constraints (or work- or work organization-related environmental stressors) acting on individuals produce effects - strains - which vary widely between people, who will develop the symptoms of stress at differing rates. This "stress-strain" link is behind the persuasive argument that increasing individual resistance to stressors will reduce the prevalence of work-related stress. This approach is not really relevant to first-line prevention, since it is the very opposite - elimination of risk factors - that is supposed to come before anything else. But we, no more than the agreement, would want to rule out[6] these other people-centred measures.

The agreement on work-related stress adds a dynamic intervention aspect to assessment: the second pillar on which the agreement stands is action to prevent, eliminate or reduce the effects of stressors through a range of measures - management and communication, training of managers and workers, information and consultation of workers. Such action will be dynamic in that, once in place, it will be reviewed regularly and its effects and optimum resource utilization assessed.

The right mix of assessment and intervention, with assistance from competent outside experts when needed, should in the fullness of time help to reduce the prevalence of work-related stress.

The TUTB in close cooperation with the ETUC and ETUI[7] staged a first follow-up seminar on 7 and 8 October 2004, timed to coincide with the official signing of the agreement. The trade union health and safety experts[8] who attended were looking to find out how to put the agreement to best use, how to make sure it got implemented, and how to measure its impacts in terms of assessment and action on work-related stressors. Inevitably, big differences were found in national practices, and the agreement will be bound to have a positive effect on these. So, some countries lack appropriate rules, while others have them on paper but they are only implemented partly, if at all, in practice, including in the countries most advanced in dynamic risk management. Cultural differences, amongst others, mean that models applied successfully in one part of Europe cannot just be imported "as is" into other countries: so, the multidisciplinary approach may be common in some countries, but in others where prevention is the exclusive preserve of doctors and engineers, the idea of enlisting work psychosociologists or ergonomists is not yet on the agenda.

Only the English version of the agreement has been co-signed by the social partners; the big need now is to translate it into all the languages used in Europe.

That will mean the regional social partners coming to arrangements over the translation and signing it in their turn: this will be a real critical path for the application of the agreement.

At the same time, the agreement needs to be promoted by any means that will get it effectively known about, incorporated into national practices, and applied in practice at every level possible (national, industry, workplace, etc.).

The TUTB and ETUI will be monitoring the processes of translating, implementing and using the framework agreement on work-related stress. Regularly updated information will be posted on the TUTB website. ■

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More information:
- Stress at Work, *TUTB Newsletter,* Special Issue, No. 19-20, September 2002, 60 p.
- Our Internet Report: http://tutb.etuc.org > Main topics > Stress at work

[6] Individual coping techniques come at the final or tertiary level of prevention to be used... when all else has failed.
[7] European Trade Union Institute.
[8] From the 25 EU member countries who are members of the Luxembourg Advisory Committee and a number of experts from the accession countries.

Asbestos: GAC 2004

A major international conference on asbestos took place in Tokyo from 19 to 21 November 2004. Titled GAC 2004 (Global Asbestos Conference 2004), it brought together some 800 conferees, including 120 foreign participants from over 40 countries, giving scientific researchers, trade union officials, representatives of authorities and asbestos victim support groups an opportunity to take stock of the situation. The participants adopted the Tokyo Declaration in favour of a worldwide asbestos ban.

GAC 2004 is a timely event in Asia, which is now the world's biggest asbestos user. Asbestos consumption has risen sharply in countries like China, India, Indonesia and Thailand, while industrial countries like Japan and South Korea have cut their use of this carcinogenic fibre. Asia is a major focus of the asbestos lobby's advertising and pressure campaigns. Japan has just brought in a partial ban which should slash asbestos use in the years ahead. ■

There will be more coverage of the GAC 2004 proceedings in the next Newsletter. The GAC 2004 documents are available at: http://park3.wakwak.com/~ gac2004/en/index.html.

Italy: Berlusconi government rolls back reforms

The Berlusconi government has drawn up plans to codify occupational health legislation which are in fact a front for a simplification and deregulation exercise.

The basic principle is straightforward - the mass flouting of health and safety laws by employers needs to be decriminalized. So the penal element has been removed from many provisions which formerly attracted criminal penalties. Declassifying acts as criminal offences may remove the paper liability, but does not help the victims! In the first eleven months of 2004, over 200 workers were killed by a lack of prevention in the building industry alone.

The unions were not consulted on the text of the counter-reform, which was drafted in virtual secrecy by the government. Not until 18 November 2004 did it put out a different version to that only recently circulated by the Ministry for Work. These machinations were designed to discourage a serious debate. The new rules are likely to be on the statute book by or before March 2005.

What had been clear and unconditional employers' obligations are downgraded to just "good practice". Some duties are watered down by reference to "general practice in the sectors and activities concerned".

Regional surveys show that firms which have prevention systems tend also to have active worker representation in occupational health. The counter-reform aims to cut the rights of workers' representatives. For example, in firms with fewer than 15 workers, workers' reps will lose the right to demand that a meeting be held to organize prevention. Union-bashing outside the workplace takes place on another level.

The new rules want to force unions into an unnatural role by becoming part of joint industrial bodies set up to certify firms in occupational health matters. This is tantamount to asking the unions to help undermine public policing and enforcement machinery.

Workers in insecure jobs will be even worse off. They will not be included in the size of the workforce used to determine the level of the employers' obligations. The new text endorses the undermining of occupational medicine. Health surveillance can now be organized by doctors with no occupational health skills, like insurance company doctors or forensic scientists (although not yet veterinary surgeons!). This will mean that health surveillance is likely to have a negligible impact on collective prevention.

The Italian unions have slammed the draft consolidated health and safety law as intolerable and called for a national prevention plan instead of a legislative reform that relieves employers of their prevention obligations. They are looking to form an alliance with scientific and professional associations of prevention experts, and are calling on the Italian Parliament and the Regional governments to throw out the Berlusconi government's reform reversals.

Fighting this proposal was one aim of the general strike called by the Italian trade unions on 30 November 2004. Other demonstrations are in the pipeline. On 2 December, a meeting of 400 workers' safety reps from different companies in Milan called for a powerful trade union campaign against the government plans. The meeting had the united backing of the three Italian trade union confederations, CGIL, CISL and UIL, and was also attended by public health service prevention officers. ■

Chrysotile: Canada undermines Rotterdam Convention

The asbestos lobby spearheaded by Canada has blocked the inclusion of chrysotile in the list of hazardous chemicals and pesticides that are subject to the Rotterdam Convention's prior information procedure before being exported. Chrysotile meets all the requirements for listing. The hazardous products covered by the Convention cannot be exported unless the importing country has given its "prior informed consent" (PIC). The Convention came into force in February 2004. The PIC procedure currently applies to 29 pesticides and 9 hazardous industrial chemicals.

Chrysotile was on the agenda of a meeting of the Intergovernmental Negotiating Committee (CNI-11) held in September 2004. Canada's opposition was backed by several governments, including the Russian Federation, Kazakhstan, Zimbabwe, Mexico, China and India. But a majority of States - notably the European Union, Egypt, Norway, Argentina, Chile, Jamaica, Congo and Tanzania - actually wanted chrysotile put on the list. The United States and Brazil abstained.

This bodes very ill for the future of the Rotterdam Convention. Canada's position reveals the disingenuousness of the proponents of controlled asbestos use, because the Convention was not set up to outlaw substances but to put in place a procedure for prior information and consent before export. If the pro-asbestos lobby seriously believed in the possibility of controlled use, then logically it should support any prior information measure as the prerequisite for control

measures. By withholding information from destination countries, asbestos-exporting States are willfully sacrificing workers' lives for profits. The Quebec Asbestos Victims Association had this to say on the Canadian government's attitude: "By this, Canada is conniving in a vile crime, which is to knowingly spread disease, death and appalling suffering among thousands of human beings with no idea of the fate they are inviting by handling chrysotile asbestos without taking proper precautions". ■

United Kingdom: House of Commons vets occupational health

A House of Commons report published in July 2004 on the work of the Health and Safety Executive (British labour inspectorate) reviews the state of health at work in the United Kingdom. It points to a far from satisfactory situation, and shows how much of this is due to the Blair government's policy focus on deregulation and "voluntary approaches".

The report makes many recommendations, including for a doubling of HSE inspector numbers, and for the early passing of new legislation to allow managers of companies responsible for the death of workers to be prosecuted. The report includes a long series of contributions from different union organizations, employers, public authorities and professional associations. ■

The full report is available on the TUTB site: http://tutb.etuc.org/uk/newsevents/files/UK-HSE.pdf.

Conspiracy of silence in the chemicals industry

A body of recent research has highlighted how the chemicals industry has knowingly concealed the risks presented by some of the products that it has put onto the market*. The Venice Court of Appeal is currently hearing appeals involving 28 managers from three of Italy's biggest chemicals companies - Montedison, Enimont and Enichem - arising out of the deaths of 157 workers from cancers caused by exposure to vinyl chloride monomer (VCM). It transpires that a secret agreement has been in place since 1972 between Dow Chemical Company and various European chemical multinationals to suppress the findings of toxicity studies on the carcinogenicity of VCM.

The documentary evidence put forward by the Venice public prosecutor, F. Casson, at the trial hearing on 13 May 2004 revealed an effective conspiracy by big chemical groups to suppress the disclosure of data on VCM held by them. The firms concerned had commissioned an Italian oncologist, Dr Cesare Maltoni, to carry out a major research study on VCM. His findings clearly indicated that VCM was carcinogenic. But instead of adopting prevention policies and disclosing the findings to the public authorities, the companies involved erected a wall of silence. The findings were passed on by a group of European companies (in particular Montedison, ICI, Solvay and Rhône Poulenc) to US firms (Dow Chemical and Union Carbide). An internal memorandum said that the study findings should stay confidential and not be disclosed outside the companies concerned. ■

* Markowitz, G., Rosner, D., *Deceit and Denial. The deadly politics of industrial pollution*, Berkeley, University of California Press, 2002.
A full transcript of the proceedings (in Italian) is available at: http://www.petrolchimico.it.

THE EUROPEAN TRADE UNION TECHNICAL BUREAU FOR HEALTH AND SAFETY was established in 1989 by the European Trade Union Confederation (ETUC). It provides support and expertise to the ETUC and the Workers' Group of the Advisory Committee on Safety, Hygiene and Health Protection at Work. The TUTB is an associate member of the European Committee for Standardization (CEN). It coordinates networks of trade union experts in the fields of standardization (safety of machinery) and chemicals (classification of hazardous substances and setting occupational exposure limits). It also represents the ETUC at the European Agency for Health and Safety in Bilbao.

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The TUTB is financially supported by the European Commission.

TUTB Newsletter No. 26 December 2004

The information contained in this issue is mainly as at 31 December 2004.
The TUTB Newsletter is published three times a year in English and French.

Responsible Publisher :
Marc Sapir, Director of the TUTB
Bd du Roi Albert II, 5
B-1210 Brussels
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Translation : Glenn Robertson
Reference material : Jacqueline Rotty
Circulation : Géraldine Hofmann
Graphic design : Coast, Brussels
Printed in Belgium

http://tutb.etuc.org