

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 agents¹ into a series of specific directives. A first directive on vibration adopted on 25 June 2002² was followed on 6 February 2003 by a directive on noise³, and a third on electromagnetic fields on 29 April 2004⁴. 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 2002⁵, 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 Com-

mission 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 2000⁶. A second list has been ready for over two years. Various substances have been pulled out of the initial list. A list of 34 substances⁷ 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 chemical⁸ 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 Directive⁹. 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 implementation¹⁰. 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.

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