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Is health and safety policy being hijacked in the drive for competitiveness?

Life, health and love are all insecure; why should work be any different?

Laurence Parisot (President of MEDEF), *Le Figaro*, 30 August 2005

Introduction

2006 is a good year in which to take stock of the situation regarding health and safety at work. It marks the end of the EU strategy for the period 2002-2006, which means that we can attempt to think beyond the very short-term horizon of an annual review. 2006 also saw the publication of the first results from the fourth European Working Conditions Survey, carried out by the Dublin Foundation. We therefore have access to data measuring developments over a fifteen-year period, which can help us debate the priorities for Community policies.

In attempting to summarise the situation, it is important to emphasise the contrast between the relative inertia shown by the EU legislator in the area of social directives, and the large amount of legislative change relating to market rules. The revision of the 'machinery' directive and, most importantly, the final agreement on REACH, represent major changes. This might be a welcome development, if these rules were sufficient in themselves to ensure high levels of protection for health and safety at work. But sadly, this is not the case.

The main problem lies in the conflict that exists between health and safety and the private interests of employers, who are concerned to maximise profits. The European Union's activities have been hampered by a constant concern not to jeopardise these private interests, which for the purposes of the cause have been invested with a kind of public

virtue dubbed 'competitiveness'. All the Community's action has had to be squeezed into an essentially financial and short-term concept of competitiveness. Within the Commission, we have seen the rapid rise of Directorate-General (DG) Enterprise, which under the leadership of its Commissioner, Günter Verheugen, is seeking to exert a kind of general oversight over the other Directorates-General. This has led to a real feeling of unease, especially in the debate about REACH. The Vice-President of the Commission, Margot Wallström, has publicly condemned the breach of collegiate responsibility within the Commission, and the fact that some Commissioners were involved in negotiations, questioning some aspects of REACH, without consulting their colleagues (McLauchlin, 2005).

1. First findings of the Working Conditions Survey by the Dublin Foundation: stagnation and inequality

The first findings of the European Working Conditions Survey were presented on 7 November 2006. Organised for the fourth time since 1990 by the Dublin Foundation for the Improvement of Living and Working Conditions, this survey was carried out in late 2005, covering 30,000 workers in the European Union and in Bulgaria, Romania, Croatia, Turkey, Switzerland and Norway.

For the past fifteen years, exposure to occupational risks appears to have remained stable or to have increased slightly. This is a worrying trend if one considers the knock-on effects of a sectoral redistribution that has seen a reduction in the share of heavy industry and agriculture. The survey emphasises the fact that the intensification of work is a strong tendency, with more and more workers being subjected to high work-rates and tight deadlines. Thus 46% of European workers have to work at very high speeds for at least three-quarters of their working time. This represents an increase of 11% compared with the survey carried out in 1990.

The survey shows the importance of more determined action by the European Union in the area of musculoskeletal disorders. Repetitive movements of the hand and arm are the most frequently cited physical risk, with 62% of European workers reporting exposure to it during at least a quarter of their working time. This represents an increase of 4%

compared with the survey conducted in 2000. In second place, workers mention painful and tiring postures: 50% of workers are exposed to these during at least a quarter of their working time. Nearly a third of the European working population reports suffering from backache, muscular pains and stress.

The perception of violence and harassment at work varies with the cultural environment. Generally speaking, it is higher in the northern European countries than in countries surrounding the Mediterranean. For example, the number of workers who report having been the victims of harassment at work ranges from 2% in Italy to 17% in Finland. There is however a consistent relationship observed between subjective perception and state of health: workers who are exposed to psychosocial risks are much more frequently absent from work for reasons of ill health than the average.

For the first time, the survey also contained a question about worker satisfaction. 80% of European workers are 'satisfied' or 'very satisfied' with their jobs. It seems that the most important satisfaction factors are not working conditions as such, but rather job security and work as a place for social contact. The main dissatisfaction factors are linked to excessively long or non-standard working hours, work intensity, lack of control over one's work, and exposure to physical or psychological health risks.

One of the conclusions to emerge from the survey is the extreme degree of inequality in situations: among countries, different sectors, socio-professional groups, and between the sexes.

Increased competition on the labour market does seem to produce or aggravate significant inequalities. Around 35% of workers interviewed reported that work affected their health. This percentage varies by more than 25% between the ten new Member States (55.8%) and the fifteen existing Member States (30.6%).

Inequalities between men and women are particularly striking. With markedly lower incomes, women spend more time working, when paid employment and unpaid domestic work are added together. Women in full-time employment work, on average, 63 hours per week (40 hours paid work and 23 hours unpaid domestic work). Those employed part-

time work 54 hours per week (21.3 hours paid work and 32.7 hours unpaid domestic work). For men, full-time employment involves an average of 51 hours' work per week (43.1 hours paid work and 7.9 hours unpaid domestic work); part-time work involves 30.8 hours' work per week (23.5 hours paid work and 7.3 hours unpaid domestic work).

2. The Community strategy

2.1 The 2002-2006 strategy ends with a whimper

In March 2002, the European Commission adopted a communication dealing with the Community strategy on health and safety at work for the period 2002-2006 (CEC, 2002). This communication was based on an analysis which was broadly correct, but remained very vague on actual initiatives and a timetable. Far from being a precise schedule of work, the strategy preferred to make sweeping statements about the need to combine all kinds of different approaches and instruments. This deficiency was made worse by the serious reduction in human resources available to the Commission's unit responsible for health and safety issues. With the benefit of five years' hindsight, it appears that the term 'strategy' was perhaps the wrong word to describe the content of the communication and the EU's action in the field of health and safety at work between 2002 and 2006. There have been scattered, one-off initiatives; some of these produced results, while others simply became bogged down.

Real legislative progress has been made in relation to asbestos and physical agents. Collective negotiations led to an agreement on stress in October 2004, but its transposition into national legislation has raised a number of problems. Negotiations on violence and bullying were due to be concluded in the first half of 2007. A draft agreement is to be ratified by ETUC, UNICE and CEEP.

Legislative deadlocks have been much more numerous, and concern priority issues: revision of the directive on carcinogenic substances, revision of the directive on pregnant workers, setting mandatory limit values for the main carcinogens, and the drafting of a directive on musculoskeletal disorders. A very worrying signal was sent by the Commission with the revision of the 'working time' directive, an unprecedented example of regression in social policy (Vogel, 2004b).

A major weakness of the actions that have been taken is the way in which social relationships and changes in the labour market have been dealt with. On three essential questions, we may use the word 'failure':

- Despite the commitment to integrate the gender dimension into initiatives relating to health and safety, the policies actually pursued have in practice scarcely evolved at all, and the question of equality remains largely ignored in relation to health and safety at work. The report by the Commission on the implementation of the framework directive and five specific directives illustrates this trend (CEC, 2004a). In the debates on REACH, the gender dimension of exposure to chemical substances was hardly raised at all.
- Job insecurity has not been considered as a priority issue. Although ignored in the inner circles of the institutions, it was at the forefront of a number of social mobilisation campaigns: demonstrations and strikes in France in spring 2006 against 'first employment contracts', a mass demonstration in Rome in November 2006 against job insecurity, etc.
- The issue of working time has been approached principally from the point of view of the employers' demands for greater flexibility. The devastating impact of the Commission's proposals on health and safety has not been seriously discussed.

2.2 'Military secrecy' surrounds the 2007-2012 strategy

There have been Community 'action programmes' for almost thirty years. The earliest goes back to 1978. In 2002 the terminology changed, and what had been an 'action programme' became a 'strategy'. The adoption of these programmes had always been preceded by a broad, informal process of consultation. The Commission circulated a preliminary draft around national authorities, trade unions and employers' organisations. Their responses were collected; the draft was amended and was then submitted to an internal, inter-departmental consultation procedure.

For the first time, the preparation of the 2007-2012 strategy took place in an atmosphere of military secrecy. Even the heads of the EU's specialised agencies in the field were sidelined, not to mention trade union organisations and, one assumes, the European employers'

organisation UNICE. This absence of transparency is doubtless to be explained by heightened internal tensions within the Commission. The mandate of the Treaty (harmonisation by means of directives while maintaining improvements made) has been called into question by campaigns for 'better regulation' or legislative simplification. The Commission wants to 'simplify' EU legislation in such a way as to reduce by 25% the administrative burden it is said to place on businesses (CEC, 2006a). The 1989 framework directive is flagged in this connection on the basis of Dutch and Danish research, which has never been independently verified (Vogel, 2004a).

An obsession with secrecy rarely goes hand in hand with efficiency. Although the content of the document has always been shrouded in mystery, its date of presentation was the one reliable piece of information available. The Commission was to have adopted its communication by 20 December 2006 at the latest. At the time of writing (8 January 2007) the strategy document has not yet appeared.

2.3 Input from trade union and employers' organisations

The trade union organisations of the 25 European Union countries agreed on the prospects for a new strategy. The debate took place within the framework of the 'workers' group of the Advisory Committee on Safety and Health at Work (ACSH). A statement issued in June 2006 set four central axes and was supported by the European Trade Union Confederation (ETUC) (Vogel and Paoli, 2006). The unions expressed support for a reduced number of priorities, coupled with a specific plan of work. The priority axes proposed are:

a) consolidation of systems of prevention and a guarantee of equal access for all workers to the relevant instruments;

b) ensuring the success of enlargement in the field of health and safety at work;

c) a more coherent policy on chemical hazards;

d) intervention on work organisation, especially with a view to preventing musculoskeletal disorders.

In a position paper dated 7 June 2006, UNICE pleads mainly in favour of a halt to the development of European legislation in the area of

health and safety at work (UNICE, 2006). The European employers' organisation does not mention a single concrete health and safety issue that should be the subject of new EU initiatives. It repeats the usual arguments in favour of deregulation. Improvements in the field of health and safety at work depend mainly on leaving it to the initiative of employers to set up ways of managing working conditions and on the espousal by workers of a 'prevention culture', which is not properly defined.

3. Legislative developments: social directives

3.1 Deadlock in the revision of the 'working time' directive

The proposed revision of the 'working time directive' ([1]), currently under discussion, was presented by the Commission in September 2004 (CEC, 2004b). Its main provisions cover the following aspects:

- the ceiling of 48 hours' work per week is made more flexible. The reference period for calculating the length of the working week can be extended to one year;
- Member States may continue to provide for individual derogations (known as 'opt-outs') to the limit of 48 hours' work per week. In some cases these opt-outs may be enshrined in collective bargaining agreements, but this is not mandatory. The proposal actually anticipates abuse of this arrangement, to the extent that it feels compelled to set a second maximum limit of 65 hours per week. This limit is not absolute: opt-outs will still be possible by means of collective agreements or agreements between the two sides of industry.
- a new definition of 'on-call time' makes it possible to require staff to be present at the workplace and at the disposal of the employer without this time being considered as working time. This provision breaches international labour standards drawn up by the

1 The first Working Time Directive was adopted on 23 November 1993. It was amended in 2000. A new Directive, codifying the provisions in force, was adopted on 4 November 2003.

> International Labour Organisation as long ago as 1930! In fact Convention No.30 on hours of work in commerce and offices states that '*the term hours of work means the time during which the persons employed are at the disposal of the employer*'.

If a check-out assistant in a large store is required to remain on the premises from 9 a.m. until 8 p.m., but only actually performs any duties for five and a half hours during that time, then under the proposed new rules she could be considered to have worked for only half the time that she effectively had to spend at her place of work and at the disposal of her employer. Fluctuations in patterns of work due to customer demand or the flow of production might thus have to be borne entirely by the workers.

Fighting this proposal became a priority for the trade union movement, which managed to convince a majority of MEPs to oppose it. At the first reading, on 11 May 2005, the European Parliament voted to end individual opt-outs. Yet although there was a comfortable majority in the Parliament on the majority of amendments, the Commission's modified proposal still fell far short of Parliament's wishes (CEC, 2005).

In the Council the debate has become polarised. The United Kingdom, supported by Estonia, Germany, Latvia, Lithuania, Poland and Slovenia, insists on retaining an opt-out clause. Belgium, Cyprus, France, Greece, Italy, Luxembourg and Spain oppose this, and on this issue support the European Parliament's position. An attempt by the Finnish Presidency to reach a compromise that would have maintained individual opt-outs came to nothing. On 7 November 2006, the 'Social Affairs' Council could only note a failure to reach agreement. It will fall to the German presidency to take the matter up again in 2007.

3.2 The guardian turns a blind eye

The lengthy negotiations around the issue of working time have drawn attention to an institutional problem. Among the different functions entrusted to the Commission under the Treaty are those of providing political impetus through its monopoly over legislative initiatives, and maintaining the rule of law in its capacity as 'guardian of the Treaty'. Can the Commission opt out of its role of ensuring respect for

Community law, on the basis of its political options or the advantages it might gain in political negotiations?

The problem is not really new. For some twenty years, the Commission has been refusing to bring proceedings for failure to act against Member States that were in breach of Article 119 of the Treaty of Rome, which guarantees equal pay for men and women.

The issue arises in the case of the 'working time directive'. Since its adoption in 1993, failures to act on the part of various Member States have been frequent and evident. According to the Commission, the directive has not been correctly transposed in 23 out of 25 countries. Some of these failures have been brought before the Court of Justice in the form of requests for a preliminary ruling, but the correct transposition of the directive has been of only minor concern to the Commission ([2]).

The political desire to re-examine the terms of a directive should not preclude ensuring its correct application so long as it remains in force. The Commission needs to distinguish between defending its political options to revise Community legislation and its role as guardian of the Treaties, whereby it has to ensure that all Member States respect all the Community rules. Exercising judgment on the usefulness of pursuing a certain course should not be used as an excuse for inactivity that threatens fundamental social rights. This, in essence, is the problem raised in the draft recommendation by the European Ombudsman on 12 September 2006 (The European Ombudsman, 2006). The Ombudsman had been approached by a German doctor, who since November 2001 had been doggedly attempting to convince the Commission that it had to ensure respect for the implementation of Community legislation on working time. In the meantime the

[2] Two rulings of the Court of Justice in the context of proceedings for failure to fulfil obligations can be mentioned. One concerns the total absence of transposition and notice thereof in Italy (Case C-386/98, *Commission c/ Italy*, judgement of the Court of 9 March 2000). The other relates to the United Kingdom's 'guidelines', which encouraged employers not to observe the provisions of the Directive (Case C-484/04, *Commission c/ United Kingdom*, judgement of the Court of 7 September 2006).

Commission has changed tack, by announcing that proceedings for failure to fulfil obligations could be brought against States which have not correctly transposed the directive. This change of direction, while positive, continues to be motivated by political opportunism: the Commission is putting pressure on Member States in order to force through a compromise on the revision of the directive ([3]).

3.3 MEPs more concerned about barmaids' bare shoulders than about skin cancer

The adoption of the directive on optical radiation brought to an end the long saga about regulating the principal physical agents in the field of health and safety at work (European Parliament and Council of the European Union, 2006a). This directive is the last in a series of four directives designed to protect workers against the dangers of various physical agents (the other three cover exposure to noise, vibrations and electromagnetic fields). The Council laid down a common position on 18 April 2005. The debate snowballed in the context of the German general election in September 2005. '*You can't legislate for sunshine*', '*Europe to ban Oktoberfest barmaids from baring their shoulders*' the Bavarian Christian Democrats proclaimed indignantly, as did a large part of the German sensationalist press ([4]). The directive was certainly not intended to modify the activity of the sun, or to prohibit daytime working in the

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3 An Agence Europe article on 8 November 2006 reports: '*EU Social Affairs Commissioner Vladimir Špidla said that as foreseen in the event agreement could not be reached* (emphasis added, LV), *the Commission would be launching a series of infringement proceedings in the very near future against the 23 Member States not meeting the requirements of the current directive*' (Bulletin of the European Union, No.9301 of 8 November 2006, page 11).

4 The case for bare shoulders was taken up by German MEP Thomas Mann (EPP) in the debate in the plenary of the Parliament on 13 February 2006. His Liberal colleague Elizabeth Lynne added a further twist: '*Imagine the language from some builders, for instance, if they were told to cover up when they were trying to get a sun tan for their holidays!*' This debate, which is worthy of inclusion in an anthology of black humour, can be found on the European Parliament website (http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20060213+ITEM-016+DOC+XML+V0//EN).).

open air. It restricted itself to providing an assessment of risks and corresponding preventive measures.

The draft directive was amended by the Parliament on 7 September 2005. The main amendment sought to remove from the text the provisions relating to natural optical radiation. This amendment deprived the directive of much of its content. Both in terms of the number of workers affected and in terms of the seriousness of the possible consequences of exposure to optical radiation, the main problem is naturally occurring radiation emanating from the sun.

Parliament's amendment received the enthusiastic support of the Commissioner for Social Affairs. For Mr Špidla, it proved that the Commission was standing by its commitment to 'better regulation'!

The new directive does nothing to enhance the consistency of a policy on health and safety at work that is supposed to deal, as a matter of priority, with the most serious hazards. About 60,000 fresh cases of skin melanoma are diagnosed every year in Europe, representing 1% of all cancers. Some of these melanomas are caused by occupational exposure. Workers exposed to the sun's rays are those whose occupation involves performing duties out of doors. These include construction workers, opencast mineworkers, fishermen, farmers, outdoor sports coaches, etc.

3.4 Spotlight on simplification

The process of drafting a directive on simplifying reports by Member States concerning the implementation of EU directives in the field of health and safety at work proved to be a curious episode.

The practical point at issue in the debate is relatively insignificant. Instead of producing some twenty separate reports on the health and safety directives every four or five years, Member States would draft a single, co-ordinated report. Such a directive represents a minimal effort at administrative rationalisation. One can only express surprise, therefore, at the political importance attached to it by the Commission.

How is this elaborate staging of a minor event to be explained? In 2004 the then Dutch Presidency waged a doughty battle in favour of deregulation in the field of health and safety at work (Vogel, 2004a).

One of its key proposals was the simplification of the framework directive. The principal issue at stake was risk assessment, which was thought to be an excessive burden on businesses. Faced with this question, the 'Competitiveness' Council meeting on 25-26 November 2004 twirled its way neatly out of trouble. It recognised the need to simplify the 1989 framework directive, but limited this simplification to an extremely secondary provision of the directive: the need for Member States to produce a report on implementation. The Council stated: '*yearly information requirements with regard to all of the individual measures impose a disproportionate burden on the Member States*' (Council of the European Union, 2004: 13). It appears that the ministers in charge of competitiveness had not read the directive, which calls for a report every four years, nor had they appreciated that the cost of producing such a report was not exactly exorbitant. The Commission was keen to give the impression that the initiative was terribly important. With great determination it proceeded to conduct a two-stage consultation process with the social partners. The draft directive has yet to be officially adopted. It is unlikely to encounter any obstacles.

There are two possible interpretations of the way this proposal was stage-managed. Both may be correct.

a) The Commission was playing for time. It made an insignificant proposal, as a gesture of goodwill towards the 'deregulationist' camp of Member States, while making it clear that there was no serious simplification proposal on the agenda.

b) The Commission was seeking to create a precedent. In Community policy-making, the search for consensus often involves exercises in semantics. It is all about finding relatively vague forms of wording, in order to guide the various parties towards political positions that they would probably have rejected if they had been put to them straight away. Transforming public services into 'services of general interest' was a semantic battle before becoming a live political issue. By linking the notions of 'simplification' and 'reduction of administrative burdens' to such an anodyne proposal, the Commission might be trying to influence the positions adopted later by the various parties when discussing weightier matters.

The ETUC tried to avoid the trap by stating: '*ETUC's support for the rationalisation of reports is the result of a very different line of thinking to that expressed in the majority of calls for legislative simplification or for better regulation. […] There are no real reasons for drawing up a programme designed to simplify health and safety legislation*' (ETUC, 2005: 2).

3.5 Paralysis in two major areas of work

3.5.1 Protecting workers against carcinogens

The 2002-2006 strategy was weak on chemical hazards. The only development envisaged was a revision of the directive on carcinogenic substances. In 2002 the Commission launched the first phase of consultation on the revision of this directive. Since then, the revision process has been stalled. The opening of the second phase of consultation has indeed been announced several times, but has yet to materialise. The proposal is supposed to involve broadening the scope of the directive to include substances that are toxic to reproduction, and defining limit values for exposure to carcinogens. Until now, the majority of these substances have not been subject to mandatory EU limit values. This creates major disparities in the level of health protection afforded to workers in Europe. Both Parliament and Council have rightly expressed concern about this situation.

This hold-up has contributed to a situation which creates huge social inequalities in relation to health. According to the CAREX database, in the 15 states which were members of the European Union in 2000, some 32 million workers are exposed to carcinogens in the course of their work, i.e. nearly a quarter of the working population. Each year there are between 35,000 and 45,000 cases of work-related fatal cancers (Musu, 2006).

3.5.2 Preparing a directive on musculoskeletal disorders

The 2002-2006 strategy identified musculoskeletal disorders (MSD) as a priority. There is consensus on the fact that the current legislative framework is insufficient to provide effective prevention (Gauthy, 2005). The Working Conditions Survey produced by the Dublin Foundation agrees with all the national data in identifying MSD as the most widespread health and safety problem in Europe. Over five years, progress has been at a snail's pace. The Commission conducted the first

phase of consultation with the social partners in 2004. The process has been deadlocked ever since. The Commission constantly announces that the launch of the second phase is 'imminent'… A recent Commission document suggests that the drafting of the new directive will take place within the context of the exercise aimed at legislative simplification (CEC, 2006b). This might simply be a codification of existing provisions, or even a 'watering-down' of these, even though their insufficiency has been amply demonstrated.

4. Market rules for chemical substances: REACH

4.1 Influence in high places

Reforming the market rules on chemical substances has been the major legislative development in the field of health and safety at work since the framework directive was adopted in 1989.

The stakes, as far as health and safety are concerned, are enormous. Exposure of workers to hazardous chemical substances causes far more deaths than industrial accidents. At the workplace, the level of prevention against chemical hazards is clearly insufficient. One of the factors contributing to this situation is the inadequacy of regulations concerning the production and marketing of chemicals. The information made available by the chemical industry is incomplete. Sometimes it is deliberately inaccurate, in order to mask the seriousness of the risks faced (Markowitz and Rosner, 2002).

The need for reform in the market for chemical substances is a matter of consensus, even though the solutions proposed may differ. The rules currently in force have been drafted in successive layers since 1967. The legislation is extremely diffuse, and the multiplicity of amendments has led to a complex and confusing *corpus*. Day-to-day practice reveals huge gaps in the safety of chemicals.

In political terms, reform in this area was expressed as a condition during the enlargement negotiations in 1995 by Sweden and Finland, whose own regulations provided a better level of protection for health and the environment.

The first attempt at reform in this area appeared in a White Paper published by the Commission in 2001 (CEC, 2001). The reaction of the

multinational companies involved in the chemical industry was extremely violent. REACH was seen as a kind of apocalypse for the European economy. 2.35 million jobs would be lost in Germany, according to a study by a firm of consultants (Arthur D. Little) funded by the employers' organisation, while a French study (Cabinet Mercier) funded by the *Union des industries chimiques* forecast up to 670,000 job losses in that country (ChemSec, 2004). Lobbying on an unprecedented scale took place in order to remove the most innovative features of the proposed reform (Lind, 2004; Contiero, 2006). The history of REACH looks set to become a classic in political science for studying the role of lobbying by industry. Guido Sacconi, the MEP responsible for the main reports on REACH, even intends to re-capture the atmosphere of the debates in the form of a thriller. The chemical industry received support from the Bush administration, which could not refrain from what it saw as its duty to interfere (Waxman, 2004).

The draft regulation adopted by the Commission in 2003 represented a step backwards compared with the White Paper. At its first reading, the European Parliament tried to defend the consistency and ambitiousness of the proposed reform. The Council's joint position was a clear watering-down of the scope of REACH. In September 2006, the Environment Committee of the European Parliament set out the terms of a compromise on which the main political groupings could agree. Parliament's amendments enjoyed a comfortable majority (42 votes in favour, 12 against and 6 abstentions). But once informal negotiations (the 'trilogue') began between Parliament, Council and Commission in November 2006, the EPP delegation broke ranks with the compromise position. This breach in the unity of the Parliamentary delegation reduced its negotiating capacity to very little.

4.2 The content of REACH

REACH is an acronym for *Registration, Evaluation and Authorisation of Chemicals*. The new system in fact rests on three pillars.

4.2.1 Registration

To be marketed in the European Union, the 30,000 substances produced in quantities of more than one tonne per annum will have to be registered with the European Chemicals Agency according to a

timetable phased in over eleven years. The manufacturer or importer of a substance will be required to provide a registration dossier containing information on the identity, toxicological and eco-toxicological properties of the substance, to identify its possible uses, to supply a safety data sheet, and in some cases to undertake a chemical safety assessment, to implement and recommend risk reduction measures.

Downstream users will also be required to meet certain obligations concerning chemical safety assessment, depending on whether or not they choose to keep the use they intend to make of the substance supplied to them confidential. If they decide to inform the manufacturer, the latter must carry out the chemical safety assessment. If not, it is the responsibility of the downstream users.

Manufacturers will be encouraged to get together and share the data they hold, in order to avoid unnecessary testing and reduce the costs of registration.

4.2.2 Evaluation

The evaluation procedure will enable the competent authorities of the Member States where the manufacturer or importer is established to inspect some of their registration dossiers. Additional information may be required if necessary.

The European Chemicals Agency will develop guidelines for defining an order of priority for assessing substances.

4.2.3 Authorisation

The use of substances causing serious concern (CMRs, PBTs, vPvBs) ([5]) will be subject to authorisation on a case-by-case basis. Such authorisation may involve some 1,400 substances.

4.2.4 The final compromise

[5] CMRs: carcinogenic, mutagenic, toxic to the reproductive system; PBTs: persistent, bioaccumulative and toxic; vPvBs: very persistent and very bioaccumulative, i.e. toxic substances which are likely to accumulate in an irreversible way in the body and in the environment.

The final compromise, approved by the European Parliament on 13 December 2006, naturally received immediate support from Council. The final version of REACH was therefore officially approved on 18 December 2006. The text will come into force on 1 June 2007. Analysis of the text shows just how much the chemical industry has managed to water down the provisions of REACH with the support of a majority of Member State representatives. The Commission has played a strange hand, not always defending its own positions throughout the course of negotiations. The principal victims of this backtracking will be workers. Indeed, one of the main concessions obtained by the chemical industry is the removal of the requirement for chemical safety reports on substances whose annual production volume is between one and ten tonnes. Of the 30,000 chemical safety reports that would have had to be produced if the Parliament's position had been followed, only some 10,000 to 12,000 will be required. For around two-thirds of substances, the information will be more rudimentary. Thus the final text eliminates information that is essential for the use of the majority of substances covered by REACH. The final compromise also lays down less stringent rules concerning authorisation procedures for the most dangerous substances.

In spite of these setbacks, REACH does, in broad terms, represent an improvement when compared with the rules currently in force. It may lead to an improvement in the prevention of chemical hazards. If this opportunity is to be seized, certain conditions have to be met:

1. improvements to Community legislation on prevention of chemical hazards in the workplace;
2. strengthening the load-bearing structures of risk prevention (worker representation, health and safety inspections, preventive services, public research institutes);
3. political willingness on the part of Member States to maintain or adopt rules that go beyond the minimum requirements of EU legislation on the workplace.

The first condition operates mainly at EU level; the second is more a question of national strategies; the third requires interaction between

the national and the EU level to ensure that rules protecting health and the environment are not attacked as barriers to the market.

These conditions also raise a more general question: how best to develop the social evaluation (and monitoring) of technological developments.

5. Revision of the 'machinery' directive

The revision of the 'machinery' directive has been adopted (European Parliament and Council of the European Union, 2006b). The reform it involves is useful, though modest. It is not a response to all of the problems raised by the implementation of the 'machinery directive'. The definition of 'machinery' has been revised with a view to ensuring legal certainty for users. Thus the concept of 'partly completed machinery' has been introduced into the new text. The directive also emphasises the key role played by risk assessment in the design of safe machinery. Requirements concerning the contents of instructions for use have also been made more stringent.

Three major problems remain to be addressed.

Market surveillance is organised in a national context in each Member State. Only measures to prohibit certain types of machinery are the subject of harmonised Community rules. Such a situation gives rise to numerous legal and practical difficulties. In practical terms, market surveillance is ineffective. Many kinds of workplace equipment carry CE marking, without meeting the requirements of the directive. In legal terms, both manufacturers and importers try to use the principle of free movement of goods in order to oppose market surveillance (Vogel, 2006).

Technical standards have a vital role to play. They continue to be drawn up in a context that is unfavourable to the different interests involved. In practice, industry has a dominant position in the standardisation process. Any account that is taken of the experience and needs of workers remains only marginal.

The directive accords great importance to the notified bodies, which have to certify the most dangerous forms of equipment. Competition between these bodies may lead to situations where, as a favour,

dangerous machinery is certified even though it does not comply with safety requirements. To date, no notified body has been penalised for such practices.

6. Personal protective equipment

The problems raised by technical standardisation have been illustrated by a case involving personal protective equipment. On 16 March 2006 the European Commission adopted a decision stating that technical standard EN 143: 2000 fails to ensure compliance with the basic health and safety requirements set out in Directive 89/686 in respect of certain forms of respiratory protective equipment (CEC, 2006c). The point at issue is an important one. Equipment using electrostatic filtering is commonly used in a wide range of industries such as construction, chemicals, the food industry, etc. The danger posed by bird flu has made this a particularly attractive market.

The effective lifespan of certain filters is abnormally low, even though the models in question conform to European standards (Huré and Iotti, 2004). These standards require a test lasting only three minutes. Such a short time span has proved totally inappropriate for electrostatic models. In fact the efficiency of these filters decreases very rapidly, because the electric charge is progressively neutralised by captive dust. The loss of efficiency of the filters is not visibly obvious. Workers wearing these devices think they are protected when in fact they are not. Developing more effective filters does not present any technical difficulty. In the United States, tests are more demanding, and numerous producers have adapted their production lines to meet the requirements of the market.

For the past three years, the French government has been insisting that the Commission must shoulder its responsibilities (Mahiou, 2006). France has adopted measures to restrict marketing of these products, and has imposed additional tests, going beyond the European standards, on manufacturers or importers. The French government's action has come up against a lobbying campaign by certain producers such as the '3M' company. The decision of 16 March 2006 came rather late in the day. It put an end to an absurd situation: the Commission should logically have initiated infringement proceedings against France,

which was in breach of its obligations. But such an initiative would have shown up the Commission's own dysfunctions and its reluctance to stand up to pressure from industry. For a number of years it turned a blind eye to the French government's formal failure to fulfil obligations, but could not bring itself to revise the status of 'harmonised standard' for the technical standard in question. The decision of 16 March means that certain items of respiratory protective equipment are no longer presumed to conform. Unfortunately the decision was not accompanied by an awareness campaign on the risks of electrostatic filters.

7. European collective bargaining: the agreement on crystalline silica

The agreement reached on 25 April 2006 on crystalline silica is a rare species in the taxonomy of the Community social dialogue (APFE *et al.,* 2006). It is a multi-sector voluntary agreement signed by two European trade union federations, both of which have long been recognised as partners in the European social dialogue, and fifteen employers' associations. Most of the latter are sub-sectoral pressure groups, which had never previously taken part in any form of social dialogue. The Commission in fact had to grant them *ad hoc* status as Community social partners.

On the trade union side, the European Trade Union Confederation was not involved in negotiating the agreement. The European Federation of Building and Woodworkers (EFBWW) rejected the invitation to take part in the negotiations. Workers in the building industry make up the largest group of workers exposed to crystalline silica. The agreement has been signed by the European Mine, Chemical and Energy Workers' Federation (EMCEF) and also by the European Metalworkers' Federation (EMF).

Crystalline silica is one of the most widespread carcinogens in the working environment. According to the CAREX database, in the Europe of fifteen countries, more than three million workers were exposed in the early 1990s. Available national data confirm that the numbers of workers exposed to crystalline silica are very high. Exposure to silica can, amongst other things, cause pulmonary fibrosis (silicosis) and lung cancer.

Community legislation has ignored this occupational risk. Crystalline silica is not classified as a carcinogenic substance in Community rules governing the internal market, even though the International Agency for Research on Cancer has since 1997 considered it a Group 1 carcinogen (i.e. a substance found to be carcinogenic for humans). It is therefore being produced and marketed without any adequate information being supplied. No limit value for exposure has been set at Community level. National legislation provides very variable levels of protection.

The majority of trade union organisations have come out in favour of silica being classified as a carcinogen, stronger preventive measures to take account of this fact, and the determination of a mandatory limit value at Community level. Two factors have helped create a more favourable climate for these demands:

a) a recommendation by SCOEL ([6]) for an exposure limit value of 0.05 mg/m^3 to be adopted;

b) the announcement of a revision to the directive on carcinogenic substances.

It was against this background that the sectoral employers' organisations proposed the conclusion of an agreement on silica. The inspiration behind this move was the organisations' fear of future EU legislation. They had a precedent to rely on. In 2003, four employers' organisations adopted a 'joint position' with EMCEF on nitrogen monoxide (NO) within the framework of the social dialogue (EMCEF *et al.*, 2003). The declaration presumed to give a lesson in epidemiology to SCOEL's scientific experts, who had proposed a limit value for this substance. It stated that SCOEL's position was 'not scientific'. The basis for this peremptory judgment was a typographical one: it was written in bold characters, without the slightest attempt at scientific demonstration. Such an episode ought not to have had any consequences. NO was on the list of limit values that the Commission was preparing to adopt. But when the Commission's directive was

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finally adopted, it was noted with surprise that NO had disappeared from the list (as had NO_2) (CEC, 2006d). This was a very grave precedent: the industry had managed to impose its veto, and had weakened the level of prevention offered against respiratory diseases of occupational origin.

The implications of the agreement on silica are contradictory (Musu and Sapir, 2006). The definition of 'good practice' may contribute to an improvement in prevention if the agreement is broadly implemented. But the agreement does not draw the necessary consequences from the carcinogenic nature of crystalline silica in terms of substitution, informing workers, or post-employment health monitoring. The agreement could thus be used to oppose further developments in Community regulation.

Conclusion: in praise of 'gold plating'

Recently a new expression has been all the rage in the narrow world of Community decision-makers. Not a press conference by Commissioner Verheugen goes by without this term being trotted out, accompanied by a wry smile or an expression of disgust. The new enemy is 'gold plating'. Gold plating describes the bad habit some Member States have of going beyond the minimum level of Community regulation. This bad habit is often prompted by trade unions, environmental protection bodies, and other disruptive elements. Gold plating occurs when governments adopt measures to provide better protection for health and safety at work, or for the environment, in areas where Community legislation has already taken effect.

The argument over gold plating is part of a more thoroughgoing debate about the role of public authorities and of legal regulation in relation to the market. Is it necessary and is it possible to go beyond the minimum *corpus* of rules which are essential for the market to operate?

Those who denigrate gold plating pour scorn on the timorous attitude of those governments which set out to protect everyone and end up discouraging their citizens from taking risks. They see this as a quasi-anthropological danger threatening the capitalist system: fearful, molly-coddled citizens who are afraid of becoming involved in big adventures.

The issue of asbestos enables us to re-situate gold plating in its proper context. The European Union had the necessary legal powers to ban asbestos from 1976 onwards. Yet this carcinogenic substance was not prohibited until 1 January 2005, because the asbestos industry had been predicting the direst consequences for the competitiveness of the European economy. According to the epidemiologist Julian Peto, 500,000 persons could die in western Europe from an asbestos-related disease between 2000 and 2030 (Peto *et al.*, 1999). Taking account of the latency period between exposure and the appearance of the disease, it is reasonable to suppose that a large number of these deaths could have been avoided if asbestos had been banned by the European Union as early as 1976.

Some governments have practised gold plating. Beginning in the late 1970s, a number of European countries decided to ban asbestos at a time when Community policy on the issue relied on 'good practice' and self-regulation by industry, together with a few compulsory rules on industrial hygiene.

In the field of health and safety at work, there is nothing frivolous about gold plating. It is not a luxury but, rather, a key factor in the fight against inequality. If it is accepted that politics and the law have a higher vocation than merely ensuring that the market can operate, then long live gold plating!

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