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*)