Preventive services and medical surveillance: new Community initiatives needed

Whether employers fulfill their safety obligation depends on a series of factors. Experience shows that three things are particularly key: independent employee representatives to defend workers' interests, public control generally exercised by the labour inspectorate, and preventive services capable of objectively assessing the various aspects of working life and introducing health considerations into firms driven by the profit motive.

The Community Framework Directive 1989 aimed to extend preventive service cover to all workers. Article 7, which deals with these services, was drafted so as to allow Member States the choice of a wide mix of practical possibilities. Sadly, this extreme flexibility has often been used as an excuse for restricted and qualified transpositions, and sometimes to avoid transposing this provision of the Directive properly. Our view, however, is that article 7 lays down a general framework of minimum requirements which must be interpreted by reference to the overall scheme of the Framework Directive. This particularly means article 6 which contains both a suggested ranking of preventive measures (with priority to eliminating risks and adapting the collective, technical and organizational conditions of work) and a very widely defined scope of prevention policies, implicit in which is that the necessary professional expertise should not be confined to a single discipline.

A grey area in the application of the Framework Directive

Looking at the application of the Framework Directive generally, it is clear that not much headway has been made with putting in place multidisciplinary prevention services covering all workers. In three of the biggest EU States (Germany, France and United Kingdom), the Directive has either not been transposed at all or only in terms which slightly amend the wording of previous legislation without really addressing the Directive's material requirements. In countries where multidisciplinary services had already been tried out, they were not extended to all workers or were actually weakened for a number of reasons (particularly so in Sweden, but the other Nordic countries also failed to implement preventive service cover on a mass scale). Yet other countries transposed the broad thrust of the Framework Directive, but left some major loopholes. In Italy, for instance, the requisite types of professional expertise have still not been defined.

Apart from setting them up and extending them to cover all firms, the issue of how multidisciplinary services should contribute to prevention has not always been addressed coherently. In particular, there is a discernible trend for many countries to try and put their preventive activities on a contractual basis, driven by the "customer" or "employer" firm's demand, with a priority ranking which does not necessarily reflect the workers' needs. In the Netherlands, in particular, the emphasis on action against absences is fuelling real concerns about the danger of health-based selection of workers (to the point where new rules have been drawn up to limit pre-employment medical checks). In other countries, the professional independence of service providers does not seem assured in practice. Some Member States have even allowed employers themselves to assume the responsibilities of preventive services (as allowed by the Framework Directive in exceptional cases provided the Member States set a precise framework of rules for it) without even defining the expertise required (like the United Kingdom) or driving a horse and cart of exceptions through the modest training conditions provided (Italy). In countries with a two-track system (medical services and safety

services), cooperation between the two is often not easy, and the medical services tend to focus on the individual, lacking the power to affect the technical and organizational choices which cause the illnesses reported.

What makes this situation particularly alarming is that job insecurity is pushing down working conditions in many industries. More than five years after the Framework Directive came into force, new Community initiatives now seem essential.

A Finnish initiative

The forthcoming EU Council presidencies of Finland (second half of 1999) and Sweden (first half of 2000) could create more favourable conditions for renewed Community action in this area. The preparatory meeting for an international symposium on European occupational health held in September 1998 in Helsinki offers some hope. The meeting was called to draft an analysis of the state of occupational health services in the EU countries (and those of the European Economic Area) to map out the prospects for the future.

Based on the thirteen national reports presented, the Helsinki seminar found that national situations were very divergent, that preventive service coverage of workers was extremely variable (from 25% to 100% according to country)[1] and that the Framework Directive's minimum requirements were being flouted.

The seminar stressed that new strategies were needed to address the problems of job insecurity. It was also concerned by the failure to collect and process information on work-related health damage. One immediate priority in this area is a real Community research policy, underpinned by the activities of the Dublin Foundation (for the improvement of living and working conditions) and the Bilbao Agency (on health and safety).

The seminar said that quality control of existing services was needed, and that ethical rules were wanted to ensure that services are prevention-oriented and guarantee professional independence for practitioners. The means of funding services were also discussed.

The Vienna conference

Many national debates currently under way on prevention services are bringing to light the long delays and many hindrances to the effectiveness of their preventive activity. A meeting of an occupational health services sub-network of the European Work Hazards Network in Vienna from 25 to 27 September, attended by prevention practitioners from seven European countries, concluded that the main problems lay in five areas:

- health surveillance;
- control of absences;
- health promotion;
- the relations between occupational health and changes in work organization;
- the multidisciplinary nature of preventive services.

A troubled Community debate

[1] With no precise figures available, the presumption is that only a minority of EU workers are currently covered by preventive services.

While the two recent initiatives just mentioned show that trade union concerns are shared by most of the institutions with a desire to see prevention improved, it would be misguided to believe that a Community consensus is possible on a more effective and more coherent policy.

There are various reasons why. The Commission's activity on preventive services is currently pulling in two directions. The coherence of its policies in general is also in doubt.

For one thing, it is the Commission's job to see that Directives are correctly transposed. The Commission informs neither the Luxembourg Advisory Committee (the tripartite body responsible for monitoring occupational health matters) nor the European Parliament (thereby denying it all powers of oversight in the matter) of its contacts with the Member States. Notwithstanding this veil of secrecy around the initiatives taken, there is no doubt that preventive services are a bone of contention between the Commission and many EU States. We have no specific information on all the issues raised by the Commission in its letters to Member States nor the criteria it has adopted for interpreting article 7 of the Framework Directive. There are no non-compliance proceedings pending before the Court of Justice of the European Communities, and no indications as to when the Commission will decide to take legal action.

For another thing, the Commission has to draw conclusions from the different national schemes to implement the Directives. There was an obligation to draw up national reports on practical implementation. Although employers and trade unions' views should also have been included in these reports, it seems clear that many States saw their input as very much a formality. Comparing the national schemes, a number of common problems can be identified which need clarification at Community level, especially as regards the composition of services, guarantees of their professional independence and participation of workers in running them. That could take different forms. The "respite from legislation" which has been going on for nearly five years now is no longer defensible given the magnitude of the problems left unanswered. Should the Framework Directive or individual Directives be amended, are Directives needed to cover areas not properly provided for? In the first instance, Community interpretation instruments would be a useful way of addressing the most pressing problems. Ratification of ILO Convention 161 would also mark significant progress for the majority of EU States[2].

The Luxembourg Advisory Committee

The Luxembourg Advisory Committee's decision in 1995 to launch a debate on multidisciplinary prevention services reflected the growing awareness of the many common problems faced by the different European countries. An ad hoc group set up to prepare the debate later had its remit extended to the problems of health surveillance. The union representatives felt the group's work should not be restricted to a general review but should provide a basis for the Commission to draw up instruments to interpret the content of the

[2] It would be interesting in this respect to follow-up on the effects of the Commission Recommendation asking Member States to ratify ILO Home Work Convention No 177. If the Recommendation was insufficient, more effective instruments should be considered, not excluding the possibility of the European Union itself finally deciding to ratify the ILO Conventions.

Community Directives and suggesting a sort of code of good practice, possibly in the form of a Commission Communication.

The group has had a particularly halting start. It held its first meeting only in May 1997 and a further two meetings in 1998. At its first meeting, the group discussed a series of documents proposed by the Commission, and in particular a report by Danish experts on the state of preventive services. While the limited scope of the Danish study (based on official replies to a questionnaire) did not enable an exhaustive study of all national situations, it did offer up useful proposals and recommendations.

The ad hoc group's examination of this study showed how sensitive the issue was. Some government representatives seemed far more preoccupied with what legal proceedings the Commission could bring for failure to incorporate the Framework Directive than with discussing their national situation at Community level. Even so, as the discussion progressed, a more open attitude took hold. The employers' representatives blocked any attempt to work out a Community policy on these matters, trying to limit the ad hoc group to simply compiling available information on national situations.

To avoid deadlocking the discussions, the union representatives put forward specific, concrete proposals on both preventive services and medical surveillance. On health surveillance, six priorities were identified and the union representatives proposed that the International Labour Office's text "Technical and ethical guidelines for workers' health surveillance" be taken as a frame of reference for a Community discussion. While most of the government representatives were clearly in favour of launching a serious discussion based on the texts put forward by the union representatives, the employers' representatives used every procedural trick in the book without ever making their positions clear. In fact, it is impossible to say whether the European employers do have a common position on the matter other than wrecking everything on the agenda.

Marginal box (in blue)

The documents prepared by the TUTB for the Workers' Group of the Luxembourg Advisory Committee can be found on our web site: www.etuc.org/tutb/uk/news&events1.html:

- Worker's Group contribution to the Ad Hoc Group on Multidisciplinary Preventive Services and Medical Surveillance;
- Health Supervision in Community Directives and Recommendations;
- Position of the Worker's Group representatives on the discussion on medical surveillance

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While the issue may be too much of a hot potato for progress to be made within a tripartite body like the Luxembourg Committee, the Member States and Community institutions should work out proper ways of protecting workers' health. The higher public interest far outweighs those of private economic gain here. Nearly ten years after the Framework Directive was adopted, no-one can seriously deny the relative failure of Community measures to establish multidisciplinary prevention services. It would be irresponsible to wait for the European employers to wake up to the need for a new policy on this point. The Commission and Member States who shape Council decisions, the European Parliament and trade union organizations must make this an occupational health priority. With the shifts in government majorities in France and Germany, a qualified majority in Council on a text which draws on the past ten years' experience to improve existing provision no longer seems beyond reach.

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