Finding your way in the

European Union Health and Safety Policy

A trade union guide

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Preface

Improving health and safety at work is one of the biggest challenges faced by the European trade union movement. The need to safeguard workers' health and safety across borders is growing apace with international trade, globalisation and the enlargement of the EU, which added 10 new member countries in May 2004. All this underlines the importance of trade unions working together across borders to work out a common strategy for the EU.

The process of completing the single market clearly showed that European cooperation also needs to include rules that protect workers and the public. So, the Treaty also asserted that the single market should have a social policy. The social dimension should include both labour market and social policies. Health and safety at work and gender equality were among the first policy areas that the EU decided to harmonise, with other areas like employment, education, workers' information and consultation and other workers' rights following later.

Step by step, the different revisions of the EU Treaty (Single Act in 1986, Maastricht in 1992 and Amsterdam in 1997) have incorporated most areas of the labour market. The EU has vowed to develop common social policies.

Initiatives to prevent social dumping have also played a major role in the development of EU rules on health and safety at work over the past 20 years. The aim has been to avoid weakening the health and safety laws of the individual member countries as the EU increasingly harmonises its policy on health and safety at work. Another aim has been for the member states to commit to helping to develop a set of principles that will give workers in all EU member countries the benefit of the same health and safety at work gains.

Regulation is the key to preventing companies from abusing their workforces by moving production to areas where health and safety protection is weakest. The role and influence of the trade union movement is crucial

in giving workers a say at all levels in the workplace. No other community in the world has come this far in developing binding, effective health and safety at work rules.

Some politicians and governments in Europe pursue a very strong deregulation agenda. Deregulation is often presented as a neutral and technical issue, described as "better regulation" or "simplification of regulation". But it is a trend with very serious consequences, which underestimates the importance of preventive requirements. It can result in death, disablement or burnout of workers. We in the trade union movement believe that more agreements must be made between employers and workers, the public authorities must accept more responsibility, and basic rules for equal protection by common legislation made stronger.

The trade unions must not simply press for the coherent transposition of Community directives, but work proactively to create a more favourable balance of power through action at many levels. Action "at the top" in bodies like the Luxembourg Advisory Committee can only be really effective if it is backed by systematic transnational trade union cooperation at other levels. It would be misguided to see the European Union as an island cut-off from world realities. Active cooperation and solidarity between trade unions in different countries are also essential on a world scale, to prevent employers from exploiting big differences between countries to carry out social dumping.

Marc Sapir
Director of the Health and Safety Department, ETUI-REHS

Introduction

This handbook is intended for workers' representatives who are involved in occupational safety and health (OSH) at the national and European levels. It sets out to help give a better understanding of contexts, procedures and possibilities for influencing policy on health and safety at work in the European Union (EU) to make workers better able to play a more active part in the trade union policy debate. It is vital that they do so.

The handbook aims to give an overview of the EU institutions and procedures involved in regulating health and safety at work, and the role of trade unions in relation to it. It covers a wide range of issues, and can be used as a reference book. Depending on where their interests lie and what they already know about a given issue, readers can choose to explore the structure and organisation of the EU, ways in which trade unions can have an influence, or specific national examples, including implementation of legislation.

The EU rules on health and safety at work derive from the EU Treaty and the directives that are drawn up on the basis of the Treaty. As well as these, there are technical standards, recommendations, guidance documents and communications, etc. The handbook focuses on the most important ones and illustrates their importance to health and safety regulation in the EU.

As well as negotiating and adopting directives, the EU uses many other tools to develop the health and safety policy agenda. The handbook also focuses on a few key aspects of the social dimension to illustrate the different tools and their importance to the health and safety effort. The main thing to remember is that the information that comes out of the European Commission on the social dimension is just as important as the proposals for new directives, because it represents an invitation to the member countries and their citizens to take part in the discussion on developing the EU's social agenda.

The trade union movement takes part in a number of areas connected with the EU's formal decision-making procedures. Where health and safety at work is concerned, this includes three-way cooperation in the EU's advisory committee on health and safety at work to the board of the Bilbao Agency,

the social dialogue with the European employers, and cooperation with MEPs and European Parliament Committees, and in the European Economic and Social Committee (EESC). Cooperation with the European Trade Union Confederation[1] (ETUC) is especially important due to the ETUC's role in most of the EU activities mentioned in this handbook.

The linkages between individual member countries' political systems and the EU provide different opportunities for involvement at national level in developing European health and safety provision. At the same time, the EU influences national health and safety provision through new directives that have to be carried over into national legislation. European guidelines have to be implemented in the individual countries and compliance with EU health and safety rules is monitored in the individual workplace. This is where cooperation over EU health and safety provision is put into practice. For trade unions in EU member countries, European health and safety provision is about ensuring both the development of effective and progressive health and safety regulations, and that employers observe existing legislation.

This handbook contains references to various country-specific examples, statistics, surveys and proposals for further information, as well as a comprehensive report on supplements that all help to illustrate and back up the contents.

This handbook is the product of inspirational cooperation across borders over the past year. The first draft of the handbook was discussed at a OSH strategy seminar in Poland in October 2004 – a historic meeting, which was the first post-enlargement gathering of all members to discuss health and safety at work. We owe a debt of gratitude for all the exciting and challenging views, good advice and concrete examples that came from member countries at the meeting. We have incorporated this input into the final product to the best of our ability.

[1] See: www.etuc.org.

The HESA Department's* information sources

Other information sources can be used to explore the issues addressed in this handbook further. The information resources produced by the ETUI-REHS' HESA Department (previously the European Trade Union Technical Bureau, TUTB) can be used to systematically track health and safety developments in the European Union.

Links to useful information sources:

- HESA website: http://hesa.etui-rehs.org
- HESAmail monthly English and French emailed briefing: http://hesa.etui-rehs.org > Hesamail
- HESA Newsletter: http://hesa.etui-rehs.org > Newsletter
- HESA publications: http://hesa.etui-rehs.org > Publications
- Labourline, the on-line catalogue of the ETUI-REHS Documentation Centre: www.labourline.org

* HESA stands for HEalth and SAfety.

Main abbreviations used in this publication:

COR	Committee of the Regions
ECJ	European Court of Justice
EESC	European Economic and Social Committee
ETUC	European Trade Union Confederation
ETUI-REHS	European Trade Union Institute for Research, Education and Health & Safety
EU	European Union
HESA	Health and Safety Department of ETUI-REHS
ILO	International Labour Organization
MEP	Member of European Parliament
MSD	Musculoskeletal Disorders
OSH	Occupational Safety and Health
REACH	Registration, Evaluation and Authorisation of Chemicals
TUTB	European Trade Union Technical Bureau for Health and Safety
UNICE	Union of Industries of the European Community
WHO	World Health Organization

1. European Union
How it works in OSH

Current OSH situation reflected by surveys and statistics

The lack of comparable occupational health and safety (OSH) data at European level remains a cause for concern. The fact is that the latest Dublin Foundation[2] European surveys of working conditions (ESWC) based on face to face interviews with a representative sample of workers are the only overall studies done in 28 European countries[3]. Other statistical data are provided by Eurostat[4], through European Statistics on Accidents at Work (ESAW) or European Occupational Diseases Statistics (EODS). The findings of these European agencies are briefly described below to give a basic overview of the context and trends in this area. Despite some encouraging results, especially regarding accident data, health problems and worsening health are still prevalent among Europe's working population.

The Dublin Foundation's 2000 survey gave an overview of the state of working conditions in the EU, highlighting trends and identifying major issues and changes in the workplace. The Dublin Foundation reported that exposure to physical hazards at the workplace, together with intensification of work and flexible employment practices are still a primary cause of health problems for workers in the European Union. In 2000, 83% of the EU's working population of 159 million people were employees and 17% were self-employed. A total of 21,500 workers across all member states – both employees and self-employed – were interviewed about their working conditions. The survey revealed that no significant improvement in risk factors or overall conditions in the workplace had occurred over the ten-year period since the first survey on working conditions was done.

In 2001, the Dublin Foundation surveyed working conditions in 10 countries that were poised to become members of the EU, plus 2 that had applied to join: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia. In 2002, the survey was also extended to Turkey. This questionnaire-based survey was identical to the other working conditions surveys done in the EU member states, to enable comparisons to be made between the two groups of countries. The survey addressed a wide range of issues related to the quality of work and employment, like: physical risk factors, working time patterns, work organisation features, social relations and work-related health problems.

[2] See: www.eurofound.ie.

[3] 15 EU member states in 2000, 13 new accession and candidate countries in 2001-2002.

[4] See: http://europa.eu.int/comm/eurostat.

The main findings of the 2000 Foundation survey

- The most common work-related health problems:
  – Backache (reported by 33% of respondents)
  – Stress (28%)
  – Muscular pains in the neck and shoulders (23%)
  – Overall fatigue (23%).
- A direct association between poor health and adverse working conditions, arising in particular from a high level of work intensity and repetitive work.
- Exposure to physical risk factors such as noise, vibrations, dangerous substances, heat and cold and working in uncomfortable positions, for example when carrying heavy loads.
- Increasingly intensive work: over 50% of workers are under pressure or work to tight deadlines for at least 25% of their working time.
- Only a slight improvement in autonomous work: only one third of workers say they have little or no control over their work while only three out of five workers can decide when to take leave.
- The changing nature of work, which is more driven by customer demand than by production targets.
- The number of people working with computers has increased from 39% in 1995 to 41% in 2000.
- Flexibility is widespread in all aspects of work, e.g., working time ('round-the-clock' and part-time work); work organisation (multi-skilling, teamwork and empowerment) and employment status (18% of all employees work under non-permanent contracts).
- More exposure to risk factors from temporary workers than from permanent employees.
- Gender segregation and gender discrimination are still common.
- Violence, harassment and intimidation are serious problems. Between 4% and 15% of workers in different countries reported having been subject to intimidation.

The main findings of the 2001 Foundation survey

- A higher proportion of workers in these countries are employed in agriculture and a lower proportion in the service sector.
- A higher proportion of self-employed workers in those countries (22% compared to 17% in the EU). However, there is a wide variation in the different types of employment status.
- A lower proportion of workers belong to the higher-skilled job categories: 31% compared to 35% in the EU.
- Gender segregation is less prevalent in those countries, and there is a higher proportion of female workers: 46% compared to 42% in the EU.
- Higher exposure to physical risk factors, such as noise, vibrations and uncomfortable and painful postures.
- Less customer-oriented and less reliant on computers than in EU.
- Less customer-driven work organisation. Less decentralised and more hierarchical structures.
- Fewer workers receive training, and work does not provide many learning opportunities.
- Workers receive more support from colleagues. Also, job demands are higher and job autonomy is lower.
- Higher prevalence of shift and night work, which are unsocial working hours. They tend to be less gender differentiated. Female part-time work is less frequent than in the EU.
- Dual workload, combining paid work with unpaid household/caring work. It is more balanced between the sexes, but not evenly distributed.
- More workers feel at risk because of work (40% against 27% in the EU).
- Work-related health problems, in particular overall fatigue and musculoskeletal disorders, are reported to be higher.

The 2004 Commission Report on Implementation[5] cited the estimates based on the Eurostat data for 2000. The report highlighted that the number of accidents per 100,000 workers, resulting in more than three days' absence from work, fell from 4,539 in 1994 to about 4,016 in 2000. The drop in this indicator reflects improvements in health and safety at work over the period. But, in absolute numbers, nearly 5,200 workers are still killed in work-related accidents every year. In total, there are still about 4.8 million accidents a year. This also means that about two thirds of the accidents lead to an absence of more than 3 working days. Almost 14% of workers suffered more than one accident a year.

A total of 158 million working days were lost in the European Union in 2000, averaging about 20 days per accident. The fact that about 7% of those injured in accidents cannot return to the same job, and that about 4% have to work shorter hours or can no longer work at all, is a major setback to delivering the Lisbon full employment goal. Nearly 300,000 workers suffer varying degrees of permanent disability resulting from a work-related accident or disease each year, and 15,000 are entirely excluded from the labour market. Around 350,000 workers had to change jobs as a result of an accident. It is estimated that the total cost to the economy amounts to between 2.6% and 3.8% of GNP. These figures show the high economic costs of not having an appropriate social policy. On the other hand, it has been estimated that the overall reduction in work-related accidents since the EU legislation came into force has produced economic benefits in the form of about 25 million working days saved.

Analysing the available information provides a basis for working out further trade union actions. But to add to what we know about existing situations, more surveys are needed on aspects of health and safety at the workplace. They should include data on things like information, consultation and participation for workers, and procedures by which for workers representatives to exercise their legal rights.

Institutions, bodies and players

Different European institutions, agencies and bodies directly influence the development of EU policy, legislation[6] and implementation of the law in health and safety at work. The main tasks of these institutions should be enforcing, strengthening and maintaining high standards of health and safety at the workplace throughout the European Union. The trade unions expect the full support of these institutions in the social dialogue and tripartite co-operation at the European and national levels. Improvements in health and safety at work can only be achieved through discussions between social partners and governments. These are discussions that must take place if drafting and putting place policies in areas like OSH legislation, promotion and information or research are to be democratically done. At present, they do not always do so. The inescapable fact is that some action plans have no firm objectives or deadlines, and some parts of European legislation are not specific enough.

[5] Commission of the European Communities, COM(2004) 62 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment), Brussels, 5 February 2004.

[6] See: www.europa.eu.int/eur-lex. A search engine for all legal instruments adopted. The text of the individual directive is also available there. It helps to know the number and year of the directive.

General EU institutions

The European Union started out to create both a war-free zone and a common market. Later, as the project developed and trade unions increased their demands for a more social dimension to Europe, employment-related aspects became an integral part of European policies. This aim was included in the European Treaties, which are regarded as primary European legislation. It covers fundamental principles of integration and is the basis of specific EU policies. EU primary legislation also deals with the structures, areas of competence and decision-making procedures of the European institutions. The European Treaties are what give EU institutions the authority to enact European secondary legislation in the form of regulations, directives, decisions, recommendations and opinions.

The main European institutions

European Commission (http://europa.eu.int): promotes integration; is the executive body of the EU and has the sole right to propose new legislation.

European Parliament (www.europarl.eu.int): the directly elected democratic representative of the general public, the EP has the right to take part in framing and passing EU legislation.

Council of the European Union (http://ue.eu.int) or **Council of Ministers** plays a fundamental role in the legislative process and sets EU political priorities. It represents the governments of the member states.

The European Council or **European Summit** is the main political body of the EU; consists of the heads of state and government of the member countries.

European Economic and Social Committee (www.esc.eu.int) is the advisory body to the Commission, consisting of groups of employers, workers and various interests.

Committee of the Regions (www.cor.eu.int) is the advisory body to the Commission providing local and regional links and involving them in the development and implementation of EU policies.

The European Ombudsman (www.euro-ombudsman.eu.int) investigates complaints by individuals and businesses about activities of the EU institutions and bodies

The Court of Justice (http://curia.eu.int) provides the judicial safeguards necessary to ensure that the law is observed in the interpretation and application of the Treaties and, generally in all the Community's activities.

The Court of Auditors (www.eca.eu.int) checks that the EU's spending is in line with its budgetary rules and regulations, and goes on the purposes for which it is intended.

European System of Central Banks and European Central Bank (www.ecb.int) defines and implements the Community's monetary policy.

European Investment Bank (www.eib.org) provides long-term loans for capital investment, promoting the Union's balanced economic development and integration.

Specific EU bodies on health and safety at work

This section describes three of the main OSH bodies in the EU – the Advisory Committee on Safety and Health based in Luxembourg, the European Agency for Safety and Health at Work based in Bilbao, and the European Foundation for the Improvement of Living and Working Conditions based in Dublin. They will be referred to respectively as the Advisory Committee, the Bilbao Agency and the Dublin Foundation.

- The Advisory Committee on Safety and Health at Work in Luxembourg

The Advisory Committee was set up by a Council Decision in 1974[7]. It assists the Commission with the preparation, implementation and evaluation of activities in the field of safety and health at work in both the public and

[7] Decision of 22 July 2003 (2003/C 218/01). This Decision repealed previous Decisions on the Committee, e.g., 74/325/EEC and 74/326/EEC.

private sectors of the economy. The Committee's main activities are:

- To conduct exchanges of views and experiences on existing or planned regulations on the basis of the information available to it.
- To help work out a common approach to problems in the fields of safety and health at work and identify Community priorities, as well as the measures necessary for implementing them.
- To draw the Commission's attention to areas in which there is an apparent need for new knowledge and for suitable training and research measures.
- To define, within the framework of Community action programmes:
  – the criteria and aims for preventing accidents at work and health hazards within the undertaking;
  – methods enabling undertakings and their employees to evaluate and to improve the level of protection.
- To contribute, alongside the European Agency for Safety and Health at Work, to keeping national administrations, trade unions and employers' organisations informed of Community measures in order to facilitate cooperation and to encourage any initiatives on their part to exchange experience and establish codes of practice.
- To give an opinion on plans for Community initiatives that affect safety and health at work.
- To give an opinion on the annual programme and the rotating four-year programme of the European Agency for Safety and Health at Work.

Scope of consultations

The Advisory Committee is consulted on many of the Commission's initiatives, and in every case when the Commission produces a new directive or revises an existing one. For instance, the Committee was consulted on the preparation of the Framework Directive on safety and health (89/391/EEC) and all subsequent health and safety at work directives.

In order to accomplish the above tasks, the Committee cooperates with the other Committees that have responsibilities for safety and health at work, including the Senior Labour Inspectors Committee (SLIC) and the Scientific Committee for Occupational Exposure Limits to Chemical Agents (OELs), mainly by exchanging information.

What do the trade unions expect from the Luxembourg Advisory Committee?

The Luxembourg Advisory Committee can play a big role because it brings together government, trade union and employers' representatives who have direct experience of health and safety issues in their country. It should make it possible to pinpoint areas where Community action is required and follow up on enforcement of Community policies in the different countries.

In some cases, the Luxembourg Advisory Committee has been able to make an invaluable contribution that has improved the European Commission's original proposals. For example, it drafted European guidance on risk assessment that clarified the scope of the Framework Directive. In other cases, the Committee's contribution has been limited by blocking actions by the employers and some States. The Committee's credibility obviously depends on its ability to make real improvements to Commission proposals and its commitment to monitoring and evaluating the practical application of Community health at work policies.

The Committee consists of three full members for each member state – one representative each from the national governments, trade unions and employers' organisations. Two alternate members may be appointed for each full member. An alternate member attends Committee meetings only when the member for whom he deputises cannot attend. Full and

Ad hoc committees

The Advisory Committee appoints ad hoc committees with specific terms of reference to provide written opinions on proposals for initiatives submitted. The opinions are drawn up by negotiation between the three parties in the ad hoc committee and adopted at an ordinary meeting of the Advisory Committee. Ordinary meetings are held in Luxembourg where the Commission's Secretariat for health and safety at work is located. The Commission decides to what extent it will follow the committee's advice.

alternate members are appointed by the Council. When submitting the list of nominees to the Council, member states must try to ensure that the Committee's composition fairly reflects the various economic sectors concerned, and the proportion of men and women in the working population. The term of office of full and alternate members lasts three years, but is renewable. A member's term of office may end before the expiry of the three-year period either if he resigns or following notice from the member state concerned that the term of office is terminated[8].

• The European Agency for Safety and Health at Work – Bilbao

The Bilbao Agency was set up by a Council Regulation[9] to provide the Community bodies, the member states and those involved in the field, with technical, scientific and economic information of use in the field of safety and health at work[10]. The Agency's main roles are:

- To collect and disseminate technical, scientific and economic information in the member states in order to pass it on to the Community bodies, member states and interested parties; the purpose of this is to identify existing national priorities and programmes and provide the necessary input to Community priorities and programmes.
- To collect technical, scientific and economic information on research into safety and health at work and on other research activities which involve aspects connected with safety and health at work, and to disseminate the results of the research and research activities.
- To promote and support cooperation and exchange of information and experience amongst the member states in the field of safety and health at work, including information on training programmes.
- To organize conferences and seminars and exchanges of experts from the member states in the field of safety and health at work.
- To supply the Community bodies and the member states with the available objective technical, scientific and economic information they require to formulate and implement judicious and effective policies designed to protect the safety and health of workers; to that end, to provide the Commission in particular with the technical, scientific and economic information it requires to fulfil its tasks of identifying, preparing and evaluating legislation and measures in the area of the protection of the safety and health of workers, notably as regards the impact of legislation on enterprises, with particular reference to small and medium-sized enterprises.
- To establish in cooperation with the member states, and coordinate, the network, taking into account the national, Community and international bodies and organizations which provide this type of information and services.
- To collect and make available information on safety and health matters from and to third countries and international organizations (WHO, ILO, etc.).

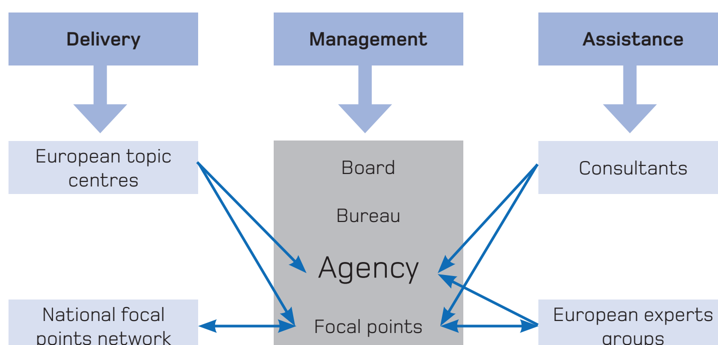
[8] See Appendix 1 – Advisory Committee: rules of procedure.

[9] Council Regulation (EC) No. 2062/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work and Council Regulations (EC) No. 1643/95 and (EC) No. 1654/2003 amending this Regulation.

[10] See Appendix 2 – Bilbao Agency: structure and procedures.

- To provide technical, scientific and economic information on methods and tools for implementing preventive activities, paying particular attention to the specific problems of small and medium-sized enterprises.
- To contribute to the development of future Community action programmes relating to the protection of safety and health at work, without prejudice to the Commission's sphere of competence.

The Agency network structure



What do the trade unions expect from the Bilbao Agency?

The Bilbao Agency has a substantial budget, most of which goes to fund the provision of information.

Based on recent experience, trade unions feel that the Agency's information-providing activities could be considerably improved in a number of ways:

1. Much of the information is supplied by national focal points. For that information to be comprehensive and not underrate the problems, these focal points must be run on a proper tripartite basis. The focal points must be more active in putting out information to workers in co-operation with trade unions. Government agencies can be reluctant to supply information on unresolved issues and failings in preventive systems.
2. The information should be processed by researchers that are well-versed in the subject-matter. Agency publications are full of glossy graphics, but the content is patchy. Some publications – like the fact sheets – are generally useful, while others have little substance to them (e.g., the report on "The State of Occupational Health and Safety in Europe").
3. The Agency should assess the real value of its different publications and website at regular intervals in order to improve them by reference to what users actually need.
4. It should examine how far it is actually helping to solve practical problems. Too many of the "good practises" describe ideal (or idealised?) situations that cannot be reproduced in many workplaces.
5. It should stick to its basic job of helping to improve the work environment by providing information. Recently, it has tended to see part of its task as improving productivity, which definitely does not form part of its terms of reference and could in some cases clash with its primary task. It should put the focus back on concern with the real situations of workers and their needs for preventive measures.

• European Foundation for the Improvement of Living and Working Conditions – Dublin

The Foundation is a tripartite European Union body set up by the European Council[11] in 1975 to contribute to the planning and design of better living and working conditions. It is a European Agency, and one of the first to be set up to work in specialised areas of EU policy. The Foundation carries out research and development projects, provides data and analyses to inform and support the formulation of EU policy on working and living conditions. It has a network of experts throughout Europe,

[11] Council Regulation (EEC) No. 1365/75 of 26 May 1975.

conducting research on its behalf, including assessing current national situations, preparing case studies and national reports, and conducting surveys.

As part of its research base, the Foundation maintains a number of key monitoring tools:
- The European Industrial Relations Observatory – EIRO (www.eiro.eurofound.eu.int).
- The European Working Conditions Observatory – EWCO, including surveys on working conditions (www.eurofound.ie/ewco/index.htm).
- Quality of Life in Europe surveys (www.eurofound.ie/areas/qualityoflife/eqls.htm).
- The European Restructuring Monitor – ERM (www.emcc.eurofound.eu.int/erm).
- The European Monitoring Centre on Change – EMCC, an information source focusing on aspects of economic and social change (www.emcc.eurofound.eu.int).

What do the trade unions expect from the Dublin Foundation?

The Dublin Foundation is tasked with the unique job of monitoring and analysing working conditions. Its Europe-wide survey of working conditions in particular is an essential reference for Community health at work policy. The fourth such survey, to be done in 2005-2006, will make it possible to measure the changes over fifteen years and give a basis for comparison between the member states of the European Union. The survey now covers 31 different countries. Starting on 19 September 2005, more than 23,000 face-to-face interviews were carried out with workers in the former EU-15 countries, the ten new EU member states, the four accession and candidate countries (Bulgaria, Romania, Croatia and Turkey), plus Norway and Switzerland. The questionnaire covers all aspects of working conditions, including physical environment, workplace design, working hours, work organisation and social relationships in the workplace. The initial results of the new European Working Condition Survey will be published in 2006.

Trade unions see it as essential for the Dublin Foundation to carry on with its work and produce detailed analyses of derived data from the survey in different areas. The linkage between living conditions and working conditions is another area where the Dublin Foundation's work can be invaluable by making it possible to address the broader issue of the relationships of unpaid domestic work to gender equality, and a range of working time issues.

The Foundation is managed by an Administrative Board comprising representatives of governments, employers and workers of each member state and three representatives from the European Commission. This representation of governments and social partners reflects the tripartite nature of the organisation's work. The Board meets twice annually to decide policy, adopt the work programme and propose the draft budget. The programmes are the outcome of detailed discussions within the groups that make up the Administrative Board and with the Institutions of the Union. The programme divides the Foundation's work into three core areas: industrial relations, working conditions, living conditions, plus the monitoring tool EMCC.

• The SLIC

The SLIC[12] is the Senior Labour Inspectors Committee. It links together the senior labour inspectors of the different European Union countries. It plays an important role in that equal application of Community directives

[12] See: http://europa.eu.int/comm/employment_social/health_safety/slic_en.htm.

to all European workers depends largely on the proper running of the labour inspectorate. The SLIC regularly runs joint coordinated campaigns in which national health and safety inspectorates focus their activities on a priority issue, like building sites, for a specific period. The SLIC has also framed common principles for health and safety inspection. The operation of each labour inspectorate in a given country can be assessed by a team of labour inspectors from a different country under the aegis of SLIC to work out suggested improvements. A big issue for SLIC in the coming years is to improve co-operation between labour inspectorates in situations where an undertaking works on the territory of a country other than its country of origin. In March 2005, the SLIC expressed justified concerns about the risks created by the proposal for a directive on the services market (Bolkestein Directive).

• The SCOEL

The Scientific Committee on Occupational Exposure Limits (SCOEL)[13] was set up to provide scientific advice to the European Commission to underpin regulatory proposals on exposure limits for chemicals in the workplace under the Chemicals and Carcinogens Directives. The SCOEL examines available information on toxicological and other relevant properties of chemical agents, evaluates the relationship between the health effects of agents and occupational exposure levels, and where possible recommends values for occupational exposure limits (OELs) that it believes will protect workers from chemical risks. Members of SCOEL are selected from among experts nominated by member states. All SCOEL members act as independent scientific advisers, not as representatives of their national governments. They include experts in chemistry, toxicology, epidemiology, occupational medicine and industrial hygiene.

After evaluating all available data, SCOEL proposes a recommendation for a limit value in the form of a short summary document. Once the summary document is agreed, the Commission makes it public to allow interested parties to submit health-based scientific comments and further data. After a comments period of about six months, the Committee reviews the document in the light of the comments received and adopts the final version, which is then published by the Commission. Once the Commission services have received the final recommendation from the Committee, they can work out legal proposals for an OEL. SCOEL makes recommendations to the Commission on 'health-based' OELs. An OEL of this type may be established in those cases where a review of all the available scientific data leads to the conclusion that a clear threshold dose can be identified below which exposure to the chemical in question is not expected to lead to adverse effects.

The European Commission uses the scientific advice from SCOEL to make proposals for occupational exposure limits. Limits based solely on scientific considerations are considered as adaptations to technical progress, incorporated in proposals for Commission directives under the Chemicals Directive, and are indicative. OELs that also take socio-economic and technical feasibility factors into account are included in proposals for

[13] See: http://europa.eu.int/comm/employment_social/health_safety/scoel_en.htm.

Council directives under either the Chemicals or Carcinogens Directives, and are binding.

Notwithstanding the positive contribution made by SCOEL, the fact remains that a huge backlog has built up in the setting of both indicative and mandatory limit values. The Commission adopted an initial list of 62 indicative exposure limits in its directive of 8 June 2000[14]. A second list has been ready for about three years. Various substances have been pulled out of the initial list. A list of 34 substances[15] 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[16] 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 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.

How to influence EU decision procedures

EU health and safety at work rules are developed in a range of ways. This section describes the reasons for the new rules, the negotiations on their contents and the players involved in the procedure. How can the Commission be prompted to draw up proposed rules, and what process do they go through before being finally adopted by the Council? The formal primary procedures are outlined below to give an overview of and explain the various possibilities for exerting influence and having a say. The overall procedure can be broken down into different stages:

- Influence on initiatives
- Decision procedure
  - Formal
  - Co-decision procedure.

The formal decision procedure can be a long drawn-out one. But for good reason: EU legislation has to apply to many parties in many countries, meaning that serious disputes and disagreements often arise along the way. Without a relatively satisfactory solution, the broad support needed for the new rules to work will not exist. As a result, some of the main players could work against implementation rather than proactively ensuring that individual companies comply with the rules. Taking action in the early stages gives more chance of having a bigger influence. But this means knowing the formal players with whom to work.

• Influence on initiatives

For a legislative or similar initiative to be taken, serious concern must exist about a health and safety at work issue affecting a large number of member states. Apart from strictly health matters, this could be a sharp rise in public spending in the social and health sector due to disability, or a need to prevent disability leading to exclusion from the labour market. Since the latter half of the 1990s, Europe has put a big focus on public

[14] 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.

[15] Some substances included in the original draft were dropped, most notably nitrogen dioxide, despite a SCOEL study and recommendation on it.

[16] The most vocal opposition to the SCOEL proposals came from the fertilizer manufacturing industry.

expenditure and the labour shortage as key reasons for a renewed drive on health and safety at work. This has also resulted in new political players started to give weight to preventive health and safety initiatives. The Commission, the European Agency for Safety and Health at Work in Bilbao and the European Foundation for the Improvement of Living and Working Conditions in Dublin all publish a copious body of analyses and reference material outlining developments in health and safety at work and pointing out the need for new initiatives. Both the Agency and the Foundation are tasked with providing information and data to give players in the field a better basis for initiating changes to EU health and safety at work rules. Eurostat, the Commission's statistics office, also provides documentation on health and safety at work.

When the EU institutions prepare their work programmes, other health and safety at work players are normally invited to comment on them. These comments are usually made in writing as part of a consultation exercise with a fixed deadline. The Commission takes the same approach to the Communications it publishes to flag up new initiatives. Sometimes, the public generally is invited to contribute. This usually appears from the actual consultations. European Commission Communications and Green Papers are good examples of this.

Some EU health and safety players are in close contact with their national representatives, organisations or institutions (see Appendix 3). The trade unions and the central organisations are the most important and easiest to get in contact with. As well as taking part in a wide range of EU committee work, a number of central organisations have a special EU office in Brussels, which handles much of the daily cooperation with the various EU institutions.

In the European Parliament, the representatives of the political parties have secretariats with their own officials, who are responsible for preparing committee work and cases on which Euro-MPs are working. The members are generally interested in receiving useful proposals for their political work. Moreover, many grass-roots movements are interested in EU issues and work together with both EU institutions and MEPs.

• Formal decision procedure

The formal decision procedure starts with the Commission drawing up and submitting a proposal. The Commission is the only player in the existing procedure that can officially do this. But, the other parties can urge and press the Commission to put forward a proposal.

The European Parliament's ability to get the Commission to submit a proposal is written into article 192 of the Treaty. It is known as Parliament's small right of initiative. "The European Parliament may, acting by a majority of its members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty." The actual decision procedure used depends on the legal basis (i.e., which provision of the Treaty) on which the initiative concerned is based.

• Co-decision procedure

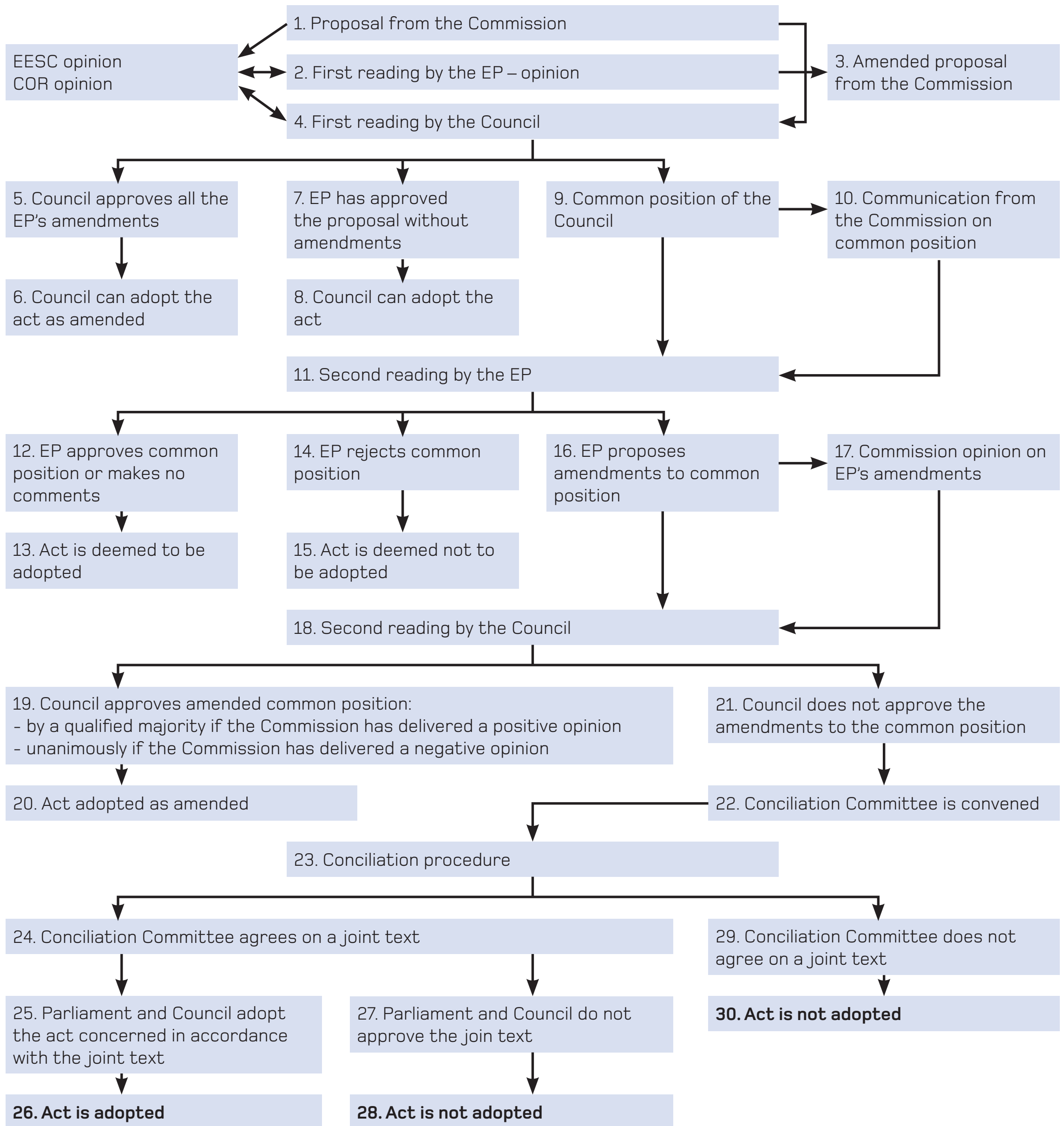
The Treaty of Amsterdam describes how the EU institutions must co-operate when new initiatives are decided. In health and safety at work matters, the so-called co-decision procedure is followed, and this is laid down in article 251 of the Treaty.

Somewhat simplified, the procedure is as follows: the Commission has the right to submit proposals to the Council. This is what is known as the Commission's right of initiative. The Council adopts proposals, but must seek Parliament's opinion before it does. Parliament presents any amendments it has passed to the Council. If the Council does not approve the amendments, it will send a so-called common position to Parliament. Parliament may then submit new amendments to the common position to the Council, which will give a fresh opinion on the amendments. If the Council cannot approve all the amendments, a Conciliation Committee consisting of members of the Council and Parliament is convened. The Committee attempts to draw up a joint draft of the amendments to be approved by the Council and Parliament.

A Commission proposal that goes through the entire procedure will have been scrutinised by Parliament three times. This gives Parliament significant influence on the content of new initiatives. In practice, the Council and Parliament are under great pressure to reach agreement.

It is important to bear in mind that once Parliament has given the Commission's proposal its first reading and submitted its amendments, it cannot later submit new amendments. So, it must take care to include everything in the first parliamentary reading. This particular stage is where other health and safety players have an opportunity to bring their influence to bear on Parliament. The Treaty of Amsterdam extended the scope of the co-decision procedure to make it apply to about three times as many subject fields as under the Maastricht Treaty. The Treaty of Amsterdam therefore increased Parliament's powers.

Co-decision procedure



2. The foundations of EU regulation of health and safety at work

Health and safety at work change constantly as new production and work methods emerge. Even as fundamental rules on health and safety at work in the EU are being developed, new health and safety problems have arisen, especially in the psychosocial and ergonomic fields. Developing such rules is a continuing process requiring new initiatives and ongoing follow-up.

The need for and practicability of EU rules on health and safety at work have grown increasingly evident in recent years. Firstly, there is a big challenge in supporting the new member states to ensure that they all make a good start on implementing EU health and safety at work directives. Secondly, the EU rules can be a good lever for getting international rules passed in organisations like the UN agency, the International Labour Organisation (ILO).

Globalisation means that many European companies today form part of multinational groups operating on a worldwide scale. The decisions taken in national departments are increasingly associated with conditions elsewhere in the world. The social dumping one might fear within the EU is certainly worse when it comes to moving production to third-world countries. This is why there is such an urgent need to strengthen the social dimension at the global level.

The EU's tools to regulate health and safety at work

The EU uses a number of tools to promote health and safety at work. The most important are outlined below:

1. Legislation: directives and regulations
2. Legal control
3. Open coordination
4. Recommendations, opinions and resolutions
5. Action programmes
6. Collective agreements
7. Financial support for research and development
8. Information activities
9. Enforcement
10. Campaigns

1. EU legislation is based on the Treaty provisions, and takes the form of **directives and regulations**. All member states have a duty to implement the directives into national legislation or practice. Directives are typically drawn up through a long decision-making procedure in which the European Commission, the Council of the European Union and the European Parliament are the main players.

2. **Legal control** means that the Commission systematically examines whether countries have implemented the legislation passed. Normally, directives stipulate that the member states have an obligation to inform the Commission how the directives have been carried over into law.

3. **Open coordination** is a relatively new method in which the Council sets objectives and guidelines for the member states to meet in a specific policy area. The method is mainly used for European economic and employment policy. One idea behind open coordination is freedom to choose the method in areas where no legislative harmonization is carried out. This means that each member state is allowed to decide how to meet the objectives and guidelines. The Luxembourg 1998 and Lisbon 2000 summits gave the open coordination method fresh impetus. Trade unions are critical of applying this method to health and safety.

4. The Council and the Commission may adopt **recommendations** in areas where there is a need to step up efforts to meet the guidelines set. The few recommendations adopted on health and safety issues have not been effective.

5. The Commission prepares **action programmes** in a number of policy areas that set the priority tasks for coming years. These programmes may contain planned legislation in the form of directives, action programmes on health and safety and proposals for collective agreements. For health and safety at work, many of the efforts are compiled in action programmes managed by the European Commission's Directorate-General for Employment and Social Affairs. The fourth action programme has been replaced by a Communication drawn up by the Commission on "Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006". The Commission includes the health and safety at work strategy in its work to implement the new social agenda. A fifth action programme for health and safety (2007-2012) will be discussed and adopted in 2006.

6. The new EU strategy for health and safety at work states that the partners should be more involved and make **agreements** (within the EU-level social dialogue based on Articles 138-139 of the EC Treaty) on health and safety at work issues. Traditions in this respect also vary widely among the member states; so far, one agreement has been made on telework, and a proposal for an agreement on stress has been negotiated and is currently being discussed by the member states' social partners. The agreements are voluntary, but the partners undertake to implement them. The European Trade Union Confederation has called for them to be more

strongly worded – i.e., for collective agreements to be binding on the member states – because experience gained from the telework agreement shows that some employers believe that voluntary agreements do not necessarily have to be put into practice. This needs to be settled with the Union of Industries of the European Community/European Association of Craft, Small and Medium-sized Enterprises and the European Centre of Public Enterprises with Public Participation and of Enterprises of General Economic Interest, and the European Trade Union Confederation cannot enter into new agreements if they are not binding.

European agreement on telework: patchy results according to the country

The agreement on the telework was concluded in July 2002 and was to be taken over into law in the different countries within three years. With that deadline now gone, what conclusions can be drawn from the implementations carried out?

It is a very mixed picture. Some countries have recorded significant progress. In Hungary, for example, the employers' organisations and trade unions decided the best way to give a consistent framework to collective bargaining would be to write the agreement's key provisions into the Labour Code. The government agreed, and branch negotiations are being held on a common basis. This helps avoid implementing the agreement simply by copying out the wording and define practical measures appropriate to each sector. Also, including the main provisions in the Labour Code gives coverage to all workers, including those not covered by collective agreements.

Inter-industry national collective agreements have been concluded in France, Belgium and Finland, covering all workers. In the case of Belgium, the authorities amended the existing home working legislation to incorporate certain provisions of the collective bargaining. The United Kingdom has no tradition of inter-industry collective agreements, so the agreement will have to be negotiated company by company. To avoid the process being too protracted and patchy, the unions and employers' organisations have worked out joint guidelines to spell out the scope of the agreement compared to the existing rules. The government gave its backing to this initiative by publishing the guidelines. In other countries, the negotiations have had less positive outcomes. In Austria, for example, the employers point-blank refused to conclude a collective agreement and demanded that simple non-binding guidelines be drawn up. The situation in Norway is quite similar. Sectoral negotiations have taken place in Denmark and Germany, but seemingly to little positive effect. In Spain, telework was put on the collective bargaining agenda in 2003, 2004 and 2005, but nothing concrete has come out of the negotiations.

The text of the agreement can be found at: http://europa.eu.int/comm/employment_social/social_dialogue/docs/300_20020716_agreement_telework_en.pdf.

Further information in: S. Clauwaert, W. Düvel, I. Schömann, *Report on the implementation of the ETUC/UNICE-UEAPME/CEEP Framework agreement on Telework,* Brussels, ETUI-REHS, 2005.

7. To launch **research, development and information** in areas capable of supporting the development of policies on health and safety at work, the EU draws from its funds, the directorates-general and cooperates with the Dublin Foundation and the European Agency for Safety and Health at Work. Research results and information about the results are publicly available, e.g., on the institutions' websites.

8. The EU can use conferences, projects, reports and the like to supplement **information activities** that help shape the policy agenda. Some of the most important activities are those done in cooperation with the rotating presidency. In spring 2001, for instance, the Swedish presidency carried out a raft of health and safety at work-related activities under the banner Work Life 2000. Finally, the EU publishes green papers, which typically set an open agenda to stimulate debate on an area, and the reform

requirements on which the Commission is focusing. Green papers are discussed in the member states and at European level. The Commission then collects proposals and views together in a white paper and points out possible legislative initiatives, etc. For instance, the green paper on companies' responsibility for society will influence European health and safety policy. Communications are one of the Commission's key information tools. The Commission uses communications to map out to the Council and Parliament, among others, its thinking on future initiatives in a specific area. Communications are not legally binding. Their primary purpose is to provide a basis for debate and dialogue with the member states and the EU institutions. Many countries often put communications out to consultation with a range of policy-shapers, including trade unions. One aim is to sound out government views on the proposals and opinions contained in the individual communication. But, the consultation also conveys the Commission's policy thinking and indicates what other national and European players think of the Commission's proposals. This can be highly useful in substantive negotiations.

9. The member states' **enforcement** of EU health and safety at work legislation is the focus of growing attention. The European trade union movement, in particular, has observed that the member states approach the task very differently, and that using EU cooperation to enhance enforcement in the countries with least control may hold out prospects. A committee of high-ranking representatives of the labour inspectorates in the various countries, the Senior Labour Inspectors Committee (SLIC), regularly exchanges experiences with labour inspection systems and has evaluated how health and safety at work are controlled in the individual countries. The European trade union movement wants more openness on this, and a European minimum level, which could be very useful in coming to a practical assessment of how the individual directives impact on member states' health and safety at work measures.

10. The annual European Week for Safety and Health at Work in October is an **information campaign** with a general theme. In 2000 and 2001, the themes were ergonomic problems, including monotonous, repetitive work, and prevention of work-related accidents, respectively. Stress was the theme in 2002 and dangerous substances in 2003. The 2004 theme was the construction industry, the 2005 theme was noise and the 2006 theme will be young workers. The week is organised by the European Agency for Safety and Health at Work in Bilbao (Bilbao Agency), which also manages the distribution of funds allocated by the Commission to both Community-wide activities and individual countries' activities connected with the week.

Role of the presidency

The general dynamics of EU development are partially guided by priorities set during the preparations for each individual country's presidency. The presidency rotates every six months, and the next government to hold the presidency often plans its initiatives by setting processes going that involve dialogue with the social partners and other players.

Sweden began making preparations in 1996 for health and safety at work as a topic of its presidency in spring 2001. A number of working parties started planning and holding about 50 conferences and seminars under the theme Work Life 2000. At the concluding conference held at the beginning of the presidency, attempts were made to set an agenda for ongoing efforts to improve working conditions for employees.

Many of the activities carried out during a presidency have been planned beforehand. These typically include work started in previous presidencies that must be finished. A health and safety at work directive that has long been under negotiation and which the new presidency wishes to wrap up could be a case in point.

However, the presidency can also be used to take policy initiatives in new areas. If the initiative wins support, the various EU institutions and later presidencies will typically work to carry the proposals through. Clearly, then, the presidency's policy stance is a big factor in getting directives passed and deciding the level of compromises between States. Some presidencies go for speed rather than quality; others focus on both. Yet others leave proposals stalled. For example, the last revision of the directive on work with asbestos was completed under the Danish presidency. The Danish government fast-tracked its work, but came up with a final compromise proposal which on some points fell short of the protection guaranteed to workers in Denmark and the rules set by the International Labour Organisation. The directive to regulate temporary work, by contrast, was virtually buried by the British presidency in the second half of 2005, and European Commission President Barroso seems to have given up any idea of harmonising the rules in an area where unchecked competition can end up killing many workers each year.

Legislation in the EU

There are two components of Community health at work legislation. One is social legislation (i.e., all the Community instruments that deal with employment relations). The other is freedom of movement of goods. Other Community policies also play into health at work, but are outside the scope of this booklet (the Seveso Directive of 24 June 1982 replaced by the Seveso II Directive of 9 December 1996, and the Community rules on ionising radiation adopted under the Euratom Treaty, for instance).

Community social legislation got off to a slow and difficult start. The first programme specifically on occupational health came in 1977, and the first major directive in 1980 (first framework directive concerning chemical, physical and biological risks). The basis of current legislation was introduced into the Treaty in 1986, with the Single European Act. Article 118A provides for directives to be adopted by a qualified majority to harmonise the rules on the work environment. These directives lay down minimum requirements. That means that all member states must achieve at least these minimum objectives, but can maintain or introduce measures that ensure a higher level of protection for workers. The Amsterdam

Treaty incorporated article 118A in article 137 of the Treaty, and it is that article (118A now article 137) that is the basis on which the 1989 Framework Directive and a score of other directives were adopted.

Community legislation on internal market rules was put in place earlier. It was initially based on article 100 of the Treaty (which became article 94 with the Amsterdam Treaty). Since the Single European Act, it has been based mainly on article 100A (which became article 95 with the Amsterdam Treaty). This legislation covers three main areas:

1. **Rules on the marketing of chemicals**: the first directive in this field dates from 1967. Forty-odd directives and regulations have been adopted. They form a complex body of legislation that offers little effective protection for human health and the environment, and is poorly applied. The asbestos affair shows how the current system is not working. The European Union has had the legal power to ban asbestos since 1976 and plentiful scientific evidence to support a ban has been around for years. But it was not until 1999 that a directive (which came into force on 1 January 2005) placed a total ban on asbestos in the European Union. This is what has put an in-depth reform of this legislation at the top of the union movement's agenda. The draft REACH regulation currently in the pipeline is a crucially important reform to improve prevention of chemical risks in workplaces.
2. **Rules on work equipment**: the key directive here is the Machinery Directive 1989. A revision of the directive is under way, and set to be completed in late 2005-early 2006.
3. **Rules on personal protective equipment**: the main directive also dates from 1989.

All the internal market rules are designed to achieve full harmonization. What this means is that not only must member states in theory meet the objectives set, but also that they cannot keep in place or introduce rules that would give better protection of health or the environment. This full harmonization principle is qualified by some exceptions that allow states some latitude to invoke safeguard clauses and provide a higher level of protection than the Community rules. The work equipment and personal protective equipment directives only lay down fairly general essential safety requirements, which are filled out by technical standards drawn up by the European technical standards bodies (CEN and CENELEC).

One area where the European standards bodies fall down is in the minimal participation by trade unions, who speak for the end-users of the equipment. This is why both the national and European trade union movements invest in taking part in standards development work. At the European level, this takes place through the European Trade Union Confederation's specialized health and safety body: the Health and Safety Department of the European Trade Union Institute for Research, Education, Health and Safety (previously known as TUTB), whose work is partially funded by grants from the Commission. Active participation is important, because the standards also lay down how each product must perform in terms of health and safety at work.

• Implementation by statute or by agreement

All member states of the European Union have to carry over the rules adopted into their own legislation. They must deliver the objectives set by the directive through mandatory measures that are applicable to all the workers covered, and these measures must be backed up by effective, proportionate penalties. This is why directives are usually transposed through national legislation or regulations. Nevertheless, article 137 of the Treaty allows it to be done through collective agreements if they apply to all the workers that fall within the scope of the directives.

Member states' industrial relations systems differ widely. In some countries, compulsory collective agreements can be made applicable to all workers, with criminal penalties for a breach of its provisions. In other countries, collective agreements cannot be made generally applicable and there are no effective penalties for breach of their terms. Also, the time for which a collective agreement lasts can be uncertain if it can be unilaterally cancelled by one of the parties. Disputes over compliance with the provisions of directives implemented through agreements will be settled in the Nordic countries, for example, through industrial disputes procedures. Workers not covered by such agreements will have to bring their cases before the civil courts or get the National Working Environment Authority and public prosecution service to bring criminal proceedings against their employers.

Individual workers and employers are mainly covered by national legislation and collective agreements containing provisions that implement the rules of directives. Occasionally, cases heard in a national court will be referred to the European Court of Justice for a preliminary legal opinion. This happens where there is a prima facie conflict between the national legislation and the Community legislation. In such cases, the European Court of Justice will give a ruling on how the Community legislation is to be interpreted, and this will have to be followed by the member states' courts. Workers and trade unions would therefore do well to familiarize themselves with the actual provisions of a particular EU directive.

Collective agreements in Denmark

Some countries use both agreements and legislation to implement directives. Denmark's treatment of the EU Working Hours Directive is one such example of partial implementation by agreement. Some of the directive's provisions have been brought in through collective agreements – e.g., the collective agreement between the Central Organisation of Industrial Employees in Denmark and the Confederation of Danish Industries – while others are implemented in the Danish rules on rest periods and rest days. The Commission queried whether implementing the directive through collective agreements covered all the employees that fall within the directive. As a result, supplementary legislation was passed that guarantees the directive's rights to employees who do not come under the relevant collective agreements. Note, however, that the provisions of the collective agreements concerned may provide better rights than those laid down by the directive.

• Enforcement of EU health and safety at work rules

Because there are as yet no EU rules on how each member state is to enforce the Health and Safety at Work Directive's provisions, National Working Environment Authority inspections are mainly carried out in accordance with national rules. Member states are responsible for deciding what inspection visits, campaigns, instructions and orders to add to the directive provisions. International Labour Organisation Convention No. 81 is the main common benchmark for the operation of an

independent and effective labour inspectorate. Attempts to dilute the labour inspectorate mean that compliance with this Convention gives important safeguards to workers. The European trade union movement must work to get this Convention ratified by all European Union countries[17], and fight attempts to turn health and safety inspectors into a body of consultants who provide advice to employers and neglect their main job of policing the rules and penalising offences by employers.

• Legal control and follow up

Two types of legal control should be mentioned: national reports on implementation and the Commission's legal review of national implementation. Almost all the minimum harmonisation directives under the Framework Directive provide for an evaluation to be done on how the directive is being implemented in each country. The individual countries write these reports, which should describe how the directive is being applied in practice in each country. The member state must ensure that the social partners are consulted in this respect. The Commission makes an overall assessment based on these country reports, and may recommend new legislative measures. The European Trade Union Confederation can influence the Commission's recommendations. The trade unions can make statements in the Advisory Committee on Safety, Hygiene and Health Protection at Work, which must be addressed by the Commission.

In 2004, for instance, the Commission published an evaluation report on the practical implementation of Framework Directive 89/391 and five individual directives (89/654, 89/655, 89/656, 90/269, 90/270). The report points out that organised employee representation in health and safety is more of a disadvantage than an advantage to health and safety at work, because it makes employees less inclined to participate actively in it. In its statement on the evaluation report, the European Trade Union Confederation objected to this claim, because there is no evidence for it. The Commission must give a decision on the ETUC's objections and at least be able to substantiate the reason for any recommendation to abolish the obligation to organise health and safety activities. This is one way the trade union movement can influence the Commission's recommendations.

• Sanctions available to the Commission

The Commission checks whether legislation has been implemented correctly. If it finds that it has not – and examples abound – it institutes legal proceedings, preparing a case against the individual member state. The steps in this procedure are:

- Preliminary inquiry
- Letter of formal notice
- Reasoned opinion
- Proceedings for failure to fulfil an obligation brought in the European Court of Justice (ECJ)
- Judgement by the ECJ
- Fine.

[17] In October 2005, two European Union countries – the Czech Republic and Slovakia – had still not ratified Convention 81.

Some proceedings are brought because companies or individuals complain about parts of legislation. The EU receives and considers very many complaints that do not result in legal action being taken against the member state. If closer examination is warranted, the Commission may submit a preliminary inquiry, which the member state then answers. In some cases, member states have "forgotten" to inform the EU that a directive has been implemented. The most important result, therefore, is that a threat of legal action may cause the member state to respond as early as the letter of formal notice.

Framework Directive up before ECJ

In 2001-2002, the European Court of Justice (ECJ) handed down rulings in the first two sets of non-compliance proceedings on the 1989 Framework Directive. In both cases, the Court held that the states concerned – Italy and Germany – had failed to transpose the Framework Directive properly.

The ECJ handed down its ruling in case C-49/00, Commission v Italy on 15 November 2001, upholding the three grounds of complaint put forward by the Commission, namely:

1. The risk assessment provision of Italian legislation refers to a specified set of risks. It does not make it clear that this list is indicative, and that all risks must be evaluated by the employer. The Court held that member states must require employers to carry out a risk assessment of all sources of risks in the workplace.
2. The Italian legislation did not make it compulsory to enlist external prevention services where the skills available within the undertaking were insufficient.
3. The Italian legislation did not define the capabilities and aptitudes that the workers appointed to form the company prevention services must possess, nor the external expertise. It left employers too much discretion.

Interestingly, it is not only the Italian transposing legislation that falls down on points two and three – enlisting external prevention services and the capabilities of internal prevention service personnel – other countries (the United Kingdom and Ireland in particular) have brought in very similar rules to the Italian legislation so as to leave employers wide discretion in the choice of what preventive services to establish.

The ECJ handed down its ruling in the proceedings against Germany on 7 February 2002. The Commission's view was that by exempting employers of 10 or fewer workers from the duty to keep documents containing the results of a risk assessment, the German legislation had not properly transposed the Framework Directive.

The Commission's arguments focused on three issues:

1. The need for a written risk assessment regardless of the size of the firm.
2. The employer's obligations as regards risk assessments.
3. The method of transposition used in Germany, where some of the Framework Directive's obligations were laid down in compulsory regulations made by the *Berufgenossenschaften* (statutory work accident insurance institutions).

The ECJ found in the Commission's favour on the first point. All firms must have a written risk assessment statement. The German legislation exempting small firms is in breach of the directive. But it considered that the Commission had not brought proof on the two other points. Here, too, the scope of the judgement reaches beyond the facts of the German case alone. Legislation in other countries allows groups of employers to evade their obligation to be in possession of a written risk assessment.

These two judgements were the first cases in which the ECJ had found member states guilty of non-compliant transposition of the Health at Work Directives in cases other than complete failure to transpose. The Commission's job, of course, is to ensure that member states give full application to the directives. The Commission should be better-resourced if it is to be an effective watchdog not just on the transposition, but also the practical application, of the directives.

European social dialogue in OSH

The expression "social dialogue" covers different processes. It may refer to trade unions and employers' organizations (the "social partners") being consulted before legislation is adopted. The EU Treaty also allows the

social partners, when consulted on a draft directive, to decide that they will work the final text out between them. Or trade unions and employers' organisations can enter into autonomous negotiations to conclude a European agreement. The social dialogue on health and safety issues is long-established at EU level. In many cases, it forms part of the EU's legislative process. Social partner consultation in the Luxembourg-based Advisory Committee and the Bilbao Agency is a significant part of what those institutions do. The ETUC and UNICE[18] act as coordinators. Where autonomous social negotiations are concerned, the ETUC and UNICE set the agenda for multi-annual joint programmes, some of which include new topics in the health and safety field.

1985-2005: twenty years of social dialogue between European employers' organisations and trade unions

Between 1985 and 2005, the European social partners concluded over 40 joint texts at cross-sector level. Specific agreements include those on parental leave (1995), part-time work (1997) and fixed-term contracts (1999), all of which have been implemented by Council decisions in the form of directives.

Recent years have seen "new generation" texts come into being. These are implemented and monitored by the social partners rather than by EU institutions. They include the framework of actions for the lifelong development of competencies and qualifications, concluded in March 2002 and the framework of actions on gender equality, concluded in March 2005.

The social partners have also concluded autonomous agreements, independent of any consultation by the Commission. The first of these was an agreement on telework, concluded in July 2002, followed by an agreement on work-related stress, concluded in October 2004.

The EU social partners are currently preparing a new joint multi-annual work programme to replace the current three-year programme, which expires at the end of 2005. The new programme will cover 2006, 2007 and 2008 and is expected to be finalised by the end of 2005.

European level instruments include the cross-sector agreements acknowledged as directives by the Council. What sets these directives apart is that the Council has no obligation to consult Parliament before adopting a proposal at the social partners' request:

- Agreement on parental leave (Council Directive 96/34/EC).
- Agreement on part-time work (Council Directive 97/81/EC).
- Agreement on fixed-term work (Council Directive 1999/70/EC).

The agreements with a non-legislative nature, where the social partners have responsibility for harmonisation are:

- Framework agreement on telework (16/07/2002).
- Agreement on stress (2004).

Sectoral level agreements are concluded by the European social partners for such industries as building and transport, or the hospital sector.

At the **workplace level,** various directives lay down basic consultation rights:

- Directive 94/45/EC on European Work Councils[19].
- Directive 2002/14/EC laying down a general framework for information and consultation, in companies with more than 20 or more than 50 workers[20].

[18] See: www.unice.org.

[19] http://europa.eu.int/comm/employment_social/labour_law/directive9445/9445euen.htm.

[20] http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_080/l_08020020323en00290033.pdf.

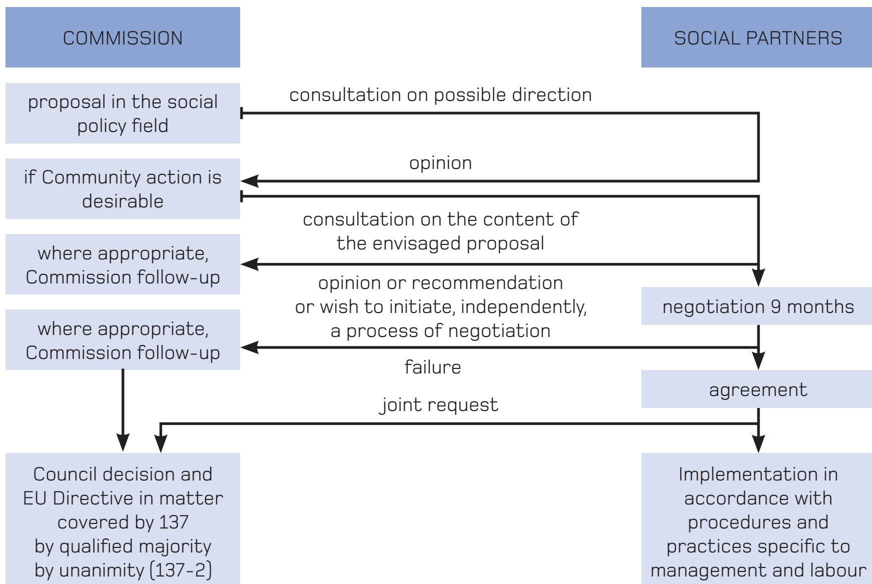
- Directive 2001/86/EC on the European company[21].
- Specific topics: collective redundancies, transfers and health and safety (Framework Directive 89/391/EEC).

The European social partners have adopted a work programme for the social dialogue for 2003-2005 in an attempt to further strengthen the autonomous social dialogue[22]. They addressed a number of issues of common concern (including OSH-related issues) and made use of a wide variety of instruments available to them. The diagram below illustrates an important feature of the social dialogue at EU level. This approach is known as "double consultation", and can be summed up as follows: when the Commission submits a proposal in the area of social policy, the social partners at the European level need to be consulted. This is a requirement of articles 138 and 139 of the Treaty. The main partners are the ETUC and UNICE – the European trade union and private employers' confederations, respectively – and CEEP is the employers' organisation in the public area.

In the first round of consultations, the Commission consults the partners on the general policy emphasis and initiatives to be followed. This takes place before the Commission submits an actual proposal. If this consultation leads to a Commission decision to submit a proposal, the partners are again consulted, this time about the contents of the proposal. The partners submit an opinion or a recommendation to the Commission, e.g., if they would prefer to negotiate an agreement in the area concerned. If the partners succeed in concluding an agreement, two options are open. The agreement may be enshrined in a Council decision, i.e., turned into a directive, or administered by the partners. The diagram below shows the results of the negotiations and concluded agreements.

[21] http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_294/l_29420011110en00220032.pdf.

[22] See also in www.etuc.org.



From EU directive to national rules

Once a directive has been adopted, it must be implemented in national legislation within a given time limit. Traditions, rules and acts governing such implementation vary from country to country.

Denmark: tripartite procedure for the implementation of directives

In Denmark, implementation takes place through a formalised procedure. Assisted by the National Working Environment Authority, the Ministry of Employment draws up a draft executive order outlining how a new directive could be implemented. The Working Environment Council, in which the social partners have equal representation, then considers the draft. The Council decides whether to appoint a special rules committee to consider how the social partners will influence the rule-making work.

The National Working Environment Authority draws up a parallel statement that goes through the text of the directive article by article, arguing how it should be implemented in Danish legislation or is already covered by existing statutory provisions. Only rarely will implementation take place through a single executive order. The implementation of a directive usually impacts on many areas of legislation.

Meetings of the rules committees may produce full or partial agreement between the parties on how to frame the executive order. The work ends with a recommendation for the Minister, summarising the points of agreement and disagreement. The Minister for Employment then has the power to give the executive order its final wording.

If the directive calls for an amendment to an Act, the proposed amendment is read in the Danish parliament. First, however, the Working Environment Council gives its recommendation to the Minister through almost the same procedure as for amending an executive order. The parties in parliament's labour market committee then negotiate the bill before a political majority passes it.

The influence of the Working Environment Council, and hence the social partners, on the formation of rules in the Health and Safety at Work Act is laid down in section 66(3) of the Act.

Some directives may be implemented by labour market agreements. If so, this will appear from the text of the directive.

When a directive has been implemented, the ministry must inform the Commission that the procedure has been completed and how it has been completed. In principle, the Commission may raise objections.

Where does the trade union movement have influence?

In theory, the trade union movement can influence all stages of the EU legislative process – from the initial stage through the formal process to implementation and legal control. Influence can be both formal and informal. In the initial stage, the trade union movement helps set the agenda. Workplace representatives, local and central trade unions regularly take part in debates on emerging health and safety at work issues. General health and safety at work or specific case studies serve as inspiration. The agenda can be set at all levels of the trade union movement.

Health and safety at work problems arise throughout Europe, and union representatives from the various member states can jointly take many initiatives. The European Trade Union Confederation is a central arena for this cooperation. This is where pan-European union representatives routinely try to influence the Commission and other EU bodies directly to initiate an EU legislative process going in the right direction.

National governments and parliaments consider Commission proposals, and some countries have one or more special EU committees to discuss them. Trade unions typically sit on these committees. This ensures

that representatives of the trade union movement gain insight into and an influence on matters in the EU pipeline. Ministry officials present a first proposal in the special committee on how to deal with a new EU draft directive from the national viewpoint. The special committee is also tasked with making recommendations to the government on negotiating briefs for the officials responsible for negotiating directives with the other member states' governments. In some countries, the government has appointed a Europe committee to scrutinise all draft directives. Ministers are given negotiating briefs to negotiate national positions. Information is also received on a range of other EU matters.

Union representation in Brussels is a stepping-stone for further cooperation with other unions, contacts with officials, MEPs, etc. The European Trade Union Confederation lays down the policy framework for further influence. It has a right to be consulted on EU initiatives in a large number of areas, and negotiates directly with the European employers' organisations on EU initiatives. The ETUC was set up in 1973 to provide workers with a joint platform in the European Economic Community. Today, it consists of 76 national trade union federations from 36 countries. Its executive committee meets four times a year, and the member organisations discuss common positions and frame mandates for their representatives in current EU matters. After the adoption of the Framework Directive, the ETUC decided to set up the European Trade Union Technical Bureau in order to improve trade union intervention in health and safety matters. The TUTB has now become the Health and Safety Department (HESA) of new ETUC Institute, ETUI-REHS.

The HESA Department: a tool for the trade unions

Marc Sapir: "An institute in the bridge-building business"

On 1 April 2005, the TUTB became the Health and Safety Department of the European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS) following the merger of the European Trade Union Confederation's three trade union institutes. The founder and Director of the TUTB, Marc Sapir, is now the new institute's Managing Director, but keeps his place at the helm of the department tasked with monitoring European health and safety at work policies. We look at the new institute, its challenges and its ambitions, and talk to the man in charge.

How can the new institute argue for workers with the present gloomy outlook for Europe, especially on the social front?

The key player there is still the ETUC and its member organizations. But the new institute can step into the debate by helping unions to pull their strategies and objectives together, by working out the tools needed for trade union development. Building a social Europe depends on what the workers can do to act. We can help them build the bridge, but they have to cross it themselves.

Is there a danger of the influence and specific message of the old TUTB getting watered down in this new set-up?

I'm not worried about that for two good reasons. One is the specific expertise of the staff, which enables them to come at European issues from both a social and technical angle. The staff are still on board and still working on health and safety at work issues.

The other is the recognition gained at both European and national level of workers' right to representation in health and safety. That right has been won

after a long struggle by workers to prevent their health and safety being dictated by market forces, and is a fundamental framework that I don't see as directly under threat, although the spread of job insecurity is making it harder to exercise.

The choice was made to frame some aspects of health and safety policy at Community level. To ensure dialogue between the European and national levels, you have to be able to bring different disciplines, experiences and expertise face to face. This is a multidisciplinary job, that needs people with scientific knowledge who can also translate workers' demands into technical health and safety at work terms.

You established the TUTB in 1989 and headed it for over fifteen years. What's your view, looking back?

The TUTB was set up fifteen years ago to support the trade unions in the European process of laying down rules, technical standards and legislation on safety and health protection. (...) I have to say that building up a common technical prevention culture is a very slow job. It's no easy thing to be involved in building a technical consensus because trade union participation in the process is extremely limited and difficult.

That is why we have gradually shifted our focus to more specific projects, and developed model schemes, but always with a structural, medium-term approach of trying to influence the way work is done at European level on issues that affect workers' safety and health. We tried to develop an approach with trade unions, obviously, but also with other players at national level. We have widened the field of partners.

The TUTB experience remains a one-off anywhere. This kind of attempt by trade union experts to influence the design of work technologies and equipment is not found anywhere else in the world. I believe we still have a lot to learn from it. Linkages have to be created between plant-level knowledge and European work if European integration is not just to be a managerial tick-box exercise, or one that aims only to guarantee the smooth running of the market. The concept of a workers' expert means two things to us. It is about the commitment of our staff, who don't confuse technical and scientific expertise with fence-sitting. Also, when setting our priorities and in our working methods, the collective experience of workers and their trade unions is both an indispensable source of knowledge, and the main benchmark for what we do.

We did major pioneering work on the OSH regulations front, producing the first reports on the practical implementation of the directives. The TUTB was the first to produce reports and call the Commission to account over where certain instruments fell short, always taking care to feed the practical problems encountered by workers in the workplace back up to the European institutions. This is something we have to do, and is central in a trade union approach. The linkage between the European and national levels was always an abiding concern for the TUTB.

From an Interview by **Denis Grégoire**, published in *HESA Newsletter* No. 27, June 2005

Finally, the trade union movement can influence the European debate on health and safety at work, as well as relevant directives and proposals, through its representation in the European Economic and Social Committee (EESC). Union representatives sit on the employees' group – one of the ESC's three groups. The other two are the employers' group and the so-called third group in which various other interests are represented – from agriculture and crafts to consumer and other voluntary organisations. The EESC gives advice to the Council and Parliament drawn from its members' close contact with the citizens of the EU through their organisations' activities. Once adopted, a directive is implemented into national legislation. A drafting committee is typically appointed, on which the trade unions sit. The trade union movement has also taken part in the practical evaluation of how the directives will work.

Refer matters to the Court of Justice more regularly

Community directives are often not fully and properly carried over into national legislation. In theory, the Commission should bring non-compliance proceedings in such cases. In practice, the Commission's control procedures are quite slow and do not enable action to be taken against all breaches. As a result, Court of Justice proceedings have still not been taken against the blatant breaches of some States more than ten years after the date on which directives should have been transposed.

The Court of Justice can also give preliminary rulings on issues. This procedure has produced the largest body of social/employment case law, and done most to influence positive developments, especially on gender equality issues. At present, it is the only avenue open to private individuals, and so trade unions (article 234 EC, former article 177 of the EC Treaty). A reference can be made to the ECJ when a case before a national court involves a rule of Community legislation that must be interpreted before the national court can adjudicate.

The preliminary rule gives the referring court the essentials of an interpretation of Community legislation on which to judge the case in accordance with the rule that Community law takes precedence, and so a rule of national law that conflicts with Community legislation must be overruled. Where health and safety is concerned, referrals for preliminary rulings have led to an improved application of certain directives. The main ones concerned are the Working Time Directive, and a number of cases on the Display Screen Equipments (VDU) and Pregnant Workers Directives. But referrals for preliminary rulings are not widely used. Trade unions would be well-advised to work out a strategy of making more regular use of referrals for preliminary rulings in health at work cases.

3. Fundamental principles of Community safety and health law

Everywhere across Europe, health and safety was the first field to be covered by industrial legislation. A body of health and safety law that clearly spells out employers' preventive obligations is central element to our social model. The key principles of Community OSH law are based on:
- prevention;
- an order of precedence of prevention measures;
- employers' responsibility;
- social dialogue and participation of employees;
- continuous improvement; and
- multidisciplinary preventive services with holistic approach to work.

The Framework Directive 1989: the benchmark

The Framework Directive 1989 lays down the principles that underlie all Community occupational health legislation. The Framework Directive enshrines some of the gains achieved in the 1970s when working conditions were at the top of organized labour's agenda. From Italy to the Scandinavian countries, a number of common strands can be picked out: opposition to repetitive work, speeded-up work paces, a division of labour that denies unskilled workers any say in the organization of their work, demands for wellbeing and dignity that go far beyond just preventing work injuries, the desire of workers for control of the productive forces, and especially to exercise control over technological changes and the social choices that go with them, etc.

The big developments taken up to at least some extent in the Framework Directive 1989 include:
- shifting the focus from financial compensation for work-related health damage to prevention ("health isn't for sale");
- changing the focus from the individual to the collective conditions that shape health ("workers aren't unhealthy, workplaces are");
- shifting from a technical approach where rules devised by specialists dictate health and safety to a socio-technical approach where workers stop being the object and become the main subject of prevention ("workers know most about their own working conditions");
- the requirement for all workers to have the same occupational health legislation cover regardless of their status. That was a breakthrough in

many countries where existing rules created wide disparities between public and private sector workers and in some cases excluded whole categories of workers (in agriculture, fishing, family businesses, co-operatives, religious foundations, etc.) or subjected them to "lowest common denominator" rules. Only domestic servants fall outside the Framework Directive;
- the very broad scope of prevention, defined as all factors that may affect health, including monotonous and repetitive work and workplace labour relations;
- laying down a general duty to ensure safety as an absolute obligation, combined with quite detailed requirements as to the means to be used (prevention plans, risk assessment, setting up preventive services, employee representatives).

Further reading

- David Walters, *Regulating health and safety management in the European Union: a study of the dynamics of change*, Brussels, P.I.E.-Peter Lang, 2002.

A structured analysis of how the Framework Directive was framed and transposed in the 15 member states between 1989 and 1998 was done by the TUTB:

- Laurent Vogel, *Prevention at the workplace*, 1994 and 1998. See: http://hesa.etui-rehs.org/uk/publications/pub16.htm and http://hesa.etui-rehs.org/uk/publications/pub17.htm

Individual health and safety at work directives

Different risk factors and categories of workers are covered in nearly a score of individual directives. Whether a directive was needed was in most cases determined by the scale or severity of the risks involved (e.g., carcinogens, biological risks), or the numbers of workers exposed (e.g., noise, work on display screen equipments, manual handling of loads, pregnant workers, etc.). None of these directives can be properly applied unless the fundamental principles of the Framework Directive have been correctly implemented, because these principles are what can bring overall consistency to the workplace prevention system. Most of these are individual directives under the Framework Directive. There are a handful of "independent" directives not directly linked with the Framework Directive covering the following issues: working time, workers with a fixed-duration employment relationship or a temporary employment relationship, young workers and the protection of workers exposed to asbestos. The figure below illustrates areas covered to date.

The two circles of a prevention system

National prevention systems can be described as sets formed by two circles. The first circle is workplaces in which a range of players is involved. The second circle is the sphere outside workplaces, populated by a set of public, social and organizational players. This second circle is critically important. This is because levels of prevention in workplaces can be very unequal for a range of reasons: employer unwillingness, lack of resources or knowledge, no trade union presence, etc. In such cases, only the existence of a sphere outside the workplace can guarantee the

Current Community health and safety directives

89/391/EEC – Framework Directive
on the introduction of measures to encourage improvements in the safety and health of workers at work

Using of the work equipment
89/655/EEC
95/63/EC
2001/45/EC
Work Equipment

Specific group of workers
92/85/EEC
Pregnant and breastfeeding workers and workers who have recently given birth

Specific activities
90/269/EEC
Manual Handling of Loads
90/270/EEC
Display Screen Equipment
92/91/EEC
Drilling

Personal protection
89/656/EEC
93/68/EEC
93/95/EEC
96/58/EC
Personal Protective Equipment

Workplace
89/654/EEC
Workplace
92/57/EEC
Temporary/Mobile Construction Sites
92/58/EEC
Safety and/or Health Signs
92/104/EEC
Surface and Underground Mineral-extracting Industries
93/103/EC
Fishing Vessels
1999/92/EC
Explosive Atmospheres

Exposure to agents
90/394/EEC
97/42/EC
99/38/EC
2004/37/EC
Carcinogens
1990/679/EEC
2000/54/EC
Biological Agents
98/24/EC
Chemical Agents → **2000/39/EC** Indicative occupational exposure limit values
2002/44/EC
Vibrations
2003/10/EC
Noise
2004/40/EC
Electromagnetic Fields
Optical radiation (adoption in 2006)

OSH directives which are not directly under Framework Directive 89/391/EEC

same level of protection for workers. The second circle covers a set of functions like rule-making, policing and enforcement of contraventions, research, information, training, etc. Let us now turn more specifically to three basic components of the first circle of prevention, i.e., the policy and structures put in place in firms.

Worker participation

In the 1970s, one key plank of trade union demands was for workers to have a bigger say in determining their working conditions. This was based on findings that:

- Beyond prevention in the narrow sense, any change in work technologies or organization can have far-reaching consequences for occupational health. The labour struggles of the 1970s underscored how closely connected were humanisation of work, democracy at work and workers' control of technological changes both in terms of technical choices and their accompanying work-related choices.
- Traditional workplace prevention policies often fail because they take only a technical and medical approach to occupational health, they work from recognized and insured health outcomes (work injuries, occupational diseases) and disregard major aspects of health at work.
- Healthier workplaces cannot be developed just by following rules dictated by specialists. Unless all those concerned are actively engaged, with guaranteed scope for expressing their health problems and needs, prevention is often just about covering employers' backs (e.g., personal protective equipment that is unsuitable or is a permanent reminder of

New EU member states and candidate countries

- **Worker participation**

In most new EU member states, different historical backgrounds created big obstacles to worker participation and trade union preventive activities. Close cooperation with the old authoritarian regimes, and the limited scope of the social dialogue, continue to play negatively into public opinion and hold back potential trade union membership. Changes to the political and economic ground rules in the early 1990s left little room for health and safety. It was a neglected field, considered as a brake on business. Legislation was slow to change to fit in with the new economic environment, while preventive and occupational health services partly collapsed. In the last decade, too, the social dialogue was not a priority in the new accession countries.

- **Worker representation in health and safety**

Although the harmonised legislation does not create obstacles to workers' reps, and almost all the rights laid down in the Framework Directive have been carried over into countries' national legislation, the situation regarding worker representation in OSH is not bright in either the new accession or candidate countries. There are several reasons why.

In most of the new and candidate countries, almost all OSH reps belong to trade unions. Small and medium-sized firms tend not to be unionised or have workers reps. Employers are not keen on developing safety rep systems, and pay little attention to developing the social dialogue on health and safety.

The density of reps therefore reflects the broader situation of trade unions in these countries – on average fewer than 50% of workers have a rep. Some countries have no estimates of the number of reps or coverage of workers by reps. Information is also lacking on the activities of non-union reps, if any exist. All these gaps in the data make it very difficult to come to any worthwhile analysis of the state of affairs.

It is also important that health and safety issues should be given equal weight on the trade union agenda with other key issues like wages and working time.

the risk may not be worn, but offers a way of passing the buck to the workers).

- Only through active participation can workers get an upper hand when decisions come to be made.

Trade union estimates for workforce coverage by OSH reps in some new EU member states and candidate countries

	Coverage of workforce by OSH reps	Unionised reps
Bulgaria	49%	80%
Croatia	65%	70%
Czech Republic	30%	100%
Estonia	90%	50%
Hungary	20%	65%
Latvia	Not quantifiable	95%
Poland	14%	Mostly TU
Romania	50%	95%
Slovakia	40%	70%
Slovenia	100% except small firms	90%

Participation is both a necessity (without it, prevention policies are less effective) and a right. It is one side of a triangle of three integral parts: the technico-medical input of preventive services; the legislative and regulatory pressure that sets a basic framework for working conditions; and participation as collective action by workers to maintain their health and as a clash of argument with the other actors present in the workplace. Participation is not about consensus-building. It is a permanent clash of sharply differing and often opposing subjective assessments and interests. It would be nonsensical to see participation as meaning an end to contention. Participation involves the right to organize (in trade unions) and the freedom to take collective action in the various ways that characterize action by organized labour (right of assembly, right to strike, etc.).

Evidence collected from several countries points to a very strong linkage between the existence of worker representation and the establishment of a prevention system in the workplace. So, in Spain, a survey of the most accident-prone workplaces found that of the firms that had taken no preventive activities, 76.2% had no prevention reps, while among the firms that had taken all the preventive activities covered by the survey, 76% had prevention reps. In Italy, the survey done by the Regional Coordination Agency found the same direct link between the existence of worker representation in the workplace and the standard of company prevention policy.

Participation is also a skill for trade union teams, who must learn to take on board the views and needs of the different groups of workers, to be informed by their experience. A purely institutional approach limited, for example, to health and safety committee meetings, can drain all the substance out of participation. At least three things are needed to achieve proficiency in this skill:

- enough training and information;
- the ability to act independently so as to work from workers' needs and

priorities and to reality-check them against the technical knowledge of prevention experts and the employer's policy;
- the ability to link the fight for health at work with the other aspects of working life.

The mechanics of participation vary immensely between countries. There are vast differences between industrial relations systems, trade union traditions, legislation, and so on, for instance. Generally, the Community directives do not lay down the practicalities of participation but simply the principles and essential elements. Obviously, it must be borne in mind that in many cases, the reality is more complex than typologies, and that different forms may exist alongside one another.

The different methods of worker participation

1. **Information**: the minimum requirement set by the Community directives. There can be no participation without equal information. It is important to develop workplace-, group- or industry-wide information pooling systems in order to avoid being given purely token information on whatever "available data" the employer is prepared to disclose. How can the choice of work equipment be discussed unless workers and their representatives have access to detailed data on the pros and cons of the different equipment available on the market, for example? A real right to information involves the right to consult experts (chosen by trade unions) to check or analyse the information given.

2. **Consultation**: consultation means that the views of workers and their representatives must be taken into account before a decision is reached. It does not mean that the employer does not have the final say, but to be effective, it means that where there is disagreement, the employer must argue his case and say expressly why he is disregarding the workers' opinion. The papers relating to the consultation should always be kept, and avenues of appeal (e.g., to the labour inspectorate) should be considered.

3. **Negotiation**: this means all the procedures that end up with the parties entering into specific agreements.

4. **Co-decision**: this is the different arrangements under which joint decision-making bodies are set up. No decision can be taken unilaterally. Procedures should be defined for referral to other bodies (e.g., labour inspectorate, joint industrial councils, etc.) where matters are deadlocked.

5. **Workers' control**: this relates to areas in which the decisions are taken by the workers and their representatives. This is rarely found other than in periods of large-scale labour action, since it attacks the very foundations of the social division of labour and the employer's power. Some EU States, however, do give workers' representatives a right to take unilateral decisions in specific matters in certain conditions. Belgium is a case in point, where workers' representatives can force the removal of an external prevention consultant who has lost the confidence of the workforce.

6. **The direct, informal participation trap**. In many cases, employers oppose legally-regulated worker participation and advocate direct, informal participation. By this, they mean forms of participation by individuals, groups (e.g., quality circles) or, sometimes, by a sort of referendum (e.g., asking workers to vote to give up vested benefits under the threat of relocation offshore). Experience teaches us that direct participation without a consultative body, without the existence of specific rights to be informed or consulted, and where there is no trade union, is generally an attempt to force the workers into a discussion on terms and limits set by the employer with the aim of creating a consensus around company management's aims and preventing the workers' specific interests from being given recognition.

Preventive services

The Framework Directive deals with preventive services in article 7. Its wording is quite complicated. It lays down a series of obligations, but gives member states a big part in defining them. It also sets out a number of fundamental principles as guidance for the member states. The concept

of prevention, and what preventive services are meant to do, cannot be defined in a coherent way without referring back to article 6 of the Directive. This makes clear that prevention is a set of multidisciplinary activities that form a coherent whole and must address all the factors that can affect health and safety.

The state of play on preventive services in the European Union is less than satisfactory. Any evaluation must be done against at least four criteria:

- universal coverage: all workers must have access to preventive services;
- multidisciplinary approach: the services must have different areas of expertise and preventive action must normally involve cooperation between these areas of expertise so as to ensure an overall approach to the work. The Framework Directive says that it is the job of the public authorities in each state to define the necessary capabilities and aptitudes, and that this decision must not be left to the employer's discretion;
- the preventive approach must be in line with the order of precedence of preventive measures. The main job of preventive services is to achieve improvements in collective working conditions;
- effective participation by workers and their organizations in preventive service activities.

No EU state meets all these criteria in practice as things stand. Some countries have made advances, but in others there has been little real progress, while elsewhere, things have actually got worse. The multidisciplinary nature of preventive services reflects the wide range and complexity of prevention tasks laid down by article 6 of the Framework Directive. Based on what has happened in countries where multidisciplinary services are up and running, it would seem that in discharging their article 7 duty of defining the necessary capabilities and aptitudes, member states should consider that, to be properly competent, a preventive service should have experts in the following fields working together:

- occupational health;
- safety;
- industrial hygiene and toxicology;
- ergonomics;
- psychosocial environment and work organization.

Cooperation between different areas of expertise does not mean that all the experts concerned need to be involved in every prevention activity. There is a difference to be made here between preventive services as a permanent organization working for prevention, and the actual content of preventive service activities, which will be multidisciplinary to differing degrees, according to the practical circumstances. Measures must be laid down to ensure that preventive services are of an appropriate standard. Here, approval by the competent authorities may be very useful. It is vital for trade unions to have a hand in framing quality standards and evaluation procedures. Regular evaluation of existing schemes and research to identify unmet needs should be part of national policy on preventive services.

Are the Dutch preventive services a real asset for prevention?

For a number of years now, the Dutch Ministry of Social Affairs has been publishing an "Arbobalans" monitoring report on different aspects of preventive provision and some performance indicators for occupational health. Material progress has been made on some indicators (especially the number of workers covered by preventive services), but other findings are much more disturbing. Prevention is mainly geared to cutting sickness absences. It gives no thought to long-term health issues, and opts for immediate individual or technical solutions rather than changes to work organization.

The focus of preventive service activities should be prevention. In some countries, national practices or regulations mean that they also carry out remedial activities, but then these should be directed to enabling preventive measures to be brought in by working back to the root causes of the disorders handled. Prevention activity must enjoy the guaranteed professional independence that will enable preventive service personnel to give advice to employers and workers alike. There must be guaranteed compliance with internationally recognized professional codes as reflected in the "International Code of Ethics for Occupational Health Professionals" in particular. Among other things, this means that services must not be used to check up on absences from work, nor must their activities be used for pre-employment health screening. In particular, any use of pre-employment genetic screening for exposure to certain risks should be outlawed.

Too often, multidisciplinary preventive service activities are bitty and run along commercial lines. The effectiveness of what they do will depend on the demand from business, and experience gained in a specific workplace is seldom put to work to improve prevention in other firms. That kind of approach seriously holds back prevention. Preventive services fulfil a public health brief that is at odds with the existence of a business demand-driven, competitive market in private services. The linkage between public prevention policies and preventive services must be strengthened. And there should be public support for preventive services, which could take a wide variety of forms according to each country's circumstances.

The functions that should be promoted could include:

- the pooling of experiences and solutions, and setting up easily-accessible databases and information systems to aid problem-solving on the basis of practices already tested-out in some workplaces;
- research on experiences developed and based on the identification of unmet needs;
- continuing professional training for all prevention specialists to keep their skills up to par;
- quality control of preventive services to avoid the creation of a market in substandard services;
- safeguarding the independence of prevention operators against employer pressure;
- better integration of preventive services into public health provision (epidemiological research, using health surveillance data produced by preventive services for early intervention, in particular as regards banning or restricting the use of dangerous chemicals, etc.).

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The employer's obligations in health and safety

One of the big improvements made by the Framework Directive is to clarify the roles of the different actors in (or contractually linked to) the firm and to spell out the relations between them. The Framework Directive sets out both the outcome to be achieved (the employer's duty to ensure safety) and key ways by which to achieve it. There is no question about the outcome to be achieved. Working conditions must not be harmful to health. There are no limitations on these obligations (other than cases of acts of God as defined in Article 5.4). Community law has dropped the "reasonably practicable" requirement laid down in previous industrial hygiene directives (mainly the Framework Directive 1980 on the risks of chemical, physical and biological agents). The danger of that was to subject prevention activities to a sort of cost-benefit calculation to establish their economic value. Also, article 6 of the Framework Directive gives some idea of the wide field of issues relevant to occupational health. The safety obligation is not limited to just avoiding work accidents, but involves acting on all the factors that have a short- or long-term effect on health.

This makes it a dynamic safety obligation directed towards ongoing improvements in working conditions, rather than a static one, defined by the absence of work accidents or occupational diseases. The employer must take account of "developments in the state of the art" and consult the workers to enable them to put forward proposals. The Chemical Agents Directive 1998 also contains major provisions on health surveillance, the results of which are to be used in revising the risk assessments and preventive measures adopted.

The guidance on methods is also important: setting an order of precedence of preventive measures, the concept of systematically planned prevention activities, and the use of risk assessment, for instance. There are also fairly general provisions on the preventive services that all employers must set up, and on participation in prevention activities by workers and their organizations.

In practice, health and safety have been found not to be overriding concerns for employers. In some areas and in some conditions, it may be genuinely in the employers' interest to improve working conditions and avoid damage to health. But not as a general rule. The profit motive often seriously eclipses health and safety issues. The evidence of nearly two centuries is that advances in prevention depend chiefly on three things:

- concerted action by workers and trade unions;
- setting a specific, binding legislative framework for employers;
- properly working control, inspection and penalty systems by which for the public authorities to enforce employers' compliance with the rules.

The employer's duty to ensure safe working conditions stems from the finding that work-related ill-health is not caused by misfortune, horrid inevitability or individual forms of behaviour. It is to do with the employer's power to specify how work should be organized, thereby imposing specific working conditions on workers. The employer's duty of safety is connected to the idea of planned prevention and the order of precedence of preventive measures. The idea is to eliminate risks at source wherever possible, anticipate potential risks, tackle them preventively, and periodically review the preventive measures put in place in the light of experience. It has been found that two big obstacles need to be overcome for this duty to be carried out in practice.

The "side-car effect"

This where preventive measures are treated as just sticking-plaster solutions to limit the adverse effects of work organization, and generally left to technical specialists. Here, prevention requirements are not made an integral part of business policy choices. Work organization, the choice of equipment and substances, and business planning are set with no real evaluation of their impact on the present or future health of workers. Technical measures are taken only after-the-event to compensate for the harm done by the company's policy decisions. In most cases, these technical prevention measures are unable to eliminate risks at source, and are variably successful attempts at damage limitation. The twisted logic of this approach can in some cases result in workers being blamed for bringing the health damage on themselves by their own behaviour.

Prevention dictated by other general business management objectives

One alternative sometimes advanced is that of putting in place a management system where occupational health forms part of a broader array of objectives (e.g., quality or environmental). While there is no doubting the need for systematic occupational health management, we must get away from some things that muddy the waters.

1. Occupational health is an end in itself and must not become a simple dependent variable of company profit levels. This is the danger created by awareness-building campaigns that confuse health protection with profit-making, productivity or competitiveness, when what is actually needed is to insist on the need to preserve workers' health, even where that means lower productivity or profits.
2. Occupational health may be at odds with other objectives (profit, quality, etc.). A management that includes an unconnected set of objectives may select occupational health objectives that square readily with the other objectives, and discard those that might clash with them.

3. Management systems tend to be designed as top-down command and control systems. Top management frames its own objectives, organizes the business so as to achieve them, evaluates and checks results, etc. Management systems are apt to bring in all the players in the firm, to get all of them behind the roll-out of a prevention programme devised by company management. This is a dangerous form of integrationism, which may aim to cut trade unions, and the mechanisms of the industrial relations system where they have a big presence, completely out of the loop; or it may aim to reduce trade union autonomy under the guise of a consensus around a "safety culture". It is vital to preserve workers' collective autonomy at all stages of preventive action, for that is what will bring to light and give visibility to new and disregarded problems. That is also what will enable health-promoting actions to be taken that on the surface run counter to company production requirements or the management chain. Finally, it is that which can lift problems out of the workplace setting and drive the policy debate on the changes that need making.

Further reading

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Limitations to be overcome

The Community directives form a body of legislation that overall breaks new ground compared to member states' national prevention systems. But it is not without failings. It is important that trade unions should identify these weaknesses in order to frame a coherent prevention strategy that goes beyond the implementation of directives by copying out the wording and establishes an overall preventive system.

1. The directives act almost entirely on the relations between employers and workers, disregarding the public provision within the prevention system.
2. The directives make no allowance for the negative impact of insecure employment. They are based on the fiction that contingent and permanent workers enjoy the same conditions, which does not reflect the reality of labour relations in the paid workplace.
3. No linkage is made between occupational health and gender equality issues.
4. Self-employed workers and domestic staff fall outside the scope of the directives.
5. The directives generally lay down duties that each employer owes to "his" workers. Real-life production work is only a very partial reflection of the division between the separate legal entities that firms are. A work specifier firm may in fact exercise quite extensive control over the working conditions of a subcontractor firm in many cases. Although the Framework Directive lays down an obligation for undertakings present on the same workplace to cooperate, the provisions as they stand go nowhere near addressing the health and safety issues that arise in subcontracting arrangements.

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On the linkages between occupational health and gender equality:

- *Gender issues in safety and health at work: a review*, Bilbao, European Agency for Safety and Health at Work, 2003.
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Vital interactions that are not always achieved

Whether at Community or national level, prevention arrangements are effective only to the extent that they join up seamlessly with other forms of provision that act on key determinants of occupational health. The labour market, social security system, environmental protection, gender equality, education and vocational training policies interact in important ways, but these are not always being brought about. Market regulation is a particular problem area in this respect. The Community rules are intended to enable work equipment and chemicals to move freely on the EU's single market. These trade rules are marred by big loopholes. They are in the process of being revised, and this will affect both the Machinery Directive 1989, and the vast body of rules on chemicals brought in since 1967. The trade unions are demanding substantial enhancements, and for the public authorities to operate an effective market surveillance policy.

Further reading

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- Tony Musu, *REACHing the workplace*, TUTB, 2004.
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  See: http://hesa.etui-rehs.org > Publications.
- "REACHing the workplace: trade unions call for a more ambitious European policy on chemicals", *HESA Newsletter*, Special issue, No. 28, October 2005. See: http://hesa.etui-rehs.org > Newsletter.
- Women for REACH and a toxic free future: www.wecf.de > Projects.

4. Essentials of European trade union strategy on health and safety at work

Most European Community health and safety at work legislation is the product of trade union action. While it goes nowhere near addressing all the problems, it is a positive net addition capable of bringing improvements to prevention systems. But that requires autonomous action by trade unions. Just improving the legal framework is not enough - the provisions need to be put into practice. Only the trade unions can put on the pressure needed to make that happen. That is why occupational health is high on the European Trade Union Confederation's agenda. It set up the TUTB (since 2005, HESA Department of the ETUI-REHS) to promote cooperation between European trade unions in that area.Campaigns run jointly by the ETUC and TUTB include the fight to get asbestos banned, the campaign to prevent musculoskeletal disorders, initiatives to improve the rules on the marketing of chemicals (REACH), etc.

Further reading

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The deep roots of trade union commitment

The societies we live in are driven by great inequalities. One of these social gaps relates to life and health. Workers have a lower life expectancy than members of the more privileged classes. Illness – be it types of cancer, skin diseases or work-related disabilities – are distributed very unequally throughout the population. Working conditions are one cause of

this situation. Social inequalities in health have grown in most European Union countries in recent years. The gap between the more privileged classes and workers is widening in terms of death, illness and disability. Similar but much more drastic developments can be seen in some eastern European countries.

Occupational health is a big priority for the trade unions. Protecting their lives and health was a main reason why organizations of working people came into existence at the start of the industrial revolution. It remains a key activity today. It is one of the main things that workers demand of unions. A trade union incapable of acting on occupational health would lack credibility when it came to upholding workers' other interests. The argument that health and safety is a common interest of both workers and employers is not borne out by the facts. In some cases, such as where ill-health also results in a visible cost for the firm, there may be a measure of common interest. Elsewhere, compromises may produce a broad meeting of minds. In yet other matters, there is conflict.

Generally, two dominant trends can be picked out:

- The further away you get from traditional recognized and compensated risks, the further apart the strategies are. So, it is easier to agree on plans to reduce industrial accidents than to attack factors that affect mental health. While some work-related health problems are linked to failings that also affect production (e.g., accidents, poor control of different kinds of pollution, etc.), others are actually linked to productivity itself, to work intensity and putting production goals before the human aspects of work (e.g., through enforced flexibility of working hours). In such cases, effective prevention measures tend to be at odds with the aims of company management.
- The more casualized jobs are, the less of a priority prevention is. In times of mass unemployment, the trend is to manage risks through employee selection and turnover, especially in what are regarded as unskilled jobs. That, moreover, is what is most questionable in economic approaches to occupational health, where prevention practice is dictated by cost-benefit analysis: where a job is devalued, so too is the worker's health. A worker who is easily and cheaply replaced will be seen as a "disposable" resource.

The struggle for health cannot be divorced from collective action and organization to transform working conditions. Neither advances in medical knowledge nor technical progress will bring long-term improvements unprompted by such collective action led by the workers themselves. That is why still today in Europe, protection of health at work is part and parcel of trade union action.

Organizing in the workplace: the starting point of any trade union action on health and safety

Trade union action on occupational health happens at very many levels: every day in the workplace, in industry and inter-industry collective bargaining, through concerted political and labour action tackling

these issues, in many tripartite bodies, in the courts to defend injured and sick workers and get judgements against the employers responsible, through relations with the press to raise the profile of workplace health problems, etc. The starting point of this action is clearly the organization of workers themselves. It is an area in which workers are generally found to have high demands of their trade unions, reflecting the experience of several generations: without labour organization, there is no certainty of long-term progress in occupational health.

Trade unions in new EU member states faced major new challenges from industry restructuring, rising unemployment, pay bargaining, defending fundamental social rights, etc. From this viewpoint, health and safety at work was a marginal issue for trade unions at the time. Nevertheless, trade unions were involved in the process of institution-building and transposition of legislation, as well as training and other forms of support for union health and safety activists at all levels. This, together with European co-operation in this field, could be a basis for future trade union involvement in OSH.

There are mechanisms for employee representation in occupational health in all European countries. The conditions and practical procedures may vary widely from one country to another, but it is readily obvious that the overwhelming majority of workers' health reps are trade union activists, and this trend is found even in countries where legislation allows non-union representatives to be elected. Generally, without trade union backing, workers' health reps have very little scope for independent action towards their employer. There are hundreds of thousands of such workers' representatives across the European Union. They constitute a massive base. A central element of trade union strategy on health and safety at work is to support their daily activities and develop an overall strategy informed by their experiences and input.

Further reading

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How to move from top-down reform to a renewal of workers' initiative?

Labour action has put workplace health and safety back on the agenda in many Community countries. Issues as varied as bullying at work, tackling toxic and harmful substances in the workplace, opposing casualization through agency employment and multi-tier subcontracting, all lead to the same conclusion: it is mistaken to believe that technical progress and economic growth will automatically bring improvements in the working environment. That is a basis for a renewed, concerted trade union action on working conditions. The issue of quality in work emerges sharply from very different national situations.

But difficulties remain that must not be underestimated. Let alone the undoubted traditional risks, two recent core changes in work organization – intensification and contingent employment – are being challenged by demands on many fronts that have far-reaching political implications

in aiming directly to curtail the employers' rights over the organization of production. Nothing effective can be done about musculoskeletal disorders, stress or bullying at work without challenging the employer's power to organize his business management. There is a widening gap between the increasingly bitty recognition given to problems and the weakness of the collective strategies intended to address them.

However real these difficulties may be, new areas for proactive union activity are still opening up, exemplified by how the relatively recent concept of bullying at work has become the focus of fierce debate in recent years. The feeling of ill-being at work is spreading, while the positive image of "enterprise" is getting deeply tarnished. Proactive union activity in the sphere of shop floor prevention is just one aspect of reclaiming the initiative that will necessarily have to tackle many other aspects (opposing contingent employment, work intensification, democracy in the workplace, etc.).

The challenge for trade unions can be summed up as: how can the "top-down reform" represented by the transposition of the Community directives be used to change the balance of power in the workplace? The election of tens of thousands of new workers' safety reps in some countries, the obligation to assess all work-related risks, and better information about chemicals, can be a big opportunity. Clearly, a legal framework alone is not a miracle cure for workplace health problems. But it is a means that should not be dismissed. While, broadly-speaking, the reforms have largely been frustrated by a "tick-box" application, some experiences show that it does not have to be this way.

The broader approach to prevention can also open up the field for trade union alliances based on the evidence of growing social inequalities in health, and the indefensible nature of the current production system with regard to environmental and human needs. On this basis, trade unions can forge alliances with environmental groups, public health lobbies and, more generally, everyone who believes that human beings, nature and the world are not just to be bought and sold.

The two dimensions of trade union preventive strategies: internal and external

In standing up for workers' health, trade unions set demands for both their own activities and those of the other players in society. Trade union strategy therefore has two dimensions – one internal, one external. The internal aspect of trade union strategy may have many strands. The pattern of trade union experiences in recent years reveals some common trends, however:

- Boosting trade union membership in workplaces, especially small and medium-sized firms, in traditionally less-unionized sectors, among contingent workers, etc. Lowering the thresholds for bringing in employee representation and setting up area representation covering multiple firms within the same sector can be important ways of achieving this aim.
- Seeing that workplace health issues are not treated in isolation as technical problems for specialists. Workplace health is tied directly into all company strategic choices and general labour market conditions.

Contingent employment, flexible working time, subcontracting, and quality management systems, are all choices that have a big impact on health at work. This therefore argues the case for concerted working that runs across the different spheres of trade union action and workplace health problems at all levels: at company level, between union health and safety committee reps and other trade union activists, in collective bargaining, in training, in policy-making (gender equality, environment, social security, etc.).

- Networking to leverage and put the experience of workplace trade union activists to work for the broader trade union. In some firms, a strong trade union presence, particularly active prevention reps, and a strong bargaining position can help get progress on prevention. Elsewhere, the picture is less rosy. It is important to get experiences circulating so they can help bring improvements to working conditions in other firms. We know from the experience of trade union networks to get dangerous chemicals replaced in the construction and printing industries, for example, what a huge potential there is in this kind of cooperation.
- Horizontal integration is about working across different issues; vertical integration is about giving trade unions a capacity to make policies that are informed by workers' experience. Trade unions are the voice of labour in a large number of bodies, where their job is to give views and argue the case for demands on countless societal problems. In the past, many trade unions may have taken the view that matters not directly related to conditions at work could be passed on to other organizations in the labour movement, like political parties. But the institutional links between political parties and trade unions are now weakening. Better vertical integration of the workplace towards the different levels of policy-making fosters a transparent and democratic system of representation that ensures that workers' interest will be upheld in all spheres of political and social activity.

Poland: trade union initiative against asbestos

In 1994, the Polish trade union confederation Solidarność in cooperation with Swedish trade unions devised and implemented a training and information programme on the protection of workers against asbestos hazards. Implementing the programme, Solidarność said, would require the government to set up an "Asbestos Unit" of specialists and representatives of different groups to draw up a national action plan to protect workers and the public against asbestos hazards.

But the trade union call did not produce the expected results. As a result, trade union protests and strikes by asbestos industry workers took place in 1997, with Solidarność's backing, and went on for several weeks, meeting only with government inaction. The unions called on the government to open negotiations on a comprehensive programme on asbestos issues. Other groundwork was done in this field for a training program on the safe use of asbestos products.

As a result of the trade union action launched in 1994, the Polish Parliament passed an Act banning the use of the asbestos-containing products (1997). In 1998, implementing regulations were enacted:

- Regulation on the safe use and removal of asbestos-containing products
- Regulation on training in the safe use of asbestos-containing products
- Regulation on health surveillance of workers exposed to asbestos-containing products, and miscellaneous regulations.

In 2001, the Polish government drafted a bill on the elimination of asbestos and asbestos-containing products.

The external dimension of trade union health and safety at work strategy means having the capacity to influence other players in this sphere, be it public authorities, research institutions, the scientific community, the press and other communication media, preventive services, etc. Trade unions should come up with proposals and demands that produce an overall strategy for the protection of health at work.

Three complementary spheres of activity: national, European and international

Working conditions are getting worse against a background of escalating competition created by the globalization of capital. That heightens the importance of trade unions in different countries working together to come up with a common strategy in the European Community. A new trade union impetus must look towards the enlargement of the EU to 10 new countries since May 2004, and several more in the not-too-distant future. The enlargement of the EU is a major challenge for trade unions. It widens their sphere of activity, forces them to seek out more effective forms of solidarity, and come up with a common strategy for preserving workers' health.

There are inconsistencies in the Community framework in occupational health terms: while offering a means of improving national preventive systems, it actually contributes to undermine working conditions in other areas. Growing moves to privatize public services, encourage casualized and contingent working, and free up the movement of capital in an area where there is little by way of a level social playing field are just some of these factors. Arguably, there is a growing gap between the avowed aims of workplace health policies and the outputs of other policies that also shape working conditions. This is true both at EU level and in the individual member states.

That is why trade unions do not simply press for the coherent transposition of Community directives but work proactively to create a more favourable balance of power through action at many levels. Action "at the top" in bodies like the Luxembourg Advisory Committee can only be really effective if backed up by a systematic transnational trade union cooperation at other levels. This includes:

- developing joint actions for occupational health within European Works Councils;
- action on occupational health by the European industry federations;
- working out common trade union platforms and exchanges of experiences on occupational health.

It would be misguided to see the European Union as an island cut-off from world realities. Active cooperation and solidarity between trade unions in different countries are also essential on a world scale, to prevent employers from exploiting the wide differences between countries to engage in social dumping.

5. Future Community policy and the Commission's "new strategy"

In the late 1980s, the European Union pursued a very proactive policy on occupational health. A long series of directives were adopted to address the pressing need to prevent competition on the single market operating at the expense of workers' lives and health. The final deadline for several directives to be implemented into national law was set at the magic date of 31 December 1992 – the date when the single market provisions were set to come into force between the then twelve member states.

The Community directives sent prevention systems into a cycle of partial reforms in the different countries of the European Union. The first substantive changes and innovations raised expectations to a high level. But these unfinished reforms show worrying signs of being stalled and inappropriate. Broadly, the main trends of the situation can be said to be:

- Traditional risks are still causing much health damage despite what is known about these risks and the preventive measures that could reduce them.
- The main emerging risks relate to work intensification, new forms of work organization and insecurity. The health damage they cause is on the rise.
- There has been a shift in cause-specific mortality. Fatal accidents are trending steadily downwards, while chemicals are now the main cause of death. So, a Spanish study estimates that occupational diseases may be responsible for 15,000 deaths a year (approximately 10 times more than fatal accidents). Psychosocial stressors are another major cause of death, but little statistical measurement has been done.
- Working conditions are declining in very different ways between different categories of worker.

Further reading

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Findings from national surveys

In **Italy**, the coordinating committee of regions and autonomous provinces recently carried out a survey of preventive provision in over 8,000 firms with at least six employees. It is the biggest such survey conducted in the European Union in recent years. The findings paint a mixed picture. Some progress has been made in setting up some forms of prevention provision, and employee representation is found in a growing number of firms. But many firms are just going through the motions, sticking to the letter of the law and failing to properly programme preventive activities. The general finding is that prevention is still very much a "side-car" activity, fairly marginal to the company's management and work organization choices. Many employers are content just to set up a preventive service without creating a real prevention system.

In **Spain**, substantially more resources have been put into prevention, but working conditions have not improved. This is the paradoxical finding made by the recently-published fifth Spanish survey on working conditions (2003). Compared to the last survey, done in 1999, the organisation of prevention has certainly improved in terms of numbers. The share of firms with a prevention rep has risen from 12.8% to 41.6%. In 1999, 24% of businesses had no form of preventive service. This had fallen to about 9% by 2003, but this increased preventive provision is mostly bought in from outside providers who have little influence on the employer's strategic choices. Over 51% of workplaces have only an external preventive service, and no in-house provision, while 22% combine an external service with a different form of prevention provision. The Spanish prevention system also falls down when it comes to training for workers. Nearly half of Spanish workers receive no occupational health training, rising to above 60% in workplaces with fewer than 10 workers. Dissatisfaction with working conditions is growing: the number of workers who are happy with their working conditions fell from 63.1% in 1999 to 59% in 2003. Work organisation is a source of growing discontent: nearly 10% of workers complain about working too fast, 6% a lack of autonomy. The health impacts are also clear. 15.7% of workers went to see their doctor about a work-related health problem in the year preceding the survey (against 13% in the 1999 survey), while 16.8% of workers regularly take painkillers (against 12.5% in 1999). Spanish surveys also reveal the gender impact of failure to apply the rules – women workers tend to have less access than men to all preventive provision.

It can be argued that, very generally-speaking, practical implementation of the Framework Directive and the measures transposing it into national law is often a tick-box exercise. The employer's safety obligation, which should address all aspects of working conditions that affect health, is widely flouted. Coverage of workers by health and safety representatives as well as preventive services is patchy, and in some countries, very large numbers of workers fall outside the preventive system altogether. It is therefore safe to say that the substantive aims of the Framework Directive have not been fully delivered. This conclusion is broadly borne out by most analyses, as well as by the Commission report on the practical implementation of the Framework Directive published in February 2004.

This is a crucial debate that goes to future Community occupational health policy in a setting where far-reaching changes raise problems at least as big as when the single market was taking shape. The changing face of work, the globalization of capital and resulting reorganization of production activities, and the EU's enlargement to 25 countries call for a fresh impetus for Community activities on occupational health.

Examples from the Commission Report on implementation – Risk assessment, documentation and supervision

Denmark: almost half of the enterprises had not carried out any risk assessment. 27% of enterprises with 5 to 19 workers had conducted a study on the evaluation of risks. 61% of enterprises with 20 to 49 workers, 67% of enterprises with 50 to 199 workers, and 95% of enterprises with 200 and more workers had conducted studies on workplace conditions (1998).

Germany: between a quarter and a third of enterprises have done systematic and comprehensive risk assessments. Given the size of these companies, this nevertheless covers 75% of all workplaces.

Netherlands: 58% of the enterprises analyse the risks. 80% of enterprises with more than 20 workers and 96% of enterprises with more than 100 workers. Amongst the smallest enterprises with 2 to 9 workers, only 52% have fulfilled their obligations.

United Kingdom: 30% of enterprises that were familiar with this obligation had done an assessment. In total, more than 80% of all enterprises have carried out risk assessments. 22% of enterprises do not have any documentation on the findings; these are mainly enterprises with less than 5 workers, but also 3% of large-sized enterprises and 24% of enterprises with less than 50 workers.

Examples from the Commission Report on implementation – Awareness raising

Netherlands: amongst the enterprises that had not fulfilled their obligation to carry out a risk assessment, 9% said that they had not been familiar with this obligation and 8% were not aware of an analysis of the working conditions and the evaluation of risks at the workplace. These enterprises are predominantly small-sized enterprises.

Spain: 68% of the enterprises claim not to understand the obligations of the employers. 16% of the enterprises reported that the level of information on occupational safety and health was insufficient. 59% of the employers claim not to be familiar with the obligation to develop and implement measures necessary for the safety and health protection of workers. 18% of the employers claim only to have a very vague idea about such measures and 13% are informed about their obligation but had not taken any action yet.

Sweden: small-sized enterprises report difficulties in understanding the provisions. The information appears to reach out to health and safety specialists and associations instead of the main actors of prevention: employers and workers.

United Kingdom: an empirical investigation confirmed that employers of small-sized enterprises have difficulties in understanding the information material provided by the authorities.

The Community strategy for the period 2002-2006

After several years of difficult debates, the Commission adopted a Communication in March 2002 outlining the Community occupational health strategy for 2002-2006. This strategy was generally right, but still much too hazy on practical measures and the timetable. Instead of being a firm work programme, the strategy was over-heavy on general pronouncements about the need to combine many different approaches and instruments. This failing was made worse by rank under-staffing in the European Commission's health at work unit, which now has just one Community official and two national experts to handle the huge chemical risks caseload, for example. It is clear that this structural undermining of Commission departments is a gift to the highly active chemicals industry lobby.

Then, too, the Council of Ministers, which represents the member states, has very often choked off initiatives put forward by the Commission. No sooner had the 2002-2006 programme been adopted than an unholy

alliance took shape between Mr Blair, Mr Berlusconi and Mr Aznar to kill off any ambitious new legislation on social/employment rights. That goes some way to explaining some hold-ups. The new member states who joined in 2004 have often been diffident about new Community initiatives, considering that they still had to get a grip on the existing Community framework of laws. The employers have been particularly busy, and their lobbying is much of the reason why the Commission has significantly watered down the chemicals marketing regulation reform (REACH).

After the "No" lobby swayed the referendums on the European Constitution in France and the Netherlands, conservative and pro-free-market political parties put a self-serving spin on what the vote means. They claimed that the public were rejecting a Europe whose regulations were reaching too far into every detail of their daily lives. They argued for a bonfire of European legislation in various fields. It is a spin that throws the baby out with the bathwater. A dislike for bureaucracy does not equal support for the law of the jungle. What people want for the workplace and environment is stronger and better Community provisions to move towards a wider harmonization of living and working conditions in Europe.

Musculoskeletal disorders: an important challenge for the Community Strategy

Musculoskeletal disorders are one of the biggest work-related health problems today. Eurostat data report a range of causes of musculoskeletal disorders. Work intensification plays a major part, but so too, among other things, do work equipment that is unsuited to the individual and the task, poor job design, and stress. The Dublin Foundation's survey of working conditions found that large numbers of workers are exposed to particular MSD causal factors:

- Painful/tiring positions: 47% (for > 25% of working time) 28% (permanently)
- Repetitive movements: 31%
- Stress : 28%
- Vibrations: 24% (for > 25% of working time)

The Commission Communication on the Community Strategy rightly called musculoskeletal disorders a priority of workplace health and safety. Existing directives do not address this issue effectively, since they are limited to specific risks (work with display screen equipment, manual handling and, soon, vibrations). A general directive on musculoskeletal disorders laying down essential ergonomic requirements would be a significant advance in this area, where the value of a Community contribution is beyond all doubt. The Nordic countries aside, no member state has managed to bring in regulations specifically to address these issues. The difficulty is more political than technical: tackling musculoskeletal disorders at source means acting on work organization, and especially taking steps against work intensification. The Communication contained two passages on Community initiatives in the field of musculoskeletal disorders, announcing a Communication that will look into their causes and will propose amendments or new legal provisions in fields in which coverage is still incomplete. The strategy period is now nearing its end, but the practical measures are still wanting. The Commission has launched an initial general consultation of trade unions and employers' organizations, but has still not set an agenda of practical measures. The European Trade Union Confederation is calling for a general directive on essential ergonomic requirements to prevent MSD.

Further reading

- Background on the debates on the Community health at work strategy can be found on the HESA site: http://hesa.etui-rehs.org > Main topics > Community strategy.
- Declaration of the Workers' Group of the Luxembourg Advisory Committee on the Commission report: http://hesa.etui-rehs.org/uk/newsevents/newsfiche.asp?pk=47.
- Commission report on the practical implementation of the Framework Directive and five individual directives (February 2004): http://europa.eu.int/eur lex/en/com/cnc/2004/com2004_0062en01.pdf.

On musculoskeletal disorders:

- "Musculoskeletal disorders: where we are, and where we could be", *HESA Newsletter*, No. 27, June 2005, p. 22-27.
- "Musculoskeletal disorders in Europe", *TUTB Newsletter,* Special Report, No. 11-12, June 1999.

  See: http://hesa.etui-rehs.org > Newsletter
- J. A. Ringelberg and Theoni Koukoulaki, *Risk estimation for Musculoskeletal disorders in machinery design,* TUTB, 2002.
- Jeremy Hague *et al., Musculoskeletal disorders and work organisation in the European clothing industry,* TUTB, 2001.
- Rory O'Neill, *Europe under strain*, TUTB, 1999.

  See: http://hesa.etui-rehs.org > Main topics > MSD.

Market rules are presently a major playing field

The interaction between employment rules on occupational health and marketplace rules continues to dog the functioning of prevention systems. Neither the situation regarding work equipment nor that on chemical substances and preparations is good enough. Prevention principles mean that the selection of the material factors with which work is done play a key role. A proper selection can only be made if a number of key boxes are ticked:

- health and safety requirements must be integrated before things reach the market. That means that inherently unsafe equipment and products must be kept out of the market wherever possible;
- that can only be done if effective public controls are exercised;
- workers' experience must be taken into account so as to improve the design of equipment and products. This means making resources available to arrange the feedback of information;
- there must be detailed information based on a thorough risk assessment on which to base the firm's choices.

Trade unions have for years put great effort into issues around work equipment and personal protective equipment. But still trade union participation in standardization activities remains vanishingly small. Market controls are patchy and wanting. Much CE-marked equipment fails to satisfy all the essential health and safety requirements.

The situation as regards chemicals is more disturbing still. The current system is based on a hugely complex set of directives and regulations worked out over time from 1967. The main driving force was the chemical industry's aim to rid itself of barriers to the establishment of a single

market for chemicals in the European Union. These commercial considerations outweighed health and environmental protection. The system put in place gives a big advantage to chemical manufacturers, who have to produce an initial risk assessment on the basis of which they must classify their product and follow a certain number of rules related to the stated risks. Notification of this initial assessment and its findings is sent to the public authorities, and goes into a Community information system. If no objections are received within a 45-day waiting period, the substance can be put on the market. In practice, public authorities rarely object to a product being placed on the market.

This means that, in many ways, the safety of chemicals is entirely a matter for the firms that make them. In theory, the drawbacks of this system could be offset by ex-post controls done by the public authorities, who should themselves check chemical substances to see whether they comply with the Community legislation. But there is a huge backlog of such official risk assessments compared to the quantity of substances coming onto the market, which leaves manufacturer assessment as the only benchmark for most substances. The initial risk assessment offers no guarantees of independence. It is done by firms whose interests clearly lie in selling what they produce, and results in what may not always be an appropriate classification. An evaluation published by the European Commission in 1998 reported misclassification in 25% of cases and mislabelling in 40% of cases. Also, manufacturers are putting new substances on the market and not declaring them as dangerous even though they are rightly suspected of being so.

Asbestos exemplified the unresponsiveness of a regulatory system in which occupational health was a side issue. The European Union was able to prohibit the marketing of a chemical substance under the Marketing Restrictions Directive as long ago as 1976. The scientific evidence at that time was strong enough to justify a ban. But it was not until a quarter of a century later that asbestos was outlawed. That delay will be much to blame for the tens of thousands of deaths over the years to come.

The stakes are high. Exposure to chemical hazards is a major cause of social inequalities in health. For example, the 2003 SUMER survey in France found that about 38% of the workers (7 million) were exposed to chemicals. The percentage is more than 45% for manual workers, more than 30% for white collar workers in trade and services, more than 16% for technicians and only about 3% of senior management. More than 16% of the workers are exposed to at least 3 different chemicals. 2,370,000 workers in France are exposed to recognized carcinogens, over 20% of them for more than 20 hours a week. And workers are the first casualties of the interactions between occupational exposures and environmental pollution.

The future regulation of the chemicals market is the focus of fierce ongoing controversy at Community level. In February 2001, the Commission put forward proposals for reform in a White Paper, which met with a broadly favourable reception. An offensive against these reforms was

launched by chemical industry employers in 2002, relayed in force by some governments, in particular the Bush Administration.

The systematic disinformation campaign run by the chemical industry has already had some success. The Commission proposal put out in October 2003 falls well short of the initial reform proposals. 2006 will be a turning point. The debates playing out are far and away the most important for workers' health and safety since the 1989 Framework Directive.

It is vital for trade unions to speak with a consistent voice in this debate, which affects all workers, not just those in the chemical industry. Experience shows that the directives on the use of chemical substances and the prevention of work-related cancers are not being properly implemented, largely because of failings in the market rules. Health problems are particularly rife in user industries like the building, textiles and metalworking sectors, not to mention service industries like cleaning and health. For that reason, the fundamental principles of proactive union activity in this area should be:

- standing up for trade union independence in face of strong pressure from chemical industry employers through hugely overplayed scaremongering about jobs;
- standing up for solidarity between all categories of workers;
- forging alliances with environmental organisations, feminist groups and public health institutions to ensure that the interests of health and the environment come before the all-out drive for profits.

It is clear that REACH is not just an arcane technical debate, but actually a vital issue for workers. Adopting this reform would help give a new impetus to prevention.

REACH comprises three lines of action:

1. **Registration**. All substances produced in volumes of at least one tonne (increased to 10 tonnes in the final proposal) must be registered. The producer or importer must submit a dossier to the public authorities containing, in particular, a preliminary risk assessment, information on the safest method of use of the product, plus other information.

2. **Evaluation**. The public authorities will examine the dossier carefully. Different kinds of testing are required according to the quantity produced.

3. **Authorization**. Special permissions will be required before the most dangerous substances – like carcinogens and endocrine disruptors – can be marketed.

Towards a new strategy for 2007-2012

In early 2005, the new Commission published its new Social Policy Agenda focused on two priority areas: full employment and equal opportunities. Under the Communication subheading "A new dynamic for industrial relations", the Commission flags up plans for a new health and safety at work strategy for the period 2007-2012. It should focus on new risks, safeguarding minimum levels of protection, and coverage for workers not adequately covered.

The Commission's pledge to zero in on these areas can only be welcomed. Protection cannot be harmonized at a minimum level without adopting directives that lay down a common basic set of rights for European workers. To be effective, the programme must do a stocktaking of public resources (regulatory, financial and human) allocated to health and safety in each member country. If there is one lesson that can be learned today from Community policy over the past 15 years, it is the

importance of joining-up national and Community prevention strategies. States have too often seen their role as confined to implementing directives in their legislation by copying out the wording without providing the means to put them into effective practice.

Czech Republic: trade union proposals aimed at achieving a health and safety strategy

Trade unions have long called for a national health and safety at work strategy. In early 2000, the government and social partner representatives opened negotiations on it. The National Policy for Safety and Health at Work was adopted in 2003, and the National Action Programme for Safety and Health at Work 2004-2006 was adopted on the basis of it. These measures seemed to take big steps towards a systematic drive in OSH at national level, and an accelerator of ongoing transposition and implementation of EU legislation. The Action Programme set priorities, responsibilities and deadlines for a number of tasks concerning legislation, economic incentives, enforcement, promotion, research, education and international co-operation in OSH, but did not allocate the necessary resources. That, together with a lack of political will, inevitably led to significant delays in programme implementation, which is still criticised by trade unions.

The new strategy must have better targeted activities, with a timetable. Trade unions want the Community strategy to focus on two major risks: musculoskeletal disorders (the main cause of illness from a stressor-ridden work organization), and chemicals – a big cause of work-related health disorders, where the regulatory framework is currently being radically overhauled. Ensuring equal protection for all workers means finally doing something about the health and safety of workers with no job security. The spread of casual hire-and-fire is taking a heavy toll on health across Europe. Existing Community provisions are not up to tackling the problem. Workers' right to collective representation, guaranteed in the 1989 Framework Directive, is another key thing. Many workers, especially temporary agency staff and workers in SMEs, are outside this directive.

There is clearly a job of work ahead. Political diatribes about "better regulation", "voluntary approaches" and other "soft deregulation" buzzwords do not address the real problems. The heavy toll taken by the recent flooding in New-Orleans should raise questions about the rhetoric of those calling for minimum state intervention in the belief that the market will provide. The coming years will be a crunch time in many respects. Both health at work and the environment will be big challenges. Will post-enlargement Europe be more than just a big market ruled by an undercutting war in which workers' lives and health are expendable? Or will a social Europe be developed that raises living standards and working conditions?

Conclusion: working together within an independent trade union strategy

Social inequities have widened in all European Community countries over the past twenty years. Resource owners are getting a bigger share of the wealth creation cake than wage earners. Health inequalities have widened, too. Declining working conditions are a part of this, due in particular to escalating competition created by the globalization of capital. The enlargement of the European Union is a major challenge for trade unions. It widens their sphere of activity, forces them to seek out more effective forms of solidarity, and frame a common strategy for preserving workers' health.

The enlargement of the European Union will not automatically turn the clock forward or back. The European Union provides a general regulatory

framework for occupational health. Overall, it is a framework that – though in need of amendment and development in different areas – does offer a means of improving existing preventive systems.

But it is not a sure recipe for an effective prevention strategy, as can be seen both at EU level and in individual member states. A preventive strategy is about setting priorities, allocating resources to create the means for prompting, supporting, controlling and evaluating the policies adopted. It means looking at preventive systems with a critical eye to see whether they are up to the challenges of changes in work.

And the big issue is how they work in practice. The existing rules and knowledge about prevention would help prevent much health damage. The ability of trade unions to marshal rank-and-file energies around workplace health issues is arguably the defining factor in giving a new impetus to public policies in this area. This is because "top-down" reforms tied up with the need to carry the Community directives over into law have largely run out of steam. In this struggle, cooperation between trade unions in the old and new States of the European Union, and in the applicant countries, will be of make-or-break importance.

Appendices

Appendix 1
Advisory Committee: rules of procedure

Meetings of the Advisory Committee (AC):

- Meetings are convened at least 3 weeks before the date. The agenda and preparatory documents are distributed.
- The **agenda** is approved at the beginning of meetings. The members may propose items for following meetings.
- Members, co-ordinators of the interest groups, observers and experts, attend meetings.
- Interest groups (governments, trade unions, employers) may be accompanied by up to two experts.
- **Minutes** are taken of each meeting. The members receive them no later than 10 days before the meeting.

Decision-making procedures:

- Opinions and reasons on which they are based must be approved by an absolute majority of the votes.
- Blank votes and abstentions are considered as valid votes.
- All Opinions delivered by the AC must be accompanied by the voting figures.
- If the minority so requests, it can express its views on the Opinion by means of written statement.
- Opinions are addressed to the Commission (EC) and made available to the members.
- The spokespersons express their views.
- The Chair adopts the Opinion if there is agreement.
- If there is no agreement, a vote is taken by show of hands or by roll call.
- Motions on postponed or unexpressed Opinions should be voted on before others.
- In the case of amendments, those that are furthest removed from the basic text are voted on first.
- The final vote will be taken on the text as it stands after the previous vote.
- The Chair or members may move the closure of the debate.
- Members have priority if they ask to speak on closure.
- Motions to close the debate will be put to a vote.

- These rules apply to any decision to be taken or any document to be adopted by the AC.
- In some cases, the AC or the Chair may entrust the drafting of an Opinion to the Bureau.
- In the case of a written procedure, the full members will vote in the time limit, not less than 14 calendar days.
- In exceptional cases, an alternate member may deputise for a full member.
- Any abstention from voting is regarded as a tacit agreement to the proposal.
- An absolute majority of the votes is required for adoption.
- If the Chair has initiated the written procedure, the Bureau may request a further examination.

Internal organisation:

- Three **interest groups** designate spokespersons and coordinators.
- They hold preparatory meetings ahead of the AC meetings, plus at least twice a year.
- The same rules as above apply to their meetings.
- The **Bureau** is chaired by one of the spokespersons on the basis of an annual rotation system.
- A vice-chair and rapporteur are appointed.
- The Bureau meets at least three weeks before the AC meeting, and regularly to organise activities.
- The meeting minutes are written by the Secretariat.
- The vice-chair can represent the Chair.
- The Bureau may assign duties to one or more of its members.
- **Working parties** (WP) representing all interest groups are set up to examine specific issues.
- The AC decides on the issues, terms of reference and duration of the WP.
- The AC may disband a working party except the SWP for the mining and other extractive industries.
- A WP's conclusions are not put to the vote.
- A WP appoints a chairperson, vice-chairperson and rapporteur responsible for minutes and for drafting its Opinion.
- The chairperson or vice-chairperson reports to the AC.
- Their respective interest groups designate members of WPs.
- Each interest group may nominate one alternate member to a working party and inform the Secretariat.
- WPs may assign duties to one or more of their members.
- Each WP is assisted by at least one AC representative.
- **WP meetings** are convened by the Secretariat at least two weeks before the meeting.
- The draft agenda and minutes of the previous meeting are approved or amended at the start of the meeting.
- Only nominated members, EC representatives and invited experts attend.
- The AC has set up a **standing working party** (SWP) for mining and other extractive industries.
- The SWP provides advice and support to the AC and submits draft opinions on future actions.

- The AC appoints a chairperson, a vice-chairperson and rapporteur for a 3–year term of office.
- The AC appoints the members of the SWP on the basis of nominations from interest groups.
- The SWP's composition reflects the economic sectors concerned and the geographical distribution.
- The chairperson or vice-chairperson reports to the AC.

Committee's work programme:

- The **annual work programme** is prepared by the Bureau and adopted by the AC at the final plenary of the year.
- The programme takes into account progress with activities, EU agencies and programmes.
- The AC adopts the SWP's draft annual programme as part of its annual work programme.
- The Bureau and Secretariat set the timetable of meetings for the following year.
- The AC submits an **annual report** to the EC, which forwards it to the other bodies.

Practical arrangements:

- The EC provides **secretariat** support for the AC.
- Correspondence for the AC is addressed to the EC, for the attention of the secretary of the AC.
- The rules on public access to the AC's documents are the same as the EC rules.
- AC discussions are confidential.
- **Revisions** to the rules of procedure, after the EC's opinion, are adopted by absolute majority of the members.
- The revision enters into force if the Council does not exercise its right of call back.

Appendix 2
Bilbao Agency: structure and procedures

Administrative Board:

- The Board sets the goals and strategy, and identifies priority OSH issues.
- It appoints the Director, adopts the Work Programme, the Annual Report and the Agency's budget, and authorises the Director to administer the budget.
- Convening twice a year, the members include representatives from the member states' governments, employers' and workers' organisations, together with three representatives from the EC. In addition, four observers are invited – two from the Dublin Foundation and one each from the European social partners ETUC and UNICE.
- The members all have a renewable tenure of three years and each year elect a chairperson and three vice-chairpersons from among their number.

Bureau:

- The Bureau oversees the Agency's operational performance and meets four times a year.
- It is made up of nine members from the Administrative Board.
- These are the chairperson, vice-chairpersons, representatives of employers' and workers' organisations at Community level, the EC and the Spanish government.
- The Bureau has a steering group role and may take urgent and necessary measures, as delegated by the Board and without prejudicing the Director's responsibilities, for the management of the Agency between Board meetings.
- To date, the tasks mandated include overseeing development of the Agency network and implementation of its Work Programme, as well as more specific tasks related to Agency activities.

Director:

- The Director is the official representative of the Agency and is responsible for its day-to-day running, including all financial, administrative and personnel matters.
- The post is for a renewable term of five years, appointed by, and accountable to, the Administrative Board.

Focal Points:

- The Agency's principal health and safety information network is made up of a 'Focal Point' in each EU member state, in the 3 candidate countries for European Union membership, and in the four European Free Trade Association (EFTA) countries.
- Focal Points are nominated by each government as the Agency's official representative in that country and are normally the competent national authority for health and safety at work.
- Focal Points play a key role within the Agency, as they are responsible for the organisation and co-ordination of the national networks and are involved in the preparation and implementation of the Agency's Work Programme.

- Like the other elements of the Agency structure, the national networks are tripartite and include representatives of workers and employers' organisations.
- The role of the Focal Points is to provide information and feedback on Agency initiatives and products, and they are consulted on all information activities related to the national level.
- The Focal Points also manage the national Agency websites and organise the annual European Week for Safety and Health at Work.
- EU Focal Points nominate representatives to the Agency's ad hoc expert groups, while Focal Points from EFTA and candidate countries nominate observers to these groups.
- Meetings are held three times a year, and in addition to the Focal Points contact persons from member states, include observers from the European Commission, the European social partners, EFTA and candidate countries.

The Expert Groups:

- Groups of experts, nominated by the national Focal Point together with observers representing each of the social partners and the Commission, provide advice to the Agency in their field of expertise and contribute to the Agency's Work Programmes.
- Experts from EFTA and candidate countries participate as observers in some of the groups.

Topic Centres:

- Topic Centres are consortia of national health and safety institutions in charge of collecting and analysing existing national data to support key areas of our work programme.
- They consist of a group of OSH expert institutions comprising one Lead Organisation and several Partner Organisations from different member states.
- The work to be done and the funding available are specified in line with the Agency's annual Work Programme.
- The Topic Centre Lead Organisation is responsible for delegating tasks to the Partner Organisations.
- Three Topic Centres are currently in operation: Topic Centre on Research, Topic Centre on Good Practice and Topic Centre New member states.

Other Consultants:

- The Agency contracts various ad-hoc research teams from leading academic and OSH-related institutions as well as consultants in areas like ICT to conduct specific, one-off projects.

Appendix 3
Some European-level organisations

European trade union organisations/federations:

- Union Network International (UNI)
- European Transport Federation (ETF)
- European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT)
- European Federation of Public Service Unions (EPSU)
- European Federation of Building and Woodworkers (EFBWW)
- European Metal Federation (EMF)
- European Entertainment Alliance (EEA)
- European Trade Union Committee for Education (ETUCE)
- European Trade Union Federation of Textiles, Clothing and Leather (ETUF-TCL)
- European Mining Chemical and Energy Workers Federation (EMCEF)
- European Federation of Journalists (EFJ)
- Council of European Professional Managerial Staff (EUROCADRES)

Employers' organisations

- Union of Industries of the European Community (UNICE)
- European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)
- European Association of Craft, Small and Medium-sized Enterprises (UAEMPE)
- European Apparel and Textile Organisation (EURATEX)
- European Chemical Industry Council (CEFIC)
- European Round Table of Industrialists (ERT)
- FEM – the organisation of the European Furniture Industry
- AmCham – organisation for American multinationals with activities in Europe

Appendix 4
European Treaties

Treaty of Paris	Treaty on the European Coal and Steel Community signed in 1951.
Treaties of Rome	Treaty establishing the European Economic Community and Treaty establishing the European Atomic Energy Community signed in 1957.
Single European Act	The Single European Act – an extension of the Treaty of Rome adopted in 1986 to achieve a free single market.
Maastricht Treaty	Treaty on European Union signed in 1992. Among several significant innovations, such as EU citizenship and the European Monetary Union, the Treaty of Maastricht created the so-called three pillar structure.
Amsterdam Treaty	Treaty on European Union signed in 1997. The Treaty made only minor adjustments in health and safety at work compared with its predecessor, the Maastricht Treaty.
Nice Treaty	Treaty on European Union signed in 2001. No changes in terms of health and safety at work.
The Constitution	A draft was submitted to the different member states in in 2004-2005. In two States (France and the Netherlands), the draft was rejected by a referendum.

Appendix 5
Web addresses of organisations

Bilbao European Agency	http://osha.eu.int
CEN	http://www.cenorm.be
Committee of the Regions	http://www.cor.eu.int
Council of the EU	http://ue.eu.int
Dublin European Foundation	http://www.eurofound.ie
EESC	http://www.esc.eu.int
ETUC	http://www.etuc.org
ETUI-REHS	http://www.etui-rehs.org
EUR-LEX	http://www.europa.eu.int/eur-lex
European Commission	http://europa.eu.int
European Court of Justice	http://curia.eu.int
European Parliament	http://www.europarl.eu.int
European Ombudsman	http://www.euro-ombudsman.eu.int
Eurostat	http://europa.eu.int/comm/eurostat
HESA Department	http://hesa.etui-rehs.org
UNICE	http://www.unice.org

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A trade union guide
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