Chapter 5
Occupational safety and health in the EU: back to basics

Aída Ponce Del Castillo

Introduction

The history of the relationship between work and health is a long and complex one. No less than a decade ago, the edited volume *Social developments in the European Union* (EU) featured a chapter on health and safety policy in the EU (Vogel 2006). It looked at the Community strategy in this area, the development of social directives, and highlighted ongoing simplification of policies and legal requirements in certain key policy areas such as musculoskeletal disorders. Ten years have passed since, providing an ideal opportunity to look back at whether or not the European Occupational Safety and Health (OSH) strategy has evolved, and in what direction. This may help shed light on future prospects for health and safety in Europe, which has important implications for the work – and lives – of millions of workers in the EU.

This descriptive chapter aims to present current research concerning occupational health and safety policies in Europe, which at this moment have reached two high points: the peak of the regulatory revolution and the peak of another (fourth) industrial revolution – where technologies interact, merge with one another and lead to an erosion of the boundaries between the physical, biological and digital environments. The views in this chapter are presented through the eyes of someone who belongs to a new generation of OSH researchers, but who uses historical notes collected from some of the veterans of EU Occupational Safety and Health (OSH), some of whom negotiated the key European directives in this field. This chapter – written in an atmosphere of political and regulatory changes that do not seem well-disposed to OSH – is intended to shed light on future prospects for health and safety in Europe.

Section 1 covers the early developments of OSH, including some national initiatives. Section 2 provides a description of the political and legislative consolidation at EU level, as well as the Framework Directive (89/391/EEC), its daughter (or individual) directives and the possible impact of the Better Regulation Agenda. Section 3 focuses on the EU Strategic Framework and its importance. Section 4 presents the more recent events of 2015, including the EU institutions' reactions to the Strategic Framework and the ex-post evaluation of the practical implementation of the OSH directives. The chapter finishes with some conclusions and a modest forward-looking perspective.

1. National initiatives: the early roots of occupational health and safety

The roots of OSH can be found at the time of the Industrial Revolution in the early 1800s. Factories and their new technologies, complex machines and production methods quickly spread throughout the continent. Combustion and steam power were the great driving forces; the textile, transport, mining, steel and other industries went through revolutionary changes; working places and factories underwent an innovative and technological transformation. New skills were needed to operate the new machines and factories, but working conditions did not progress at the same pace. Technology flourished but was accompanied by a deterioration of the working environment; occupational risks became more serious and difficult to prevent, leading to accidents, disabilities and fatalities at work. Simultaneously, issues of occupational health and safety emerged because people felt the need to be protected from new industrial hazards and risks.

One clear starting point of OSH is England, where the government adopted eight so-called Factory Acts between 1802 and 1891. These Acts were passed by Parliament and were intended to provide protection to people working in factories and mills[1]. As Eves (2014) describes it, this legislation 'is generally believed to be the first attempt to regulate conditions of work in the United Kingdom'. The Acts indeed banned

1. History of Occupational Health and Safety: http://www.historyofosh.org.uk/

child labour, required employers to keep premises clean and healthy, ensure there were sufficient windows, supply 'apprentices' with 'sufficient and suitable' clothing and accommodation for sleeping, limiting their work to twelve hours per day, and night work was forbidden. King William IV appointed the first factory inspectors and, shortly thereafter, the first 'lady inspector'. They visited workplaces on horseback and wielded their executive powers to enter factory premises, question workers and report accidents (HSE 2016).

The rapid growth of the economy led to the development of a labour movement. In addition to work organisation and wage issues, one of the main incentives for this movement were the numerous physical stresses to which workers were exposed, such as smoke, noise, extreme temperature, fumes and radiation, and also mental challenges such as monotony, stress, mental overload, and night work. These threats multiplied and became more and more disturbing, consequently making workers increasingly dissatisfied with their working conditions. In the early XIX century, the Labour movement had gained enough power to demand and obtain changes. The first modern legislation on health and safety came into force in Britain and Norway almost at the same period. Later, social protest also pushed Bismarck to publish the first Occupational Safety Act, in 1890 in Germany. This Act was designed to ensure safe workplaces, limit working hours for women and young workers and prohibit work on Sundays.

National initiatives such as these were the first building blocks of modern OSH legal frameworks. However, legislation was not the only way of securing OSH – key public institutions contributing to its development, such as labour inspectorates, were also created. As Kilimnik (1998) suggests, the development of OSH in Germany was based on three main pillars: occupational factory inspectorates ('*Gewerbeaufsicht*'), vocational insurance associations ('*Berufsgenossenschaften*') and work councils ('*Betriebsraete*'). The first labour inspectorates were established by the local governments of Aachen, Arnsberg and Dusseldorf in 1854, twenty years after their creation in the UK. They were originally tasked with enforcing child labour law and bore responsibility for the prevention of disorder in sanitation, health and safety. Vocational insurance associations, although overlapping with inspectorates, had slightly different responsibilities. Created by Bismarck in 1884, they focused on preventing occupational accidents and illnesses and, later on, dealt with

the compensation of workers and victims or survivors of accidents. They were governed by employers but gradually incorporated worker representatives into their boards. Works councils were the third institution to handle occupational safety and health regulation. They were established by the German government after World War I and included all employees as well as, often, the employer. They focused on the needs and goals of the company and were designed to foster cooperation rather than conflict between the parties (Kilimnik 1998).

In a country like Sweden, OSH policies were also encouraged because occupational health was regarded as a productive asset necessary for economic growth while being, at the same time, a cost for social insurance and employers (Frick 2011). In Sweden, the first Occupational Safety Act came into force in 1890. It failed to deliver and protect workers due to weak supervision and enforcement. After 1900, the Act was broadened and worker compensation schemes were introduced. In 1912, the role of the worker safety representative was established. In several other European countries, workers – supported by trade unions – defended their right not to be injured. These turned occupational health and safety into a political issue and an area in which workers and employers struck cooperative agreements (Frick 2011).

Despite such positive developments, major difficulties still remained, particularly in relation to the implementation and enforcement of these new policies. Given the inability of states to enforce rules, the approach shifted towards promoting voluntary compliance by companies, incentivised as a way to reduce risks and fatalities. Voluntarist policies were promoted through participation and dialogue between workers and employers, as a forerunner of what is now called 'good practices'. Sweden drew up its legislation on chemicals, accidents and stress at work following a broad parliamentary discussion with social partners, with a view to reforming the system. At this time, the figure of the safety representative emerged, and unions pushed for surveys on exposure to stress at work. This push was, de facto, the first step towards tackling psychosocial risks at work. In Sweden, health prevention and protection at work were not imposed strictly through law and regulation. During the 1970s, visual artists and graphic designers produced posters that

promoted health prevention and safety at work in all its dimensions. These posters became an integral part of the preventive culture currently deployed by public institutions and unions[2] .

In Italy, at the beginning of the 1960s, a common front was established by unions, doctors, occupational physicians, technicians and scientists. It promoted cultural change, creating a real social awareness of the dramatic number of accidents, deaths and related illnesses at work. The main goal was to prevent risks and reject a purely financial approach to risk. At the time, investigations were initiated within the pharmaceutical company Farmitalia, where workers had made complaints about their working conditions. They demanded that harmful chemical substances be replaced and requested that changes to the work organisation be made with their involvement. Similar initiatives were taken in other companies, particularly at Fiat, and the movement spread throughout the country during the 1960s and 1970s (Diario Prevenzione 2016). Italy thus started a culture that involved workers in preventive strategies, enabling them to understand the reality of their working environment and participate. In 1974, the 'Research and Documentation Centre for Occupational Risks and Damages' was established. Training courses were put in place and unions focused more on health protection as a central objective in their strategy of 'conscious productive labour' (Stanzani 2016; Alhaique *et al.* 1999).

These various initiatives led to the development of a major reform of health and safety policy. Although sometimes participation was the result of industrial conflict, agreements were reached by collective bargaining in various companies, as well as by the identification and assessment of risks in the workplace and the development of epidemiology in preventive industrial medicine. Workers were involved in the investigation of non-harmful technological alternatives and the fight against carcinogenic substances such as asbestos, silica and vinyl chloride monomer. Workers carried out union surveys and brought union knowledge to scientific research; their experience propelled research in preventive medicine (Alhaique *et al.* 1999).

2. International Institute of Social History https://socialhistory.org/

One milestone in the Europeanisation of the issue of OSH was the adoption of the reformed 1978 health law, through which the Italian approach became widely disseminated, and became one of the driving forces behind the development of European policies and directives in occupational health and safety (ETUI 2016). For example, in the Netherlands, it led to the establishment of Science Shops ('wetenschapswinkels'), which disseminated information and educational materials. In Denmark, in 1975, it contributed to the creation of the Work Environment Action-Group of Workers and Academics (Diario Prevenzione 2016).

Despite major issues related to the use of hazardous chemicals at the workplace, such as asbestos, mechanical dangers in shop floors and unsanitary working conditions, the 1970s were prosperous years for occupational health and safety policies. In these years, policies were in tune with the political agenda, and social goals were pursued with the same energy as economic objectives. In the 1970s, worker participation was fully introduced and safety representatives appeared. With workers directly involved, the identification and recognition of diseases moved faster and focused on securing important goals: a healthy working environment, in-putting workers' direct experiences into health control, preventive systems, tackling the problems raised by technological transformation and laying down guidelines for the future (Bagnara *et al.* 1985).

2. From national initiatives to a consolidated European approach: the Framework Directive and its daughter directives

2.1 The early EU regulatory framework (1989-1992)

In 1978, the Council of the European Union passed a resolution on the first Action Programme on Safety and Health at Work in the EU (Council of the European Communities 1978) – the predecessor of today's Strategic Framework. The Action Programme was ambitious in its objectives, recognizing that the number of accidents and diseases resulting from work remained high and had incalculable consequences for society.

The aim of the programme was to increase the level of protection against occupational risks of all types; it aimed to do this by increasing preventive measures as well as by the monitoring and controlling of risks. As early as 1978, the Action Programme indicated the need to determine, fix and harmonise exposure limits for dangerous substances, especially carcinogens; to incorporate safety and ergonomic aspects in the various stages of the design, production and operation of machinery and work equipment; and stressed that the use of modern technology and advanced processes was increasing and would lead to new dangers – without however clearly identifying these.

With regard to more specific health issues, the 1978 Action Programme recognised the need to promote collaboration with Member States in the field of occupational medicine. The Council of the European Union indicated the need to plan the monitoring of workers' health. The Action Programme also made reference to psychosocial considerations; it suggested the adaptation of work to workers as a way to achieve the highest level of physical and mental well-being. All in all, it set an ambitious agenda for the EU (Council of the European Communities 1978; Walters 1999), which would have a substantial impact on the negotiation of the ensuing EU health and safety directives.

The Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), hereafter 'Framework Directive', came into force in 1989. It was fully transposed in all Member States by 1992. It is based on Article 118a of the Treaty on the Functioning of the European Union (2012), which provides that 'the Council shall adopt minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers' (Council of the European Communities 1989). As argued by Vogel (2015), the Framework Directive is a centrepiece of Community occupational safety and health legislation. It brings together several achievements of the labour movement and has the advantage of being a self-standing piece of legislation, rather than a Europeanized version of a national piece of legislation, even though the rules it contains do exist in other countries and international labour Conventions. From a political point of view, adopting a framework directive which would complement other specific directives made sense because Member States could transpose and implement it relatively

quickly, which would lead to the same minimum level of protection across risks and across Europe.

The Framework Directive's main objective was to improve the safety and health of workers, which is why it made the principle of prevention a cornerstone of the system. It also defined general principles for managing safety and health; identified the responsibilities and obligations of the employer, as well as the rights and duties of workers; and established the obligation to conduct risk assessments. Social dialogue, worker participation, training, safety representatives and safety committees were all part of the legislation, with a variety of rights. Kineke (1991) highlights the fact that several aspects of the directive's text were particularly new and relevant:

— It sought to harmonize health and safety, as well as to guarantee working conditions and well-being;
— It set minimum requirements for Member States, in the sense that they were free to provide a level of protection that was more stringent or detailed than that resulting from EU law;
— References were made to the nature and size of companies, including the need to avoid imposing constraints that might affect the development of small and medium sized enterprises;
— It was expansive, valid for all enterprises and all industrial sectors;
— It allowed Member States discretion as to its implementation, although reporting on implementation to the European Commission was required.

Between 1989 and 2013, some 30 daughter directives with more detailed requirements were adopted; these covered a broad range of topics and risks such as physical, chemical and biological agents, general workplace requirements, work equipment, personal protective equipment, manual handling of loads and display screens equipment. A full list of OSH directives is available in Annex 1.

In January 1993, the Single Market – which was the main driver for European integration – became a reality for twelve EU Member States: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the UK. European Commission President Jacques Delors showed support to social stakeholders and encouraged them to model the social dimension of the

European Single Market in a relatively easy and non-formal way. This provided a platform for information, consultation, negotiation and training. Industry representatives wanted policies that considered directives on standards, and unions started to explore and observe that particular field. This led to the creation of expert groups to discuss technical standards in Germany and Belgium, with employers, consumers and union representatives participating as observers.

The Framework Directive and its daughter directives established a new and robust legal framework in Europe, supported by multiannual Community strategies. Through these, the European Commission planned to improve working conditions in Europe by addressing specific political objectives and ambitions. However, the legislative system put in place by the Framework Directive started misfiring in certain key aspects of occupational health: new legislation was and still is difficult to achieve, and enforcement is still problematic. This was the result (among other things) of the limited capacity of labour inspectorates at national level and the sometimes-difficult cooperation with safety representatives, despite legal obligations to involve the inspectorates and provide them with information. Also, trade unions were quite willing to engage in OSH but sometimes lacked the necessary scientific knowledge to negotiate with employers on very technical matters. On the other hand, industry gradually started moving away from a preventive approach and pushed for a simplification of policy and rules.

The EU legislative structure was supported by various building blocks such as the European Agency for Safety and Health at Work (EU-OSHA) and the Advisory Committee on Safety and Health at Work. The creation of the EU-OSHA in 1994 contributed to a modern occupational health sector in Europe, collecting information and raising awareness through the focal points established in various Member States. This Agency, established in Bilbao, is a tripartite body that takes a comprehensive approach to occupational health and safety and provides a platform wherein trade unions, employers and governments can defend their interests and try to reach consensus on various issues. In 2003, a Council Decision (2003/C 218/01) set up the Advisory Committee on Safety and Health at Work in order to streamline the consultation process in the field of occupational safety and health and to rationalise the bodies created by previous Council Decisions. The Advisory Committee has established a series of thematic Working Parties, such

as the Standing Working Party (SWP) on the mining industry, and the Working Parties on chemicals, standardisation and strategy. The Advisory Committee's remit is to assist the European Commission in the preparation, implementation and evaluation of activities in the fields of safety and health at work, in particular by giving opinions in the area of OSH, identifying OSH policy priorities and establishing relevant strategies towards achieving goals. The Committee also facilitates the exchange of views and experiences between Member States and stakeholders, operating as an interface between the European and national level.

2.2 Better regulation: questioning the Framework Directive (mid-2000s)

As of 1992, at the time when the legal framework began to be implemented, the principles of Better Regulation started permeating the new directives and social policies of the European Union (Vogel *et al.* 2010). As Walters (1999 and 2002) point out, the intense legislative activity and proactive policy approach of the previous decades slowed down in the 1990s: this explains the limited success in achieving European harmonization in health and safety after that period. As of the mid-1990s, several international projects started to analyse the economic impact of regulation, its performance and its cost for industry (particularly at a micro level).

In the mid-2000s, the European Commission adopted 'Better Regulation' as a key strategy. Better Regulation – an approach born in the United States and then adopted by the Organisation for Economic Co-operation and Development (OECD 1995) – focuses on simplifying legislative actions and, in the case of OSH directives, advocates the modernization of 'older' provisions. Updating directives and their content is a reasonable endeavour but, in this case, the European Commission focuses mainly on competitiveness, innovation. It also, as explained by Van den Abeele (2015) uses impact assessments and ex-post evaluations to systematically reduce regulatory costs and burdens, without taking into account the benefits of regulation and the cost of non-Europe. In February 2007, during the Presidency of José Manuel Barroso, the European Commission published its strategy for 2007-2012, entitled 'Improving quality and productivity at work: Community Strategy 2007-2012 on

health and safety at work'. However, at this time the issue of working conditions in the European Union was at a standstill. Primary prevention at the workplace – which accounted for at least 8% of avoidable cancers – was still not a core pillar of the OSH. Action on musculoskeletal disorders was also missing (Vogel 2010). Weak points became increasingly visible and obvious, such as the need to deal with risks related with asbestos pollution, dangerous chemicals, carcinogens, mutagens and substances having a toxic effect on reproduction. The wider legislative framework became gradually affected by the weight of political debates about competitiveness versus legislation, cost versus benefit, innovation versus prevention and safety versus profit.

3. The European Commission's 2014 Strategic Framework: importance and limitations

3.1 Towards a new Strategic Framework

In the field of occupational safety and health, the EU has used multi-annual strategies to achieve its political objectives. These strategies, formally endorsed by the European Commission after consultation, are voluntarily implemented by Member States and stakeholders. Various strategies or Action Programmes have been adopted since 1978. Strategic Frameworks are key instruments: they identify priorities and common objectives, provide a framework for coordinating national policies and promoting a holistic culture of prevention, they establish a clear European direction. As a result of the 2007-2012 Strategy, all the then 27 Member States put in place national strategies (European Commission 2014a).

In 2011 a new Strategic Framework was announced for the period 2013-2020. Expectations were running high, given the importance of the framework as a common tool. However, in 2012, the European Commission announced a delay, arguing that managing the financial crisis took priority. Faced with such a cloudy horizon, various actors started to put pressure on the European Commission: BusinessEurope and the European Trade Union Confederation (ETUC) sent letters to European Commissioners insisting on the need to issue the Strategy as soon as possible, making their own antagonistic sets of demands that showed their very different expectations. The atmosphere was tense and

uncomfortable, as no one knew whether the European Commission was going to publish the Strategic Framework or reverse its course and keep delaying implementation. Indeed, the Commission needed two more years to negotiate, develop and (probably) internally renegotiate the Strategic Framework on Health and Safety at Work for the period 2014–2020. When the framework finally came out – in 2014 instead of 2012 – it was welcomed by the OSH community for two main reasons. First, stakeholders were finally given an indication of the priorities to tackle in the next period. Second, the number of deaths and accidents in companies in Europe was still high, and primary occupational safety and health prevention measures were still precarious. In other words: *doing nothing was not an option.*

The Strategic Framework that was proposed as a result of the consultation is rich in political ambition but lacks strategic guidance and content. It contains three major challenges: 'improving the implementation record of Member States, in particular by enhancing the capacity of micro and small enterprises to put in place effective and efficient risk prevention measures; improving the prevention of work-related diseases by tackling existing, new and emerging risks; tackling demographic change' (European Commission 2014a). The European Commission suggests addressing these challenges through several actions, which are linked to seven objectives: consolidating national strategies, facilitating compliance with OSH legislation, particularly by micro and SMEs, improving enforcement in Member States, simplifying existing legislation, addressing the ageing of the workforce and emerging risks, improving statistical data collection and reinforcing coordination with international organisations.

The European Commission explained that it 'can meaningfully contribute to reducing work accidents and occupational diseases worldwide'. Cooperation with the International Labour Organisation (ILO), in particular, as well as the World Health Organisation (WHO) and the OECD is presented as key. Several actions are envisaged, such as; 'supporting candidate countries during accession negotiations; strengthening OSH cooperation, in particular with the ILO, but also the WHO and the OECD; launching a review of the Memorandum of Understanding with the ILO to better reflect OSH policy; contributing to implementing the sustainable development chapter of EU free-trade and investment agreements regarding OSH and working conditions;

addressing OSH deficits in the global supply chain and contributing to G20 initiatives on safer workplaces in this regard; strengthening ongoing cooperation and dialogue on OSH with strategic partners' (European Commission 2014a).

However, the 2014 Strategic Framework is not a real strategy – it is a document that lacks actual content and depth. Several weak points should indeed be pointed out. Firstly, the objectives are too general and should address some issues that have been overlooked. They should also be measurable. Secondly, several of the so-called 'key' challenges – improving implementation, occupational diseases and an ageing workforce – are not really new and already have been 'key' for a long time. Thirdly, most of the work that needs to be done to achieve the objectives is delegated to the Bilbao Agency, which is already overburdened by its own work programme and, additionally, has no executive power. This means that the European Commission can concentrate on what appears to be the most important and almost the sole strategic objective: simplifying existing legislation. The Strategic Framework states that this should be done in line with the REFIT programme in the following way: by assessing whether the OSH acquis is fit for purpose, by finding out how to improve its implementation and by ensuring better and effective compliance by Member States and enterprises (European Commission 2014a).

The Strategic Framework should be designed around real workplace issues, particularly in small and less developed companies where workers are more likely to suffer on the job. Important real issues are, for example, psychosocial risks, musculoskeletal disorders and exposure to dangerous substances, such as nanomaterials, endocrine disruptors and reprotoxins. It should also look at other empirical risks, such as those faced by migrant workers, crowd workers and cloud workers.

3.2 The European social partners' reactions to the Strategic Framework

The ETUC, in its Executive Committee meeting of 2-3 December 2014, called on the European Commission to put forward a substantial strategy for occupational health and safety in Europe, and also to launch at once an ambitious initiative to establish binding European

exposure limits for an extended number of carcinogenic and mutagenic substances. Moreover, ETUC demanded the immediate launch of legislative actions in a number of unregulated areas: musculoskeletal disorders (vibration, manual handling and display screen equipment); psychosocial risks; risks to reproductive health arising from toxic substances; risks derived from new materials such as nanoparticles, chemical disruptors of the hormone system. ETUC also insisted on the need to deal with such risks from both male and female workers' perspectives, as exposures to substances, biological agents and working processes are different (men and women being involved in different sectors and occupations), and the diagnosis of occupational diseases is different for men and women. This differentiated approach needed to be mainstreamed into all OSH policies, both at national and European level (ETUC 2014a).

Commenting on the Commission's Strategic Framework, the ETUC expressed its disappointment and described the strategy as weak, insubstantial and containing no concrete proposal for action nor specific improvement to health and safety. It criticized the fact that the strategy threatens to deregulate health and safety, claiming a need to 'simplify legislation where appropriate' to make it easier for SMEs to implement health and safety. The ETUC concluded that 'the strategy proposes to treat health and safety as part of the REFIT programme of cutting so-called red-tape. Workers' safety is not a bureaucratic burden' (ETUC 2014 b).

BusinessEurope reacted by issuing a Position Paper on the EU Strategic Framework on Health and Safety at Work. It welcomed the focus of the Strategic Framework on better implementation, compliance and simplification. It remarked that psychosocial risks, musculoskeletal disorders and mental health problems are complex and subjective issues, adding that a better understanding is needed of how individuals' private lives and work interact. BusinessEurope also insisted on prioritizing non-legislative tools, including good practices, and on the need to take costs into account when taking action in this area. It supported the European Commission's high priority given to reducing administrative and regulatory burdens on SMEs (BusinessEurope 2014).

4. Recent developments: the year 2015

The year 2015 has been marked by several key OSH discussions: the European Parliament and the Council of the European Union reacted strongly and in different ways to the European Commission' Strategic Framework. Also, an important part of the evaluation of the EU OSH directives took place during the year and this evaluation process might be the biggest and most complex (24 directives are being evaluated) carried out by the European Commission under the rules of the Regulatory Fitness and Performance programme (REFIT programme). The final discussions around the amendment of the carcinogens directive equally took place in 2015. At international level, key meetings were organised to finalize draft ISO/DIS 45001 on occupational health and safety management systems – requirements with guidance for use, but they were unsuccessful.

4.1 EU institutions' reactions to the Strategic Framework on health and safety at work

In addition to the criticisms described in the previous section, 2015 brought new reactions to the EU Strategic Framework on Health and Safety at Work 2014-2020. On 27 February 2015, the Council of the European Union adopted conclusions entitled 'EU Strategic Framework on Health and Safety at Work 2014-2020: Adapting to new challenges' that called upon the European Commission to 'review the EU Strategic Framework in the light of the ex-post evaluation of OSH directives' and, most importantly, it adds, 'taking into account the opinions given by the Advisory Committee on Safety and Health and the Senior Labour Inspectors' Committee (SLIC)' (Council of the European Union 2015a).

Another set of Council Conclusions were issued on 28 September 2015, entitled 'A new Agenda for Health and Safety at Work to Foster Better Working Conditions'. On the issue of REFIT, the (EPSCO) Council underlines that 'Better Regulation principles and the Regulatory Fitness and Performance Programme can never replace political decisions and should not reduce the level of protection for workers, but should instead increase it through better effectiveness and efficiency and ensure that the measures are well-designed and deliver sustainable benefits for citizens, business and society as a whole'. The Council of the European

Union also insists on the importance of the overall structure of health and safety at work legislation (a structure that is based on the Framework Directive) and recognizes that some directives may need updating in order to keep pace with technological developments. It adds that such changes must be based on a comprehensive impact assessment, recalling the importance of the precautionary principle, if evidence is lacking (Council of the European Union 2015 b).

The September 2015 Council conclusions tried to give a more concrete direction to the Eropean Commission's approach. For example, the Council of the European Union calls upon the Commission to consider improvements to the legislation on carcinogens and mutagens, so that new substances may be added rapidly; to update the directives related to musculoskeletal disorders; to prepare an operational plan of action for the Strategic Framework; to provide adequate training to labour inspectors, and so forth. It also invites social partners to continue negotiations on transnational and international agreements.

On 25 November 2015, the European Parliament issued a Resolution on the EU Strategic Framework on Health and Safety at Work 2014-2020. The Resolution stressed the need for clear and efficient rules, while regretting that the European Commission has not set out specific targets in the framework. It also suggested that more concrete legislative and or non-legislative measures should be made, and also that implementation and enforcement tools should be included in the framework following its review in 2016. The European Parliament asked the Commission to draw up indicative reduction targets for occupational diseases and accidents in order to ensure that national OSH strategies reflect the EU-OSH Strategic Framework and are fully transparent and open to input from social partners and civil society (European Parliament 2015). The Parliament also called on Member States and social partners to act, urging them to improve the skills and competences of safety representatives and company managers. Member States should also promote the involvement of workers in OSH prevention activities; they are free to adopt higher standards than the minimum OSH requirements.

4.2 The ex-post evaluation of OSH directives

In 2012 and 2013, DG Employment, Social Affairs and Inclusion (DG EMPL) of the European Commission issued an evidence-based 'Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) directives in EU Member States', which was to be conducted by a consortium consisting of consultancy firms COWI, IOM (Institute of Occupational Medicine) and Milieu Ltd. The main idea was to evaluate the practical implementation of OSH legislation, its relevance, effectiveness and coherence, and to provide recommendations for the development of future EU policy instruments in this area. As a part of the evaluation, during the summer of 2013 the European Commission launched a public consultation on the future EU policy framework. After a lengthy period of collecting information (mainly through phone calls), COWI organized a 'Validation Seminar' in Brussels on 9 December 2014 with key stakeholders, Member States, social partners and other organizations[3]. The objective was to discuss the preliminary conclusions of the upcoming evaluation (COWI 2014).

The report produced by the consultants eventually concluded that all 24 OSH directives have been relevant for Member States and that most of their provisions remain relevant. On effectiveness, the report concluded that the directives indeed reach their objectives in ensuring health and safety of workers. On coherence, the report finds no contradictory provisions and very few overlaps between OSH directives. Furthermore, among the few overlaps identified, a large majority do not result in double regulation in practice and therefore do not lead to additional costs when applied by employers (COWI 2014).

The Advisory Committee on Safety and Health reacted to the consultant's report by issuing an Opinion that (significantly) was

3. The Validation Seminar focused on five key topics: 1) Do the directives work as intended? 2) How do we manage the major ongoing risks of musculoskeletal disorders and psychosocial risks? 3) How do we maintain the relevance of the directives? 4) How do we best manage chemical risks (including nanoparticles)? 5) How do we deal with challenges in the implementation of OSH legislation – enforcement and SMEs (DG Employment 2014)? The participants, however, were less interested in discussing possible recommendations than being informed of the timeline and plans of the European Commission with regards to the OSH acquis. Since the beginning of this process, the Commission has been reluctant to share its plans, information about future steps, deadlines and goals related to the OSH acquis.

adopted unanimously by worker representatives, employers' representatives and governments. The Committee states that the need to update some directives or requirements does not call for a full recast of the occupational health and safety directives system. It considers that the current structure of the acquis – with a Framework Directive and individual directives – should be maintained. It also considers that any specific proposals with regard to the OSH acquis should take into account the opinion of the tripartite Advisory Committee on Safety and Health (ACSH) and the contributions of social partners, according to the provisions of the EU Treaty on social dialogue. It underlines the need to focus on better enforcement and compliance and to find new and innovative ways of reaching SMEs and micro-enterprises. The Committee considers that any specific proposals with regard to the OSH acquis should take account of the opinion of the tripartite ACSH (2015) as well as the contributions of social partners, according to the provisions of the EU Treaty on social dialogue.

4.3 Revising the carcinogens and mutagens Directive

The Carcinogens and Mutagens Directive (2004/37/EC), which sets out requirements on the employer to identify carcinogenic and mutagenic substances and assess the potential risks, substitute, provide health surveillance, set binding exposure limits, etc., was opened for revision in 2004. Negotiations between workers' representatives, employers' representatives and officials of the European Commission have now been taking place for 12 years. The process has taken this long because of the divergent opinions on the methodologies for deriving limit values, on the inclusion of reprotoxins as well as on whether the approach should be more or less risk-based.

Finally, in 2016, after scientific evaluation and impact assessment, the European Commission introduced a legislative proposal for a first wave of 13 new and revised occupational exposure limit values for a number of priority occupational chemical carcinogens. As the European Commission explains, this also 'fits within the Commission's priority for a deeper and fairer single market, in particular its social dimension' (European Commission 2016). The proposal was adopted by the College of Commissioners on May 13, 2016 and sent to the Council of the European Union and the European Parliament for negotiation and

subsequent adoption, probably by the end of 2016 (Morris 2016). More substances with updated limit values can be expected, as this first wave of Occupational Exposure Limit Values is not enough to significantly update the Directive. Wriedt (2015) has identified at least 70 limit values that need to be included. A second and a third wave of substances will probably be presented by the European Commission by the end of 2016, as well as the proposal to include reprotoxin substances in the scope of the Carcinogens Directive.

This type of legislative initiative is very important for many European workers employed in various industrial sectors, such as the chemical, automotive, construction sectors, health care, etc. These workers are exposed to a variety of substances that have a toxic effect on reproduction: mutagenic substances as well as carcinogens such as asbestos, silica, diesel exhaust, mineral oils and solar radiation, as well as shift work, which need to be eliminated. Recent research by Jukka Takala (2015) estimates the number of deaths caused by occupational cancer in the EU every year at 102,500 (and 610,000 globally). This accounts for an unsettling 53% of all work-related deaths in the EU (Takala 2015).

Conclusions and forward-looking perspective

OSH has never been a particularly 'politically salient' policy area. Neither does it generate daily news stories that the media can pick up and disseminate; unfortunately, it becomes newsworthy only when workers die or are injured (Thébaud-Mony *et al.* 2015). The best way workers can be protected is by going 'back to basics', i.e. by having a clear set of rules that can be implemented and enforced by Member States, which must not fall into the trap of simplifying for simplifying's sake or of trading safety for profit.

Similarly, the European Commission's REFIT programme should not undermine the current level of protection. Aimed at simplifying EU law and reducing regulatory costs, it has been increasingly at the centre of the Commission's work programme since the Juncker Commission came into office in November 2014. One of the Commission's key focuses is that 'the Treaty requires that directives in the social field avoid imposing administrative, financial and legal constraints in a way which would hold

back the creation and the development of small and medium-sized undertakings (Art. 153(2) (b) TFEU)' (European Commission 2012 and 2015a).

Looking at the future of OSH, REFIT should not be implemented in a strict and inflexible manner, especially when primary prevention is still far from a reality in many EU Member States. Although the European Commission has published a guideline document on REFIT, the process is not yet clearly defined. Focusing our attention on particular new and emerging risks is useful but should not limit our ability to work on the basics of occupational health and safety. Psychosocial risks, for example, are not new and have been the subject of regulation in several European countries such as Austria, Belgium, Croatia, Denmark, Finland, Spain, Sweden and Norway. The EU should use existing initiatives and truly innovate, rather than consider these phenomena as 'emerging' risks that are difficult to deal with.

The EU should also address unfinished business and proceed with key legislative initiatives such as a Directive on Musculoskeletal Disorders (MSDs). These disorders affect the majority of workers and are the most common although unrecognized occupational disease in the EU, often causing back pain, neck and upper and lower limb pain, and leading to disabilities, cardiovascular diseases, stress and finally possibly an exit from the labour market. MSDs downgrade workers' quality of life as well as companies' productivity. Looking at the 2015 and 2016 European Commission Work Programmes entitled 'A new start' and 'No time for business as usual' – it appears that the objective is to 'do different things', 'do things differently' and 'drive change'. Particular emphasis has been and will be put on jobs, growth and investment – through the Investment Plan – aimed at mobilising more than EUR 315bn over three years. The European Commission also presents the lightening of the regulatory load as a political priority, but claims it can reduce bureaucracy while maintaining high levels of social, health and environmental protection (European Commission 2014b and 2015b).

The European Commission assumes that rules are too complex, but the reality is that complexity lies in the way business takes place. The labour market is changing rapidly; relationships are becoming more complex and blurred, and supply chains now increasingly include digital and cyber platforms. In 2016, Degryse describes situations where

tasks previously performed by professional workers are now being performed by 'citizen-workers'. Today, people themselves perform activities that used to be the responsibility of their banker, travel agent or energy supplier. Workers are becoming crowd workers, cloud workers, click workers or data workers, and are increasingly interacting in high-speed work contexts with non-human actors such as robots, automated decision-making systems, software, algorithms and online platforms.

These changes are profoundly transforming the labour market and labour law, and are having an impact on occupational health and safety, in particular with regard to a certain dilution of responsibilities, obligations and rights. Work is becoming less social, increasingly de-humanised, and the border between private and working life is sometimes almost invisible. The response to this development in our economies and labour market must be broadened to construct a genuine and innovative European occupational health and safety strategy. This could be considered part of the EU's 'innovation policy', in the sense that it could provide new solutions to emerging issues, could impact positively – and healthily – the different sizes of European companies, could motivate them to achieve short, medium and long-term occupational safety and health objectives and foster investment in OSH. These profound and lasting strategic changes must be accompanied by similarly profound regulatory changes and a strong focus on enforcement, rather than resulting in simplification and less regulation.

References

Advisory Committee on Safety and Health at Work (2015) Opinion on the report by COWI *et al.* on the Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States. Doc.1674-EN (2015). Adopted on 24/09/2015. https://circabc.europa.eu/sd/a/74238129-f7d4-42f1-8af3-9ea1ed70eb00/Doc.1674_EN-Adopted_Opinion_COWI_Report-24.09.15.doc

Alhaique D., Carnevale F., Marri G. and Pepe A. (1999) Union struggles for working environment control in Italy from the postwar period to the 1970s in Grieco A., Iavicoli S. and Berlinguer G. (eds.) Contributions to the History of Occupational and Environmental Prevention, Amsterdam, Elsevier, 353-366.

Bagnara S., Misti R. and Wintersberger H. (eds.) (1985) Work and health in the 1980s. Experiences of direct workers' participation in Occupational Health, Berlin Edition Sigma.

BusinessEurope (2014) Position Paper, EU Strategic Framework on Health and Safety at Work, 1 December 2014.

Council of the European Union (2015a) EU Strategic Framework on Health and Safety at Work 2014-2020: Adapting to new challenges, Brussels, 27 February 2015.

Council of the European Union (2015 b) A new Agenda for Health and Safety at Work to foster better working conditions. Draft Council conclusions, Cover Note, Brussels, 28 September 2015.

Council of the European Communities (1978) Council Resolution of 29 June 1978 on an action programme of the European Communities on safety and health at work, OJ C 165, 11 July 1978, 1-13.

Council of the European Communities (1989) Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC). http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01989L0391-20081211&from=EN

COWI (2014) Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States, Main Report.

Degryse C. (2016) Digitalisation of the Economy and its impact on labour markets, Working Paper, 2016.2, Brussels, ETUI.

DG Employment (2013) Evaluation of the European Strategy on Safety and Health at Work 2007-2012, Final Report, March 2013. ec.europa.eu/social/BlobServlet?docId=10016&langId=en

DG Employment (2014) Discussion paper for preparation prior to validation seminar, 25 November 2014.

Diario Prevenzione (2016) The struggle for health at work: the Italian workers' model of the 1970s as a source of inspiration, 15 February 2016. http://www.diario-prevenzione.it/index.php?option=com_content&task=view&id=4949&Itemid=2

ETUC (2014a) ETUC Resolution 'The EU has to act now to improve occupational health and safety', 2-3 December 2014. https://www.etuc.org/documents/etuc-resolution-eu-has-act-now-improve-occupational-health-and-safety#.VvljA9KLSUk

ETUC (2014 b) EU Commission's Framework on Health and Safety at Work: too late, too weak, 6 June 2014. https://www.etuc.org/press/eu-commission%E2%80%99s-framework-health-and-safety-work-too-late-too-weak#.VvlmPdKLSUk

ETUI (2016) The struggle for health at work: the Italian workers' model of the 1970s as a source of inspiration, 15 February 2016. http://www.etui.org/Topics/Health-Safety/News/The-struggle-for-health-at-work-the-Italian-workers-model-of-the-1970s-as-a-source-of-inspiration

European Commission (2012) Communication from the Commission 'EU Regulatory Fitness', Strasbourg, 12 December 2012.

European Commission (2014a) Communication from the Commission on an EU Strategic Framework on Health and Safety at Work 2014-2020, Brussels, 6 June 2014. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0332

European Commission (2014b) Communication from the Commission 'Commission Work Programme 2015 A New Start', Strasbourg, 12 December 2014.

European Commission (2015a) Commission Staff Working Document, Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook, Accompanying the document Better Regulation for Better Results – An EU Agenda, Strasbourg, 19 May 2015.

European Commission (2015b) Communication from the Commission 'Commission Work Programme 2016 No time for business as usual', Strasbourg, 27 October 2015.

European Parliament (2015) Resolution on the EU Strategic Framework on Health and Safety at Work 2014-2020, 25 November 2015. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0411+0+DOC+XML+V0//EN

European Commission (2016) Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-248-EN-F1-1.PDF

Eves D. (2014) 'Two steps forward, one step back' A brief history of the origins, development and implementation of health and safety law in the United Kingdom, 1802-2014. Health and Safety Executive. http://www.historyofosh.org.uk/brief/index.html

Frick K. (2011) The regulation of Systematic Work Environment Management in Sweden- Higher ambition in a weak Swedish work environment system, Chapter 6 in Regulating Workplace Risks- A Comparative Study of Inspection Regimes in Times of Change.

HSE (2016) The history of HSE, Health and Safety Executive. http://www.hse.gov.uk/aboutus/timeline/

Kilimnik K.S. (1998) German Occupational Safety and Health Regulation From an American Perspective, Penn State International Law Review, 6(2), Dickinson Journal of International Law. http://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1072&context=psilr

Kineke J.E. (1991) The EEC Framework Directive for Health and Safety at Work, Boston College International and Comparative Law Review, 14(1), 213-224. http://lawdigitalcommons.bc.edu/iclr/vol14/iss1/10

Morris A. (2016) Health and safety at work - Amendment of the Carcinogens & Mutagens Directive, 12th ETUI seminar on workers' protection and chemicals 30th June – 1st July 2016, ETUI. https://www.etui.org/News/Workers-and-chemicals-12th-ETUI-seminar

OECD (1995) Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, Paris, Organisation for Economic Co-operation and Development.

Stanzani C. (2016) Seminario europeo ETUI su: Il modello operaio italiano di lotta per la salute la sicurezza nei luoghi di lavoro negli anni '70 e '80, Sua influenza in Europa e sua attualità per le strategie sindacali di prevenzione di oggi, Brussels, 9-10 February 2016.

Takala J (2015) Eliminating occupational cancer in Europe and globally. Working Paper 10, Brussels, ETUI.

Thébaud-Mony A., Davezies P., Vogel L. and Volkoff S. (2015) Les risques du travail, Pour ne pas perdre sa vie à la gagner, Paris, Editions La Découverte. http://www.editionsladecouverte.fr/catalogue/index-Les_risques_du_travail-9782707178404.html

Van den Abeele E. (2015) 'Better Regulation': a bureaucratic simplification with a political agenda, Working Paper 04, Brussels, ETUI.

Vogel L. (2006) Is health and safety policy being hijacked in the drive for competitiveness in Degryse C. and Pochet P. (eds.) Social Developments in the European Union 2006, Brussels, OSE and ETUI.

Vogel L. and Van den Abeele E. (2010) Better Regulation: A critical assessment, Report 113, Brussels, ETUI.

Vogel L. (2010) Barroso I: a 5-year standstill on health and safety at work, Autumn-winter 2010/HesaMag #02, Brussels, ETUI.

Vogel L. (2015) The machinery of occupational safety and health policy in the European Union, History, institutions, actors, Brussels, ETUI.

Walters D. (ed.) (2002) Regulating Health and Safety Management in the European Union. A Study of the Dynamics of Change, Brussels, Presses Interuniversitaires Européennes.

Walters D. (ed.) (1999) Regulating Health and Safety at Work. The way forward, Institute of Employment Rights, London.

Wriedt H. (2015) Carcinogens that should be subject to binding limits on workers' exposure, Report 136, Brussels, ETUI.

Annex 1 **List of Occupational Health and Safety Directives**

Directive 89/391 – OSH 'Framework Directive'

Workplaces, equipment, signs, personal protective equipment
Directive 2009/104/EC – use of work equipment
Directive 99/92/EC – risks from explosive atmospheres
Directive 92/58/EEC – safety and/or health signs
Directive 89/656/EEC – use of personal protective equipment
Directive 89/654/EEC – workplace requirements

Exposure to chemical agents and chemical safety
Directive 2009/161/EU – indicative occupational exposure limit values
Directive 2009/148/EC – exposure to asbestos at work
Directive 2004/37/EC – carcinogens or mutagens at work
Directive 2000/39/EC – indicative occupational exposure limit values
Directive 98/24/EC – risks related to chemical agents at work
Directive 91/322/EEC – indicative limit values

Exposure to physical hazards
Directive 2013/59/Euratom – protection against ionising radiation
Directive 2013/35/EU – electromagnetic fields
Directive 2006/25/EC – artificial optical radiation
Directive 2003/10/EC – noise
Directive 2002/44/EC – vibration
Directive 96/29/Euratom – ionizing radiation
Directive 90/641/Euratom – outside workers in controlled areas (ionizing radiation)

Exposure to biological agents
Directive 2000/54/EC – biological agents at work

Provisions on workload and ergonomic
Directive 90/270/EEC – display screen equipment
Directive 90/269/EEC – manual handling of loads

Sector specific and worker related provisions
Directive 2010/32/EU – prevention from sharp injuries in the hospital and healthcare sector
Directive 94/33/EC – young workers
Directive 93/103/EC – work on board fishing vessels
Directive 92/104/EEC – mineral-extracting industries
Directive 92/91/EEC – mineral-extracting industries - drilling
Directive 92/85/EEC – pregnant workers
Directive 92/57/EEC – temporary or mobile construction sites
Directive 92/29/EEC – medical treatment on board vessels
Directive 91/383/EEC – fixed-duration or temporary employment relationship