Revision of the directive on occupational cancers: a political battle requiring staying power

Cancers caused by work have become one of the main legislative battlegrounds in the European Union. The current revision of the directive can already be seen as a victory for the trade unions, in an overall unfavourable context. But how far will the revision go?

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The proposal to include diesel emissions in the Directive on carcinogens is the main bone of contention between Parliament and the Council of the European Union.
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In Europe, cancers are the main cause of deaths related to bad working conditions. An in-depth look at them reveals a paradox. All of them are avoidable: all that needs to be done is to eliminate exposure to dangerous substances at work. However, little progress has been made over the past few years. In the 1980s and 1990s, a lot of effort was put into getting asbestos prohibited, with the battle ending in 1999 with the substance being banned throughout the European Union from 1 January 2005 onwards. But subsequent union demands for tighter legislative measures on occupational cancers have come up against very effective industry lobbying and European Commission hostility. It was as if, once the asbestos battle had been won, a new chapter had been started, with occupational cancers moving out of the political focus.

The challenge we are facing is formidable. Of all the legislation on work-related health risks, legislation in this field has the greatest impact on human lives. Effectively fighting occupational cancers involves questioning employer control over the way work is organised and the use of certain production methods. The vast majority of occupational cancers are not due to accidents, but to the lack of attention paid to preventing risks in production processes and to the deliberate negligence of human health in the search for profits.

Ten years wasted

The process of revising the directive on protecting workers against carcinogens was finally started in 2016, despite having been planned for the 2002-2006 period as part of the Community strategy on work-related health. At that time, four aspects were considered as priority by the European Commission: the inclusion of reprotoxic substances in the directive's scope, the adoption of new occupational exposure limits (OELs), a revision of the existing OELs and the adoption of criteria for setting OELs.

In the context of progressively implementing REACH, it would have been logical to consider this revision as a top priority for the 2007-2012 strategy. But this was devoted to the deregulatory shift linked to the political context of the formation of the first Barroso Commission (which took office in November 2004).

The subsequent period was overshadowed by a legislative paralysis justified by various pretexts. First, the legislative context had been made more complex by the so-called "better legislation" process which meant that any legislative proposal had to be subjected to an impact assessment revolving mainly around cost-benefit calculations. When complex measures involved impacts covering many decades, these calculations were generally based on tenuous assumptions very much open to manipulation.

Second, the launch of the REFIT[1] programme in December 2012 constituted a further hurdle, introducing a legislative moratorium in the field of work-related health pending an assessment of all directives. This moratorium, originally planned just for 2014, was extended by the Juncker Commission for the whole of 2015. On 6 June 2014, the Commission adopted the EU Occupational Safety and Health (OSH) Strategic Framework 2014-2020, without however foreseeing any legislative measure concerning cancers. There was thus a risk of a further multi-year stalemate, despite the fact that occupational cancers kill more than 100 000 people in Europe every year.

The formation of the new Commission under Jean-Claude Juncker in 2014 brought no change to this approach. At her hearing by the European Parliament on 1 October 2014[2], Ms Thyssen – designated for the employment and social affairs portfolio – listed four priorities for her work. Workers' health and safety were not on her list. The word "cancer" was not mentioned once during the long hearing. The brief statement referring to European

1. Acronym for "Regulatory Fitness and Performance Programme".
2. The full minutes of this hearing are available at: http://www.europarl.europa.eu/hearings-2014/resources/library/media/20141022RES75837/20141022RES75837.pdf

legislation on occupational risks was marked by the same fudging as seen over the past decade in the two Barroso Commissions.

The stalemate finally came to an end during the Dutch Presidency of the European Union in the first half of 2016[3].

Parliament removes the barrier

The directive is set to be revised in several phases. This entails overlapping debates as the legislative process associated with each batch of proposals can take quite a long time and will not be completed when the subsequent batch is submitted to the European Parliament and the Council of Ministers. For instance, the proposal for the first phase of the revision was presented in May 2016 and ended with the adoption of a directive in December 2017. In the meantime, the second phase was initiated in January 2017. The amendments brought in by the European Parliament with regard to this second phase were voted on in March 2018 and negotiations are now taking place between the Parliament and the Council to get a directive adopted, probably in the course of the second half of 2018. We are seeing a similar overlapping with the third phase. Started in April 2018, it is expected to go on until 2019, when the fourth phase will probably be launched after the European elections in May 2019.

Cutting up the process into several phases is basically no problem. For a directive against occupational cancers to be effective, it needs to be regularly reviewed to take account of the latest data. However, a series of *ad hoc* revisions targeting specific points brings with it the risk of missing out on a comprehensive analysis of all prevention needs. This is why the European Trade Union Confederation is calling for the adoption of a medium-term roadmap defining these needs and providing a definitive schedule for the various legislative measures, as well as for other legislative measures such as better Community funding for research aimed at stimulating the substitution of carcinogens.

The European Parliament has played a particularly positive role in this process, with its amendments greatly improving the Commission's minimalistic proposals. This pressure – backed by some 85% of MEPs[4] – took the Commission by surprise. It tried to present the amendments as unreasonable, intimating that they endangered the whole process of revising the directive.

In the EU system, amendments put forward by Parliament are only included in the final text of a legislative instrument when they have been taken up by the Council of Ministers. These negotiations take place in the context of what is called a "trilogue", in which the representatives of the Parliament and the Council seek a compromise. Though not having decision-making power, the Commission takes part in these meetings and is able to defend its positions.

With regard to the negotiations on the first phase, the Member States were divided into three blocks[5]. A significant group of States were in favour of supporting a major part of the Parliament's amendments. The States most active in this group were Sweden, France, Germany and Belgium, though, in certain questions, up to a dozen States could be involved. Two States (the United Kingdom and Poland) wanted to uphold the Commission's minimalistic proposals and rejected all of the Parliament's substantial amendments. They were very often supported by Romania and Finland. The other States took middle-of-the-road positions or did not voice a clear opinion. There was thus no clear majority within the Council[6]. After a series of fruitless meetings, a compromise was finally reached, with the directive adopted in December 2017.

Twenty-one supplementary limit values

The final text is a great improvement on the initial proposal, especially due to the inclusion of reprotoxic substances in its scope of application, something the European Parliament had wanted to achieve in the first phase. The final compromise requires the Commission to assess the consequences of this measure at the latest by the first quarter of 2019 with the aim of envisaging a revision

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3. For the reasons for this shift, see Vogel, L. (2016) Cancer at work: more needs to be done to achieve better legislation, *Hesamag*, 14, 6-9.
4. Just two groups, the extreme-right (ENL) and the national conservatives (ECR) did not vote in favour of the majority of amendments.
5. These blocks were not static, i.e. their composition changed over time. Depending on the issue in question, certain States could have position more or less favourable regarding the Parliament's amendments.
6. A qualified majority in the Council consists of 55% of Member States, representing at least 65% of the EU population.

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on this point. Thanks to the Parliament, the directive requires Member States to organise the health surveillance of exposed workers beyond the actual period of exposure. This is an important aspect, as cancer often only develops several years after exposure. With regard to hexavalent chromium and wood dust, the European Parliament has achieved exposure limit values ensuring a higher level of protection against cancers. However, the Parliament's amendment regarding crystalline silica was not adopted, with the European limit value leaving a considerable residual risk. This point will need to be put on the agenda of the next phases.

As regards the second phase, the most important debate was about diesel engine exhaust emissions, a risk affecting some 3 million workers in Europe. The European Parliament has voted in amendments which include these emissions in the directive's scope of application and set exposure limit values for two of their constituents (elemental carbon and carbon dioxide), but it is still too early to know whether this will gain a majority in the Council of Ministers.

Taking stock, we can expect 21 limit values to have been adopted by the end of the current Commission's term of office in 2019. While constituting great progress compared to the three limit values adopted between 1990 and 1999, it is just little when compared to workplace reality. The 2020 target of 50 limit values will not be achieved. The defined limit values offer very different levels of protection depending on the substances. There is a lack of consistency and a major transparency problem in that the directive provides no information on the residual risks even if a limit value is complied with. Looked at from a quantitative perspective, the most important aspect is the momentum which has led to a large majority being created within the European Parliament and which has mitigated the Council's initial reluctance to go any further than the minimum proposed by the Commission. A window of opportunity is thus now open.

The current revision is limited to catching-up measures, i.e. adapting the directive to the scientific state-of-the-art and to the prevention possibilities available at the end of the 20th century. In the meantime, new scientific knowledge has appeared, especially relating to carcinogenesis, the role played by epigenetic processes, endocrine disruptors, the transgenerational effects of certain forms of occupational exposure, the risks linked to the spread of nanomaterials and the role of multiple exposures.

While the current revision is indispensable, it must not black out the need to find legislative responses to emerging risks or to take account of our better knowledge. We are only at the start. There is still much work to be done. We need to create a balance of power allowing a comprehensive strategy for eliminating occupational cancers to be defined. This fight goes hand-in-hand with actions to defend the environment against chemical risks. It also has a decisive role to play if we want to combat social health inequality. Beyond their immediate results, the current intense debates are of great importance in emphasising the political dimension of the fight against cancer.

More information

The ETUI website regularly tracks progress in the field of occupational cancers, with a whole section devoted to this question: https://www.etui.org/Topics/Health-Safety-working-conditions/Occupational-cancers
On 4-5 December 2018, the ETUI will be holding a conference in Brussels on "Women, cancer and work". Details will be available soon at www.etui.org. To receive regular updates, please send an email to dgregoire@etui.org.

Women also affected! The example of cytostatic drugs

In the field of healthcare, many drugs have health-impairing consequences for staff. This is particularly the case with the cytostatic substances used to treat cancers (chemotherapy). At all stages – drug preparation and administration, contact with patients' urine or sweat, waste disposal and laundry cleaning – hazardous exposure may occur if the work is not correctly organised. Such exposure can itself cause cancer and is reprotoxic (fertility problems, miscarriages, etc.). The staff concerned are mainly women. While the occurrence of all occupational cancers is seriously underestimated, this is especially the case for women. Many stereotypes associate occupational cancers with jobs done by men in traditional industries. Yet the prevention of occupational cancers is particularly lacking in sectors dominated by women, for instance healthcare or cleaning. The revision of the directive is doing nothing to rectify this situation. The majority of the substances targeted by the European Commission are found in jobs done by men. This is why the trade unions and the European Parliament want to get cytostatic substances included in the directive's field of application. Adopted by the Parliament, an amendment relating to the second phase of the revision calls for priority to be given to this question in the upcoming phases.