Chapter 7
One swallow doesn't make a summer — European occupational health policy at a crossroads

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Introduction

European Union legislative action in the field of workers' health and safety has been put on the back burner since the beginning of the 21st century. The main reason for this is not specific to occupational health but reflects the general weakening of social policies in the EU, a trend which became clearly noticeable when the focus of the Lisbon Strategy was adjusted in 2004-2005. It is also linked to the gradual implementation of the 'Better Regulation' agenda, under which legislative initiatives have been made dependent on their supposed economic impact. This weakening of Community occupational health policy can be traced by examining the various strategies established for 2002-2006, 2007-2012, and finally 2014-2020. In terms of occupational health legislation, there is a striking contrast between the large amount of legislation produced in the wake of the Single European Act (1986), and the far smaller number of texts produced as of 2002. The table annexed to this chapter gives an overview of the legislation adopted. This quantitative reduction, however, is only one aspect of the change. In terms of quality, the few directives worked on since 2002 have been the subject of tough negotiations, providing only a partial, and often insufficient, response to the needs they were supposed to meet[1].

In May 2016, a glimmer of hope arose with the launch of the revision of the directive on carcinogens and mutagens at work. Will this change of direction lead to a revitalisation of Community policy, or will it remain a one-off? This chapter examines the development of European regulation in this area over the last twenty years. After considering the needs to which it is responding, and dwelling on the fact that Community legislation is a vital tool in this area if we are to see harmonised progress on living and working conditions in Europe (Section 1), we examine the impact of 'Better Regulation' (Section 2). The revision of the carcinogens and mutagens directive (Section 3) raises some particularly interesting questions. It seems to go against a general trend unfavourable to rules protecting workers' lives and health. We shall attempt, therefore, to understand how, at a particular point in time, multiple complex factors have created an unexpected window of opportunity. Section 4 shows that the renewed activity in relation to cancer has not yet been able to revive Community policies on other priority occupational health issues. Major challenges remain: the still worrying level of musculoskeletal disorders and the strong emergence of psychosocial risks require an approach to occupational

1. For reasons of space, this chapter does not cover developments on the regulation of working time.

health going beyond material risks. These reflect aspects of work organisation needing to be regulated with a view to counteracting the power of employers.

We conclude on the need to consider health and safety issues as part of a broader approach linking societal issues to workplace democracy. In our view, a purely technical approach to occupational health rules is bound to be inefficient and basically legitimises the double standards under which the health of people at work is far less well protected than their health in other contexts (regulations on the marketing of foodstuffs, medicines, cosmetics, rules on transport safety, air and water quality etc.).

1. Clear needs for legislation

Employment and working conditions are responsible for a large and increasing share of the social inequalities in health in Europe, as in the rest of the world (Benach *et al.* 2013). Life expectancy, healthy life expectancy, cardiovascular mortality, cancer, mental health, disabilities acquired or intensified in adulthood: in all these areas there are very strong correlations between an individual's socio-occupational group and the state of his/her health. Different disciplines (sociology, epidemiology, statistics, toxicology, ergonomics, etc.) establish often very complex causal links, requiring an analysis taking account of effects and the cumulation of harmful factors throughout a person's working life (Thébaud-Mony *et al.* 2015). The risks involved are both material (toxic chemical substances, inadequate work equipment) and immaterial (absence of workplace democracy, imbalance between the work which has to be done and the means available to perform it, work intensification, discrimination and harassment, etc.). Accumulated exposure to these harmful factors tends to become greater lower down the social hierarchy. European surveys show two fault lines. Manual workers are far more exposed to material risks and tiring or taxing posture. When it comes to most immaterial risks (low levels of autonomy, lack of training, precarious work, etc.), the most obvious fault line in risk distribution is between those who design tasks and those responsible for implementing them (Amossé 2015). When poor working and employment conditions have chronic or serious effects on workers' health, they can result in downward occupational and social mobility, towards jobs which are less-skilled, less well-paid and/or more precarious.

Examining the data from national and European surveys on working conditions[2], we can identify a number of general characteristics:

— major inequalities exist, not only between occupational groups, but also between women and men, between workers with different employment statuses (precariousness), and between companies of different sizes. Other factors interact with these inequalities: immigrant status and ethnicity, age, position of the

2. At Community level, the most important survey on working conditions is taken every five years by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), in Dublin. The first survey dates back to 1990-1991, while the sixth one was carried out in 2015. We therefore have a set of data on the evolution of working conditions in Europe covering 25 years.

company in sub-contracting chains, stronger impact of austerity policies in some sectors (civil service, health and social services, education, etc.);

— most risks remain at a high level for long periods of time, with no primary prevention measures taken despite the risks being known for a long time. They are downplayed due to passive resignation to so-called 'occupational hazards', with gender stereotypes having a strong influence. While there have been some improvements in the accidents at work statistics, no significant improvement is observable in the field of health, a field in which data is not collected systematically. Most public health statistics take no account of the occupational activity of those whose health is affected;

— the objective set out in the Treaty of Rome (1957) – the harmonisation and improvement of working conditions – is far from being met[3]. There are still huge differences in the quality of working and employment conditions between Member States, and, in some respects, these differences are growing. For example, the share of women workers in part-time jobs has increased in some Member States to the point of becoming standard for most women (in the Netherlands, for instance). In all European Union countries, moreover, there are still considerable or worsening gaps between different socio-economic groups;

— the cumulative impact of poor working conditions often results in people being sidelined from the labour market well before they reach statutory retirement age (Volkoff and Gaudart 2015; Vendramin and Valenduc 2014). Occupational health problems are an important factor in the reduced employment rates of over-50s. Workers in the building sector, in cleaning or in nursing are often unable to complete a full working career.

The unequal distribution of unpaid work between women and men is still a fundamental characteristic of our societies. Its consequences interact strongly with the conditions of paid work. Public health surveys carried out in Catalonia, for example, show that less-qualified female workers are particularly negatively impacted by a heavy domestic workload (Borrell *et al.* 2004). Many factors help to explain this: these women cannot afford paid help in the home; work of a lower status results in a lower social status, making it more difficult to challenge inequality in the family structure; low-skilled work is quite similar to housework, and this monotony can negatively affect health.

From the time when preparations began on the Single Market (second half of the 1980s), improving working conditions with a view to ensuring workers' health and safety emerged as a key aspect of Community social policy. Several strong arguments justified this importance. They remain just as valid today.

3. Article 117 of the Treaty of Rome states that: 'Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained'. This objective is repeated, in different words, in the current Article 151 of the Treaty on the Functioning of the European Union (TFEU).

Completion of the Single Market implied greater competition between companies at European level. It was therefore important to ensure that companies could not gain a competitive advantage by ignoring prevention and adopting poor working conditions, as this could create a downwards spiral. The debates in the run-up to the adoption of the Lisbon Strategy in 2000 show that, at that time, most employers acknowledged that Europe's competitiveness could not be based on poor quality of work; they recognised the correlation between quality of work, in terms of production efficiency, and the quality of working conditions. From the social and political viewpoint, working class support for European integration would only be obtained if people could see a positive impact of Europe on their living and working conditions.

The Single Market involved measures to harmonise market regulation (particularly for machines and chemical products). Harmonisation of market rules would only work when accompanied by a partial harmonisation of the rules governing working conditions. This link resulted in a dual harmonisation. While market rules have basically been fully harmonised (up to a point where Member States have little leeway to go beyond the Community requirements), social rules have seen just minimal harmonisation. National rules ensuring a higher level of protection for workers than the minimum requirements set out in the directives are, indeed, one of the forces driving the development of Community legislation. European legislation can often evolve precisely because more effective rules have already been adopted in a number of Member States.

The adoption of the Single European Act in 1986 was followed by ten or so years of very productive legislative activity on occupational health issues, leading to a radical overhaul of national occupational health rules in many Member States.

The Single European Act added Article 118A to the Treaty of Rome (Article 153 TFEU). Thanks to this legal base, Community legislative activity in the field of occupational health, which began in a rather piecemeal way in 1978, became more systematic. The negotiations on the 1989 framework directive[4] took place in parallel with the negotiations on the machinery directive[5]. The rules on chemical risks at work are closely linked to the rules on the production and marketing of chemical products. While the link between economic rules and occupational health rules is essential, it does not, however, constitute grounds for Community legislative intervention. The aim is to protect workers' health by acting on all factors influencing it. This principle was clearly upheld by the Court of Justice of the European Union (CJEU) in its ruling of 12 November 1996 on an action for annulment of the Working Time Directive, brought by the United Kingdom[6].

4. Council Directive 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29 June 1989, pp.1-8.
5. Council Directive 89/392/EEC, of 14 June 1989, on the approximation of the laws of the Member States relating to machinery, OJ L 183, 29 June 1989, pp.9-32.
6. Judgment of the Court of 12 November 1996, United Kingdom/Council, case C-84/94, Rec. I-05755.

2. Better Regulation: silent revision of the Treaties and greater bureaucratisation of decision-making since 2004

The European employers put up very little systematic opposition to Community occupational health legislation between 1989 and 1995, considering it as complementary to the harmonisation of market rules, which they supported. Only two specific initiatives met with their resistance during this period: the 1993 directive on the organisation of working time[7] and the 1989 directive on work equipment[8], insofar as it required existing equipment to be made to comply with the rules. In both cases, the opposition reflected the individual position of one national employers' organisation: the Confederation of British Industry (CBI) on working time, and the Union des industries et métiers de la métallurgie (UIMM, the French employers' federation for the metal industry) on compliance of work equipment. UNICE, the Union of Industrial and Employers' Confederations of Europe, now BusinessEurope, merely supported these national organisations without fully taking part in the discussions. The CBI's strategy involved the UK government (which brought an action for annulment of the directive to the Court of Justice, and subsequently began purely formal transposition with no potential sanctions). The UIMM campaign began with a dramatic condemnation of the supposed cost of rendering all existing equipment compliant, estimated at 30 billion euros in the French metalworking sector alone (Cornudet 1995). This assessment turned out to be inaccurate. To our knowledge, this was the first time that an economic argument was used against a Community legislative measure taken to protect workers' lives and health. The UIMM campaign did however have some impact, as the revision of the Work Equipment Directive adopted in 1995 was less ambitious than the initial proposal. However, the main objective and outcome of the campaign were predominantly national. The UIMM wished to have some provisions removed from the French legislation and to push the government to halt inspection measures and the imposition of sanctions by the labour inspectorate.

The European Commission took an ambiguous stance in this first debate on occupational health legislation and the extent to which it was a 'burden'. It defended the legislation as one element in the balance to be struck between 'social' and 'economic' issues, a balance regularly referred to by the Community. However, in September 1994, the Commission set up an expert group – the Molitor group – to assess the impact of Community and national legislation on employment and competitiveness (Vogel 1995). Looking back, it is striking, at such an early stage, to hear the Community putting economic considerations before the protection of workers' lives and health.

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7. Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, OJ L 307, 13 December 1993, pp.18-24.

8. Council Directive 89/655/EEC, of 30 November 1989, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual directive within the meaning of Article 16 paragraph 1 of Directive 89/391/EEC), OJ L 393, 30 December 1989, pp.13-17. This directive concerns employers' obligations vis-à-vis work equipment, while the machinery directive concerns the obligations on manufacturers and importers placing machinery on the market. The two texts complement each other.

The 'Better Regulation[9]' principles progressively gained the upper hand from the end of the 1990s onwards (Van den Abeele and Vogel 2010; Van den Abeele 2014 and 2015; Alemanno 2015). Initially they appeared to be merely the practical extension of the Treaty principles of subsidiarity and proportionality. But in 1997-1998, the Commission made 'Better Regulation' a principle in its own right. It developed certain stances, geared towards finding alternatives to legislation and towards the introduction of cost-benefit assessments before deciding on the need for legislation. It developed a concept of law based on 'market totalitarianism', to use the expression aptly coined by French lawyer Alain Supiot (Supiot 2010).

'Better Regulation' has resulted in waning Community action in the field of occupational health, without the slightest amendment to the Treaty (Vogel 2015b). Increasingly formal criteria have meant that any potential new legislation is subject to impact assessments focusing on a cost-benefit calculation; moreover, all existing legislation is to be reviewed, assessing the administrative burden supposedly placed on companies. The wording of the Treaty contrasts, therefore, with how these legislative powers are exercised in practice. The exercise of these powers is hampered by a change of the main criterion justifying legislation: from protecting workers' lives to ostensible economic efficiency.

The 'means-to-an-end' approach, whereby any legal rule is assessed in terms of economic 'dividends', has deeply impacted decision-making mechanisms within the European Union. Formally speaking, tripartite consultations are still held regularly, on the basis of the Treaty. Their real impact, however, has been greatly reduced. The European Commission uses its sole right of legislative initiative as a privilege, refusing to submit proposals for directives, and thus preventing their discussion in the Council and European Parliament. The most striking example of this change is the social dialogue agreement on health and safety in the hairdressing sector reached in 2012 (Vogel 2018). In this case, bureaucratic procedures completely undermined the Treaty provisions on social partner autonomy and the option of implementing an agreement reached in the European social dialogue via a directive.

The two mandates of the Barroso Commission (2004-2014) were marked by a dual process: a reduction in the political role played by a Commission increasingly hesitant to set out ambitious projects, and, within the Commission, increased power for a bureaucracy close to the President and responsible for monitoring the other departments as part of the 'Better Regulation' agenda (Van den Abeele 2015). This has resulted in a lucrative market for private consultants, not as independent as they might seem. Their access to this market partly depends on how willing they are to bend to the Commission recommendations, issued throughout the impact assessment process.

9. According to its supporters, the idea of the 'Better Regulation' programme is to ensure that EU policies and legislation are drafted and assessed in a transparent, evidence-based fashion, taking account of the views of citizens and stakeholders. The aim is to ensure targeted regulation which does not do more than is necessary to meet its objectives and provides benefits at as low a cost as possible. Critical analysis shows that this approach essentially favours the interests of employers.

The crisis in Community regulation was accentuated by the REFIT (Regulatory Fitness and Performance) initiative, launched in December 2012. Its aim is to assess all existing legislation (the 'Community acquis'), and to make it more difficult to adopt any new social, environmental or consumer protection legislation. In 2013, the Commission suspended the legislative initiatives underway in the field of health and safety. The process of evaluating the acquis was used as the pretext for this hold-up. Initially intended to run until the end of the mandate of the second Barroso Commission (1 November 2014) (European Commission 2013), the Juncker Commission extended the moratorium on new legislation to cover the whole of 2015. Under pressure from various factors, the moratorium was abandoned in May 2016, under the Netherlands Presidency.

The European Commission is using REFIT as a way to put pressure on Member States to revise their own legislation downwards (Tansey 2014). The pejorative term 'gold-plating' is used to describe national legislation providing a higher level of protection to workers (or other beneficiaries). The aim of this pressure is to convert the minimum requirements in the directives into rules ensuring total harmonisation.

With regard to occupational health policies, it appeared, at the end of 2014, that their future was bleak at European level. In June 2014, the Commission had adopted a 'strategic framework on occupational safety and health' (European Commission 2014). It did not refer to a single legislative initiative. Essentially, the Commission merely called on other players (the Member States, employers' and workers' organisations, etc.) to provide a minimum level of service in the absence of an ambitious EU initiative. From 2015, however, the winds of change started blowing in one particular area: occupational cancers.

3. Revision of the directive on carcinogens and mutagens (2015-2017)

We shall now look briefly at the revision of Directive 2004/37/EC[10] on carcinogens and mutagens at work (hereafter CMD), focusing on the factors which enabled this change from previous policies[11]. These were a combination of intrinsic factors (specific to the issue of occupational cancer) and a wide range of external factors, all reflecting the European Union's current extreme instability.

10. Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (sixth individual directive within the meaning of Article 16(1) of directive 89/391/EEC of the Council, OJ L 158, 30 April 2004, pp.50-76.

11. Detailed analyses of all the issues raised by the revision of the directive can be found in various publications by the European Trade Union Institute, particularly in a collective volume on cancer and work, due to be published in the second half of 2018.

The most important intrinsic factors can be summarised as follows:

— cancer, accounting for more than 100,000 deaths per year, is the main cause of mortality due to poor working conditions in Europe (Takala 2015). In the 1980s and 1990s, a series of demonstrations called for a ban on asbestos. These protests led, in 1999, to a ban in the European Union, from 1 January 2005 onwards. It seemed as if, with asbestos banned, a page had been turned, with occupational cancers no longer a political issue;

— between 1990 and the turn of the millennium, the view shared by most European stakeholders, with some differences, was that what was needed was ongoing improvement of the 1990 directive and the establishment of national public policies allowing for its proper implementation. One important political issue was the extension of the directive's scope to reprotoxic substances;

— little by little, the main discussions shifted to market regulation, with REACH[12] as the key element. The REACH negotiations took around ten years, and were considered – also outside the European Union – as extremely important. While the discussions on the CMD may have aroused the interest of, at best, a few hundred people, the REACH discussions aroused massive interest and were highly controversial, despite their extreme technical complexity;

— REACH entered into force in 2007, with employers' organisations initially branding it as a disaster for the European chemical industry. Conversely, implementation of the new regulation was considered as a way to restore consumer and public confidence in chemical products, and to influence decision-making, which it did, most effectively. Generally speaking, employers considered REACH to be the key issue, with the specific legislation on carcinogens at work seen as a sort of secondary, almost residual, point.

Some Member States were in favour of revising the CMD, though for different reasons. They were, unsurprisingly, concerned about the increasing costs of cancer to social protection systems (RIVM 2016; Vencovsky *et al.* 2017). In a number of countries, legislation on carcinogens and reproductive risks at work already went much further than the CMD.

These countries joined forces with a growing number of employers. For employers' confederations in countries where the legislation went further, political conditions did not permit any form of backtracking[13]. They therefore saw the Commission's inertia as encouraging unfair competition from countries which did little to tackle occupational

12. REACH is the acronym referring to Regulation (EC) No.1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

13. To our knowledge, it was only the Austrian employers who in 2018, following the formation of a government of the extreme right and the Christian Democrats, proposed that Austria should henceforth apply only the minimum requirements of the Community occupational health directives, abandoning 'gold-plating' (a higher level of worker protection). The declarations to this effect have, to date, been very general and vague. No specific measures have been proposed.

cancers. The other factor was the concern of sectoral employers' organisations, which were worried that the REACH authorisation procedures would require them to abandon production or reduce the use of substances of very high concern, particularly due to their impact on workers. These organisations saw an improvement to the CMD as a lesser evil.

2015 was a crucial year for preparing to launch the revision of the directive. The formation of the European Commission under President Jean-Claude Juncker in November 2014 gave no cause for optimism. At her hearing before the European Parliament on 1 October 2014[14], Marianne Thyssen – appointed to the post of Commissioner for Employment and Social Affairs – mentioned four priorities for her work. Workers' health and safety were not among them. The word 'cancer' was not mentioned once during this long hearing.

Under pressure from many sides, the European Commission reiterated that, until the evaluation of the existing occupational health legislation was completed, it would not be possible to launch a revision of the directive.

There had been fairly broad agreement within the European Parliament for years that the directive needed to be revised, particularly in order to include reprotoxic substances. This position became more entrenched following the health scandals to which we will refer shortly. From June 2016 onwards, analysis of the results of the Brexit referendum in the United Kingdom strengthened this trend. In the Parliament's view, it was time for the European Union to again place greater emphasis on new legislation to meet the expectations of the general public (Ulvskog 2016). The advantage of the issue of occupational cancer was that it was an opportunity to respond to compelling needs without explicitly referring to the collective relations between workers and employers. Its close links to public health and the environment made it even more of a legitimate cause.

On 25 February 2015, a coalition of 31 employers' organisations wrote to the European Commission. While upholding their ideological support of the 'Better Regulation' principles, the letter called for work on revising the CMD to begin. It was signed by associations representing a very broad range of sectors: the automotive sector, medical technology, the steel and mining industries, aluminium, etc. It was also supported by the American Chamber of Commerce to the European Union, an organisation representing US multinationals. The signatories were worried that the lack of legislative action in this area could result in prohibitions or restrictions under REACH. This concern led important employers' organisations to depart from the purely deregulatory ideology of BusinessEurope, the European employers' confederation.

On 9 March 2015, the Social Affairs Council of Ministers called on the Commission to launch the CMD revision. This move had been in the pipeline since 2014, in the form of joint initiatives of the labour ministries of four Member States (the Netherlands, Belgium, Germany and Austria). The Netherlands, which was to hold the presidency of

14. This hearing can be found at: http://www.europarl.europa.eu/hearings-2014/resources/library/media/20141022RES75837/20141022RES75837.pdf

the Council of Ministers in the first half of 2016, put strong pressure on the European Commission, demanding a legal proposal on occupational cancers during its presidency and leaving it up to the Commission to organise its procedures to do so.

On the trade union side, 2015 was the year of the 13th European Trade Union Confederation (ETUC) Congress in Paris (September). During the preparatory discussions and in the course of the congress itself, the elimination of occupational cancers was defined as a priority occupational health campaign: union action could thus be concentrated on this issue in the various countries and sectors[15]. There was broad agreement on this, in contrast to the previous decade where there had been major differences of view on REACH.

The specific factors just referred to would probably have resulted in a different outcome, without the convergence of certain external factors linked to the broader context.

Three large-scale health scandals have arisen in the course of the last five years. Basically, public health and environmental issues, they also have an important occupational health aspect. These scandals concern endocrine disruptors (Horel 2015), renewal of the authorisation for glyphosate (Foucart and Horel 2017) and the standards for diesel vehicle engines (Neslen 2016). They all shed a harsh light on the way in which the Community institutions function. 'Better Regulation' is supposed to make decision-making less political by making greater use of technical and scientific assessments and cost-benefit calculations (Marcilly and Touillon 2015). These three scandals show the extent to which scientific expert reports and socio-economic impact studies can be manipulated in support of political options which are not described as such, but which are presented, rather, as the natural conclusions to be drawn from 'neutral data'. Industry's stranglehold on whole swathes of European regulation became clear, in specific eloquent examples, to millions of people.

The negotiations on revising the Posted Workers Directive were also a factor. Throughout 2016, there seemed to be a strong risk that these would come to a standstill. Revision of the CMD seemed to be a less problematic alternative, should the Commission wish to show an improvement to social legislation before the end of its mandate in 2019.

Finally, in May 2016, the Commission adopted the first revision proposal, the first step towards the adoption of the Directive of 12 December 2017 (European Commission 2016). The previous argument used – that the evaluation of existing legislation should first be completed – was unceremoniously buried.

The directive is being revised in several stages, meaning that the discussions at times overlap. As the legislative process for each proposal can take quite a long time, it is not completed by the time the next proposal is put to the European Parliament and the Council of Ministers. For example, the proposal for the first phase of the revision was presented in May 2016, with the directive adopted in December 2017. In the meantime,

15. See, in particular, the Emergency motion on health and safety at work adopted on 2 October 2015 by the 13th ETUC Congress.

the second phase had begun (January 2017). The European Parliament amendments to this second phase were voted on in March 2018, and negotiations between Parliament and Council will probably end during the second half of 2018. The third phase, which began in April 2018, should finish in 2019, while the fourth phase will probably be launched after the May 2019 European elections.

Parliament has played a dynamic role in this process, with its amendments – supported by around 85% of MEPs[16] – greatly improving the Commission's minimalist proposals.

During negotiations of the first phase in the 'trilogue', the Member States were divided, generally, into three blocks[17]. A significant group of countries supported the Parliament's wish to go beyond the Commission's minimalist approach. The most active Member States in this group were Sweden, France, Germany and Belgium, but, on certain points, as many as ten countries supported Parliament's position. Two countries (the United Kingdom and Poland) wished to retain the Commission's minimalist proposals, rejecting the Parliament's substantial amendments. They were generally backed by Romania and Finland. The other countries occupied the middle ground, or had no clear position. Following a series of unfruitful meetings, agreement was reached, leading to the directive being adopted in December 2017.

The final text is substantially better than the initial proposal. The inclusion of reprotoxic substances in its scope is a key issue. According to the final agreement reached, the Commission must assess the consequences of this measure by, at the latest, the first quarter of 2019, allowing the legislation to be revised on this point. Thanks to the Parliament, the directive requires Member States to organise the health monitoring of exposed workers, even after the period of exposure is finished. For hexavalent chromium[18] and wood dust, the Parliament obtained occupational exposure limit values (OELs) ensuring a higher level of protection against cancer. However, the Parliament's amendment on crystalline silica[19] was not adopted, with the European OEL leaving workers subject to a considerable risk.

The most important discussion for the second stage concerned emissions from diesel engines. Around 3 million workers in Europe could potentially be affected. The Parliament has voted amendments bringing these emissions into the scope of the directive and setting OELs for two of their components (elemental carbon and carbon dioxide). It is too early to know what the majority view within the Council of Ministers will be.

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16. Only two groups – the extreme right (ENF) and the nationalist conservatives (ECR) – did not vote in favour of most of the amendments.

17. Discussion between the author and members of the Committee of Permanent Representatives (COREPER) from various Member States between January and July 2017. These blocks were not static. Countries could be more in favour of some Parliament amendments and less in favour of others.

18. Hexavalent chromium is a state of oxidation of chromium. It is highly toxic. It is used in many industrial applications, and around a million workers are estimated to be exposed to it at work in Europe.

19. Crystalline silica is a carcinogen when inhaled. It is the raw material for some industrial processes, such as glass manufacturing. Workers are most often exposed when dealing with materials which contain it. It is estimated that, in Europe, 5.3 million workers are exposed to crystalline silica. 70% of these work in the construction sector.

If we look at what has been achieved so far, 21 OELs should be adopted before the end of the mandate of the current Commission in 2019. Though this constitutes real progress compared to the three OELs adopted between 1990 and 1999, a lot remains to be done, given the reality of workplace situations. The objective announced by Commissioner Marianne Thyssen in May 2016 to adopt 50 OELs by 2020 will not be met. The OELs already set levels of protection which vary greatly between substances. There is a lack of consistency, made more serious by a problem with transparency, since the directive provides no information as to the residual risks which still remain even if an OEL is respected. The other questions raised mainly concern the scope of the directive. In the first quarter of 2019, the Commission is supposed to put forward its proposals on the inclusion of reprotoxic substances. Whether or not diesel engine emissions will be included will depend on the agreement negotiated between the Parliament and the Council in the second half of 2018.

4. Beyond legislation on cancers: a move towards a revival of occupational health policies?

The prevention of occupational cancers is rightly considered to be a key priority. The question which arises is to what extent the breach opened up by this issue can help to revitalise occupational health policies as a whole.

We should be cautious in our answer. The European Trade Union Confederation (ETUC) and BusinessEurope have diametrically opposed positions on this issue. In the view of the union confederation, there are further priority areas which require new legislation. The first of these are psychosocial risks (PSRs), on which there are no specific provisions in the existing legislation, although the general prevention principles of course apply to all risks. The same is true for musculoskeletal disorders (MSD), which figure in European and national surveys as the most common complaint of workers in relation to the negative impact of work on their health. BusinessEurope, however, is against any new legislation on these questions. This very strong opposition from employers is due to the fact that both these categories of risk are largely determined by work organisation, in the broadest sense of the term (pace of work, compartmentalisation of tasks, management methods, subordination of workers to management). A technical approach would not work at all for PSRs, and would have limited effectiveness for MSDs. Any new legislative proposal, therefore, will require looking at work organisation, via the procedures used in other areas of prevention: risk assessment, worker consultation and participation, possible involvement of labour inspectorates, involvement of prevention services whose independence must be guaranteed, etc.

While the European Parliament is generally in favour of a more ambitious Community policy also addressing these two areas, the Member States have very divided views, and national legislation differs greatly from one country to another[20]. The pressure on the

20. Some countries have specific, quite detailed legislation on psychosocial risks (particularly Sweden, France and Belgium), whereas others barely do more than apply the general prevention measures as well as some fragmentary provisions (e.g. on protection against harassment), which do not emphasise a primary prevention approach.

Commission is far less in this area than with respect to cancer, and there are practically no links to market regulation.

DG Employment's inertia on the issue of PSRs has paved the way for questionable initiatives geared to keeping people with mental health problems in work, or getting them back to work (Scandella 2017). Within the Commission, these are directed by DG Health. The pharmaceutical industry sponsors most of them, seeing opportunities to develop new markets. The issue of work organisation is avoided, in favour instead of an approach focused on 'problematic' individuals, with all the associated risks of stigmatisation.

The main justification for the lack of Community action was the need to assess all existing legislation. This long process, which began in 2013, has finally come to an end. It resulted in the Commission's adoption, on 10 January 2017, of guidance documents revising or partially updating the strategy set for the period 2013-2020 (European Commission 2017a and 2017b).

As is often the case with Community texts, the Communication of 10 January 2017 is drafted in a rather piecemeal way, containing statements designed to satisfy all parties. It is likely that, on many points, no decision has yet been taken, and that the document could later on justify very different policies.

The overall conclusion drawn by the Commission is that the legislative 'acquis' must be maintained. There is no more talk, therefore, of revising the 1989 framework directive, relaxing the prevention obligations of small and medium enterprises or transforming some directives into non-binding guidance documents. The idea of modernising this 'acquis' and adopting specific texts where it is insufficient is however addressed very hesitantly. The Commission states how important it is to revise the rules protecting workers against cancer. However, the section in the 10 January 2017 communication on PSRs and MSDs is entitled 'Helping businesses cover rapidly increasing occupational safety and health risks'. The heart of the system would still be optional self-regulation by employers, plus some advisory and practical tools. This general thrust is confirmed by the complete absence of an analysis of the role of workers' representatives in prevention.

Given the institutional calendar (the run-up to European elections and a new Commission in 2019), no new action will be taken before 2020.

Sectoral social dialogue did not result in any new formal health and safety agreements in 2017. Probably, the Commission's refusal to implement the agreement concluded in 2012 in the hairdressing sector via a directive was one factor discouraging the sectoral social dialogue committees. However, these committees are still actively involved in a series of 'soft law' initiatives. The revision of the carcinogens directive led to closer contacts between union and employer organisations on specific sectoral issues. A joint letter, for example, was signed by the sectoral employers' organisations and the ETUC

on 16 July 2016, calling for an OEL for formaldehyde[21]. The Commission included this proposal in the third phase of the revision of the directive.

Although the Communication of 10 January 2017 distances itself from the deregulatory tone of the past, it is still very vague when it comes to initiatives over and above the revision of the CMD. It no longer suggests that small and medium-sized enterprises could be exempted from some of the occupational health rules. The Communication announces adaptations to technical progress for six existing directives[22]. This procedure allows the Commission to amend technical provisions without having to go through the ordinary legislative procedure. In principle, the process should be completed for four of these directives by the end of the term of office of the current Commission in 2019[23].

Conclusions

The recent developments in the field of occupational health show that, even in a context which does not, in general, favour social rights, there may be windows of opportunity. These are linked to a complex chain of events, whereby different interests converge at a particular moment. In our view, such opportunities could be encouraged if occupational health issues were seen in relation to a series of other policies. There are many links between occupational health and issues such as ageing, better allocation of public health expenditure (with greater priority given to the prevention and reduction of social health inequalities) and gender equality, and these links would justify far more ambitious Community policies. Analysis of the social dynamics of prevention, moreover, suggest that active worker representation is often the key difference between prevention 'on paper' and real action to eliminate risks (Walters and Nichols 2007). The absence of such representation is often a major barrier to prevention in small companies or more precarious jobs. Recognition of this fact enables us to broaden the discussion. This is not purely an occupational health issue. The democratic deficit in Europe reflects, in our opinion, first and foremost an absence of democracy at work. Around half of European workers lack any form of collective representation. An increasing percentage of workers are no longer covered by collective agreements. Sub-contracting aggravates this situation, as a considerable share of the real power is transferred to the contracting party. This situation has a threefold impact. It acts as a barrier to real prevention at the workplace, and is thus a key factor in threats to workers' health. It prevents the establishing of counterbalancing mechanisms within a company. This has a direct impact on working conditions, but also influences the more general effects of business activity within society. Environmental issues, problems relating to job quality, the weighing-up of the social usefulness of certain production processes: none of these issues can be properly addressed without daily counterbalancing employers' decision-making monopoly. At a macro-political level, an absence of workplace democracy boosts

21. https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-171/feedback/F11816_en

22. See the table annexed to this chapter, which, for these directives, indicates that ATP (adaptation to technical progress) is underway.

23. In the case of two directives, Member States have indicated that the changes would go beyond purely adaptation to technical progress, which means that the usual legislative procedure will need to be followed. This position is supported by the tripartite Advisory Committee on Health and Safety at Work.

passivity, abstentionism, vulnerability to populist campaigns, and the emergence of political movements built around charismatic leaders (Coutrot 2018).

Part of a deeper crisis affecting all Community regulation, the crisis in occupational health regulation provides an opportunity to relaunch more general action for change in Europe. This is the battle which trade union organisations should be engaging in. They should highlight the close links between occupational health, industrial policy, the environment, quality of work and workplace democracy, and should build alliances focusing on these needs.

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All links were checked on 1.7.2018.

Annex: Community safety and health directives currently in force

Box 1 Framework directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

Workplace

89/654/EEC
Workplace (*1)

92/57/EEC
Temporary or mobile construction sites (*8)

92/58/EEC
Safety and/or health signs (*9)
(ATP underway)

1999/92/EC
Explosive atmospheres (*15)

Use of work equipment

2009/104/EC
(codification of directive 89/655/EEC and of its later amendments) (*2)

Individual protection

89/656/CEE (*3)
Use of personal protective equipment
(APT underway)

Specific activities

92/29/EC
Medical treatment on board vessels
(ATP underway)

92/91/EEC
Mineral-extracting industries (*11)

92/104/EEC (*12)
Surface and underground mineral-extracting industries

93/103/EC (*13)
+ 2017/159/EU
(SD) Fishing vessels

92/104/EEC
Surface and underground mineral-extracting industries

2010/32/EU
(SD) Prevention from sharp injuries in the health sector

Exposure to chemical, physical and biological agents

2004/37/EC
(codification of directive 90/394/EC and of its later amendments) (*6)
Carcinogens and mutagens
Amended by directive **2017/2398**

Two other directives amending this directive should be adopted by the end of the mandate of the current Commission

2000/54/EC
codification of directive 90/679/EC and of its later amendments Biological agents (*7)
(ATP underway)

98/24/CE
Chemical agents → **2000/39/EC**, **2006/15/EC**, **2009/161/EU**, **2017/164/EU**

Limit values indicating exposure at work

2009/148/EC
(codification Directive 1983/477/EC and its amendments) *14
Asbestos

2002/44/CE
Vibrations (*16)

2003/10/CE
Noise (*17)

2006/25/CE
Artificial optical radiation (*19)

2013/59/Euratom
(amending previous directives)
Ionising radiation

2013/35/UE
(amending a 2004 directive)
Electromagnetic fields (*18)

Box 1 (continued)

Precarious working conditions

91/383/EEC
Workers with a fixed-duration employment relationship or a temporary employment relationship

Working time

2003/88/EC
(codification of directive 93/104/EC and of its later amendments)

Working time
+ directives on specific sectors:

1999/63/EC
(SD) working time of seafarers (amended by directive 2009/13/EU)

2000/79
(SD) civil aviation

2002/15/EC
working time in road transport

2005/47/EC
mobile workers in cross-border railway services (SD)

2014/112/EU
(SD) inland waterway transport

Specific categories of workers

92/85/EEC
Pregnant workers, workers who have recently given birth or are breastfeeding (*10))

94/33/EC
Young people at work

Ergonomic factors

90/269/EEC
Manual handling of loads (*4)

90/270/EEC
Display screen equipment (*5)

Notes: the individual directives falling under the framework directive are indicated by an * followed by a number. For example, *10 means 'tenth individual directive of the framework directive'.
The note (ATP underway) means that the Commission is currently working on modifications amounting to adaptations to technical progress. These modifications do not follow the usual legislative procedure. These are Commission directives. These texts should be adopted by the end of the mandate of the current Commission.
The letters SD mean that this is a Council directive implementing an agreement concluded as a result of the social dialogue. In these cases, Parliament is not involved in the adoption of the legislation. Most of these directives are to do with working time. They cover sectors or activities excluded from the scope of the initial 1993 directive.
This table does not include two other directives agreed upon in the course of social dialogue in the maritime sector. These can be considered as 'mixed' directives, since they concern a set of provisions including some occupational health and safety issues. These two directives (Directive 2009/13/EC, amended by Directive 2018/131) enable the implementation of European agreements for the application of an ILO convention.
This table is based on Vogel (2015a). It was updated on 1 June 2018.