The Juncker years and their patchy record on occupational health

After 10 years of almost total paralysis inflicted by the European Commission between 2004 and 2014 under the leadership of José Manuel Barroso, has occupational health finally regained a foothold in European Union policies? The record of the outgoing President, Jean-Claude Juncker, whose term of office comes to an end in November 2019, is ambivalent. There has been some progress on occupational cancer, but performance has been very poor in other important areas.

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Workplace exposure to carcinogens is the principal cause of mortality due to the absence of prevention measures, with 100 000 deaths a year in the European Union. Image © Belga
Between 2004 and 2014, the European Commission stopped treating occupational health as one of its priorities. In the drive towards deregulation, legislation in this area was seen as a burden for businesses. There was one initiative after another, with all sorts of different names, like "Better Regulation" and "REFIT". This opened the door to a lobbying campaign that consistently predicted dire economic consequences whenever the interests of industrialists appeared to be under threat.

When Luxembourg’s Jean-Claude Juncker took office in November 2014, he espoused the same principles as the preceding team. The new President of the European Commission inherited a roadmap called the "Strategic Framework on Health and Safety at Work", adopted in June 2014. This document made no proposals to improve the framework of European legislation. During her hearing in the European Parliament on 1 October 2014, the Belgian Marianne Thyssen, who was to become the Commissioner with responsibility for European social policy, did not even mention the word “cancer” once.

**An untenable status quo**

It very soon became apparent that the status quo was untenable. There were many factors at play that would prevent the Commission from burying the subject. Trade union organisations, represented by the European Trade Union Confederation (ETUC), had made this a priority issue. They could draw on a growing public awareness of the harmful nature of many chemicals on the market. The prevention of occupational cancers combines issues relating to both the organisation of work and the chemicals market, as well as environmental concerns. But the common priority is to replace the substances that are of greatest concern in order to reduce the health and environmental burden.1

An increasing number of Member States were pressing the European Commission to start moving on this. Exposure to carcinogens at the workplace is the main cause of mortality resulting from a lack of preventive measures, with 100,000 deaths a year across the European Union. In addition to the obvious human and social cost, this burden weighs heavily on social security and public health budgets. Many states therefore adopted rules that went beyond the Community minimum, which, in the main, dated back to 1990. In particular, this pressure on the Commission was stepped up with the preparations for the Dutch Presidency of the European Union during the first half of 2016. From summer 2015 onwards, the Netherlands, supported by other countries, such as Germany, France, Belgium and Denmark, insisted that the European Union needed to improve its legislation.

There were many factors at play that prevented the Commission from burying the subject. On several occasions, the European Parliament had, by a large majority, spoken in favour of relaunching occupational health policies. As Claude Rolin (Belgian Member of the European Parliament (MEP) belonging to the European People’s Party (EPP)) tirelessly insisted, the issue of occupational cancers was an opportunity to show that Europe could still meet public expectations.

The employers’ side was split. Business Europe, which comprises the cross-sectoral employers’ confederations, supported the deregulation strategy. On the other hand, chemical industry representatives were more sensitive to the fact that, if nothing changed in the area of workers’ protection, stricter rules applying to the production and marketing of a number of substances might be adopted. So in February 2015, 31 sectoral employers’ organisations wrote to the European Commission, calling for work on the revision of the carcinogens directive to be restarted.

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1. According to the World Health Organization, in 2016 the annual impact of a limited number of chemicals was 1.6 million deaths and 45 million years lost due to disability, ill health or early death. As regards substances in the workplace, this estimate covered only 12 carcinogens as well as smoke, vapours and gases.
A political dynamic that improved upon minimalist proposals

Initially, the Commission met these pressures with well-worn arguments: first, existing legislation had to be evaluated, after which a response could be provided. As the evaluation was a long-drawn-out process, there was no precise end date in prospect. At the end of 2015, the floodgates finally opened. Even though the evaluation was not finished, the Commission issued its initial legislative proposal in May 2016. Commissioner Marianne Thyssen announced that the process of revising the directive would be conducted in steps. The first proposal should make it possible to increase the number of substances subject to an occupational exposure limit value (OELV) from three to fourteen. Other proposals were to be prepared during her term of office, with a view to achieving the objective of 50 substances by 2020.

To summarise in quantitative terms, three proposals were adopted, covering a total of 25 substances. In other words, the objective was half-achieved. There is no point in discussing whether the glass is half full or half empty. It is more worthwhile to analyse the political dynamic behind this revision, something that can only be understood in light of the major health scandals of recent years. These include the issue of endocrine-disrupting chemicals — that of glyphosate, in particular, and, beyond that, the excessive use of pesticides — and "Dieselgate". Aside from the specific features of each case, what they have in common is that they highlight the central role played by industrial lobbies in regulation processes. What is new is the rapid succession of health scandals, widely reported in the press. This is a context that helps foster alliances based on a very simple principle: human life takes precedence over industrialists’ profits.

The Commission's initial proposals for legislative revision were minimalist. They generally reproduced proposals made during the first decade of the millennium, whose adoption was blocked by the Barroso Commission. The Juncker Commission expected a rapid legislative process that would ratify its proposals without major changes. The reality was quite different. The European Parliament proposed amendments that significantly improved upon these texts. Far from regarding this issue as a technical matter that could be left to specialists, Parliament realised that here was a fundamental political debate. Legislating on occupational cancers means imposing rules on employers, and this creates opposing forces regarding choices about what should be produced, and how. The Member States were strongly divided between those that supported the Commission (in particular the United Kingdom, Poland and Hungary) and those that wanted to go further. Different majorities formed from one amendment to the next. The context of Brexit clearly came into play. The British Government, siding with the Commission in this case, saw its credibility unravel. Meanwhile, the other governments sharing the same point of view were relatively passive and quite unable to match the skill of the British in negotiations within the Council of Ministers of the European Union.

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Questions pending

The record of the first three revision steps remains encouraging. This is all the more remarkable since the general context is not favourable to the world of work. Among the advances achieved as a result of the European Parliament’s amendments, it is worth noting the inclusion of diesel engine emissions within the scope of the directive and a significant reduction in risk levels in terms of the OELVs for several substances. On other matters, the amendments adopted paved the way, but do not yet provide the solutions. These need to be dealt with in proposals from the new Commission, chaired by Ursula von der Leyen.

The most important challenge for the coming revisions of the directive is the inclusion of reprotoxic substances. In line with an amendment voted in when the first revision was made, the Juncker Commission was required to issue a statement on its position no later than 31 March 2019. It did not meet that deadline. It merely posted a study by external consultants, which does not represent its own position, on its website.

Extending the scope of the directive to cover dangerous medicines that can cause cancer is also a very important matter. Some 12 million people working in the health sector, including more than 7 million nurses, are potentially exposed to such medicines, which, among other things, are used in chemotherapy. Because of the feminisation of the health sector and, in particular, nursing, the great majority of those exposed are women. Organisation of prevention in this area is still poor, because of the stereotypes that associate care work with an activity “naturally” falling to women. This assumption leads to health risks being neglected, or even being regarded as unavoidable sacrifices. The new von der Leyen Commission is to decide on this question by 30 June 2020. This will be a major test of credibility.

There is a problem about the consistency of OELVs. The 25 OELVs adopted so far correspond to very different levels of risk to health. Some of them allow considerable risks to continue. The inconsistency derives from the arbitrary way in which the Commission proposes OELVs on a case-by-case basis. Easily manipulable cost-benefit calculations are cited in order to justify high risks. The most striking cases relate to crystalline silica, with a limit that is twice that in the USA, and hexavalent chromium, where the OELV initially proposed by the Commission was improved upon by the Parliament and the Council, increasing from 0.025 g/m³ to 0.005 g/m³. Even that improved OELV means a huge risk of lung cancer for 50 workers exposed at that level throughout their working life. An editorial in one of the most prestigious scientific occupational health reviews justifiably commented: “Some of the limits are outrageously high and breach the fundamental rights of safe and healthy working conditions. Moreover, there are still very few binding values, many more are needed in order to protect workers more thoroughly against occupational cancer.”
In these two areas, the Juncker Commission refrained from taking any legislative initiatives, displaying a naïve trust in the virtue of voluntary actions by employers. It also pursued the previous policy of preventing agreements between European trade union and employers’ organisations from being implemented by means of a directive. The suspended agreement in the hairdressing sector was about health and safety. The agreement on central government administrations was broader, but it specified that workers should be kept informed on all matters of occupational health.4

One factor behind the impasse is the glaring lack of resources granted by the Commission to the unit responsible for occupational health matters in the Directorate-General for Employment, Social Affairs and Inclusion. Staff numbers are in free fall compared with the pre-Barroso period, despite the fact that programmes like Better Regulation and REFIT are diverting most of the existing resources into extremely time-consuming cost-benefit analyses. A complete bottleneck hampering the development of occupational health policies has formed.

What about the future?

In a long interview published in March 2019 in a review of the areas under her responsibility, European Commissioner Marianne Thyssen took stock of the five years of her term.5 She made no mention of the revision of the cancer directive. It is difficult to explain this extraordinary silence on what she might have claimed as a success. The appointment letter sent by the President of the new Commission, Ursula von der Leyen, to the future Employment Commissioner, the Luxembourger Nicolas Schmit, does not even mention occupational health as one of his responsibilities. During his hearing by the Parliament in October 2019, Mr. Schmit put things right by clearly stating that occupational health and safety would be among his priorities during his term, and he undertook to continue with the revision of the cancer directive. However, he remained in line with the previous Commission in saying nothing about substances that are toxic to reproduction. When asked about psychosocial risks and musculoskeletal problems, he expressed doubts about legislative measures. Without giving any details, he stated that, in countries where legislation had been adopted, “no real good solution has been found”. The experience of countries that have adopted specific legislation would seem to indicate the contrary: greater attention to psychosocial risks and a genuine drive to put preventive solutions in place.

We should not, of course, attach too much importance to these initial statements. Experience shows that the complex political dynamic that characterises the European Union can spring surprises. It will be social movements in occupational health, and their ability to find alliances (such as with the environmental protection movements and those lobbying on public health issues, that may provide an opportunity to find contacts in the institutional system) which could then break the logjam on the many issues currently lying idle. This is a major challenge, as working conditions are also a significant factor in social health inequalities.

Further reading

Musu T. and Vogel L. (2018), Cancer and work: understanding occupational cancers and taking action to eliminate them, Brussels, ETUI.


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