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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and  
Health Legislation and Policy**

{SWD(2017) 9 final}  
{SWD(2017) 10 final}

## INTRODUCTION

Over the last 25 years, the EU has been a front-runner in setting high standards of worker protection against health and safety risks at work on its territory, and has promoted high levels of protection also in third countries. Occupational safety and health policy is contributing to the objective of improving the safety and health of workers in the EU. According to the most recent available data the incidence rate of deaths in accidents at work dropped by almost 1/4 as compared with the situation in 2008<sup>1</sup>, however, with different trends in individual Member States. The percentage of EU workers reporting at least one health problem caused or made worse by work decreased by nearly 10%.<sup>2</sup>




**Over 1000**  
fatal accidents  
less in 2013  
compared to 2008  
in EU-28

Investment in occupational safety and health makes a lot of sense. It improves people's lives by preventing work-related illness and accidents and also has a tangible positive effect on EU economies. It leads to improved business productivity and performance. At macroeconomic level, it contributes to national competitiveness.<sup>3</sup> Different studies prove that the employer will have a return in double for every euro spent on occupational safety and health.<sup>4</sup>

The EU legislative framework has played a pivotal role in shaping national and company level occupational safety and health strategies. The detailed ex-post evaluation of the EU acquis, checking their relevance as well as efficiency, effectiveness, coherence and EU added value, carried out by the Commission confirms that the framework meets its ambition to adequately protect workers.<sup>5</sup> This REFIT evaluation comprised the Framework Directive 89/391/EEC and 23 related Directives.

It concluded that the overall structure of the EU occupational safety and health acquis, consisting of a goal-oriented Framework Directive complemented by specific Directives, is generally effective and fit-for-purpose. However, it pointed to specific provisions of individual Directives that have become outdated or obsolete, and highlighted the need to find effective ways to address new risks. The way in which Member States have transposed the EU occupational safety and health Directives varies considerably across Member States. Compliance costs therefore vary and cannot be easily dissociated from more detailed national requirements. However, overall, the evaluation clearly concluded that compliance with the occupational safety and health Directives is more challenging for SMEs than large establishments, while at the same time the major and fatal injury rates are higher for SMEs. Specific support measures are therefore necessary to reach SMEs and help them increase their compliance in an efficient and effective way.



**1 EUR spent =  
at least 2 EUR  
in return**

<sup>1</sup> Eurostat, European Statistics for Accidents at Work (ESAW) (online data code hsw\_n2\_02), EU-28.

<sup>2</sup> Eurostat, 2007 and 2013 EU Labour Force Survey ad hoc modules on accidents at work and work-related health problems. Estimate excluding NL due to non-provision of 2013 data and FR due to important differences in the survey questionnaires between 2007 and 2013.

<sup>3</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---safework/documents/publication/wcms\\_215307.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_215307.pdf)

<sup>4</sup> *Calculating the international return on prevention for companies: costs and benefits of investments in occupational safety and health*, International Social Security Association; 2013.

<sup>5</sup> See SWD (2017)10 Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation)

Based on the detailed ex-post evaluation, it is clear that the EU must continue investing in occupational safety and health for it to remain at the vanguard and ensure effective worker protection also against the background of the changing nature of work and new risks. Occupational safety and health measures should reach the widest number of people at work, no matter the type of working relationship they are in, and no matter the size of company they work for. Compliance with occupational safety and health rules should be manageable for businesses of all sizes and effectively monitored on the ground. Measures must be result-oriented, instead of paper-driven, and maximum use should be made of new digital tools to facilitate implementation.

In its 2015 report on the EU Strategic Framework on Health and Safety at Work 2014-2020<sup>6</sup>, the European Parliament also drew the Commission's attention to the importance of implementation, compliance and enforcement of the occupational safety and health legislation as well as number of increasing or new risks. The report also notably emphasised the need to protect all workers regardless of the size of the employer, type of job or contract.

With these common objectives in mind and as part of its overall strategy for modern employment and social systems in the EU – as reflected in its broad consultation on a European Pillar for Social Rights launched in March – the following key actions, further detailed in Annex 1, would bring a new impetus to the EU Strategic Framework on Health and Safety at Work<sup>7</sup>:

### **Top Three Occupational Safety and Health Actions**

- 1) Stepping up the fight against occupational cancer through legislative proposals accompanied by increased guidance and awareness-raising;
- 2) Helping businesses, in particular micro-enterprises and SMEs, comply with occupational safety and health rules;
- 3) Cooperating with Member States and social partners to remove or update outdated rules and to refocus efforts on ensuring better and broader protection, compliance and enforcement on the ground.

## **1. FIGHTING OCCUPATIONAL CANCER AND DEALING WITH DANGEROUS CHEMICALS**

It has been estimated that in the EU between 91,500 – 150,500 people with past exposure to carcinogenic substances at work were newly diagnosed with cancer in 2012. Moreover, between 57,700 – 106,500 cancer deaths were attributed to work-related exposure to carcinogenic substances in 2012; designating cancer as the first cause of work-related deaths in the EU.

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<sup>6</sup> European Parliament: report on the on the EU Strategic Framework on Health and Safety at Work 2014-2020, (2015/2107(INI)) – 26.10.2015

<sup>7</sup> Communication from the Commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of the Regions on the EU Strategic Framework on Health and Safety at Work 2014-2020; COM(2014)332 final.

It is hardly possible to quantify value of human life and lost quality of life. Direct costs of work-related cancer in terms of healthcare and productivity losses amount at least to some 4-7 billion EUR per year. The indirect costs may reach as much as about 334 billion EUR (242 – 440) each year<sup>8</sup>.

Work-related  
cancer kills  
**10 people  
per hour**

National measures in this area vary significantly, leading to different levels of protection of workers across the EU.

At EU level, minimum standards for the protection of workers from exposure to chemicals at work are set through the Carcinogens and Mutagens Directive (Directive 2004/37), the Chemical Agents Directive (Directive 98/24) and the Asbestos Directive (2009/148). They complement action under the Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH') and other pieces of chemicals regulation by focusing on specific situations at the workplace.

**At least  
32 MILLION  
workers  
exposed to  
carcinogens**

EU-wide limit values for chemicals promote upwards levels of protection throughout the EU, contributing to an improved level playing field for businesses and help companies operating across borders thus saving compliance costs as they can use the same technology to protect workers at different sites. There is also an important element of economies of scale in the complex scientific assessments underlying the establishment of specific limit values for chemicals, which allows Member States to shift more financial resources to protection and prevention measures. It is therefore important to revise or adopt new EU limit values for the most dangerous substances.

Following the proposal to amend the Carcinogens and Mutagens Directive and establish, or revise, binding occupational exposure limit values with regard to 13 chemical agents adopted on 13 May 2016<sup>9</sup>, the Commission adopts today a new proposal improving protection of 4 million workers in the EU by acting on further carcinogenic chemical agents. It is committed to continue efforts to prevent deaths caused by work-related cancer and other health problems through further legislative proposals.

### **Legislation to improve protection against dangerous substances and fight occupational cancer**

- Second amendment of the Carcinogens and Mutagens Directive
- Subsequent amendments of the Carcinogens and Mutagens Directive are foreseen concerning substances such as formaldehyde, beryllium, cadmium, chromium VI compounds and nickel compounds. Work has started with a view to presenting a new Commission proposal envisaged for early 2018
- In parallel, work will continue on enhancing the relevance and effectiveness of the Chemical Agents Directive by revising existing and establishing further occupational (indicative) exposure limit values and biological limit values in 2017 and 2018.

<sup>8</sup> "Work-related cancer in the European Union. Size, impact and options for further preventio. RIVM Letter report 2016-0010 W.P. Jongeneel et al.

<sup>9</sup> COM (2016) 248.

Sound scientific basis is indispensable to underpin any occupational safety and health action, particularly in relation to dangerous chemicals. The Commission will seek advice from the Scientific Committee on Occupational Exposure Limits or from the Risk Assessment Committee of the European Chemicals Agency. The scientific assessments from these sources will serve as the basis for proposals subject to impact assessment and social dialogue as well as tripartite consultation<sup>10</sup>.

Following the results of the "HazChem@Work" study contracted by the Commission, a database on occupational exposure for some hazardous chemicals<sup>11</sup> will be established in early 2017. This will be an important step towards better availability and sharing of data on health effects, exposure potential and existence of national occupational limit values with regard to priority dangerous substances. In addition, the Commission will step up and further refine analysis of data obtained through key sources of information<sup>12</sup> and will actively work to allow for the progress of the European Occupational Diseases Statistics data collection.<sup>13</sup> Another promising action is the European Human Biomonitoring Initiative, which is a major new joint initiative funded by Horizon 2020 and 26 Member States to generate new scientific evidence from harmonised data on chemical exposures and health<sup>14</sup>.

Protection of workers from exposures to dangerous chemicals is fostered by the occupational safety and health chemical directives and significantly reinforced by the REACH Regulation and other legal acts regulating chemicals. A recent opinion of the REFIT platform<sup>15</sup> has acknowledged the complementarity of the two systems but recommended that the Commission should raise awareness and issue guidance on their implementation so that the interfaces between the REACH Regulation and occupational safety and health legislation are clearly established. Consequently, further work is ongoing both at scientific and administrative level to remove any uncertainties and overlaps in the design and practical application of this joint EU framework for dealing with dangerous chemicals. The Commission has undertaken to present a common approach in 2017.

Legislative action needs to be followed up through effective implementation at the workplace. In this context, the European Agency for Safety and Health at Work will stage a Healthy Workplaces Campaign on dangerous substances in 2018-2019 and the Senior Labour Inspectors Committee will publish relevant guides, such as a guide on preventing exposures to respirable crystalline silica.

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<sup>10</sup> Within the Advisory Committee on Safety and Health at Work.

<sup>11</sup> <http://www.hazchematwork.eu/>

<sup>12</sup> Such as the European statistics on accidents at work, the EU Labour Force Survey ad-hoc modules on accidents at work and other work-related health problems, Eurofound's European Working Conditions Survey or the European Survey of Enterprises on New and Emerging Risks (ESENER) conducted by the European Agency for Safety and Health at Work. Occupational safety and health research will be furthermore be effectively supported through inclusion of relevant headings under the 9th Research and Innovation Framework Programme and a dialogue with key global counterparts such as the US and China will be initiated in order to get a fuller picture of EU occupational safety and health in global context and produce more reliable statistics based on bigger cohorts.

<sup>13</sup> Regulation (EC) No 1338/2008 on Community statistics on public health and health and safety at work, OJ L 354/70, 31.12.2008.

<sup>14</sup> <http://www.eea.europa.eu/themes/human/human-biomonitoring>

<sup>15</sup> [http://ec.europa.eu/smart-regulation/refit/refit-platform/docs/recommendations/opinion\\_chemicals.pdf](http://ec.europa.eu/smart-regulation/refit/refit-platform/docs/recommendations/opinion_chemicals.pdf)

## 2. HELPING BUSINESSES COMPLY WITH OCCUPATIONAL SAFETY AND HEALTH RULES

### 2.1. Supporting compliance by microenterprises and SMEs

The legal obligation to assess occupational health and safety risks on a case-by-case basis, taking into account specificities of each workplace, is at the heart of EU occupational safety and health legislation. As such, this case-by-case approach provides for the necessary flexibility to tailor the risk assessments, preventive measures and training to the specific sector a business is engaged in, the activities of its workers, the size of the business, the gender and age composition of the workforce, newly emerging risks, etc. However, in practice that flexibility is not always made use of.

As shown by the evaluation, microenterprises and SMEs struggle to put in place the necessary occupational safety and health management measures. Microenterprises represent almost 93% of all enterprises in the EU.<sup>16</sup> Only 69% of microenterprises declare that they perform regular occupational safety and health risk assessments (against 96% for larger enterprises).<sup>17</sup> This is not because they are less willing to protect their workers but is related to more limited financial, technical and human resources, as well as to a lack of awareness and expertise as compared to bigger establishments.



1 in 3  
microenterprises  
does not assess  
workplace risks

All stakeholders, including in the first place SMEs themselves<sup>18</sup>, agree that in this area making exemptions for SMEs is not the right approach, because they fear it may potentially lower the protection level of SME workers. Moreover, there is considerable evidence pointing towards a greater risk of serious injuries and fatalities in micro and small enterprises than in larger establishments<sup>19</sup>. However, compliance should become simpler and less costly and this requires specific support measures for SMEs and microenterprises.

Building on the evaluation findings, the Commission in cooperation with the European Agency for Safety and Health at Work will organise a review for Member States and social partners to exchange best practices on ways to reduce compliance costs of SMEs and thereby increase compliance (e.g. financial incentives, digital tools, etc.) whilst maintaining equal protection levels for workers irrespective of the size of the company they work for. Clearly, however, they need better knowledge, more support and clear and efficient procedures to reach a higher level of compliance.

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<sup>16</sup> Eurostat, SBS, online data code sbs\_sca\_r2, reference year 2012.

<sup>17</sup> Contexts and arrangements for occupational safety and health in micro and small enterprises in the EU – SESAME project, European Risk Observatory, EU-OSHA, 2016.

<sup>18</sup> Reply of the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) to the public consultation on the new EU occupational safety and health policy framework, 26/08/13

<sup>19</sup> Source: EU-OSHA, Contexts and arrangements for occupational safety and health in micro and small enterprises in the EU – SESAME project. European Risk Observatory Literature Review, 2016. Available at: <https://osha.europa.eu/en/tools-and-publications/publications/contexts-and-arrangements-occupational-safety-and-health-micro/view>

### **Getting most out of risk assessments**

In order to help businesses getting most out of obligatory risk assessments, preventive measures and training, the Commission makes available today a **practical guidance document**<sup>20</sup>.

Apart from the general guidance presented in the annexed document, the Commission will finalise and disseminate in 2017 more detailed and targeted guides on risk management in agriculture and fishing. In 2017 an interactive e-guide on work-related vehicle safety will be published. Managing occupational safety and health in these high risk sectors is especially challenging and the numbers of accidents are among the highest. The guides will help employers, especially in SMEs, to effectively improve the prevention of accidents and ill-health. The Commission will also involve the Enterprise Europe Network to raise awareness and provide support to SMEs in this regard.

Also at national level, more and more Member States dedicate an important part of their occupational safety and health policy work to reaching out to and making proper tools for micro and SMEs. Member States are invited in this context to similarly underline the importance of result-oriented risk assessments and to share best practices on preventive measures and training.

### **Use of web-based tools**

The Commission calls on Member States to fully embed the use of web-based risk-assessment tools in their legal systems.

Finally, the European Agency for Safety and Health at Work makes an important contribution, through its risk awareness campaigns and the development and spreading of online interactive risk assessment tools. Their Online interactive Risk Assessment (OiRA)<sup>21</sup> and similar national internet-based tools (developed for example in the Netherlands, Ireland or Poland) are especially useful as they provide cost-free sector-specific information and guide employers through all steps of the risk assessment process, automatically generating a documented record which can be used as a proof of compliance and as a means to monitor effectiveness of the risk management plan. Such tools need to be significantly expanded and their use needs to be recognised and integrated in national requirements for compliance with risk assessment obligations.

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<sup>20</sup> See SWD (2017)9 - Health and Safety at Work is Everybody's Business – A practical guidance for employers

<sup>21</sup> <http://www.oiraproject.eu/>

### **The 'Online interactive Risk Assessment (OiRA)' actions**

- So far, 93 Online interactive Risk Assessment (OiRA) tools have been published and 30 are under development. 44.614 risk assessments have been carried out with the tools to date.
- With EU financial and technical support and active cooperation of national partners and sectoral social partners, the following targets should be reached by 2018, focusing on priority sectors:
  - **150 published Online interactive Risk Assessment (OiRA) tools, and**
  - **100,000 risk assessments carried out with the tools.**

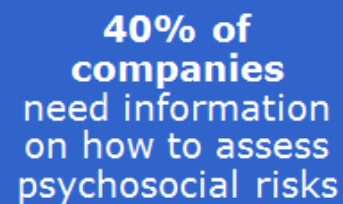
## **2.2. Helping business cover rapidly increasing occupational safety and health risks**

The ex-post evaluation identified a number of growing concerns which companies would need more support to address; stress, musculoskeletal disorders and the growing diversity of the workforce, notably with regard to ageing.

- *Psychosocial risks*

Psychosocial risks and work-related stress are among the most challenging – and growing - occupational safety and health concerns. Over half of EU workers report that stress is common in their workplace<sup>22</sup> and 4 in 10 think that it is not handled well. Workplace stress has a serious impact on productivity:

- It accounts for around half of lost working days as the absences are relatively long;
- Stress causes reduced performance at work and can lead to five times more accidents;
- About a fifth of staff turnover is related to stress at work.



**40% of  
companies  
need information  
on how to assess  
psychosocial risks**

Psychosocial risks are complex, multidimensional issues.

Poor health might be caused by a constellation of factors, related and/or unrelated to workplace.

The Framework Directive creates a legal obligation for employers to protect workers from all workplace risks. Some individual occupational safety and health directives (e.g. display screens directive) include provisions indirectly linked to the prevention of psychosocial risks. EU-level social partners' framework agreement on work-related stress<sup>23</sup> underlines the relevance of the Framework Directive. The European Agency for Safety and Health at Work conducts awareness raising actions and, in the framework of a pan-European campaign on

<sup>22</sup> <https://osha.europa.eu/en/themes/psychosocial-risks-and-stress>.

<sup>23</sup> <http://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=1106>



stress and psychosocial risks carried out in 2014-2015, it made available a practical e-guide to managing psychosocial risks<sup>24</sup> designed to respond to the needs of employers and people working in small enterprises.

There is a variety of approaches across the Member States. Some do not explicitly mention psychosocial risks in their occupational safety and health legislation, while others highlight the need to consider them as part of the occupational safety and health. Some require psychosocial risk assessments with a few advocating the involvement of an expert. One Member State has established binding guidelines on psychological risks prevention. Member States also develop non-regulatory approaches (tripartite bodies, guidance, awareness raising, management standards etc.).

To improve workers' protection in practice, it is necessary to raise employers' awareness and provide them with further guides and tools. In the guidance document published today the Commission clarifies that according to the existing EU level provisions employers are obliged to protect workers from psychosocial risks and that these risks have to be duly taken into account in the risk assessment process. The document provides concrete non-binding tools and resources for employers to effectively tackle psychosocial risks in the risk assessment. The Commission will work together with the European Agency for Safety and Health at Work and the Advisory Committee for Safety and Health at Work to identify good practice for promotion and dissemination and will mandate the Senior Labour Inspectors Committee to develop a guide for assessing quality of risks assessments and risk management measures with regard to psychosocial risks.

- *Risks related to musculoskeletal disorders*

Exposure to ergonomic risks factors represents one of the major occupational safety and health problems in the EU today. Repeated exposure to these risks can result in work-related musculoskeletal disorders – one of the most serious and widespread work-related illnesses, which give rise to major cost burden for individuals, businesses and society in general. According to the findings of the 2013 Labour Force Survey, work-related musculoskeletal disorders are today the most prevalent type of work-related health problem and the first cause of work-related absenteeism. They represent about 60% of all work-related health problems in the EU, and account for 60% of sickness absences and cases of permanent incapacity to work.

Ergonomic risks are complex and multidimensional in their nature. When occurring at the workplace, they can directly cause, or make worse a pre-existing, ill-health condition. Different jobs entail very different exposures and there are considerable age, lifestyles and gender differences which need to be taken into account.

This category of risks is currently covered by various EU Directives (2002/44 "vibration", 90/269 "manual handling of loads", and 90/270 "work with display screen equipment"), as well as by the Framework Directive. Other EU Directives have an indirect impact on the prevention of work-related musculoskeletal disorders. Non-regulatory initiatives included the European Agency for Safety and Health at Work's awareness-raising campaigns (2000 and 2007) and the Senior Labour Inspectors Committee's campaign (2007-2008) on enforcement of the "manual handling of loads" Directive in the sectors of health care, transport, construction and retail.

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<sup>24</sup> <http://hw2014.healthy-workplaces.eu/en/tools-and-resources/a-guide-to-psychosocial-risks>

There are differences in the way Member States have transposed (and implemented) the current EU occupational safety and health framework - e.g., as regards Directive 90/269/EEC, in some cases Member States have set out legally binding limits or thresholds; in other cases these limits are included in the guidance to the legislation, recommendations or other indicators. Member States also develop non-regulatory approaches (guidance, awareness raising, management standards etc.).

Also in this case, the Commission wants to improve the protection on the ground by clarifying employers' obligation to ensure protection from this type of risks and to take them into account in the risk assessment process, as well as by assisting employers in complying with their obligations. Work with the European Agency for Safety and Health at Work and the Advisory Committee for Safety and Health at Work on identification of good practice for promotion and dissemination and a Senior Labour Inspectors Committee's guide for assessing quality of risks assessments and risk management measures with regard to ergonomic risks will also be initiated.

- *Diversity-sensitive risk assessment*

The Framework Directive creates a legal obligation for the employer to take the measures necessary for the safety and health protection of all workers. It foresees that particularly sensitive risk groups must be protected against the dangers which specifically affect them.

Risk management measures need therefore to pay attention to the specific risks faced by women and men, young workers, older workers, migrants or persons with disabilities; and necessitates the design of specific preventive and protective measures according to the requirements of those groups of workers. The evaluation pointed in particular to the need to step up age-sensitive risk assessment but the same principles apply to all vulnerable workers.

The number of people aged over 60 in the EU is currently increasing by about two million every year, which is twice as fast as it did before 2007. By 2030, older workers will make up almost a quarter of the total workforce. Currently many older workers leave the labour market prematurely, often due to health problems, including those related to poor working conditions.

The EU Strategic Framework on Health and Safety at Work 2014-2020 has identified demographic change and ageing workforce as one of the key challenges, and proposed a number of actions which are currently under development. The European Agency for Safety and Health at Work's Campaign (2016-2017) "Healthy Workplaces for All Ages" is a world leading initiative raising awareness of this issue across the EU.

EU Member States vary both in terms of their demographic situation and with regard to their legal and institutional framework. An integrated policy framework is in place only in a limited number of Member States, but for most Member States population and workforce ageing are a policy priority resulting in a varied set of measures (including in the area of occupational safety and health) to increase older people's participation in the workforce. All Member States have implemented pension reforms, and those with an older population have raised the retirement age and restricted access to early retirement, as well as introduced economic incentives to employ older people.

As regards gender, there is evidence that work-related risks to women's safety and health have been underestimated and gender-neutral approach has contributed to less attention and resources being directed towards prevention of work-related risks experienced by women.

In order to respond to these growing occupational safety and health challenges, the guidance document draws attention to the need to make risk assessment diversity-sensitive and pay attention to specificities related to age, gender and other demographic characteristics. It points out, at the same time, that assumptions should not be made purely on the basis of such characteristics. The risk assessment should consider work demands in relation to the individual's abilities and health. The document provides also practical tools for employers to reflect age-related and gender-related risks in the risk assessments.

### **Actions on rapidly increasing occupational safety and health risks**

- Publication on best practices in managing psychosocial risks and ergonomic risks
- Develop relevant principles for labour inspectors with regard to age-sensitive risk assessment

Lifestyle-related risk factors – such as unhealthy diets, physical inactivity, smoking and the harmful use of alcohol – are contributing to the heavy burden of chronic disease across Europe. This carries a direct threat to workers' health and also has an impact on workers' productivity and that of companies, and the economy, as well as on the sustainability of effective, accessible and resilient health systems. Workplace related initiatives on health determinants are important to promote the wellbeing of workers.

## **3. UPDATING AND REMOVING OUTDATED RULES, REFOCUSING EFFORTS ON FACILITATING COMPLIANCE, A BROADER COVERAGE OF PEOPLE AND BETTER ENFORCEMENT AND MONITORING**

### **3.1. Updating EU legislation and removing obsolete provisions**

Whilst the detailed ex post evaluation has confirmed that the EU occupational safety and health legislation, consisting of the Framework Directive and the related specific directives, is generally effective and fit-for-purpose, it has also identified scope for removing or updating a number of outdated provisions.

To address this, as a first step, the Commission will launch and conclude within two years a program for removing or updating outdated provisions in the Directives. The program will seek to have clearer, more coherent and more relevant rules, simplifying and reducing administrative burden, where possible, for businesses and enforcement agencies, but only where it allows maintaining or improving workers protection. Building on the strong tradition of tripartite dialogue on occupational safety and health at national and EU level, the legislative proposal to amend the Directives, where needed, will be prepared in close cooperation with the Advisory Committee on Safety and Health at Work, where social partners and governmental experts are around the table.

Drawing on the ex-post evaluation, the Commission has identified the following six Directives as priorities:

- *Workplaces (89/654)*

Modern IT technologies and new forms of work such as platform work mean that an increasing number of workers occasionally or regularly work outside of the employers' premises. In this context, the findings of the evaluation exercise indicate that a shift towards a more dynamic notion of "workplace" seems to be needed.

Clarification of the notion of "workplace" and updating/simplifying/removing the annexes of the directive will be considered to reflect changes in ways of working.

- *Display screen equipment (90/270)*

The technology has changed dramatically since the display screen equipment Directive was adopted in the early nineties. Some technology referred to in the Directive is no longer in use and corresponding provisions could possibly be removed. Other issues to consider will be technical updates of some of the definitions used in the Directive, such as the definition of "workstation", as well as some exemptions which could be outdated.

- *OSH signs (92/58)*

Annex II of Directive 92/58/EEC provides for a list of requirements as regards safety signboards including pictograms to be used. It also stipulates in Annex II section 1.3 that "The pictograms used may be slightly different from or more detailed than shown in section 3, provided that they convey the same meaning and that no difference or adaptation obscures the meaning". The evaluation pointed to some uncertainties as for to what extent the EN ISO 7010 signs standard can be considered as compliant with Directive 92/58/EEC (in particular as regards the pictograms used). Some Member States have advocated for the alignment of the Directive with the standard EN ISO 7010 in order to ensure a greater harmonisation of safety signs across the EU.

In order to simplify and clarify existing obligations, adaptation of the Annexes to take into account the EN ISO 7010 or a reference to those standards within the Directive will be considered.

- *Biological agents (2000/54)*

The evaluation posed questions regarding the scope of application of the Directive, most importantly on the need to update the list of biological agents in Annex III. An update of the Annex III will therefore be considered.

- *Medical assistance on board (92/29)*

The evaluation indicated a possible need to review and update the compulsory list of medical supplies laid down in the Directive.

It also posed the question of conformity with international standards, such as such as International Maritime Organisation (IMO) – Life Saving Appliances (LSA) Code 4.15.1.8; ISO 3864-1:2011 "Graphical symbols – Safety colours and safety signs"; International Labour Organisation's 2006 Maritime Labour Convention and the Convention on Work in Fishing).

Moreover, the use of new technological equipment to improve treatment and diagnosis of disease and/or prevention of accidents appears a possible option for larger vessels.

- *Personal protective equipment (89/656)*

A technical update of the directive will be considered with reference to the definition of Personal Protective Equipment, in particular as regards the current exclusions of equipment used by emergency and rescue services such as fire fighters.

- *Further updates*

Other Directives might be subject to similar technical updates (e.g. the Carcinogens and Mutagens Directive 2004/37 and the Chemical Agents Directive 98/24) and particular attention will be given to the annexes to the various Directives, with the aim to assess how they can be made more future-proof.

### **3.2. Encouraging Member States to review national occupational safety and health legislation**

In the field of occupational safety and health, EU sets minimum requirements which Member States can go beyond to adopt more detailed provisions which bring additional protection for workers. In doing so, it is essential that the focus is on increased protection and that no unnecessary administrative burden is added on companies. The Framework Directive gives flexibility to Member States as regards provisions such as the documentation of the risk assessment to allow adaption of the measures to, for example, the size of undertakings, the nature of their activities and the nature and extent of the risks.

The last few years have shown a most welcome trend among Member States to screen their legislative frameworks in order to simplify while maintaining or improving protection. There is a lot to be gained by this. Indeed, the perception of business of the occupational safety and health rules as complex varies from 14% to 67% across the Member States.<sup>25</sup> This suggests that a significant proportion of the administrative burden on businesses originates in national differences rather than the EU minimum requirements, while there is no corresponding indication that there would be more work accidents and occupational disease in systems with less perceived burden.

#### **Examples of Interaction EU/National Level**

- Requirement of external certification by a consultant for risks assessments prepared by employers. No such obligation exists in the framework directive but it is introduced in some national provisions and poses direct costs for companies;
- Obligations to have signed documents and other documentation requirements for appointments of various occupational safety and health actors where the EU rules (e.g. the Construction Sites Directive 92/57/EEC) only require the appointment.

<sup>25</sup> EU-OSHA, European Survey of Enterprises on New and Emerging Risks - 2 (ESENER-2), 2014. Available at: <https://osha.europa.eu/en/surveys-and-statistics-osh/esener>

The Commission can play an important supporting role in this process to ensure that Member States use the opportunity of learning from each other's good practice and have the necessary expertise.

### **Reduction of administrative burdens**

- The Commission will initiate a peer review process with the specific aim to reduce administrative burden in national legislation while maintaining workers' protection.

As a response to the EU Strategic Framework on Health and Safety at Work 2014-2020, 17 Member States have adopted national occupational safety and health strategies which are the key instrument to adapt national policies to new needs and priorities. The most effective frameworks, e.g. the German or Slovak strategies, set specific measures and define indicators allowing for monitoring and follow-up. It is strongly encouraged that all Member States urgently adopt national strategies including a priority axis on reviewing and updating of national legislation, with the specific aim of removing redundant provisions and alleviating administrative burden where possible, especially for small and micro-enterprises.

In the assessment of the implementation of the current Strategic Framework in 2018, the Commission will focus on the implementation of the priorities in this communication including stock taking and recommendations on the reduction of administrative burden drawing from the peer-review.

At EU level, the transposition of the EU acquis will be supported via reinforced cooperation, with Member States, social partners and labour inspectorates. The Commission will prioritise cases where breaches are particularly important and remedy is likely to have a significant impact. Enforcement in individual cases is a matter for Member States' authorities.

### **3.3. Encouraging Members States to ensure a broad coverage of occupational safety and health policies**

- *Self-employed*

The legal basis for EU occupational safety and health legislation, Article 153 of the TFEU, foresees that the EU can legislate to improve the working environment to protect workers' health and safety.

In this context, it is important to note that the Court of Justice of the EU has held that the classification of a "self-employed person" under national law does not prevent a person being classified as an employee or worker within the meaning of EU law if his independence is merely notional, thereby disguising an employment relationship (Allonby, C-256/01).

Self-employed workers account for 16.4% of total EU employment. Particularly large proportions work in wholesale and retail, but also in high risk sectors such as agriculture, forestry, fishing and construction. Because of the particular status of the self-employed working under his or her own supervision, it could be complex and burdensome to apply risk assessment, training, consultation etc. to their situation as these principles build on a worker/employer relationship.

However, in cases where self-employed are working alongside workers this distinction is less evident. Also the actions/oversights of a self-employed can in this context have an impact on the health and safety of the worker. Two specific occupational safety and health Directives, where such a risk is more prevalent are the Construction Sites Directive 92/57/EEC and the Fishing Vessels Directive 93/103/EC, which scope covers the self-employed working alongside workers.

Taking into account that many self-employed work in high risk sectors, a Council Recommendation on self-employed encourages Member States to promote their safety and health and include them in the scope of their national legislation. It also foresees that: "self-employed workers, irrespective of whether they work alone or with employees, may be subject to health and safety risks similar to those experienced by employees".

Before the adoption of the Council Recommendation, very few Member States included self-employed in their national occupational safety and health legislation. Since its adoption, about half the Member States have included them in their legislation with some variation in the definition of a self-employed, the scope of the relevant legislation and the extent of their obligations. Member States are hereby called to fully implement the Recommendation.

In the rapidly changing labour market with the emergence of new forms of work and increasing uncertainty over the status of workers and self-employed, the question of application of health and safety rules to all becomes even more important to prevent accidents and occupational disease.

- *Persons employed for household work in private households*

The EU occupational safety and health legislation does not oblige Member States to include persons employed for household work in private households<sup>26</sup> under the scope of their national occupational safety and health rules and not all parts of the EU acquis in this area may be well suited for it, such as specific requirements laid down in the Workplace Directive in relation to emergency routes and exits and their signalisation.

However, the International Labour Organisation's convention on domestic workers<sup>27</sup> states that every domestic worker has the right to a safe and healthy working environment and that this principle shall be implemented with due regard for the specific characteristics of domestic work. To date six Member States have ratified the convention: Belgium, Germany, Finland, Ireland, Italy and Portugal.

Around half of the Member States have occupational safety and health rules in place covering persons employed for household work in private households. Their experience may help in bringing about across Member States comparably high standards as regards the health and safety at work protection of the estimated 2.5 million such persons in the EU. It may also help Member States who ratify the aforementioned International Labour Organisation's convention complying with their international obligations.

In early 2018 the Commission, in cooperation with the International Labour Organisation, will invite national administrations, social partners and representatives of the civil society to a conference to take stock of progress and encourage ratification and pragmatic implementation building on best practice.

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<sup>26</sup> Under the Occupational Safety and Health Framework Directive 89/391/EEC those are referred to as "domestic servants"

<sup>27</sup> C189 - Domestic Workers Convention, 2011 (No. 189)

### 3.4. Enhancing enforcement and a culture of prevention

Given the importance of enforcement in occupational safety and health implementation, it is vital that Member States fulfil the obligation to ensure monitoring and enforcement on the ground and that they secure the necessary resources to do so.

The role of the Commission, as the "guardian of the Treaties", is to see to it that EU law is properly enforced, if necessary through infringement procedures. The Commission will pursue this role in line with the Communication "*Better Results through Better Application*" (C(2016)8600) adopted on 13 December 2016.

The ex-post evaluation indicated that legal requirements combined with inspection are major reasons explaining why establishments develop occupational safety and health policies and take relevant action. Inspections can indeed contribute to a true prevention culture. Studies show tangible impacts of inspections on occupational safety and health conditions in companies in terms of a reduction in injury rates following inspection.<sup>28</sup> A drop of 22% in injury rates over the following 3 years was noted in concrete individual plants which were inspected and penalised.<sup>29</sup> Recent studies confirm that inspections lead to a decrease in workplace injuries.<sup>30</sup> Higher occupational safety and health inspection scores, yield a decrease in the rate of severe injuries.<sup>31</sup>

And yet, the frequency of inspections varies significantly across the Member States and overall, at least 50% of microenterprises and SMEs and 25% of large enterprises have not had a single inspection in the last three years.

The way in which inspections are carried out also varies greatly between Member States and sometimes within Member States. In some cases inspections focus on checking compliance and imposing sanctions only. In other cases, they go beyond, helping companies identify better ways to achieve compliance.

Cooperation between social partners, trade organisations and inspectorates is essential for the prevention of accidents and disease, notably in microenterprises and SMEs. The Commission will also reinforce its support for better standards and guidance, in particular through the Senior Labour Inspectors Committee. The evaluation recognises the key role of this Committee in the process of identifying best practices regarding enforcement and inspection by Member States and its contribution to competence building and guidance to inspectorates. The Senior Labour Inspectors Committee will work to enhance relevant and targeted training for labour inspectors at EU level.

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<sup>28</sup> The Fitness check evaluation report in Annex 1 showed that even if at macro-economic level no correlation could be identified between accidents rates and frequency of inspections, at a more micro-level evaluation evidence points to the fact that enforcement, and particularly the combined role of inspectors enforcing legislation and providing guidance on implementation, contributes to the compliance with the occupational safety and health acquis.

<sup>29</sup> Quoted in OECD 2000. Building an evidence base for the Health and Safety Commission Strategy to 2010 and beyond: A literature review of interventions to improve health and safety compliance, Health and Safety Executive 2004;

<sup>30</sup> David I. Levine Michael W. Toffel, Matthew S. Johnson, Randomized Government Safety Inspections Reduce Worker Injuries with no detectable job loss, *Science*, 18 May 2012, pp 907-911.

<sup>31</sup> Occupational safety and health inspection scores predicts rates of workers' lost time injuries: <https://www.ncbi.nlm.nih.gov/pubmed/9316705>;



To reach out to microenterprises and SMEs in the context of limited resources labour inspectorates need to join forces with other enforcement agencies to use every opportunity for raising awareness of existing obligations and preventive measures and reduce the burden on companies of overlapping inspections. The Platform to enhance cooperation in tackling undeclared work<sup>32</sup> is a very good example of how such cross-agency cooperation can be set-up and contribute to awareness raising, mutual understanding, concrete initiatives and joint actions at EU level.

In the context of the new world of work, it is very important that individuals already have an understanding of occupational safety and health when entering the labour market. This requires not only lifelong learning for occupational safety and health professionals but also integration of occupational safety and health in all sectors of education. Labour inspectorates and national agencies play a decisive role in this respect. This will be another important element of Senior Labour Inspectors Committee cooperation, the peer-review and implementation of the Strategic Framework.

### **3.5. Developing monitoring tools**

Evidence based policies need high quality, comparable and timely data. For this reason, in view of informing future policy development, work will continue, within the Commission and in collaboration with other actors such as the European Agency for Safety and Health at Work and Eurofound on the development of the EU-level data collections. This will include, for example, tools to monitor the performance of the occupational safety and health legal framework and continue to track impacts, methodological work on the issues of under-coverage and under-reporting as regards the European Statistics on Accidents at Work data collection and work on the pilot data collection on European Occupational Diseases Statistics. It will include as well exploring the possibility of ensuring up-to-date data at the EU-level about the incidence rate of accidents at work broken down by enterprise size. New editions of existing multiannual EU surveys<sup>33</sup> will also be conducted by the horizon of 2020. Important efforts will also be devoted to develop better exposure data. The use of new ICT solutions to improve the information base will be explored.

Occupational safety and health research will furthermore be effectively supported through inclusion of relevant headings under the 9th Research and Innovation Framework Programme and a dialogue with key global counterparts such as the US and China will be initiated in order to get a fuller picture of EU occupational safety and health in global context.

## **CONCLUSION**

The 25 years of experience in occupational safety and health policy at EU level and the detailed ex-post evaluation of the EU acquis allow us to draw lessons for the future. Modern occupational safety and health policy must consist of clear, up-to-date rules at EU and national level. Businesses must be helped in complying with the rules and in drawing maximum benefits from their occupational safety and health efforts in the form of healthier, happier and more productive workforces. This is particularly true for micro- and small

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<sup>32</sup> Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work

<sup>33</sup> European Survey of Enterprises on New and Emerging Risks, European Working Conditions Surveys, EU Labour Force Survey ad hoc module on accidents at work and other work-related health problems.

enterprises, where the potential positive impact of better occupational safety and health is the greatest but which at the same time face constraints in understanding and applying the existing rules.

Whilst binding rules enforced on the ground are crucial, a culture of compliance in businesses of all sizes and amongst workers is what truly makes the difference on the ground. Such a culture of compliance must be forged from early days of education onwards, be it in professional education or management training. It must be nourished through permanent awareness raising efforts and exchanges of best practices, and kept on alert through inspections which ideally go beyond mere checking and sanctioning and help identify better ways of compliance. Social dialogue has made a huge contribution to improving health and safety, at EU, national, sectorial and company level. It has not lost any of its relevance in today's context. On the contrary, social dialogue will be crucial in implementing the actions contained in this Communication.

Modern occupational safety and health policy relies on many actors working together with common sense and a common conviction that high standards of protection of people's health and safety at work are everybody's business.

## ANNEX 1

### List of occupational safety and health actions

| Action   | Actors  | By when  |            |
|--|---|--|------------|
| <b>Fighting occupational cancer and dealing with dangerous chemicals</b>   |   |  |            |
| 1  | Second amendment of the Carcinogens Directive   | European Commission  | Early 2017 |
| 2  | Third amendment of the Carcinogens Directive  | European Commission  | Early 2018 |
| 3  | Fourth list of indicative limit values in the Chemical Agents directive   | European Commission  | Early 2017 |
| 4  | Database on occupational exposure for some hazardous chemicals  | European Commission  | Early 2017 |
| 5  | Healthy Workplaces Campaign on dangerous substances   | European Agency for Safety and Health at Work  | 2018-2019  |
| <b>Helping businesses comply with occupational safety and health rules</b> |   |  |            |
| 1  | Reach out to SMEs to promote OiRA and similar national tools  | Member States and social partners, with the support of the European Commission and the European Agency for Safety and Health at Work | 2017       |
| 2  | Fully embed the use of web-based risk-assessment tools in the national legal systems. Recognise OiRA and similar tools as compliance with risk assessment obligation. | Member States  | Mid-2018   |
| 3  | Reach the following targets:<br>- 150 published OiRA tools, and<br>- 100,000 risk assessments carried out with OiRA.  | European Agency for Safety and Health at Work  | Mid-2018   |
| 5  | Guide for risk prevention in small fishing  | European Commission  | Early 2017 |

|   |  |   |   |
|---|--|---|---|
|   | vessels.   |   |   |
| 6   | Guide to best practice to improve the application of occupational safety and health in agriculture, livestock farming, horticulture and forestry.                  | European Commission   | Early 2017                                  |
| 7   | Publication on best practices in managing psychosocial risks and ergonomic risks   | European Agency for Safety and Health at Work   | Early 2018                                  |
| <b>Removing or updating outdated rules and ensuring better and broader protection, compliance and enforcement on the ground</b> |  |   |   |
| 1   | Update the display screen equipment directive (90/270)   | European Commission, in consultation with the Advisory Committee on Safety and Health at Work and Social Partners | Ongoing 2017-2018, to be finalised end-2018 |
| 2   | Update the OSH signs directive (92/58)   |   |   |
| 3   | Update the biological agents directive (2000/54)   |   |   |
| 4   | Update the medical assistance on board directive (92/29)   |   |   |
| 5   | Update the workplaces directive (89/654)   |   |   |
| 6   | Update the personal protective equipment directive (89/656)  |   |   |
| 7   | Full implementation of the Council Recommendation on self-employed   | Member States   | End 2018                                    |
| 8   | A high-level conference on persons employed for household work in private households   | European Commission (with the International Labour Organisation)  | Early 2018                                  |
| 9   | Ratification of the International Labour Organisation's Convention on Domestic Workers.  | Member States   | Mid-2018                                    |
| 10  | Invite Member States to a peer review process with the specific aim to reduce administrative burden in national legislation while maintaining workers' protection. | European Commission   | Ongoing 2017-2018                           |
| 11  | First report on the peer review  | European Commission   | End 2017                                    |
| 12  | Update national occupational safety and health strategies reflecting priorities of this Communication and including first results                                  | Member States   | End 2017                                    |

|    |   |   |            |
|----|---|---|------------|
|    | of the peer review  |   |            |
| 13 | Updated Common Principles of Labour Inspection on Health and Safety   | Senior Labour Inspectors Committee                                | 2017       |
| 14 | Guide to good practice to improve the application of occupational safety and health by reducing work related vehicle risk | European Commission/European Agency for Safety and Health at Work | 2017       |
| 15 | Common standards for inspector training programs  | Senior Labour Inspectors Committee                                | 2018       |
| 16 | An e-handbook on cross-border enforcement   | Senior Labour Inspectors Committee                                | 2018       |
| 17 | Develop relevant principles for labour inspectors with regard to age-sensitive risk assessment                            | Member States and the Senior Labour Inspectors Committee          | Early 2018 |