

# Deregulation continues to kill

We are used to reading warnings on cigarette packets: 'Smoking kills'. This should not distract from other vital health factors. The paralysis in European occupational health policy has become one of these vital factors.

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**Workers carry out exercises to improve their flexibility. Employees are entitled to expect their employers to put in place more substantial risk prevention measures.**

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More than 160 000 dead every year, including some 100 000 from occupational cancers. One worker in two considers that he will not be able continue to work until the age of 60 years. This is not a simple subjective perception. In the various countries in Europe, employment rates are falling dramatically for 55-year-old workers even though the doubt surrounding early retirement rights is increasing the risk of toppling into poverty. Occupational health matters are complex. They do not result directly from the state of the art or the science. They also reflect the power relationships between social classes. Immediately and directly, in the life of businesses in which bodies, on a day-to-day basis, constitute operating costs. In a more delayed and diffuse manner, in public policies.

### The watershed of the Barroso years

In the late '80s, the desire to implement the single market persuaded European institutions to encourage improvements in working conditions. This was partly a concession to the trade union movement. It was also the expression of an economic project whereby the position of Europe in the global distribution of work was to be consolidated by the quality of work. This was described as a central issue for a knowledge-based economy. Occupational health, lifelong learning, consultation of workers in undertakings, and industrial policies based on innovation were other facets of a European strategy that was supposed to result in a new social compromise and a return to a cycle of growth.

With hindsight, these texts leave the impression of a certain naivety. There was already a significant discrepancy between trumpeted projects and actual developments. Production chains were reorganised in line with a neo-liberal model that left little room for collective compromises between capital and labour. The dominant features of this 'modernisation' were summarised well in 2010 by Christine Castejon and Thomas Coutrot: 'generalised competition (in theory, the only way to go), job insecurity at every turn, reduction in leisure time, alignment of the public service with a model of profitability, obsession with the short-term'<sup>1</sup>.

The collapse of the Soviet bloc played a paradoxical role. In one way, it seemed to confirm the superiority of a capitalism moderated by social reforms. Towards the end of the '90s, 12 of the 15 countries that then made up the European Union were governed by social democracy<sup>2</sup> but this was breaking, with variable intensity depending on the country, the structural links it had maintained with trade unionism and the labour movement for at least a century. The word 'reforms' had a

completely new meaning. It no longer meant attempts at the redistribution, on a more egalitarian basis, of wealth, education, power or health. It was now a matter of 'reforming the labour market' to make it more flexible and opening up new opportunities by privatising the public services. The general trends in this evolution of capitalism on a worldwide scale were supplemented in Europe by the fact that the dominant classes in the West felt free no longer to make significant concessions to the labour movement. The new elites in the East, born largely out of the privileged bureaucracies of the former Stalinist regimes, were determined to dive into the process of capital accumulation without having to pay an excessive price in terms of the improvement in living and working conditions. The four decades during which most independent forms of the labour movement had been destroyed seemed to them to be an essential step in rapidly achieving a competitive position on the world market. The enlargement of the European Union in 2004 was an opportunity for an alliance between the political heirs of Margaret Thatcher and those of General Jaruzelski.

The political results of the Barroso decade for occupational health were disastrous. We shall not dwell on this<sup>3</sup>. Bear in mind, however, that the essential role of the European Union was to develop a legislative framework for the harmonisation of working conditions and ensure that the Member States were observing the rules put in place. As regards Community legislation, no significant initiative was instigated despite the obvious failings hampering prevention. The revision of the Directive on the protection of workers against carcinogens got bogged down. The adoption of a directive on musculoskeletal problems was halted even though a draft text was ready. Even a second-line initiative like the prohibition of exposure of workers to passive smoking during their work fell through the cracks. The rare projects that were completed concerned initiatives started earlier, which it would have been difficult to block owing to the inertia inherent in large institutions. In parallel, the Commission began a wide-ranging campaign against the 'legislative burden' represented by legislation on occupational health<sup>4</sup>.

### 'Better regulation': locking in the future

Ten lost years is a lot but the key factor undoubtedly lies elsewhere. Every effort has been made to lock in the future, and to establish new bureaucratic mechanisms to make the launch of legislative initiatives more and more arduous. With no substantial revision

1. Castejon C. and Coutrot T. (2010) Ce ne sont pas des 'risques psychosociaux', ce sont les ravages du capitalisme, Santé & travail, No 53.

2. With differences from one country to another. Sticking to the main countries, Tony Blair and Lionel Jospin became Prime Ministers in 1997, Gerhard Schröder in 1998, while Felipe González gave way to the conservative Aznar in 1996. Italy passed through shorter cycles, alternating between right and centre-left.

3. See 'European news' in HesaMag Nos 2 (2010), 5 (2012) and 7 (2013).

4. European Commission (2012), Results of the public consultation on the TOP 10 most burdensome legislative acts for SMEs.

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of the EC Treaty's provisions on the production of legislation, we have been witnessing a silent constitutional counter-reform. This is intended to slow down the adoption of new texts, whether in the social or environmental field or for consumer protection. It is due to various different blocking factors. It is based on the development of an internal bureaucracy and more and more systematic use of outside consultancies. It tends to relegate tripartite consultation and the role of the European Parliament to the sidelines. Political discussion of legislative choices is giving way to calculations as sophisticated as they are unreal with regard to costs and benefits.

We can trace the main stages of this process that is being rolled out under the Orwellian watchword 'Better regulation'. This 'better legislation' is inspired by a legal concept based on 'market totalitarianism' in the happy expression of the French lawyer Alain Supiot. A statutory rule is only good if it generates profits (from the almost exclusive point of view of private enterprises, need it be said?).

5. Bové J. (2014) Hold up à Bruxelles. Les lobbies au cœur de l'Europe, Paris, La Découverte.
6. Members of the Stoiber Group representing workers, environmental protection and consumer protection adopted a dissident opinion in October 2014, highlighting the inadequacy of the figures put forward by the group.
7. Perulli A. (2015) Observations sur les réformes de la législation du travail en Europe, *Revue de droit du travail*, March 2015, 170-180.

An Impact Study Office was set up in late 2006 with the task of evaluating in advance any proposed legislation even before it has been officially drafted by the Commission. The evaluation criteria are vague. They result in arbitrary management of this procedure. The entire process is characterised by a lack of transparency allowing industry lobbies to play a central role<sup>5</sup>. Thus, this Office was able to block the proposed directive on the prevention of musculoskeletal problems with inconsistent arguments. At the legal level, there is nothing to prevent the Commission disregarding a negative opinion issued by that body. In practice, it has tended to grant it blocking powers taking effect downstream, thereby preventing the only Community body elected by universal suffrage, the European Parliament, from expressing a view. Over time, the requirements – defined by the Commission itself – for the content of impact studies have become ever more complex. As a result, greater resources are allocated to the conduct of cost-benefit studies than to the substantial content of legislation. As regards the revision of the Directive on carcinogens, cost-benefit studies of very debateable reliability were subcontracted by the Commission to private consultants. These studies were completed in 2011. Four years later, the impact study has yet to be presented. Embarrassed explanation: in the meantime, the requirements for the impact evaluation had become even more stringent so that the Commission no longer had sufficient elements to present its evaluation.

### The Stoiber Group

The establishment in August 2007 of the 'High Level Group on Administrative Burdens', called the Stoiber Group after the Bavarian conservative leader who chaired it, can be examined as a textbook case of the

techniques of political manipulation in the field of regulation. Originally, this group was to be restricted to examining the 'administrative costs' of existing legislation. Employers' interests were always overrepresented in the group. Of its 15 members at the end of its mandate in 2014, six were employers' representatives. Four others had been involved in consultative bodies set up by right-wing governments of to encourage deregulation in the United Kingdom, Germany, Sweden and the Netherlands. The Stoiber Group's mandate was supposed to come to an end in 2010. Edmund Stoiber twice obtained extensions for the group's activities, which ended on 31 October 2014. In June 2014, it drew up recommendations running in a clearly deregulationist direction. According to the group, its recommendations would save over 40 billion euros<sup>6</sup>. These estimates were based on a simplistic method. Private consultants carried out a few interviews with enterprise leaders on the supposed costs of different types of regulation. They then extrapolated the stated costs to all enterprises in the European Union. No verification was able to establish whether the data emerging from these interviews corresponded to reality. The only 'validation' consisted of the infinite repetition of the same figures from one document to another.

In December 2012, the Barroso Commission initiated 'REFIT', an acronym for 'Regulatory Fitness and Performance Programme'. The objective was to review all of the European legislation already adopted (the Community '*acquis*') and to submit any new initiative to competitiveness tests. In practice, this involved abandoning any ambitious policies in the social and environmental fields. By October 2013, REFIT was being reflected in the blockage of proposals intended to enhance occupational health legislation. REFIT is not just an obstacle at Community level. The Commission is using it to get Member States to revise their own legislation downwards. In the most indebted countries like Greece, Portugal, Ireland and Cyprus, the Commission used the troika mechanism to impose a brutal challenge to social rights. For Adalberto Perulli of the University of Venice, the picture is clear: 'A recurrent feature of these reforms and more flexible labour law is the exponential growth of inequality and insecurity. A picture that, in the eyes of an observer today, seems far removed from the European idea of "quality jobs" and the international principle of "decent work"<sup>7</sup>.

The switch from Barroso to Juncker in November 2014 changed the style but not the substance. The first initiatives resulted in a deterioration of bureaucratic procedures. On 18 December 2014, less than two months after the end of Edmund Stoiber's official mandate,

the new President of the European Commission appointed him special adviser for 'better regulation'. The press release triumphantly announced that the Commission's initiatives in the field of 'better regulation' would save EUR 31 billion. These figures are based on the same fanciful extrapolations made by firms of private consultants on the claimed cost of directives.

The decision-making process was made even more onerous. It brought to mind the censorship mechanisms used by the Catholic Church for publications. Any proposal originating from a Commissioner can only be submitted for collegiate discussion by the Commission if it has first passed through two filters: an initial level of control (and blockage) involves the compulsory approval of a Vice-President of the Commission. Each of the six Vice-Presidents oversees a disparate set of subjects. After this *nihil obstat* comes the *imprimatur*. Vice-President Timmermans still has the power to block any initiative he considers contrary to the sacrosanct principles of 'Better regulation'.

### European Parliament technically unemployed

On matters of occupational health, it may be asked whether the European Commission – in its upper circles – has lost all contact with reality. It is no longer just trade union critics who are bemoaning the failure of its policies. Most Member States no longer accept the legislative paralysis. This has come to the fore over the last 12 months through several initiatives.

In March 2014, the Labour Ministers of Germany, Austria, Belgium and the Netherlands sent a very firm letter to the European Commission demanding the revision of the Directive on carcinogens. In December 2014, the Council of Environment Ministers decided to join Sweden in a legal complaint against the European Commission, which was blocking the actual application of an essential part of the 2009 Regulation on pesticides. It was supposed to have defined criteria concerning endocrine disruptors by the end of 2013. Giving way to pressure from pesticide manufacturers, the Commission did not meet the obligation that it had itself proposed. Its reaction following the unprecedented initiative of the Member States was to adopt new delaying measures: a wide-ranging online public consultation to be followed by ... an impact study of the possible costs of defining the criteria! An absurd exercise insofar as a simple definition of criteria gives rise to no costs that can be determined in advance. Finally, on 9 March 2015, meeting at the initiative of the Latvian Presidency, the Council of Social

Affairs Ministers demanded that the Commission take initiatives to revise the Directive on carcinogens. In less than a year, the battle instigated by four Member States had convinced the majority of the other states.

Parliament did not accept being kept on the sidelines. On 9 March 2015, the Belgian paper *Le Soir* ran the headline: 'European Parliament technically unemployed'. The first lines of the article left no doubt about the Members' discontent: 'MEPs are fed up... This rather uncomfortable statement comes from someone close to a big shot in the European Parliament and sets the tone, with a new parliamentary session opening in Strasbourg next Monday. Ultra-light agenda, journalists who no longer bother to turn up'. The paper explained: 'What's behind all this: "better regulation". Parliament mistrusts poisoned chalices. It is amazed at the proposal by Commission Vice-President Timmermans to submit every amendment to an impact study. As Green MEP Philippe Lamberts says: "The limitation on bankers' bonuses would never have been passed if we had had to submit it to impact studies".'

Even the world of employers is split between its support for the Commission's deregulationist approach and the fact that legislative paralysis has unintended consequences. Politics hates a vacuum. What is not dealt with by the Community legislation on occupational health ends up reappearing elsewhere; sometimes in national laws attempting to fill the Community gaps, with the drawback – for enterprises – of again being

confronted with 28 significantly different sets of laws in the European Union. This is already the case for limit values for exposure to dangerous chemicals and for the prevention of psychosocial risks. Sometimes it is other Community laws that have to pick up the baton. Thus, in the fight against occupational cancer, with a lack of progress on rules on the protection of workers, it is the marketing rules that are attempting – for better or worse – to respond to the increasing concerns. The omnipresent synergies in the statements by the leaders of the Commission are nothing but sudden swerves by a vehicle forced to set off while all the others have broken down.

### Bureaucracy and its rituals

On 25 February 2015, a broad coalition of 31 employers' organisations wrote to the European Commission. While reiterating its ideological support for the principles of 'Better regulation', the letter demanded that the revision of the Directive on carcinogens be unblocked. It was signed by associations from very diverse sectors: automobile production, medical technology, iron and steel, mining, aluminium, etc. It was also supported by the powerful American Chamber of Commerce to the European Union, which represents the US multinationals. Of course, the reason for the letter was not workers' health. The signatories were concerned because the legislative inertia in this field might result in prohibition or restriction measures under REACH, the Regulation on the production and marketing of chemicals. Although we clearly do not share the motivation of the signatories, it is no less comforting to find that the simple defence of their own interests is leading them to break away from the purely deregulationist ideology of the global organisation for European employers, Business Europe.

Up to now, the Commission has responded impassively that there is no need to rush. Its own procedural requirements have to be completed before the substantial questions put to it. The agreed response with regard

to the trade unions, Parliament and states or employers' circles was that it was vital not to do anything with regard to legislation in 2015. The absolute priority was to evaluate the existing legislation<sup>8</sup>. This has been an interminable exercise between different Commission services and private consultants, resulting in voluminous texts in which it is difficult to find any concrete analysis of needs. Mr Juncker tirelessly repeats: 'Europe must only concern itself with the big picture and leave the small things alone'. The only problem lies in knowing who has the power to define what is 'big' and what is 'small'.

Any institution, public or private, tends to develop a bureaucracy that considers its development and reproduction as ends in themselves. The system ends up by becoming divorced from the functions for which it was conceived. Procedures are no longer directed towards functional efficiency but towards the reproduction of rituals, giving the bureaucracy the illusion that it is dominating reality. This process may become irreversible when the institution is no longer even able to spot the signs of its own crisis. It considers that all is well as long as the formalities and ceremonies are being observed. It is in this context that an evaluation should be made of the proposals currently doing the rounds within the European Commission, whereby negotiations between trade union and employers' organisations are to be submitted to ... both prior impact studies and possibly public consultation on the internet. Such a proposal would run counter to the basic principles of the EC Treaty, which recognises the independence of parties in collective negotiations. It would put an end to any attempt at social dialogue while, in parallel, the same Commission repeatedly says that it would like to revive this activity.

The crisis in the regulation of occupational health has now become a more essential crisis for EC regulation as a whole. This may give an opportunity to revive more global mobilisations for another Europe. There is no doubt that this is a battlefield on which the trade union organisations need to be involved. ●

#### More information

Schömann I. (2014) Collective labour law under attack: how anti-crisis measures dismantle workers' collective rights, Policy Brief 2/2014, Brussels, ETUI.

Van den Abeele É. (2014) The EU's REFIT strategy: a new bureaucracy in the service of competitiveness?, Working Paper 2014.5, Brussels, ETUI.

These publications can be consulted at [www.etui.org](http://www.etui.org).

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Even the world of employers is split between its support for the Commission's deregulationist approach and the fact that legislative paralysis involves unforeseen drawbacks.

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<sup>8</sup> The evaluations have been ongoing for 20 years. In occupational health, the first exercise dates back to 1995, with the Molitor Group established in September 1994. It is difficult to find a single original idea emerging from these laborious procedures.