
TUC Briefing
European Commission Communication
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European Commission communication on EU occupational safety and health legislation and policy

A TUC Commentary

Background

On 10th January 2017 the European Commission issued a [communication](#) that was their response to a report which was produced for them in November 2015.

That report, usually referred to as the “COWI report” after one of the group of consultants who wrote it, was the result of an evaluation of how the 1989 Framework Directive and 23 subsequent EU health and safety directives have been implemented and how effective, or otherwise, they have been.

The COWI report, which is 449 pages long (plus annexes) has now finally been published and is available to read along with a 269 page working document from the Commission.

The evaluation came at a time when the Commission was pursuing a strong de-regulation agenda (REFIT) and part of the remit of the consultants was to look at issues such as whether the regulations were a “burden” on business. The COWI report was extremely positive about the overall package of regulation stating that they were coherent, practical and, with a few exceptions, did not result in double regulation. The regulations have also been transposed into national states well with very few problems although it highlights a number of gaps, in particular in relation to vulnerable workers.

The consultant’s report stated that, overall the effect of the regulations is good, especially for workers health and safety, and there is no evidence of

the regulations being a burden. On the contrary, they appeared to have contributed to a significant fall in injury and ill-health across the EU. The report also stresses the importance of enforcement and inspection.

One of the conclusions in the report is that “Strong evidence suggests that employee representation has noticeable influence on the proportion of establishments performing risk assessments and an even more pronounced impact on other key requirements.”

There are a number of recommendations made by the authors. These were very limited and did not always reflect what was said in the report, but were generally positive.

Commission proposals

The communication from the European Commission is important because it contains their proposals for what they plan to do in response to the COWI report.

The areas covered in the report are

- Occupational cancers/chemicals
- Improving compliance
- Helping employers deal with psychosocial risks, musculoskeletal disorders and diversity
- Updating existing legislation
- Encouraging members to review national regulation including coverage to the self-employed and domestic workers.
- Improving enforcement
- Developing monitoring tools.

Many of these areas reflect the priorities of trade unions which has been to concentrate on those areas that do most damage, in particular occupational cancers, stress and musculoskeletal disorders (MSDs), while at the same time seeking to address the lack of enforcement and difficulties in protecting vulnerable workers.

Unions have said that this is best achieved through strong regulation, proper inspection and enforcement, social dialogue and partnership in the workplace and national and European level, and strong unions and safety representatives.

Does the Commission communication deliver what we would like?

a) Occupational Cancers and Chemicals.

Cancer is the leading cause of work related deaths in the EU and trade unions have been campaigning for decades for action on this. Following pressure from the Dutch and other governments, the Commissioner promised to propose 25 new binding occupational exposure limits (BOELs) in 2016 and to reach a total of 50 BOELs in the Carcinogens Directive by 2020. With 13 BOELs added in May 2016 and five more proposed in the communication, they are still well behind what they promised. In addition, many of the big killers are not covered (such as diesel exhaust) and even the limits that are proposed for some of the more common killers like silica are totally inadequate and well below the standards that already exist in many countries.

However simply setting a few new limit values is not the only answer. The commission also needs to address the difficulties with setting limits because of the current procedures and regulations which do not reflect the actual risk to workers. There is, later in the communication, a mention that they may make technical changes to the Carcinogens and Mutagens Directive and Chemicals Agents Directive to assess how they can be made more "future-proof" but no detail is given. Current exposure limits are based on very old evidence, sometimes dating back over 40 years.

The Commission's communication does not address the failure of national governments to view exposure limits as absolute maximums and to enforce the existing requirements on employers to remove all workplace exposure to carcinogens where it is possible through substitution or other controls.

It is also a major omission that there is nothing to address the huge problem of asbestos that is still leading to millions of European workers being exposed every year

In practice there is nothing new in the Commission's proposals on carcinogens and chemicals, and it does not even meet the guarantees that had been in the past.

b) Improving compliance

The Commission rightly stresses the importance of risk assessment

prevention and training, however there is little practical proposed. There is a new risk assessment guide which is very similar to those produced by the European Agency and many national enforcement agencies, including the HSE. It stresses the importance of worker involvement throughout but has only one mention of unions where it says of the assessments *"You can use it to demonstrate to your workers, to trade unions and labour inspectors that you have made informed decisions about the risks and ways to tackle them."* This seems to see unions as being outside the process. Despite all the mentions of worker involvement I am not aware of any involvement by unions in the process of developing the guide.

The communication also recommends the use of web-based tools, in particular those developed by the Bilbao Agency but suggests a review of best practice to reduce compliance costs and thereby increase compliance. It is unclear how reducing compliance costs will necessarily lead to increased compliance and that is not stated.

c) Helping employers deal with psychosocial risks, musculoskeletal disorders and diversity

These are three of the top priorities for unions and we have been calling for action on each of them for many years.

On psychosocial risks the communication states that stress accounts for around half of all lost working days and that those with a stress-related illness can have five times more accidents. The COWI report gave quite a bit of consideration to this area and recommended *"As the prescriptive approach appears to be that favoured in the majority of member states, it is suggested that consideration be given to commissioning a scientific assessment of the feasibility of generating prescriptive material (suitable for legislation) relating to psychosocial risks, to indicate whether or not such an approach could be viable. This could be used to inform a decision on the form and content of legislative developments in this important area of worker health"*.

This recommendation has been totally ignored in the communication. Instead of looking at the possibility of regulation all the Commission says is needed is "to raise employers' awareness and provide them with further guides and tools." The Commission emphasises that these will be "non-binding". This is a significant disappointment for unions and also a wasted opportunity given the huge cost of work-related mental health disorders.

The proposals are equally disappointing on MSDs which they say are the most prevalent type of work-related health problem and the first cause of work-related absenteeism.

There are a number of directives that are meant to prevent these such as the Manual handling and Display Screen directives, but clearly they have had only limited effect. As with stress, the COWI report recommended enabling legislation and prescriptive material. It suggested *"that consideration be given to commissioning an ergonomics assessment of the feasibility of generating prescriptive material relating to MSDs not related to manual handling or DSE work. At least as an interim measure, consideration should also be given to the option of detailed guidance (for which potential examples are already available nationally) supporting enabling legislation, possibly in the form of an amendment to the Framework Directive, or at least a clear direction that the goal set by the Framework Directive (of assessing and managing workplace hazards and risk factors) can be met through appropriate application of such guidance."*

All the Commission can come up with in response to this recommendation is identification of good practice and a guide, this is despite previous proposals for a specific directive and general support from most member states for one in the past. In addition however there is a proposal under "updating EU legislation" for a number of technical updates to the DSE regulations, but these are limited to definitions.

Action on diversity sensitive risk assessment are certainly much needed. There are already legal requirements on pregnant women and young workers, but issues around disability, migrants, older workers and gender differences are often overlooked. This is recognised by the Commission and much of the text highlights the difficulties these groups face, but proposed action is limited to developing relevant principles for labour inspectors on age-sensitive risk assessment.

d) Updating existing legislation

This is the section where the legislative proposals are to be found. There are six directives that they say they are looking at but in most cases all that is being proposed is simple amendments. In most of these however the changes will be welcomed by unions, even though they are very limited. There will be some relief that there are no proposals to remove, merge or weaken any of the directives, especially given the pressure from some employers for one single directive for all health and safety.

The proposals that the commission is making are: changing the definitions of “workplace” and “workstation”; resolving confusion between the directive and standards on safety signs; updating the list of biological agents; updating the list of medical supplies required on ships; removing the exclusion from the directive of some forms of PPE used in the emergency services.

This is not a complete list and others may be considered, but, in general, these proposals are positive and there is an assurance that social partners will be involved in the discussions, however, on safety signs there is an “option of replacing the current provisions relating to the pictograms in the Directive by a reference to the relevant EN ISO 7010 standard.” Clearly unions would have concern over replacing provisions in Directives by references to standards.

e) Encouraging members to review national regulation including coverage to the self-employed and domestic workers.

This section of the communication criticises some of the practice at national level in some member states, in particular on risk assessment requirements, and suggests a peer review process to reduce administrative burdens. Which is quite a frightening suggestion and is the best way to stifle experiments in good practice.

The Commission also gives strong encouragement on member states to review existing regulations to alleviate administrative burdens. However, when it comes to under enforcement there is less enthusiasm. The Commission states that it will only prioritise cases where breaches are particularly important and remedy will have a significant impact. In the past there have been 78 infringement proceedings for failure to transpose the Framework Directive correctly into national legislation, and that is just one of the 24 health and safety directives.

There are two parts of this section however where the proposals are slightly more positive.

The first is in coverage of the self-employed. They are not included in the Framework Directive and only the Construction Sites and Fishing Vessels Directives specifically include them. The British Government recently forced though a change in the law exempting many self-employed workers from the health and safety at work act. One of the reasons was

that there was no requirement to protect them under EU law. The Commission now recommends that all member states include self-employed in their national occupational health and safety legislation and wants this done by the end of 2018. This could easily be achieved by a simple amendment to the Framework Directive, but this is not being considered.

The Commission is taking a similar view on workers who do household work in private households, who are excluded from health and safety legislation in about half of countries in the EU. This is despite an ILO convention stating they should be included. The Commission will be holding a conference on this in 2018 to “encourage ratification and pragmatic implementation building on best practice.” Again this is an area where a simple amendment to the Framework Directive would be much more simple, and effective.

f) Improving enforcement

The COWI report made it clear that *“legal requirements combined with inspection are major reasons explaining why establishments develop occupational safety and health policies and take relevant action.”* The communication gives the case for inspection very well giving statistics showing that inspections lead to a decrease in workplace injuries and higher occupational safety and health inspection scores, yield a decrease in the rate of severe injuries. The Commission states that at least 50% of microenterprises and SMEs and 25% of large enterprises have not had a single inspection in the last three years. In some countries the figure would be far higher, and it is clear that Government austerity programmes have had a major impact. In the UK for instance only “high risk” enterprises have any kind of proactive inspection and most workplaces will never see an inspector until things go wrong.

The Commission commends some initiatives such as joint work with other enforcement agencies but there are no specific proposals, which means that those member states that are not enforcing EU regulations will continue to get away with it. The Commission has traditionally seen this as being an area for the Senior Labour Inspectors Committee to deal with but they have no powers of sanction and asking the Inspecting Agencies to police themselves is hardly going to lead to change.

g) Developing monitoring tools.

This section of the communication deals with data collection and just restates a number of existing initiatives.

Conclusions

The press release issued by the Commission states that “the proposal and changes were developed in close consultation with stakeholders at all levels, notably social partners”. This is not true. Although the COWI report was written with some input from social partners, unions had no direct involvement in the contents of the Commission’s communication.

Despite this, trade unions will welcome the fact that the Commission have resisted calls from some member states and employers to reduce the levels of protection given to workers and are not making any significant changes. However it is a matter of regret that they have not publicly considered all the recommendations in the COWI report and either accepted them or given reasons for not implementing them. It is also regrettable that the Commissioner’s speech, launching the Communication, made several references to “gold-plating” and burdens.

Particularly disappointing is that they have ignored the strong evidence for increased regulation in the areas of MSDs and stress and are not even meeting their previous commitments on carcinogens.

Unions will also be disappointed that the Commission has virtually ignored the major role played by unions and workplace representatives. There is absolutely nothing on unions, or safety representatives and the nearest there is to anything positive is a mention of the importance of social dialogue, despite this being a major issue highlighted in the COWI report.

The European trade union movement will be involved in the discussions at the Commission’s Advisory Committee on the implementation of the Commission’s proposals and hopefully some progress will be able to be made in ensuring that, those little changes that are proposed, are implemented quickly and in a way that will have the maximum impact.

The communication, consultant’s report and accompanying papers can all be accessed here:

<http://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=2709&moreDocuments=yes&tableName=news>