

**COMMUNICATION FROM THE COMMISSION
ADAPTING TO CHANGE IN WORK AND SOCIETY: A NEW COMMUNITY STRATEGY ON HEALTH AND
SAFETY AT WORK 2002 – 2006**

UNICE POSITION PAPER

EXECUTIVE SUMMARY

UNICE has noted the Commission communication on a new Community strategy on health and safety at work for 2002-2006. European employers broadly share the overall approach suggested by the Commission which focuses on a consolidation of the risk prevention culture, through the use of a variety of policy instruments, the building of partnerships and the involvement of all relevant players, in particular social partners.

A substantial corpus of legislation aimed at raising health and safety standards and covering all known risks has gradually been put in place at EU level. Without ruling out the need in the future to adapt the existing legislative framework, it is important to focus now on its effective implementation and application throughout Europe, as well as on its simplification. Taking appropriate steps to that effect is therefore a priority.

European legislation is based on risk prevention. In order to be effective, the Community strategy must also focus on enhancing risk awareness and creating a genuine risk prevention culture, addressing all parts of society and going beyond the active population and the workplace. Member States' education and training policies as well as awareness-raising actions are important tools for strengthening the prevention culture.

New risks will require focused attention and monitoring. The very nature and underlying complexity of some emerging risks, especially psycho-social risks, will require the conception of measures and instruments that allow flexibility for development and innovation in both their monitoring and management.

With the enlargement of the European Union on the near horizon, the Community strategy must also give the necessary attention to preparing the ground for effective implementation and application of the EU health and safety standards in the candidate countries.

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INTRODUCTION

UNICE has noted the Commission communication on a new Community strategy on health and safety at work for 2002 - 2006¹.

Starting from the analysis that a substantial corpus of legislation aimed at raising health and safety standards has gradually been put into place at EU level, the Commission announces:

- a global approach to well-being at work geared towards enhancing quality of work, taking account of the emergence of new psycho-social risks,
- a strategy seeking to consolidate a risk prevention culture through a variety of policy instruments,
- a strong focus on partnerships and involvement of all relevant players, in particular social partners.

GENERAL COMMENTS

European employers broadly share the overall approach suggested by the Commission. They

- fully agree that the new Community strategy needs to build on past achievements, using a variety of instruments to improve quality at work, involving all relevant players and promoting partnerships;
- welcome in particular the Commission's commitment to giving importance to social partners' contributions;
- welcome the emphasis on a strengthening of the prevention culture;
- welcome the focus on ensuring correct implementation and consistent application of the existing legal framework;
- welcome the focus put on simplification and modernisation of existing legislative provisions, based on a thorough assessment of implementation reports and of the effects of legislation;

¹ COM(2002) 118 final

- share the Commission's view that the European Agency for Safety and Health at Work and social partners have an important role to play in the prevention of new risks, especially when the problems are of high complexity and not fit for legislation;
- welcome the call for stepping up ongoing work on the harmonisation of statistics;
- support a benchmarking process and the setting of quantified national objectives, provided that the necessary progress is achieved in terms of comparability, precision and coverage of available statistical data;
- welcome the Commission's commitment for a better consideration of health and safety issues in other relevant Community policies.

However, employers regret that the communication does not convey a clearer sense of focus. Moreover, they do not always agree with the emphasis chosen by the Commission and have reservations about some specific proposals. For example:

- Employers are attached to providing good working conditions and safer and healthier jobs, but think that the objective to foster well-being goes well beyond the sphere of the workplace and what a strategy for safety and health at work can reasonably be expected to deliver. Fostering well-being is therefore not solely in the hands of employers.
- A substantial corpus of legislation aimed at raising health and safety standards and covering all known risks has gradually been put in place at EU level. Without ruling out the need in the future to adapt the existing legislative framework, UNICE believes that strong emphasis should be put on the development of non-legislative tools in order to promote an effective implementation and application of existing legislation, to allow flexible and well-adapted solutions and to promote a risk prevention culture.
- European employers recognise that new risks require focused attention and monitoring. Occupational health and safety risks that are not yet sufficiently researched or known today may emerge in the future. Whereas the Commission attaches almost exclusive attention to emerging psychosocial risks, there is a need to remain vigilant with regard to a broader spectrum of possible new risks. At the same time, employers highlight that the focus on new risks should not distract from the necessity to prevent and control many of the traditional risks.
- The very nature of psychosocial risks (stress, harassment) illustrates the importance of conceiving measures and instruments that allow flexibility for development and innovation in both the monitoring and the management of the risks. According to UNICE, the remedy does not consist in proposing additional specific legislation, but in the development of practical guidelines, exchanges of good practices and awareness-raising activities. The complexity underlying these risks requires that room is left for social partners as well as individual enterprises to develop their own, customised solutions. This is also the case for musculo-skeletal disorders.
- The Commission remains unspecific on the terms of how it intends to support candidate countries in meeting the occupational safety and health (OSH) challenge. UNICE believes that a more ambitious and structured programme for action should be envisaged, with a view to ensuring that the same occupational safety and health standards are efficiently implemented and applied throughout an enlarged EU and that fair competition takes place.

- When it comes to adaptation of the existing EU institutional framework, it is essential to address questions such as how government, employee and employer representatives from the candidate countries can be familiarised with the functioning of tripartite advisory committees and agencies before accession, and how these bodies need to be reformed in order to be able to function efficiently once the candidate countries have joined the EU.
- As regards mainstreaming of health and safety in other Community policies, employers do not fully agree with the emphasis given by the Commission to some areas. A strong focus should be put on ensuring that Community rules on the manufacturing and marketing of machinery, work equipment and chemicals are coherent with occupational safety and health requirements as well as on EU initiatives in the field of research and education/training. Employers warn that the Commission's proposal to use the European Employment Guidelines as a key vehicle for the promotion of safety and health at work must not result in diluting both the employment goals and health and safety objectives.

DETAILED COMMENTS

On the concept

UNICE fully subscribes to the Lisbon objectives of turning Europe into the most competitive knowledge-based economy in the world, with more and better jobs. A constant pursuit of improvements as regards the quality at work is a concern for companies and necessary in terms of efficiency and competitiveness. An effective protection of the safety and health of workers is an essential factor in achieving better jobs. UNICE acknowledges however that there are other factors that will determine the quality of employment.

The main objective set by the Commission to foster "well-being at work" by means of the new Community strategy on occupational safety and health seems to go far beyond what this strategy can reasonably be expected to deliver: to make a contribution to enhanced quality of work through the reduction of occupational accidents and diseases and better risk prevention and management. "Well-being" and "quality" are very individual notions. Workers needs and expectations vary, as does a persons predisposition and perception. Moreover, well-being is a notion that extends well beyond the sphere of work and is influenced by factors that are external to the workplace. It must be noted that the promotion of physical, moral and social well-being at work is not solely in the hands of employers, but also depends on circumstances in the private life of employees, their life style, the social and cultural environment, political and societal developments, etc. It is therefore a shared responsibility of all.

Strengthening the prevention culture

The development and strengthening of a preventive culture must be a central element of a medium- to long-term strategy to improve occupational safety and health². UNICE therefore welcomes the inclusion of this aim in the new Community strategy. However, the particular focus put by the Commission in this context on the integration of disabled people into work life seems misplaced. A strategy to promote a risk prevention culture must address all parts of society, and go beyond the workplace and the working population. It should help create a general culture that values health and risk prevention. It must be recognised that fostering

² See also the UNICE publication "Occupational safety and health: a priority for employers", August 2000

changes in behavioural patterns, decisive in achieving better OSH performance, cannot be achieved solely through legislation.

Education and training policies, which are a member state responsibility, play an important role in the strengthening of the prevention culture. It is beneficial to start education valuing a general culture of health and risk prevention at an early age. It is, moreover, crucial that curricula of future workers and future managers adequately integrate aspects relating to safety and health. Furthermore, awareness-raising actions targeting a large public must be envisaged.

UNICE thinks that, at European level, it would be appropriate

- to charge the Agency for Safety and Health at Work with the organisation of exchanges of experiences concerning the various approaches of member states and candidate countries when it comes to the integration of OSH issues in different stages of education and training;
- to ensure that OSH issues are taken into account in EU initiatives in the field of education and training.

Finally, social partners at the appropriate levels have an important role to play in encouraging innovative approaches and providing and disseminating good practice examples.

Fostering better application of existing law and adapting the legal framework

Employers consider that a substantial legislative framework covering all known risks and most categories of workers, including temporary workers, is in place. This framework is complex and not always fully understood. It is therefore essential to focus on ways to ensure correct implementation and better application of the existing legislative framework. A starting point must be the systematic evaluation of the implementation and practical application of existing legislation. Such a systematic evaluation is so far lacking and has to be undertaken³. In this context, UNICE wishes to remind the Commission of the ACSHH opinion of October 1999, which proposed a method for examination and discussion of national reports, and calls on the Commission to quickly put it in practice.

In the context of better application of the existing legal framework, particular emphasis must also be put on the production, in conjunction with the ACSHH and social partners, of practical guides on how to apply a particular Directive. The systematic development of such instruments at European, national and sectoral level is crucial in order to enable companies to develop their own practical and effective solutions.

A proper analysis of national reports on the implementation of existing Directives must also be the starting point for the modernisation/adaptation of existing legal provisions. However, the Commission proposes to extend the scope of the carcinogens Directive and to tackle musculo-skeletal disorders without having made such an analysis. Therefore, so far those proposals lack substantiation and clarity. This illustrates the need for further analysis, before coming to any conclusions.

UNICE would like to recall that any Commission decision to propose new specific legislation in the future must be based on a) a proper analysis of the implementation of the existing legal framework; b) a sound analysis of scientific evidence and c) a thorough assessment of economic and social costs and benefits in relation with the introduction of new legislation.

³ UNICE highlights however that sufficient human and financial resources are a prerogative for enabling the Commission to live up to its commitment.

Finally, without ruling out the need to adapt the existing legislative framework in the future, UNICE believes that strong emphasis should be put on the development of non-legislative tools in order to promote an effective implementation and application of existing legislation, to enable flexible and effective solutions and to promote a risk prevention culture.

Prevention and management of new risks

The new risks arising from the way we live and work, will require focused attention, monitoring and actions from all sections of society. Occupational health and safety risks that are not yet sufficiently researched or known today may emerge in the future. Whereas the Commission attaches almost exclusive attention to emerging psychosocial risks, there is a need to remain vigilant with regard to a broader spectrum of possible new risks. At the same time, employers stress that the emergence of new risks must not distract attention from the need to prevent and control many of the traditional risks.

UNICE welcomes the role attributed to the European Agency for Safety and Health at Work to act as a “risk observatory” through the systematic gathering of information, scientific opinions and good practices. Research plays a fundamental role in the prevention of occupational risks. A more systematic gathering of information on research carried out by different national institutes and universities must therefore be noted positively. However, UNICE regrets that the Community strategy does not foresee the incorporation of occupational health and safety in EU research programmes.

Employers will play their role in managing those occupational health and safety risks that they can effectively assess, influence and control. They are also prepared to work with other players in a proportionate way where the risks are multi-factorial. However, they cannot be expected to solve societal problems.

Rapidly changing situations on one hand and the very nature of certain emerging risks on the other illustrate the importance that the measures and instruments applied allow flexibility for development and innovation in both the monitoring and the management of these risks. The framework Directive⁴, which covers all health and safety risks, including the emerging risks highlighted by the Commission, imposes general obligations on employers and allows this flexibility.

When it comes to the effective prevention and management of stress, violence at work/moral harassment and muscular-skeletal disorders, employers believe therefore that the answer does not lie in further specific legislative initiatives, but in the dissemination of practical solutions and guidelines, the exchange of good practices and awareness-raising. In this context, UNICE strongly welcomes the Commission’s recognition of the important role that social partners and social dialogue can play, with regard to providing guidance on the prevention of these emerging complex risks.

Benchmarking OSH performance

UNICE fully supports the Commission’s call for stepping up the work on the harmonisation of statistics and improving the comparability of data.

UNICE also supports the call for a benchmarking-process as regards OSH performance and for considering the introduction of quantified national objectives in view of reducing occupational accidents and illnesses and improving quality at work.

⁴ Directive 89/391/EEC

However, it is important to keep in mind that a benchmarking process on the basis of indicators and the setting of national targets can only be meaningful if harmonised data enabling comparisons is available. There are still major obstacles in this respect and many will remain due to the differences in national health, social security and insurance systems. As regards occupational diseases, for example, diagnosis, declaration, recognition and compensation schemes vary from one member state to another. These are major obstacles for the development of harmonised statistics, European indicators and comparable national indicators in this area.

For UNICE, it is essential that indicators are

- objective (They should measure progress achieved in terms of outcomes. If subjective indicators based on survey of opinions are used, they should be clearly designated as such.);
- comparable (If comparability problems occur, they should be accompanied by a clear explanation of the statistical differences.);
- up-to-date, and available on a regular basis so as to monitor the evolution over time;
- based on available data in order to avoid imposing additional administrative burden on companies.

Mainstreaming health and safety at work into other community policies

UNICE fully agrees that health and safety concerns should be better taken into account in other Community policies. However, not all areas are equally relevant.

UNICE has some reservations about the proposal to amend the employment guidelines and attempts to use them as a vehicle for the promotion of safety and health at work, and more particularly for addressing specific risks such as stress at work. Such an approach would not do justice to the importance that must be attached to the reduction of occupational accidents and illnesses and the development of a genuine occupational health and safety strategy. Equally, it would not do justice to the importance of maintaining a focused European Employment Strategy, in order to improve employment rates⁵. Employers warn that the Commission's proposal must not result in a dilution of both the employment goals and health and safety objectives. However, employers support the introduction of objective, comparable and up-to-date occupational health and safety indicators and of an OSH benchmarking-process in the employment process.

UNICE thinks that a stronger focus than in the past should be put on ensuring that Community rules on the manufacturing and marketing of machinery, work equipment and chemicals are coherent with occupational safety and health requirements. This is also important to provide for smooth functioning of the single market.

Lastly, UNICE has further above already drawn attention to the fact that it regrets that a better integration of occupational health and safety aspects into education/vocational training and research activities at Community level are important aspects which are not mentioned in the Commission Communication.

⁵ UNICE has already warned on earlier occasions that a simplification of the European Employment Strategy is required, particularly through the reduction of the number of employment guidelines. The guidelines have become complex and difficult to follow. Instead of introducing new partial objectives that run the danger of further diluting the main objectives, there is a need to refocus the guidelines and their content on the core priorities.

Preparing for enlargement

Enlargement is one of the major challenges for the EU and the candidate countries are facing the challenge to properly transpose and apply the considerably complex *acquis communautaire* in the field of occupational safety and health and to develop appropriate institutional and administrative structures that can ensure this. However, the Commission remains unspecific on the terms on how it intends to support the candidate countries in meeting the OSH challenge. UNICE is attached to a proper functioning of the internal market and avoiding distortions of competition. Therefore, a more ambitious and structured programme for action must be envisaged, with a view to ensuring that the same occupational safety and health standards are applied throughout an enlarged EU and that fair competition takes place.

Adapting the institutional framework

The Commission proposes to merge the Advisory Committee on Safety, Hygiene and Health Protection at Work (ACSHH) and the Safety and Health Commission for the Mining and Other Extractive Industries (SHCMOEI). In their joint contribution on the restructuring of advisory committees in the field of occupational safety and health dated 25 October 2000, UNICE and ETUC expressed their reservations as regards a straightforward merger of these committees.

SHCMOEI has particular expertise and competences, which are quite different from those of ACSHH (notably the right of initiative and the right to make recommendations⁶ to Member States). Yet, these competences cannot be transposed to the ACSHH framework. Consequently, whatever form the “merger” might take, it would in practice mean the disappearance of SHCMOEI as such. Whether this is desirable or under which conditions a merger could take place should be further debated, notably in the light of enlargement and its impact on the future functioning of the different advisory committees.

In its communication, the Commission also proposes to admit representatives of the candidate countries labour inspectorates to ACSHH, the Agency for Safety and Health at Work and the Foundation for the Improvement of Living and Working Conditions. It remains unclear on which terms this could be envisaged and why social partner representatives are not mentioned in this context. The true questions, not addressed in the Commission communication, are how government, employee and employer representatives from the candidate countries can be familiarised with the functioning of tripartite advisory committees and agencies before accession and how these bodies have to be reformed in order to be able to function efficiently once the candidate countries have joined the EU.

Target groups

Classifying women, younger worker, older worker and workers in “non-standard” working relations as “particularly sensitive” or target groups in themselves does not seem useful. The whole work force has to be protected from particular hazards that may arise. In this respect, companies conduct risk assessments and take appropriate measures. To what extent particular attention needs to be given to different categories of workers and gender differences will necessarily depend on the nature of activities, the potential risks involved at company level and on the extent to which they are likely to affect one category of workers

⁶ In this context, a “recommendation” has a binding effect (different from a Recommendation as a Community act in the sense of article 249 of the Treaty)

more than others. The generalisations undertaken in the Commission document may be misleading.

Adapting legislation to the emerging problem of musculo-skeletal disorders (MSD)

The prevention of MSD needs to be taken seriously. The issue of the appropriateness of adapting different Directives could be further debated within the framework of ACSHH, on the basis of an evaluation of the implementation of the existing legal framework. However, the conception of a meaningful specific Directive with the aim of appropriately covering all work places and situations seems unrealistic. The problem of MSD is much too complex and multifarious.

UNICE therefore thinks that priority should be given to the elaboration of practical guides and evaluation tools that are sector- and workplace-oriented and will prove very useful in enabling companies to develop well-adapted solutions. In particular, social partners at the appropriate levels as well as preventive services have an important role to play in supporting companies in this respect.

On the appropriateness of a Community instrument on violence at work/moral harassment

Employers agree that violence at the workplace is an issue that needs to be addressed and can provide many examples of good practice to inform the debate. Beyond the need to protect workers against externally or internally originated physical violence, it is also in the interest of employers to tackle the phenomenon of moral harassment as far as it is in their hands. It needs to be emphasised, however, that violence at the workplace and harassment are covered by the provisions of the Framework Directive. As a consequence, employers must assess the risks to workers and apply the appropriate preventive measures within the framework of existing legal provisions.

Moreover, it should be noted that, like stress, the phenomenon of moral harassment is much too complex, multifaceted, difficult to assess and differently perceived (due to enormous cultural differences and the fact that it is a subjective notion) to be more effectively tackled through an additional legislative initiative in the form of a specific Directive. Such a Directive would run the risk of proving unworkable. Aware of these facts, in its opinion of December 2001, ACSHH pronounced itself in favour of a Council Recommendation and stressed the need for practical guidelines and awareness-raising campaigns. UNICE fully supports this view.

Stress at work

UNICE attaches great importance to the question of work-related stress, whose effects can be very harmful for both the affected employees and the proper functioning of companies. It highlights here again that work-related stress is already covered by the provisions of the Framework Directive, so that employers must assess the risks to workers and apply the appropriate preventive measures. UNICE shares the Commission's analysis that the complex and multifarious nature of stress calls for innovative, flexible and adapted approaches that additional specific legislative initiative cannot necessarily deliver. It therefore welcomes the Commission's plans to consult the social partners on this issue.

CONCLUSIONS

A substantial corpus of legislation aimed at raising health and safety standards covering all known risks has gradually been put into place at EU level. There is a considerable potential for improving occupational safety and health performance by focusing on ways to ensure better implementation, application and exploitation of the existing legal framework and by simplifying it. Taking appropriate steps, making use of a variety of instruments and involving relevant players, should therefore constitute a priority.

UNICE recognises that, in the future, a need to adapt the existing legislative framework, in the light of new scientific evidence and technical progress, cannot be ruled out. It would like to recall, however, that any Commission decision to propose new specific legislation in the future must be based on a) a proper analysis of implementation of the existing legal framework; b) a sound analysis of scientific evidence and c) a thorough assessment of economic and social costs and benefits associated with the introduction of new legislation.

However, additional specific legislation does not appear to be the most appropriate way to tackle certain complex emerging risks, especially psychosocial risks. More effective ways, making use of a variety of non-legislative instruments and involving relevant players at appropriate levels, must therefore be fully explored.

UNICE fully recognizes, though, that new risks will require focused attention, monitoring and actions from all sections of society. It stresses that there is a need to remain vigilant with regard to a broader spectrum of possible new risks, going beyond a focus on psychosocial risks. Employers will play their role in managing those occupational health and safety risks that they can effectively assess, influence and control. However, they cannot be expected to solve societal problems.

Furthermore, UNICE stresses that the promotion of a prevention culture must be at the core of the new Community strategy. The existing legislative framework promotes a preventive approach and improves technical prevention measures. UNICE believes, however, that efforts to strengthen the prevention culture in the EU can only bear fruit if a strategy is adopted to raise risk-awareness that goes beyond a strict definition of the active population and the workforce. This requires focused attention on education and training policies and awareness-raising actions.

Finally, enlargement constitutes an important challenge in terms of occupational safety and health and therefore requires a central place within the framework of the new strategy. It must be ensured that the same occupational safety and health standards are applied throughout an enlarged EU and that there is fair competition.