

EUROPEAN TRADE UNION CONFEDERATION
UNION OF INDUSTRIAL AND EMPLOYERS' CONFEDERATIONS OF EUROPE
EUROPEAN CENTRE OF ENTERPRISES WITH PUBLIC PARTICIPATION AND
ENTERPRISES OF GENERAL ECONOMIC INTEREST

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PROTECTION OF HEALTH AND SAFETY AT WORK
RESTRUCTURING OF THE ADVISORY COMMITTEES

CONTRIBUTION BY THE SOCIAL PARTNERS

25 October 2000

1. NEED FOR AN ADVISORY COMMITTEE IN THE FIELD OF HEALTH AND SAFETY AT WORK

Commission's proposals

- a) *Health and safety at work issues could be discussed by the existing committees in the context of the social dialogue;*
- b) *An independent advisory committee for the field of health and safety at work to be maintained.*

A real improvement in occupational safety and health is based on close cooperation between all the players concerned, and at all levels. Definition and implementation of EU policy in this area must therefore involve close concertation between the EU institutions (in particular the Commission), national public authorities and the social partners.

In this context, the European social partners recall their attachment to the proper functioning of ACSHH, which is a starting point and a support for their reflections in this area. They consider that it must play a role in the framework of the Commission's new consultation procedures (see below), as well as in the framework of the process of enlargement of the EU.

However, the Treaty (article 138) confers on the European social partners a series of prerogatives for social policy, to which they are also attached.

Thus, they believe that the alternatives proposed by the Commission are not exclusive but **complementary**. Their specific proposals in this area are developed in a separate statement.

2. LEGAL BASIS FOR THE PROPOSAL

Commission's proposals

Council Decision based on Article 202.

The social partners agree that a Council **decision** is the most appropriate legislative instrument.

However, they could not accept the legal basis proposed by the Commission (article 202), which relates to the executive competences conferred on the Commission by the Council, unless express reference is made to the fact that the 28 June 1999 Council decision in relation to committee procedures **does not apply to ACSHH**. This would have the effect of enclosing the functioning of the Committee in a series of extremely strict procedures, which is incompatible with its tripartite nature.

Another solution could be to base the Council decision on **article 308** of the Treaty (formerly article 235).

In any event, the social partners would like a reference to be made to **articles 136 and 137** of the Treaty as justification for the initiative.

3. FORM OF THE PROPOSED INSTRUMENT

Commission's proposals

- a) *New instrument: the main feature of the instrument would be the proposal for a single and entirely new committee;*
- b) *Instrument amending the Council Decision establishing the Advisory Committee on Safety, Hygiene and Health Protection at Work;*
- c) *Instrument amending the Council Decision establishing the Safety and Health Commission for the Mining and Other Extractive Industries,*

The response to this question requires advance clarification by Commission services as to the reasons why it envisages a merger of the committees.

While reserving their positions pending these clarifications, the social partners would like to draw the attention of Commission services to the fact that a "straightforward" merger of the committees cannot be envisaged.

The Mine Safety and Health Commission (SCHMOEI) has competences which are quite different from those of ACSHH (notably the right of initiative and the right to make recommendations¹ to Member States), as well as particular expertise resources to which SCHMOEI members are very attached. This arises essentially from the specific nature and the particular features of the sector concerned.

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 SCHMOEI as such.

¹ 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)

4. SCOPE

Commission's proposals

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| <ul style="list-style-type: none"> a) All private or public sectors of activity: all sectors and all risks; b) All private or public sectors of activity excluding ionising radiation. |
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The social partners consider that ACSHH has a general mission in the field of occupational safety and health and that its competences must therefore cover all questions on which the European Commission can act :

- ~~☒~~ either by virtue of the Treaty on European Union or the Euratom Treaty.;
- ~~☒~~ or under an initiative by DG Empl. or another DG (e.g.) environment, public health, product safety, etc.)

5. POSSIBLE LINKS BETWEEN THE NEW COMMITTEE AND THE SENIOR LABOUR INSPECTORS COMMITTEE (SLIC)

Commission's proposals

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| <ul style="list-style-type: none"> a) Separate proposal for a Council Decision establishing the Senior Labour Inspectors Committee to be presented together with the draft decision establishing the new committee to replace the existing Commission decision; b) The Senior Labour Inspectors Committee to be an integral part of the new committee while maintaining its independence; c) Maintain the status quo, i.e. keep the Commission decision. |
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At the present time, there is no link between ACSHH and SLIC. The social partners have on many occasions called on Commission services to ensure transparency and reciprocal exchange of information between the two committees. Hence, the status quo is not a solution in their view.

However, the very nature of SLIC and the focus of its work, geared more to inspection than prevention, would make integration in ACSHH extremely difficult.

For that reason, the social partners prefer the first proposal, provided that the two decisions contain **cooperation mechanisms** (e.g. regular exchanges of information on work, circulation of activity reports and work programmes, exchanges of observers, joint seminars on various themes, etc.).

6. POSSIBLE LINKS BETWEEN THE NEW COMMITTEE AND THE SCIENTIFIC COMMITTEE FOR OCCUPATIONAL EXPOSURE LIMITS TO CHEMICAL AGENTS.

Commission's proposals

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| <ul style="list-style-type: none"> a) Separate proposal for a Council decision establishing the Scientific Committee for Occupational Exposure Limits to Chemical Agents to be presented together with the draft decision establishing the new committee to replace the existing Commission decision; b) the Scientific Committee for Occupational Exposure Limits to Chemical Agents to be an integral part of the new committee while maintaining its independence; c) Maintain the status quo, i.e. maintain the Commission decision. |
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The social partners consider it essential that the discussions, and decisions, of the Commission and ACSHH on occupational exposure limits are based on rigorous scientific analyses, notably those carried out by SCOEL.

The independence of scientists is an essential element for the validity and recognition of their analyses. Hence, the social partners reject any possibility of integrating SCOEL in ACSHH.

The social partners also recall that the mandate of the ACSHH ad hoc group on occupational exposure limits has recently been modified to take account of the requirements of directive 98/24 (chemical agents), notably regarding relations between the two committees and the European Commission. They therefore believe that the Commission's first proposal is the best possible route, on condition that the two decisions lay down the rules for coordination between the two committees by integrating the relevant portions of the OEL ad hoc group's new mandate.

7. POSSIBLE LINKS WITH THE EUROPEAN AGENCY FOR HEALTH AND SAFETY AT WORK

Commission's proposals

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| <ul style="list-style-type: none"> a) <i>Adoption of opinions concerning the Agency's programmes of work (current task to be formalised);</i> b) <i>The members of the Agency's Bureau are proposed by interest groups within the new committee</i> |
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The social partners recall that an evaluation of the Bilbao Agency is in progress, the results of which should highlight a series of elements linked in part to relations between ACSHH and the Agency. The conclusions of the evaluation will be examined by members of the Agency's Administrative Board and of ACSHH. If appropriate, this exercise should lead to Commission proposals for amendments to the regulation instituting the Agency.

In this context, the social partners would like to reserve their positions pending the evaluation report. However, they point out that the European Commission's second proposal would be tantamount to abolishing the Agency's Administrative Board, which comprises ACSHH members. This point will be the subject of subsequent debate.

8. COMPETENCIES AND POWERS OF THE NEW COMMITTEE AS COMPARED WITH THE EXISTING COMMITTEES

Commission's proposals

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| <p><i>The following cumulative tasks may be vested in the new committee:</i></p> <ul style="list-style-type: none"> a) <i>consultations/adoption of opinions;</i> b) <i>submit proposals to the governments of the Member States (Article 1, paragraph 3 OP);</i> c) <i>adoption of opinions on Community research programmes;</i> d) <i>preparation of (draft) codes of good practice;</i> e) <i>dissemination of information.</i> |
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In the view of the social partners, the Commission's proposal b) is unacceptable for the reasons set out in point 3 above.

Broadly, proposal e) falls more within the remit of the European Agency than the Committee. That being the case, it is very clear that both Commission services and ACSHH members have a duty to disseminate the results of the Committee's work.

The social partners attach very great importance to consultation of ACSHH on the general orientations of the proposed research programmes.

In addition, they believe that ACSHH:

- ✗ should be consulted on the Commission's **work programme** for occupational safety and health;
- ✗ should be consulted on reports on practical implementation of directives (see 1999 opinion on implementation of directives).

9. ADDITIONAL TASKS OF THE NEW COMMITTEE BY COMPARISON WITH THE EXISTING COMMITTEES

Commission's proposals

- a) collect and reflect the opinions and experiences gained at national level with a view to tasks a)-d);
- b) cooperate in defining and implementing Community programmes

In the opinion of the social partners, proposal a) falls within the framework of preparation of the Committee's work and discussions rather than that of additional tasks to be conferred on it. In this area, close cooperation with the Bilbao Agency is necessary.

Proposal b) is not very clear and needs to be explained in greater detail by Commission services.

The social partners consider that ACSHH should be consulted by Commission services on any initiative linked to occupational safety and health, whether or not they emanate from DG-Empl. Some initiatives taken by other DGs may have repercussions on occupational safety and health and should be brought to the attention of ACSHH, e.g. in the area of environment and public health. This is particularly true for the research programmes (see above) or Community initiative programmes linked to education and training. However, involvement of ACSHH in implementation of these programmes is unrealistic.

10. STRUCTURE OF THE NEW COMMITTEE

Commission's proposals

- a) *Committee consisting of: main Committee, Bureau, standing sub-committees, interest groups and ad hoc working groups;*
- b) *Single basic committee relying on classical working groups (Ad Hoc groups); formalisation of interest groups.*

Generally speaking, the social partners believe that the Committee's structure must be simpler and as flexible as possible in order to allow good coordination of work and an effective response to the subjects it is called upon to tackle.

The Commission's proposal a) is **unacceptable as it stands**. The structure which it would put in place would be unnecessarily complex, very difficult to manage and would not allow the Committee to carry out its tasks effectively. In addition, from the budgetary angle, creation of three or four standing subcommittees would represent a considerable budget item, reducing the Committee's resources.

The Commission's second proposal has the merit of formalising the structure of the Committee in **interest groups**, which reflects present practice and has long been requested by the social partners.

However, regarding creation of ad hoc groups, the present practice could be improved in order to give the Committee greater flexibility in definition of the working methods it wishes to use, on a case-by-case basis and as a function of the subjects it has to deal with. Thus, the social partners believe the structure of the Committee could be as follows:

~~☞~~ main committee;

~~☞~~ three interest groups;

~~☞~~ bureau (superseding the present programming group) comprising the Commission and, for each interest group, the spokesperson, the coordinator, and one member to be designated by the group;

~~☞~~ working groups comprising five representatives per interest group, created by the committee on the bureau's proposal, whose mandate should clearly specify the tasks to be carried out and, if necessary, the timetable;

~~☞~~ expanded working groups created by the committee on the bureau's proposal to meet specific requirements (e.g. examination of a purely sectoral issue, examination of national reports on transposition of directives, etc.) comprising up to one representative of each interest group per EU Member State; the committee's decision to create this type of working group would clearly define the mandate, and their subordination link with the committee; they could be disbanded by the committee.

The social partners' comments on the Commission's proposals take no account of the alternatives proposed by the Commission but are based on the above proposal

11. COMPOSITION OF THE MAIN COMMITTEE

Commission's proposals

Alternative 10a):

a) 1 representative by interest group and Member State, spokesman, delegates of standing sub-committees;

Alternative 10b):

b) 2 representatives by interest group and Member State, spokesman;

c) 2 governmental representatives, 1 representative of the workers and 1 employers' representative.

The Commission has stated clearly that the composition of the committee should be modified, notably with a view to EU enlargement, to allow only one representative of each interest group per Member State.

The social partners could accept this reduction in the number of full members on condition that :

~~☞~~ it applies to all groups – proposal c) is unacceptable;

~~☞~~ two alternate members are designated per interest group and per Member State, who would be invited to take full part in separate meetings of the interest groups and who would receive all the information circulated to full members; one of the alternate members also have the possibility to replace the full member in plenary meeting in case of impossibility for the latter to participate;

~~☞~~ the rules for designation of bureau members of working groups (standing, ad hoc or expanded) are rendered more flexible insofar as it would be more difficult to find the expertise needed for highly specific subjects in a committee with a smaller number of members.

12. DECISION-MAKING PROCESS

*Commission's proposals*Alternative 10a):

- a) central decision-making body;
- b) decisions may be taken at main committee level and at sub-committee level.

In the social partners' eyes, the committee should take decisions and validate the documents prepared in the working groups. However, and in order to allow flexible functioning and improve the committee's capacity to react to questions submitted to it, this principle could be supplemented with the following arrangements :

- ~~2.4~~ establishment of a system for decision-making by written procedure, whose rules would be clearly laid down in the committee's procedural rules;
- ~~2.4~~ possibility for the committee to delegate some decisions to expanded working groups on the basis of an ad hoc mandate.

13. NUMBER AND COMPOSITION OF THE STANDING SUB-COMMITTEES*Commission's proposals*Alternative 10a):

- a) limited number (3-5) and 1 representative by interest group and Member State;
- b) depending on the number of sub-committees, fixed number of members.

The expanded working groups should be created on an ad hoc basis, and the number of their respective members decided on the same basis.

14. PROCEDURE FOR CREATING THE STANDING SUB-COMMITTEES*Commission's proposals*Alternative 10a):

- a) the sub-committees are established at the time of the decision;
- b) the sub-committees are established in the decision establishing the new committee, with Commission adaptation procedure;
- c) the sub-committees will not be enumerated in the decision establishing the committee but will be created by the committee itself.

The decision should only include the possibility of creating expanded working groups and leave it to the committee's procedural rules to specify the conditions under which such groups can be put in place.

15. COMPOSITION OF THE WORKING PARTIES*Commission's proposals*

- a) classical working parties (Ad Hoc groups);
- b) working parties of a new type with a core responsible for drafting, 1 or 2 per interest group.

The composition of working groups would continue to be five members per interest group (except for the bureau and expanded groups), designated by the coordinators of each group (with no obligation to be a member of the committee). The chair, vice-chair and rapporteur of each working group would be designated by the bureau, taking account of a balanced spread of functions among the groups. The chair of each working group should be a member of ACSHH, but this obligation would no longer apply for the other two members of the bureau.

In case of need, it is up to each working group to ask one or more persons to draw up a draft opinion. In this case, the document would have to be validated by the group as a whole (by written procedure if necessary) before being submitted to the committee.

16. INTEREST GROUPS

Commission's proposals

- a) *interest groups at main level only;*
- b) *interest groups also at level of the standing sub-committees;*
- c) *unique interest groups covering the two levels "main" and "sub-committee".*

Tasks of the interest groups

- a) *preparation of meetings*
- b) *coordination of positions*

Organisation in working groups have proved its effectiveness. It reflects the very nature of the committee and must therefore be used at **all** levels. The social partners are extremely attached to this principle and could under no circumstances accept its modification. (In this regard, they propose that this composition be reflected in the physical arrangement of meeting rooms and that members sit as a function of their membership of an interest group rather than as a function of their nationality.)

The groups would be composed of full members, alternate members and invited experts (whose number would be defined by the bureau) and who could, for instance, comprise representatives of European social-partner organisations.

It is evident that the coherence of the committee's work depends on the capacity of each interest group to coordinate the positions of its members. Both the worker group and the employer group have demonstrated this capacity, essentially due to the coordinating role played by the European organisations. This role should be formalised.

In addition, the social partners believe that there is an urgent need for the government group to find practical solutions along the same lines, ensuring better coordination of the positions expressed.

17. COMPOSITION OF THE BUREAU

Commission's proposals

- a) *restricted group on the lines of the existing spokesman group (1 representative by interest group), chaired by the Commission;*
- b) *existing planning group chaired by the Commission;*
- c) *groups with 2 representatives by interest group chaired by the Commission.*

See point 10 above.

18. TASKS OF THE BUREAU

Commission's proposals

Cumulative

- a) *prepare the plenary meeting and procedural aspects;*
- b) *approximation of the view points of the different interest groups and preparation of compromise proposals;*
- c) *emergency decision;*
- d) *nomination of members of the working parties.*

The bureau, an emanation of the committee, would have the main task of organising the committee's work :

- ✂✂ setting agendas for plenary meetings;
- ✂✂ setting the timetable for meetings of the committee, interest groups and working groups;
- ✂✂ preparation of new draft procedural rules for the committee (to be adopted in plenary) and of all subsequent amendment proposals (also to be adopted in plenary);
- ✂✂ preparation of the draft annual or multiannual work programme for the Committee (to be adopted in plenary);
- ✂✂ proposals for creation of working groups and preparation of the corresponding draft mandates (to be adopted in plenary);
- ✂✂ proposals for creation of standing or expanded working groups and preparation of the corresponding draft terms of reference (to be adopted in plenary);
- ✂✂ designation of chairs, vice-chairs and rapporteurs for working groups;
- ✂✂ designation of working group members (on the proposal of the coordinators).

In addition, the bureau could be given mandates by the committee, e.g. to take urgent decisions or finalise draft opinions, without the need to refer back to plenary.

Bringing points of view closer together and preparation of compromises is a **natural** task for this type of body, without the need for this to be specified.

19. PROCEDURE FOR NOMINATING THE MEMBERS AND ALTERNATE MEMBERS OF THE NEW COMMITTEE

Commission's proposals

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| <ul style="list-style-type: none"> a) <i>by the Council of Ministers acting on proposals from the Member States (status quo);</i> b) <i>by the Commission acting on proposals from the Member States;</i> c) <i>by the Member States which subsequently notify the nominations to the Commission.</i> |
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The social partners believe that the present procedures for nomination of ACSHH members are adequate and that there is no need to change them.

In addition, the Council decision, like the decision on the standing committee on employment, should specify that the worker and employer interest groups are coordinated by ETUC and UNICE respectively.

20. DURATION OF TERM OF OFFICE

Commission's proposals

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| <ul style="list-style-type: none"> a) <i>three years;</i> b) <i>five years.</i> |
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A five-year mandate has the advantage of greater stability. That being the case, in the context of a smaller committee, it might also prove useful to have some rotation in nominations which is why the social partners tend to prefer a mandate limited to three years.

21. CHAIRING OF MEETINGS

Commission's proposals

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| <ul style="list-style-type: none"> a) <i>the main committee is chaired by the Commissioner;</i> b) <i>the main committee is chaired by the Director-General;</i> c) <i>the sub-committees are chaired by the director, the head of unit, the advisers.</i> |
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Chairmanship of the committee is one thing. Unfortunately, experience has shown that the chair's participation in meetings is another.

It is clear that the Commissioner's commitments are difficult to reconcile with participation in meetings. That being the case, it could be very useful to arrange for regular exchanges of views between the Commissioner and committee members.

The social partners attach very great importance to occupational safety and health. If the Commission shares this view, it is essential that the Director-General for Employment and Social Affairs chairs the committee and is actually present at meetings.

The bureau could be chaired by the Head of Unit in charge of occupational safety and health.

The chairs of working groups are nominated by the bureau from the list of group members, ensuring a balanced spread of functions among the interest groups. Chairs of expanded working groups are designated by the committee on a case-by-case basis, as required (members of an interest group or representatives of the European Commission).

22. EXPERTS TO BE INVITED

Commission's proposals

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| <ul style="list-style-type: none"> a) <i>the Chairman of the main committee may invite experts;</i> b) <i>the Chairman of the main committee and the Chairman of the standing sub-committees may invite experts to their respective meetings;</i> c) <i>the Chairman of the main committee, the Bureau and the Chairman of the permanent sub-committees may invite experts.</i> |
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The very nature of occupational safety and health means that it is often necessary to seek expertise beyond committee members. In the eyes of the social partners, this question should be settled by the bureau. The details of the procedure could be laid down in the committee's procedural rules.

23. OBSERVERS

Commission's proposals

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| <ul style="list-style-type: none"> a) <i>open definition of observers;</i> b) <i>closed list of observers.</i> |
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The social partners believe that the decision itself could make provision for some observer seats:

- ~~the~~ representatives of EEA Member States (one per interest group per country);
- ~~the~~ representatives from other committees (notably MSHC);
- ~~the~~ directors of the Bilbao Agency and Dublin Foundation.

In addition, the bureau could be able to invite some observers to a plenary, on a case-by-case basis and to reflect the subjects for discussion.

24. INTERNAL OPERATIONS

Commission's proposals

Certain specific features to be fleshed out in the rules of procedure, for example written procedure for decision-making and use of modern means of communication;

The social partners believe that this must be one of the committee's first tasks after the decision is adopted.

However, they believe that these procedural rules should not be adopted by the Council but by the committee itself, on the bureau's proposal

Without prejudging of the discussion within the ACSHH concerning the elaboration of Internal rules, social partners consider that the following issues should be, at least in principle, be integrated in the decision itself :

- ✂✂ role and mission of the ACSHH;
- ✂✂ organisation of the ACSHH in three interest groups
- ✂✂ role of ETUC and UNICE as coordinators of the workers'- and employers' interest groups;
- ✂✂ mechanisms for a reinforced cooperation with SLIC and SCOEL;
- ✂✂ relationship with the European Agency (Bilbao);
- ✂✂ structure of the Committee, including chairmanship;
- ✂✂ composition of the Committee, procedures for the nomination of the members, duration of their mandate.

The other issues would be better addressed in the framework of the Internal rule (especially the definition of decision making processes).