

**PROTECTING THE HEALTH AND SAFETY OF SELF-EMPLOYED WORKERS**

**UNICE RESPONSE TO THE SECOND CONSULTATION OF THE SOCIAL PARTNERS**

**INTRODUCTION**

1. UNICE has noted the document for the second consultation of the social partners by the European Commission on protection of the occupational safety and health of self-employed workers and hereby submits its contribution to the discussion.
2. In its second consultation document, the Commission recalls that
  - EU labour legislation, notably on occupational safety and health, does not in general cover self-employed workers, since it applies to the framework in which there is a relationship of subordination between an employer and one or more employees;
  - some Member States do not provide legal protection for the health and safety of self-employed workers;
  - statistics seem to indicate, however, that self-employed workers are more likely to be involved in accidents at work than employees;
  - during the first consultation, a majority of the social partners spoke in favour of a Community action in order to ensure a minimum level of protection of the health and safety of self-employed workers, by advocating recourse to a non-binding instrument.
3. The Commission therefore proposes that the issue of the protection of the health and safety of self-employed workers be addressed through a Council Recommendation based on Article 308 of the Treaty, which would call on Member States to lay down minimum rules for the protection of the safety and health of self-employed workers.
4. More concretely, the Commission wishes to encourage Member States either to extend current OSH legislation to self-employed workers or to adopt specific legislation. In terms of content, the Commission highlights the importance of access to information and training and health surveillance, as well as the need to ensure proper labour inspection and surveillance of application of legislation. It also stresses that the specific situation of sub-contracting should be addressed by Member States.
5. In its second consultation document, the Commission now invites the social partners to give an opinion on (1) the objectives and content of the proposed initiative and (2) to inform it of their wish to initiate a negotiating process.

**GENERAL COMMENTS**

6. UNICE recognises the importance of ensuring the safety and protecting the health of self-employed workers, particularly in a context where this form of work is developing and a large number of self-employed workers are operating in high-risk sectors such as agriculture, construction, fisheries and transport.
7. UNICE endorses the opinion produced by ACSHH on this topic in 1997 and the comments which follow complement it.

8. The approach advocated by the Commission, which leans towards a non-binding instrument in the form of a recommendation to Member States, followed by an evaluation, seems reasonable to UNICE. The advantage of such an approach is that it will trigger debate in the Member States and allow each of them to verify the types of problems that need to be addressed and to find the most appropriate solutions for tackling them effectively.

#### **OBJECTIVES AND CONTENT OF A POSSIBLE INITIATIVE**

9. As the Commission recalls, with a few exceptions, EU labour legislation, notably on occupational safety and health, does not cover self-employed workers, since it applies to the framework in which there is a relationship of subordination between an employer and one or more employees. UNICE stresses that a future recommendation should not aim at addressing those workers who claim to be self-employed but for whom a link of subordination to the business for which they work can be demonstrated, and who should accordingly be regarded as employees.
10. Regarding the substance, UNICE stresses that the proposal for a recommendation on the occupational safety and health of self-employed workers must refrain from recommending, and also not implicitly involve, an “alignment” of the regime applicable to self-employed workers on that applicable to employees.
11. It is necessary to adapt the principles which guide prevention of risks at work to the very particular situation of self-employed workers while retaining comparable objectives in terms of the level of protection to be attained.
12. UNICE believes that emphasis needs to be placed on ensuring that self-employed workers have ready access to all the information and training they may need regarding their safety and health at work, under economically acceptable conditions.
13. In this context, it may be useful, at EU level and if necessary in liaison with the sectoral organisations most concerned, to envisage preparation of practical guides and brochures for self-employed workers, setting out the main occupational risks they may be confronted with and offering them examples of good practice for prevention.
14. UNICE also believes it necessary to recall the fundamental principle, contained in directive 92/57/EC on temporary work sites, whereby self-employed workers must not only ensure their own safety at work but also make sure that they do not endanger that of others, notably through their behaviour.
15. However, UNICE does not see any further scope for additional considerations relating to genuine self-employed workers and subcontracting and, in this context, highlights the need to recognise the principle of contractual freedom.
16. Any arrangements for the organisation of health surveillance and for inspection/control should be made exclusively at Member-State level, in accordance with national systems and practice.
17. UNICE proposes that Member States’ measures be evaluated five years after publication of the recommendation. This period would leave Member States sufficient time to implement measures and for these measures to show some effects.
18. Lastly, as already highlighted in its contribution to the first-stage consultation, UNICE considers a further discussion on the specific content of the proposal for a Council Recommendation to be prepared by the Commission should be held in the framework of ACSHH.

## **NEGOTIATION PROCESS PURSUANT TO ARTICLES 138(4) AND 139 OF THE TREATY**

19. Due to the fact that UNICE agrees with the Commission's plan to tackle the health and safety protection of self-employed by means of a Council Recommendation and that the social provisions of the Treaty refer to an employer/employee relationship, UNICE does not see any scope for initiating a negotiation process pursuant to Articles 138(4) and 139 of the Treaty.