

The Advisory Committee on Safety and Health at Work

Opinion

on the report by COWI et al on the Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States

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Adopted on 24/09/2015

The Advisory Committee on Safety and Health at Work,

Having regard to:

- The mandate of Working Party 'Evaluation of OSH Directives'.
- The report by COWI et al on the evaluation of the practical implementation of the EU occupational safety and health directives in EU member states.

ADOPTS THE FOLLOWING OPINION

The Advisory Committee, in relation to the findings of the contractors' evaluation report,

- welcomes the evaluation exercise to check whether EU OSH legislation is well implemented and achieves its objectives of worker protection in an effective and efficient way;
- welcomes the possibilities it has had to input to the work of the contractors throughout the drafting of their report, whilst pointing out that the timeframes in some cases did not allow for a full consultation;
- notes the methodological challenges faced by the contractors, in particular regarding the lack of comparable data from different member states and the difficulty for national experts to manage their task in a very tight timeframe;
- notes the work done by the contractors to develop (and document) the methodology in order to meet the evaluation challenges, through making use of different data sources and taking account of their quality;
- calls on the Commission to consult it in an effective and timely manner in any follow-up work that it undertakes, while reserving its position on the outcome of the full ex-post evaluation pending the eventual Commission Communication and any specific proposals which the Commission may make in regard to the OSH acquis.

The Committee acknowledges the following conclusions of the contractors' report:

- The OSH acquis, comprising the Framework Directive and the 23 individual directives under evaluation, represents a comprehensive package of legislation aimed at securing the same minimum level of protection from work related health and safety risks for the workers of all EU Member States. **(page 396, para 9.1)**
- Overall, the EU OSH acquis is coherent **(page 369, para 8.1.4)**. There are no contradictory provisions and very few overlaps between the OSH directives. **(page 422, para 9.5.1)**. Furthermore, most of the few overlaps identified do not result in double regulation in practice” **(page 422, para 9.5.1)** The overall structure of the OSH acquis based on a Framework Directive and individual Directives covering specific occupational risks does not need to be changed **(page 422, para 9.5.1)**. At the same time, analyzing the interlinkages of the Common Processes and Mechanisms (CPMs) across Directives, and thus their suitability to work in tandem, the evaluation found unsystematic inclusion of CPMs into the individual Directives. This has caused some confusion at enterprise level. **(page 425, para 9.6.1)**
- While the Member States have chosen various models for their legal implementation of the Directives' requirements, there is no doubt that the Directives' requirements form the core of the national systems in one way or the other. The significance of the Directives in setting the scene for OSH regulation in the EU is therefore very high. **(page 397, para 9.1)**
- Only very few discrepancies have been observed in the transposition of the OSH acquis ... From this perspective, it can be concluded that the structure and general principles of the OSH acquis are well suited as a European framework to be transposed and implemented at national level. **(page 401, para 9.2.1)**
- There is a good level of quantitative compliance with the CPMs of OSH information for workers and protective and preventive services; moderate to good compliance with performing risk assessments; moderate compliance with training of workers and health surveillance; and varied indications on compliance with worker consultation. **(page 404, table 9.3)**
- 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. **(page 415, para 9.4.1)**
- Enforcement, and particularly the combined role of inspectors enforcing the legislation and providing guidance on implementation, is considered to have a significant influence on compliance with the OSH acquis. **(page 415, para 9.4.1)**.
- Legal requirements are an important factor (but certainly not the only one) influencing the compliance behaviour of establishments. This suggests that, by requiring the introduction of such requirements in all MSs, the Directives will have had an impact on compliance behaviour. **(page 274, para 6.8.2)**.
- The analysis shows that benefits generated by the health and safety effects of the acquis primarily fall on the individual workers, while most of the compliance costs fall on enterprises. However, the results do not necessarily imply that OSH is not profitable for enterprises. While there is a paucity of CBA studies focusing on OSH legislation, several studies were identified that assess the profitability of OSH interventions at enterprise level. Although it is too simplistic to conclude that OSH always will be profitable, a

number of case studies showed that OSH can indeed be profitable for enterprises (including SMEs). **(page 419, para 9.4.2)**

Regarding the specific recommendations made by the contractors, the Advisory Committee:

- underlines the point that although there is a need for an update of some outdated Directives, or certain requirements in the Directives, as they do not take account of the present technical situation, there is no need for a full recast of the occupational health and safety Directives system. The current structure of the acquis with a Framework Directive and individual directives should be maintained; **(Recommendation cluster 1, 2.3)**
- underlines that there are some opportunities to streamline certain Directives and to better ensure the effectiveness of provisions and to manage complexities, while maintaining or increasing the existing levels of protection for workers; **(Recommendations 1.2, 2.4, 2.5)**
- welcomes the recommendation that consideration should be given to developing better, more consistent data recording systems at national and EU level which better reflect causal factors and therefore assist in identifying risks and risk prevention strategies, while noting the practical difficulties and costs associated with these and emphasising that full use should be made of the data already being collected; **(Recommendation 4.1)**
- underlines the recommendations concerning future risks, that consideration should be given to work-related MSDs, psychosocial risks and the aging worker population, with a view to clarifying any need for action and where action is deemed necessary, determining the most appropriate course such action should take to ensure the ongoing relevance of the entire OSH legislative acquis; **(Recommendations 2.1, 2.2, 1.3)**
- underlines the recommendation to focus on better enforcement and compliance, whereby it is recommended that the Commission considers how efforts to ensure compliance can be further enhanced with particular focus on SMEs and micro-enterprises and also considering the need for risk based approaches; **(Recommendations 3.1, 3.2, 3.3)**
- underlines the need to find new and innovative ways of reaching SMEs and micro-enterprises – for example tools such as OIRA, and exploring the approaches adopted in some MSs to make the essential requirements of the Directives more accessible – rather than establishing exemptions for them, as this would lead to a lowering of the levels of protection for some workers; **(Recommendation 3.1)**
- agrees that the focus of OSH management should be on the full management cycle and the consistent application of the general principles of prevention and not just on certain processes or procedures; **(Recommendation 3.3)**
- considers that any specific proposals in regard to the OSH acquis should take account of the opinion of the tripartite ACSH and the contributions of social partners according to the provisions of the EU Treaty on social dialogue.