

NOVEMBER 2015
DG EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States

REPORT BY DIRECTIVE: DIRECTIVE 89/391/EEC ON THE INTRODUCTION OF MEASURES
TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH OF WORKERS AT WORK

ADDRESS COWI A/S
Parallelvej 2
2800 Kongens Lyngby
Denmark

TEL +45 56 40 00 00

FAX +45 56 40 99 99

WWW cowi.com

NOVEMBER 2015
DG EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States

REPORT BY DIRECTIVE: DIRECTIVE 89/391/EEC ON THE INTRODUCTION OF MEASURES
TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH OF WORKERS AT WORK

PROJECT NO.	A031983
DOCUMENT NO.	
VERSION	3.0. Final
DATE OF ISSUE	23 Nov. 2015
PREPARED	COWI - PGM
CHECKED	COWI - HECN
APPROVED	COWI - NEO

CONTENTS

List of abbreviations	6
Executive summary	7
1 Introduction	13
2 The Directive	17
2.1 Background and objective	17
2.2 Risks	18
2.3 Provisions	18
2.4 Intervention logic	22
2.5 Measuring impacts	25
3 Implementation in Member States	29
3.1 MQ1: Common Processes and Mechanisms	29
3.2 MQ2: Derogations and transitional periods	31
3.3 MQ3: Compliance	31
3.4 MQ4: Accompanying actions	42
3.5 MQ5: Enforcement	45
3.6 MQ6: Vulnerable groups	47
3.7 MQ7: SMEs and microenterprises	49
4 Assessment of relevance	51
4.1 EQR1: Current relevance	51
4.2 EQR2: Future relevance	59
5 Assessment of effectiveness	67
5.1 EQE1: Effect on occupational safety and health	67
5.2 EQE2: Effect of derogations and transitional periods	77

5.3	EQE3: Effect of Common Processes and Mechanisms	77
5.4	EQE4: Effect of enforcement	79
5.5	EQE5: Benefits and costs	81
5.6	EQE6: Broader impacts	85
5.7	EQE7: Objective achievement	86
6	Assessment of coherence	91
6.1	EQC1: Coherence with other OSH Directives	91
6.2	EQC2: Coherence with other EU policies	101
7	Conclusions and recommendations	107
7.1	Implementation	107
7.2	Relevance	108
7.3	Effectiveness	108
7.4	Coherence	110
7.5	Overall discussion	110
7.6	Overall conclusion and recommendations	112

APPENDICES

Appendix A	Literature
------------	------------

List of abbreviations

Acronym	Definition
ACSH (WP)	Advisory Committee on safety and health at work (Working party)
CTS	Carpal tunnel syndrome
DWEA	Danish Working Environment Authority
EAV	Exposure action values
ELV	Exposure limit values
EQC	Evaluation question coherence
EQE	Evaluation question on effectiveness
EQR	Evaluation question on relevance
ESAW	European statistics on accidents at work
ESENER	European Survey on New and Emerging Risks
EU	European Union
EU-OSHA	European Agency for Safety and Health at Work
EWCS	European Working Conditions Survey
HAV	Hand-arm vibration
HAVS	Hand-arm vibration syndrome
HSE	Health and Safety Executive
ILO	International Labour Organisation
KR	Key requirement
LFS	Labour Force Survey
MQ	Mapping question
NIR	National Implementation Report
OSH	Occupational Safety and Health
SBS	Structural Business Statistics
SLIC	Senior Labour Inspectors Committee
TFEU	Treaty on the Functioning of the European Union
TS	Tender Specifications
VDV	Vibration Dose Values
WBV	Whole-body vibration
WHO	World Health Organisation

Executive summary

Introduction and background

The present document is a Directive-specific report, which forms part of the overall reporting of the evaluation of 24 Directives on Occupational Safety and Health (OSH) commissioned by DG Employment of the Commission. The objective is to evaluate the practical implementation of EU OSH Directives in the EU Member States (MSs) and to assess their impacts and identify their strengths and weaknesses. Against this background, the aim is to present possible improvements to the regulatory framework. The present report concerns Directive 89/391/EEC on the introduction of measures to encourage improvements to the safety and health of workers at work, in the following referred to as the 'Framework Directive'.

The Framework Directive has a special role among the 24 OSH Directives in total. By describing the responsibilities and obligations of employers and workers, it serves as a basis for the 23 Directives covering specific risks connected with safety and health in the workplace. Nevertheless, the Framework Directive, with its general principles, continues to apply in full, to all areas covered by the specific Directives, although these Directives may contain more stringent and/or specific provisions.

Objective

In other words, the objective of the Framework Directive is in general to introduce measures to encourage improvements in the safety and health at work. This means that the Framework Directive applies to all sectors – both public and private; although some public institutions, such as the armed forces, the police and civil protection services are exempt from adhering to certain provisions due to the nature of their work – i.e. where characteristics peculiar to certain specific activities inevitably conflict with the Framework Directive. In any case, workers excluded from the scope must still be protected as far as possible in the light of the objectives of the Directive. Finally, it does not apply to domestic workers.

Methodology

Findings are based on an analysis of the OSH legislation in each of the MSs, official statistics at national and EU level, National Implementation Reports (NIRs) (submitted to the Commission by the MSs by end of 2013) as well as scientific articles, existing studies and interviews with both national and EU stakeholders. It is, however, not straightforward to assign the collected information on safety and health developments to the different Directives. Actually, there might be a tendency to overvalue the impacts of the more general Directives – such as the Framework

Directive – and so to undervalue the impacts of the more specific Directives. The reason is that most of the available official statistics and other collected information are of a general nature and therefore easier to attribute to general Directives.

Risks

The Framework Directive does not mention specific, occupational safety and health risks in its text. Hence, it covers in principle all risks by laying down general principles to prevent and eliminate risks, and so most of the collected information has relevance in the analysis. It lays the foundation for the specific Directives, which target specific aspects of safety and health at work. Such aspects include specific tasks (e.g. manual handling of loads), specific risks (e.g. exposure to dangerous substances or physical agents), specific workplaces and sectors (e.g. temporary work sites, extractive industries, fishing vessels) and specific groups of workers (e.g. pregnant/breastfeeding women, young workers, workers with a fixed duration employment contract).

Implementation

Although numerous infringements concerning the national transpositions of the Framework Directive have been initiated since 1990, our analysis shows that most of the early stage problems have been overcome, as only few minor discrepancies in the national transposing legislation remain. All MSs have implemented more detailed or stringent requirements than those laid down in the provisions of the Framework Directive. Hence, there are no signs that their implementation has impeded improvements to occupational safety and health conditions in the MSs.

Compliance

Our analysis also shows that compliance with the Framework Directive provisions is good among undertakings in the MSs. Higher compliance is registered for large establishments than for SMEs. This is a finding that goes for the OSH acquis as a whole, but also a finding that should be seen in the context that SMEs and microenterprises in many Member States make up the majority of the enterprises.

Most undertakings regularly carry out risk assessments and do follow up on these, while they also have internal safety and health representatives. In addition, workers are generally kept informed and consulted on preventive services. However, OSH training seems to be insufficient in a significant share of the establishments.

This good level of compliance is encouraged by a number of accompanying actions taken at both MS level and EU level to encourage the achievement of the safety and health targets of the Framework Directive. These include guidance documents, support tools, awareness-raising campaigns, education and training activities, and financial incentives. However, there are indications of information gaps, particularly for SMEs, and of uncoordinated and unsystematic information. Furthermore, all MSs enforce the Framework Directive provisions through competent enforcement authorities and through criminal and administrative sanctions.

Relevance

The Framework Directive has been relevant as it serves as a basis for the 23 other specific Directives covering specific risks connected with safety and health in the workplace. Furthermore, statistics on fatal and non-fatal accidents, as well as work-related health problems, show that it has been relevant in the sense that many working days and lives are lost each year – although there has been a significant decrease in the number of occupational injuries in recent years. In other words,

work-related injuries have burdened, and are still burdening individual workers, their employers and society.

Furthermore, our analysis shows that the Framework Directive remains relevant for the future, regardless of the developments in safety and health at work in the EU. Old risks will be reduced as we continue to learn more about chemicals and other workplace contaminants, the effects of poorly designed equipment and processes, and other workplace hazards. At the same time, new risks will emerge, increasing attention to e.g. nanomaterials, increased use of green technologies and alternative energy sources as well as psychosocial risks. Furthermore, trends such as an aging workforce, higher employment rates for women, more migrant workers, and more workers with temporary contracts suggest an increased need for addressing the specific issues affecting vulnerable groups – although this is already partly done through a number of the specific Directives.

Effectiveness

With the Framework Directive being the basis for the 23 specific Directives, it is difficult to assess to which degree the observed changes to occupational safety and health in the MSs can be attributed to the Framework Directive and to which degree changes should be attributed to the other Directives. That being said, our analysis – including the views of both national and EU stakeholders consulted during this evaluation – suggests that the Framework Directive has positively affected enterprises' behaviour in ensuring occupational safety and health in the MSs. This has in particular been the case for the large enterprises, and less for SMEs and microenterprises. The differences in securing occupational safety and health are due to difficulties in complying with provisions due to inadequate financial resources, lack of safety and health expertise and cultural issues.

These impacts have been caused by a number of different provisions listed in the Framework Directive. Although we argue that the provisions work in tandem to produce impacts, there is a tendency that both national stakeholders and EU stakeholders attach most importance to risk assessments as they are seen as a foundation for developing a risk prevention culture rather than taking a more reactive approach to safety and health.

Furthermore, we assess that sanctions and other related enforcement measures and activities have contributed to the effectiveness of the Framework Directive. The most effective measures seem to be combining enforcement with guidance measures, increased frequency of inspections, and monitoring of enterprises where problems have previously been identified. Having said that, effectiveness could be higher as many stakeholders consider that the current level of enforcement is not always satisfactory, and that there seems to be a trend towards fewer resources being allocated to enforcement activities.

Finally, we have addressed effectiveness by looking at the benefits – including the broader benefits – and the costs that arise to society and the employers as a result of occupational safety and health activities. This part of the evaluation is mainly done at the OSH acquis level – i.e. for the 24 OSH Directives together – and is presented in detail in the main evaluation report. However, several of the interviewed stakeholders did link many of the benefits and costs to the Framework Directive itself. Similarly, several stakeholders assess that the Framework

Directive, and OSH legislation in general, contributes to establishing a level playing field by setting common standards for safety and health. The importance of this effect has been especially highlighted in the context of the economic crisis where the Directive's minimum requirements have helped to avoid social dumping.

Coherence

Since the general principles contained in the Framework Directive form the basis for the provisions in the other OSH Directives, there is naturally high synergy between the Framework Directive and the other OSH Directives. This synergy is not seen as overlapping or as inconsistent.

Safety and health at work – and more generally working conditions – are addressed by other EU policies, such as other non-OSH Directives, action plans and strategies. Furthermore, other international organisations – in particular the ILO – strive to improve working conditions. These different actions seem, however, to be in line with the general principles of the Framework Directive and so they do not give rise to coherence issues.

Overall conclusion and recommendations

In conclusion, we assess that the Framework Directive has achieved its stated objective of introducing measures to encourage improvements in safety and health at work. This assessment is supported by the above conclusions – i.e. that the Framework Directive overall is implemented and complied with, that it remains relevant, and that it has led to positive workplace impacts as well as safety and health impacts, and that it has contributed to levelling the playing field by setting common requirements for occupational safety and health in the EU. Finally, our analysis does not give rise to any coherence issues vis-à-vis other OSH Directives or other EU policies.

The analysis also looked into strengths and weaknesses of the present regulatory framework, and we have derived a number of recommendations for the way forward in developing the OSH acquis in general and the Framework Directive in particular.

Recommendation on OSH acquis structure

Several times during our analysis, we considered the suitability of having a goal-oriented Framework Directive (i.e. process-based) as a basis for the specific Directives, many of which are more prescriptive by nature. In this context, we looked into the possibility of changing the OSH acquis structure by assembling the provisions of the Framework Directive and the 23 specific Directives into one completely new Directive with annexes. The strength is the ease of updating annexes when needed compared with that of updating specific Directives. However, the weakness is a heavy administrative burden arising from its implementation in national legislations.

All in all, we recommend keeping the OSH acquis structure as it is – i.e. with a Framework Directive and specific Directives. This opinion has also been expressed by most of the stakeholders consulted during the evaluation.

Recommendation on streamlining Directives

Still, we have identified a number of CPMs, such as risk assessments that are dealt with both in the Framework Directive and in some of the specific Directives.

Hence, we recommend streamlining the OSH acquis, for example, stating clearly in the Framework Directive what is meant by risk assessment and by risk prevention measures. This definition should not be repeated in the specific Directives, not least to avoid confusion. However, the specific Directives should explain, where appropriate, how these provisions lead to effective risk management within the given topic addressed.

Recommendation on goal formulation

As mentioned above, having both goal-oriented and more prescriptive Directives leads to some variation in the OSH acquis provisions. As a rule, we assess that there are benefits from having clearer goals, not least to improve the Commission's monitoring and evaluation possibilities and so to improve its information about needs for revisions. Another benefit is that this requires the national stakeholders pursue the same goals – at least to some extent.

Hence, assuming that it is the aspiration for the OSH acquis to become more goal-oriented in the future, we recommend that this is done when revisions to the Directives' area are made, e.g. during a streamlining process. This may also require revisions to the Framework Directive to remain a solid basis for the now more goal-oriented specific Directives. However, our analysis shows that it will not be straightforward to formulate precise goals for the Framework Directive – and for many of the other Directives.

Recommendation on provisions

During the streamlining process, it may also be suitable to revise some of the Framework Directive provisions and introduce new. For example, a number of stakeholders have claimed that the division of responsibilities for carrying out preventive and protective activities could be made clearer.

Another area in which we recommend further action at the EU level is psychosocial risks. There is widespread recognition and acceptance that such risks are a major cause of absence from work within all MSs and that they have a significant, wider impact on the wellbeing of workers. However, although a need for action is generally accepted, there is presently no consensus on the form and direction of such action. Nevertheless, it is clear that a dialogue needs to be initiated between stakeholders on how best to address this issue. Hence, we recommend that the Framework Directive address this topic in a future revision.

Recommendation on synergies

Finally, although we conclude that there are currently no significant coherence issues, there might be benefits in the future from enhancing synergies between the Framework Directive (and the other Directives) and new policies and developments. In other words, we recommend that the Commission takes into account parallel actions – while at the same time monitoring and responding to emerging risks such as nanomaterials, increased use of green technologies and alternative energy sources as well as psychosocial risks, and trends, such as an ageing workforce.

1 Introduction

About this report

This Directive-specific report forms part of the evaluation of 24 Directives on Occupational Safety and Health (OSH) commissioned by DG Employment of the Commission. The report concerns Directive 89/391/EEC on the introduction of measures to encourage improvements to the safety and health of workers at work, in the following referred to as the 'Framework Directive'.

Evaluation of OSH Directives

The evaluation of the 24 OSH Directives was initiated in 2013 and finalised in 2015. The evaluation produced cross-cutting findings on the implementation of the 24 Directives, which have been documented in the Main Report. Annexed to this Main Report are Directive-specific reports – such as this one – for each of the 24 Directives. Although one of many Directive-specific reports, this one is particularly important as it covers the Framework Directive.

Objective of the evaluation

The objective was to evaluate the practical implementation of EU OSH Directives in EU Member States (MS) with a view to assessing their impact and identifying their strengths and weaknesses in order to identify possible improvements to the regulatory framework. Two sets of questions, and subsequent evaluation criteria, were formulated to address and clarify the various impacts of the Directives in the MSs.

The first set dealt with the implementation of the Directives in the MSs:

- › **Implementation:** MQ1-MQ7 are mapping questions. Apart from addressing the overall implementation of the Directives, they explore specific implementation issues, such as derogations, transitional periods, compliance and enforcement:

MQ1: Across the Member States, how are the different Common Processes and Mechanisms foreseen by the Directives put in place, and how do they operate and interact with each other?

MQ2: What derogations and transitional periods are applied or have been used under national law under several of the Directives concerned?

MQ3: What are the differences in approach to and degree of fulfilment of the requirements of the EU OSH Directives in private undertakings and public-sector bodies, across different sectors of economic activity and across different sizes of companies, especially for SMEs, microenterprises and self-employed?

MQ4: What accompanying actions to OSH legislation have been undertaken by different actors (the Commission, the national authorities, social partners, EU-OSHA, Eurofound, etc.) to improve the level of protection of safety and health at work, and to what extent are they actually used by companies and establishments to pursue the objective of protecting safety and health of workers? Are there any information needs that are not met?

MQ5: What are the enforcement (including sanctions) and other related activities of the competent authorities at national level and how are the priorities set among the subjects covered by the Directives?

MQ6: What are the differences of approach across Member States and across establishments with regard to potentially vulnerable groups of workers depending on gender, age, disability, employment status, migration status, etc., and to what extent are their specificities resulting in particular from their greater unfamiliarity, lack of experience, absence of awareness of existing or potential dangers or their immaturity, addressed by the arrangements under question?

MQ7: What measures have been undertaken by the Member States to support SMEs and microenterprises (e.g. lighter regimes, exemptions, incentives, guidance, etc.)?

The second set addressed the three main evaluation criteria, which were relevance, effectiveness and coherence (a total of 11 evaluation questions):

- › **Relevance:** EQR1-EQR2 relate to the extent to which Directive provisions are relevant for current and future risks as well as the composition of industrial sectors:

EQR1: To what extent do the Directives adequately address current occupational risk factors and protect the safety and health of workers?

EQR2: Based on known trends (e.g. new and emerging risks and changes in the labour force and sectoral composition), how might the relevance of the Directives evolve in the future, and stay adapted to the workplaces of the future in light of the horizon of 2020? Does the need for EU level action persist?

- › **Effectiveness:** EQE1-EQE7 explore whether the introduction of a Directive has led to changes to enterprise behaviour and the occupational safety and health of workers:

EQE1: To what extent has the Directive influenced workers' safety and health, the activities of workers' representatives, and the behaviour of establishments?

EQE2: What are the effects on the protection of workers' safety and health of the various derogations and transitional periods foreseen in several of the Directives concerned?

EQE3: How and to what extent do the different Common Processes and Mechanisms that were mapped contribute to the effectiveness of the Directives?

EQE4: To what extent do sanctions and other related enforcement activities contribute to the effectiveness of the Directives?

EQE5: What benefits and costs arise for society and employers as a result of fulfilling the requirements of the Directives?

EQE6: To what extent do the Directives generate broader impacts (including side effects) in society and the economy?

EQE7: To what extent are the objectives achieving their aims and, if they are not, what cause could play a role? What factors have particularly contributed to the achievement of the objectives?

- › **Coherence:** EQC1-EQC2 address the extent to which objectives and actions from a given OSH Directive interact, or overlap, with other OSH Directives and/or with other EU policies:

EQC1: What, if any, inconsistencies, overlaps, or synergies can be identified across and between the Directives (for example, any positive interactions improving health and safety outcomes, or negative impact on the burdens of regulation)?

EQC2: How is the interrelation of the Directives with other measures and/or policies at European level also covering aspects related to health and safety at work, such as EU legislation in other policy areas (e.g. legislation: REACH, Cosmetics Directive, Machinery Directive, policy: Road Transport Safety, Public Health, Environment Protection), European Social Partners Agreements or ILO Conventions?

Methodology and sources of information

The overall methodology used for the evaluation, and thus also for the analysis presented in this report, is described in detail in Chapter 2 of the Main Report. The Directive-specific report findings are based on the analysis of the OSH legislation in each of the MS, official statistics at national and EU levels, National Implementation Reports (NIRs) submitted to the Commission by each of the MSs before the end of 2013, as well as selected scientific articles, studies and interviews with both national and EU stakeholders.

Report structure

The report is structured according to the themes and issues listed above.

- › Chapter 2 presents the overall understanding of the Directive, i.e. its rationale, provisions and intervention logic. It also describes issues relating to measuring impacts resulting from the Directive.

- › Chapter 3 presents the relevant findings on the implementation of the Directive in the MSs (addressing questions MQ1-MQ7).
- › Chapter 4 presents the relevant findings on the relevance of the Directive (addressing questions EQR1-EQR2).
- › Chapter 5 presents the relevant findings on the effectiveness of the Directive (addressing questions EQE1-EQE7).
- › Chapter 6 presents the relevant findings on the coherence of the Directive (addressing questions EQC1-EQC2).
- › Chapter 7 describes the main conclusions emanating from the findings presented in Chapters 3 to 6.

2 The Directive

2.1 Background and objective

Background

The background for introducing the Framework Directive can be found in the Commission's programme concerning safety, hygiene and health at work, European Council (1987) resolution of 21 December and resolutions by the European Parliament. Furthermore, the preamble to the Framework Directive states that the incidence of accidents at work and occupational diseases is too high, which is why preventive measures must be introduced or improved, without delay, in order to safeguard the safety and health of workers and ensure a greater degree of protection.

Prior to introducing the Framework Directive in 1989, the EU had already – in a significantly smaller EU – for a number of years initiated common actions to improve safety and health at work. One of these actions launched in 1974¹, was a Social Action Programme resolution (European Council, 1974), which called for improved working conditions. It was a response to social unrest in the beginning of the 1970's and to increasing concerns over diverse social systems in the EU. In June 1978, the European Council (1978) passed a resolution on an Action Programme on safety and health at work and, almost simultaneously, passed Directive 78/610/EEC, which aimed at reducing risks associated with exposure to vinyl chloride. In 1980, Directive 80/1107/EEC on dangerous substances including chemical, physical and biological agents was enacted. This was followed by a Directive establishing occupational safety and health standards for accident hazards of certain industrial activities (Directive 82/501/EEC), lead exposure (Directive 82/605/EEC), asbestos (Directive 83/477/EEC), noise (Directive 86/188/EEC), and specified agents (Directive 88/364/EEC).

¹ See e.g. Kineke (1991) for a concise presentation of the history of occupational safety and health in the EU.

Objective

The Framework Directive was introduced in 1989 due to the Single European Act in 1986 (European Commission, 1986) which extended the EU's authority to legislate in the field of occupational safety and health. It added Article 118a to the EEC Treaty authorising the adoption of minimum workplace requirements for safety and health by way of Directives.

The Framework Directive describes the responsibilities and obligations of employers and workers and, at the same time, it serves as a basis for more specific Directives covering specific risks connected with safety and health in the workplace. Hence, the other 23 Directives – covered by this evaluation – have been adopted on the basis of the Framework Directive. Nevertheless, the Framework Directive, with its general principles, continues to apply to all areas covered by the specific Directives, although these specific Directives may contain more stringent and/or specific provisions.

2.2 Risks

All risks in the Framework Directive

The Framework Directive does not mention specific occupational safety and health risks in its text but covers, in principle, all risks by laying down general principles for preventing and eliminating risks.

Specific Directives based on principles of Framework Directive

However, the general principles laid down in the Framework Directive form the basis for establishing more stringent and/or specific prevention and protection principles and measures in individual Directives, addressing specific risk, tasks, sectors and/or groups of workers. In other words, the specific Directives take their starting point in, and in turn refer to, the Framework Directive, while focusing on specific aspects of safety and health at work and setting specific minimum requirements² for the protection of workers. The specific Directives focus on:

- › specific tasks (e.g. manual handling of loads)
- › specific risks (e.g. exposure to dangerous substances or physical agents)
- › specific workplaces and sectors (e.g. temporary work sites, extractive industries, fishing vessels)
- › specific groups of workers (e.g. pregnant/breastfeeding women, young workers, workers with a fixed duration employment contract).

2.3 Provisions

Scoping and definition

Since the Framework Directive caters for all occupational safety and health risks, it does, as shown in Table 2-1 apply to all sectors – both public and private. According to Article 2.2 of the Directive, some public institutions, such as the armed forces, the police and civil protection services are exempt from adhering to certain provisions due to the nature of their work – i.e. where characteristics peculiar to

² The individual Member States are allowed to maintain or establish higher levels of protection.

certain specific activities inevitably conflict with the Framework Directive. Hence, it is by no means a general exemption.

However, workers excluded from the scope must still be protected as far as possible in the light of the objectives of the Directive. Finally, the Framework Directive does not apply to domestic workers.

CPMs and other
KRs

In the process of analysing the implementation, relevance, effectiveness, and coherence of the Framework Directive provisions, we focus on the most important ones – the key requirements (KR). Explained in detail in the methodology chapter of the Main Report, KRs have been identified by the OSH experts of the evaluation team. Some of the KRs are Common Processes and Mechanisms (CPM). These are the fundamental requirements placed on the employer, from which KRs of the 24 Directives originate. As such, they constitute the foundation for making a comparative analysis across the 24 Directives. The Framework Directive thus forms the basis for the more specific Directives. In other words, it is the principal Directive, specifying the overall requirements for CPMs. Table 2-1 identifies the articles of the Framework Directives in which CPM provisions are found:

- › **Risk assessment.** It is the obligation of the employer to assess risks in the workplace and document this assessment. The assessment then enables the employer to effectively implement measures that can ensure that the safety and health of workers is maintained.
- › **Internal and/or external preventive and protective services.** It is the obligation of the employer to designate one or more workers to carry out tasks and activities related to the protection and prevention of occupational risks in the workplace. If no personnel in the undertaking and/or establishment are qualified to carry out these tasks, the employer is obliged to enlist competent, external services.
- › **Information to workers.** It is the obligation of the employer to ensure that all information pertaining to safety and health risks and protective and preventive measures and activities is communicated to the workers. These measures must describe health and safety requirements for each type of workstation and/or job, first aid, firefighting, evacuation of workers in instances of serious and imminent danger.
- › **Training of workers.** It is the obligation of the employer to ensure that each worker receives adequate safety and health training, particularly in relation to information and instruction on his/her specific workstation or job.
- › **Consultation of workers.** It is the obligation of the employer to consult workers and/or their representatives and allow them to take part in discussions on all issues relating to safety and health at work, including the planning and introduction of new technology (as specified in Article 6.3c).
- › **Health surveillance.** The aim is to ensure that workers receive health surveillance appropriate to the safety and health risks they incur at work. Measures must be introduced in accordance with national laws and/or

practices to ensure that each worker, if he so wishes, may receive health surveillance at regular intervals. Health surveillance may be provided as part of a national health system.

Although in assessing the Framework Directive, focus is on the CPMs. Table 2-1 also points to a number of other KRs within the Framework Directive:

- › **Controls and supervision** specify the obligation on MSs to implement the Directive and to monitor its compliance. The evaluation has paid particular attention to this requirement.
- › **Responsibility of the employer** implies an obligation on the employer to document the overall requirements to ensure the safety and health of workers in every aspect related to work, and so setting the scene for the CPMs and other requirements. However, the workers' obligations in the field of safety and health at work does not exempt the employer from his obligations in terms of responsibility.
- › **Workers' obligations** is a continuation of the above specifying the workers' responsibility to ensure safety and health measures at work, and detailing requirements to cooperation between workers and employers.
- › **Measures necessary for the safety and health protection of workers** goes on to setting the scene for the implementation of actual safety and health measures to avoid, evaluate and combat risks.
- › **Employer cooperation** deal with the coordination of measures where several employers share a given workplace.
- › **Emergency measures** concern the general requirements to first aid, firefighting and evacuation measures.
- › **List of occupational accidents** is about keeping records of occupational accidents that result in a worker being unfit for work for more than three working days.
- › **Reporting of occupational accidents** addresses the drafting and submission of these records to responsible authorities.
- › **Workers may not be placed in disadvantage.** This KR addresses requirements necessary to protect workers' representatives from discontent/dissatisfaction among employers because they uphold workers' rights.

Table 2-1 CPMs and other key requirements of the Framework Directive

Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (Framework Directive)						
Key requirements: Scoping and definitions						
Scope of application Arts. 1, 2	The Directive applies to all work-related activities, but certain public service and civil protection activities, such as the armed forces, the police and civil protection services, are exempt from adhering to certain provisions due to the nature of their work – i.e. where characteristics peculiar to certain specific activities inevitably conflict with the Framework Directive. Hence, it is by no means a general exemption.					
Scope of application Arts. 1, 2, 3a	The Directive applies to workers with the exception of domestic servants.					
Key requirements: Common processes and mechanisms						
CPM	Conducting a risk assessment	Ensuring internal and/or external preventive and protective services	Information for workers	Training of workers	Health surveillance	Consultation of workers
Relevant Articles	6.3, 9.1a	7.1	10	12	14	11, 6.3c
Key requirements: Directive-specific provisions						
Controls and supervision (Member State level) Art. 4.2	Member States shall implement the provisions of the Directive and ensure adequate controls and supervision.					
Responsibility of the employer Art. 5.1	The employer is duty bound to ensure the safety and health of workers in all aspects of their work.					
Workers' obligations Art. 13	Every worker is obliged, as far as possible, to ensure his/her own safety and health, and that of other persons, in accordance with the training and instructions provided by the employer.					
Measures necessary for the safety and health protection of workers Art. 6.1, 6.2	The Directive requires that employers implement measures following the general principles of prevention and protection, as specified therein (these include specific CPM measures such as information and risk assessment, which will be addressed in the context of the relevant CPMs).					
Employer cooperation Art. 6.4	Where several enterprises share a work place, the employers shall cooperate in implementing the safety, health and occupational hygiene provisions, coordinate their actions in matter of the protection and prevention of occupational risks and inform one another and their respective workers and/or workers' representatives of these risks.					
Emergency measures Art. 8	The employer shall take necessary measures for first aid, firefighting and evacuation of workers and arrange necessary contacts with external services.					

List of occupational accidents Art. 9.1c	The Directive requires employers to keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days.
Reporting of occupational accidents Art. 9.1d	The Directive requires the employer to draw up reports for the responsible authorities on occupational accidents that result in a worker being unfit for work for more than three working days.
Workers may not be placed in disadvantage Art. 11.4 and 7.2	Designated workers and workers' representatives with specific responsibility for the safety and health of workers may not be placed at a disadvantage because they consult or raise issues with the employer.
Non-key Directive-specific provisions	
<p>The following Directive-specific provisions are not considered to constitute key requirements in the context of the evaluation:</p> <ul style="list-style-type: none"> Provisions of a technical nature, such as those referring to the adoption of individual Directives, technical amendments and the applicability of the Directive vis-à-vis the individual Directives (Art. 16), committee procedure (Art. 17), implementation reports (Art. 17a), final provisions (Art. 18) and addressees (Art. 19). 	

2.4 Intervention logic

Impact logic

The assessment of the impacts of the Framework Directive, as explained in detail in the methodology chapter of the Main Report, builds on the development of an intervention logic that sets the scene for answering the three fundamental evaluation questions: 1) impact *of what?*, 2) impact *for whom?*, 3) impact *on what?* These three questions are answered via the four logical steps:

- CPMs and other KRs** are the provisions of the Directive, which during the analysis were identified as those requiring particular attention when assessing impact. In other words, they define the impact the Directive has on a particular sector/environment/individual (impact on what?).
- Workplace impacts** defines the direct change/improvement (impact *on what and/or whom?*) that occurs at a workplace as a result of implementing the KRs. For instance, better safety and health surveillance, organisational changes, greater awareness among workers about potential safety and health issues, etc. These changes come at a cost to the employer, but are also the drivers for safety and health impacts.
- Safety and health impacts** constitute the actual removal and/or reduction in safety and health risks (impact *on what?*) for the workers (impact *for whom?*) arising as a result of the Directive (KRs) through the above-mentioned workplace impacts.
- Broader impacts** constitute the economic and social impacts (impact *on what?*) that may affect society (impact *for whom?*) as a result of the above-mentioned safety and health impacts.

Impact storyline

Assessment of the impact of the Framework Directive is presented in the following chapters, in particular in Chapter 5 on effectiveness. This assessment is rooted in the impact logic described in the previous paragraphs. The OSH experts of the evaluation team have made an initial hypothesis on the expected impacts resulting from the implementation of the Directives. These were then analysed based on data from statistics, studies and interviews.

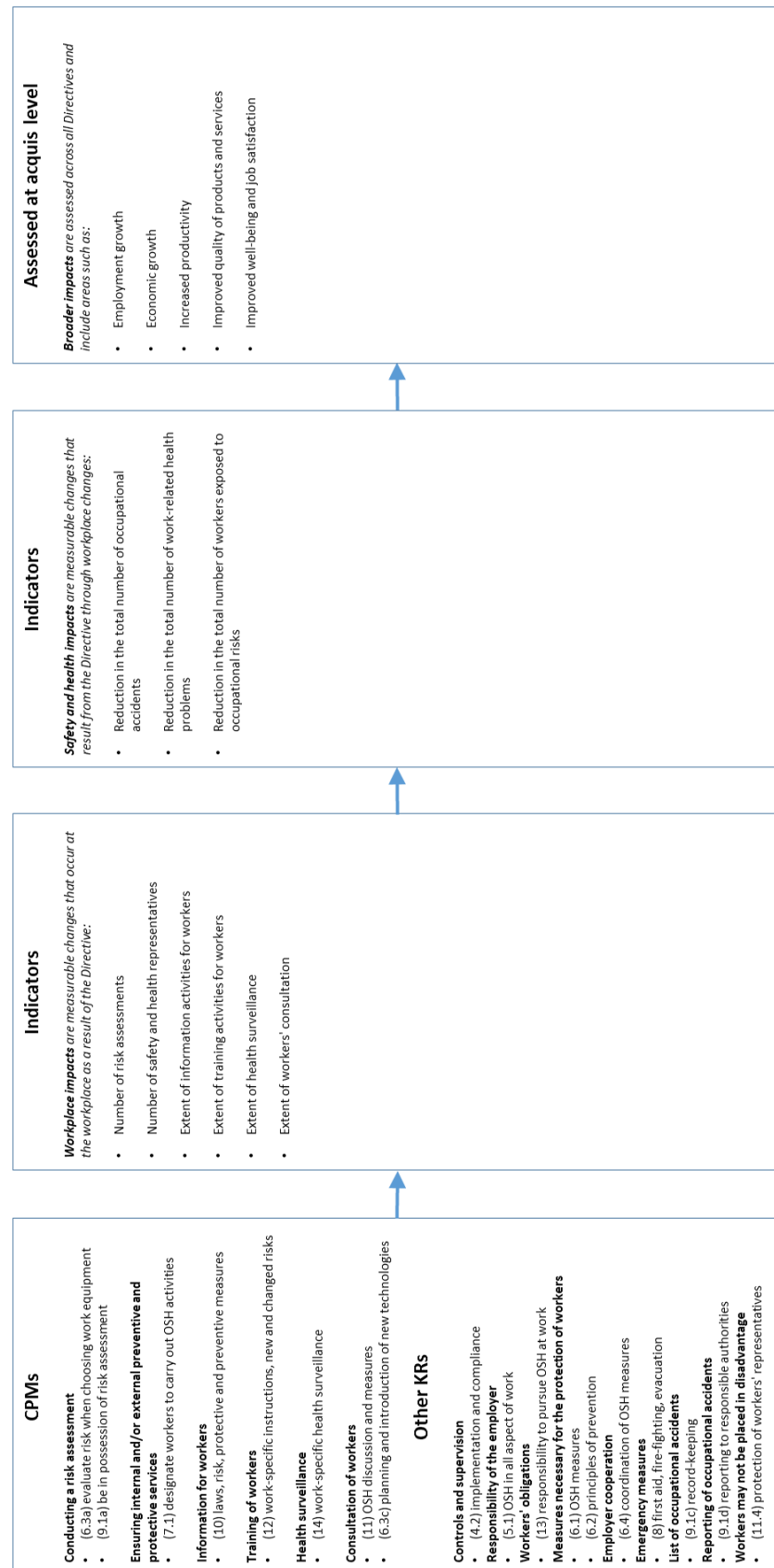
This storyline starts with the overall objective of the Framework Directive to introduce measures to encourage improvements on safety and health of workers at work. As shown in Figure 2-1, the success of this objective can be measured by the reduction in the total number of occupational accidents, the total number of work-related health problems and the total number of workers exposed to occupational risks.

One should keep in mind that many of these reductions would not have happened without the implementation of the 23 other OSH Directives. In other words, when assessing the impacts of the Framework Directive, one must acknowledge that this evaluation, to a large extent, represents an assessment of the OSH Directive acquis as a whole. At the same time, it covers the broader impacts of the OSH Directives on productivity and the quality of products and services, on employment and economic growth, and on their contribution to improved well-being and job satisfaction. Many of the broader impacts may arise directly at workplace level, e.g. via a reduction in the number of early retirements. Similarly, when assessing the specific OSH Directives it must be acknowledged that part of the observed changes to the specific occupational safety and health issues may be attributed to the Framework Directive.

In practice, it is difficult to attribute or allocate the various developments in prevention of occupational accidents or exposure levels to specific Directives. Moreover, there might be a tendency to overvalue the impacts of the more general Directives – such as the Framework Directive – and so to undervalue the impacts of the more specific Directives. The reason for this is that much of the available information is of general nature and therefore easier to allocate to general Directives. Similarly, many stakeholders may find it difficult to assess the specific impacts resulting from a particular Directive. When using the same, or similar, information sources for an impact assessment of the various Directives, there is an obvious risk of double counting an impact. This risk should be noted and addressed as a central element of the coherence assessment.

Regarding workplace impact, it is also difficult to assess just how much stems from the Framework Directive and from individual Directives. Nevertheless, our initial assumption is that many of the impacts from the CPMs originate from the Framework Directive as it introduces central provisions. The workplace impact indicators shown in Figure 2-1 can be linked to the CPMs, although one should also look at development in workplace indicators related to some of the other KRs.

Figure 2-1 Intervention logic for Framework Directive



2.5 Measuring impacts

Three levels of impacts

To assess whether or not the initial impact hypothesis is correct, the impacts at three levels are analysed; namely (i) workplace impacts; (ii) safety and health impacts; and (iii) broader impacts. There are two important considerations in this regard:

- 1 While workplace impacts do not necessarily say anything about specific improvements concerning occupational accidents, work-related health or exposure levels, they can provide important indications about these; i.e. relating to the fact that the safety and health impacts of the Framework Directive stem from the direct changes at the workplace.
- 2 As indicated in the intervention logic, the broader effects of the Directive are assessed at the *acquis* level. However, it can be argued that an overall contribution comes from the Framework Directive, and so it is also addressed in this Directive report.

Indicators must be quantifiable

Furthermore, the assessment of impacts requires in practice that the addressed impact indicators are quantifiable. The evaluation team has developed a set of indicators in this context. This set represents the list of workplaces as well as safety and health impacts that ideally should be considered in the evaluation of the Directive (see Figure 2-1 and Table 2-2).

It should be emphasised that assessments of the workplace impacts and the safety and health impacts are also based on the results of existing studies and on stakeholder views gathered through interviews.

Table 2-2 Impact indicators

Workplace impacts	Safety and health impacts
Number of risk assessments ⁽¹⁾	Reduction in the total number of occupational accidents
Number of safety and health representatives	
Extent of information activities for workers	Reduction in the total number of work-related health problems
Extent of training activities for workers	
Extent of health surveillance	Reduction in the total number of workers exposed to occupational risks
Extent of workers' consultation	

Note: ⁽¹⁾The quality of the risk assessments might be a better indicator, but more difficult to measure.

Statistics available to analyse impacts

It should be noted that even though an indicator is potentially quantifiable does not necessarily mean that sufficient data exist to quantify an indicator. Hence, Table 2-2 should be seen as a list of indicators for which potential statistical sources *could* be available.

Based on Table 2-2, Table 2-3 thus provides an overview of identified data variables and statistical sources that should provide useful information on the above indicators in the evaluation of the Framework Directive. In addition, the

Flash Eurobarometer 398 on working conditions (European Commission, 2014) has provided valuable insight into the assessment of workplace impacts.

Table 2-3 Available statistics for impact indicators

Workplace impacts	Variable	Source
Number of risk assessments	Regularity of safety and health risk assessments	EU-OSHA: ESENER (2009) - MM161, ER207
	Follow-up on safety and health risk assessments	EU-OSHA: ESENER (2009) - ER210
Number of safety and health representatives	Presence of safety and health representatives	EU-OSHA: ESENER (2009) - MM355 ⁽¹⁾
	Resources for safety and health representatives	EU-OSHA: ESENER (2009) - ER150
Extent of information activities for workers	Regularity of safety and health information	EU-OSHA: ESENER (2009) - ER205
	Quality of safety and health information	Eurofound: EWCS (2010) -Q30 (Q12*, Q10**)
Extent of training activities for workers	Provision of relevant OSH training	EU-OSHA: ESENER (2009) - ER159, ER160
Extent of health surveillance	Regularity of medical examinations	EU-OSHA: ESENER (2009) - MM154
	Regularity of sickness cause analysis	EU-OSHA: ESENER (2009) - MM152
Extent of workers' consultation	Presence of safety and health committee consisting of members of management and worker representatives	EU-OSHA: ESENER (2009) - ER102
	Extent of say in decisions (regarding risk assessments)	EU-OSHA: ESENER (2009) - ER209
Safety and health impacts	Variable	Source
Reduction in the total number of occupational accidents	Number of accidents and incidence rates (by severity, sex, age, economic activity, size of enterprise)	Eurostat database: ESAW - hsw_acc7_work (until 2007), hsw_acc_work (from 2008)

Reduction in the total number of work-related health problems	Number of work-related health problems and relative prevalence rates (by severity, sex, age, economic activity, size of enterprise)	Eurostat database: LFS 2007 and 2013 ad hoc modules - hsw_pb LFS 1999 ad hoc module - hsw_healthpb
	Extent of work affecting health	Eurofound: EWCS (2010) - Q67 (Q33*, Q33**)
	Number of days absent from work due to health problems	Eurofound: EWCS (2010) - Q72 (Q34-B*, Q34-B**)
Reduction in the total number of workers exposed to occupational risks	Share of persons reporting exposure to hazards that can adversely affect health (by type of health effect, sex, age, economic activity)	Eurostat database: LFS 2007 ad hoc module -hsw_exp5
	Extent of safety and health risks at work	Eurofound: EWCS (2010) - Q66 (Q32*, Q32**)
	Extent of exposure to safety and health hazard types at work	Eurofound: EWCS (2010) - Q23 (Q10*, Q8**)

Notes: * EWCS (2005), ** EWCS (2001/2000).

⁽¹⁾ MM355 refers mainly to safety and health representatives within the meaning of Article 3c and so may only be a weak indicator for workers involvement in protective and preventive services (Article 7.1).

Data challenges

As indicated in Table 2-3, we do not face severe challenges regarding the availability of statistical data to document the impacts of the Framework Directive.

3 Implementation in Member States

Implementation evaluation through seven mapping questions

As part of the evaluation, a mapping exercise on the implementation of the 24 Directives at national level in all MSs has been conducted. This has been done by answering seven mapping questions. The answers have been collected in the evaluation's Country Summary Reports from the 27 MSs.

Use of country codes

For presentation purposes, we make use of the country codes shown in the brackets: Austria (AT), Belgium (BE), Bulgaria (BG), Czech Republic (CZ), Denmark (DK), Germany (DE), Estonia (EE), Ireland (IE), Greece (EL), Spain (ES), France (FR), Italy (IT), Cyprus (CY), Latvia (LV), Lithuania (LT), Luxembourg (LU), Hungary (HU), Malta (MT), the Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), Slovenia (SI), Slovakia (SK), Finland (FI), Sweden (SE), the United Kingdom (UK).

3.1 MQ1: Common Processes and Mechanisms

MQ1: Across the Member States, how are the different Common Processes and Mechanisms foreseen by the Directives put in place, and how do they operate and interact with each other?

Although the first mapping question focuses on the six Directive provisions that we have categorised as CPMs as presented in Section 2.3 above, we do look into the implementation of all KRs specified in the different Directives. However, particularly for the Framework Directive that introduces the CPMs, focus is on the requirements for conducting a risk assessment, for ensuring internal and/or external preventive and protective services, for informing workers, for training workers, for carrying health surveillance, and for consulting workers. Therefore, we will explore how these requirements have been transposed into the national legislations of the MSs, whether there has been any infringement proceedings or inconsistencies, and whether more detailed or stringent requirements than those directly specified in the Directive have been implemented the MSs.

78 infringement proceedings since 1990

The fact that the European Commission³ has instituted 78 infringement proceedings for failure to transpose the Framework Directive correctly into national legislation indicates that transposition has not always been an easy task. The transposition seems, in particular, to have caused difficulties in Spain (ES) being subject to 26 of the 78 infringement proceedings, although most of the cases have subsequently been closed. Spain (ES) was also mentioned by the European Commission (2004) as one of the MSs where the Framework Directive had considerable legal consequences due to outdated or inadequate legislation on the subject when the Directive was adopted. However, as indicated below, this does not necessarily imply low compliance with the CPMs in Spain (ES).

Germany (DE) has been subject to eight cases, Italy (IT) seven and Portugal (PT) six. Actually, all 15 old MSs have had at least one case, while only two of the new MSs, Poland (PL) and Slovakia (SK), have had one case each. However, we have not investigated whether new infringement proceedings are underway.

It is also outside the evaluation's scope to make a detailed analysis of all infringement proceedings. However, one of the typical non-conformities seems to be failure to make the Framework Directive provisions applicable to the public sector or to the use of public installations – i.e. problems with the scope of application. Another typical non-conformity is imprecise implementation of Art. 5.1 – i.e. of the employers' duty to ensure the safety and health of workers in every aspect related to the work.

The European Commission (2004) also mentions other non-conformities such as incomplete transposition of the general principles of prevention (Art. 6.2) and uncertainties regarding the obligation to evaluate the risks to the safety and health of workers (Art. 6.3a). Furthermore, it emphasises several issues regarding the provisions for preventive and protective services (Art. 7) – e.g. incorrect transposition of the subsidiary obligation to employ external competent services to carry out activities where internal capabilities are insufficient.

Finally, a large number of Member States (CY, EE, FI, IE, LU, LV, MT, NL, PL, PT and SE) have included domestic servants in the definition of 'worker' when transposing the Framework Directive, setting a broader scope of application.

More detailed or stringent requirements

The information collected from the MSs also reveals that all have implemented more detailed or stringent requirements than those specified in the provisions of the Framework Directive, and so the basis for its objective has been in place.

Discrepancies observed in seven MSs

Furthermore, Table 3-1 shows that discrepancies have only been observed in six MSs. Observed discrepancies cover, in this context, cases of incorrect transposition, i.e. that the text of the national transposing legislation differs from the Directive's requirements, leading to its incorrect implementation. However, it is not always straightforward to assess whether a discrepancy in practice has led to a lower level of protection.

³ Based on list of infringements received by mail from DG EMPL on 10 November 2014.

For example, in the Dutch (NL) OSH law on the CPM, training of workers, there is no explicit obligation for employers to ensure that temporary/ad hoc workers from outside the organisation are given appropriate instructions on health and safety risks. Furthermore, no mention is made of training rights of workers' representatives with a specific role in protecting the safety and health of workers.

Table 3-1 Observed discrepancies in national transposing legislation

Observed discrepancies	No observed discrepancies
IE, IT, NL, EE, FI, PL	HU, LT, SE, AT, BE, BG, CY, CZ, DE, DK, EL, ES, FR, LU, LV, MT, PT, RO, SI, SK, UK

Source: Country Summary Reports.

One inconsistency was identified for Estonia's (EE) transposition of Directive 89/391/EEC (Framework Directive). It relates to preventive and protective services. There is no provision to ensure that designated workers are not placed at any disadvantage because of their activities related to the protection and prevention of occupational risks, nor is there specific information on the time allocated to fulfil these obligations.

However, these discrepancies cannot be considered as major and do not seriously affect the effectiveness of the Framework Directive.

Overall MQ1 answer

Although since 1990, numerous infringement proceedings for the national transpositions of the Framework Directive have been initiated, it seems that most of the early stage problems have been overcome, and only a few discrepancies in the national transposing legislation remain. Furthermore, all MSs have implemented more detailed or stringent requirements than those specified by the Framework Directive.

3.2 MQ2: Derogations and transitional periods

MQ2: What derogations and transitional periods are applied or have been used under national law under several of the Directives concerned?

Overall MQ2 answer

No derogations or transitional periods have applied or used in national law under the Framework Directive.

3.3 MQ3: Compliance

MQ3: What are the differences in approach to and degree of fulfilment of the requirements of the EU OSH Directives in private undertakings and public-sector bodies, across different sectors of economic activity and across different sizes of companies, especially for SMEs, microenterprises and self-employed?

Above-medium compliance with Framework Directive provisions ...

... but high compliance with CPMs in many MSs ...

From the interviewed EU stakeholders' perspective, both employer and worker representatives assess that the degree of compliance with the Framework Directive is above medium.

A similar result can be derived from the CSRs, although there are large differences between MSs. Finland (FI) is the MS with the highest scores overall, followed by Austria (AT), Spain (ES) and Italy (IT). There is no indication that numerous infringement proceedings lead to low compliance.

Lowest scores for consultation of workers

The CSRs show that CPMs are more readily complied with in certain MSs, and the consultation with workers is given the lowest priority. Similarly, the European Commission (2004) highlighted that the participation of workers was not always organised in a satisfactory manner, and that there was little systematic access to preventive and protective services (see below for further on compliance with the different CPMs).

Higher compliance for larger establishments than for SMEs

The above average compliance scores for establishments in the different MSs cover differences between larger undertakings and SMEs (i.e. enterprises with less than 250 workers). In most MSs and for most CPMs, the assessed compliance levels are in general slightly higher for larger undertakings.

This assessment is supported by the National Implementation Reports, where a number of MSs highlight the difficulties faced by SMEs and microenterprises in complying with the requirements. Insufficient knowledge/specialised personnel, and/or lack of financial resources are the main challenges facing implementation. Similar concerns were brought up in the 2004 implementation report (European Commission, 2004), stating that the level of implementation in SMEs was often insufficient.

Similar views can be found among the EU stakeholders consulted. 77 % of those interviewed felt that the SMEs within their respective areas were struggling with compliance when compared to larger enterprises. Other groups with lower compliance levels are start-ups contra experienced companies, and companies within the sector with a lower incidence of occupational injury compared to those with higher incidence rates. The most important reasons given for non-compliance of safety and health measures in SMEs are insufficient resources, knowledge and time.

This result is also supported by findings of the Flash Eurobarometer 398 on working conditions (European Commission, 2014). The findings indicate that the larger the establishment, the more likely their claim was that safety and health measures are in place. We have not found evidence of differences in compliance levels between the private sector and the public sector.

Regular and followed-up risk assessments

Evidence of compliance with the first CPM can also be found in the ESENER survey data gathered by EU-OSHA. However, we only have data for 2009. On this basis, it is not feasible to draw conclusions on the regularity of and follow-up on safety and health risks assessments initiated by the implementation of the Framework Directive. That said, Figure 3-2, shows that around 90 % of the establishments confirm that risk assessments are carried out and monitored, so there is good reason to believe that the Framework Directive has contributed to this process. EU-OSHA (2012) appears to have reached the same conclusion.

Figure 3-2 *Regularity of and follow-up of risk assessments (%), 2009*



Source: EU-OSHA: ESENER (2009) – MM161, ER207, ER210.

The European Commission (1996) has provided guidance (guidelines) on risk assessment. The guidelines emphasise that the purpose of carrying out a risk assessment is to enable the employer to effectively take the measures necessary to ensure the safety and health protection of workers: prevention of occupational risks, provision of information to workers, provision of training to workers, and organisation and means to implement the necessary measures. Hence, the guidelines address risk management measures, and they provide specific advice for small and medium-sized enterprises – e.g. on ways to acquire external, specialist assistance.

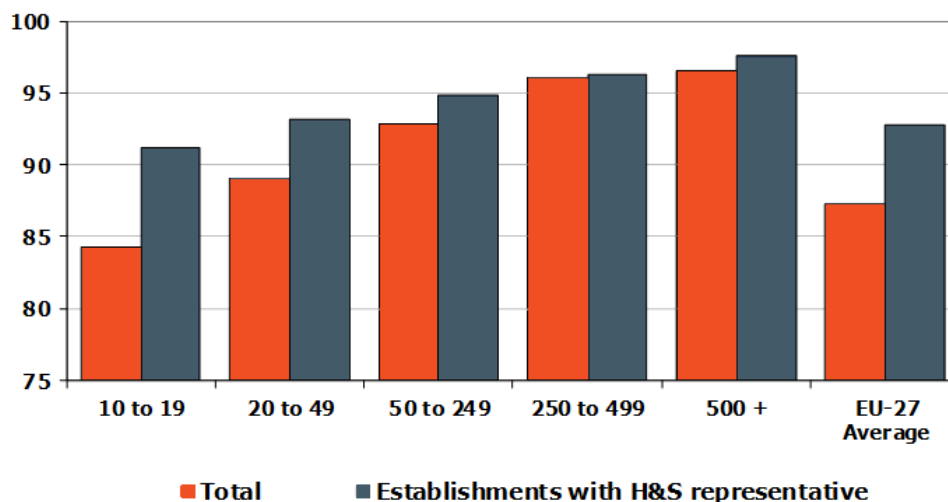
Risks change over time, and so do the requirements to the content of a risk assessment. For example, the NERCLIS report (Cardiff University et. al., 2011) highlighted the need to increase the focus on psychosocial risks, particularly in SMEs. It accused the ESENER survey for not addressing this issue sufficiently.

Worker Representatives affect OSH compliance

An interesting finding from ESENER 2009 is the correlation between the performance of risk assessments and the existence of an OSH Worker Representative (ER). The figure below illustrates that smaller businesses are more inclined to perform risk assessments if they have an appointed safety and health

ER, while larger establishments generally both have an ER and high-risk assessment compliance.

Figure 3-3 *Workplaces regularly checked for safety and health as part of a risk assessment: total and with worker representation*



Source: ESENER 2009.

In extension of this analysis, Figure 3-4 shows the impact of worker representation on other CPMs and OSH measures. The figure illustrates that while ERs have a noticeable influence on the number of undertakings performing risk assessments, they have an even greater impact on other key requirements. For instance, ERs significantly influence the extent to which causes of sickness/absence are regularly analysed or the extent to which OSH issues are regularly discussed at high-level management meetings.

Figure 3-4 *Health and safety management measures, by existence of a formal worker representation, % establishments, EU-27*

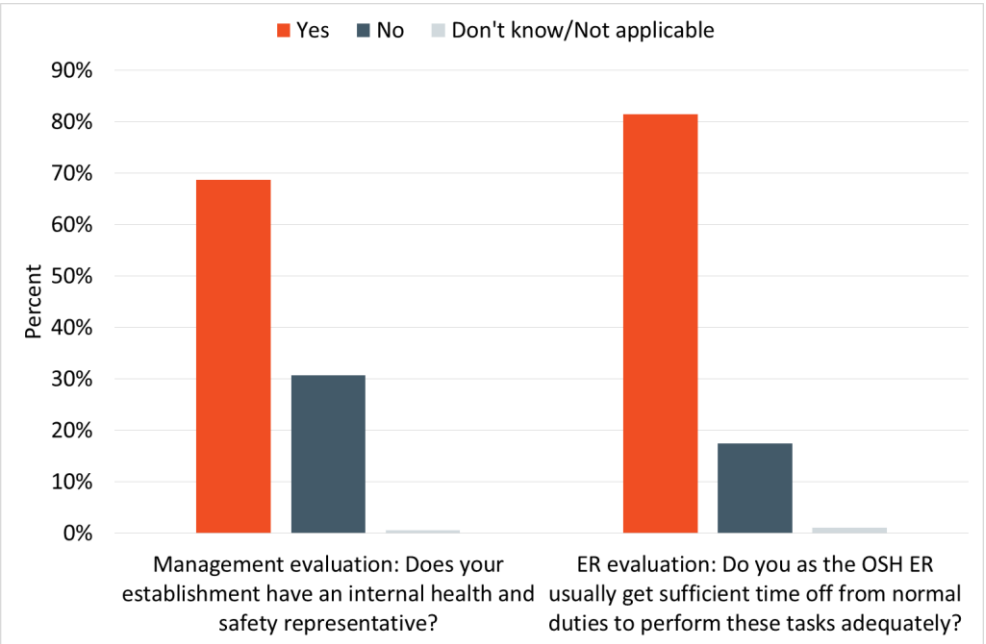


Source: ESENER 2009.

69% of establishments have ERs

Considering the significant impact of worker representation on compliance with the Framework Directive provisions, it is noteworthy that approximately a third of interviewed establishments in ESENER 2009 did not have an appointed or elected ER, as shown in Figure 3-5. While it is positive that 69 % do, this gap constitutes room for improvement of compliance, particularly in SMEs (cf. Figure 3-3). Likewise, while 81 % of ERs state that they get sufficient time off from normal duties to perform their OSH-related tasks adequately, there is room for improvement by aiming to influence employers to allow more time being spent on ER OSH duties in the remaining 19 % of cases.

Figure 3-5 Presence of and resources for safety and health representatives (%), 2009



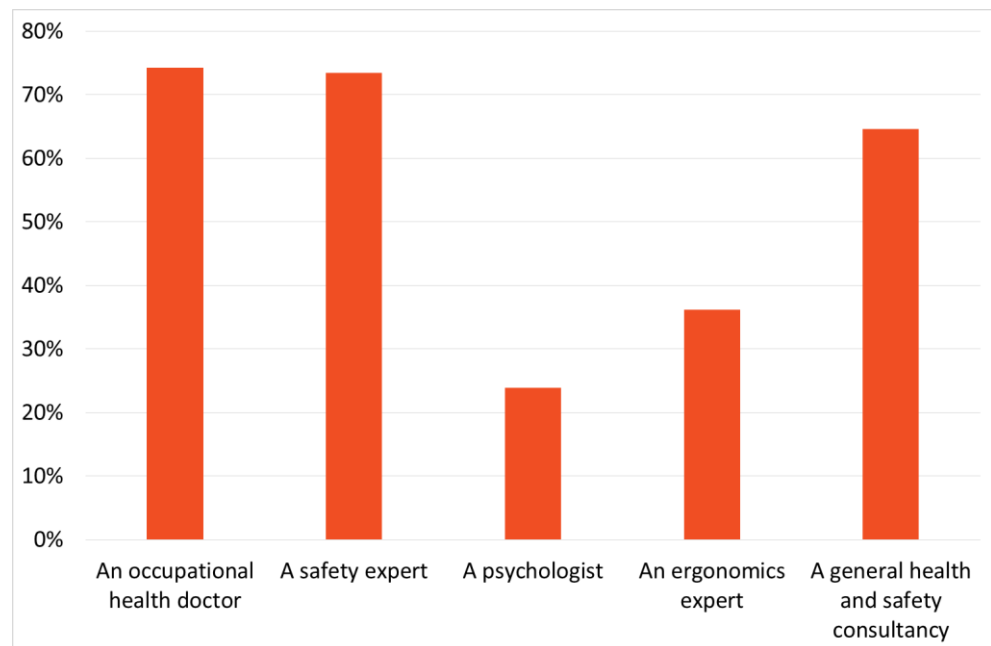
Source: EU-OSHA: ESENER (2009) – MM355, ER150.

Preventive and protective services compliance

The second CPM of the Framework Directive concerns the obligation on employers to designate one or more persons to carry out activities related to the protection and prevention of occupational risks (in-house competencies or externally contracted). Very little data exist on this point, as MSs do not monitor the level of establishment compliance.

However, during the 2009 ESENER survey, managements were asked to define which health and safety services they used in their establishments. While this does not allow us to draw conclusions on overall compliance levels for the CPM in the EU, it serves to illustrate which services are most used at enterprise level. As illustrated in Figure 3-6, as many as 74 % of managements claimed to have an occupational health doctor assigned, 75 % claimed to have a safety expert and 65% claimed to have a general health and safety consultancy assigned. In comparison, only 24 % reported to make use of a psychologist and 36 % of an ergonomics expert dealing with the set-up of the workstation. While these shares are likely biased by managers' personal and possibly financial interests in the company, they serve to show that emerging risks such as psychosocial risks and risks related to musculoskeletal disorders (MSD) are only covered by preventive and protective services to a very limited extent.

Figure 3-6 Types of health and safety services in use, % of establishments

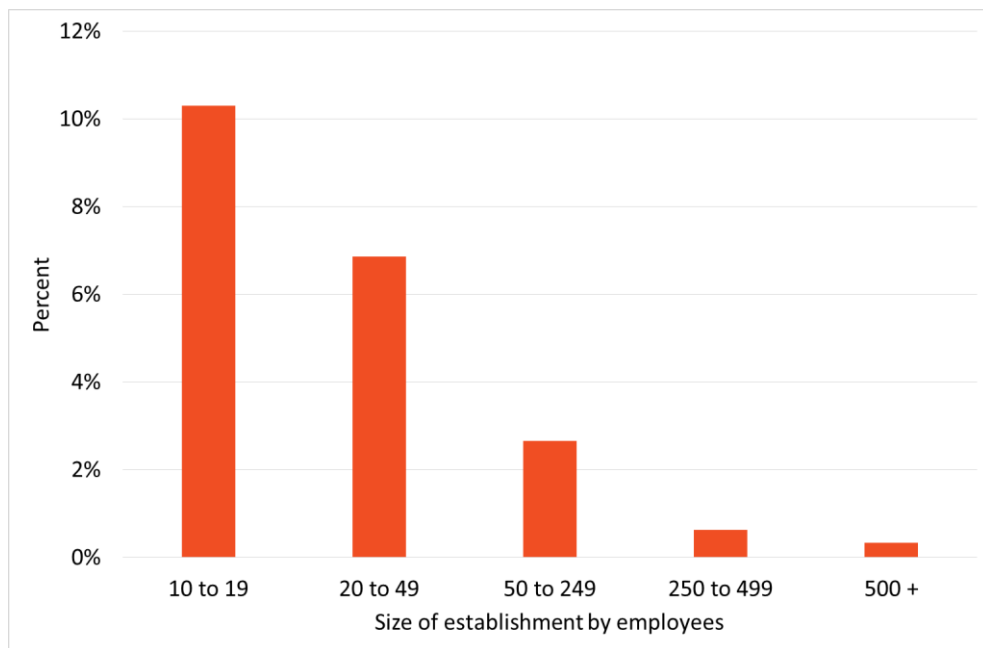


Source: EU-OSHA: ESENER (2009) – MM150

Note: The figure shows the share of managers who replied positively to each type of the question: "What health and safety services do you use, be it in-house or contracted externally?"

If we isolate the share of managers who reported to have none of the health and safety services shown in Figure 3-6 assigned to the establishment, we get an indication of the minimum level of non-compliance with the CPM of preventive and protective services. Figure 3-7 thus shows the share of managers that replied 'no' to all of the above options by size of establishments. The figure clearly shows that (acknowledged) non-compliance increases as the number of workers drops. Interestingly, only 0.63 % and 0.33 % of managers in establishments with 250-499 and more than 500 workers respectively, replied that they had no preventive and protective services. Compared with compliance levels for the other CPMs presented in this chapter, this figure seems unrealistically high, and it should not be interpreted as representative of actual workplace compliance levels.

Figure 3-7 *Share of establishments with no preventive and protective services, by size of establishment*



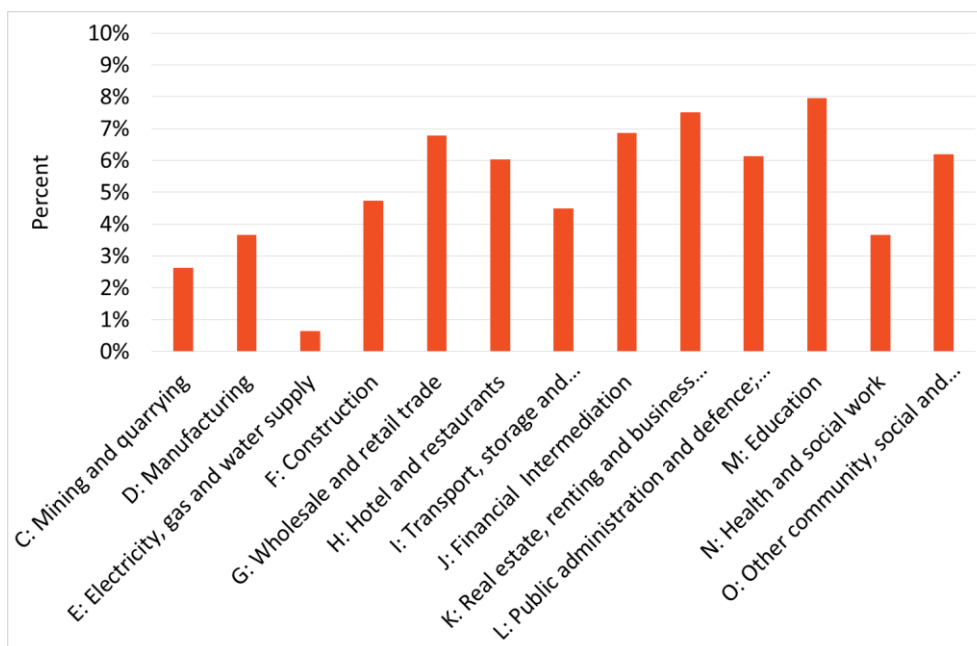
Source: EU-OSHA: ESENER (2009) – MM150

Note: The figure shows the share of managers, who replied that they had none of the options provided by the question: *"What health and safety services do you use, be it in-house or contracted externally?"* by size of establishments by workers.

Some has adopted the option of outsourcing OSH protection and prevention services for small enterprises with insufficient in-house capacity. This approach, however, is not without risk. It can, for example, result in employers' dismissing/minimising their obligation in terms of prevention and thus lead to safety and health issues being overlooked. This is especially the case for those enterprises where safety and health risks tend to be in the lower end of the scale. Furthermore, external providers are not necessarily specialised in providing sector specific services, and many of them offer general services for all types of companies – often with a focus on larger enterprises.

Caution must be taken in interpreting the objectivity of the managers surveyed in Figure 3-8 below, which segregates the same group of respondents illustrated in Figure 3-7 above, by economic sector rather than by size of establishments. Thus, as above, the actual share does not fully represent EU compliance, yet the figure illustrates that compliance is significantly higher in sectors characterised by high levels of occupational accidents and diseases, such as mining and quarrying, manufacturing, electricity, gas and water supply and health and social work.

Figure 3-8 Share of establishments with no preventive and protective services, by sector



Source: EU-OSHA: ESENER (2009) – MM150

Note: The figure shows the share of managers, who replied that they had none of the options provided by the question: "What health and safety services do you use, be it in-house or contracted externally?", by economic sector (NACE Rev. 2).

Difficult to assess actual compliance levels, some trends observed

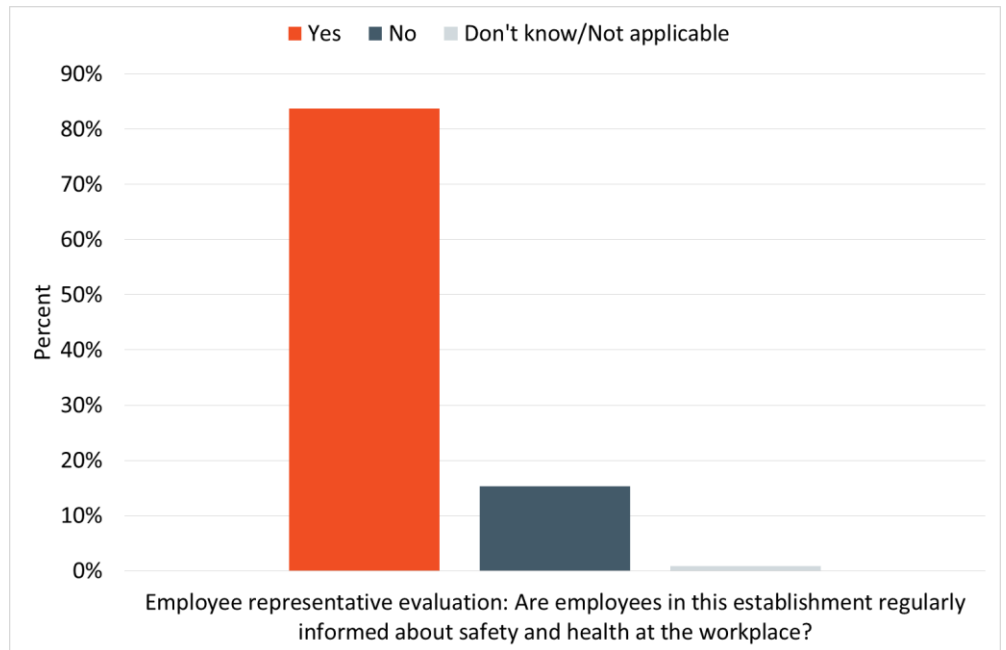
Based on ESENER data only, it is difficult to establish an actual compliance level in the CPM on preventive and protective services across MSs. However, together with views provided by the stakeholders interviewed, the findings suggest that psychosocial and ergonomic risks receive least attention and that SMEs and microenterprises have a higher degree of acknowledged non-compliance as do economic sectors, which have traditionally been acknowledged as having fewer occupational accidents and diseases, such as education and financial intermediation.

Regular and informative activities for workers

The Framework Directive also includes a number of workers' obligations (Art. 13), hereunder to cooperate with employers in order to make correct use of machinery, protective equipment, etc. To fulfil these obligations, they must be regularly informed by the employers (Art. 10) – and Art. 8 comprises requirements to workers being ready to deal with first aid, firefighting, etc. Figure 3-9 shows that the majority of the establishments complies with this provision, as more than 80 % of workers are regularly informed about safety and health at the workplace.

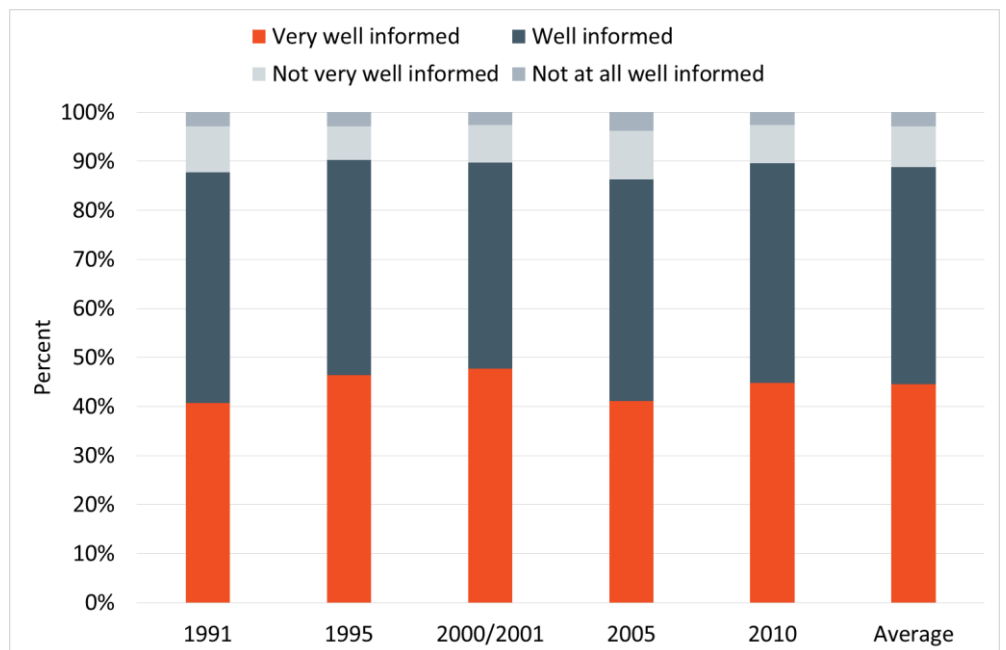
Furthermore, Figure 3-10 indicates that the information received is generally considered to be useful. This assessment has remained fairly constant over the years even though the number of MSs covered by the working conditions survey has increased in the given period. Hence, to the extent that the Framework Directive has contributed to raising the information levels, it appears to have been effective.

Figure 3-9 Regularity of information about safety and health at the workplace (%), 2009



Source: EU-OSHA: ESENER (2009) – ER205.

Figure 3-10 Quality of safety and health information (share of respondents)



Source: Eurofound: EWCS – Q30 (2010), Q12 (2005), Q10 (2000/01), Q10 (1995), Q10 (1991).

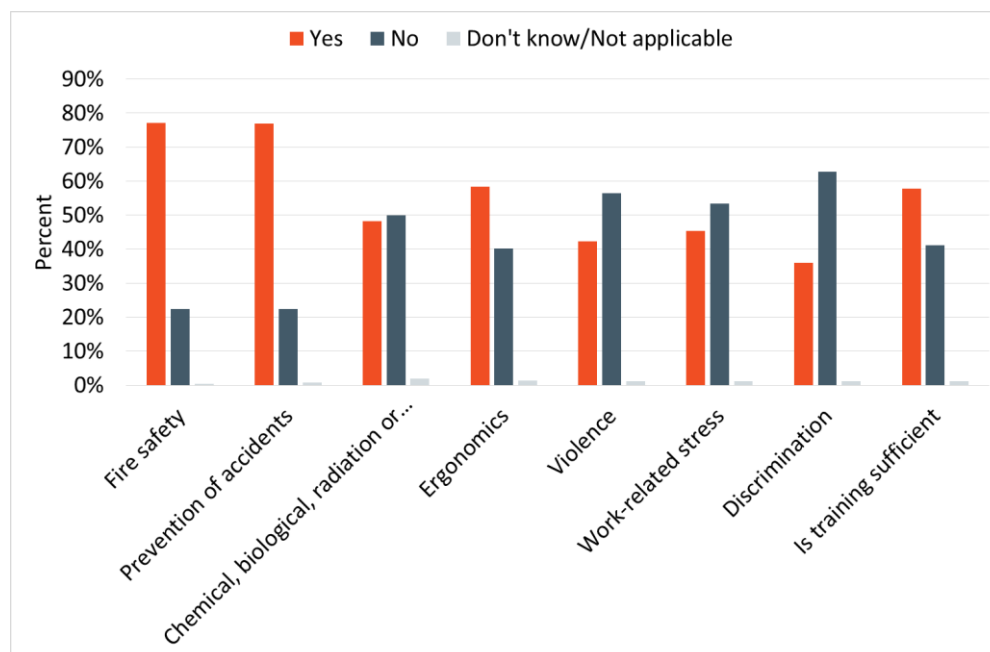
Note: The data for 1991 and 1995 only cover EU-12.

Provision of
insufficient OSH
training

Regular information to workers is not always enough for them to be able to carry out their safety and health duties properly; they may also require training. While the Framework Directive contains requirements for OSH training, Figure 3-11 shows that around 40 % of the respondents to the 2009 ESENER survey assess that the OSH training provided to worker representatives in the field of safety and health is

insufficient. This is worrying. Furthermore, the figures suggest that most training has been given on traditional topics such as fire safety and the prevention of accidents, while less emphasis has been given to emerging topics such as violence, work-related stress, discrimination, and other emerging risks.

Figure 3-11 Provision of relevant OSH training (%), 2009



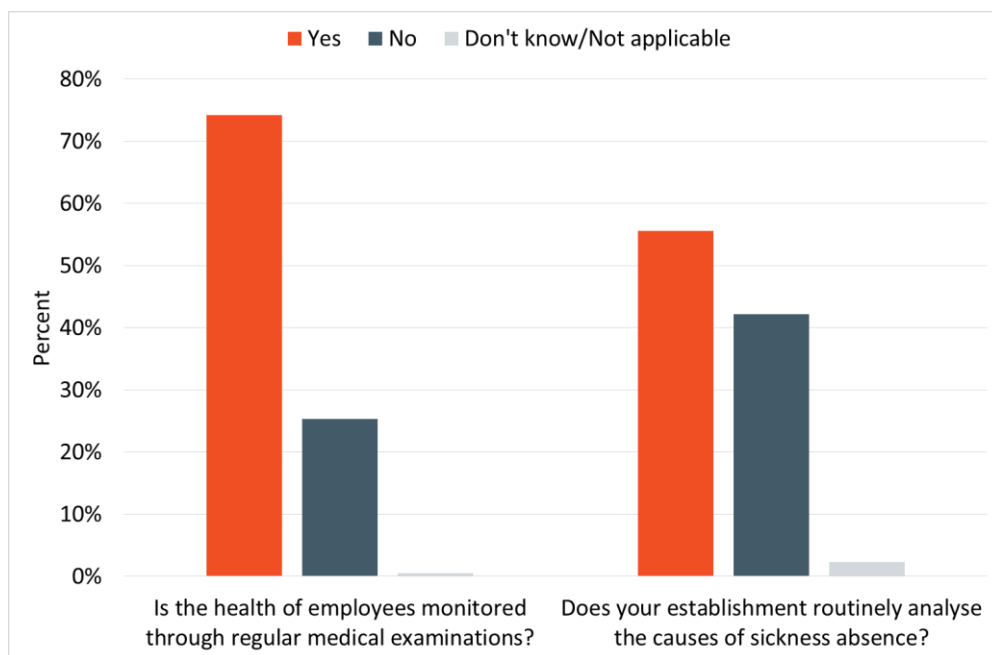
Source: EU-OSHA: ESENER (2009) – ER159, ER160.

More regular medical examinations than sickness cause analyses

The Framework Directive (Art. 14) requires that employers carry out health surveillances to ensure that workers receive information appropriate to the safety and health risks they incur at work, and to ensure that they are fit to carry out their work – hereunder that the results of medical surveillance are taken into account when assigning tasks to the workers concerned. Hence, measures must be introduced in accordance with national laws and/or practices, and must be such that each worker, if he so wishes, may receive health surveillance at regular intervals. Health surveillance may be provided as part of a national health system.

Although, the ESENER survey does not specifically provide an account on the prevalence of health surveillances, Figure 3-12 points to their existence as more than 70 % of the managerial staff surveyed claimed that the health of the workers is monitored through regular medical examinations. Furthermore, more than 60 % claimed that the establishments routinely analyse the causes of sickness absence.

Figure 3-12 Regularity of medical examinations and sickness cause analyses (%), 2009

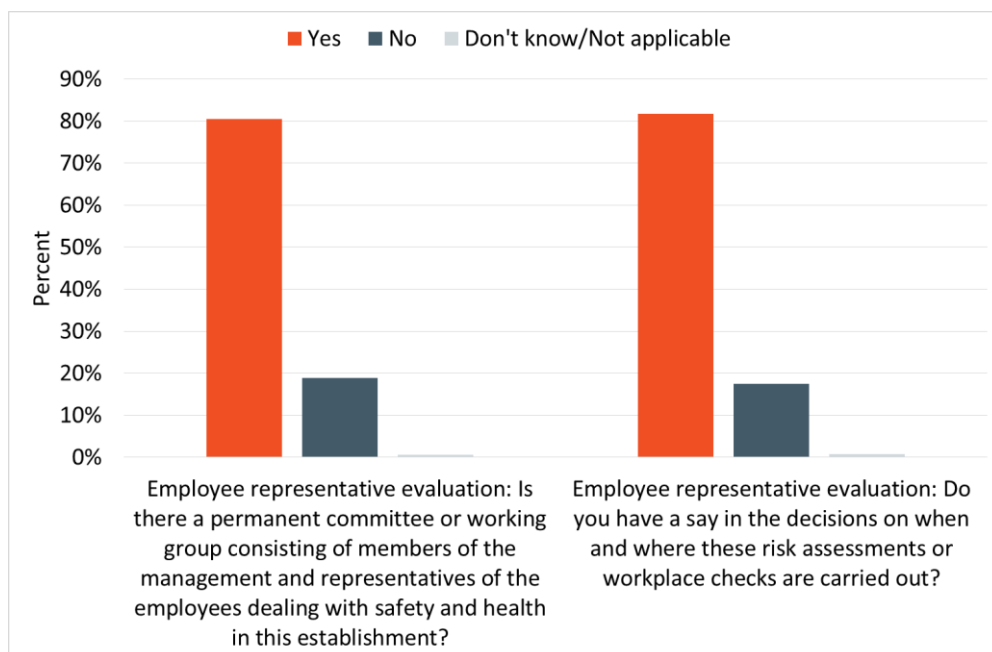


Source: EU-OSHA: ESENER (2009) – MM154, MM152.

High extent of
workers consultation

Finally, Figure 3-13 shows that most establishments have permanent committees or working groups composed of members of the management and representatives of the workers dealing with safety and health. Most worker representatives claim to have a say in decisions on when and where risk assessments or workplace checks are carried out.

Figure 3-13 Extent of workers' consultation (%), 2009



Source: EU-OSHA: ESENER (2009) – ER102, ER209.

Overall MQ3 answer Overall, compliance with the Framework Directive provisions among the establishments in the MSs is high. Compliance among larger establishments is higher than for SMEs. Most establishments regularly carry out risk assessments, they follow up on them, and they have internal safety and health representatives and services. Furthermore, workers are kept informed and consulted to a great extent. In turn, there seems to be insufficient OSH training in many establishments.

3.4 MQ4: Accompanying actions

MQ4: What accompanying actions to OSH legislation have been undertaken by different actors (the Commission, the national authorities, social partners, EU-OSHA, Eurofound, etc.) to improve the level of protection of safety and health at work, and to what extent are they actually used by companies and establishments to pursue the objective of protecting safety and health of workers? Are there any information needs that are not met?

When answering the fourth mapping question, we distinguish between accompanying actions taken at MS level, based primarily on information presented in the CSRs developed within this evaluation, and the National Implementation Reports and accompanying actions taken at EU level, mainly based on information obtained through desk research and interviews with EU level stakeholders.

3.4.1 Accompanying actions at Member State level

Guidance documents and support tools

We have looked into various actions made at MS level to encourage the implementation of, and compliance with, the Framework Directive.

Table 3-2 shows the tangible results of these initiatives by listing actions in the form of guidance documents and support tools, including IT tools. It shows that Spain (ES) has made many efforts to put support mechanisms in place. This is to some degree true for the Czech Republic (CZ) and Slovenia (SI). However, approximately half of the MSs have only drawn up 10 or fewer guidance documents and five or fewer support tools.

Table 3-2 Guidance documents and support tools

	0-5 support tools	6-10 support tools	Above 10 support tools
0-10 guidance doc.	EE, EL, FI, FR, IE, LT, LV, MT, RO, SE ⁽¹⁾ , SK, UK	BG, DE, IT, NL, PL	CZ
11-20 guidance doc.	BE, CY ⁽²⁾	SI	
Above 20 guidance doc.	AT, DK, HU, LU, PT		ES

Source: Country Summary Reports.

Note: ⁽¹⁾ The Confederation of Swedish Enterprises has indicated that the low number is due to the exclusion of a number of additional guidance documents and tools provided by Prevent and the Swedish Work Environment Authority (SWEA).
⁽²⁾ The Cyprus Ministry of Labour, Welfare and Social Insurance claims that the number of guidance documents will exceed 20 by the end of 2014.

Table 3-2 does not necessarily suggest that the available guidance documents and support tools are sufficient. In fact, several stakeholders consulted during the development of the CSRs stated that they are not always sufficient. There is an additional need for guidance documents and targeted information for specific sectors, as well as guidance for SMEs according to those interviewed. In this context, Table 3-3 shows that most MSs report information gaps, some of which are especially relevant for SMEs.

Table 3-3 Information gaps

No information gaps	Information gaps – some specifically SME-related	Information gaps – none specifically SME-related
DE, DK, HU, IE, SE, UK	BE, BG, FR, IT, LV, MT, PT, SI, SK	AT, CY, CZ, EE, EL, ES, FI, LT, LU, NL, PL, RO

Source: Country Summary Reports.

Other stakeholders feel that information is available – but it is uncoordinated and unsystematic. In the CSR for the Netherlands (NL), it is stated that the best option would be a solution-oriented website with a search engine prompted by keywords. It should be easy to use, should provide a clear answer and information to the specific question and must provide a solution – preferably based on a scan of the applicable OSH catalogues. At present, information provided by available tools and the internet is dispersed, and it is not always to the point and not always with a ready-made solution.

Other examples of lacking additional information and guidance include issues relating to an ageing workforce and psychosocial issues. For example, this is the case in the CSR for Cyprus (CY) and Denmark (DK).

Awareness-raising campaigns, and education and training activities

A number of MSs have also made use of active supporting actions, such as awareness-raising campaigns, and the education and training of employers and workers within the establishments. Table 3-4 shows that most MS have not made

much use of this type of action. Only the Czech Republic (CZ) and Latvia (LV) have launched more than five activities under each action.

Table 3-4 Awareness-raising campaigns, and education and training activities

	0-5 education and training activities	Above 5 education and training activities
0-5 campaigns	AT, BE, BG, CY, DK, EL, FI, FR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SE ⁽¹⁾ , SK, UK	
Above 5 campaigns	DE, EE, ES, LV, SI	CZ, LV

Source: Country Summary Reports.

Note: ⁽¹⁾ The Confederation of Swedish Enterprise has indicated that the low number is due to the exemption of a number of additional campaigns and activities carried out by Prevent and the Swedish Work Environment Authority (SWEA).

Financial incentives A number of MSs also use financial incentives to encourage establishments to comply with safety and health provisions. For example, Germany (DE) provides various insurance premium variations and tax incentives for enterprises, although they are difficult to attribute to a specific Directive. Another example is Luxembourg (LU) where financial incentives consist of partial reimbursements of costs related to safety and health investments and to the acquisition of material (DVD, posters, etc.) related to promoting safety and health at work.

3.4.2 Accompanying actions at EU level

EU guidance The EU has initiated a number of accompanying actions to support the implementation of the Framework Directive and the OSH acquis as a whole.

As already mentioned above, the European Commission (1996) issued a "Guidance on risk assessment at work (Directive 89/391/EEC)". This guidance document was originally addressed to MSs and was to be adapted to suit national employers, workers, safety experts, etc. The document is in itself regarded as a guideline for employers to fulfil their duties, as laid down in the Framework Directive.

EU reports Other EU reports also contain some guidelines, for example, the European Commission (2008) analysis of "causes and circumstances of accidents at work in the EU". This report presents not only a statistical analysis of accidents at work and a review of their causes and circumstances, but also it suggests implementation of possible measures in order to prevent such accidents.

OiRA The Online Interactive Risk Assessment (OiRA⁴) IT tool developed by EU-OSHA is mentioned by various MSs in their National Implementation Reports and pointed out during several MS interviews. It is a web-based platform specifically targeted at microenterprises and small organisations to support them in the implementation of a systematic risk assessment process. Cyprus has, for example, completed the

⁴ <http://www.oiraproject.eu/>

implementation of this tool for hairdressers/barbers and office workers, and it is currently being expanded to cover butcheries, catering and primary and secondary education sectors. Furthermore, the Department of Labour Inspection is actively promoting the OiRA during inspections, providing information on the operation of the tool to companies.

Healthy Workplaces Campaign	Several MS stakeholders also quote the biannual Healthy Workplaces Campaigns ⁵ organised by EU-OSHA that aim at raising awareness on occupational safety and health related issues. Many MSs have actively supported these campaigns by using the opportunity to generate national level events to promote safety and health focusing on specific themes.
EU Funds	Finally, EU Funds, such as the European Social Fund (ESF ⁶) and the Employment and Social Innovation programme (EaSI ⁷), are available to support actions related to the implementation of safety and health provisions. The European Union (2010) e.g. describes how the ESF can support the three OSH topics: training and education, health promotion and prevention of sick leave and establishment of safety and health provisions at work.
Overall MQ4 answer	Numerous accompanying actions have been taken both at MS level and at EU level to encourage the achievement of the safety and health targets of the Framework Directive. These include guidance documents, support tools, awareness-raising campaigns, education and training activities, and financial incentives.

3.5 MQ5: Enforcement

MQ5: What are the enforcement (including sanctions) and other related activities of the competent authorities at national level and how are the priorities set among the subjects covered by the Directives?

All MSs enforce Framework Directive	<p>All Country Summary Reports developed during this evaluation point to the existence of general enforcement authorities responsible for occupational safety and health matters. Furthermore, all MS have specific strategic/procedural focus on the Framework Directive, and impose specific criminal or administrative sanctions.</p> <p>The MSs have several enforcement authorities that are charged with the responsibility of overseeing the implementation of occupational safety and health issues, e.g. a Ministry of Social Affairs and Employment or a Department for Occupational Safety and Health. These institutions are responsible for implementing a broad scope of safety and health issues across Directives, and because national policies often use the Framework Directive as their point of</p>
-------------------------------------	--

⁵ https://osha.europa.eu/en/campaigns/index_html

⁶ <http://ec.europa.eu/esf/home.jsp>

⁷ <http://ec.europa.eu/social/main.jsp?catId=1081>

departure, it is considered that all MSs have covered the Framework Directive provisions.

Large variation in number of labour inspections

As shown in Table 3-5, there is much variation between MSs regarding the number of labour inspections carried out. These inspections relate not only to the Framework Directive, but also to other Directives relevant for a given inspection i.e. at a given workplace. Data show that Greece had the highest number of inspections carried out, while Malta was the MS with the fewest inspections in the reported years. The total number of inspections in the EU fell slightly between 2007 and 2012, with great variation across the MSs.

The number of labour inspections does not automatically mean compliance. The 2004 implementation report (European Commission, 2004) suggests that, at that time, there were insufficient resources among labour inspectorates and insufficient uniformity in inspections carried out in MSs. Furthermore, the implementation report concludes that the introduction of the Framework Directive did not lead to increased inspection efforts.

Finally, Cardiff University et.al. (2011) assessed the impact of emerging trends and risks on labour inspection methodologies. They concluded, for example, that labour inspectors should be further supported through:

- › training;
- › international collaborations on aspects of inspecting new and emergent risks;
- › increased investments in IT support for intelligence gathering, dissemination and more systematic planning and coordination;
- › improving relations between inspection and preventive services and other OSH experts;
- › working with partner institutions and other authorities in relation to undocumented/undeclared work;
- › better data collection on risk by cooperation with other stakeholders like health insurance bodies (e.g. data on significantly increased use of pharmaceuticals against depression at workplaces and data on MSD).

Table 3-5 Number of labour inspections (across Directives)

Member State	2007	2012	Change 2007-12
AT	308	312	1 %
BE	145	145	0 %
BG	383	334	-13 %
CY	29	21	-28 %
CZ	341	332	-3 %
DE	3340	3007	-10 %
DK	636	471	-26 %
EE	41	38	-7 %
EL	27895	26832	-4 %
ES	1729	1871	8 %
FI	450	421	-6 %
FR	1541	2236	45 %
HU	121	102	-16 %
IE	77	93	21 %
IT	3810	3156	-17 %
LT	202	196	-3 %
LU	N/A	N/A	
LV	134	112	-16 %
MT	9	14	56 %
NL	287	260	-9 %
PL	1416	1634	15 %
PT	283	391	38 %
RO	526	571	9 %
SE	359	250	-30 %
SI	36	33	-8 %
SK	260	298	15 %
UK	2610	2420	-7 %
Total	46968	45550	-3 %

Source: Country Summary Reports.

Overall MQ5 answer

All MSs enforce the Framework Directive provisions through enforcement authorities and criminal and administrative sanctions. There are, however, indications that labour inspectorates lack resources, and that there is a need for improved training and international collaboration and for increased investments in IT support for intelligence gathering.

3.6 MQ6: Vulnerable groups

MQ6: What are the differences of approach across Member States and across establishments with regard to potentially vulnerable groups of workers depending on gender, age, disability, employment status, migration status, etc., and to what extent are their specificities resulting in particular from their greater unfamiliarity, lack of experience, absence of awareness of existing or potential dangers or their immaturity, addressed by the arrangements under question?

Vulnerable groups addressed by various Directives ...

The Framework Directive covers all workers, also vulnerable groups – including those also covered by the specific Directives: Directive 92/85/EEC targeted at pregnant/breastfeeding women, Directive 94/33/EC targeted at young workers, and

Directive 91/383/EEC targeted at workers with a fixed duration employment contract.

... and by various tools

This means that tools such as legislation, strategies, guidelines, roadmaps and plans to address OSH topics of special relevance to vulnerable groups, implemented in the MSs are not necessarily a response to the Framework Directive, but to other Directives and national action plans.

With this in mind, Table 3-6 shows that 980 tools have been developed across the MSs. From among these, 102 tools address general work arrangements for vulnerable groups while 99 focus on pregnant or breastfeeding women.

Table 3-6 Number of tools addressing vulnerable groups in the EU – by topic of tool

Topic of tool	Number of tools
Pregnancy, breastfeeding	99
Menstrual disorders: menopause	12
Reduced physical capabilities	87
Additional non-work activities	15
Part-time jobs - precarious contracts	60
Natural deterioration of physical and mental capacities	68
Longer recovery time	44
Longer exposure to occupational hazards	17
Increased risk of developing long-term illnesses	38
Risks faced by disabled workers	38
Superimposition of occupational risk factors	40
Less awareness of the risk amongst new workers	55
Lack of awareness of long-latency occupational diseases	27
Work arrangements	102
Language barriers	30
Fear of authorities	13
Lack of OSH training	73
Lack of familiarity with the working environment	75
Total	980

Source: Country Summary Reports.

Variation in number of tools in MSs ...

Table 3-7 shows that the use of tools that address vulnerable groups varies between MSs. Although the four of the MSs with more than 50 tools are large countries, there is no clear indication that the number of tools relates to country size. Furthermore, we have not found any indications of variations between types of enterprises. Naturally, it should of course be emphasised that quality and accessibility to tools might be more important than quantity.

Source: Country Summary Reports.

Based on the information in the CSRs, it is however difficult to assess whether the implementation of measures targeting vulnerable groups can attributed to the Framework Directive and if these measures have effectively improved safety and health at work.

The European Parliament (2011) concluded that attention to vulnerable groups is particularly important in light of the major social and economic changes underway in Europe: an ageing workforce, higher employment rates for women, a rise in the number of migrant workers, and a greater use of temporary contracts. Furthermore, it emphasises that recent European policy initiatives provide additional impetus towards addressing vulnerable groups, e.g. the EU 2020 strategy that calls for an increase in workforce participation during this decade, including older workers and women.

However, the European Parliament (2011) states that there is scope for further EU action to reduce occupational safety and health risks for vulnerable workers. Possible actions are:

- › inclusion of domestic workers in the scope of the Framework Directive and other OSH Directives where relevant;
- › promotion of age management in enterprises, e.g. the development of guidelines for SMEs;
- › emphasising the importance of an integrated approach to disability, focusing on both prevention and reintegration;
- › development of tools such as educational programmes targeting students;
- › promotion of the translation of OSH documents into major languages used by migrant workers;
- › greater attention to long-term health surveillance of temporary workers and means to encourage and track OSH training for temporary workers such as 'passports' containing information on the training carried out by the worker in his/her previous position.

While the Framework Directive applies to vulnerable groups, three Directives specifically target such groups. One cannot simply attribute all improvements to the Framework Directive. Trends, such as an ageing workforce, an increase in female employment, more migrant workers, and more short-term workers, suggest a need to address vulnerable groups.

3.7 MQ7: SMEs and microenterprises

MQ7: What measures have been undertaken by the Member States to support SMEs and microenterprises (e.g. lighter regimes, exemptions, incentives, guidance, etc.)?

Mainly use of lighter regimes and incentives

Table 3-8 shows that MSs to varying degrees have taken measures to support SMEs and microenterprises in complying with national provisions stemming from the Framework Directive. There is a tendency among MSs to adopt lighter regimes and incentives as the preferred method to support SMEs and microenterprises, while only Germany (DE) and Finland (FI) make use of Directive-specific guidance to SMEs and microenterprises. Note that in this context SMEs and microenterprises in many MSs make up the majority of enterprises, and so they are in practice already targeted by the general guidance documents.

Table 3-8 Measures to support SMEs and microenterprises – use by Member State

	Yes	No
Directive-specific guidance	DE, FI	AT, BG, CY, CZ, EL, IE, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK, BE, DK, EE, ES, FR, HU, IT, LV, UK
Exemptions	BG, CZ, DE, FI, FR, NL, SE, SK	AT, CY, DK, EE, EL, ES, IE, LT, LU, MT, PL, PT, RO, SI, BE, HU, IT, LV, UK
Lighter regimes	BE, CZ, DE, DK, ES, FI, HU, IT, LT, LU, LV, NL, PT, RO, SI	AT, BG, CY, EE, EL, IE, MT, PL, SE, SK, FR, UK
Incentives	BE, BG, CY, DE, EE, ES, FR, IT, LU, MT, NL, PL, RO, SK	AT, CZ, DK, EL, FI, IE, LT, PT, SE, SI, HU, LV, UK

Source: Country Summary Reports.

Note: The Confederation of Swedish Enterprise has indicated that Prevent and the Swedish Work Environment Authority (SWEA) do provide some specific SME support.

Difficult to reach smaller companies

However, as will be discussed in Chapter 5, many national authorities acknowledge they face particular problems in reaching microenterprises and SMEs about occupational safety and health issues; especially those that are not part of a business federation. Such microenterprises and SMEs are often demotivated by the administrative complexity and formal requirements of the safety and health control authorities.

Overall, this contributes to a high degree of non-compliance among microenterprises and SMEs. Exceptions to this rule are SMEs that are financially well off and are aware of the requirements for safety and health in the workplace or are working in high-risk areas. SMEs that are subcontractors to large establishments with integrated quality systems and strictly monitored by inspectorates also tend to observe the safety and health regulations.

Overall MQ7 answer

There is a tendency to support SMEs and microenterprises in complying with occupational safety and health provisions using lighter regimes and incentives.

There is also a tendency for non-compliance among these establishments, although to a lesser degree among the financially sound and those working in high-risk areas/sectors.

4 Assessment of relevance

4.1 EQR1: Current relevance

EQR1: To what extent do the Directives adequately address current occupational risk factors and protect the safety and health of workers?

In this section, we look at the relevance of the Directive for the coverage of workforce and MSs, and the severity and extent of risks. The conclusions from the five parameters used to assess relevance are summarised in Table 4-1.

Table 4-1 Summary of the five relevance parameters

Coverage of workforce and Member States		Accidents and health problems		
Number of Member States where the Directive is potentially relevant	Proportion of EU workforce to whom the Directive is potentially relevant	Fatal accidents at work (per 100,000 employed)	Non-fatal accidents at work (per 100,000 employed)	Work-related health problems
27	100 %	1.91	1481	12.8 %

Relevance in all MSs

The Directive acts as the framework for OSH legislation in all MSs and so has EU-wide relevance.

Coverage of work
force

The Framework Directive provides the basis for OSH for the entire labour market, and it thus covers the entire labour force – with the few exceptions discussed above.

The extent and severity of the risks involved

Fatal accidents at work

According to the ESAW database, 3,878 fatal accidents were recorded in 2012 across the EU-27, representing a stated incidence rate of 1.91 per 100,000 employed.

Examining the data by enterprise size, the same database records 169 fatal accidents in enterprises employing zero workers (presumably the self-employed). However, judging from the number of individual MSs for which a zero or no entry is shown, this element of the database is far from complete, and should therefore not be regarded as a genuine reflection of the situation across the EU-27. Again, incidence rate statistics are not provided, causing further difficulties in interpreting this statistic.

Non-fatal accidents at work

According to the ESAW database, 3,156,456 non-fatal accidents were recorded in 2012 across the EU-27, representing an incidence rate of about 1,553 per 100,000 employed. Again, not all MSs choose to include injuries during travel.

Examining the data by enterprise size, the same database records 509,871 non-fatal accidents in enterprises employing 1-9 workers. Again, incidence rate statistics are not available from this source. A further category in the same database is size zero, presumably relating to those who are self-employed and therefore have no workers. The database only records 49,678 non-fatal accidents involving four or more days' absence from work. However, the number of individual MSs for which a zero or no entry is shown suggests a need to be cautious in regarding this as a genuine reflection of the situation across the EU-27. In addition, no incidence rate statistics are provided.

Other sources such as the 2007 and 2013 LFS ad-hoc module include statistics on employed people who reported 'an accident' at work in the past 12 months (although technically it is one or more). Across all sectors, 3.0 % of respondents reported that they had experienced an accident at work. With around 210,000,000 employed persons on average for that same year (Employment (main characteristics and rates) - annual averages [lfsi_emp_a]).⁸ This suggests a figure approximately twice that reported by ESAW (6,566,397 accidents). However, this figure also includes less serious accidents requiring between zero day and three days of absence, which are not reported in ESAW. Nevertheless, such accidents may turn into more serious conditions. The smallest worker number unit included in the database for which accident data are presented is ten or fewer, so it offers no insight into the situation of the self-employed.

Work-related health problems

LFS data on health

Turning to ill-health, the 2007 LFS included documentation of people who reported one or more work-related health problems in the past 12 months. 12.8 % of respondents across all sectors replied affirmatively to this question. It should be noted that the work-relatedness is attributed by the respondent and that the parameter 'related to work' should not be confused with 'caused by work'. This is particularly important in those MSs where determination of work-relatedness (or otherwise) has a potentially significant influence on the cost and extent of treatment available, which tends to encourage such attribution. Nevertheless, data suggest a high level of ongoing work-related ill-health. As an indicator of the

⁸ Eurostat.

severity and impact of ill-health, 42.7 % of those having reported a work-related health problem indicated that they had required time off work and 18.4 % that this absence had exceeded one month. In addition, 27.5 % reported that their health problems had imposed considerable limitations on their ability to carry out normal day-to-day activities – at work or home. As with accidents, the smallest worker number unit this database represents is ten or fewer.

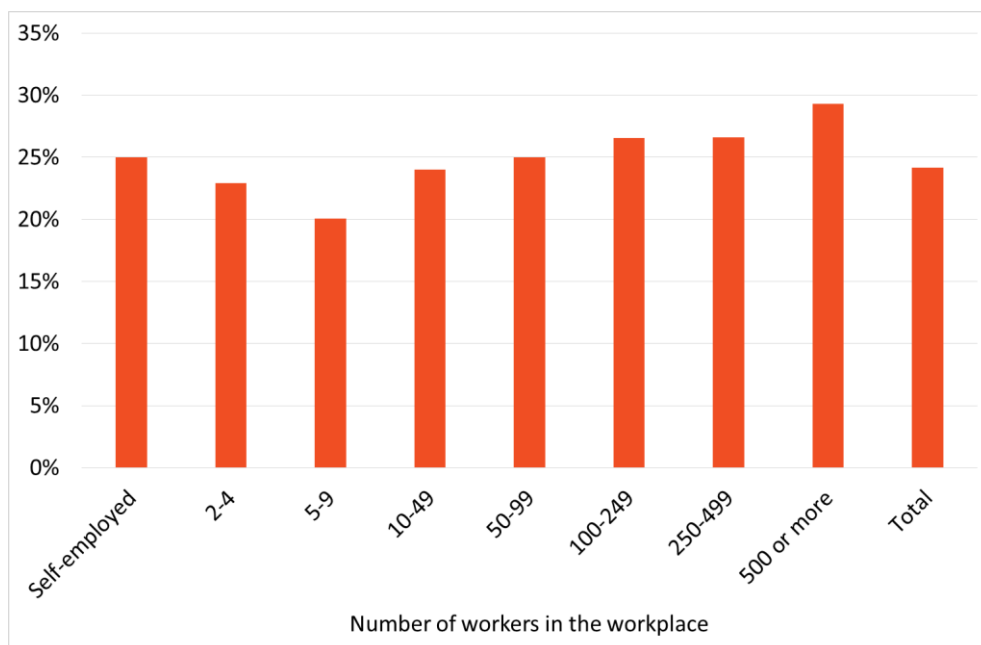
EWCS data on health and safety

A second source is the EWCS survey data from 2010. This showed that 24.2 % of respondents from the EU-27 considered their health or safety to be at risk because of their work, whilst 32.3 % considered that their work affected their health (presumably negatively, although the question is ambiguous and could suggest a positive effect).

Additional breakdowns of data within these questions allow for an analysis of responses in respect of the number of people in their workplace (not necessarily equivalent to company size for companies with multiple worksites); workers in the public and private sector; and workers of different ages and gender.

The first of these aspects shows in Figure 4-1 the percentage of people who consider that their health and safety is at risk, analysed by the number of employees where they work (size of business).

Figure 4-1: Percentage of workers who consider their health and safety is at risk, according to the number of people working in the workplace (EWCS, 2010)



Source: EWCS 2010, q66, N=87567.

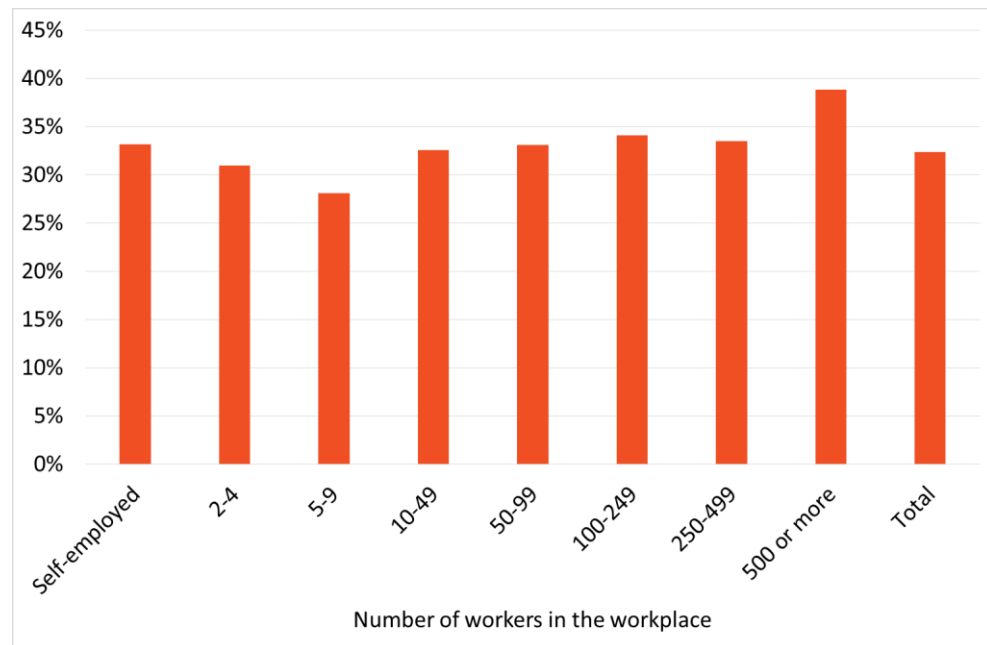
Note: Question asked: Do you think your health or safety is at risk because of your work? Percentages of respondents who answered yes are shown.

The figure shows a pattern with a dip from those who are self-employed or where there are 2-4 employees down to a minimum where there are 5-9 employees (all generally classified as microenterprises) before an increase in organisations with

more employees. This finding does not support suggestions that those working in microenterprises or SMEs are more at risk.

Figure 4-2 shows the equivalent analysis of those who consider that their work affects their health. Note that, in this and subsequent presentations relating to the same question, the 2010 data shows the total number of responses and therefore includes those who in response to the clarification question indicated that this was a mainly positive effect. This aspect is included to provide comparability with previous surveys where this supplementary question was not asked. One analysis of this supplementary suggested that as many as 25 % of respondents could report a positive effect.

Figure 4-2: Percentage of workers who consider their work affects their health, according to the number of people working in the workplace (EWCS, 2010)



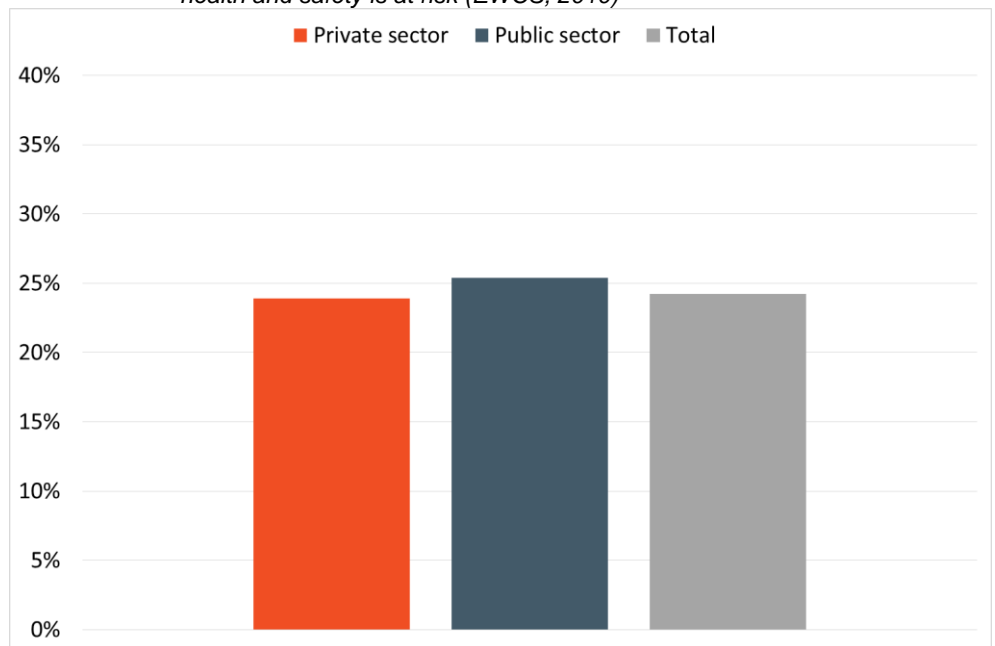
Source: EWCS 2010, q67, N=88553.

Note: Question asked: Does your work effect your health? Percentages of respondents who answered yes are shown.

The findings show a very similar picture to that of Figure 4-1, again countering the view that those employed in microenterprises and SME businesses are more at risk.

Turning to Figure 4-3, this shows those who consider their health and safety to be at risk, according to whether they work in the public or private sector.

Figure 4-3: Percentage of workers in the public and private sector who consider their health and safety is at risk (EWCS, 2010)



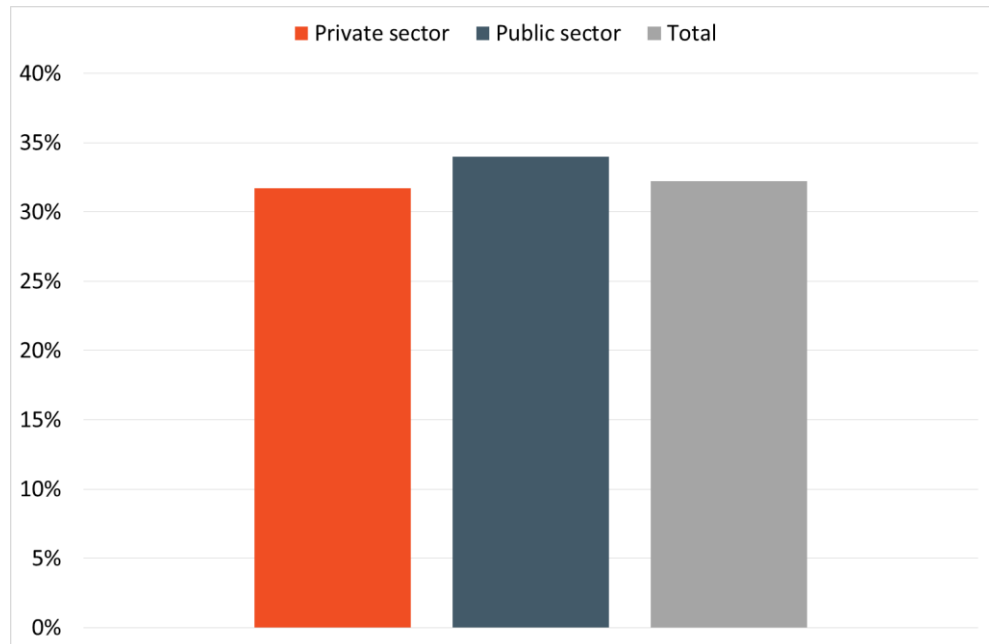
Source: EWCS 2010, q66, N= 78327, by public/private sector

Note: Question asked: Do you think your health or safety is at risk because of your work? Percentages of respondents who answered yes are shown. Based on EU-25 answers have been adjusted to fit relative size of workforce in each member state.

This shows a slight excess of public over private cases, although the difference is very small and unlikely to be considered meaningful.

A very similar picture is shown in Figure 4-4, which depicts the equivalent analysis for the question regarding whether or not respondents considered work to affect their health. In this case, there is a slightly greater level of positive responses in the public over the private sector.

Figure 4-4: Percentage of workers in the public and private sector who consider their work affects their health (EWCS, 2010)

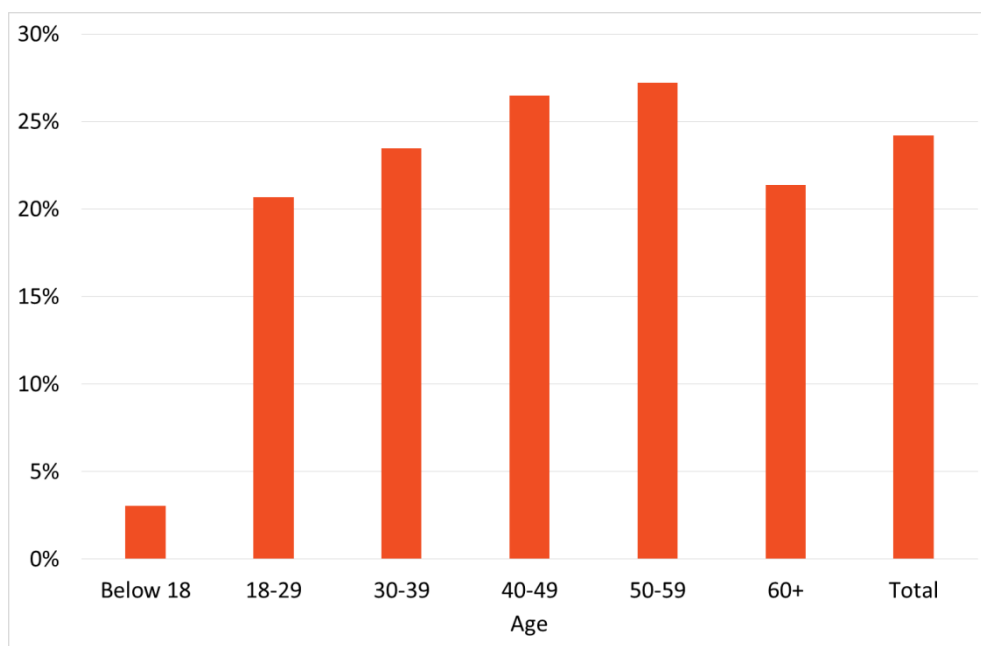


Source: EWCS 2010, q67, N= 79014, by public/private sector

Note: Question asked: Does your work affect your health? Percentages of respondents who answered yes are shown. Based on EU-25 answers have been weighed to fit relative size of workforce in each member state.

Figure 4-5 shows workers who consider their health and safety to be at risk, analysed according to their age. It shows that people under 18 years (the age group covered by the Young People Directive) are substantially less likely to consider their health and safety to be at risk than those in older age groups, including their immediate age peers (18-29). There is of course no way of telling from these data whether this reflects a difference in awareness (it is often suggested that younger workers do not have a sufficient appreciation of the risks they face) or that they are genuinely less at risk. Figure 4-6, which shows those who consider their work to affect their health, presents a very similar picture.

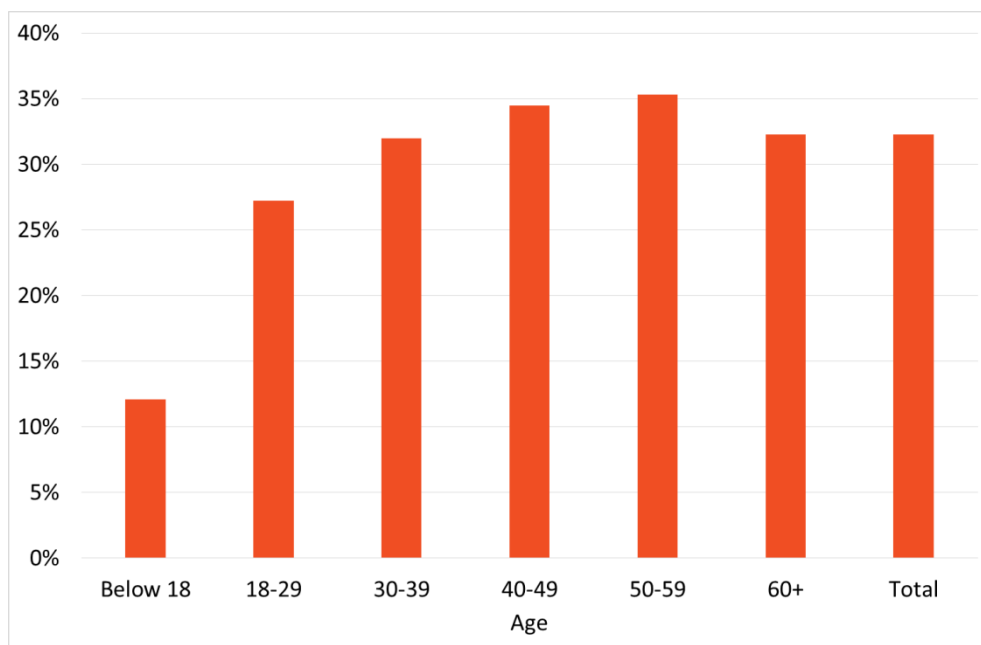
Figure 4-5: Percentage of workers who consider their health and safety is at risk, according to their age (EWCS, 2010)



Source: EWCS, 2010, q66, N=91019, by age group

Note: Question asked: Do you think your safety is at risk because of you work?
Percentages of respondents who answered yes are shown.

Figure 4-6: Percentage of workers who consider their work affects their health, according to their age (EWCS, 2010)

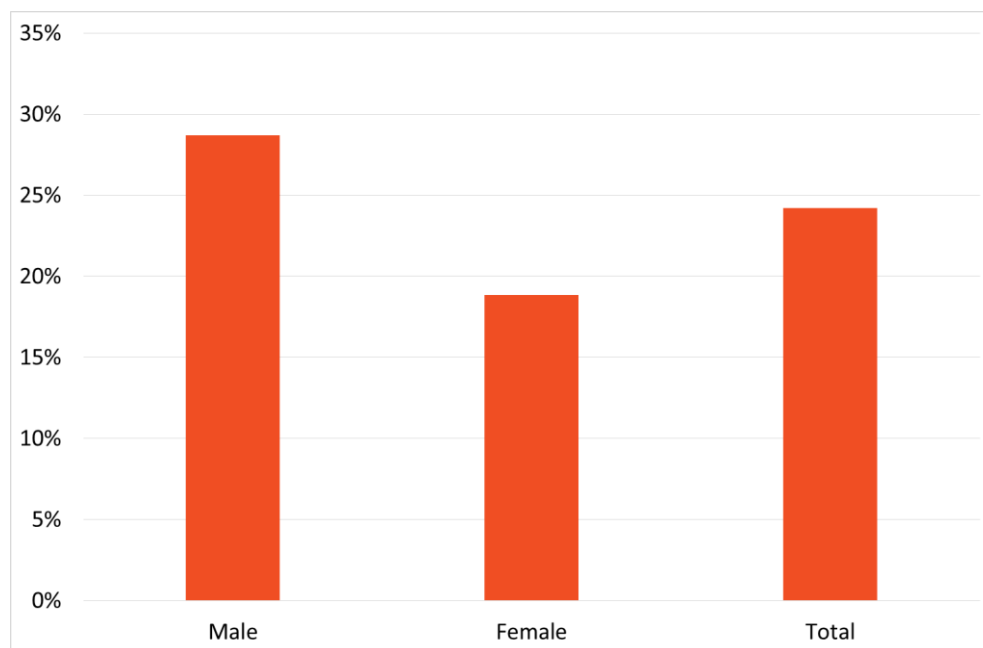


Source: EWCS, 2000/2001, 2005, 2010, q67, N= 92104, by age group

Note: Question asked: does your work affect your health? Percentages of respondents who answered yes are shown.

Finally, Figures 4-7 and 4-8 show the analysis of the same two questions according to the gender of the respondents. They demonstrate that male workers are more likely to consider their health and safety to be at risk (Figure 4-7) or that their health is affected by their work (Figure 4-8).

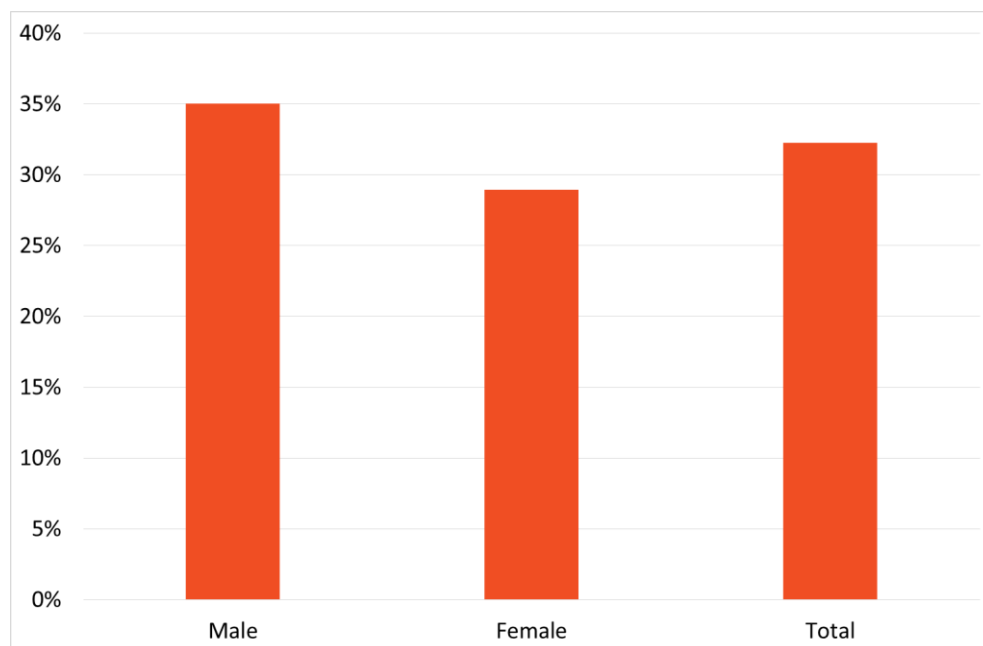
Figure 4-7: Percentage of workers who consider their health and safety is at risk, according to their gender (EWCS, 2010)



Source: EWCS, 2010, q66, N= 91017, by gender

Note: Question asked: Do you think your safety is at risk because of you work? Percentages of respondents who answered yes are shown.

Figure 4-8: Percentage of workers who consider their work affects their health, according to their gender (EWCS, 2010)



Source: EWCS, 2000/2001, 2005, 2010, q67, N= 92108, by gender

Note: Question asked: does your work affect your health? Percentages of respondents who answered yes are shown.

Nearly 4,000 work-related fatal accidents across the EU in 2012 demonstrate the ongoing relevance of, and need for, the provisions for occupational safety and health of the Framework Directive (and the individual directives).

In addition to the accidental injuries, the toll of work-related ill health puts an additional burden on the individual workers affected as well as on their employers and on society. The fact that approximately one in every eight workers, in one year alone, experiences work-related ill health and approximately a fifth of these losing more than a month of work are further evidence of its ongoing relevance.

Broader impacts can be identified by statistics. More than one quarter of workers with a work-related health problem report that their problems limited day-to-day activities considerably. Although the nature of these limitations has not been explored, the fact that they are regarded as 'considerable' implies a degree of disability, which affect both the worker and potentially other family members.

Self-employed workers

One area of uncertainty associated with occupational health and safety concerns self-employed workers. As they are neither workers (any person employed by an employer) nor employers, the provisions of the Framework Directive do not per se cover them. For this reason, they largely fall outside the scope of the EU OSH legislation. Although this exclusion is not necessarily reflected in the national legislations of the MSs, self-employment is nevertheless seen as an OSH challenge.

The difficulties in identifying appropriate data to establish the scale of the problem are reflected by a comment in an EU-OSHA report on accidents and illnesses among the self-employed; "the available statistics present significant shortcomings".

The report is based on ESAW data which show no great differences in the incidence rates of fatal accidents among workers compared with the self-employed when all sectors are viewed together. However, this overall figure apparently masks sector differences. For example, in the agriculture, hunting and forestry sectors the fatal accident rate of self-employed and family workers is notably and consistently higher than that of *workers* in the same sectors. The fact that fatal accidents are no less common among the self-employed than among other workers questions their exclusion from the protection provided by OSH legislation.

Overall EQR1 answer

Statistics on fatal and non-fatal accidents as well as work-related health problems clearly demonstrate the relevance of the Framework Directive in helping to improve workplace safety and health. Hence, work-related injuries have caused, and are still causing, burdens on the individual workers, on their employers and on society. Based on the limited data on fatal accidents, it also seems that the Directive is of relevance to the self-employed.

4.2 EQR2: Future relevance

EQR2: Based on known trends (e.g. new and emerging risks and changes in the labour force and sectoral composition), how might the relevance of the Directives evolve in the future, and stay adapted to the workplaces of the future in light of the horizon of 2020? Does the need for EU level action persist?

Relevance remains
while risks change ...

Given the nature of the Framework Directive, it will remain relevant in the future regardless of developments in safety and health at work. The hazards and risks are likely to change, with old risks declining and new risks emerging. These changes will derive from a variety of sources, including the decline of traditional industries and the improved control of recognised hazards, balanced by the introduction of new industries, technologies and processes.

Even as existing hazards and risks (hopefully) become increasingly well managed and the incidence of injuries and work-related ill health falls, it will still be necessary to ensure that remaining hazards continue to be managed to minimise risk.

A further challenge will be the changes in the demographic characteristics of the EU population, with a progressively ageing workforce creating new susceptibilities.

There is therefore little doubt that the need to manage hazards and risks in the workplace will persist and the Framework Directive, providing (as the title indicates) an overarching framework for managing that, will continue to be of relevance, both at the MS level and in the wider EU.

... also in the opinion
of national
stakeholders ...

National level stakeholders drawn from governments, employers, workers and experts were in almost universal agreement that the Framework Directive has been (and is likely to remain) relevant. Opinions varied somewhat as to whether it would become more relevant, with some MSs 'hedging their bets' by suggesting that it would remain the same – or increase! In some instances, this uncertainty stemmed from continuing concerns about the economic situation with the view that in times of economic hardship the Directive could become more relevant as employers might succumb to the temptation to reduce health and safety standards. However, this appears to be more a question of a possible need for enhanced enforcement within the MS than any change affecting the Framework Directive itself.

Interviewees were asked to provide numerical ratings to two questions:

- 1) "To what extent do you consider the national legislation transposing the Directive you are commenting on to be relevant in helping to safeguard the health and safety of workers in your Member States (rate on a scale of 1-5)?"
- 2) "To what extent do you consider that the contents of the national legislation transposing the Directive you are commenting on reflect current working methods and available technologies and the risks associated with these in your Member State (rate on a scale of 1-5)?"

On the first question about safeguarding health and safety, not all MS were able to provide such an estimate, as it was considered that the extent of coverage of the Framework Directive meant that replies relating to certain risks might not apply to others. As an added complication, some respondents gave a lower score because the Framework Directive ‘did not adequately cover’ changes that were more appropriate to apply to other Directives. For example, several MSs commented on the inadequacies of the current Display Screen Equipment Directive (i.e. in the given Directive report) – an issue that is more properly addressed when exploring the relevance of that Directive. As this introduced a degree of unreliability into the scoring, it was deemed inappropriate to present a numerical average as this suggested a possibly spurious degree of reliability/accuracy. Nevertheless, it was noted that the majority of respondents rated it between three and five, with the median reply around four.

There were some indications in some MSs of a dichotomy between different stakeholder groups, with workers’ groups possibly offering lower ratings. However, this was not a consistent pattern and, in some MSs, all stakeholder groups appeared to agree. By examining written explanatory comments, it was found that such dichotomies often arose out of concerns about enforcement in their MS, rather than due to aspects of the Framework Directive itself.

In response to the question about the national legislation, while most MSs found the national legislation to be reasonably effective, there was a dissenting minority who considered it less so (once again the issue of enforcement arose here in a few MSs). This resulted in a slight tendency for MSs to give this question a marginally lower rating, although the range of ratings remained very similar. Where sufficient scores had been collected to provide an average for a MS, the difference was frequently only around 0.2-0.3 so that the median score remained close to four.

As noted above, a number of MSs attributed deficiencies in risk coverage to the Framework Directive when the hazard would more properly be addressed elsewhere. In addition to the example of changing technologies and the Display Screen Directive, other issues raised were that of nanomaterials or nanoparticles. Both of these issues are addressed in the reports on their relevant specific directives (DSE and CAD).

A gap over
psychosocial risks

However, one clear issue that emerged, probably with the strongest emphasis, was that of psychosocial risks with a very widely held view that – although the Framework Directive in principle covers all safety and health risks at the workplace – there is a need to underline the coverage of emerging risks. On the other hand, some MSs did not refer to it as an issue, rather as an active dissent. Some MSs included violence and harassment within the scope of such work – but this was not a widely expressed opinion – or even a large minority.

The possibility of amending the Framework Directive to explicitly encompass psychosocial risks (rather than implicitly as at present) was discussed at the validation seminar and was not widely approved or accepted.

Despite near unanimity over the need to address psychosocial risks in some way, there appears to be no clear consensus over how best to address them, with some

stakeholders favouring a specific Directive and others considering joint agreements and guidance to provide the best solution. Different levels of preference seemed to reflect different levels of existing national provision to some extent, with those MSs with well-established risk assessment procedures and guidance being possibly less likely to favour a higher (Directive) level of community action over those with little or no such provision. Another factor would appear to be national preferences over managing occupational health and safety risks with some MSs generally avoiding the use of guidance and appearing to prefer a more prescriptive approach. However, it should be noted that this is based on expert knowledge of such provisions in the different MSs and an observation of a possible relationship that could be coincidental.

Based on expert knowledge, it would seem that a common basis for a risk assessment, including risk assessment tools for those MSs currently without them, could be beneficial. However, it is apparent that national perspectives on psychosocial risks, and how they should be addressed, have some inconsistencies which might make such a project challenging. The recently publicised e-guide on psychosocial risks at work, published by EU-OSHA, may go some way towards drawing MSs towards consensus.

A wide variety of other issues was raised, some by just one MS and others by a small minority. Only those referred to by more than one MSs are referred to here. Again, it appeared that some 'new' concerns were not genuinely new and perhaps reflected concerns about their effective management nationally.

One such issue was the risks associated with green technologies and alternative energy sources. However, no details were provided of what new hazards were generated by such industries that were not already covered. Whilst they might well alter the degree and pattern of exposure to risk, it was not clear what, if any, genuinely new hazards were likely to be created. However, given the level of interest in this particular issue there might be some value in at least exploring the possibility of preparing interpretative guidance on occupational hazards and risk generated by new and green technologies and how best to manage them.

A second area of concern was that of the ageing workforce and the implications of people continuing to work (and be exposed to risks) to a greater age. As with green technologies, it is not clear the extent to which this generates a need for a more careful consideration of such workers as a 'vulnerable group' within the existing legislative framework (perhaps an approach which could be addressed through guidance) – and where it might actually result in a genuinely increased risk. One such area might be the cumulative exposure to certain chemicals where exposure might occur over a longer period than previously considered (and covered by existing research). More scientific study (possibly including a re-appraisal of existing research material) would seem to be required before any answer can be provided at a generic level. However, this issue is considered further in relation to specific risks of relevance (such as those addressing musculoskeletal hazards and chemical exposures) in the relevant hazard-specific reports.

A small minority mentioned concerns about night/shift work. Shift work has been identified as carcinogenic and so it can be stated to present identifiable

occupational health risks (there might be other risks including possible psychosocial disruption). What is less clear is how best to address such risks as, particularly in essential services such as health care, banning such work is clearly not an option. Once again, some form of systematic appraisal of the risks and ways of managing those risks would appear to offer an appropriate way forward. It is known, for example, that different shift-rotation systems are more readily adapted to (and with apparently less disruption); although it is not known whether any evidence exists to enable this to be related to risks such as cancer.

Among another small group, concerns were expressed regarding SMEs. This area has been given much thought in recent years with regard to the possible relaxation (simplification) of requirements, alterations to the scope of some directives to better accommodate them, etc. As only a small group of interviewees highlighted this fact, it is possible that the majority feel that this issue has already been adequately addressed. Again, this was not a view specifically canvassed during the interviews and remains purely speculative.

Finally, a similar small minority referred to concerns regarding teleworkers (to which could be added homeworkers). Once again, it is not clear whether or not they require new legislation, the adaptation of existing legislation or some other approach. In many instances, teleworkers would not be covered by legal provisions (e.g. workplaces). Thus, some form of systematic evidence-based review of the needs would seem to be called for.

... and EU stakeholders

The EU interviews frequently addressed just a selected number of specific directives, although a number covered the Framework Directive. During the interviews, a number of changes/trends to working methods and risks were highlighted, which may influence the relevance and effectiveness of the Framework Directive. Two main changes to working methods are for one thing the loosening of worker-employer relationships through constellations such as a worker having multiple part-time jobs, temporary work or being independent, (which will likely weaken the OSH legislation in its current form). Secondly, the movement towards work activities taking place outside the physical location of the workplace, where the responsibility of the employer can be discussed/does not extend to.

In broad terms, although numeric scores were seldom given, the Framework Directive was seen to remain relevant today and likely to continue to remain so, although some variances were noted in the national interviews.

As mentioned, some possible ‘new risks’ were referred to in relation to this Directive which are better addressed in other directives (e.g. the CAD and nanomaterials). As with the national interviews, psychosocial risks were raised in a number of interviews although opinions varied widely over how best to address them. Some stakeholders considered that the contribution of non-work factors rendered a directive inappropriate, while others advocated such an approach.

No new areas for risk management were raised by the national stakeholders.

... and confirmed by NIR information

The template for the NIRs included two questions; the responses to which could potentially affect the ongoing and future relevance of the Framework Directive:

- › In the light of practical experience, is the scope of the Framework Directive still appropriate, e.g. non-application to certain groups?
- › Has the MS taken additional measures not included in the Directive? If yes, please describe them and give reasons why these additional measures were taken.

Not all MSs responded to these questions. Of those who specifically commented, twelve (of 23) responded that the scope remained applicable and appropriate. From this, it might be considered that a sizeable minority regarded the Directive as continuing to be relevant.

Some NIRs advocate the widening of the scope of the Framework Directive, which can be interpreted as enhancing its relevance. This included three references to exclusions of the military and emergency services (Article 2(2)) although it should be noted that this is not a blanket exclusion and only relates to where it might create a possible conflict. It should however be noted that two MSs specifically stated that they considered this exclusion appropriate. Other references include:

- › Extending the coverage to domestic workers (six MSs) although some other NIRs point out that they have already done so, and different sectors from one MS offered conflicting views
- › Extending the coverage to the self-employed (four MSs).

As the Directives establish minimum requirements, it is of course open to any MS to extend the scope of any provision – as appears to be the case here – and there does not seem to be widespread support for such alterations. Indeed it is interesting to note that, even among those MSs who have extended the scope of their national legislation beyond that of the Framework Directive, these MSs expressed the view that the scope of the Framework Directive remained appropriate (i.e. relevant).

None of the MSs who commented on this question suggested that the scope was such that it (and the Directive) was no longer relevant. It would therefore seem that, although a small minority of MSs advocates extending the scope of the Directive, all continue to support it.

The majority of respondents to the question of additional measures (9/25) indicated that they had not made any major changes. Two MSs indicated that they had made a number of changes – but did not specify their nature. Several others referred to extensions of the scope of their legislation (rather than additional provisions) with references to the self-employed and domestic workers.

A small subgroup (five) indicated some form of action regarding those providing specialist support either with a more detailed specification for those people, or measures such as specific training.

Another subgroup (four) had some form of provision relating to psychological/psychosocial issues. These ranged from simply making explicit the

coverage of the legislation to encompass psychosocial risks to passing specific additional laws (such as that in France on bullying and harassment).

This qualitative information, together with the evidence of ongoing accidents and ill-health presented above, strongly suggests that the Framework Directive will remain relevant for the future period up to 2020. There are no majority views for any change, with the strongest support (6 MSs) for the inclusion of domestic workers. However, six out of 27 does not suggest substantial support for this measure.

ILO Convention on Domestic Workers

The ILO Convention C189⁹ provides that Members shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence (Article 5) and shall take measures to ensure that domestic workers, like workers in general, enjoy fair terms of employment as well as decent working conditions (Article 6). A case could be made that a safe and healthy workplace is part of those ‘decent working conditions’. Currently only two MSs (Germany and Italy) have ratified this convention, with Ireland due to join them in June 2015. While this is their national choice, it does not suggest widespread support for this measure within the EU-27.

Self-employed workers

As noted above, the NIRs from four MSs contained specific reference to extending OSH coverage to the self-employed. Some stakeholders, especially at EU level, also referred to concerns that changes in work and working practices, including ‘independent’ workers (i.e. self-employed persons) would be likely to weaken the influence and impact of OSH legislation. It is also noted that a number of MSs already encompass the self-employed, at least to some extent, within their national legislation. Given expectations that the proportion of those in self-employment amongst the EU workforce is likely to increase, and given (limited) suggestions from statistical data that such workers are no less at risk than their counterparts in employment, there would seem to be a rationale for opening a debate on extending some degree of OSH protection to these workers.

Non-application to specified public service activities

The scope of the Framework Directive excludes from its applicability:

“certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services”

where characteristics inevitably conflict with it. It is important to note from this wording that such services are not excluded in their entirety, but only where there is an apparent conflict.

This exclusion was explored in a question asked in the NIR template:

“In the light of practical experience, is the scope of the Framework Directive still appropriate e.g. non-application to certain groups?”

⁹

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:2551460

On the specific issue of excluding groups such as police and military, most stakeholders either made no explicit reference or stated positive agreement. Only one (PT) actively indicated that they considered this unreasonable. However, from the terms of their reply it seemed that they might have been applying this exclusion more widely than the clause indicates (i.e. only where there is an apparent conflict). Many MSs positively acknowledged the logic of the exclusion under the circumstances apparently intended. Several of those who actively endorsed its retention noted the qualification, pointing out that general OSH protection was applied to these groups through national legislation in any case.

However, some MSs took the opportunity provided by the question to raise issues relating to other groups – mainly the group of domestic workers. Comments reflected a range of opinion including views that the exclusion was correct, and that it was impracticable to include such workers (as inspections could not be carried out) or others who considered it to be an inappropriate exclusion (and an exclusion which some MSs didn't adopt anyway). Apart from this, there were (fewer) references to the self-employed, two referred to home workers (one for, one against), and there was one reference to migrant workers.

Overall EQR2 answer The Directive will remain relevant in the future regardless of the developments in safety and health at work in the EU. Old risks will decline and new risks will emerge, with increasing attention to e.g. nanomaterials and psychosocial risks as well as to an ageing workforce, increased use of green technologies and alternative energy sources, and the self-employed.

There is no great support for what might be seen as increasing the relevance of the Directive by widening the scope – for example by removing the specific exclusion on the military or the police where there is a possible conflict.

5 Assessment of effectiveness

Outset in impact
storyline

The assessment of the effectiveness of the Framework Directive takes its point of departure in the impact storyline presented in Chapter 2 of this report. Based on the data gathered from statistics, studies and interviews, we examine whether the initial hypotheses regarding the impacts that the Framework Directive may have caused can be confirmed. This is done by looking into the values of the impact indicators that were developed as part of the elaboration of the intervention logic for the Framework Directive.

Outset in evaluation questions on effectiveness

We present the assessment by answering the seven evaluation questions on effectiveness. It is important to emphasise that while the first four questions and the last are answered at Directive level, the responses to questions five and six, regarding broader impacts, are in practice based on an analysis of the OSH acquis as a whole. However, since the Framework Directive serves as a basis for the 23 specific Directives, it may also be considered to serve as the basis for such broader impacts.

5.1 EQE1: Effect on occupational safety and health

EQE1: To what extent has the Directive influenced workers' safety and health, the activities of workers' representatives, and the behaviour of establishments?

This first evaluation question on effectiveness is arguably the most important question to answer in the evaluation of the Framework Directive. In line with the intervention logic shown in Chapter 2, we present the assessed impacts firstly by looking into workplace impacts – i.e. the direct changes/improvements that occur at the workplace as a result of implementing the KRs; and secondly by looking into the actual improvement in the safety and health situation arising from the workplace impacts.

5.1.1 Workplace impacts

Implementation and compliance with Framework Directive provisions

In order for the Framework Directive to have an impact on the workplace – such as better health surveillance, organisational changes, higher awareness among workers about potential safety and health issues etc. – it is necessary that MSs implement and comply with its provisions.

This issue was assessed in Chapter 3, and the overall conclusion is that the Framework Directive has been implemented in all MSs and that its provisions have largely been complied with.

Regarding implementation, it should be remembered that a number of infringement proceedings regarding national transposition of the Directive have occurred, and there are still some inconsistencies in national law, although none is considered major, as they do not affect implementation of the Directive.

As noted earlier, compliance is also in general higher for larger establishments than for SMEs. In the discussion of compliance in Chapter 3, we addressed many of the indicators in Table 2-2, which were categorised as workplace impact indicators, as their values reflected compliance more directly than actual changes in the workplace.

The compliance findings in Chapter 3 are supported by findings of the Flash Eurobarometer 398 on working conditions (European Commission, 2014). 62 % of the respondents to this survey claim to have been consulted on safety and health issues at work by their employer or a safety and health representative. Furthermore, 77 % of workers confirm that safety and health information and/or training is available in their workplace, while 59 % confirm that there are measures to prevent health problems or accidents at work. Finally, the general tendency is that the larger the establishment the respondent works for, the more likely they are to claim that each of these measures is in place.

Large workplace impacts for large enterprises, and ...

The overall impression that the MSs have implemented and complied with the Framework Directive is confirmed by the stakeholders interviewed in the different MSs. Figure 5-1 shows that the Framework Directive, particularly for the larger enterprises, has had high behavioural impacts at workplace level. The interviewed stakeholders agree on this.

Several reasons are given for the impact on the large enterprises. Firstly, as also concluded in Chapter 3, large enterprises have designated OSH experts/departments enabling them easy compliance with international OSH standards. They have well-established safety and health cultures, partly developed through access to internal programmes and procedures and sufficient financial resources. Large enterprises are also often more aware about their company image and are concerned about bad safety and health stories in the media. From a sectoral perspective, it is therefore not surprising that compliance with the OSH legislation is relatively high in sectors with predominately large enterprises, such as oil and gas, energy, mining, commerce and the banking sector, although the state of the sectoral financial conditions also is an important determinant.

Figure 5-1 Workplace impacts – assessed by stakeholders across Member States



Source: Member State interviews.

Note: Scores from 1 to 5 represent very low to very high impact – assessed by the stakeholders by responding to the question: "to what extent has the national legislation transposing the Directive(s) you are commenting on affected establishments' behaviour for securing of OSH (rate on a scale of 1-5)?"

... smaller workplace impacts for smaller enterprises

A low workplace impact score is particularly characteristic for smaller enterprises, especially microenterprises. Likewise, workers are the most pessimistic on this account, while the authorities are the most optimistic.

The low workplace impact score is a result of the fact that SMEs and in particular microenterprises find it difficult to comply with national legislation stipulated by the Framework Directive. Financial constraints are mentioned as the key reason for inability to employ the necessary expertise and acquire technical capacity and knowledge.

Another key reason, somehow related to the lack of financial resources, is a general low level of awareness of OSH issues and the lack of a safety and health culture in microenterprises and SMEs. On this issue, national authorities from several MSs also acknowledge that it is particularly different to communicate occupational safety and health issues to microenterprises and SMEs, and especially those that are not part of a business federation. In turn, microenterprises and SMEs are often demotivated by the administrative complexity and formal requirements of the safety and health control authorities. This was also emphasised in the EU-OSHA (2012) and during the discussion at the validation seminar on 9 December 2014 as part of the present evaluation.

The option of outsourcing OSH protection and prevention services for smaller enterprises where the in-house capacity is insufficient is also being tried out. This is not without risk. Employers may not live up to their obligation in terms of

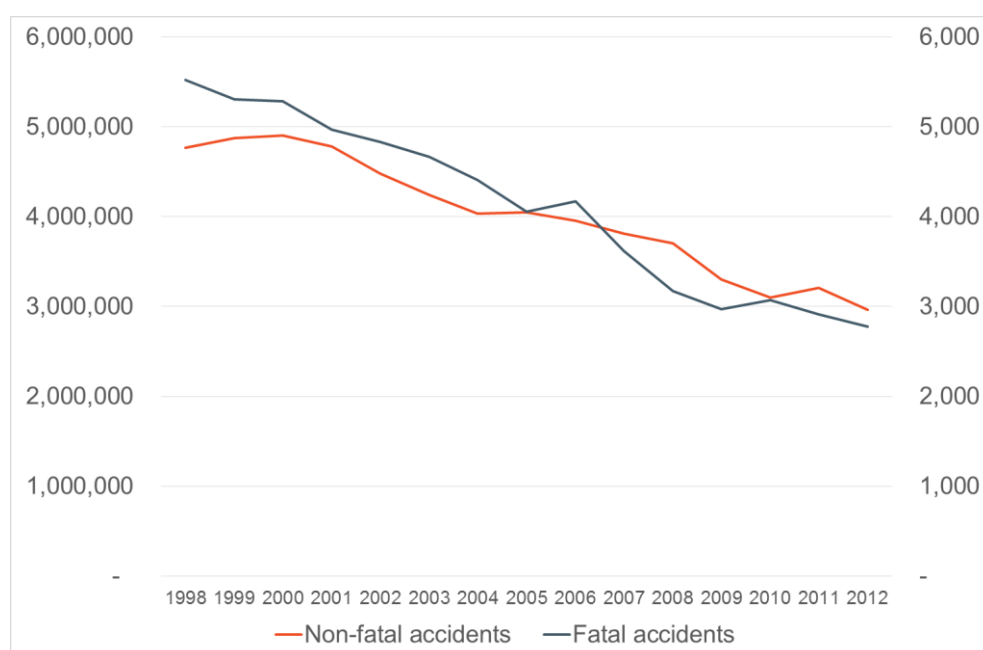
prevention, and this may lead to safety and health issues being overlooked. External providers may not necessarily be able to provide services that are specific to certain sectors, and many of them only offer general services for all types of companies – often with a focus on larger enterprises.

5.1.2 Safety and health impacts

Reduction in the total number of occupational accidents ...

The previous section points towards the conclusion that the Framework Directive has brought about improvements at workplace level by increasing the extent and scope of safety and health activities. This leads us to believe that this has also led to positive safety and health impacts.

Figure 5-2 Number of occupational accidents – EU-15



Source: Eurostat database: ESAW.
Note: Left axis: no-fatal accidents; right axis: fatal accidents.
Non-fatal accidents are accidents that lead to more than 3 working days lost.
Only data for EU-15 are available to illustrate the long-term trend.

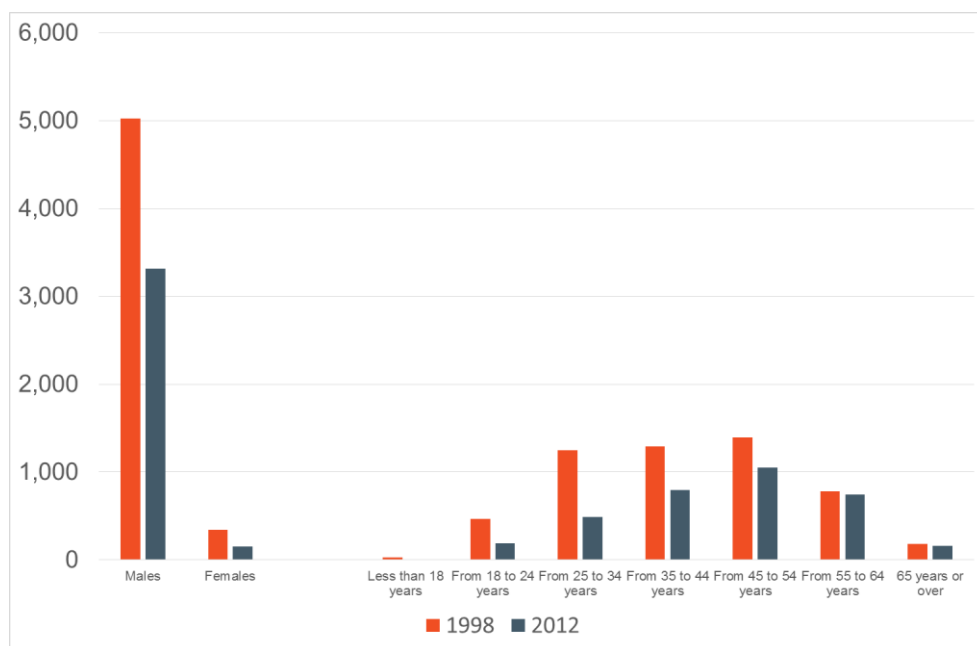
Figure 5-2 shows that the number of occupational accidents have fallen significantly during the period 1998-2012 – and that the number of fatal and non-fatal accidents has dropped. As in any impact evaluation, it must be emphasised that the reduction, wholly or in part, in occupational accidents may have occurred without the implementation of the Framework Directive. In other words, it is not possible to assess how much of the reduction – measured by official statistics – can be attributed to the Framework Directive. However, it is plausible to assume that the Framework Directive has made a positive contribution.

Several MS stakeholders stated that there is an absence of proper national monitoring instruments other than such official statistics on occupational accidents and diseases. Increased monitoring is needed to provide an accurate answer to this evaluation question.

... mainly for males
and younger workers

Figure 5-3 and Figure 5-4 show that the reduction in the number of fatal and non-fatal occupational accidents between 1998 and 2012 has mainly affected male workers. However, the percentage reduction of fatal accidents has been larger for the female workforce (-56 %) than for the male workforce (-34 %). For the non-fatal accidents, the percentages are -41 % for females and -46 % for males.

Figure 5-3 Number of fatal occupational accidents by sex and age – EU-15



Source: Eurostat database: ESAW.

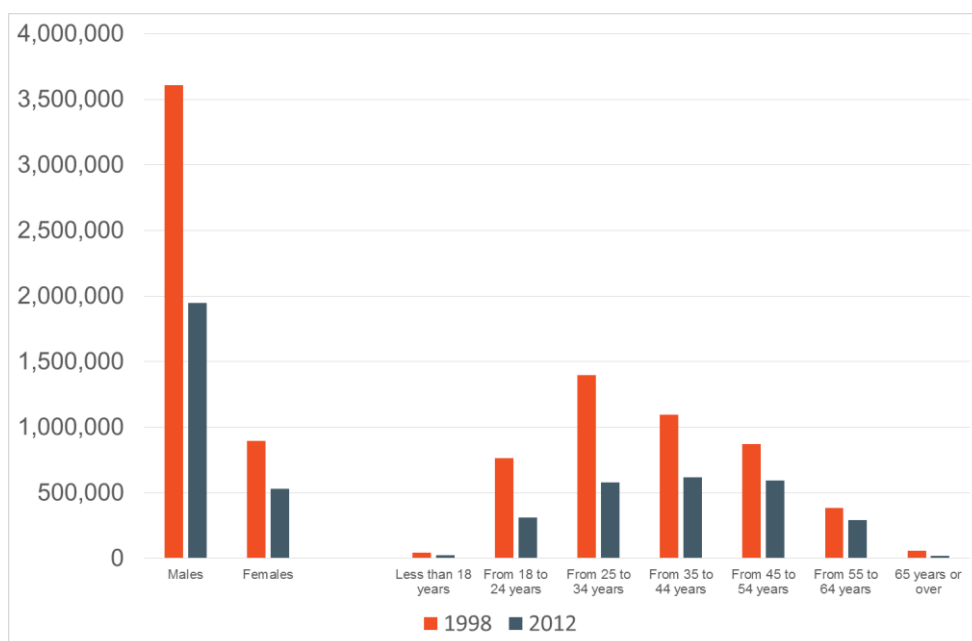
Note: Only data for EU-15 are available to illustrate the long-term trend.

This difference does not mean that we should stop paying particular attention to the contribution to safety and health improvements for the male-dominated work functions and sectors. On the other hand, EU-OSHA (2013 and 2014a) emphasises that the increasing female workforce also has implications for safety and health issues. It is suggested, for example, that women are overrepresented when it comes to work-associated health issues such as allergies, infectious illnesses, neurological complaints and hepatic and dermatological complaints. Women are more likely to be bullied, subjected to sexual harassment, and to use poorly fitting personal protective equipment not meant for a smaller frame. Furthermore, both European Commission (2012) and SLIC (2013) state a need to accept that women are more vulnerable than men, particularly when looking at downsizing and restructuring as was the case in the recent economic crisis.

The reduction in occupational accidents appears to have had greater impact on younger workers – i.e. those below 44 years. This development must, however, be seen in the light of an ageing workforce. When looking at the incidence rates¹⁰ according to age in the ESAW database, it can be seen that between 1998 and 2012 these fell at a similar rate. There is no evidence that the Framework Directive, or the other Directives, benefitted some age groups more than other groups.

¹⁰ Incidence rate = number of accidents per 100,000 employed.

Figure 5-4 Number of non-fatal occupational accidents by sex and age – EU-15



Source: Eurostat database: ESAW.

Note: Non-fatal accidents are accidents that lead to more than 3 working days lost.
Only data for EU-15 are available to illustrate the long-term trend.

The emergence of an ageing workforce however implies that it is necessary to ensure that legislation is adapted to benefit the group that, in all likelihood, is vulnerable due to age, poorer immunity and work-related illnesses. As suggested in Eurofound (2012), enterprises often try to adapt work – in particular for the workers above 60 years of age – so that it involves lighter loads, less painful positions, and a slower rate. This is in line with the information disseminated by EU-OSHA, which for several years (e.g. EU-OSHA, 2000) has increasingly suggested that workplaces, work allocation and equipment should correspond to the requirements/limitations of older people, including specific safety and health measures.

Differences in
incidence rates
between sectors

Structural changes within the MSs' economies have affected development and in turn had an impact in the number of occupational accidents. The labour market overview produced as part of this evaluation describes in greater detail the apparent tendency to shift from primary – often male-dominated – sectors such as agriculture, forestry, fishing and mining, and secondary – also often male dominated – sectors such as the manufacturing industry, towards the tertiary – often female-dominated – service sectors. In this century alone, 10 % of EU-27 manufacturing jobs were lost between 2000 and 2013 – amounting to almost 4 million jobs, and 19 % amounting to more than 2 million jobs were lost in the agriculture, forestry and fishing sectors. During the same 13-year period, more than 6 million new jobs were created in human health and social work and in the professional and scientific sectors. Likewise, more than 3 million jobs were created in the wholesale and retail sectors, administrative and support services, and education.

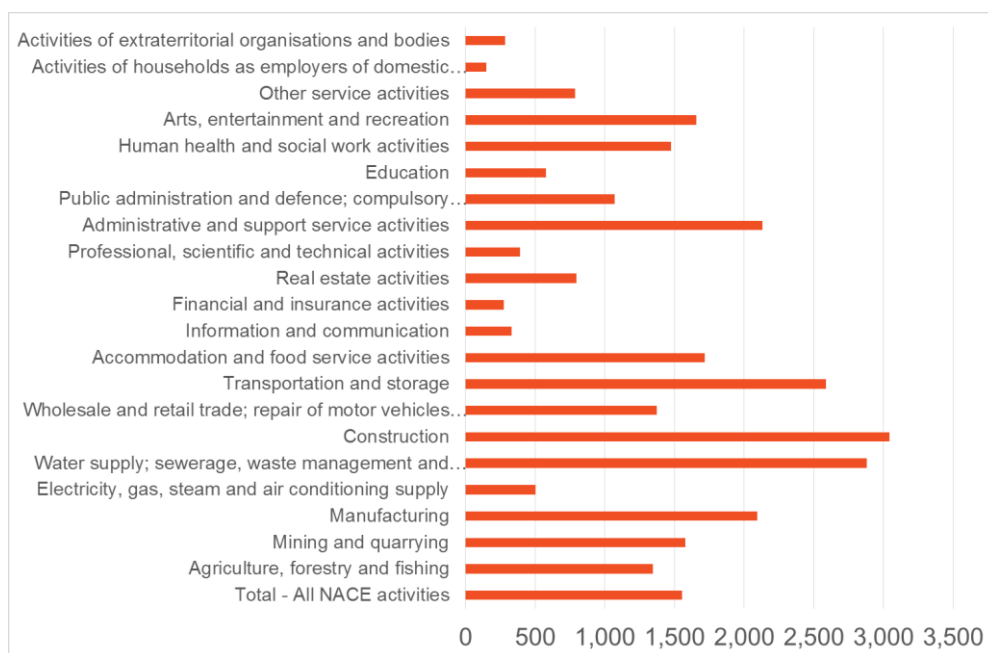
By their very nature, these structural changes lead to a decline in the number of occupational accidents in traditional sectors already addressed by the OSH acquis. However, it is likely that risks, such as psychosocial risks, will increase in service sectors.

This is supported by Figure 5-5 and Figure 5-6, which show that the incidence rates of occupational accidents differ greatly between economic sectors. Construction and mining sectors have the highest incidence rates when it comes to fatal accidents, while the same applies to the construction and water sectors when it comes to non-fatal accidents. At the opposite end, incidence rates are somewhat lower in service sectors such as financial intermediation, extra-territorial organisations and bodies, and households. Hence, the shift in the economic structure from manufacturing to services will inherently have contributed to a decrease in the number of occupational accidents.

In the service sector, it is likely that emerging risks, such as psychosocial risks, will become prevalent. EU-OSHA (2014a) emphasises the growth in female-dominated sectors, such as human health and social work, education and the retail sector. EU-OSHA (2014b) highlights the challenges facing the health and social care sector, including shortages of skilled and experienced professionals, an ageing workforce, increased use of technology requiring new skills and the introduction of new care trends to tackle multiple chronic conditions.

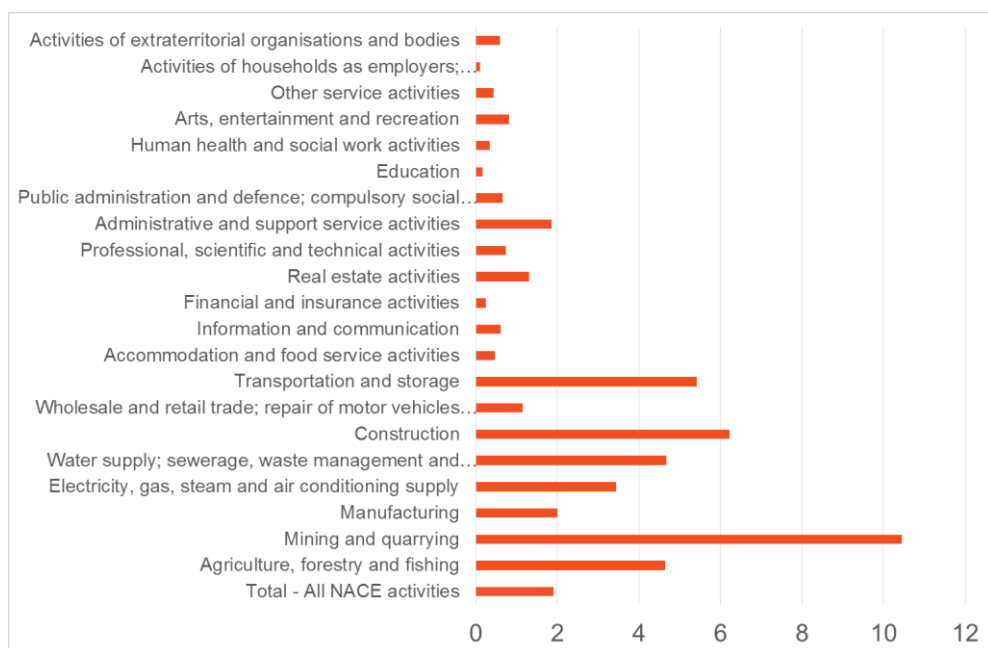
Another emerging job types are the 'green jobs'. EU-OSHA (2014c) has looked at the electricity sector and concluded that the greening of the electricity sector may involve a decentralisation process and the formation of workplaces into smaller, dispersed units and microenterprises, possibly with less OSH awareness and culture, and with fewer resources to address OSH. New materials with unknown risks, e.g. nanomaterials in insulation material, new composites in wind turbine blade manufacture, a range of materials such as graphene in batteries and toxic chemicals in solar panels may be used. Furthermore, conflicts may arise between environmental considerations and OSH – whereby measures taken to protect the environment may adversely affect OSH, and the rapid progress in green innovation could mean that OSH is left behind.

Figure 5-5 Incidence rates of non-fatal accidents by economic sector – 2012
(accidents per 100,000 employed)



Source: Eurostat database: ESAW.

Figure 5-6 Incidence rates of fatal accidents by economic sector – 2012
(accidents per 100,000 employed)



Source: Eurostat database: ESAW.

Framework Directive
has led to positive
safety and health
impacts ...

To continue the analysis of the above statistical trends, most of the interviewed national stakeholders and EU stakeholders believe that the Framework Directive has contributed towards improving the safety and health situation. However, a number of national stakeholders do point to some peculiar developments. For example in France, an increase in observed and documented occupational

diseases over the past 30 years can partly be attributed to greater awareness as, at the same time, significant improvements in working conditions have taken place. Similarly, in Finland, the level of absence due to sickness has remained stable since the transposition of the Directive, although the number of occupational accidents have decreased.

In this respect, there is consensus between the various EU stakeholders, i.e. national authorities, employer and worker representatives, as well as other safety and health experts.

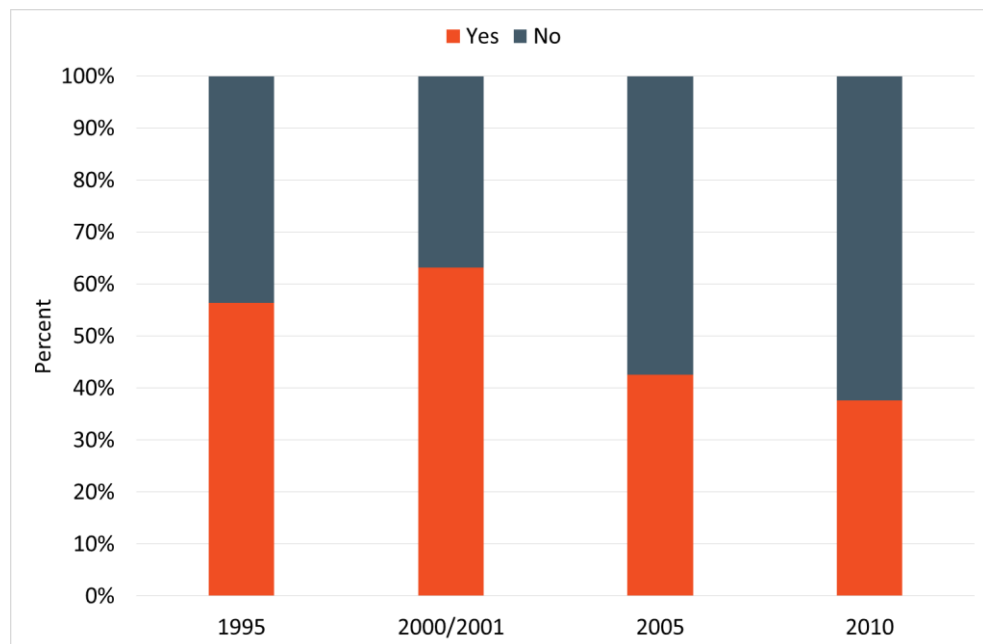
The tendency to move towards a better workplace, where safety and health issues are prominent is also supported by the recent Flash Eurobarometer 398 on working conditions (European Commission, 2014) where 85 % of the respondents expressed satisfaction with workplace safety and health. This survey confirms that emerging risks, such as exposure to stress due to structural changes, is considered a major safety and health risk (53 % of workers). This is followed by ergonomic risks: repetitive movements or tiring or painful positions (28 %) and lifting, carrying or moving heavy loads on a daily basis (24 %).

... that also are reflected in health assessments ...

To support the notion that the Framework Directive has led to positive safety and health impacts, some of the responses to the Eurofound working conditions surveys (EWCS) – as shown in Figure 5-9 – indicate that over time the share of the workforce that claims their health is affected by their work has declined. As previously mentioned, some of this decline would have happened irrespective of the implementation of the Framework Directive.

It should be noted that the formulation of some of the EWCS survey questions might change over time – at the cost of comparability and trend analysis. Although, we do accept that there may be a balance between timeliness – i.e. that the issues that are most important at any given time are covered – and comparability.

Figure 5-9 Does your work affect your health?



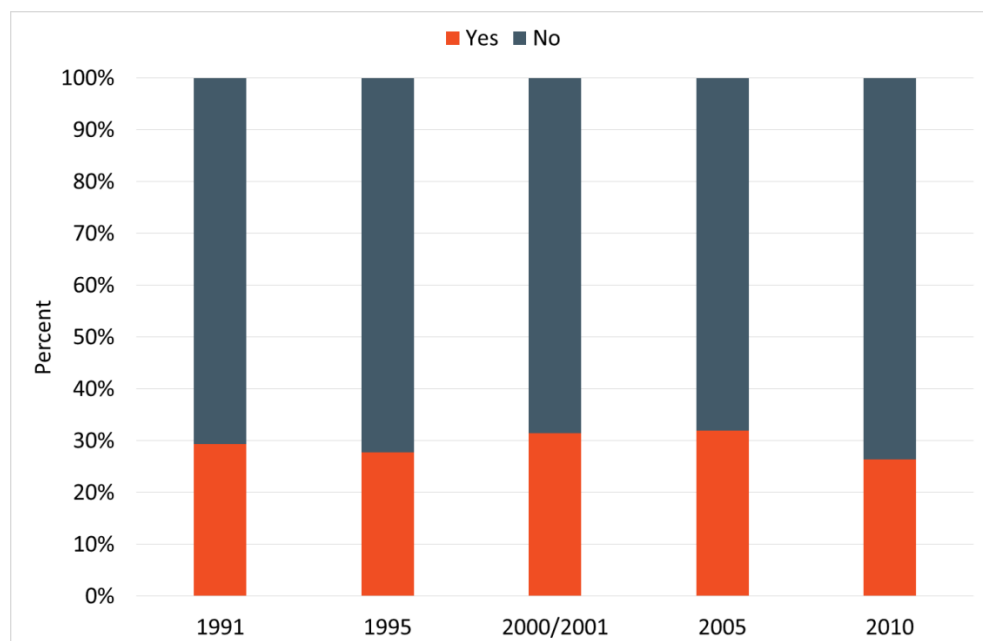
Source: Eurofound, EWCS.

Note: The formulation of the survey question has changed slightly over time. The data for 1995 only cover EU-12.

... although not unambiguous

As shown in Figure 5-10, the responses to EWCS do however not lead to an unambiguous conclusion as the reduction in the number of workers who think their health and safety is at risk because of their work is small.

Figure 5-10 Do you think your health or safety is at risk because of your work?



Source: Eurofound, EWCS.

Note: The formulation of the survey question has changed slightly over time. The data for 1991 and 1995 only cover EU-12.

As already mentioned, it is not possible to measure exactly how much the Framework Directive – together with the specific Directives – has contributed to improving occupational safety and health, such as reducing work-related accidents.

At the same time, there are indications that the Framework Directive has contributed significantly. This is supported by the responses to the implementation questions in Chapter 3 – e.g. that the Framework Directive provisions have been complied with for the most part and that a number of accompanying actions to support its implementation were initiated. It is also stressed in the conclusion in Chapter 4 that the Directive remains relevant, which is similarly supported by the above indications of effectiveness – e.g. from the stakeholders interviewed, but also from the measurable occupational safety and health improvements.

Overall EQE1 answer The Framework Directive is assessed to have had behavioural impacts on enterprises in the field of occupational safety and health. This is particularly the case for larger enterprises, and less so for SMEs and microenterprises. The lower effect in SMEs and microenterprises is explained by their inability to comply with provisions due to insufficient financial resources, expertise and culture. It is thus assessed that part of the observed reductions in overall occupational injuries are due to the Framework Directive. This is also the views of both national and EU stakeholders consulted during this evaluation.

5.2 EQE2: Effect of derogations and transitional periods

EQE2: What are the effects on the protection of workers' safety and health of the various derogations and transitional periods foreseen in several of the Directives concerned?

Overall EQE2 answer No derogations or transitional periods have been applied or used under national law in the implementation of the Framework Directive. Hence, there have been no effects on this account.

5.3 EQE3: Effect of Common Processes and Mechanisms

EQE3: How and to what extent do the different Common Processes and Mechanisms that were mapped contribute to the effectiveness of the Directives?

Implementation and compliance with Framework Directive provisions As already discussed in Chapter 3 and in the answer to EQE1 above, EQE3 is particularly relevant for the Framework Directive as it introduces the CPMs. Hence, the answer to EQE3 takes its starting point in the notion that the CPMs have been implemented in the MSs and largely have been complied with, and that the CPMs have had behavioural impacts at workplace level.

Risk assessment is most important ... In Chapter 3, we concluded that in most MSs follow-up on safety and health risk assessments is satisfactory and regular. This notion is supported by the views of

many of the national (Figure 5-11) and EU (Figure 5-12) stakeholders interviewed during this evaluation. Although we claim, e.g. when describing the intervention logic in Section 2.4, that it may not be feasible to assign an impact to a single CPM or KR, there appears to be a belief that risk assessments have been a contributing factor. This is because they are considered the basis for applying a risk prevention approach rather than a more reactive approach to safety and health.

However, some interviewees also argued that the CPM requiring regular risk assessments, introduced in the Framework Directive, might divert attention from the goal of actually managing the risks connected with certain exposure levels addressed by other Directives. This problem may differ between MSs, depending on their approaches to OSH management and on their success in getting enterprises to integrate these factors.

The impact of risk assessments has been investigated by, e.g. Mendeloff and Staetsky (2012), who conclude that while there may be sporadic evidence of impact, it is difficult to draw any clear causal conclusion. This is due to several reasons, such as incomplete information about levels of risk assessments prior to the Framework Directive's implementation, compliance with the requirements, and the difficulty in accounting for other factors that affect safety and health performance in the MSs.

Figure 5-11 *Relative importance of the different CPMs and other KRIs according to national stakeholders*



Source: Member State interviews

Note: The graph depicts the relative number of times a specific CPM has been mentioned, across all Member States and stakeholder groups, when answering the question "Which key requirements have contributed the most [to the safety and health impact of the Directive]?"

... and more even
contributions from
the other CPMs

Figure 5-11 suggests that the contributions to the safety and health impacts from the remaining CPMs are fairly even and that there is a certain consensus among the interviewed stakeholders. This is in particular the case among the MS stakeholders, although workers – when compared with employers – place relatively more weight on information activities and less on prevention and protection services.

The information, which is based on answers from EU stakeholders, shows a somewhat different viewpoint. The worker organisations do, for example, put almost as much weight on risk assessment/analysis, as on information and training activities.

Overall EQE3 answer

Although we have argued that the CPMs and the other KRs work in tandem to produce impacts, there is a tendency that both national stakeholders and EU stakeholders place most importance on risk assessments as they are seen as the foundation for applying a risk prevention approach rather than a more reactive approach to safety and health.

5.4 EQE4: Effect of enforcement

EQE4: To what extent do sanctions and other related enforcement activities contribute to the effectiveness of the Directives?

Enforcement is important for compliance ...

The EU stakeholders collectively assess that enforcement activities have been important in securing compliance with the Framework Directive, although the employer organisations regard them as less important. As we conclude that compliance is important for achieving safety and health impacts, we must also conclude that enforcement activities have contributed to these impacts.

Having said that, a number of EU stakeholders raised concerns about the standard of the current level of enforcement, and many felt that it was insufficient, thus preventing the Directive from achieving optimal effectiveness. They have observed a trend whereby fewer resources are allocated to enforcement activities, and both employer and worker organisations consider enforcement as a strong motivator for employers to comply with the Directive. Fewer resources allocated to labour inspectorates is an issue highlighted by a number of international organisations, such as the ILO (2010) and EPSU (2012), who also point to differences in resources in between countries creating a not so level playing field.

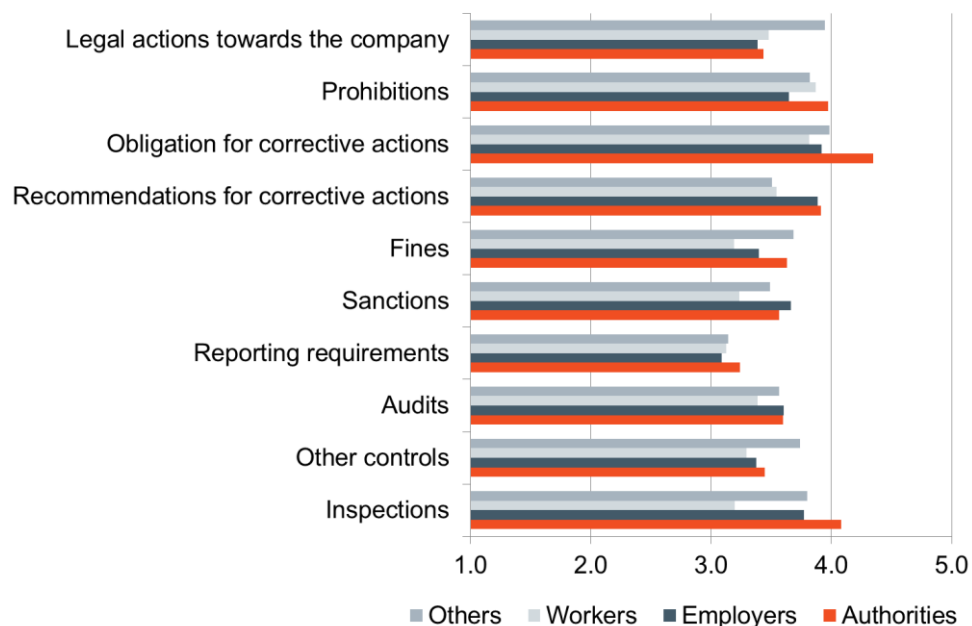
... via a number of enforcement measures

As shown in Figure 5-14, the enforcement of the Framework Directive provisions takes place using numerous enforcement measures. The most striking observation is probably that all MS stakeholders value the various measures equally. There are of course a few differences. While reporting requirements are assessed to contribute least to the effectiveness of the Framework Directive, the largest contribution seems to come the obligation for corrective actions – that is highly valued by the authorities.

The EU stakeholders gave their views on the importance of enforcement measures, including new measures. This has led to the identification of the following three measures as the most important: combining enforcement with guidance measures, increased frequency of inspections, and monitoring of enterprises where problems have previously been identified.

The first and most important of these three measures, i.e. combining enforcement with guidance, is envisaged to involve a classification of employers into 'bad seeds' who are purposefully non-compliant, and 'uninformed' who are un-purposefully non-compliant. The argument is that many enterprises, especially SMEs and start-ups, are simply not aware of the rules. By combining enforcement (inspections) with guidance, it is possible to provide a more detailed and better-suited response to those who lack knowledge about what they are to comply with.

Figure 5-14 National stakeholder views on the importance of enforcement measures regarding their contribution to the Directive's effectiveness



Source: Member State interviews.

Note: Average scores, by stakeholder groups across all Member States, to the question: "Do you consider the following enforcement measures and sanctions to be effective? (rate on a scale of 1-5)".

Overall EQE4 answer Sanctions and other related enforcement activities are assessed to have contributed to the effectiveness of the Framework Directive. The measures of greatest importance appear to be combining enforcement with guidance measures, increased frequency of inspections, and monitoring of enterprises where problems have previously been identified. That said, the effectiveness could be even higher as many stakeholders assess that the current level of enforcement is not always sufficient, and that there seems to be a trend towards fewer resources being allocated to enforcement activities.

5.5 EQE5: Benefits and costs

EQE5: What benefits and costs arise for society and employers as a result of fulfilling the requirements of the Directives?

OSH acquis answer The benefits and costs to society and to employers of meeting the requirements of the Directives cannot be attributed to a single Directive. This is very much in line with our conclusion when describing the intervention logic in Section 2.4, i.e. that it may not be feasible to attribute the workplace impacts – and so the safety and health impacts – to a single CPM or KR.

In this evaluation we have answered EQE5 – and EQE6 using a top-down approach, and thus in the Main Report we have presented the answers for the OSH acquis as a whole. However, in the discussions about the Framework Directive during stakeholder interviews, we have come across much wider impacts,

although many of the stakeholders have also underlined the attribution difficulties. These views are presented in the following.

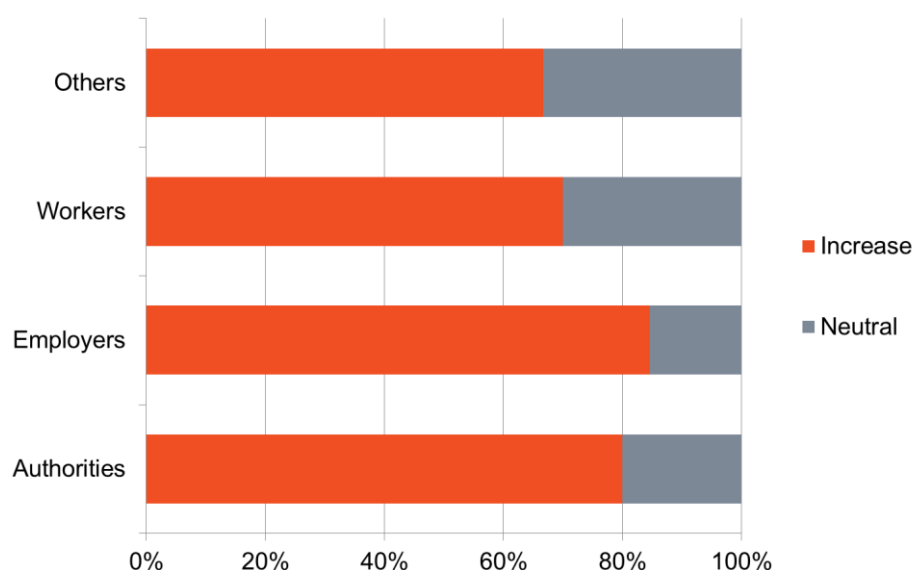
Costs

The issue of compliance with the Framework Directive has already been analysed in detail by answering MQ3 (Section 3.3) – based on the detailed Country Summary Report and the EU-OSHA ESENER database. The overall answer was that the Framework Directive's provisions have largely been complied with, although more so by larger establishments than by SMEs.

Increase in
compliance costs ...

Additional information resulting from the stakeholder interviews tells of additional costs arising from implementation of the Framework Directive. Figure 5-15 shows that most MS stakeholders claim that there have been compliance costs associated with the Framework Directive. This is not surprisingly particularly so for employers.

Figure 5-15 National stakeholder views on the development of compliance costs due to the Directive



Source: Member State interviews.

Note: Stakeholder views, across all Member States, on the question: "Are employers experiencing increased compliance costs (costs which would not have occurred without the Directive) from the implementation of national legislation based on the Directive(s)?"

Many of the EU stakeholders found it difficult to quantify actual costs from complying with the Framework Directive, although around 50 % of them suggested that the additional costs (both compliance and administrative costs) were significant – in particular for SMEs and microenterprises with a lack of resources, knowledge and time.

However, many of the EU and the MS stakeholders point to the fact that the increased compliance costs can be regarded as an investment in safety and health

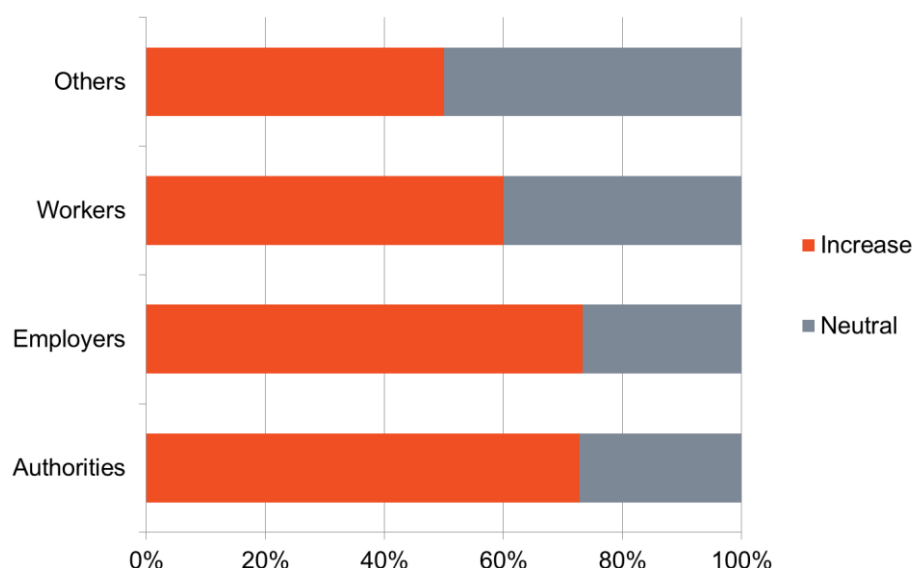
improvement, and that the increased safety and health benefits in many cases outweigh the increased compliance costs. In other words, compliance costs are often seen as necessary short-term costs incurred with the aim of realising long-term benefits.

In this context, it should be noted that while risk assessments – as discussed when answering EQE3 – by many MS stakeholders have been assessed to be the largest contributor to the effectiveness of the Framework Directive, they are not assessed to be the most costly. Several stakeholders point to the provision of information and training of workers as being more costly, along with ensuring preventive services and actions such as organising and adapting work to workers in the effort to improve safety and health. Other important cost items include access to safety and health expertise, be it internal or external, as well as the acquisition of equipment to meet proper safety and health standards.

... and in
administrative costs

Only a few EU stakeholders raised the issue that the Framework Directive has led to administrative costs. The main opinion is that any administrative costs are driven by the national implementation of the Directive, rather than by the Directive itself. This is contradictory to the MS stakeholders who, as shown in Figure 5-16, state that the Framework Directive has increased administrative costs; albeit to lesser extent than compliance costs as discussed above. This view should, however, only be considered indicative of the costs incurred as many of the stakeholders found it difficult to respond to this interview question. In addition, there seems little consensus on what is covered by administrative costs. While employers tend to look at administrative costs from a strict business perspective, some national authorities also consider the administrative obligations linked to the protection of the safety and health of workers and the obligations to monitor compliance in order to secure fair competition.

Figure 5-16 National stakeholder views on the development in administrative costs due to the Directive



Source: Member State interviews.

Note: Stakeholder views, across all Member States, on the question: "Are employers experiencing increased administrative costs from the implementation of national legislation based on the Directive(s)?"

Benefits

Improvements to safety and health at work

The benefits from the Framework Directive in the form of improvements to safety and health at work have already been discussed in detail under EQE1 above – by measuring the impacts in the form of reduced occupational injuries.

However, to be able to directly compare these benefits with the costs of achieving them, benefits need to be monetised. For a discussion of this issue, please consult the overall response to EQE5 provided in the consolidated analysis in the Main Report.

Overall EQE5 answer

While benefits and costs incurred by society and employers – as a result of implementing occupational safety and health activities – are assessed at OSH acquis level, the stakeholders interviewed have attributed some of these to the Framework Directive. Hence, the implementation of the Framework Directive has led to both compliance and administrative costs, and to reduced occupational injuries.

5.6 EQE6: Broader impacts

EQE6: To what extent do the Directives generate broader impacts (including side effects) in society and the economy?

OSH acquis answer

Similar to EQE5, the assessment of the broader impact to society and the economy of the OSH Directives was made for the OSH acquis as a whole, and the answer to EQE6 is presented in the Main Report.

Small to moderate
broader impacts

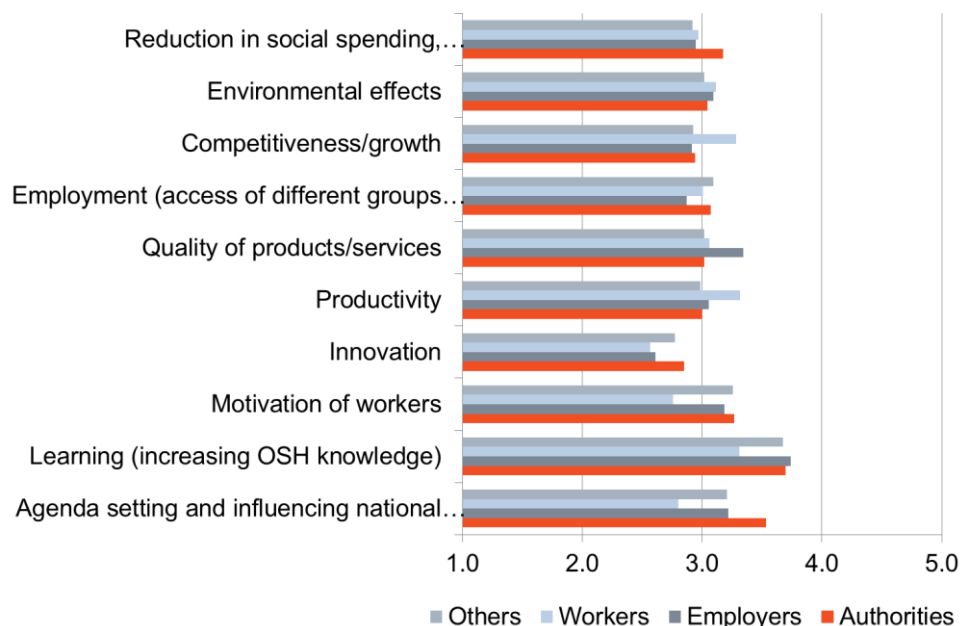
When consulting the EU and MS stakeholders on the impact of the Framework Directive, we did come across the issue of broader impacts. Based on the responses of the MS stakeholders, Figure 5-17 shows that generally they assess these to be small to moderate.

Not surprisingly, the largest impact – but probably least wide-ranging – is that of increased awareness and knowledge about occupational safety and health, which is the conclusion of all national stakeholders. This impact has materialised e.g. through the incorporation of accident prevention and safety and health issues into the curriculum in various apprenticeship-training programmes. Furthermore, it has materialised via public OSH related databases, which have grown in both scope and number.

The broader or longer-term impacts such as productivity, competitiveness and employment are almost equally valued, while there are fewer expectations to innovation, which should possibly be categorised as a side effect. It can be argued that productivity is closely related to safety and health as fewer accidents and occupational diseases lead to less absence from work, which in turn improves work efficiency when measured in hours. Added to this, the encouragement of new and more efficient working methods and technologies.

Increased productivity leads to greater competitiveness, which has been highlighted as the fourth most important benefit derived from the Directive. However, the cost of compliance can offset these benefits. Some stakeholders also argue that gains to competitiveness can be negative. This is especially the case in MSs where compliance with the legislation is very low. It is also an issue facing microenterprises and SMEs, as the degree of compliance in smaller companies tends to be low. Non-complying small enterprises can thus gain a competitive edge relative to their complying counterparts; and hence skew competition.

Figure 5-17 Extent to which the transposition of the Directive has contributed to broader effects in society according to national stakeholders



Source: Member State interviews.

Note: Average stakeholder scores, across all Member States, to the question: "To which extent do you consider that the implementation of the legislation transposing the Directive(s) you are commenting on has contributed to creating broader/unintended effects in society? (rate on a scale of 1-5, and explain how)".

Overall EQE6 answer Similarly, any broader impacts of occupational safety and health activities are primarily assessed at the OSH acquis level. However, some national stakeholders associate some of the wider impact with the implementation of the Framework Directive.

5.7 EQE7: Objective achievement

EQE7: To what extent are the objectives achieving their aims and, if they are not, what cause could play a role? What factors have particularly contributed to the achievement of the objectives?

Improvements in the safety and health of workers at work ...

Article 1.1 of the Framework Directive states that its objective is to introduce measures to encourage improvements in safety and health at work. Based on responses to the evaluation questions, it can be concluded that this has been fulfilled.

The responses to the implementation questions in Chapter 3 suggest that the Framework Directive provisions have been implemented in the MSs and that they are generally observed. Chapter 4 concludes that the Framework Directive remains relevant. The responses to questions about effectiveness show that the Framework Directive had had a behavioural impact at workplace level – more so in large

enterprises and less so in SMEs and microenterprises – and that all workplace impacts have benefitted the safety and health of workers.

... and a basis for other Directives

Furthermore, the Framework Directive is seen as a good starting point or basis for the specific Directives, in that it enables them to focus on specific aspects of safety and health at work, hereunder specific minimum standards for the protection of workers. This is also supported by the responses to the coherence questions provided in Chapter 6.

Since some of the specific Directives focus on CPMs or basic principles for specific risks, workers, or workplaces, while others are more prescriptive, focusing on specific safety and health requirements, there is overlap between the Directives – also with the Framework Directive. It has been argued that the CPM requiring regular risk assessments introduced in the Framework Directive may divert the attention from the goal of actually managing the risks connected with certain exposure levels addressed by other Directives. This challenge may be different across MS depending on their approaches to OSH management and on the integration of these factors into enterprises.

The overlaps between Directives therefore mean that occupational safety and health risks are covered more than once. Actually, this applies to all risks as the Framework Directive, in principle, addresses them all. However, there is a tendency to adopt specific Directives for specific risks, i.e. with specific provisions for how to intervene and to adopt minimum safety and health requirements in addressing the risk. This tendency might also have led to the notion among some stakeholders that the absence of a specific Directive targeting a specific risk – as is the case for psychosocial risks – means that the risk in question is not really covered or prioritised.

Stakeholders assess objectives to have been reached to a reasonable extent ...

Both EU stakeholders and MS stakeholders (Figure 5-19) asses that the legislation transposing the Framework Directive, and the Framework Directive itself, is considered to have reached its objectives to a reasonable extent, albeit with certain shortcomings. While the view that the Directive has been a success is relatively strong with EU employer organisations and knowledge institutions, worker organisations are more doubtful.

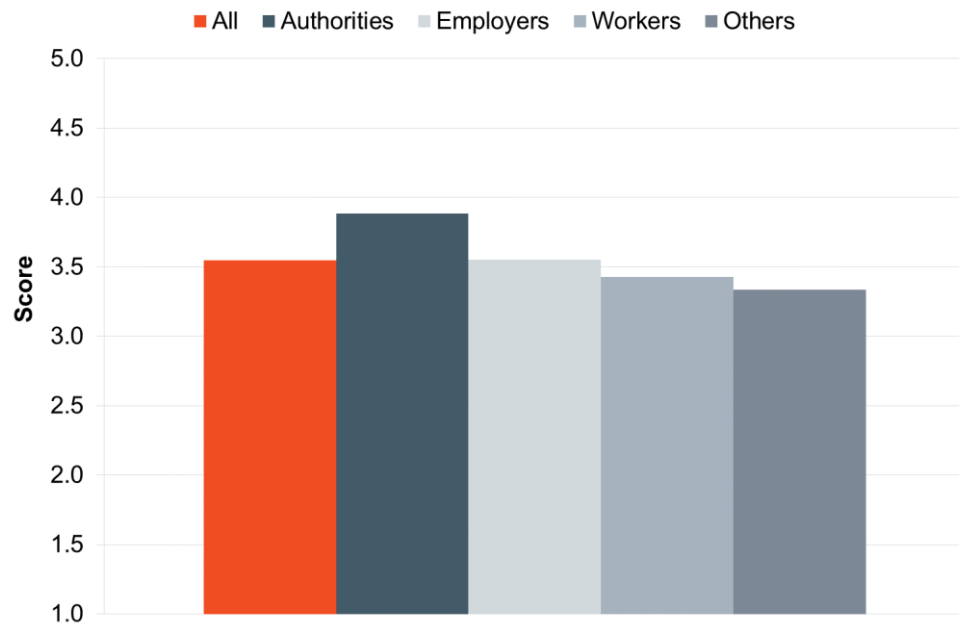
National stakeholders feel that the Directives' success is particularly strong among national authorities, whereas employer's worker representatives as well as safety and health experts tend to hold views that are more moderate.

In some cases, stakeholders think that the old legislation was somewhat clearer, more precise and easier both to understand and to enforce. It is however also a predominant view that the new legislation transposing the Framework Directive is more balanced and in essence constitutes a holistic approach.

Some stakeholders, including national funds, however pointed to important caveats. Fragmented and strictly administrative application of the Directives may deteriorate working conditions, as this would fail to address broad social and environmental issues (psychosocial risks and environmental pollution). As stressed previously in the section on the relevance of the OSH framework, such diffuse risks

could (and should) be covered by the existing framework if it was applied in the holistic manner intended by the legislator.

Figure 5-19 National stakeholder views on whether the legislation transposing the Directive has fulfilled its objective (score 1-5)?



Source: Member State interviews.

Note: Average stakeholder scores, across all Member States, to the question: "Has the legislation transposing the Directive you are commenting on fulfilled its objectives and to what extent (rate on a scale 1-5)?"

... and that a contribution to levelling the playing field

Finally, all MSs and EU stakeholder groups share the view that the Framework Directive, and OSH legislation in general, contributes to establishing a level playing field by setting common standards for safety and health. The importance of this effect was especially highlighted in the context of the economic crisis, including how the Directive's minimum requirements helped avoid social dumping.

Stakeholders from several MSs also stressed that the OSH common standards intended to create a level playing field in the EU in reality play against microenterprises and SMEs. This is because these companies face the greatest financial difficulties due to the legislative requirements for conducting risk assessments, replacing and modernising work equipment, performing medical examinations, etc.

Overall EQE7 answer

The brief answer to this fundamental question is that the Framework Directive has achieved its stated objective of introducing measures to encourage improvements to safety and health at work. This answer is supported by the responses to the other evaluations' questions – i.e.: i) that the Framework Directive overall is implemented and complied with; ii) that it remains relevant; iii) that it has led to positive workplace impacts as well as safety and health impacts; iv) and that it has

contributed to levelling the playing field by setting common standards for occupational safety and health in the EU.

6 Assessment of coherence

Directive 89/391/EEC is, as already emphasised, by its intrinsic nature a Framework Directive setting key principles. Therefore, by setting additional requirements in relation to specific places, activities, risks or groups of workers should not cause coherence issues as the specific Directives were developed in line with the Framework Directive. However, as the specific Directives were adopted from 1989 to 2013, certain provisions of a general nature, which could be considered as part of a framework, have been introduced in the various specific Directives. It is now more a question of overall coherence of the OSH acquis than inconsistency. The section below describes these provisions and their possible inclusion within the Framework Directive. It also includes a section on external coherence where the analysis did not identify any inconsistencies or gap issues. One issue that deserves particular consideration is the more stringent approach taken by some ILO conventions which only some MSs have ratified.

6.1 EQC1: Coherence with other OSH Directives

EQC1: What, if any, inconsistencies, overlaps, or synergies can be identified across and between the Directives (for example, any positive interactions improving health and safety outcomes, or negative impact on the burdens of regulation)?

The requirement to conduct a risk assessment

The requirement to conduct a risk assessment is set as a general, ‘a minima’, principle in the Framework Directive, while most Directives regulating specific risks and requesting employers to carry out a risk assessment define in detail the elements/risks that must be covered by this assessment. However, these Directives contain provisions that are not directly linked to the specific scope and they could apply to all workers irrespective of the risks or the sector. Therefore, these requirements are additional to the general principles set in the Framework Directive. These may bring added value in relation to the specific risks covered by each specific Directive, as long as they are coherent with the general principles of the Framework Directive.

Most OHS Directives with a risk assessment procedure contain a requirement relevant to the update or periodical repetition of the risk assessment. However, this requirement varies from one Directive to another requiring that the risk assessment

must be kept up-to-date. Directive 89/656/EEC (PPE) provides that the assessment must be reviewed if any changes are made to any of its elements. The two mining extractive industry Directives (92/104/EEC and 92/91/EEC) require that the health document, which contains the risk assessment, must be kept up-to-date. According to all four physical agents Directives and Directive 98/24/EC (chemical agents at work), the risk assessment must be kept up-to-date on a regular basis, particularly if there have been significant changes which could render it out-of-date, or when the results of health surveillance show it to be necessary. Moreover, all four physical agents Directives set the obligation to carry out the risk assessment at suitable intervals. Finally, both Directive 2004/37/EC (carcinogens or mutagens) and Directive 2000/54/EC (biological agents) mention that the assessment must be renewed regularly and in any event when any change occurs. Such differences may be confusing for the employer, e.g. in terms of timing and circumstances, which trigger an update of the risk assessment. In workplaces with several agents, the employer may need to update or review the risk assessment under different circumstances for each agent. This can lead to additional burden for employers.

In some cases, requirements under the specific Directives establish a more multidisciplinary, integrated approach reflecting the complementarity of all CPMs when it comes to achieving the maximum possible degree of workers' protection. This connection between different CPMs could bring added value if associated with a general requirement set within the Framework Directive and applicable across all specific Directives. The analysis has identified two such instances:

- › All four physical agents Directives require that the employer must give particular attention, when carrying out the risk assessment, to appropriate information obtained from health surveillance, including published information, as far as possible. A similar requirement is set under Directive 98/24/EC (chemical agents at work); the employer must assess any risk to the safety and health of workers arising from the presence of chemical agents, taking into consideration where available the conclusions to be drawn from any health surveillance already undertaken. This connection between the results of health surveillance and the assessment of the risks can have an added value within the general principle of conducting a risk assessment.
- › All four physical agents Directives and Directive 92/85/EEC (pregnant/breastfeeding workers) provide that the risk assessment must be planned and carried out by competent services or persons taking particular account of the provisions of Article 7 of the Framework Directive (protective and preventive services).

The employer obligation to be in possession of a risk assessment

The Framework Directive requires employers to be in possession of an assessment of the risks to safety and health at work, including those facing groups of workers exposed to particular risks. With regard to this provision, one of the requirements set by the four physical agents Directives could apply to all Directives irrespective of the risk covered. These Directives require that the risk assessment are recorded on a suitable medium; according to national law and practice. Similarly, the data obtained from the risk assessment must be preserved in a suitable form to permit consultation at a later stage. This requirement is general

and reflects an aspect of the principle of prevention that could be applicable in all risk assessment procedures.

Risk management
measures derived
from the risk
assessment

The Framework Directive provides that subsequent to the risk assessment and as necessary, the preventive measures and the working and production methods implemented by the employer must ensure an improvement in the level of protection afforded to workers with regard to safety and health and be integrated into all the activities of the undertaking and/or establishment and at all hierarchical levels. The risk management measures set in the other Directives are very specific and cannot be replicated to all occupational risks with the exception of the provision of Directive 2013/35/EC (electromagnetic fields) requiring that the amended protection and prevention measures must be preserved in a suitable traceable form to permit consultation at a later stage.

Preventive and protective services

This requirement applies for each establishment/undertaking rather than in relation to specific risks. Therefore, the fact that most of the specific Directives do not include a relevant specific provision is justified, as every establishment and/or undertaking should have such services or persons designated as responsible for protective and preventive activities that cover all the risks present in this establishment or undertaking and all personnel (all groups of workers).

In one case, a specific Directive includes specific information on their duties in relation to one group of vulnerable workers; this could be extended to other groups of vulnerable workers.

Article 7 of the Framework Directive clearly states that the persons/services appointed to carry out preventive and protective activities in the establishment/undertaking must be informed of the factors known to affect, or suspect of affecting, the safety and health of workers in the establishment/undertaking. Directive 91/383/EEC (temporary workers) sets a requirement (to MSs) to make sure that workers, services or persons designated to carry out preventive and protective activities are informed of the assignment of temporary workers to the extent necessary for them to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment.

Information to workers

The Framework Directive sets out the requirement of providing information to workers in a general manner. This general wording could potentially cover and include every kind of specific information. Moreover, all specific Directives (apart from the ATEX Directive) also contain specific provisions on information for workers that apply to the specific risks or workplaces they cover. Furthermore, all these Directives apart from Directive 2004/37/EC (carcinogens or mutagens), Directive 2009/148/EC (asbestos), Directive 2000/54/EC (biological agents) and Directive 92/29/EEC (medical treatment on board vessels), include a 'without a prejudice clause' referring to Article 10 of the Framework Directive. This must not be considered as a consistency issue because these provisions:

- › either only repeat the requirement to provide information on all the measures to be taken concerning safety and health of worker that is already included in the Framework Directive information-related requirement;

- › or specify, provide more detail and list more examples in a non-exhaustive way, concerning the type/kind of information to be provided to workers, without contradicting the general principle set out in the Framework Directive.

However, in some cases, these additional details and examples of information to be communicated to the workers are more general and could bring added value to the general principles set in the Framework Directive:

- › Directive 2009/104/EC (work equipment), Directive 98/24/EC (chemical agents), Directive 92/57/EEC (temporary or mobile construction sites), Directive 92/104/EEC (surface and underground mineral-extracting industries Directive 92/91/EEC (mineral-extracting industries through drilling) and Directive 93/103/EC (work on board fishing vessels) require that the information should be comprehensible to workers concerned, not only in specific sectors of activity or in relation to specific equipment, but also in relation to, e.g., specific risks. This may entail additional cost (e.g. translation if needed for non-native speaker workers, simplification of technical information).
- › The four physical agents Directives as well as Directive 98/24/EC (chemical agents at work)¹¹, Directive 2009/148/EC (asbestos) and Council Directive 92/85/EEC (pregnant/breastfeeding workers) all specifically include the outcome/results of the risk assessment in the information to be communicated to workers and do not reserve this right only to workers with specific functions in protecting the safety and health of workers, or workers' representatives with specific responsibility for the safety and health of workers as under the Framework Directive. It would be more coherent including it directly in the Framework Directive.
- › The four physical agents Directives additionally require that information relating to the results of the risk assessment must include an explanation of their significance and potential risks. The scope of these Directives does not justify limiting this requirement only to them. Streamlining this requirement through inclusion in the Framework Directive would allow to improve the quality and comprehensiveness of the information provided to the workers.
- › The four physical agents Directives mention the circumstances in which workers are entitled to health surveillance as part of the information for workers. As health surveillance is a general requirement set out by the Framework Directive, it only seems logical that information on the circumstances under which workers are entitled to health surveillance is part of the general information for workers requirement.
- › The four physical agents Directives and Directives 2004/37/EC (carcinogens or mutagens), 2009/148/EC (asbestos) and 2000/54/EC (biological agents) include safe working practices to minimise exposure or risks from exposure as part of the information for workers. Information on safe working practices

¹¹ Note that it then also applies to carcinogens, unless provisions of CMD are more stringent.

could be part of the information communicated to workers also in other cases (e.g., manual handling of loads, display screen equipment, work equipment, sector-specific Directives etc.). The same can be argued about the requirement to provide workers with information on how to detect health effects of exposure and how to report them, which is only set in the physical agents Directives.

- › Some Directives lay down specific requirement on information for workers in particular cases; Directive 2004/37/EC (carcinogens or mutagens) in case of abnormal situations, Directive 2009/148/EC (asbestos) in case of excess of exposure limit values, Directive 2000/54/EC (biological agents) in cases of accidents or incidents. Workers must be informed as soon as possible of the occurrence of such cases and receive information on the causes and measures to rectify the situation. Similar to this information of exceptional nature is the requirement set out under Directive 2009/104/EC (work equipment) to ensure that all workers have at their disposal adequate information that contains at least information concerning foreseeable abnormal situations. Accidents, incidents or abnormal situations may occur in relation with other risks and not only carcinogens/mutagens, asbestos, biological agents and work equipment (e.g. chemicals, ATEX) and in all types of workplaces.
- › Only Directive 91/383/EEC (temporary workers) sets a requirement regarding the timing of providing information to workers stipulating that this should be done before workers take up activity. Although this is justified by the specific character of temporary or fixed-term employment, it reflects a general principle that could be specified in the Framework Directive.

Training of workers

The Framework Directive sets the general principle of ensuring adequate training to all workers, in particular in the form of information and instructions specific to their workstation or job. At the same time, most specific Directives also contain specific provisions on training of workers that apply to the specific risks or workplaces they cover¹². Most of these provisions include a 'without prejudice' clause referring specifically to Article 12 of the Framework Directive. This not be considered a consistency issue because, as in the case of the requirement relevant to information for workers, these provisions:

- › either only repeat the requirement to provide information on all the measures to be taken concerning safety and health of worker that is already included in the Framework Directive information-related requirement;
- › or detail and list more examples in a non-exhaustive way, concerning the type/kind of information to be provided to workers, without contradicting the general principle set out in the Framework Directive.

¹² Council Directive 89/654/EEC (workplace), Council Directive 92/57/EEC (temporary or mobile construction sites), Council Directive 92/29/EEC (medical treatment on board vessels) and Council Directive 92/85/EEC (pregnant/breastfeeding workers) do not include a training of workers requirement.

However, in some cases, the additional details and examples of training that should be provided to the workers are more general and could bring added value to the general principle set in the Framework Directive:

- › Although this is only mentioned in Directive 89/656/EEC (PPE), a requirement for the employer to arrange demonstrations could constitute an effective form of training, complementing information and instructions in various other cases, apart from the use of PPE. For example, demonstrations would also be compatible with work equipment in relation to manual handling of loads (e.g. demonstration of how to lift loads) but also in relation to specific risks (e.g. demonstration of how to execute tasks involving biological agents or asbestos).
- › In line with demonstrations, training should really result in workers being able to perform and execute their tasks safely, bearing in mind the risks they are exposed to when tasks are not performed correctly. Such a requirement is only explicitly set out in Council Directive 90/269/EEC (manual handling of loads), which requires that 'workers receive, in addition proper training, information on how to handle loads correctly and the risks they might be open to, particularly if these tasks are not performed correctly'. Although this requirement itself relates to the scope of the specific Directive, its rationale could be for general application, for example in relation to how to use work equipment and display screen equipment and what could happen if it is not used properly, how to work under conditions of noise, vibration, etc. and what could happen if tasks are not executed according to health and safety requirements, how to handle carcinogens or mutagens, chemical agents, etc.
- › Directive 89/656/EEC (PPE), Directive 2009/148/EC (asbestos), Directive 92/104/EEC (surface and underground mineral-extracting industries), Directive 93/103/EC (work on board fishing vessels) explicitly mention that training (in its form of providing instructions) must be understandable/comprehensible to the workers concerned. The scope of the above-mentioned Directives does not seem to provide a sufficient justification for this requirement being included only therein; instructions given in the course of training should be comprehensible to workers concerned not only in specific sectors of activity or in relation to specific equipment or risk factors, but in general.
- › All four physical agents Directives include safe working practices among the topics to be covered in training. Similarly, precautions to prevent exposure are listed among the issues on which training must be provided in Directive 2004/37/EC (carcinogens or mutagens) that also applies to asbestos, Council Directive 98/24/EC (chemical agents at work), Directive 2000/54/EC (biological agents). In reality, this requirement already applies to all risks. Therefore, it could be set as a general principle in the Framework Directive.
- › Only the new electromagnetic fields Directive (2013/35/EU) links training (and information) with workers at particular risk. Workers at particular risk could be subject to particular attention when drawing up and/or providing training. As this group of workers can be present in any workplace and perform activities

that could entail any of the risks covered by the Directives, any link between them and training would make sense in a more general context and not exclusively in relation to electromagnetic fields.

- › Directive 2004/37/EC (carcinogens or mutagens), Directive 2000/54/EC (biological agents) and Directive 2009/148/EC (asbestos) all include special circumstances and what to do in that case among the issues to be covered by training. Incidents may occur in relation to other risks and not only carcinogens/mutagens and biological agents, whereas emergency procedures might be necessary to be followed in other cases apart from activities with asbestos. In principle, all workers in all sectors of activity should be prepared and able to cope with any potential exceptional situation like an incident, an accident etc.

Health surveillance

Article 14 of the Framework Directive lays a – rather abstract – ground rule on health surveillance. Systematically, health surveillance is not set in the same way as other employer obligations; instead of Section II of the Framework Directive entitled ‘Employers’ obligations’ it is part of Section IV ‘Miscellaneous provisions’. This is linked to the fact that the provision of Article 14 obliges the employer to ensure that all workers receive health surveillance appropriate to the health and safety risks they incur at work, while it is up to national transposition and national legislation to ensure that an adequate system of health surveillance is established.

Several specific Directives have laid down detailed requirements for the health surveillance of workers, which do not contradict but rather further specify the scope of the requirement, providing more details. The conditions in which health surveillance is required, as well as more specified arrangements for it, are set in the legal act transposing the Framework Directive in the majority of MSs.

In this context, there are some general details found under some specific Directives that could potentially bring added value to the general principle of health surveillance under the Framework Directive:

- › Only Directive 2013/35/EU (electromagnetic fields) specifies that medical examinations or surveillance must be made available during hours chosen by the worker. This is not in any way linked with the specific character of the risks deriving from electromagnetic fields but is rather applicable in every health surveillance procedure. Therefore, it could be added to the Framework Directive.
- › Directive 2006/25/EC (artificial optical radiation) sets an additional, more specific requirement for the employer to ensure that the doctor, the occupational health professional or the medical authority responsible for the health surveillance, has access to the results of the risk assessment where such results may be relevant to the health surveillance. There is a similar requirement under Directives 2004/37/EC (carcinogens or mutagens), 2009/148/EC (asbestos) and Directive 2000/54/EC (biological agents) according to which the doctor or the authority responsible for the health surveillance must be familiar with the exposure conditions or circumstances of each worker. This requirement is not linked with the specific character of the

risks deriving from electromagnetic fields but is rather applicable in every health surveillance procedure. Therefore, it could be added to the Framework Directive.

- › The Framework Directive does not go further and does not set specific follow-up measures to health surveillance, such as the employer must be informed of any significant findings from the health surveillance, taking into account any medical confidentiality¹³, must review the risk assessment¹⁴, must take into account OSH professionals' advice in implementing risk management measures including the possibility of alternative work assignment of workers concerned¹⁵. It does not seem justified that follow-up measures as a general principle are applied only for some agents. The same provision could apply to all health surveillance procedures as it is not exclusively linked with the specific nature of each risk and therefore it could be included in the Framework Directive.

Health records	The Framework Directive does not regulate health records, whereas almost all specific Directives containing a provision dedicated to health surveillance, include specific requirements and specifications about health records (e.g. access rights, duration). The requirement to keep health records is directly linked with the requirement to ensure that workers receive health surveillance appropriate to the health and safety risks they incur at work. Therefore, it does not seem justified to include a relevant obligation only in relation with specific risks. This is an obligation that could be streamlined under the Framework Directive and apply to all health surveillance procedures.
Consultation of workers	The provisions on consultation of workers do not give rise to any coherence issues. Most of the Specific Directives simply make a cross-reference to the relevant provisions of the Framework Directive. The remaining ones set specific consultation requirements that cannot be replicated into the Framework Directive.
Limit values	The limit values and their related procedures of adoption are dealt with under the specific chemical and physical agents Directives. No potential coherence issues are identified here.
Workers at particularly sensitive risks	A general definition of 'workers at particularly sensitive risk' is not included in the EU Framework Directive; only the new electromagnetic fields Directive (2013/35) provides a definition of workers at particular sensitive risk within the scope of this specific Directive. However, it is not considered necessary to set a specific definition of particularly sensitive risk groups under the Framework Directive since

¹³ Directive 2002/44/EC (vibration), Directive 2006/25/EC (artificial optical radiation)

¹⁴ Directive 2002/44/EC (vibration), Directive 2003/10/EC (noise), Directive 2006/25/EC (artificial optical radiation), Directive 2004/37/EC (carcinogens or mutagens), Council Directive 98/24/EC (chemical agents at work)

¹⁵ Directive 2002/44/EC (vibration), Directive 2003/10/EC (noise), Directive 2006/25/EC (artificial optical radiation) – with no mention of reassignment, Council Directive 98/24/EC (chemical agents at work)]. Similarly, according to Directive 2009/148/EC (asbestos),

this notion may evolve in time and may differ depending on the specific occupational risks.

Other aspects

Reporting obligations

The Framework Directive only contains one reporting obligation, which requires employers to submit to the responsible authorities' reports on occupational accidents suffered by their workers. Several of the other OSH Directives contain some specific reporting obligations specifically designed for the risk they cover and therefore would not need to be streamlined under the Framework Directive (e.g. prior notice to be submitted to authorities before construction under Directive 92/57/EEC, detailed report to be forwarded to competent authorities on any occurrences at sea which affect the safety of workers under Directive 93/103/EC). No issues of coherence were therefore identified related to reporting obligations.

Inspection and enforcement measures

The Framework Directive does not contain any inspection requirements, apart from a general requirement set in Article 4(2), which states that MSs must ensure adequate controls and supervision without further specification.

Inspections are only implied when providing that workers' representatives must be given the opportunity to submit their observations during inspection visits by the competent authority. The area of labour inspection is in fact one of the areas where the Commission¹⁶ has already identified a gap by recognising that it is not covered or only partly covered by legislation and EU policies (see also below section on coherence with ILO instruments). Such inspections are only required by Directive 92/29/EEC (medical treatment on board vessels) specifically concerning vessels and medical supplies.

Provision on substitution

Article 6 of the Framework Directive requires employers to implement the measures necessary for the safety and health protection of workers based on several principles. One of these principles is to replace the dangerous by the non-dangerous or the less dangerous. Such requirement has been implemented and specified under Directive 98/54/EC (chemical agents), Directive 2004/37/EC (carcinogens and mutagens) and Directive 2000/54/EC (biological agents). There are no overlaps between these substitution requirements that are very specific and the related general principle in the Framework Directive.

Moreover, the Framework Directive does not set a general principle on penalties; only Directive 2013/35/EU (electromagnetic fields), Directive 2006/25/EC (artificial optical radiation) and Directive 2009/148/EC (asbestos) require that MSs must provide for adequate penalties in the event of infringement of transposing legislation. Directive 94/33/EC (young people at work) also requires that MSs must

¹⁶ COM (2006) 249 final, Promoting decent work for all: The EU contribution to the implementation of the decent work agenda in the world, Brussels 24.05.2006, p.4, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0249:FIN:EN:PDF>

lay down any necessary measures to be applied in the event of failure to comply with transposing legislation.

Finally, only Directive 92/85/EEC (pregnant/breastfeeding workers) sets a specific judicial protection provision to enable all workers who feel themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process (and/or, in accordance with national laws and/or practices) by recourse to other competent authorities.

EU Stakeholders' views

Almost no stakeholders (21 out of 23) identified any internal coherence issue in relation to the Framework Directive.

One stakeholder highlighted the high level of coherence between the Framework Directive and the specific directives. However, the same stakeholder noted that individuals involved in the implementation of OSH Directives would benefit from better guidance through the relevant requirements of the applicable legislation.

Another stakeholder underlined synergies between Directive 89/391/EEC (Framework Directive) and Directive 92/57/EEC (temporary or mobile construction sites Directive) as regards the provision of the latter to appoint a coordinator for safety and health matters. The stakeholder considers the provision to contribute effectively to raising awareness and spreading knowledge about potential hazards and occupational risks among workers.

Information from the NIRs

Two MSs specifically referred to the Framework Directive noting that the body of regulation on occupational safety and health is very broad and complex. Notably, they argue that an unnecessary burden derives from the consideration and the practical implementation of the CPMs (e.g. risk assessment, consultation and participation of workers, information, training and instruction of workers, health surveillance, and protective and preventative services requirements). Three other MSs have explicitly stated that there are no difficulties and/or contradictions in relation to the application of the requirements of Directive 89/391/EEC, with one of them considering the general provisions useful. They further considered that there is no incoherence between the general provisions of the Framework Directive and the specific requirements of the individual specific Directives on the same matter.

National stakeholders and experts' views

Stakeholders from one MS found that the basic obligations of the Framework Directive, namely the risk assessment, consultation and participation of workers, information, training and instruction of workers, health surveillance, and protective and preventative services requirements were overlapping with the individual Directives containing the same type of obligations. Along the same lines, stakeholders in another MS flagged that the repetition of the requirements to conduct a risk assessment and to carry out health surveillance in the Framework Directive and other individual OSH Directives was sometimes creating confusion among employers.

Overall EQC1 answer

Since the general principles enshrined in the Framework Directive are the basis for the provisions in the other OSH Directives, there are naturally many synergies between the Framework Directive and the other OSH Directives. Such synergies are however not considered as overlaps or inconsistencies. In other words, there

appears from the perspective of the Framework Directive and for the OSH acquis as a whole not to be any severe coherence issues.

6.2 EQC2: Coherence with other EU policies

EQC2: How is the interrelation of the Directives with other measures and/or policies at European level also covering aspects related to health and safety at work, such as EU legislation in other policy areas (e.g. legislation: REACH, Cosmetics Directive, Machinery Directive, policy: Road Transport Safety, Public Health, Environment Protection), European Social Partners Agreements or ILO Conventions?

Other EU, non-OSH
legal acts

Directive 2002/14/EC (Informing and consulting of workers)

The provisions on information and consultation of workers and/or their representatives in the Framework Directive are specifically related to issues concerning occupational safety and health. In Directive 2002/14/EC the provisions on information and consultation are very general and constitute minimum requirements. There is no mention of health and safety in Directive 2002/14/EC. There appears to be no coherence problems between the two directives. In order to facilitate better synergy between the Framework Directive and Directive 2002/14/EC, it could be considered to incorporate a reference to the Framework Directive in Article 9 of Directive 2002/14/EC, which is a provision that deals with the relationship to other EU provisions.

Directive 2003/88/EC (working time)

Directive 2003/88/EC (working time) sets common minimum protective standards against occupational safety and health risks posed by overwork or inadequate rest periods. The Directive has a direct link with the OSH acquis as noted in a recent report on the implementation of Directive 2003/88/EC¹⁷ “there are effects on health and safety which result from a combination of different characteristics of working hours and their interactions”. Therefore, there is a positive synergy between Directive 2003/88/EC and the Framework Directive as the implementation of the Working Time Directive requirements contribute to the prevention of health and safety risks deriving from excessive or night working hours.

Directive 2009/38/EC (European Works Council)

Directive 2009/38/EC (European Works Council Directive) aims to improve the right to information and to consultation of workers in Community-scale undertakings and Community-scale groups of undertakings. Directive 2009/38/EC does not refer specifically to health and safety matters. There appears to be no coherence issues between the two Directives due to their different scope. In order to facilitate better synergies between the Framework Directive and Directive 2009/38/EC, it could be

¹⁷ Deloitte Consulting CVBA/SCRL for the European Commission, DG for Employment, Social Affairs and Equal Opportunities Study to support an Impact Assessment on further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation Final report, 21 December 2010

considered to incorporate a reference to the Framework Directive in Article 12(4) of Directive 2009/38/EC, which is a provision setting a without prejudice clause with other EU legal texts including Directive 2002/14/EC. Conversely, the Working Councils could play a role in ensuring a harmonized and balanced implementation of OSH requirements across the undertaking or group of undertakings.

Other EU measures and policies

This section considers coherence between Directive 89/391/EEC and various relevant EU measures and policies.

The Eco-innovation Action Plan¹⁸

This action plan underlines that new skills are required to facilitate the transition to a greener economy and to provide related reinforced skilled workforce for businesses. The Commission committed to develop a European Sector Council on skills for green and greener jobs to facilitate exchanges of information between the MSs on skills profiles, training programmes and skills gaps in the environmental goods and services industry and in other relevant industries

This plan should therefore support and allow a better implementation of the worker obligation to make correct use of machinery, apparatus, tools, dangerous substances, transport equipment, other means of production and personal protective equipment in the 'green jobs' sector and the employer obligation to ensure that each worker receives adequate safety and health training.

A Stronger European Industry for Growth and Economic Recovery¹⁹

Under this Communication, the Commission considers it necessary to invest in skills and training to accompany structural changes in the European industry. It stresses that skills are a key driver for growth, employment and competitiveness and that they lay the foundation for productivity and innovation. In order to improve workers' skills and to match skills and jobs, the Commission has committed under this Communication to:

- › Develop a European multilingual classification of Skills, Competences and Occupations.
- › Promote the creation of the European Sector Skills Councils and of Knowledge and Sectors Skills Alliances and support the development of multi-stakeholder partnerships in the ICT.
- › Promote the uptake of standardised skills certification schemes through the Intelligent Energy Europe Programme in 2013/2014.

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and social committee and the committee of the regions innovation for a sustainable Future - The Eco-innovation Action Plan.

¹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Stronger European Industry for Growth and Economic Recovery Industrial Policy Communication Update' {SWD(2012) 297 final}

- › Support MSs in 'rethinking skills' by providing them with policy guidance on implementing efficient reforms and developing the effective education and training systems that will lead to a better skills supply.

Such measures should therefore support and allow a better implementation of the worker obligation to make correct use of machinery, apparatus, tools, dangerous substances, transport equipment, other means of production and personal protective equipment in new industrial sectors.

A renewed EU strategy 2011-14 for Corporate Social Responsibility²⁰

According to the Commission, 'corporate social responsibility' (CSR) is a concept whereby companies on a voluntary basis integrate social and environmental concerns in their business operations and in their interaction with their stakeholders. Workers' health and safety conditions are a key component of corporate social responsibility. Under this plan, the Commission committed among other things to:

- › launch a process with enterprises and other stakeholders to develop a code of good practice for self and co-regulation exercises, which should improve the effectiveness of the CSR process.
- › facilitate the better integration of social and environmental considerations into public procurement as part of the 2011 review of the Public Procurement Directives.
- › consider a requirement on all investment funds and financial institutions to inform all their clients (citizens, enterprises, public authorities, etc.) about any ethical or responsible investment criteria they apply or any standards and codes to which they adhere.
- › present a legislative proposal on the transparency of the social and environmental information provided by companies in all sectors.

This EU initiative is seen as an important incentive for employers to implement measures from the Framework Directive and other OSH Directives.

Other international instrument

The right to receive information concerning safety and health under the Framework Directive constitutes a specific aspect of the right to be informed, which is established as a workers' right in the Charter of Fundamental Rights of the EU (Article 27) and the European Social Charter (Article 21).

On the international level, the EU and ILO have a longstanding cooperation on the field of occupational health and safety, both within Europe and in global and regional fora. The EU contributed to the ILO Promotional Framework for OSH Convention no 187 (2007), the 2003 ILO global OSH strategy and the Safe Work

²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681 Final

programme²¹. For MSs that have ratified the relevant ILO OSH Conventions mentioned below, more stringent provisions compared with the EU OSH acquis lead to additional compliance obligations and at the same time constitute a competitive disadvantage towards MSs that have not ratified the same Convention and do not have to meet the international requirements.

The 1981 ILO Occupational Safety and Health Convention (No. 155), ratified by 16 MSs, applies to all branches of economic activity and to all workers, including public workers. It does not exclude specific cases as the Framework Directive does with certain specific public service activities (armed forces, police, civil protection) but State-parties to the Convention may however list, upon ratification, any branches and/or categories of workers that are excluded.

In the same spirit as the Framework Directive, the ILO Convention also contains general principles, on one hand as obligations set upon the States (e.g. to formulate, implement and review public policy, enforcement system), and on the other hand as obligations to the employers on the level of the undertaking. These obligations are consistent with the ones covered under the Framework Directive (i.e. ensure safe workplaces, machinery, equipment as well as protective clothing and equipment, ensure safe use of chemical, physical and biological agents, provision of emergency measures, cooperation of employers in shared undertakings, workers' consultation, information and training, no cost for workers).

Moreover, the 2002 ILO Protocol to the Occupational Safety and Health Convention (P.155), ratified by five MSs, has a broader scope as it does not exclude domestic workers. It aims to strengthen recording and notification procedures for occupational accidents and diseases and to promote the harmonisation of recording and notification systems with the aim of identifying their causes and establishing preventive measures. It provides more stringent or detailed requirements on obligations already required in the Framework Directive (recording and notification of occupational accidents and information for workers).

The 1985 ILO Occupational Health Services Convention (No. 161), ratified by 11 EU MSs, especially refers to occupational health services, in the sense of the preventive and preventive services of Article 7 of the Framework Directive. The Convention sets the general principles of national policy and organisation of such schemes on national level. It requires the specific functions of these services that include, inter alia, conducting the risk assessment, surveillance of the factors in the working environment and working practices which may affect workers' health and health surveillance, advice on planning and organisation of work, collaboration in providing information, training and education in the fields of occupational health and hygiene and ergonomics.

Finally, another ILO instrument of a general character, is the 2006 Promotional Framework for Occupational Safety and Health Convention (No. 187), ratified by

²¹ ILO, 'The ILO and the EU, partners for decent work and social justice – Impact of ten years of cooperation', ILO office, November 2012, available at http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_195135.pdf

11 MSs. This instrument focuses on the continuous promotion of a national preventative safety and health culture, mainly by setting obligations to MSs in order for them to achieve progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health. Recitals 8 and 9 of the Framework Directive also state the responsibility of MSs to encourage improvements, despite the differences in their legislative systems.

Overall, there is a consistent approach between the above-mentioned ILO instruments and the Framework Directive. It should however be noted that there are some differences. More specifically some requirements are more stringent in the ILO instruments than the general principles laid down in the Framework Directive:

- › Provisions on inspection and enforcement are not included in the Framework Directive, therefore the ILO Conventions could add value to the OSH acquis²².
- › The scope of application of Convention no.155 does not exclude domestic workers, as it is the case with the Framework Directive. It should be noted that the Council Decision 2014/51/EU of 28 January 2014 authorises MSs to ratify, in the interests of the European Union, the Convention concerning decent work for domestic workers, 2011, of the International Labour Organisation (No. 189).
- › The 2002 Protocol also has a broader scope of application that includes domestic workers and establishes in some cases (record-keeping, information for workers, notifications) more stringent or detailed requirements than the EU OSH acquis²³.

EU Stakeholders' views	Stakeholders have not identified any coherence issues in relation to the interaction between the Framework Directive and other EU policies or legislation.
National stakeholders and experts' views	None of the national stakeholder interviews identified coherence issues between the Framework Directive and other non-OSH EU legal acts and policies.
Information from the NIRs	None of the MSs have identified coherence issues between the Framework Directive and other non- OSH EU legal acts and policies.
Overall EQC2 answer	Safety and health at work – and generally working conditions – are addressed by other EU policies, hereunder other non-OSH Directives, action plans and strategies. Furthermore, other international organisations – in particular the ILO – pursue improvements to working conditions. These different actions seem, however, to be in line with the general principles of the Framework Directive and so they do not give rise to coherence issues.

²² European Commission – DG Employment, Social Affairs and Inclusion, Analysis – in the light of the European Union acquis- of the ILO Conventions that have been classified by the International Labour Organisation as up to date, Luxembourg, 2014, p.89.

²³ Ibid.

7 Conclusions and recommendations

The final chapter presents the conclusions and recommendations from the above analyses of implementation, relevance, effectiveness and coherence respectively. Subsequently, we synthesise the presented results and discuss in general terms Directive-specific crosscutting issues and key findings, which in turn feed into the overall conclusions and recommendations.

7.1 Implementation

The Framework Directive has been transposed – with a few early stage problems ...

Although since 1990, numerous infringement proceedings concerning the national transpositions of the Framework Directive were initiated, it seems that most of the early stage problems have been overcome, as only few minor discrepancies in the national transposing legislation remain. All MSs have implemented more detailed or stringent requirements than those laid down in the provisions of the Framework Directive. Hence, there are no signs that their implementation has impeded improvements to occupational safety and health conditions in the MSs.

... and the provisions are complied with

Among undertakings in the MSs, compliance with the Framework Directive provisions is good. However, higher compliance is registered for large establishments than for SMEs. Most undertakings regularly carry out risk assessments and do follow up on these, and they have appointed internal safety and health representatives. In addition, workers are generally kept informed and consulted on preventive services. However, OSH training seems to be insufficient in a significant share of the establishments.

Compliance is encouraged by accompanying measures ...

This good level of compliance is encouraged by a number of accompanying actions taken at both MS level and EU level to encourage the achievement of the safety and health targets of the Framework Directive. These include guidance documents, support tools, awareness-raising campaigns, education and training activities, and financial incentives. Still, there are indications of information gaps, particularly for SMEs, and of uncoordinated and unsystematic information.

... and by a number of enforcement measures

All MSs enforce the Framework Directive provisions through competent enforcement authorities and through criminal and administrative sanctions. There are, however, indications of a lack of resources in labour inspectorates, necessitating efforts to improve training and international collaboration, and

increase investments in IT support for data gathering. This should not least be seen in the light of emerging risks that call for new skills.

Increased need to address vulnerable groups ...

Despite the fact that the Framework Directive addresses vulnerable groups, three Directives specifically target these groups. Therefore, one cannot directly attribute improvements to the Framework Directive. Due to trends, such as an ageing workforce, higher employment rates for women, more migrant workers, and more workers with temporary contracts, there is an increased need to address the specific issues affecting these vulnerable groups.

... and SMEs and microenterprises

Similarly, there is a tendency to support SMEs and microenterprises in complying with occupational safety and health provisions through lighter regimes and incentives. However, there is still a tendency for non-compliance among such undertakings – although to a lesser degree among the financially sound establishments and those working in high-risk areas.

7.2 Relevance

The Framework Directive has been relevant ...

The Framework Directive has been relevant in the sense that it serves as a basis for the 23 other specific Directives covering specific risks connected with safety and health in the workplace. Furthermore, statistics on fatal and non-fatal accidents, as well as work-related health problems show that it has been relevant in the sense that many working days and lives each year are lost – although there has been a significant decrease in the number of occupational injuries in recent years. In other words, work-related injuries have burdened and are still burdening individual workers, their employers, and society.

... and remains so

The Framework Directive remains relevant for the future, regardless of the developments in safety and health at work in the EU. Old risks will recede as we continue to learn more about chemicals and other workplace contaminants, the effects of poorly designed equipment and processes, and other workplace hazards; and new risks will emerge, directing attention to e.g. nanomaterials and psychosocial risks as well as to an ageing workforce and increased use of green technologies and alternative energy sources.

7.3 Effectiveness

The Framework Directive has helped securing occupational safety and health ...

With the Framework Directive being the basis for the 23 specific Directives, it is difficult to assess how much of the observed changes to occupational safety and health in the MSs can be attributed to the Framework Directive and how much should be attributed to the other Directives. Nevertheless, our analysis – including the views of both national and EU stakeholders consulted during this evaluation – suggests that the Framework Directive has positively affected enterprises' behaviour regarding ensuring occupational safety and health in the MSs. This has in particular been the case for the large enterprises, and less so for SMEs and microenterprises. Such lower effects are due to difficulties in complying with provisions, related to a lack of financial resources and of safety and health expertise and cultures.

<p>... by a number of different provisions</p> <p>...</p>	<p>This impact has been caused by a number of different provisions. Although we have argued that the CPMs and the other KRs work in tandem to produce impacts, there is a tendency that both national stakeholders and EU stakeholders put relatively most importance on risk assessments as they are seen as the foundation for adopting a risk prevention culture rather than a more reactive approach to safety and health.</p>
<p>... and via enforcement activities</p>	<p>Sanctions and other related enforcement measures and activities are assessed to have contributed significantly to the effectiveness of the Framework Directive. The measures of highest importance seem to be combining enforcement with guidance measures, increased frequency of inspections, and monitoring of enterprises where problems have previously been identified. Having said that, effectiveness could be higher as many stakeholders consider that the current level of enforcement is not always satisfactory, and that there seems to be a trend towards fewer resources being allocated to enforcement activities.</p>
<p>Benefits and costs</p>	<p>While the benefits and costs to society and the employers as a result of occupational safety and health activities are addressed at the OSH acquis level, the stakeholders interviewed have attributed some of these to the Framework Directive. Hence, the implementation of the Framework Directive has involved compliance and administrative costs and has led to less occupational injuries.</p>
<p>Broader impacts</p>	<p>The broader impacts of occupational safety and health activities are primarily assessed at the OSH acquis level. Some national stakeholders associate the wide-reaching impacts to the implementation of the Framework Directive, and it is a held view across all MSs that the Framework Directive, and OSH legislation in general, contributes to establishing a level playing field by setting common standards for safety and health. The importance of this effect has been especially highlighted in the context of the economic crisis, and how the Directive's minimum requirements have helped to avoid social dumping.</p> <p>Stakeholders from several MSs also highlight that the OSH common standards, which are intended to create a level playing field in the EU, in reality play against microenterprises and SMEs as these companies are exposed to the greatest financial difficulties related to the legislation; such as conducting risk assessments, replacing and modernising work equipment, performing the medical examinations, etc.</p> <p>Hence, overall, it is assessed that the Framework Directive has achieved its stated objective of introducing measures to encourage improvements in the safety and health at work. This assessment is supported by the above conclusions – i.e. that the Framework Directive overall is implemented and complied with, that it remains relevant, and that it has led to positive workplace impacts as well as safety and health impacts, and that it has contributed to levelling the playing field by setting common requirements for occupational safety and health in the EU.</p>

7.4 Coherence

No coherence issues vis-à-vis other OSH Directives ...

Since the general principles contained in the Framework Directive form the basis for the provisions in the other OSH Directives, there is naturally high synergy between the Framework Directive and the other OSH Directives. This synergy is not seen as overlapping or as inconsistent. From the perspective of the Framework Directive, and for the OSH acquis as a whole, there does not appear to be any coherence issues.

... nor vis-à-vis other EU policies

Safety and health at work – and more generally working conditions – are addressed by other EU policies, hereunder other non-OSH Directives, action plans and strategies. Furthermore, other international organisations – in particular the ILO – pursue improvements to working conditions. These different actions seem, however, to be in line with the general principles of the Framework Directive and so they do not give rise to coherence issues.

7.5 Overall discussion

Implemented, relevant, effective, and no coherence issue

In conclusion, we find that the Framework Directive has generally been well implemented in the MSs. The Directive remains relevant, and it has been effective and has not given rise to coherence issues.

Alternative structure of OSH acquis

During the analysis, we have also contemplated whether these achievements would have been as successful or even more successful with an alternative structure of the OSH acquis – e.g. having one Directive similar to the Framework Directive, but with a number of annexes instead of the 23 specific Directives. An argument in favour of this is that this would make the OSH acquis more streamlined than it is now. However, we have not identified any major overlaps/inconsistencies. An argument against change is that the implementation of a completely new Directive with annexes in national legislation would be an administrative burden at this time.

Focus on vulnerable groups and SMEs

On several occasions, we have discussed the possible need to address safety and health of vulnerable groups – in particular within SMEs and microenterprises. This discussion has also included the issue of whether such specific targeting can be accommodated within the present structure of the OSH acquis – hereunder whether it should take place within the Framework Directive itself, or whether it is more appropriate to make use of specific Directives

Furthermore, since SMEs represent more than 99 % of all enterprises in Europe, it is not easy to see how targeting efforts can be stepped up. Having said that, the microenterprises may increase compliance with provisions through more proactive guidance. Actually, adopting a 'think small first' principle could also benefit large companies. In other words, smarter regulation is needed rather than more regulation.

Psychosocial risks

One aspect of workplace health currently only implicitly addressed by the Framework Directive and not effectively covered in any individual Directive, is the impact of psychosocial risks on health and wellbeing. Such risks are widely

recognised as a cause of work-related absence, and stress is currently regarded as the second most frequently reported work-related health problem in the EU²⁴.

A number of stakeholders, particularly among employers, have expressed concern that it is difficult or impossible for an employer to differentiate between work and non-work risks and that this could unfairly penalise employers for risks that they have no control over. However, such arguments can be applied to other risks, which are not unique to the workplace including those relating to MSDs and some physical agents such as noise. However, in each case it is possible to identify workplace sources of such risk and take steps to safeguard workers, so this dichotomy does not absolve employers from taking action. This issue was explored with stakeholders during the validation seminar and although not all participants appeared to accept this argument, the majority of those who actively expressed a view appeared to support it.

Given the considerable negative impact on health of psychosocial risks, it is clear (and appears to be generally if not universally accepted) that some form of action is required. What is not clear is the nature of such action. Many of the factors giving rise to such problems are well known. However, given their complexities and interactions they clearly do not readily lend themselves to the type of prescriptive directive (possibly incorporating 'exposure limits') favoured by some MSs. Equally, some stakeholders are strongly opposed to what they see as 'just' guidance. Clearly, some action in this area is desirable.

Apart from no action at all (on which there seems to be agreement is not an option), three possible approaches can be outlined (although there are undoubtedly more). These are a non-legislative approach based on the use of (agreed) guidance, goal-setting legislation, and prescriptive legislation. At the validation seminar, the option of amending the Framework Directive to explicitly mention psychosocial risks (to make their inclusion as risks explicit), and addressing the issue by information and guidance was not universally well received, although some participants did endorse a fully non-legislative approach. Others however expressed a preference for a more detailed legislative solution.

The extensive research literature on psychosocial risks, including the interaction between occupational and non-occupational factors, makes this a complex field in which to enact legislation. However, comments and responses collected during the course of this study, again supplemented by comments from OSH experts, suggest that there is less motivation for ameliorative action in the absence of legislation, implying that guidance alone is less likely to be effective.

The complexities and interactions of different risk factors suggest that a prescriptive approach would not provide an effective tool for controlling psychosocial risks. However, the OSH culture in some MSs does not readily lend itself to a more goal-setting legislative path. As the prescriptive approach appears to be that favoured in some MSs (possibly the majority), it is suggested that consideration is given to commissioning a scientific assessment of the feasibility of

²⁴ <https://osha.europa.eu/en/topics/stress>

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.

7.6 Overall conclusion and recommendations

Overall conclusion

Although the above discussion does not alter the overall conclusion that the Framework Directive has fulfilled its objectives, it does give rise to a few recommendations:

Keep the OSH acquis structure – but streamline Directives

Several times during our analysis, we considered the suitability of a goal-oriented Framework Directive (i.e. process-based) as a basis for the specific Directives, many of which are more prescriptive by nature. In this context, we looked into the possibility of changing the OSH acquis structure by assembling the provisions of the Framework Directive and the 23 specific Directives into one completely new Directive with annexes. The strength is considered to be the ease of updating annexes when needed compared with that of updating specific Directives. However, the weakness is a heavy administrative burden arising from implementing it in national legislations.

While it is also the view of most stakeholders consulted during the evaluation, we recommend keeping the OSH acquis structure as it is – i.e. with a Framework Directive and specific Directives.

Still, we have identified a number of CPMs, such as risk assessments, that are dealt with both in the Framework Directive and in some of the specific Directives.

Hence, we recommend a streamlining of the OSH acquis specifying for example in the Framework Directive what is meant by risk assessment and by risk prevention measures. This should not be repeated in the specific Directives, not least to avoid confusion. However, where appropriate the specific Directives should explain how these provisions lead to effective risk management within the given topic addressed.

Improved formulations of goals

As mentioned above, it leads to some variation in the OSH acquis provisions having both goal-oriented and more prescriptive Directives. As a rule, we assess that there are benefits from having clearer goals, not least to improve the Commission's monitoring and evaluation possibilities and so to improve information about needs for revisions. Another benefit is that this requires the national stakeholders pursue the same goals – at least to some extent.

Hence, assuming that it is the aspiration for the OSH acquis to become more goal-oriented in the future, we recommend that this is done when revisions to the Directives' areas are made, e.g. during a streamlining process. This may also require revisions to the Framework Directive in order for it to remain a solid basis for the now more goal-oriented specific Directives. However, our analysis shows that it will not be straightforward to formulate precise goals for the Framework Directive – and for many of the other Directives.

Improved provisions During the streamlining process, it may also be suitable to revise some of the Framework Directive provisions and introduce new. For example, a number of stakeholders have claimed that division of responsibilities for carrying out preventive and protective activities could be made clearer.

Another area in which we recommend further action at the EU level is psychosocial risks. There is widespread recognition and acceptance that such risks are a major cause of absence from work in all MSs, and which have a significant, wider impact on the wellbeing of workers. Although a need for action is generally accepted, there is presently no consensus on the form and direction of such action. Nevertheless, it is clear that a dialogue needs to be initiated between stakeholders on how best to address this issue. Hence, we recommend that the Framework Directive address this topic in a future revision.

Improved synergies Finally, although we conclude that there are currently no significant coherence issues, there might be benefits in the future from enhancing synergies between the Framework Directive (and the other Directives) and new policies and developments. In other words, we recommend that the Commission take into account parallel actions – while at the same time monitoring and responding to emerging risks such as nanomaterials, increased use of green technologies and alternative energy sources as well as psychosocial risks and trends, such as an ageing workforce.

Appendix A Literature

Cardiff University, Kooperationsstelle Hamburg, Mälardalen University and CIOP-PIB Warsaw (2011), Contract to assess the potential impact of emerging trends and risks on labour inspection methodologies in the domain of occupational health and safety (the NERCIS project).

Directive 78/610/EEC, Council Directive of 29 June 1978 on the approximation of Laws, Regulations, and Administrative Provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31978L0610>

Directive 80/1107/EEC, Council Directive of 27 November 1980 on the protection of workers from risks related to exposure to chemical, physical and biological agents at work, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31980L1107>

Directive 82/501/EEC, Council Directive of 24 June 1982 on the major-accident hazards of certain industrial activities, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31982L0501>

Directive 82/605/EEC, Council Directive of 28 July 1982 on the protection of workers from the risks related to exposure to metallic lead and its ionic compounds at work, https://europadatenbank.iaaeu.de/user/view_legalact.php?id=251

Directive 83/477/EEC, Council Directive of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, https://europadatenbank.iaaeu.de/user/view_legalact.php?id=250

Directive 86/188/EEC, Council Directive of 12 May 1986 in the protection of Workers from the risks related to exposure to noise at work, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31986L0188>

Directive 88/364/EEC, Council Directive of 9 June 1988 on the protection of workers by the banning of certain specified agents and/or certain work activities, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31988L0364>

Directive 89/391/EEC, Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31989L0391>

Directive 91/383/EEC, supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31991L0383&from=EN>

Directive 92/85/EEC, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have

recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0085>

Directive 94/33/EC, on the protection of young people at work, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31994L0033>

EPSU (2012), A mapping report on Labour Inspection Services in 15 European countries, http://www.epsu.org/IMG/pdf/EPSU_Final_report_on_Labour_Inspection_Services.pdf

EU-OSHA (2000), The changing world of work, Magazine of the European Agency for Safety and Health at Work 2, <https://osha.europa.eu/en/publications/magazine/2>

EU-OSHA (2012), Drivers and barriers for psychosocial risk management: an analysis of the findings of the European Survey of Enterprises on New and Emerging Risks (ESENER), <https://osha.europa.eu/en/publications/reports/drivers-barriers-psychosocial-risk-management-esener>

EU-OSHA (2013), New risks and trends in the safety and health of women at work, European Risk Observatory, Literature review, <https://osha.europa.eu/en/publications/reports/new-risks-and-trends-in-the-safety-and-health-of-women-at-work>

EU-OSHA (2014a), Mainstreaming gender into occupational safety and health practice, <https://osha.europa.eu/en/publications/reports/mainstreaming-gender-into-occupational-safety-and-health-practice/view>

EU-OSHA (2014b), Current and emerging issues in the healthcare sector, including home and community care, European Risk Observatory report, <https://osha.europa.eu/en/publications/reports/current-and-emerging-occupational-safety-and-health-osh-issues-in-the-healthcare-sector-including-home-and-community-care/view>

EU-OSHA (2014c), Green jobs, new risks? New and emerging risks to occupational safety and health in the electricity sectors, Workshop for European Sectoral Social Dialogue Committee 'Electricity', <https://osha.europa.eu/en/publications/reports/green-jobs-new-risks-new-and-emerging-risks-to-occupational-safety-and-health-in-the-electricity-sector/view>

Eurofound (2012), Sustainable work and the ageing workforce, <http://eurofound.europa.eu/publications/report/2012/other/sustainable-work-and-the-ageing-workforce>

European Commission (1986), Single European Act, http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_singleact_en.htm

European Commission (1996), Guidance on risk assessments at work, DG EMPL, Health and safety, <https://osha.europa.eu/en/topics/riskassessment/guidance.pdf>

European Commission (2004), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment), COM(2004) 62 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0062&from=EN>

European Commission (2008), Causes and circumstances of accidents at work in the EU.

European Commission (2012), The social impact of the economic crisis and ongoing fiscal consolidation, Third report of the Social Protection Committee, DG EMPL, <http://bookshop.europa.eu/en/the-social-impact-of-the-economic-crisis-and-ongoing-fiscal-consolidation-pbKE3112594/>

European Commission (2014), Flash Eurobarometer 398, Working conditions, http://ec.europa.eu/public_opinion/flash/fl_398_pres_en.pdf

European Council (1974), Council Resolution of 21 January concerning a Social Action Programme, 17 O.J. European Commission (No, C 13) 1, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31974Y0212\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31974Y0212(01))

European Council (1978), Council Resolution of 29 June on an Action Programme of the European Communities on Safety and Health at Work, 21 O.J. European Commission (No, C 165) 1, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31978Y0711\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31978Y0711(01))

European Council (1987), Council Resolution of 21 December on safety, hygiene and health at work, [http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31988Y0203\(01\):EN:NOT](http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31988Y0203(01):EN:NOT)

European Parliament (2011), Occupational health and safety risks for the most vulnerable workers, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/464436/IPOL-EMPL_ET\(2011\)464436_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/464436/IPOL-EMPL_ET(2011)464436_EN.pdf)

European Union (2010), The European Social Fund and Health, Background Report.

Hämäläinen R-M (2008), The Europeanisation of occupational health services: A study of the impact of EU policies, People and Work, Research Reports 82, <https://helda.helsinki.fi/bitstream/handle/10138/20390/theeurop.pdf?sequence=1>

ILO (2010), Labour administration and inspection: Challenges and perspectives.

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_145952.pdf

Kineke, J.E. (1991), The EEC Framework Directive for health and safety at work, Boston College International and Comparative Law Review, Volume 14, Issue 1, Article 10,

<http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1343&context=iclr>

Mendeloff J and L Staetsky (2012), Implications of the Use of Risk Assessment in the EU for the United States, Working Paper for American Society of Safety Engineers Foundation.

SLIC (2013), 65th meeting of Senior Labour Inspectors Committee (SLIC), Thursday 14 November 2013, Vilnius, Lithuania, Thematic Day, Investment in Health and Safety: Economic Slowdown vs. Decent Work,

<http://ec.europa.eu/social/main.jsp?catId=148&intPageId=685>