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SECOND STAGE OF CONSULTATION OF THE SOCIAL PARTNERS ON WORK-RELATED MUSCULOSKELETAL DISORDERS

1. INTRODUCTION

The purpose of this document is to elicit the opinion of the European social partners, pursuant to Article 138(3) of the Treaty establishing the European Community on the content of a possible Community initiative to protect workers from work-related musculoskeletal disorders.

On 9 November 2004, the Commission launched the first-stage of consultation of the social partners on work-related musculoskeletal disorders. In accordance with Article 138(2) of the Treaty establishing the European Community, the social partners were asked to give their opinions on the possible direction of Community action in this field, and in particular on:

- the appropriateness of the existing legal framework to prevent musculoskeletal disorders;
- the nature and scope of a possible new initiative at Community level, should this be deemed necessary; and
- the favoured approach (binding/non-binding instrument or a combination of them).

In addition, the European social partners were asked whether they would consider a joint voluntary initiative under Article 139 of the EC Treaty appropriate.

The Commission received replies to the first stage consultation document from eleven social partner organisations at European level:

- three general cross-industry organisations (CEEP, ETUC, UNICE);
- two cross-industry organisations representing certain categories of workers or undertakings (UEAPME, CEC);
- five sectoral organisations representing employers (COTANCE, FIEC, GEOPA-COPA, PEARLE, EuroCommerce);
- and one European trade union organisation (EFFAT)¹.

¹Replies were sent by the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Trade Union Confederation (ETUC), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP), the European Confederation of Executives and Managerial Staff (CEC), the Confederation of National Associations of Tanners and Dressers of the European Community (COTANCE), the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME), the European

The organisations representing the agricultural social partners (EFFAT/GEOPA-COPA) in a joint response, announced their intention to start sectoral negotiations under Article 139 of the EC Treaty.

2. RESPONSES OF THE SOCIAL PARTNERS TO THE FIRST STAGE OF CONSULTATION

All the replies confirm the importance of tackling work-related musculoskeletal disorders. All acknowledge the importance of the existing legislation but underline the difficulty of dealing with musculoskeletal disorders and their causes, given their variety and multi-faceted nature, both from a prevention and risk management point of view.

The views of the European social partners differ, however, as to which strategy to adopt, which factors to take into consideration, and the most appropriate level at which to tackle this issue. In general, the social partner organisations representing employers, and in particular UNICE, consider that progress in effective prevention and management of musculoskeletal disorders cannot be achieved through the legislative route. They argue that the current legislative framework already largely covers musculoskeletal disorders and that a single text covering all types of musculoskeletal disorders would be unrealistic, given the variety of situations and risks. Rather, they stress the importance of better implementing the current legal framework and of developing practical tools to this end, in particular for small and medium-sized enterprises.

Furthermore, most employers' organisations emphasise the need to improve sector-specific and workplace-targeted risk management through better practical prevention guidance and information. Such guidance should be provided mainly at national and sectoral levels and implemented on a voluntary basis. Community structures, such as the Advisory Committee on Safety and Health at Work and the social dialogue at sectoral level, may provide support, for example through the development of specific guidelines, awareness-raising activities, exchange of experience and dissemination of good practice.

ETUC argues in favour of new Community legislation on work-related musculoskeletal disorders, stating that the increase in work-related musculoskeletal disorders in the majority of Member States demonstrated the insufficiency of the existing legal framework. Non-statutory measures should complement legal instruments. Regarding the nature and scope of new Community legislation, ETUC favours an integrated approach through amending the existing legislation, in particular Council Directives 90/269/EEC on the "manual handling of loads" and 90/270/EEC on "display screen equipment", supplementing these with a new directive on repetitive work, and introducing a new directive on the primary prevention of musculoskeletal disorders.

CEEP does not support the idea of a specific new legislative initiative in this field but stresses the need to consolidate and simplify the current legislative framework.

Construction Industry Federation (FIEC), the Retail, Wholesale and International Trade Representation to the EU (EuroCommerce) and the Performing Arts Employers Associations League Europe (PEARLE). A joint reply was sent by the social partners of the agricultural sector, i. e. the European Federation of Trade Unions in the Food, Agriculture and Tourism Sectors and Allied Branches (EFFAT) and the Employers' Group of the Committee of Agricultural Organisations in the European Union (GEOPA-COPA).

Furthermore, CEEP emphasises the need for a more comprehensive risk assessment strategy on work-related musculoskeletal disorders.

Furthermore, the majority of social partners identified the importance of improving ergonomics and work organisation in strengthening prevention of, and reducing musculoskeletal disorders. In this context, biomechanical aspects and work organisation should be taken into account, as well as the design of machinery, material and tools used on work sites.

3. THE COMMISSION'S ASSESSMENT

3.1. Musculoskeletal disorders are on the increase

Work-related musculoskeletal disorders are one of the major safety and health problems facing the European Union today. They affect both women and men and all sectors of activity across the European Union and are a major financial cost to businesses and society at large.

Many initiatives have been taken both at EU and national levels, since the 1980s, to tackle work-related musculoskeletal disorders. Several Community directives were adopted and apply, either directly or indirectly, to musculoskeletal disorders. However, musculoskeletal disorders are on the increase in most Member States as illustrated by data on exposure to risk factors and on perceived work-related health risks available from the 1999 European Labour Force Survey compiled by Eurostat ("Ad hoc module on accidents at work and work-related health problems")² and the recent results of the Fourth European Survey of Working Conditions (European Foundation for the Improvement of Living and Working Conditions, 2006)³.

According to the 1999 Survey, work-related musculoskeletal disorders account for 53% of all work-related diseases in the EU-15. The most self-reported symptoms are backache (25%), muscular pains (23%) and fatigue (23%). Workers are reported to be exposed to ergonomic risks such as repetitive arm/hand movements (62%), painful/tiring positions (47%), handling of heavy loads (36%) and vibrations (24%) for a quarter or more of their working time. Musculoskeletal disorders also account for the highest number of absences (49.9% of all absences of more than three days) and of permanent incapacity for work (60%). Although precise figures on the costs of musculoskeletal disorders to European business and to society do not exist, some Member States (UK, Netherlands, Germany, Finland and Denmark) have estimated the cost of work-related musculoskeletal disorders at between 0.5% and 2% of GDP⁴.

The need to address ergonomic risks gains importance in a context where demographic changes are expected to lead to an increasing number of aged workers

² Eurostat:

http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996.45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/health/hsw/hsw_inj_pb/hsw_healthpb&language=fr&product=EU_MASTER_health&rot=EU_MASTER_health&scrollto=0

³ European Foundation for the Improvement of Living and Working Conditions, 2006:

<http://www.eurofound.eu.int/ewco/surveys/EWCS2005/index.htm>

⁴ European Agency for Safety and Health at Work:

<http://agency.osha.eu.int/publications/reports/201/en/index.htm>

in the EU. Prolonging working life and ensuring higher participation of older workers in the productive process are key challenges in the context of the Lisbon Strategy for Growth and Jobs. Further development of the principle of adapting the work to the individual and more comprehensive consideration of ergonomic risks are therefore required.

3.2. Implementation

Responsibility for implementing EU Directives on health and safety at work lies with Member States. They have adopted extensive action plans to promote active prevention of risks, to raise awareness among interested parties of the importance of integrated prevention, and to develop guidelines to assist employers and workers in implementing health and safety legislation.

In spite of the amount of information available, employers and workers, in particular in small and medium-sized enterprises, are not sufficiently well informed. As pointed out by the contributors to the first stage of consultation, the relevant information should be made more understandable and sector specific. Guidance should be offered to improve implementation.

3.3. The current framework

Musculoskeletal disorders are currently covered by various Directives, each addressing a particular risk (Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration)⁵) or a specific task (Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads⁶ and Council Directive 90/270/EEC on the minimum health and safety requirements for work with display screen equipment⁷), as well as by the general provisions of the "framework" Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁸.

However, only a limited number of work situations, i.e. the manual handling of loads, the work with display screen equipment and the activities involving exposure to local or whole-body vibration are covered by the current individual directives. It is clear however that, apart from the specific area of exposure to vibration, the incidence of other ergonomic risk factors such as repetition, awkward/static postures, force or contact stress is not adequately addressed in the existing EU legislation.

For instance, **awkward postures** are not necessarily or exclusively linked to the manual handling of loads or the work with display screen equipment; they can also occur when performing tasks or work activities that involve repeatedly raising or working with the hands above the head, kneeling or squatting or just working with the back, neck or wrists bent. The same can be said for **repetition** as a risk factor occurring in performing tasks where the same motion or cycle of motions is repeated

⁵ OJ L 177, 6.7.2002, p13.

⁶ OJ L 156, 21.6.1990, p.9.

⁷ OJ L 156, 21.6.1990, p.14.

⁸ OJ L 183, 29.6.1989, p1.

within a short time frame. Moreover, other risk factors such as **contact stress** – e.g. using the hand or knee as a hammer or working with objects that press hard into muscles or tendons – seem to be completely ignored by the current legislation.

Musculoskeletal disorders represent today a clearly defined category of risks and associated diseases. They are disorders of the muscles, nerves, tendons, ligaments, joints, cartilage or spinal discs that are typically the result of gradual or chronic development as opposed to resulting from instantaneous and acute events.

In addition, a substantial body of epidemiologic research establishes a link between musculoskeletal disorders and specific work-related risk factors, where there are high levels of exposure to one risk factor or a combination of several risk factors. As a result, the concept of "work-related musculoskeletal disorders" is today commonly accepted as referring to musculoskeletal disorders resulting largely from the work environment and the performance of certain tasks or made worse or longer-lasting by certain work conditions. Also, current research in ergonomics shows that work-related musculoskeletal disorders are not sector or task-specific and that they may occur in different activities presenting common characteristics in terms of intensity, frequency and duration of the exposure. Moreover an extensive body of research has shown that a limited number of specific work-related risk factors, and combinations of these factors, are the major contributors to the development and manifestation of work-related musculoskeletal disorders in diverse work situations and on a general scale.

4. NEED FOR A NEW LEGISLATIVE INITIATIVE?

In view of the above and having carefully examined the replies of social partners to the first-stage consultation document, the Commission considers that there is a need to improve European workers' protection against exposure to risks that may result in work-related musculoskeletal disorders. The current individual directives do not cover all types of work situations or address all risk factors leading to work-related musculoskeletal disorders.

A new regulatory initiative should in any case be considered in the framework of the current discussion on better regulation and simplification of the existing EU legislative framework. This means that, while fully taking into consideration other existing legislative instruments, any new initiative should represent an added value in terms of making legislation easier to apply (reducing the number of reference texts), less burdensome (simplifying administrative and technical obligations) and more effective (making the legislation easier to implement and enforce than it is at present).

A new legislative initiative would reduce the number of regulatory texts covering aspects of prevention of work-related musculoskeletal disorders by integrating the provisions of Directives 90/269/EEC and 90/270/EEC into a single new directive. It would also provide employers with a clearer and more streamlined framework for risk assessment and prevention. In addition, enforcement activities would be conducted with reference to a simplified framework to maximise synergies, minimise overlaps and redundancies and increase the clarity and consistency of Community rules.

The Commission, therefore, considers that a legislative initiative, setting out a revised, integrated and more legible EU regulatory framework on musculoskeletal disorders, might be appropriate.

Any regulatory initiative in this field would be complemented by non-legal measures: better information, guidance and outreach would be developed to help the relevant parties, in particular SME's, to implement legislation on musculoskeletal disorders. This should take place at all levels, including at EU and national levels, and closely involve social partners. Any legislative proposal would be subject to a comprehensive socio-economic impact assessment. It would also be the object of extensive consultations with social partners and governments within the Advisory Committee on Safety and Health at Work.

4.1. Towards an integrated, updated and more legible regulatory framework

The Commission is considering proposing a new legislative initiative addressing all significant risk factors of work-related musculoskeletal disorders and laying down minimum health and safety requirements for protecting workers from exposure to these risk factors in all workplaces. In doing so, the Commission would take account of risk factors already covered by the existing legislation, in particular with regard to Directive 2002/44/EC.

This new legislative instrument would take the form of an individual directive within the meaning of Article 16(1) of Council Directive 89/391/EEC.

The envisaged directive would provide a comprehensive definition of work-related musculoskeletal disorders and work-related risk factors, based on the latest evidence available in the ergonomics and epidemiological literature. Particular attention would be given to the following biomechanical risk factors, which are most likely to cause or contribute to the occurrence of work-related musculoskeletal disorders, by themselves or in combination: force, repetition, awkward postures, static postures, and contact stress.

The directive would require employers whose workers perform work tasks where:

- medical surveillance reports signs and symptoms of work-related musculoskeletal disorders, and/or
- workers' exposure to one or more risk factors is significant enough for work-related musculoskeletal disorders to occur if exposure continues unabated,

to evaluate the risk factors involved in those tasks in order to determine the extent of the danger they may represent to the health of workers and, based on this evaluation, to establish and implement an ergonomics prevention programme designed to control or reduce the exposure to those risks.

The envisaged directive would provide employers with basic criteria to identify the work tasks involving exposure to a level of intensity, duration or frequency that would require an extended risk assessment. The latter would cover all workers who perform the same tasks and be conducted by the employer or a specialised prevention service with reference to internationally recognised methods.

Furthermore, employers would be provided with a clearer and more streamlined framework for risk assessment and prevention. In this connection, a **two-stage risk assessment procedure** would be entailed to ensure that preventive interventions are limited only to those tasks or work activities that have been identified as problematic.

To this end, the envisaged directive would provide appropriate quantifiers to define hazard thresholds in terms of level of intensity, frequency and duration of exposure that cannot be exceeded when performing certain work activities. The application of those quantifiers would not involve the use of any technical tools, but would take the form of an observation-based analysis of the task accomplished by the employee, supported by a basic screening tool which would connect risk factors to work activities and relevant hazard thresholds.

The ergonomics prevention programme would be based on the general principles of prevention set out in Article 6(2) of Council Directive 89/391/EEC and include some, or all, of the technical and organisational measures typical of successful ergonomics programmes, in particular:

- workers' training and information;
- engineering controls (changing workplace design and layout);
- work performing controls (changing the way the employees perform a specific task), and
- administrative controls (changing the way the task is assigned or scheduled).

The envisaged directive would cover all major work-related musculoskeletal disorders, through the definition of a methodological platform for the integrated analysis of workplace conditions and for the establishment of a comprehensive set of prevention measures.

In addition, this would make practical implementation and enforcement of such measures easier than is currently the case, while also providing Member States with a common framework that would facilitate their adjusting of employers' obligations to the activities and size of different categories of undertakings, in accordance with Article 9(2) of Directive 89/391/EEC.

The envisaged directive would also incorporate the provisions of both Directive 90/269/EEC and Directive 90/270/EEC, thereby simplifying the EU regulatory environment for health and safety at work. The Commission would take this opportunity to update some of the provisions of the latter two directives, in accordance with requests from several Member States to amend the existing texts to reflect technological developments and to lay down more detailed risk assessment and prevention models⁹.

Furthermore, this integrated framework covering risk prevention and ergonomics measures would also include provisions from other directives which deal indirectly with aspects of ergonomics, such as Council Directive 89/654/EEC of 30 November

⁹ See COM(2004) 62 final.

1989 concerning the minimum safety and health requirements for the workplace¹⁰ and Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipments by workers at work¹¹.

These efforts should be accompanied by similar undertakings of Member States to simplify their respective legislation in this area of prevention and to develop appropriate mechanisms to facilitate their implementation.

4.2 Outreach initiatives: enhancing the importance of non-binding instruments

The envisaged directive would be supplemented by other non-regulatory initiatives.

The development of practical guidelines to help implement legislation, in particular for SME's, has proved its worth in combination with awareness-raising campaigns and activities to promote exchanges of good practice.

In this regard, the Commission will promote, in 2007, through the Senior Labour Inspectors Committee (SLIC), an inspection campaign on the enforcement of national provisions on manual handling of loads, focussing, in particular, on the health care and transport sectors, with a view to identifying examples of good practice on controlling the risk and fostering the exchange of practical inspection methodologies. This campaign will be conducted in parallel with the initiatives foreseen within the framework of the 2007 European Week on musculoskeletal disorders organised by the European Agency for Safety and Health at Work.

The Commission will also consider, in conjunction with the Advisory Committee on Safety and Health at Work, the possibility of developing outreach and compliance assistance instruments at European level, such as guidelines.

Based on the experience of the recently signed "European agreement on the reduction of workers' exposure to work-related musculoskeletal disorders in agriculture", the Commission would also encourage sectoral social dialogue initiatives at EU level to develop frameworks for action identifying aspects of sector based prevention strategies on musculoskeletal disorders. The Committees for sectoral social dialogue can act as the appropriate consultation for the exchange of good practice, the promotion of research results and the development of sector tailored user guides.

In this context, the Commission has also noted with interest the request of agricultural social partners for a consistent definition of musculoskeletal disorders at Community level, for the harmonisation of scientific and statistical data collection and for the identification of operational tools for practical risk assessment.

5. QUESTIONS TO THE SOCIAL PARTNERS

The Commission invites the social partners to:

¹⁰ OJ L393, 30.12.1989, p.1.

¹¹ OJ L393, 31.12.1989, p.13.

- forward an opinion or, where appropriate, a recommendation on the content of the envisaged regulatory and non regulatory initiatives pursuant to Article 138(3) of the Treaty establishing the European Community;
- inform the Commission about their readiness to start a negotiation process on the basis of the proposals described in this document pursuant to Articles 138(4) and 139 of the Treaty establishing the European Community.