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Second phase of consultation of the social partners on simplification of the provisions of the health and safety at work directives concerning the reports on their practical implementation

1. INTRODUCTION

The aim of this document is to launch the second phase of consultation of the social partners at European level on the issue of simplifying the final provisions of certain health and safety at work directives¹, pursuant to Article 138(3) of the Treaty.

On 1 April 2005, the Commission agreed to consult the social partners on a text setting out the current disparities in the frequency of drafting the various national reports on the practical implementation and asking for their opinion on the future thrust of a Community measure to simplify the performance of this obligation.

The Commission had received ten replies by the end of the six-week consultation period. The social partners that replied² all emphasised the importance of an initiative to simplify and rationalise the provisions of the Community directives which impose practical implementation reporting obligations. However, their opinions differed as regards the scope and the elements to be taken on board.

2. RESPONSE OF THE SOCIAL PARTNERS AT COMMUNITY LEVEL TO THE FIRST PHASE OF CONSULTATION

The Commission examined with interest the opinions of the social partners at Community level received during the first consultation, which has just ended.

What emerges first of all is a consensus on the need to simplify the final provisions of the health and safety at work directives concerning the practical implementation reports.

In particular, concerning the specific point which the Commission addressed, i.e. the possibility of negotiating an agreement on standardising the contribution of the social partners to the national reports to be drawn up by the Member States, the majority of

¹ Directives 89/391/EEC, 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/269/EEC, 90/270/EEC, 91/383/EEC, 92/29/EEC, 92/57/EEC, 92/58/EEC, 92/85/EEC, 92/91/EEC, 92/104/EEC, 93/103/EC, 94/33/EC, 98/24/EC, 99/92/EC, 2002/44/EC, 2003/10/EC and 2004/40/EC.

² CoESS (Confederation of European Security Services), UEAPME (European Association of Crafts, Small and Medium-sized Enterprises), UNICE (Union of Industrial and Employers' Confederations of Europe), GEOPA (Employers' Group of the Committee of Agricultural Organisations in the European Union), EuroCommerce (Retail, Wholesale and International Trade Representation to the EU), ETUC (European Trade Union Confederation), EMC (European Managers' Confederation), Eurocadres (Council of European Professional and Managerial Staff), CEMR (Council of European Municipalities and Regions), ECPE (European Centre of Enterprises with Public Participation).

the organisations that replied stated that this was neither necessary nor desirable, as the social partners should be allowed to reply as they considered appropriate and to focus on the issues they considered to be most important. On the other hand, two organisations took the view that the social partners' contributions to the national reports should be better defined, as the method currently used in many Member States does not allow them to contribute meaningfully. According to these two organisations, a procedure providing for the results of negotiations between the European social partners on the harmonisation of the procedures concerning their contribution to the national reports to be taken into account should be defined.

The organisations often had differing views on the content and scope of any amendments to be made to the current provisions of the directives.

So, whilst there was unanimous support for harmonising the intervals for the drafting and submission of the national reports to a standard period of five or six years, opinions diverged regarding certain aspects of a possible streamlining of the directives, in particular the issue of whether to have a standard national implementation report for all the directives. Most of the organisations took the view that a standard report on the practical implementation of all the health and safety directives would simplify this area and contribute to consistency whilst allowing the interaction between the directives to be taken into account. One organisation indicated that the best approach would be to provide for a single report containing specific sections for particular fields of activity associated with an existing legal act. According to this organisation, this solution could also help to involve all the relevant parties in the national procedures for drawing up the report. It was also stated that, if the standard report approach were chosen, the report would have to be detailed enough to provide a sound analysis and in-depth evaluation of each of the directives transposed and its implementation. The standard report should have two parts, with the first containing the structural elements of the health and safety at work policy, and the second answering specific questions associated with the application of each of the specific directives.

Another organisation took the view that simplification in this area cannot be achieved by standardising the various reports; on the contrary, this could even create more administrative obstacles resulting from the technical nature of each individual subject and mean more work for the social partners contributing to the report.

Concerning the scope of the initiative, two organisations said that it should not cover those directives that do not currently provide for implementation reports, i.e. the "biological agents" (2000/54/EC) directive and the "carcinogens or mutagens" directive (2004/37/EC), in order to avoid imposing new administrative burdens. The organisation representing workers said that the standard report could also cover areas which are currently the subject of recommendations (occupational diseases, self-employed workers) and the European collective agreements on health and safety.

The same organisation underlined the importance of defining the structure, content and methods of drafting the standard report. Its drafting should be facilitated by a questionnaire to be drawn up by the Commission, after consulting the Advisory Committee on Safety and Health at Work.

One organisation commented on the arrangements for simplification, stating that the best solution would be to adopt a specific directive amending the provisions on drafting practical implementation reports for the existing directives.

3. THE COMMISSION'S POSITION

Given the replies of the social partners who recognise the importance of protecting the health and safety of workers and reports on the practical implementation of the directives concerned, the Commission takes the view that the results of the first consultation confirm that the current system of reporting should be amended.

The final provisions of the directives in question provide for different intervals for the submission to the Commission of the national reports: either every five years (Directives 89/391/EEC, 89/654/EEC, 89/655/EEC, 89/656/EEC, 91/383/EEC, 92/29/EEC, 92/58/EEC, 92/85/EEC, 92/91/EEC, 92/104/EEC, 94/33/EC, 98/24/EC, 99/92/EC, 2002/44/EC, 2003/10/EC and 2004/40/EC) or every four years (Directives 90/269/EEC, 90/270/EEC, 92/57/EEC and 93/103/EC). It should be noted that Directives 2002/44/EC and 2003/10/EC lay down in detail certain aspects that the national reports must include, i.e. a description of best practices in the subject covered by the directives and measures taken by the Member States to publicise these practices. Furthermore, other health and safety directives do not contain any obligation to report on their implementation (Directives 2000/54/EC and 2004/37/EC). These aspects lead to different situations and make it a very complicated exercise to administer.

As the social partners confirmed in their replies, the added value of the exercise is not in dispute – it is an important part of the legislative cycle, as it allows Member States to analyse the main points of the implementation of the national regulations transposing the directives concerned, whilst consulting the social partners in accordance with national practice.

The Commission is convinced that the exercise should be simplified and stepped up, in particular through the involvement of the social partners in the preparation of the national reports.

The Commission plans to propose a directive which would amend the existing provisions of the directives concerned.

4. THE CONTENT OF A POSSIBLE INITIATIVE

In order to bring the existing situations into line, the Commission believes that the intervals laid down for the submission of the national practical implementation reports should be harmonised. The harmonised interval could be five years, giving a sufficiently long period for the practical implementation of the national legislation transposing the health and safety at work directives. The change should apply to all the current health and safety directives and could also be introduced in the "biological agents" (2000/54/EC) directive and the "carcinogens or mutagens" directive (2004/37/EC), which, currently, do not provide for the drafting and submission of national reports. There is no objective reason for this omission,

certainly if the nature of the subjects is taken into account – evaluating the practical implementation of these directives is essential for closely monitoring any implementation difficulties identified and any shortcomings that need to be improved upon.

In order to contribute more to simplifying and rationalising the exercise, a standard implementation report could be envisaged, containing a general part with general principles and common aspects applicable to all the directives (e.g. the global legal context, essential provisions provided for in framework directive 89/391/EEC, information, dissemination and support campaigns for the new rules, etc.), complemented by specific chapters which could be categorised by different criteria (groups of workers exposed, hazardous substances, use of certain work equipment, workplaces, specific risks, work organisation aspects, etc.) and which would cover aspects specific to the directives in question.

The aspects mentioned in the "vibrations" directive (2002/44/EC) and the "noise" directive (2003/10/EC) on the information to be submitted by the Member States in their national reports, i.e. a description of best practices and the measures taken to publicise them, constitute an important source of information on the national practices and their dissemination, which could help to improve their implementation. These aspects could therefore be extended to include the other directives, thus allowing them to be used by the Commission for its report, to be drafted on the basis, *inter alia*, of the national reports.

In this regard, the rules on the drafting by the Commission of a report on the practical implementation of directives, based on the national reports, should be retained.

It would also be advisable to provide for the establishment by the Commission of an appropriate structure to help the Member States to draft their reports as consistently as possible. In this regard, the Advisory Committee on Safety and Health at Work, a tripartite body, should be closely involved in the drafting of these documents, in particular via suggestions to improve the content of the structure and specific arrangements to encourage the active and effective participation of the social partners at national level during the drafting of the national reports and in line with existing national practices.

Finally, experience has shown that the obligation to submit practical implementation reports to the Advisory Committee and the other institutions, provided for in the final provisions of some of the directives concerned, is a time-consuming administrative formality, not only for the Commission but also for the addressees, with little added value to show for it. The data are submitted in raw form and, because of their volume and fragmentary nature, they do not give an overview of the situation, preventing the institutions from pronouncing on the effectiveness of the Community policy in this field. The Commission takes the view that, following the example of Directives 2002/44/EC and 2003/10/EC, the periodic reports that it will be drafting, based *inter alia* on the national reports, should replace the submission of the 25 national reports, which would allow the political decision-makers to gain an overall vision of the practical implementation of the directives. National reports could still be communicated at the specific request of the institutions concerned.

5. QUESTIONS TO THE SOCIAL PARTNERS

The Commission calls on the social partners:

- to submit an opinion or, where appropriate, a recommendation on the objectives and content of the planned proposal, pursuant to Article 138(3) of the EC Treaty;
- to inform the Commission, if appropriate, of their desire to undertake dialogue based on the proposals in this document, in accordance with Articles 138(4) and 139 of the EC Treaty.