



## **Peer Review on “The efficient transposition, implementation and enforcement of EU OSH legislation”**

Copenhagen, Denmark, 19-20 June 2018

### **Executive Summary**

The Peer Review provided the opportunity to discuss and exchange information on the way EU Occupational Safety and Health (OSH) legislation has been transposed, implemented and enforced in different EU Member States. The discussion mainly focused on the different processes and stakeholders involved in transposing EU OSH legislation and the extent to which this impacted and was ‘intertwined’ with existing national legislation. The host country Denmark presented the work of their Implementation Committee and Implementation Council regarding the transposition and implementation of EU OSH legislation. Distinguishing between necessary measures and unnecessary administrative burden was an important part of this discussion. Different strategies for implementation and enforcement, including stakeholders involved, capacity for enforcement and the use of data driven models were also discussed. The host country and the participating countries shared their experiences on the three aspects and discussed potential ways of improving national practices.

The event was hosted by the Danish Working Environment Authority and Ministry of Employment, and brought together representatives from responsible Ministries and Labour Inspectorates, as well as independent experts from seven peer countries, namely Austria, Cyprus, Germany, Ireland, Malta, Sweden and Slovenia as well as representatives from the European Commission, the Senior Labour Inspectors' Committee (SLIC) and the social partners.

### **Key learning messages from the Peer Review**

#### **Implementation and transposition of OSH legislation**

- A proper implementation of OSH legislation requires that the legal and regulatory framework is sustainable and flexible to make it possible to detect and integrate new risks as they emerge in the changing world of work. It also requires a multi-stakeholder approach to implementation and enforcement and life-long education in matters of OSH. The system should aim not only to guarantee minimum standards but to improve working conditions throughout the European Union, fully acknowledging the benefits of good OSH.
- In transposing EU OSH legislation, it is important for all requirements of the Directives to be met. In some Member States this has led to approaches seeking to translate EU legislation verbatim into national legislative frameworks. Whilst ensuring that minimum standards are provided and protecting against the risk of infringement proceedings, it was felt in a number of countries that such an approach of ‘verbatim transposition’ of EU legislation onto national legislation, might in the longer term require a process of readjustment to the overall national framework and national context without undermining the standards set. Overall, transposition was considered to be merely the first step with business and workers relying on implementation measures including guidance and tools to shape their practices. It is therefore vital for such tools to be

designed in close alignment with the legislation whilst translating this into a language which makes it accessible and meaningful to different employers or sectors. It was considered that these practical steps towards implementation are best suited to enhance overall working conditions and OSH standards in the workplace.

- OSH legislation and strategies have to be accompanied with concrete action plans with detailed instructions on how things should be done in practice. Similarly, guidelines for labour inspectors and employers should provide details and examples that are easy to follow and apply. Ongoing training for employers, inspectors and workers should be provided in order to guarantee the implementation of the OSH legislation.
- In order to ensure that new legislation does not impose unnecessary administrative burdens on businesses, the Danish hosts presented the work of their Implementation Council and Implementation Committee which scrutinises every piece of EU legislation and uses five principles<sup>1</sup> to assess how it should be transposed and implemented in an effort to ensure that unnecessary administrative burdens on businesses are minimised. In the discussion the view emerged that a clear distinction must be made in terms of what is necessary administrative work for the proper implementation of the OSH legislation and unnecessary administrative burden, which has to be understood in the strict sense of administrative procedures and paper work.

### **Enforcement of OSH legislation and feedback**

- The experience of the participating countries indicates that cooperation from companies in enforcement is key, although there are differences between mandatory cooperation practices prescribed in the national legislation and advisory ones, whose recommendations are not binding for companies as the experiences of the different participating countries indicates.
- Incentivising the implementation of OSH regulation is considered as another effective way for enforcement. Various incentives could be used, such as offering grants for employers, by classifying companies based on their OSH practices and giving companies with good OSH compliance records grants and other financial incentives to reward them. Another possibility is to include an OSH clause in procurement procedures. Nonetheless it is important to combine 'carrot' and 'stick' approaches for better results, with enforcement and sanctions being particularly important for companies not willing or able to see the business advantage in sound OSH practices.
- There is a need to follow up inspection reports by obliging companies to manage OSH and improve conditions. Follow-up inspections and measuring change procedures are necessary to guarantee that the companies follow through with the instructions of the labour inspection authorities.
- Appropriate enforcement requires the use and analysis of data (e.g. data on companies such as work-place accidents, court cases etc. to assess companies' risk profile). Different countries have been using different models, such as the data driven risk model that has been piloted in Denmark<sup>2</sup>, the priority point system in Austria, the risk-based system in Sweden, and the inspection rating system in Cyprus. The question remains,

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<sup>1</sup> 1) Do not go beyond minimum implementation; 2) Do not put Danish businesses at a disadvantage; 3) Use flexibility and derogations where possible; 4) Look for alternatives to regulation; 5) Do not come into force before transposition deadline

<sup>2</sup> In Denmark a new model of risk-based inspections has been piloted on the construction sector, in this model companies are identified for inspections from notifications, complaints and local knowledge, the inspections targets construction sites rather than companies. In Austria a ranking system of imminent risk is used to prioritise inspections. In Sweden all inspections are risk-based i.e. based on the risk profile of companies. In Cyprus a risk rating system using companies' data on workplace accidents, complaints, court cases and previous inspections, is used to assess the level of risk of inspected workplaces.

however, whether industry-specific models should be preferred to more universal models which allow for unforeseen (new) risks to be taken into account.

- Data should be used not only to improve the enforcement of OSH legislation but also to share information on implementation and enforcement practices among different countries and at the EU level, which can be done through activities such as the peer reviews, or the studying of neighbouring countries' practices. The sharing of statistical data on OSH processes and outcomes was also discussed, but in order for this to be more valuable, a degree of harmonisation at EU level with regard to collecting and collating data is necessary. Issues such as confidentiality and other considerations need to be taken into account when data are shared and exchanged.
- Annual reports and systematic reviews should be used as mechanisms for providing feedback between public authorities and policy-makers in order to be able to assess how legislation is implemented on the ground and see if there is a need for change. In some countries the feedback loop already leads to policy change, while in others it just serves to better understand how the system works in practice. In Denmark and Sweden, the feedback process is intrinsic to a system of strong collaboration and interlinks between authorities, social partners and other actors at all levels. For example, in Sweden the Work Environment Authority, review the provisions of regulations every four years, in this process labour inspectors produce a report which present issues encountered provides advice for solutions. The report is then used to revise the regulations. In this revision process other important stakeholders are also consulted. Efforts should be made to ensure these type of evaluations and feedback mechanisms are embedded in national system and results are reflected in policy changes to ensure an effective implementation of OSH legislation.
- Tripartite structures that provide feedback to the way OSH is implemented and enforced are equally important. The involvement of the social partners means the commitment of employers and workers in the process, which can better guarantee the implementation of the OSH legislation.