Protecting the Community

A worker's guide to health and safety in Europe

Throughout the European Community, 8,000 workers die and 10 million are injured by workplace accidents or diseases every year. 1992 has been declared European Year of Safety, Hygiene and Health Protection at Work and many of the health and safety Directives arising from the European Commission will become law in the member states by the end of the year. But what will this mean for Europe's 150 million workers? Will the promise of higher standards of health and safety be transposed into national laws? And will those standards be enforced?

This handbook helps guide workers and their representatives, health and safety advisers and professionals and all those concerned about the impact of Europe on health and safety, through the maze of Community institutions and procedures. It provides comparisons of health and safety standards and practices in the different member states and gives a comprehensive view of the most important health and safety Directives. It shows how key elements of some Directives have been watered down before becoming law in the UK; it shows how to influence the decision-makers and offers ideas on how to ensure that the European Commission's slogan for the year: '*Europe 1992 — Let's make it a better place to work*' is more than just an idle promise.

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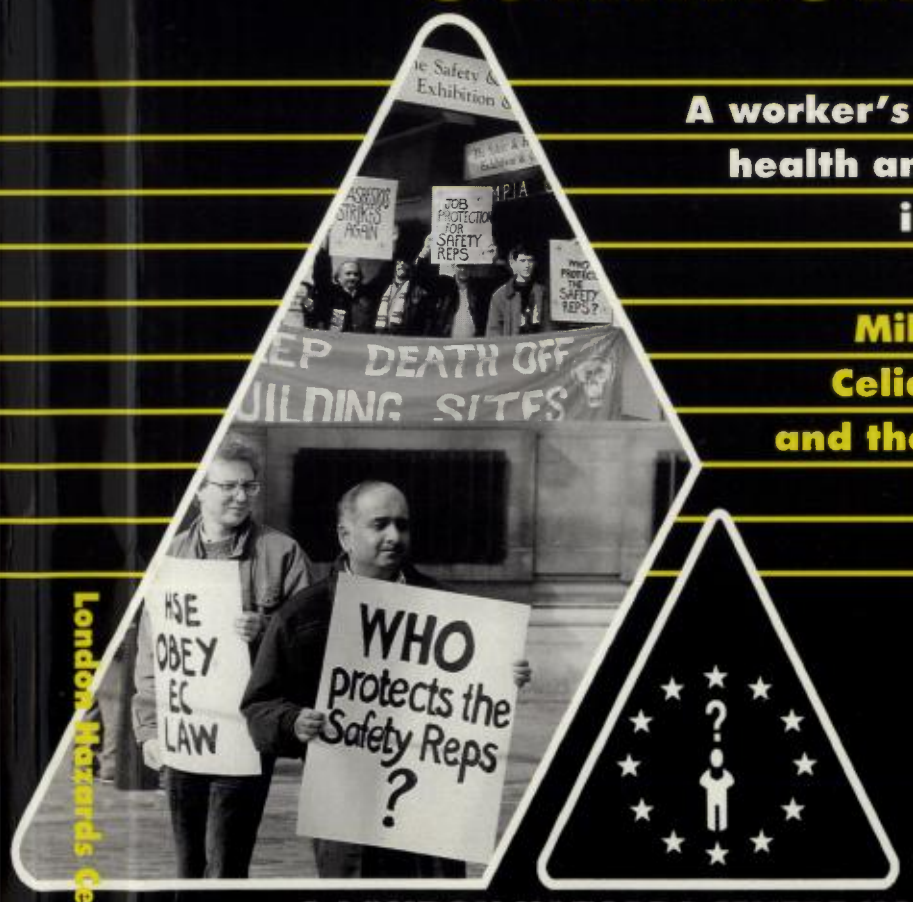

Mike Allen, Celia Mather and the London Hazards Centre

A LONDON HAZARDS CENTRE HANDBOOK

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ABOUT THE LONDON HAZARDS CENTRE

Advice service

The London Hazards Centre helps workplace and community groups in London to use information on occupational and environmental health and safety in order to combat health hazards at work, at home and in the community.

Research and briefing service

We also offer a research and briefing service to trades unions, local authorities, journalists, media researchers and others working to combat hazardous working and living conditions.

Information resources

The Centre's library contains a unique collection of scientific journals, trade union and community bulletins, official publications, CD-ROM health and safety databases, press clippings, videos and photographs. This is supplemented by on-line access to major international databases and contact, via electronic mail, with a vast network of research and resource agencies worldwide. Our library has been designated a *Practical Information Centre* for the World Health Organisation's International Programme on Chemical Safety.

Training

In the last few years, major new regulations have been introduced as the Government has implemented European Community directives on health and safety. In many workplaces the legal duty to instruct and inform the workforce about the regulations has not been fulfilled. The London Hazards Centre offers training courses or sessions on basic health and safety law, procedures and good practice. We cover the control and substitution of hazardous substances, including chemicals and the COSHH Regulations; VDUs and office hazards; safety representatives' rights; information sources on health and safety; and new European legislation. We can tailor our course modules for specific needs.

Inspections

Many workplaces are badly laid out with little attention to ergonomic considerations and the general health and safety of the people who work in them. The London Hazards Centre will carry out an inspection of your premises and make written recommendations on any necessary improvements in line with the law and good practice.

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We can provide a speaker for your meeting, seminar or conference. Recent talks have included noise reduction and safe eradication of asbestos and cockroaches in system-built tower blocks; tackling office hazards; chemicals and COSHH (Control of Substances Hazardous to Health Regulations 1989); RSI; and hazards of homeworking.

Affiliate

We welcome affiliations from individuals and groups committed to the fight against hazards at work and in the community. Affiliation shows support for the Centre, brings you a year's supply (four issues) of our newsletter the *Daily Hazard*, and news of the Centre's other publications and activities.

Rates

Contact the London Hazards Centre for current charges for affiliation, research and briefing services, training courses, inspections and speakers.

Protecting the Community

A worker's guide to health and safety in Europe

Mike Allen, Celia Mather and the London Hazards Centre

A LONDON HAZARDS CENTRE HANDBOOK

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Maggie Alexander
London Hazards Centre
May 1992

PREFACE

Stephen S Hughes MEP

March 12th 1992 saw the launch of Europe's Year of Action on Safety and Health at Work, which is designed to familiarise the European Community's (EC) employers and workers with the wave of EC directives on health and safety now being translated into national legislation. Most will come into effect at the end of this year. It should also be the year when those in the labour and hazards movements not yet familiar with the way EC laws are made equip themselves with the knowledge they need to campaign to shape the future of health and safety policies and practice in this important field. The London Hazards Centre should be heartily congratulated on producing a book which satisfies both of these objectives admirably. As author of the European Parliament's report on the Year of Action I can only wonder at the short-sightedness which lead to funding for this book's publication being turned down by the UK Steering Committee for the Year.

The EC has already had an impact on UK health and safety law. UK Regulations on lead, asbestos and noise, for example, derive from European directives. But since 1987, when the way EC laws are made was streamlined to clear away the barriers to a complete internal market, Europe has become the *'main engine room for health and safety legislation in the UK'*. These were the words used by the Health and Safety Executive (HSE) in 1990 acknowledging that most of its expert staff time was (and continues to be) tied up with European legislation.

The detailed work on health and safety directives at Parliamentary level takes place in the Social Affairs Committee. As a full member of the Committee I am spokesperson for the 180-strong Socialist Group on most health and safety matters. In my work the Hazards Network has provided invaluable support over the last five years. In addition, unions including the BFAWU, COHSE, GMB, IPMS, MSF, NALGO, NGA, NUPE, TGWU and USDAW regularly provide comments on and amendments to directives coming through the system. Additional influence has been exerted through the TUC and the European Trade

Union Confederation which often have early access to draft directives even before they reach the Parliament.

Despite this wide-ranging support, I am conscious of the fact that these contacts probably translate into little more than a few hundred 'initiates' within the UK who have acquired a detailed knowledge of how EC laws are made and how it is possible to influence their shape and content. There is therefore still an urgent need for the tens of thousands of grass-root and shop-floor trade unionists, safety reps and activists not yet familiar with this subject to come to grips with it. Although the system of EC law-making can seem quite complex, the first two chapters of this work present the clearest and most readable background and guide I have ever read on the subject. For the reader new to the subject, time spent reading this section will be time well spent.

The following two chapters provide an excellent background on the way decisions and legislation on health and safety are made in the UK, and, by way of comparison, in other European countries.

Chapters 5 and 6 provide a detailed examination of the directives so far agreed and those now in the pipe-line. Attention is given to the strengths and weaknesses of these directives as well as the obligations and new requirements they demand.

It is no exaggeration to say that the directives agreed as well as those currently under consideration will undoubtedly have implications for every workplace, employer and worker in the EC. The first of these directives is the Framework Directive which is similar in some respects to the UK's Health and Safety at Work Act but which includes provisions on information, consultation and participation for workers and other new provisions such as the 'right to stop the job'. Beyond that, there are directives covering health and safety requirements in the workplace, all types of work equipment and personal protective equipment, requirements for handling loads, work with display screen equipment (VDUs) and work with carcinogenic and biological agents. Most of these have been or soon will be covered by Consultative Documents from HSE with a view to Regulations, Accepted Codes of Practice and Guidance. In the pipeline right now are proposals on protecting pregnant women at work, working hours, construction site safety, the creation of a European Health and Safety Agency and safety in the offshore sector, deep mines, quarries and open-cast sites, fishing vessels and the transport sector, to name but a few. And there will be many more beyond these.

Having armed the reader with a detailed knowledge of the

legislation, the way it has evolved and the points at which to exert pressure and influence, the closing sections of the book go on to present a checklist for future action and an invaluable guide to resources and contacts.

In short, there is everything necessary to transform even those trade unionists and safety reps who consider themselves absolute newcomers to EC health and safety law into fully equipped activists. This is essential for at least three reasons: firstly, to ensure that as many as possible follow the HSE's work on the directives already agreed in order to ensure that these are fully transposed into UK law. Secondly, to provide the informed grass-root and shop-floor level presence which will be our best guarantee that the requirements of these directives are fully applied when they come into effect from the end of 1992. And thirdly, to exercise influence over the future direction and content of EC-generated health and safety legislation.

Over the past two years in particular, my staff and I have been virtually inundated with questions about this emerging body of legislation. The answers — I hope always reasonably swiftly provided! — have had to be retrieved from a growing number of boxfiles and data bases spread between my UK, Brussels and Strasbourg offices. Now that the London Hazards Centre has pulled the answers — to what must be just about every conceivable question — together in this one volume, I give them my heartfelt thanks!

Stephen S Hughes MEP
Durham
March 1992

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THE EUROPEAN COMMUNITY AND THE SOCIAL CHARTER

INTRODUCTION

This book is about the effect of European legislation on the laws and practice of health and safety in the UK and throughout the European Community (EC). Legislation arising from the EC has the potential to have the greatest impact on health and safety in the UK since the enactment of the 1974 Health and Safety at Work Act (HSW Act). But will this potential be realised? How will this legislation be 'transposed' into UK law? Will the legislation be weakened or strengthened in the transposition process? Will the mechanisms of enforcement ensure its full implementation? What will happen to safety reps' rights? How can workers in the workplace influence and affect the body of legislation emerging from Brussels?

This book aims to answer these questions, and to provide a practical guide for workers, safety reps and other trade unionists, and health and safety advisers who are concerned about the effects of Europe on health and safety.

To many workers, the European Community remains little more than a vague idea, often associated with tabloid jokes or scare stories about 'interfering Brussels bureaucrats'. The Community's institutions and decision-making processes appear even more remote and forbidding than those of the UK Government. And not without cause. Only a small number of constitutional lawyers would claim to understand fully the complex structures and mechanisms which govern the Community.

Nevertheless, since Britain's entry into the European Community in 1973, the power and influence of its institutions are felt in most spheres of everyday life, from the High Street to the workplace.

THE EUROPEAN COMMUNITY: HISTORY AND BACKGROUND

The first chapter of this book aims to provide a basic overview of the European Community — its origins, development and principal institutions. This is followed by a discussion of the emergence of the single European market — due to be completed by the end of 1992 — and its much-debated 'social dimension', including the Social Charter and Action Programme.

This Department of Trade and Industry poster invites businesses to call their 1992 hotline. Who will provide the workers' hotline? Alan J P Dalton

Many active trade unionists at least have been slightly infected by the 'Europhoria' which overcame British trade unions following Jacques Delors' address to the TUC in 1988. Delors, President of the European Commission and a former minister in the French socialist government, outlined a vision of a 'social Europe' with a 'platform of guaranteed social rights'. What's more, he recognised unions as 'social partners' with a legitimate right to influence and help shape the development of the European Community. In short, Delors seemed to offer British unions some access to power and decision-making again after being excluded from the corridors of Whitehall during the Thatcher years.

British unions have responded by increasing their level of activity within the Community — building closer links with sympathetic Members of the European Parliament (MEPs), lobbying the European Commission, opening offices in Brussels and, most importantly, developing a wide range of contacts with trade unionists in the rest of the Community. The nature and extent of the unions' response to the development of the European Community and to the onset of 1992 in particular is detailed later in this book (see Chapter 7).

European integration — the wagon starts to roll

At the end of World War II, there was a groundswell of opinion in support of closer European integration. Its advocates, including leading politicians like Jean Monnet and Robert Schumann, were motivated to act by the devastation of a second world war on European soil and a concern to end underlying historic conflicts, principally between France and Germany. Only a minority of these 'Euro-federalists' were interested in full European union or a United States of Europe. The more influential majority were 'Euro-functionalists' who simply wanted greater co-operation on practical, largely economic, programmes.

The first pan-European body with any authority was the European Coal and Steel Community (ECSC) formed in 1951. This integrated the steel and coal industries of West Germany, France, Italy and the three Benelux countries (Belgium, Netherlands and Luxembourg), placing them under common control. But the Preamble to the ECSC Treaty betrayed its deeper significance, namely:

> *'to substitute for age-old rivalries the merging of essential interests; to create, by establishing an economic Community, the basis for broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared.'*

Despite the failure of efforts to form a European Defence Community in 1954, efforts to increase pan-European co-operation continued, culminating in the Treaty of Rome signed in 1957. The European Atomic Energy Community (EURATOM) was established in the same year with the aim of developing nuclear energy for peaceful purposes. Although there are, in fact, three distinct European Communities, they are generally referred to in the singular.

The Common Market proved a great success for the founding six members. The 1960s saw their exports and gross national product increase twice as fast as Britain's, family consumption rose two and a half times as fast and investment five times as fast (Budd and Jones 1990). So it was no surprise that Britain twice applied for Community membership during the 1960s. But its application was vetoed on both occasions by Charles De Gaulle, the French President, who believed Britain remained Atlanticist — far too closely involved in its 'special relationship' with the United States. It was only after De Gaulle's retirement in 1969 that the Community could invite applications from Britain, Denmark, Ireland and Norway (although Norway voted against entry in a referendum).

The Treaty of Rome

The Treaty of Rome had two sets of objectives — narrow and broad. Its immediate objective was to establish a customs union by eliminating tariff controls between member states. The broader, more ambitious objective was to develop common economic policies leading to a gradual economic convergence. However, the idea of economic union was not spelt out in the Treaty. Similarly, although Article 2 of the Treaty referred to member states' ambition of an ever-closer union, political union would not be openly on the agenda until the Maastricht summit of December 1991 (see below, page 16).

The next major step in the European Community's development did not emerge until the late 1980s with the first moves towards a single European or internal market. Pressure for change emerged for a number of reasons.

- Throughout the 1970s and early 1980s, the Community had been bogged down by rows over the Common Agricultural Policy and over financial contributions of member states to the Community budget. This was the phase of 'Euro-sclerosis' — the Community's political arteries were clogged and some new initiative was required to restore its dynamism.
- This problem partly arose because the need for unanimous agreement among member states on important decisions led to constant horse-trading and political stalemate.

- Spain and Portugal joined the Community in 1985 (effective from January 1986), adding momentum to the old idea of ever-closer European union.
- Perhaps most importantly, it became increasingly clear that the absence of a single European market had disadvantaged European companies in competition with US and Japanese rivals. European markets and companies could no longer afford to be fragmented on national lines in the face of the challenge from highly integrated North American and Japanese corporations. As one major European employer put it:

> *'1992 is the only possible rational response to market globalisation and to the growing competitiveness of the US and Japan. Europe and its companies have no alternative. 1992 is a necessity.'* (de Benedetti 1989)

Member states agreed to revise the Treaty of Rome in order to give the Community further powers and to speed up decision-making. Consequently, in February 1986, member states signed the **Single European Act**. Its main terms included:

- a deadline of 31 December 1992 for the completion of a single market;
- a commitment from member states to pursue greater economic and social cohesion;
- the inclusion of a European Monetary System (EMS) and a European Currency Unit (ECU) into the Community's legal framework;
- an extension of Community powers in the areas of research and technology, environmental protection and social policy;
- provision for greater co-operation in foreign policy;
- an extension of majority voting (rather than unanimity) and greater influence for the European Parliament in certain policy areas (see next chapter).

As well as setting the deadline for a single European market, the Single European Act is a milestone in Community development for two other reasons. Firstly, the Act allows the European Parliament to amend legislation under a new 'co-operation procedure' (see page 43).

Secondly, Article 100A allows the Community to introduce new laws on the basis of a qualified majority vote (QMV — see page 41) by the Council of Ministers. Article 100A specifically *excludes* provisions which relate to *'the rights and interests of employed persons'*. However,

Article 118A allows qualified majority voting for proposed legislation on the *'working environment, as regards the health and safety of workers,'* although there is disagreement over the interpretation of this clause. The Commission (which effectively functions as the Community's think-tank, civil service and rules monitor — see Chapter 2) has recently interpreted it widely, attempting to include issues like working time and pregnancy and maternity rights under its provisions. Nevertheless, the UK Government has insisted that it should be strictly restricted to health and safety issues and threatened to challenge the legality of the Commission's initiatives in the European Court of Justice.

The introduction of qualified majority voting, although still controversial on social and employment matters, has helped accelerate Community decision-making. The previous requirement for unanimity allowed certain governments to veto initiatives, especially on social legislation covering workers' rights.

The Treaty of Rome already committed member states to a common market, and most customs tariffs and quotas had been eliminated. But a wide range of restrictive regulations and practices still prevented the emergence of a single market — from differing technical standards on equipment to bureaucratic delays at national frontiers. Furthermore, genuinely pan-European companies could not emerge as long as company law, rules of incorporation, and taxation provisions differed so markedly between member states. So new Community legislation introduced under the Single Market programme includes proposals to make cross-border mergers and takeovers easier and to harmonise corporate tax policies and company structures.

The Single European Act aims to create *'an area in which the freedom of movement of goods, persons and capital is ensured ...'* So, for example, professional qualifications secured in one member state will be mutually recognised by all others. Similarly, under the public procurement provisions, companies from throughout the Community will be able to bid for contracts on the same basis as national or local firms.

The main aim of the single market is to remove barriers or 'distortions' to trade within the Community. Such distortions range from non-tariff barriers to preferential treatment and subsidies for domestic companies. This can only be done, the Commission insists, by intensifying competition, leading to an improvement in quality, skills and technology so that Europe competes on the global market in terms

of high value production rather than lower value mass production. Even countries like Portugal and Greece, with relatively low labour costs, cannot compete on a low-wage, low-costs basis with some of the newly industrialising countries.

In fact, in many respects, the Commission's industrial policy includes measures long advocated by the British labour movement. Both believe in the importance of increasing investment, principally in research and development and the infrastructure; better vocational training; and stronger measures to promote regional development in areas of declining traditional industries. However, the main thrust of the Single Market process is 'neo-liberal' — a market-driven programme designed to open up national markets and break down monopolies. So, for example, after extensive lobbying by private parcel carriers and mail firms like TNT and UPS, the Commission proposed in January 1992 that national postal services should be opened to competition and private sector involvement.

The likely economic impact of the single market has been the subject of various studies, the most influential of which is *The Economics of 1992*, a report solicited by the European Commission, widely known as the Cecchini Report after the chairman of the steering group. The Cecchini Report, published in 1984, paints a relatively rosy picture of the Community's economic prospects — in the medium to long term. It suggests that the single market would boost the Community's gross domestic product (GDP) by 4.5% and create 1.8 million jobs. Cecchini suggests that within several years, by the late 1990s, the single market will create over five million jobs, produce a 7% increase in Community output, and cut prices by 4.5%. But this will only take place if accompanied by reflationary economic policies co-ordinated between member states.

It is clear that the single market will not have a uniform effect. Its impact will differ widely between member states and between industries. In its assessment of 1992, the Trades Union Congress states that the UK economy is particularly vulnerable due to the loss of industrial capacity since 1979 and the poor competitiveness of British industry, especially in high technology, high value-added sectors (TUC 1988).

If we take vocational training as just one example, British industry's preparedness for the competitive challenge of 1992 must be called into doubt. In comparison to the UK's principal competitors, the bulk of

the British workforce remains under-educated, under-trained and under-qualified.

In 1990 some 47% of British companies were unable to meet their skill needs. The problem is most acute in professional and technical occupations, like engineering and technologically related jobs. When commentators refer to Britain as the 'Thick Man of Europe' they are not betraying a lisp. Training is just one area of competitive disadvantage which has prompted anxious British unions to look to the social dimension of the Single Market programme to provide a degree of protection against its immediate impact.

THE SOCIAL DIMENSION

Ever since the single market was first suggested, the European Community's unions have adopted a policy of constructive criticism. Working primarily through the European Trade Union Confederation (ETUC), unions have, in effect, recognised the inevitability of the single market.

The ETUC has pursued a relatively successful strategy of constructive engagement rather than abstention or sidelined opposition. As a result, with the help of its allies in the European Parliament, the ETUC has secured a commitment from the European Commission and Council of Ministers to ensure a 'social dimension' to 1992. The ETUC has argued that the Single Market and the social dimension must be pursued 'in parallel' but the schedule for the Action Programme designed to implement aspects of the Social Charter lags far behind the economic and technical measures for the completion of the Single Market. Early in 1991, Jacques Delors himself conceded that progress in implementing the Social Charter was 'particularly disappointing'.

The argument for a social dimension is basically two-fold:

- without both economic and social cohesion, some member states may try to compete on the basis of lower costs by maintaining lower social provisions and benefits, and encouraging 'social dumping' (moving industry from the relatively high-wage, strongly unionised countries of northern Europe to low-wage, poorly unionised areas with the result that standards are undermined across the board);
- consequently, if competition is to be on a level playing field, Europe's workers should also enjoy a basic floor or platform of social and employment rights.

The social dimension is also *politically* important to the success of the single market project. Given that 1992 will inevitably lead to serious casualties, at least in terms of short-term job losses and industrial dislocation, the social dimension serves as a 'sweetener' for Europe's workers and unions. It is designed to demonstrate that 1992 is not solely in the interests of business and that the Commission, Council, Parliament and at least the majority of member states are committed to Europe as a multi-dimensional Community, not just as a market-driven economic unit.

Jacques Delors warned in 1989 that while Europe's unions had consistently supported the creation of a single market, the Commission could not afford to become complacent: *'we must not endanger that process by being deaf to their concerns'.* Without measures covering *'the social dimension and ... rights of workers, the internal market will be at risk',* according to Vasso Papandreou, the Commissioner for employment matters. In other words, some degree of *social* stability and *political* consensus is required if the *economic* aims of the Community are to be achieved.

A recent survey found that West European nations lead the world in terms of the 'social safety nets' enjoyed by their citizens — that is, the tax-funded, largely universal programmes of health, education and welfare services for the socially vulnerable or disadvantaged (Estes 1988). The European labour movement fears that without the upward harmonisation of such standards of provision, there will be a downward drag, with companies and member states forced to compete on the basis of cost-cutting. This would represent a real threat to the high levels of social protection enjoyed by many European workers.

However, it appears that some interests — principally the current UK Government — anticipate something closer to a two-tier Europe. This strategy aims to attract external investment from Japanese and US transnational corporations by offering not only financial incentives to locate in the UK but also lower wage costs and a more 'flexible' arrangement on workers' rights and trade union organisation. In doing so, right-wing or neo-liberal critics of the social dimension are able to exploit the ambiguity of the concept. As Bill Wedderburn has asked,

> *'Does it all mean that the 'social dimension' comprises those measures which are a natural part of the economic market — the welfare without which the competition will not work? Or does it go further and include measures of social justice and*

priorities based on human need which take precedence over the [accountants'] bottom line?' (Lord Wedderburn 1990).

Means

Community institutions basically enjoy three means of promoting the social dimension. Firstly, and most importantly, the Community can legislate new laws covering a limited range of workers' rights. There are three forms of legislation or law binding on member states: **Treaty provisions** — like the 'equal pay' Article 119 of the Treaty of Rome; **Regulations** — which are directly applicable in all member states; and **Directives** — requiring national governments to implement Community instructions (see the next chapter for further details).

Secondly, the social dimension includes financial assistance to the Community's depressed regions through sources like the Social Fund. Thirdly, the Community promotes a 'social dialogue' between the 'social partners' on both sides of industry, ensuring that unions as well as employers contribute to policy development and decision-making.

Since the UK joined the Community in 1973, successive governments have been obliged to accept EC measures on a range of workers' rights, covering collective redundancies, transfers of undertakings and sexual equality. But since the election of the Conservative Government in 1979, the UK has consistently opposed Community initiatives on social protection and workers' rights. In 1983 the Conservative Government was obliged to introduce amendments to the 1970 Equal Pay Act in order to fully enforce the Equal Pay Directive. Equally reluctantly, it passed the 1986 Sex Discrimination Act only after the European Court found the 1976 Sex Discrimination Act to be inadequate.

The UK Government has used both direct veto powers and disabling amendments in order to undermine or water down social measures by the Community. While the proposed Vredeling Directive on worker consultation was blatantly blocked by the UK, the Government has also ensured that recent health and safety measures have been watered down. For example, despite the fact that permanent loss of hearing results from sustained exposure to 90 decibels of noise, the UK Government insisted that the noise directive's threshold remained at this level on the grounds of the excessive costs to industry if it were reduced.

The origins of the Social Charter

In December 1989, the most well-known aspect of the social dimension, the 'Social Charter', was adopted by the European Council of heads of state and government at its Strasbourg summit. It was accepted by each member state, their governments ranging from right-wing Christian Democrat to Socialist, with the single exception of the UK.

The Charter — formally called the *'Community Charter of the Fundamental Social Rights of Workers'* — stemmed from an initiative by Michel Hansenne, a Belgian socialist who was then president of the Council of Labour and Social Ministers. In 1987 Hansenne suggested that workers across the Community should all enjoy a 'basic floor' of employment rights.

Jacques Delors, the Commission president, invited the Economic and Social Committee to draft an Opinion on the issue. In March 1989, the European Parliament added impetus by calling for the adoption of a Community charter. The Commission published the draft charter in May 1989 which was eventually endorsed by the heads of 11 of the 12 member states at the end of the year — with the exception of Mrs. Thatcher. The UK Government has maintained a rigid opposition to the Charter whose vague principles disguised, according to Mrs. Thatcher, a Marxist-inspired conspiracy to introduce a *'socialist superstate ... by the back door'*.

The basis of the Social Charter lies in Article 117 of the Treaty of Rome, where member states agree *'upon the need to promote improved working conditions ... so as to make possible their harmonisation while the improvement is being maintained'*. But the Social Charter only emerged in recent years due to the development of the Single Market.

In the preamble to the Charter, the European Council affirms that *'the same importance must be attached to the social aspects as to the economic aspects'* of the Single Market. There are two main reasons for this. Firstly, in terms of social justice, it is felt proper that the internal market should entail improvements in the social rights of citizens as well as benefits for business. Secondly, on economic grounds, if certain rights are guaranteed, disparities in working conditions across member states will be reduced. Otherwise distortions in competition would hinder the proper functioning of the market. Companies would not be operating on a level playing field if employers in some countries were required to maintain minimum benefits and rights while other countries or companies were allowed to undercut the competition.

THE SOCIAL CHARTER

1. Freedom of movement throughout the Community, including equal treatment in terms of access to employment, working conditions and social benefits.
2. Freedom to work in an occupation which shall be 'fairly remunerated'.
3. Improvement of living and working conditions, especially for part-time and temporary workers, to include the right to weekly rest periods and annual paid leave.
4. The right to adequate social protection.
5. The right to freedom of association and free collective bargaining.
6. The right of access to vocational training.
7. The right of equal treatment for men and women in terms of access to employment, pay, working conditions, education and training, and career development.
8. The right to information, consultation and participation, particularly in relation to technological change, restructuring, redundancies, and for workers in multinational enterprises.
9. The right to workplace health protection and safety, including training, information, consultation and participation for employees.
10. Rights for children and adolescents, including the right to a minimum working wage.
11. The right of the elderly and retired workers to a decent standard of living.
12. The right of people with disabilities to have access to assistance programmes.

The Action Programme

The Charter itself has no binding force: it is only a *'solemn declaration of intent'*. Far from being a radical manifesto of workers' rights, the Social Charter simply amounts to a set of principles and standards which, as one prominent legal commentator notes, *'certainly does not go as far as International Labour Organisation Conventions and Recommendations'* (Hendy 1989). If workers are to secure any legal and enforceable rights,

its vague principles must be translated into detailed Community legislation, proposed by the Commission and accepted by the Council of Ministers. Governments which signed the Charter are expected to present an annual report on how they are implementing its provisions.

The process is complicated by the fact that activities of European Community institutions are governed by the principle of **subsidiarity**. This involves limiting Community legislation to circumstances where its objective cannot be achieved by action at lower levels. The Commission initiates legislation only if believes its objectives can be reached more effectively at EC level than by leaving responsibility to either member states or to collective bargaining between the social partners (to which it otherwise normally considers itself 'subsidiary'). So, for example, it is considered preferable if member states pass domestic legislation to implement social charter provisions or if the same ends are met through collective bargaining between employers and unions. The Charter itself states that responsibility for its implementation can rest with member states rather than Community institutions, and could be through collective agreement rather than European legislation.

The importance of subsidiarity is illustrated by the Action Programme. On social protection, for example, it is recognised that because member states' social security schemes vary so widely and *'reflect the history, traditions and social and cultural practices proper to each member state'*, the Commission accepts that *'there can therefore be no question of harmonising [social security] systems'*. So it merely proposes a couple of non-binding Recommendations on resources and on convergence of objectives in social security schemes to offset regional imbalances.

But the Charter does assume that some Community measures will be needed. It invites the Commission to propose legal instruments to create rights which come within the Community's area of competence. So in November 1989, even before the Charter had been adopted by the European Council, the Commission published an Action Programme of measures to implement certain provisions of the Charter (see box). Because of the principle of subsidiarity, some of the Charter's provisions have not led to specific proposals in the Action Programme. For example, social security provisions and protection for the disabled and elderly are considered best dealt with through domestic measures by national governments.

The Action Programme's instruments take various forms, with widely differing potential impact on employment rights in member

states. At one end of the spectrum are **Directives** and **Regulations**, which have binding force. At the other end, are **Opinions** issued by the Commission, which are intended to influence the actions of member states, but without binding force. However, mere Opinions or **Communications** may lead to legislation at a later date.

The Commission has limited proposals for binding Community legislation — Directives and Regulations — to areas where Community law is needed '*to achieve the social dimension of the internal market and more generally, to contribute to the economic and social cohesion of the Community*'. The problem is that the Commission has not yet specified the provisions of the Treaty of Rome under which proposals will be introduced. The legal basis of a proposal is crucial in assessing whether a measure is likely to be adopted or rejected by the Council of Ministers.

Neither the Charter nor the Action Programme deal solely with employment rights. The Charter covers a broad range of social issues, including social security and vocational training. The Action Programme proposes initiatives covering the labour market in general. However, we will focus on aspects of the Charter which are more likely to affect workers' rights in the UK. These are the provisions which the Action Programme proposes to implement by binding Community legislation, or by an instrument of an unspecified kind which the Commission may eventually decide to put forward in the form of binding legislation. Further measures based on the Charter may be proposed in the future.

Legal basis

The impact of the Action Programme within the UK has sparked intense controversy because of the Tory Government's hostility to the Social Charter, the Action Programme and any other EC social measures which could bypass the UK's veto. This opposition culminated in the opt-out at Maastricht. But the likely impact of EC employment initiatives upon the UK still depends upon their legal basis — that is, whether they fall within the scope of qualified majority voting by the Council of Ministers, as with health and safety issues, or whether they require unanimity.

Qualified majority voting is permitted on proposals adopted under Articles 118A to encourage '*improvements, especially in the working environment, as regards the health and safety of workers*'. The Commission intends to exploit Articles 100A and 118A as the basis for implementing the Action Programme. The Council has already indicated that it will

THE SOCIAL ACTION PROGRAMME

The main proposals of the Action Programme consist of the following:

- ▲ a Directive on atypical employment (part-time and temporary work);
- ▲ a Directive on minimum working time, covering rest periods, holidays, night work, weekend work and overtime;
- ▲ a Directive on the protection of pregnant women and women who have recently given birth;
- ▲ a third equal opportunities programme;
- ▲ the revision of the 1975 Directive on collective redundancies;
- ▲ a Directive on the protection of young workers;
- ▲ a Directive on the formation of European company councils for the information and consultation of workers in 'European-scale enterprises';
- ▲ a Recommendation on financial participation schemes;
- ▲ an instrument on access to vocational training;
- ▲ various Directives on health and safety;
- ▲ an Opinion on the 'equitable wage';
- ▲ a Communication on collective bargaining, including agreements at Community level.

use Article 100A as the basis for one of the proposed Directives on 'atypical' (i.e. part-time, temporary, etc.) workers. The draft Directive on the protection of pregnant women at work and other draft Directives relating to health and safety also fall within Article 118A.

If the meaning of 'working environment' and 'health and safety' is broadly defined, other proposals could also fall within the scope of Article 118A. For example, in relation to the draft Directive on the organisation of working time, the Action Programme quotes the adverse effects which the reorganisation of working time can have on workers' 'well-being and health'.

The UK Government has insisted that most of the legislation proposed in the Action Programme can only be pursued under Article 235 of the Treaty. This gives the Council powers to take appropriate measures to meet a Community objective where the Treaty does not

provide a specific power to do so. Proposals based upon Article 235 must be adopted unanimously. If the UK Government wishes to challenge the legal basis on which a proposal is put forward, it can refer the issue to the European Court of Justice.

After Maastricht

The Maastricht Summit ended with 11 of the 12 member states signing a 'Social Protocol' to the new treaty enabling them to act by qualified majority in order to implement social legislation like the Action Programme. The precise implications of the Maastricht 'opt-out' remain unclear, not least because Britain's exemption may yet be challenged in the European Court of Justice. For example, Britain assumes the EC Presidency in June 1992 but may be excluded from discussions on social policy even when it would be expected to preside over the Council of Ministers.

However, the new treaty does not take effect until the end of the year by which time a Labour Government might have been returned to office. Labour was committed to opting back in, by signing both the Social Protocol and the Social Charter. But as the Conservatives won the election, the impact of EC social legislation on the UK remains unclear. If, for example, the Council passed a Directive on employee participation, European-scale companies like Shell or Hoechst would find it difficult if not inconvenient to exclude British representatives. Nor would British-based companies with operations on the Continent be able to escape social provisions which did not apply in their home base.

> *'It may even be that multinational employers will still decide to include British trade unions in the proposed cross-border works' councils, simply because it is too difficult to do otherwise. As the Italian foreign minister, Gianni de Michelis, said: 'The attracting power of 11 plants versus one will be far greater than the power of one over the 11.' John Major will not succeed in immunising the British social and industrial relations system from the virus of European "social partnership".'* (Palmer 1991)

Under the terms of the Maastricht pact, qualified majority voting will be extended to cover not only improvements to the 'working environment' but also working conditions, employee information and

consultation, equal opportunities, and protection of pensioners and the unemployed.

The British Government would no longer be able to veto progress on social matters like employee participation or part-timers' rights. But any measures passed would not take effect in the UK. The protocol also extends the range of issues on which the EC can introduce legislation although they require unanimous voting. These include social security, collective bargaining and representation (union recognition), redundancy provisions, employment creation and working conditions for non-EC migrant workers. Again, none of these initiatives would apply to Britain.

In order to illustrate more clearly the nature and possible impact of the Social Charter and Action Programme, we'll focus on just a few aspects of the social dimension, looking at initiatives covering health and safety, 'atypical workers', and working time.

Health and safety

There is already a substantial amount of Community legislation covering workplace health and safety (see Chapters 5 and 6). The amendments made to the Treaty of Rome in 1987 by the Single European Act emphasise the weight given to health and safety by the Commission. Article 118A of the Treaty says that:

> *'member states shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonisation of conditions in this area, while maintaining the improvements made'.*

The Commission's major initiative in health and safety is the so-called 'six-pack' of directives which incorporates the framework directive on encouraging health and safety improvements along with the five daughter directives on workplace health and safety requirements, use of machinery, personal protective equipment, work with VDUs and handling heavy loads.

Health and safety concerns also figure in the Social Charter which states that *'every worker must enjoy satisfactory health and safety conditions in his working environment'*. The Charter requires *'appropriate measures'* to harmonise health and safety provisions while maintaining

improvements. As many as ten further Directives are proposed under the Action Programme, from minimum health and safety requirements at temporary or mobile work sites to health and safety signs at the workplace.

'Atypical' workers

It is worth looking at other aspects of the Action Programme, partly to give a flavour of the measures currently in the pipeline and partly to indicate the complications and disputes which have arisen, and are likely to continue, over the interpretation of Community law covering employment matters. The Social Charter asserts that the internal market should improve the living and working conditions of Europe's citizens, in accordance with Article 117 of the Treaty of Rome. National governments and Community institutions should attempt to harmonise standards to the level of best practice amongst member states.

The Charter places particular emphasis on 'atypical' forms of employment, including fixed-term contracts, and seasonal, part-time and temporary work, which has grown considerably in recent years. In the early 1980s, the Commission proposed Directives regulating part-time work, temporary work and fixed-term contracts. The proposal on part-time work, for example, requires part-timers to receive the same treatment as full-timers, except where a difference in treatment is justified by shorter working hours. But the draft excludes differences in treatment in relation to health and safety, work organisation, promotion prospects, and dismissal. Part-time workers' pay would be calculated on the same basis as, and in proportion to, that of full-timers and those wishing to work full-time and full-timers wanting to work part-time would have priority when a suitable vacancy arises at their workplace.

The draft Directive on temporary work is intended to regulate businesses supplying temporary workers. It would restrict the circumstances in which temporary and fixed-term contracts can be used, and their duration. Employers intending to use temporary workers and those on fixed-term contracts would be required to inform their workforce representatives.

Although the Action Programme proposes only one Directive, the Commission has now decided to split the proposal into three, covering different aspects of atypical work, each with a different legal basis. On 13 June 1991, the Commission formally adopted three draft Directives,

Accident in a sweatshop Reproduced from Posada (1989): *Messanger of Mortality*, Redstone Press

based on Articles 100, 100A and 118A – and so opened them to qualified majority voting, avoiding the likelihood of a UK Government veto. The proposed Directives are likely to have considerable impact on the rights of atypical workers since UK law imposes few restrictions on the use of fixed term or temporary contracts. Furthermore, the employment protection rights of part-time employees working less than 16 hours a week are very limited, and for those working less than eight hours a week even more so.

Working time

The Commission's proposal to introduce regulations on working time under the *'working environment'* criteria of Article 118A has outraged

the UK Government. The Charter's provisions on *'the duration and organisation of working time'* state that workers should have a right to annual paid leave and a weekly rest period. The Action Programme considers the adaptation, flexibility and organisation of working time to be important not only in respect of working conditions but also in its effect on competitiveness. Working time has dominated a number of major collective agreements across the Community, often following a campaign of industrial action, most prominently by the German IG Metall metalworkers union and the UK engineering unions which won significant cuts in working time.

Since the Commission wants to avoid *'excessive differences in approach'* between member states, the Action Programme proposes a working time directive outlining *'minimum reference rules'* on the maximum length of work, rest periods, holidays, night work, week-end work, and systematic overtime. Such a directive is likely to have a significant effect on the rights of workers in the UK where the statutory regulation of working time has been considerably weakened in recent years. Under the 1986 Wages Act, Wages Councils lost the right to set paid holiday entitlements while both the 1986 Sex Discrimination Act and the 1989 Employment Act ended restrictions on the working hours of women and young workers.

Britain's opt-out of the social dimension at the Maastricht summit was a blow to hopes that the Social Charter would at least provide the basis for regaining some of the social benefits and employment rights lost since 1979. But a government veto cannot prevent the emergence of a genuinely European social dimension to the process of European integration. A diverse range of groups have begun to form pan-European and bilateral cross-border relations, linking trade unionists, pensioners, women's organisations, minority groups, consumer advocates, and many other pressure groups. While initiatives by the Commission and Council of Ministers are central to the implementation of the Social Charter, the dialogues and networks which have emerged in recent years will remain central to creating a European civil society, an alternative vision to the grey and one-dimensional prospect of a profit-driven single market.

2

COMMUNITY INSTITUTIONS AND PROCEDURES

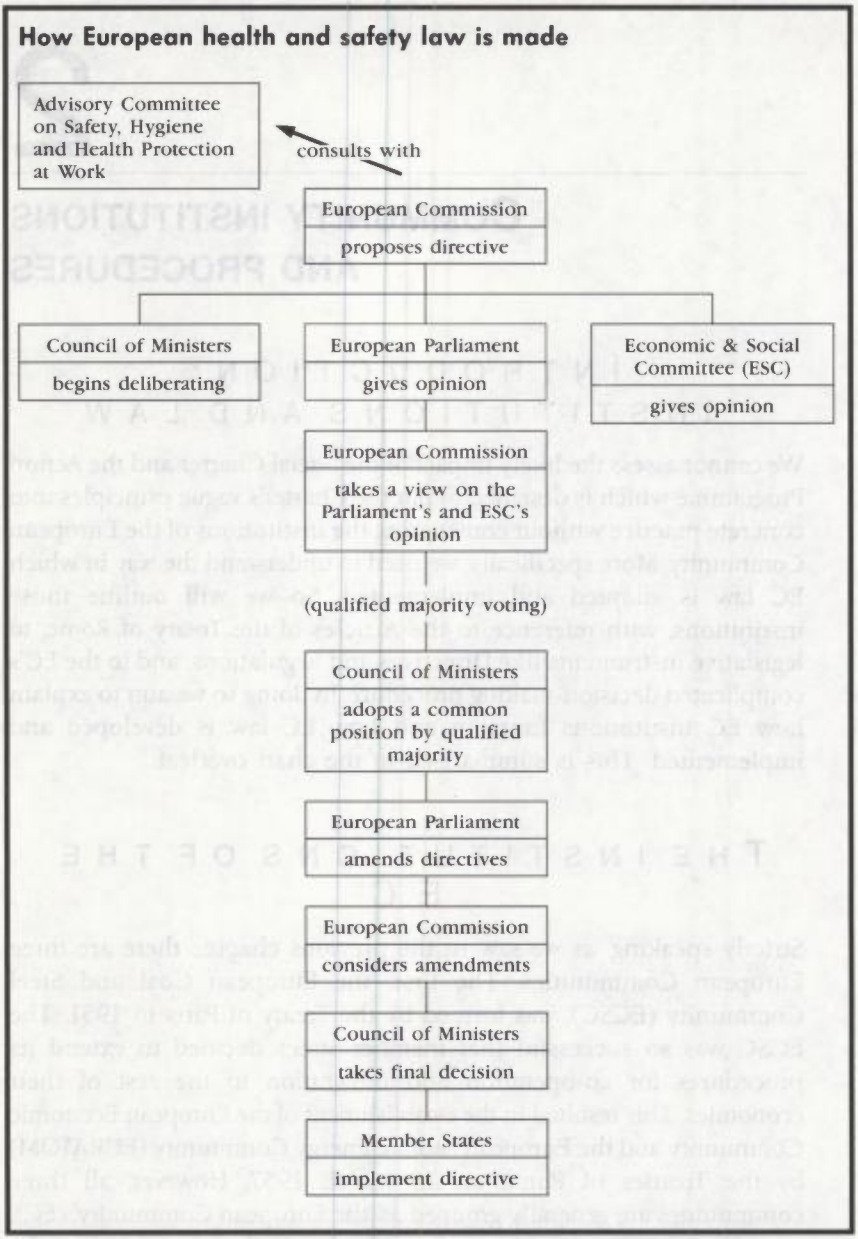
INTRODUCTION: INSTITUTIONS AND LAW

We cannot assess the likely impact of the Social Charter and the Action Programme which is designed to put the Charter's vague principles into concrete practice without considering the institutions of the European Community. More specifically, we need to understand the way in which EC law is adopted and implemented. So we will outline those institutions, with reference to the Articles of the Treaty of Rome, to legislative instruments like Directives and Regulations, and to the EC's complicated decision-making procedure. In doing so we aim to explain how EC institutions function and how EC law is developed and implemented. This is summarised in the chart overleaf.

THE INSTITUTIONS OF THE EC

Strictly speaking, as we saw in the previous chapter, there are three European Communities. The first, the European Coal and Steel Community (ECSC), was formed by the Treaty of Paris in 1951. The ECSC was so successful that member states decided to extend its procedures for co-operation and integration to the rest of their economies. This resulted in the establishment of the European Economic Community and the European Atomic Energy Community (EURATOM) by the Treaties of Rome on 25 March 1957. However, all three communities are generally grouped as 'the European Community' (EC).

The above treaties have since been revised and updated by the provisions of the Single European Act (SEA), signed in February 1986.



Reproduced from Labour Research Department (1992): *1992 Health and Safety — A guide to the European directives on H & S at Work*, LRD Publications

The SEA commits member states to:

- the completion of the single European or internal market by the end of 1992;
- greater economic *and social* cohesion (including social policy);
- the promotion of research and technological development;
- the improvement of the environment, including the working environment;
- progress towards economic and monetary union.

The European Community has had 12 member states since Spain and Portugal joined in 1986. With the unification of Germany in October 1990, the Community's population grew to 342 million inhabitants. The six founding members — Belgium, France, West Germany, Italy, Luxembourg and the Netherlands — were joined by Denmark, Greece and the United Kingdom in 1973, and by Greece in 1981.

Three sets of common institutions govern the European Community:

- **decision-making** institutions — the European Commission, which initiates legislation and implements decisions; the European Parliament, which passes opinions on, and occasionally amends, Commission proposals; and the Council of Ministers, which takes the final decisions;
- **monitoring/regulatory** agencies: the European Court of Justice and Court of First Instance ensure Community laws are observed; the Court of Auditors supervises the financial affairs of the Community;
- **advisory bodies**: the Economic and Social Committee and the ECSC Consultative Committee express the views of leading interest groups, including those of trade unions and employers — the 'social partners'.

Some commentators have tried to explain Community institutions by comparing them to British equivalents. In this case, the Council of Ministers is the Cabinet; the European Commission is the civil service; the European Parliament is the House of Commons; and the European Court of Justice is the Community's judiciary.

Unfortunately, there are no direct parallels since the reality is far more complex. For example, it is the Commision rather than the Council of Ministers which initiates most legislation. The Council remains, however, the most powerful of the Community's institutions: no major decisions are made or laws passed without its agreement.

THE EUROPEAN COMMISSION

The European Commission functions as a civil service but only in so far as it provides the Community's administration. It supervises the working of the Common Market, the Common Agricultural Policy and the implementation of the internal market. But it is also the Community's principal think-tank. Unlike a civil service, it proposes and initiates legislation rather than simply responding to the initiatives of politicians. In doing so it sets the agenda for the work of the Council of Ministers.

At the Maastricht summit in December 1991, the Council further reduced the reach of national government vetoes by expanding both the Commission's powers and qualified majority voting to the following areas:

- the power to initiate proposals on health, education and culture (at least in their cross-border aspects) and on consumer protection;
- Europe's infrastructure, with the right to regulate telecommunications, transport and energy links between member states;
- the promotion of small business, industrial innovation and new technology.

The Commission consists of representatives from each member state. The 17 representatives, known as **Commissioners**, are nominated by their national Governments but must be appointed by mutual agreement between member states. The bigger member states (France, Germany, Italy, Spain and the UK) have two commissioners: smaller states have one.

The 17 Commissioners form a 'college' which considers policy proposals before they are presented to the Council of Ministers. There must be general consensus that a proposal is at least coherent and presentable before it is sent to the Council.

Each Commissioner is responsible for at least one specific policy area or portfolio, generally linked to one of 22 Directorates-General, or departments, of the Commission. So, for example, the Greek Commissioner, Vasso Papandreou, is responsible for Directorate-General V (DG V) which covers Employment, Social Affairs and Education.

Each Directorate-General contains a number of Directorates: in DG V these are:
Directorate A: employment, including social affairs and equal opportunities for women;
Directorate B: living and working conditions, welfare;
Directorate C: education, vocational training, youth and disabled;

Directorate D: the European Social Fund;
Directorate E: health and safety at work.

Unlike British civil servants, Commissioners are active politicians. They argue, debate and lobby with other EC colleagues and with politicans from member states.

Within the larger member states, the standard practice is that one Commissioner is nominated by the ruling political party and the other by the main opposition party. For example, Leon Brittan was nominated by the Thatcher Government. Former Labour minister, Bruce Millan was the Opposition's successful nomination. Commissioners are subject only to the supervision of the European Parliament and must act independently of domestic political pressures and considerations. They take an oath to put aside the interests of their national governments or political parties in favour of the interests of the Community as a whole.

Commissioners cannot be removed from office by either member states or the Council of Ministers. Only the European Parliament has the power to replace them and even then it cannot selectively dismiss individual Commissioners: it must dismiss the entire Commission.

Commissioners hold office for a renewable term of four years. The heads of government appoint a President from amongst the Commissioners. The President of the Commission holds office for a renewable term of two years. The current President is Jacques Delors, formerly a Socialist minister in France.

The Commission's offices are based mainly in Brussels but it also has offices in Luxembourg. With more than 12,000 staff, the Commission is organised into 23 departments or 'directorates-general'. The most relevant directorate-general for our purposes is DG V (i.e. DG five), which covers employment, social affairs and education.

Tasks

- The Commission's principal function is to ensure that Community law and the decisions of Community institutions are applied. Consequently, it enjoys extensive investigative powers and the right to bring infringement proceedings. Member states which fail to fulfil their Treaty obligations can be taken to the European Court of Justice. The Commission can impose fines on individuals and companies, notably those which violate competition rules.
- The Commission has exclusive responsibility for proposing to the

Council of Ministers legislative measures to advance Community policies. It is this right of initiative — its role in proposing new laws — which is the source of the Commission's power. Some 726 proposals were submitted to the Council in 1990.

- In certain areas, the Commission enjoys extensive powers of its own — on competition, for example, it can prohibit monopolies and restrict state subsidies. In other respects, the Commission follows Council instructions.
- The Commission manages Community finances and funds, including the Social Fund, Regional Development Fund and agricultural subsidies.

With regard to social policy, including employment rights, and working conditions, the Commission's proposals are designed to implement the principle laid down in Article 117 of the Treaty of Rome. That principle — of 'upward harmonisation' — requires EC institutions and laws to promote *'improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained'.*

The Commission's administrative staff is based mainly in Brussels. However, the 'Brussels bureaucracy' is not as large as its critics suggest. With 16,700 officials divided between the 20 Directorates-General, the Commission itself is quick to point out that it has *'less than the staff of many single ministries in member countries'.*

THE COUNCIL OF MINISTERS

The Council of Ministers is the Community's most powerful institution and major decision-making body. The Council makes the Community's most important decisions on the basis of proposals from the Commission. It consists of the leading ministers from member state governments — precisely which ministers depends on the agenda of the meeting. For example, when employment issues are being discussed, the Council consists of labour, employment or social affairs ministers. The Council met 85 times in 1990.

The Council examines proposals from the Commission which it can amend only by unanimous consent. Although unanimity has not always been necessary for some types of decision, the Council has traditionally tried to secure overall agreement. This laborious process was one factor in the 'Euro-sclerosis' which seemed to paralyse the

Community in the 1970s and early 1980s. However, since the Single European Act, a system of qualified majority voting (QMV – see below) has been introduced to speed up the decision-making process.

The Council presidency changes every six months, and is held by each member state in rotation. The presidency passes between member states in alphabetical order. So, for instance, while the Netherlands took over the Presidency in July 1991, Portugal followed in the first half of 1992, and the UK takes charge for the second half of 1992.

The Council is assisted by a secretariat of around 2,200 and a Committee of Permanent Representatives, known as COREPER. COREPER consists of civil servants from each member state and it co-ordinates the preparatory work for Council meetings. It plays a trouble-shooting role in trying to resolve reservations that a member state has about proposals before they are submitted to the Council.

The Council of Ministers is not the same as the European Council. This consists of the heads of state or government and the President of the European Commission. Since 1975, the European Council has met around twice a year at European summits in order to discuss general Community questions, foreign policy and political co-operation, and to make strategic decisions, such as moves towards a single European currency or political union.

Until 1986, the European Council had no legal standing in Community law but the Council summits have effectively become the final court of appeal for Community decision-making. The Maastricht summit in December 1991, for example, had a profound effect on the debate about the direction of the Community and, more specifically, the impact of the social dimension within the UK (see below, page 28).

European Parliament

Since 1979 the European Parliament has been elected by direct universal suffrage every five years. Some 518 seats are allocated to member states in proportion to population. The four most populous member states (France, Germany, Italy and the UK) have 81 MEPs, Spain has 60, the Netherlands has 25, there are 24 each from Belgium, Greece and Portugal, 16 from Denmark, 15 from Ireland and six from Luxembourg. Although Parliament's headquarters are based in Luxembourg and its 18 committees meet in Brussels, it holds its monthly plenaries in Strasbourg.

The decision-making process

The Commission drafts proposals for legislation. They are submitted to the Council of Ministers after the European Parliament and, in many cases, the Economic and Social Committee, have given their opinions. In short, the Commission proposes, the Council disposes.

Ministers from member states sitting on the Council usually consider reports from the Parliament and ESC when they consider Commission proposals. If there is a problem or failure to agree among junior ministers on the councils (like, for example, employment ministers sitting on the social affairs council), the matter may be referred to the more senior councils of foreign ministers. If there is still no agreement, the matter may be sent up to the European Council or summit, consisting of prime ministers, presidents and the President of the Commission.

Most discussions on the Council of Ministers consist of member states each stating their national position. After full debate, officials and experts are called in to redraft the proposals in order to secure a mutually acceptable position. Although some decisions can be taken by qualified majority, the Council strives for unanimity. In the event of one or two nations being isolated on an issue, the minority has usually — albeit reluctantly — gone along with the majority in the interests of European unity. Britain is the exception: it was the only member state to refuse to sign the Social Charter and its opt-out of the 'social protocols' and moves towards monetary union at Maastricht were without precedent.

For further detail see 'co-operation procedure' below (page 43).

MEPs have formed political groups within the Parliament which cut across national boundaries. The Socialists form the largest single group, followed by the European People's Party — mainly Christian Democrats.

The Parliament exercises influence rather than power. It cannot initiate laws or make decisions. So its only areas of influence are negative — it has the power to dismiss the entire Commission and it is able to amend or delay the Community budget and spending programme. The first weapon is more of a potential than an actual sanction: it has

European Parliament — seats distributed by political affiliation*	
Socialists (including 46 British Labour Party)	179
European People's Party (Christian Democrat)	122
Liberal, Democratic, Reformist	49
European Democrats (including 32 UK Tories)	34
Greens	29
United European Left	28
European Democratic Alliance	22
European Right (far right)	16
'Rainbow'	15
Left Unity	14
Non-affiliated independents	10
Total	518

* As of April 1991

never been employed and is unlikely ever to be used. But the Parliament has successfully held up the Community budget and influenced spending priorities. It has reformed aspects of the Common Agricultural Policy and secured more resources for regional policy and social issues.

The Maastricht summit conferred extra responsibilities on Parliament. But although it gained new rights to veto proposals in such areas as environmental protection, research and development, and consumer protection, these are issues which MEPs want to advance rather than block.

The European Parliament's functions can be categorised as legislative, budgetary, political and supervisory.

Legislation

The Parliament has no legislative powers as such — it cannot initiate, pass or exercise final veto over legislation (although Parliament must

ratify international association and co-operation agreements). It can only pass opinions on legislative proposals from the Commission and request amendments which the Commission or Council are not obliged to accept. However, the Commission does take Parliament's opinions very seriously and often invokes the Parliament's position to strengthen its own hand against the Council of Ministers.

Commission proposals submitted to the Parliament en route to the Council are examined by at least one of the 18 committees. In some cases, these directly mirror a Directorate-General (transport or overseas development) and in others cover wider or more specific areas (women's rights or research and technology). The reports of these specialist committees are considered by the various political groups before debate at the Parliament's plenary sessions. Parliament's opinions are then sent to the Commission and Council.

However, the Single European Act gave the Parliament a slightly more influential role in the legislative process in certain areas, including the internal market. Under the new 'co-operation procedure', there are now two readings of legislation in both Parliament and the Council of Ministers. The Parliament may propose amendments to the 'common position' adopted by the Council upon the first reading of a Commission proposal. If its amendments are acceptable to the Commission, the Council need not be unanimous but may adopt them by a qualified majority within three months. Unanimity is required when the Council wishes to override Parliament's rejection of its 'common position'.

The Maastricht summit further amended the procedure, giving a greater say to the European Parliament. From the end of 1992, Commission proposals will need three separate readings where MEPs will be able to suggest amendments to the Council. If the amendments are still rejected by the Council after the third reading, an absolute majority of MEPs could exercise a veto.

Budgets

As noted above, Parliament has the power to adopt or reject the Community's budget. If it rejects it — as on two previous occasions — the entire budgetary procedure must begin again. The budget is initially drafted by the Commission but financial authority rests with the Council and Parliament.

Parliament has the final say on 'non-compulsory' spending (i.e.

largely non-agricultural funds) and is empowered to amend spending plans in line with Treaty provisions. Given its lack of direct legislative powers, Parliament tends to employ its financial weight to influence Community policies. Hence the frequent and much-publicised rows over the Community budget.

Political role

The Parliament is the only democratically elected and representative body among the EC's principal institutions. In requesting the development of policy initiatives by the Commission, it is able to influence the direction of the Community, often in decisive ways. For example, Parliament was behind the draft treaty on European Union which led to the Single European Act.

Supervision

Parliament enjoys responsibility for supervising the work of both the Commission and the Council. Under Article 144 of the Treaty of Rome, it has the power to dismiss the Commission by a two-thirds majority vote — a right which has yet to be employed. In monitoring Community developments, Members of the European Parliament (MEPs) rely largely on the Court of Auditors and their own questions to the Commission and Council.

Despite some initial expectations, the Maastricht summit failed to address the problem of the 'democratic deficit' — the fact that the Community's only democratically elected and representative institution still lacks effective decision-making power.

The Advisory Committee on Safety, Hygiene and Health Protection at Work

The Advisory Committee on Safety, Hygiene and Health Protection at Work is the Community's single most important institution dealing specifically with health and safety. In fact, according to one member of its workers' group, *"where workers are concerned, the Advisory Committee is the most important body when it comes to initiating activities in the field*

of health and safety at work in the Community and influencing opinion formation in the Commission' (Konstanty 1990). The Advisory Committee was set up in 1974 as a result of the Commission's concern to have a permanent body to provide assistance with its increasing health and safety workload.

The main factors behind the creation of the Advisory Committee were:

- the need for a single mechanism to ensure co-ordination and co-operation between national authorities, employers' organisations and trade unions on health and safety matters;
- the Council Regulation of January 1974 which initiated the first Action Programme on health and safety at work;
- awareness that new health and safety problems were being created by new technology; new, potentially dangerous substances and materials; and by changes in production methods and processes;
- and, finally, to conform to the Treaty of Rome's aim of ensuring workers' protection against occupational disease and industrial accidents.

The Advisory Committee comprises 72 full members and is chaired by the social affairs Commissioner — currently Vasso Papandreou. Each member state nominates two government representatives, two employers' representatives and two trade union representatives. Acting on the recommendations of member states, the Council appoints each member for a three-year term. The Council aims to ensure that the Committee's membership is as broadly representative as possible. So, for example, the European Trade Union Confederation (ETUC) rather than a single national confederation provides the spokesperson for the workers' group.

As the central forum for advice and consultation on health and safety matters, the Advisory Committee can anticipate and even forestall potential problems in legislating health and safety matters. This is possible because of its dual role in, firstly, allowing consultation between member states prior to the Commission submitting a final text to the Council of Ministers; and, secondly, ensuring that the social partners agree with the basic principles of draft measures and are able to register their views on specific points.

While the Committee strives to reach a unanimous view on most questions, when this is not possible it adopts a common position on points where there is common ground. Dissenting views and the

particular opinions of the different interest groups may provide additional or complementary perspectives to the common position.

The Committee receives administrative and secretarial support from Unit E/5 of DG V's Health and Safety Directorate.

The Advisory Committee's tripartite structure is organised around the three main interest groups — workers, employers and governments — and supplemented by a number of ad hoc groups covering specific topics. Their work is co-ordinated by an organisation group consisting of interest group representatives working alongside the chairpersons of the ad hoc groups. The Advisory Committee has also, since 1977, established working groups to examine draft Directives. Its first test was the initial bout of relevant directives covering dangerous substances, vinyl chloride momomer and monitoring of hazards (1976) and the provision of safety information in the workplace (1978).

In fact, the Advisory Committee's function has evolved from that of a relatively passive commentator on EC initiatives to being actively involved in drafting proposals. The expertise of Advisory Committee members often permits it to determine the Commission's priorities. In effect, the Committee enjoys a certain power of initiative since the Commission can often be prompted into action by an Advisory Committee investigation into a particularly new or urgent health and safety problem.

The 'hands-on' involvement of the Advisory Committee in the preparation of proposals helps to lubricate the legislative process. If a broad tripartite consensus is reached between government representatives and the social partners, time-consuming difficulties can be avoided in subsequent stages at the Council's Social Affairs Working Party, COREPER, and/or the European Parliament.

The Advisory Committee's main responsibilities include:

- contributing to the EC's legislative process by passing opinions on legislative proposals with health and safety implications;
- co-ordinating consultation between interested parties (national authorities, unions and employers) on existing EC provisions and proposed initiatives;
- cultivating a 'common approach' to health and safety problems, EC priorities and the implementation of EC measures;
- initiating and organising campaigns against specific workplace hazards and risks, and establishing the methods required to measure and improve workplace health protection;

▲ informing interested parties of EC measures and encouraging codes of practice on the basis of exchanges of information and experience.

The Advisory Committee has exercised its responsibilities in one of its major areas of work — developing the EC's Action Programmes on workplace health and safety. The first action programme, between 1978-82, covered occupational accidents and diseases, dangerous substances, the prevention of machinery-related hazards, and improving the 'human factor' in workplace health and safety.

The second Action Programme, covering 1982-86, focused on training, information, statistics and research, and co-operation with other international agencies like the International Labour Organisation and World Health Organisation.

Article 118A of the Single European Act gave the Committee's work added momentum in expediting the decision-making process on health and safety matters. The Committee played a leading role in collaborating with the appropriate departments of the Commission in developing the third Action Programme (1988-92) which focused on workplace safety and ergonomics; occupational health and hygiene; information; training; small and medium-sized undertakings; and social dialogue.

The Advisory Committee was instrumental in developing the framework Directive and the five 'daughter' Directives (on personal protective equipment, workplace health and safety requirements, use of work equipment, manual handling of loads, and VDUs). The Committee may deliver a joint opinion and/or individual supplementary comments by each interest group and ad hoc group.

Problems

The Advisory Committee has complained that the Commission has failed to consult it on broader issues whose health and safety implications may be more opaque or long term but are nevertheless real. So, for example, the Advisory Committee protested that it had not been consulted at the preparatory stage of the plans for the Single Market. In the Committee's view, proposals for the harmonisation of technical standards, for example, had serious consequences for health and safety.

The Committee has also occasionally been frustrated by its terms of reference. In the aftermath of Chernobyl, for instance, the Committee was concerned to initiate work on workers' protection against the effects

of ionising radiation. However, the terms of the 1974 Council Decision which set up the Committee specifically excluded this area of competence along with health protection in the mineral extracting industry. The EURATOM Treaty required only the Economic and Social Committee to be consulted on radiation hazards. The Commission subsequently moved an amendment to the Decision, adding radiation protection to the Advisory Committee's brief.

On the workers' side, the European Trade Union Confederation has expressed concern that the Commission was giving manufacturers a free ride in determining technical standards without an input by the social partners. The Commission has sought to allay such fears by affirming the need to involve workers' representatives in the evaluation of standards through the forum of the Advisory Committee. Similarly, unions should be represented on national delegations to the Comité Européen de Normalisation (CEN) and the Comité Européen de Normalisation Electrotechnique (CENELEC). Despite these and other assurances, in February 1989 the ETUC set up its own Technical Bureau (see page 45) to provide an expert monitor service on the technical work of the standardisation bodies. The unions also contribute to the ad hoc standardisation group established under the auspices of the Advisory committee.

Economic and Social Committee

In most cases, before a Commission proposal can be adopted by the Council, the opinion of the Economic and Social Committee must be sought. The Committee is a consultative body, with 189 members drawn from all 12 member states representing one of three groups, the principal 'social partners' — trade unions and employers — and 'various interests' (the latter covers lobbies for agriculture or transport, for example, and organisations representing small businesses, professions, and consumer protection). The Committee meets eight times a year. Its nine specialist working parties cover such areas as social questions, economy and finance, and regional development.

The ESC is purely consultative but its expertise is highly valued and, like the Parliament, its specialists' opinions command respect from the Commission and Council. The ESC must be consulted before Directives covering certain issues are adopted. The ESC can also issue

opinions on its own initiative. Although appointed as representatives, ESC members act in their personal capacity, and, at least theoretically, they cannot be bound by a mandate from an outside body.

EUROPEAN COURT OF JUSTICE

The European Court of Justice (ECJ) is responsible for the interpretation of EC law. The ECJ consists of 13 judges appointed by consensus between member states, each for a renewable term of six years. The Court sits in Luxembourg. There is no requirement that the judges should be of any particular nationalities but, in practice, there is generally one judge from each member state and an additional judge nominated by the larger member states in rotation.

The ECJ is an independent forum in which disputes over the meaning, scope and application of EC law are resolved. It is empowered to:

- judge the interpretation or validity of Community law at the request of a national court;
- declare void any legal instruments adopted by the Community institutions or member states which are incompatible with Community law: it can do so at the request of a Community institution, member state or an individual directly concerned (for example, former UK employment secretary Michael Howard threatened to go to the ECJ if the Commission attempted to pass employment legislation under 'health and safety' criteria which allow a qualified majority vote and thus bypass a UK veto).

The judges are assisted by six Advocates-General whose duty is to provide a reasoned submission on the case before the Court in order to help it to reach its decision. The five larger member states each nominate an Advocate-General and the remaining one is nominated by the smaller states in rotation.

The Treaty requires both the judges and the Advocates-General to be indisputably independent and to be qualified for appointment to high judicial offices in their respective countries or to be legal advisers of the highest calibre. Consequently, member states have tended to nominate a wide range of lawyers for the post, including civil servants and academics, as well as judges.

The ECJ backs up the European Commission in monitoring whether member states fulfil their Treaty obligations and, specifically, whether they implement Directives. If the Commission finds that a state has failed to implement a Directive, it draws the state's attention to the situation and invites a response. The Commission usually aims to settle disputes by dialogue and agreement on what the state must do to comply with the directive's requirements. Infringement proceedings are only initiated if agreement is not possible.

If a state fails to act, the Commission refers the case to the ECJ. All member states have at one time or another been the subject of enforcement proceedings. If the Court finds that a member state has failed to fulfil its obligations, the state is instructed to take measures to comply with its judgment. If it still fails to comply, the Commission can bring further proceedings to obtain a declaration that the state is in default. But no there is no further sanction is available.

The ECJ can challenge the legality of acts by the Council and Commission, including Directives and Regulations, although Recommendations and Opinions are not subject to review. Member states can challenge legislation on the grounds of lack of competence, or infringements of procedure.

Individual citizens are also entitled to challenge the validity of a decision or regulation addressed to them or if it is their 'direct and individual concern'. Both the Council and the Commission can bring an action to challenge the validity of each other's acts. If the ECJ decides that a challenge is well founded, the act may be declared void.

THE 'SOCIAL PARTNERS'

ETUC

The European Trade Union Confederation (ETUC) consists of 36 affiliated confederations in 21 European countries, representing over 45 million workers (approximately 40% of the West European workforce). The ETUC constitution demands a '*new orientation of Europe, based on the needs of working people, involving structural reforms in the economy and society*'. Its main priority is to ensure that the Single European Market has a social dimension principally through a '*Community bargaining dimension*', the upward harmonisation of working

conditions, and entrenched employment rights. This is necessary, argues the ETUC, in order to avoid post-1992 social dumping (see page 8) As a designated 'social partner', the ETUC is consulted by the Commission on a wide range of legislative initiatives.

UNICE

The Union of Industrial and Employers' Confederations of Europe (UNICE) brings together some 33 employers' federations, including the UK's CBI, from 22 European countries, within and outside the EC. It is the leading body representing private sector employers at the European level. UNICE's main function is to lobby and pressure EC institutions in its members' interests. Its priorities include *'the strengthening of European economic and social cohesion'* and the *'development of the social dialogue [with ETUC]'* alongside the *'creation of a more favourable climate for enterprise'.* UNICE is a designated European 'social partner' and is consulted by the Commission on many legislative proposals.

CEEP

The third European 'social partner' is the European Centre for Public Enterprises (CEEP) which groups public sector employers from within the Community. CEEP's principal roles are to influence EC institutions in areas of special interest to public undertakings, to make such undertakings' opinions known and to provide information on EC issues to its members. It is consulted by the Commission on certain legislative proposals within its areas of interest or expertise.

COMMUNITY LAW AND DECISION-MAKING

European Community law comes in several forms: the Articles of the Treaty of Rome, Directives, Regulations, Decisions, Opinions and Recommendations. However, the EC's legislative instruments are adopted in different forms by member states and each type of instrument has a potentially different effect on national law.

Basically, their impact is as follows:

- **Regulations** apply directly to all member states;
- **Decisions** may be made by the Commission or the Council and are binding only on member states, companies or individuals to which they are specifically addressed;
- **Directives** stipulate objectives which member states adopt in national legislation in the most appropriate manner;
- **Recommendations and Opinions** are not binding at all: they simply offer advice or suggestions to member states. Recommendations usually advocate a specific course of action while Opinions simply state a view on a situation or event in the Community or in a particular Member State.

For example, the Commission's proposals under the Action Programme include a Directive on minimum working time (covering rest periods, holidays, night work, weekend work and overtime) and a regulation on workers' rights of residence when employed in a member state. Once the Regulation is passed, it is immediately applicable in each member state and workers automatically enjoy the rights (or responsibilities) it confers. But although there are a few cases in which a Directive can have a direct effect, a Directive usually first needs to be implemented through domestic legislation by the national Parliament of each member state.

Regulations have the most direct impact on member states. According to Article 190 of the Treaty of Rome, a Regulation is *'binding in its entirety and directly applicable in all member states'*. So Regulations automatically become part of member states' domestic law without requiring further legislation. However, if a Regulation is to be directly enforceable by individuals, it must comply with the above conditions for direct effect.

Directives are binding upon each member state, in terms of the result to be achieved. But the form and method of implementing a Directive is left to national authorities. Member states can incorporate Directives into domestic law in whatever way is most appropriate to their own legal and political systems. Nevertheless, Directives include deadlines for member states to implement their provisions. If a member state fails to act by the deadline and the Directive has 'direct effect' (see below), individuals can enforce it even if it has not been incorporated into national law.

Recommendations and opinions are not binding on member states and are usually issued on matters which are considered the rightful

preserve of national institutions. In line with the principle of 'subsidiarity', many issues are considered more appropriately dealt with by national legislation or by the 'social partners' through collective bargaining.

Hence the Commission's reluctance to use the Action Programme to propose measures on a national minimum wage or collective bargaining procedures. This is one reason why many British trade unionists have felt frustrated that the Social Charter and Action Programme deals almost exclusively with individual rights to equal treatment, vocational training, etc., at the apparent expense of collective rights to organise, bargain, or secure union recognition, for example.

The Commission also issues **communications**, **memoranda**, **programmes** and **guide-lines** which have no binding force but are designed to influence member states or to pressure them into adopting certain policies.

Community law is the overriding point of reference and is binding in all member states. The UK gave up rights of sovereignty when it passed the 1972 Act of Parliament on entry into the EC and later incorporated the provisions of the Single European Act in 1986. The House of Lords is no longer the UK's ultimate arbiter or final court of appeal. Nevertheless, in most cases, workers or unions with a grievance under EC law will still need to exhaust all legal avenues of appeal in the UK before a case can be referred to the European Court of Justice.

The Treaty of Rome

The Articles of the Treaty of Rome can only be amended by the unanimous decision of all member states. The European Commission or the government of any member state can submit proposals for the amendment of the Treaty to the Council (Article 236). The Council then consults the European Parliament, and, where appropriate, the Commission. Proposed amendments are then discussed at a conference of governmental representatives. Any amendments to the Treaty come into effect only after ratification by all member states in accordance with each nation's constitutional requirements.

The most recent amendments to the Treaty of Rome were made in 1987 by the Single European Act, which introduced qualified majority voting on a range of issues.

Directives and Regulations

The development of Directives and Regulations follows a similar legislative process to that of Treaty amendments. Firstly, the Commission convenes a working group to consider new proposals, assess the current state-of-play in the area and produce a report. The relevant directorate-general usually uses the report to produces a draft Directive or Regulation which may then be adopted by the Commission by simple majority vote. The draft, known as a 'Commission proposal', is then submitted to the Council of Ministers.

Just as the Council receives the draft, the European Parliament (EP) and the Economic and Social Committee (ESC) are also consulted — the ESC at least on proposals covering social and employment matters.

The European Parliament's specialist committees undertake detailed work on the Commission's proposal which is then debated by the entire Parliament, with amendments frequently made from the floor. This results in an Opinion of the Parliament being sent back to the Commission.

The ESC also debates legislative proposals before submitting its Opinion to the Commission. The Commission may decide to amend a proposal in the light of Opinions received before it is sent to the Council for formal consideration. But the Commission is not obliged to consider the views or recommended amendments of either the European Parliament or the ESC.

The unanimous agreement of the Council is required for it to amend a Commission proposal. In the traditional legislative process (changed in some cases by the Single European Act — see below), unanimity is also required to adopt a proposal unamended: so the opposition of a single state can prevent its adoption.

Once a Directive is adopted, it is notified to member states. Directives take effect upon notification. Directives contain a date by which they should be implemented — if necessary by the passage of domestic legislation. Regulations take effect on the date they specify, or, if none is specified, at least 20 days after they are published.

Qualified majority voting

The Single European Act introduced a number of new policy objectives into the Treaty of Rome, the most relevant of which for our purposes are:

National votes on the European Council Eve Barker/*Hazards*

- Article 100A — governing measures aimed at *'the establishment and functioning of the internal market'*;
- Article 118A which provides that member states shall *'pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made'.*

The Single European Act allowed the Council to take decisions relating to these new policy objectives — and, controversially, only these new objectives — on the basis of 'qualified majority voting' (QMV). Under QMV, the votes of member states are weighted according to size of population:

France, West Germany, Italy, UK	10 votes each
Spain	8 votes
Belgium, Greece, Netherlands, Portugal	5 votes each
Denmark, Ireland	3 votes each
Luxembourg	2 votes
Total votes	76

Under QMV, 54 votes constitute a qualified majority on the Council and they are sufficient to pass legislation. Consequently, no single country — or even two countries — can block proposals.

Co-operation procedure

The Single European Act also introduced a new legislative procedure — the co-operation procedure — for proposals covered by QMV. This gave the European Parliament a greater role by adding several stages before the Council finally makes a decision. Instead of taking a final decision after receiving the Commission's amended proposal, the Council must take a 'common position' on the proposal — by a qualified majority vote, if necessary. The European Parliament is then informed of the common position and the supporting reasons.

Then, Parliament may do one of three things:

1) approve the common position or, if it makes no decision within three months, the draft legislation is automatically adopted by the Council;
2) reject the common position outright, in which case the Council can adopt the proposal only by a unanimous vote;
3) or decide by a majority vote to propose amendments to the common position. The Commission must then re-examine the proposal and present the Council with a draft which may take into account some or all of the proposed amendments. The Council can adopt the proposal, as re-examined by the Commission, by a qualified majority. However, it must vote unanimously if it wants to adopt amendments made by Parliament which the Commission excluded from the draft, or if it wants to amend the proposal as re-submitted by the Commission.

'Direct effect'

Member states usually pass legislation in order to incorporate obligations under Community law into national law. But even if a Community obligation is not so absorbed into domestic law, in some circumstances it can be directly enforced by individuals.

National courts must interpret and apply legislation adopted to implement a Directive to conform with the requirements of Community law. In fact, an important ruling by the European Court of Justice on

the 'Equal Treatment' Directive implies that national courts should interpret all domestic laws in a way which conforms with EC law.

In some circumstances individuals may be able to rely upon Community laws *directly*, before a national court or tribunal, even if a Community provision has not been incorporated into national law. Provisions which can be directly enforced by individuals have **'direct effect'**. Such provisions must be precise, unconditional and self-contained — in other words, they should not need any further measures by either member states or the EC. The European Court rules whether or not a provision of EC law has direct effect.

The European Court has already decided that some Articles of the Treaty of Rome do have direct effect and so can be directly enforced by individuals. Article 119, which covers equal pay for equal work, is directly enforceable by and between individuals in member states. Articles which can be enforced between individuals have 'horizontal' direct effect. Others with direct effect can be enforced 'vertically' — against the government or state. So, for example, Directives cannot be enforced between individuals, but only against a state or government which has failed to implement them. Consequently, their direct effect is 'vertical' rather than 'horizontal'.

HOW TO INFLUENCE THE DECISION-MAKERS?

For most trade unionists, the legalities and technicalities of EC institutions will never get their pulse racing. But workers need to understand the procedures and the 'players' if they are to be able effectively to exert the pressure required to influence the EC legislative process. [The following draws heavily on Budd and Jones 1990: *Decision-making and how it is influenced*].

The most effective time to lobby is during the earliest phase of the decision-making process. This can be broken down into four overlapping stages:

- when the Commission is drafting the legislation which is then examined by experts and working parties;
- when the first draft is published;
- when the draft is considered by the European Parliament and the Economic and Social Committee;

▲ when the revised draft is again considered by the Commissioners and COREPER before being sent to the Council.

At the drafting stage, Commission officials within the Directorates-General will consult and solicit opinion from a wide range of relevant organisations. But it is perfectly legitimate for groups to submit their views and arguments even if unsolicited although they will be competing with well-resourced professional lobbyists. So, on health and safety matters, for instance, trade unionists are best advised to use the Trade Union Technical Bureau (TUTB) of the ETUC (see box). The TUTB enjoys resources, official recognition and access to EC decision-makers which it allows it to function on behalf of workers' representatives throughout the Community.

The Trade Union Technical Bureau

The TUTB was established by the ETUC at the end of 1988, reflecting the need to strengthen the unions' technical expertise and personnel resources in response to EC health and safety initiatives. The TUTB's principal role is to supply studies, information and analysis on health and safety issues, and to monitor EC legislation and broader European standards. Although funded by both the European Commission and the non-EC European Free Trade Association, the TUTB works largely with trade union and other workers' organisations, in particular the ETUC and its national affiliates. It provides technical assistance and advice to the ETUC's specialist industry committees and the workers' group of the Advisory Committee to the European Commission on Safety, Hygiene and Health Protection at Work.

The TUTB's main priorities are:

▲ to set up a database and information system covering EC health and safety initiatives;
▲ to give technical assistance to workers' representatives involved in the standardisation of health and safety provisions, with a view to creating a European network of union experts;
▲ to organise conferences and studies (like its recent conference on labour inspection in the EC and its report on used machinery), reports and training as a contribution to the EC's health and safety programme;
▲ to provide expertise and advice for the ETUC concerning Commission proposals.

Organisations like the TUTB or the HSE itself will offer opinions on a draft Directive. In meetings chaired by the Commission, specialist groups of experts are requested to reconcile widely differing views — often to produce a 'lowest common denominator' — which is at least acceptable in principle if not in detail to all 12 member states. It is at this early stage of widespread consultation and publicity that trade unionists are best advised to contact MPs and MEPs, lobby the HSE and British representatives in Brussels and mobilise opinion within their own organisations.

The third stage — when the draft is considered by MEPs — provides the next major opportunity. MEPs can exert influence, especially if they are on specialist committees, but also on the floor of Parliament during plenary sessions, in lobbying British and European protagonists and through parliamentary questions. A conscientious and diligent MEP can have a decisive influence on his/her fellow MEPs and consequently on the Parliament's opinions which the Commission and Council are obliged to consider.

However, opportunities for influencing the decision-makers start to wither by the fourth stage. The British Permanent Representative on COREPER (known as UKREP) is required to consider and reflect the opinions of interested parties while COREPER and the Commission re-draft proposals for submission to the Council of Ministers. But it is usually only the major lobbying groups which are able to make an impact at this stage.

3

HEALTH AND SAFETY DECISION-MAKING IN THE UK

THE WORK OF THE HEALTH AND SAFETY COMMISSION AND THE HEALTH AND SAFETY EXECUTIVE

The Health and Safety at Work Act (HSW Act), passed in July 1974, established the Health and Safety Commission (HSC) in order to give effect to the Act's provisions and to draft regulations for the detailed implementation of the Act's general requirements. The HSW Act simply provides a framework of general duties: the HSC employs regulations to implement the provisions of the parent Act.

The HSC consists of a chairperson and between six and nine other part-time members appointed by the Secretary of State for Employment after consultation with the CBI, TUC and local authorities. The Commission, and most associated committees, are meant to be tripartite, with equal representation from employers and trade unions, and representatives of the enforcing authorities. A small secretariat of civil servants provides administrative support.

The HSC structure and constitution reflects the finding of the Robens Committee that employee participation in the development of health and safety arrangements was a precondition for securing workers' co-operation and commitment. Consequently, while health and safety is recognised as a management responsibility, the HSC is required to consult with employee representatives on the framing of regulations, guidance and standards.

The HSC has the power to appoint two types of advisory committee (which include independent consultants and specialists as well as members from both sides of industry) to provide technical expertise on particular issues:

- industry advisory committees (IACs) cover specific sectors such as agriculture, construction and the health service;
- subject advisory committees (SACs) provide advice on specific problems, like hazardous or toxic substances, pathogens or nuclear installations (less-established ad hoc committees cover other issues on a temporary basis);

While both SACs and IACs are tripartite, the SACs are more concerned with technical issues and so tend to provide a forum for independent specialists to provide expertise and advice to the HSC on specific hazards, substances or other health and safety issues. The IACs are more concerned with issues and hazards peculiar to a particular industry, such as head injuries in construction or noise in foundries. For example, the work of the Construction Industry Advisory Committee led to the introduction of the Construction (Head Protection) Regulations on 1 April 1990. This has led to a 25% reduction in head injuries (compared with a 2% reduction in all construction injuries). The establishment of national norms enhances unions' bargaining leverage in ensuring their implementation at local or workplace level.

The advisory committees are also playing an increasing role in establishing and monitoring EC standards. For example, the Construction Industry Advisory Committee (CONIAC) has called on the construction industry to play a greater part in establishing new EC standards for site health and safety.

One of the HSC's principal responsibilities is to initiate new proposals for health and safety legislation — both UK and European initiatives — as well as general guidance notes and Approved Codes of Practice (ACPs). The HSC receives expert advice from its advisory committees before proposing measures to the appropriate Government ministers. When its advisory committees and the Commission itself have reached agreement on a particular measure, the Commission publishes its proposals in Consultative Documents. For example, the HSC issued a Consultative Document in November 1991 on *Manual handling of loads: proposals for Regulations and guidance*. The proposals reflect an 'ergonomics approach' to the assessment and control of risks to workers of injury from manual handling operations. At the same time another HSC Consultative Document proposed draft Regulations to implement the use of work equipment Directive. In October 1991, a joint DoE/HSC consultation paper was produced, containing two sets of Regulations to implement the environmental and human health and

safety requirements of two EC Directives on genetically modified organisms (GMOs).

Consultative Documents are circulated to representative bodies like the TUC and CBI as well as independent experts and consultants. These organisations will, in turn, canvass opinion among their own members or affiliates. Following consultation and debate, the Commission formally proposes measures to the Government which, if it finds them acceptable, presents them to Parliament.

The Health and Safety Executive (HSE) is the operational arm of the HSC with responsibility for applying and enforcing the HSW Act. The HSE's ruling group consists of three civil servants appointed by the Secretary of State for Employment. The HSE was set up in 1975 following the amalgamation of several separate inspectorates covering factories, mines and quarries, agriculture, explosives, nuclear installations, and radiochemicals.

A management board must accept policy initiatives before they are proposed to the HSC. The board also co-ordinates the activities of the HSE's separate divisions. These divisions can be grouped into three distinct but overlapping categories.

- Three **policy divisions** — Hazardous Substances, Resources and Planning, and Safety Policy and Information Services — cover non-operational activities like research, policy and advice to field staff. For example, the Resources and Planning Division has two main sections which deal, in the first case, with HSC/E work plans and international issues — primarily European work, and, in the second, with workers' training and information. Other facilities are regionally dispersed, with Information Management in Sheffield, the Economics and Statistics Unit in Bootle, Merseyside, and the Accident Prevention Advisory Unit in Preston.
- **Specialist services**, like the Technical and Air Pollution Division and the Research and Laboratory Services, provide scientific and technical facilities.
- **Operational divisions** include Medical Services and a number of inspectorates. Medical services, for example, advises the inspectorates on occupational health issues, examines employees working on hazardous jobs, and conducts medical surveys.

The HSE's three inspectorate divisions cover Factory and Agricultural; Mines and Quarries; and Nuclear Installations. The former

is the largest and most complex. Responsibility for specific industrial sectors is broken down between National Interest Groups (NIGs) located in the Factory Inspectorate's area offices. Some areas also host National Responsibility Groups for sectors lacking a specific NIG. Sectors tend to be allocated according to an area's industrial profile so that, for example, the West Midlands Area hosts the engineering and foundries NIGs, East Scotland has the brewing/distilling NIG and the offshore rigs' NRG, while Merseyside covers chemicals and petrochemicals NIG and the glass NRG. In addition, all area offices are covered by several Field Consultant Groups which provide specialist advice to general inspectors on issues like occupational hygiene, fire and explosions.

In 1991, the transfer of responsibility for offshore and railway health and safety led the HSE to set up two new divisions, the Offshore Safety Division and the Railway Inspectorate.

The HSE's resources and staffing have been the subject of intense debate in recent years. Around 3,500 staff joined the HSE from various government departments and inspectorates when it was formed in 1975. Between 1977-79, the last two years of the Labour Government, staffing increased to 4,168 as part of a projected increase to the 4,400 staff needed to meet increasing demand for HSE services. Not only did the HSW Act create additional responsibilities, it also brought several million more workers within the scope of its provisions. However, following the election of a Conservative Government in 1979, staff cuts in the civil service and cuts in public spending prompted a decline in HSE staffing, falling to 3,563 in 1985.

Health and safety has clearly suffered as a lower priority for a Government principally concerned with cutting employers' costs and reducing public spending. Overall, HSE funding fell as a proportion of Department of Employment funding from 11% in 1975-76 to 7.9% in 1990-91, according to a trade union 'alternative report' on the work of the HSE (IPMS 1992). The report concludes that '*every part of the organisation except the Nuclear Installations Inspectorate was smaller at the end of the 1980s than at the beginning*.' For example:

- the 1991 ratio of factory inspectors to worksites (transient and fixed) was 1:1000 compared to 1:420 in 1980;
- over 247,000 of the 500,000 fixed registered workplaces had not been inspected for three years, and over 69,000 had not been inspected for 11 years;
- and the early 1980s freeze on civil service recruitment reduced annual intake in the Factory Inspectorate alone from 759 in 1980

to 592 in 1988. Even John Rimington, the HSE's Director General, recognised the seriousness of the situation. In early 1991 he conceded that, '*There has been a 50% increase over the last two years in the number of complaints investigated by our field forces and as a result we are no longer in a position to respond to all public complaints.*' (HSC 1991).

The **Factory Inspectorate** in particular has experienced severe cuts in staffing. These have occurred at a time of increasing demands on the Inspectorate's resources and an expansion in its areas of responsibility. For example, the number of fixed premises (excluding mobile worksites) which the Inspectorate covers grew from around 260,000 in 1982 to over 390,000 in 1985. At the same time it assumed responsibilities for asbestos licenses, the control of lead at work, notification of workplaces handling hazardous substances, gas safety, and major industrial accident hazards.

Consequently, whereas Factory Inspectors made around 213,000 visits in 1980, this figure had fallen to only 190,546 visits by 1985. This occurred at a time when the accident rates in manufacturing and services showed a steep rise. Nevertheless, enforcement statistics illustrate a radical drop in the number of charges brought by the Inspectorate, falling from around 3,000 in 1975 to 1,604 in 1980. In 1990, staffing levels in specialist inspectorates and technical departments like the Technology Division were estimated as 40% under force. Since 1985, the number of occupational health doctors has fallen by 20%.

Staffing levels have yet to reach the levels anticipated at the start of the 1980s. According to the HSC's Annual Report for 1990-91, there were 3,877 HSE staff in post on 1 April 1991. The number of factory inspectors rose to 651 at 1 April 1991 and 65 new inspectors were introduced following the adoption of new responsibilities for railway and offshore health and safety. As well as a rise in the number of factory inspectors, there have also been increases in the Agricultural and Specialist Inspectorates. While the Quarries Inspectorate stayed the same as the previous year, the Mines Inspectorate has declined to around 45.5 from 58 in 1989, reflecting the decline in the industry itself. The Nuclear Inspectorate stands at 162, one less than the previous year.

The proportion of factory inspectors under training has increased over three years from about 13% to 27%, resulting in what John Rimington, HSE Director General, describes in his foreword to the Report as a '*temporary quite severe loss of productivity and efficiency*', adversely affecting inspection targets. He notes that this effect is likely to be even more marked with the build-up of the Offshore Safety Division. The

total number of trainees has risen from 5,565 in 1989-90 to 8,409 in 1990-91.

The Factory Inspectorate's work is increasingly taken up with 'basic' inspections, its largest area of work: basic inspections are more tightly focused and more wide-ranging than the previously prevalent 'general' or 'routine' inspections. Routine inspections usually involved a comprehensive assessment of an establishment's health and safety arrangements, resulting in the production of a dossier outlining any problems and hazards. These came to be considered too superficial, in identifying the symptoms or consequences of health and safety problems rather than the basic causes.

As a result, the Inspectorate introduced basic inspections which are more selective compared to general inspections which were often undertaken every four years or so irrespective of an undertaking's risk level. By contrast, basic inspections are allocated according to a computerised rating system, known as SHIELD. This rates establishments according to specific risk criteria, including inspectors' assessments of general health and safety standards; 'worst possible scenario' risks for workers and the public; and management abilities to maintain standards. The system is designed to be more rational and time-saving, ensuring that poor performers and high-risk firms are inspected more frequently than others.

Basic inspections have been described as more of an audit than a comprehensive examination. Depending on a firm's SHIELD-assessed rating, inspectors may choose not to go beyond a general assessment of a firm's overall health and safety provisions, the resources it allocates to maintaining standards, and/or general health and safety management.

Inspectors enjoy a range of enforcement rights, from general advice to instituting criminal proceedings:

- improvement notices require an employer to correct a practice or remove a hazard, for example, within a specific period of time;
- if the employer fails to comply, a prohibition notice may be issued which may halt the operation in question, especially if there is an immediate danger (a deferred prohibition notice may be issued if the inspector believes there is no immediate risk or if the employer requires time to take remedial action);
- employers failing to comply with a notice may be prosecuted in a magistrates court where they face a maximum fine of £2,000 or, if the case is referred to a higher court, face an unlimited fine or up to two years' imprisonment.

Appeals can be made to an industrial tribunal which can order the suspension of an improvement notice.

In the bulk of cases, however, inspectors are content to issue informal advice, either verbal or written, including proposals to change or improve health and safety standards and/or arrangements. Fewer than one in 25 visits lead to direct enforcement action in the form of improvement and prohibition notices or through criminal proceedings. The HSC/E prefers a strategy of education and persuasion in its dealings with employers.

However, even the chairman of the HSC believes that its '*biggest problem*' is '*to get health and safety managed in the same way as finance, sales, quality assurance, and so on*' and concedes that health and safety '*is not taken seriously enough in industry*' (Cullen 1990).

> '*Our approach to [enforcement] is not to say, 'We will put you into prison if you do not obey the law', but 'You have got to have reasonable standards and we will use a variety of means to make sure that you do. If it is a matter of prosecuting you in the criminal courts we most certainly will and we will make a big hullabaloo about fines not being big enough ... Short of that, we will serve notices on you and do a great many other things'. In other words, our approach is, first, reasonable, and then firm, and, if necessary, very firm indeed*' (Rimington 1990).

The precise form of action adopted by inspectors is based on assessments of:

- ▲ the seriousness of evident hazards;
- ▲ whether breaches of the law are deliberate or involuntary;
- ▲ the establishment's past record;
- ▲ management readiness to resolve problems.

Consequently, employers found breaking the law or evading their health and safety responsibilities will not necessarily receive even an improvement or prohibition notice let alone face prosecution.

The enforcement authorities can refer individual cases to magistrates courts for prosecution although it is HSC policy not to take court action except in extremely serious cases or flagrant violation of the law. But even where prosecutions are successful, magistrates can fine only up to £2,000 and many have been reluctant to do so even for breaches which have resulted in death or injury. In 1989, for example,

the average level of fines was only £547. The HSE's Director-General himself has conceded that even in *'really very shocking cases, magistrates were not using the powers available to them.'*

Magistrates have the power to refer cases to the higher Crown Court at the request of the HSC/E but only in a limited number of cases when prohibition or improvement notices have been breached. Even in cases of deaths resulting from such breaches, only rarely have culpable employers been referred to the Director of Public Prosecution on manslaughter charges.

The ceiling for all fines is to rise from £2,000 to £5,000 from October 1992, while maximum fines for some health and safety offences are due to conform with harsher penalties under environmental protection and food safety law. One development which may influence the HSE's approach to enforcement is a clause in the Offshore Safety Bill which would enable magistrates to impose fines of up to £20,000 for breaches of ss.2-6 of the HSW Act.

Each year area directors receive national guidelines covering allocation of staff resources, the areas of work to be undertaken by inspectors and the amount of time to be allocated to each area of the Inspectorate's duties. Although some flexibility is allowed, area directors are generally expected to assign around 25% of inspection time to basic inspections with the rest largely divided between special initiatives, accident investigations and 'other work', which includes educational work, relations with police and local authorities, and asbestos licensing.

For individual sectors the Report highlights a number of positive developments. In construction, the introduction of the Construction (Head Protection) Regulations on 1 April 1990 has led to a 25% reduction in head injuries (compared with a 2% reduction in all construction injuries). Work on the development of construction safety regulations is being held in abeyance until the proposed EC Directive on temporary or mobile worksites is finalised.

THE HSC/E AND EUROPEAN COMMUNITY INITIATIVES IN HEALTH AND SAFETY

Since the Single European Act introduced qualified majority voting for EC health and safety Directives, the European Commission has pursued an ambitious action programme of workplace health and safety reform. With the aim of promoting the social dimension of the internal market,

HSC/E Profile

A clearer profile or snapshot of HSC/E activities can be gleaned from the HSC's annual reports. The Annual Report for 1990-91, for example, contains provisional figures for accidents and diseases reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations introduced in 1985 (RIDDOR). It also features the preliminary conclusions of the Department of Employment's Labour Force Survey (LFS) on individual reports of work-related injuries and ill health. These findings suggest that under-reporting of injuries and diseases by employers and self-employed is considerably greater than anticipated. In terms of HSC/E organisation and activities, 1991 saw a number of developments, including:

- new responsibilities for railway and offshore oil and gas safety;
- a new Field Operations Division (FOD), which has promoted a multi-disciplinary approach to field work;
- proposals to implement the EC Framework Directive and associated 'daughter' Directives;
- recognition that risk assessment must be the basis for EC safety legislation;
- and greater liaison with local authorities, since the HSC expressed anxiety at the rising accident rate in services and urged local authorities to target resources more effectively.

the Commission is aiming to harmonise minimum health and safety standards and arrangements throughout the Community. After a faltering start, the programme at last acquired its momentum with the recent adoption of the Framework Directive and a number of 'daughter' Directives.

The HSC is increasingly unsure about its ability to influence the shape of EC health and safety provisions. HSC chairman Sir John Cullen has said that new EC provisions amounted to a 'tidal wave' of legislation which threatens to increase costs to industry. The proportion of health and safety legislation originating from abroad rather than from the UK increased from 22% in 1981-82 to 67% in 1989-90. Furthermore, while recognising that many EC provisions simply make explicit what is already implicit in UK health and safety law, the HSC believes they will still require industry to digest a mass of new regulations.

During the last six months of 1991 alone, the HSC published a record number of consultative documents, with several more due during 1992. This flood of proposals reflects the HSC's obligation to implement the first set of health and safety Directives under Article 118A by the end of 1992. These include the Framework Directive and its five 'daughter' Directives on: use of personal protective equipment; use of work equipment; manual handling of loads; minimum workplace requirements; and work with display screen equipment.

The impact of EC legislation can be seen from an outline of HSC/E activities from mid-June to early December 1991. Seven of the eleven consultative documents issued by the HSC/E contained proposals to implement EC Directives:

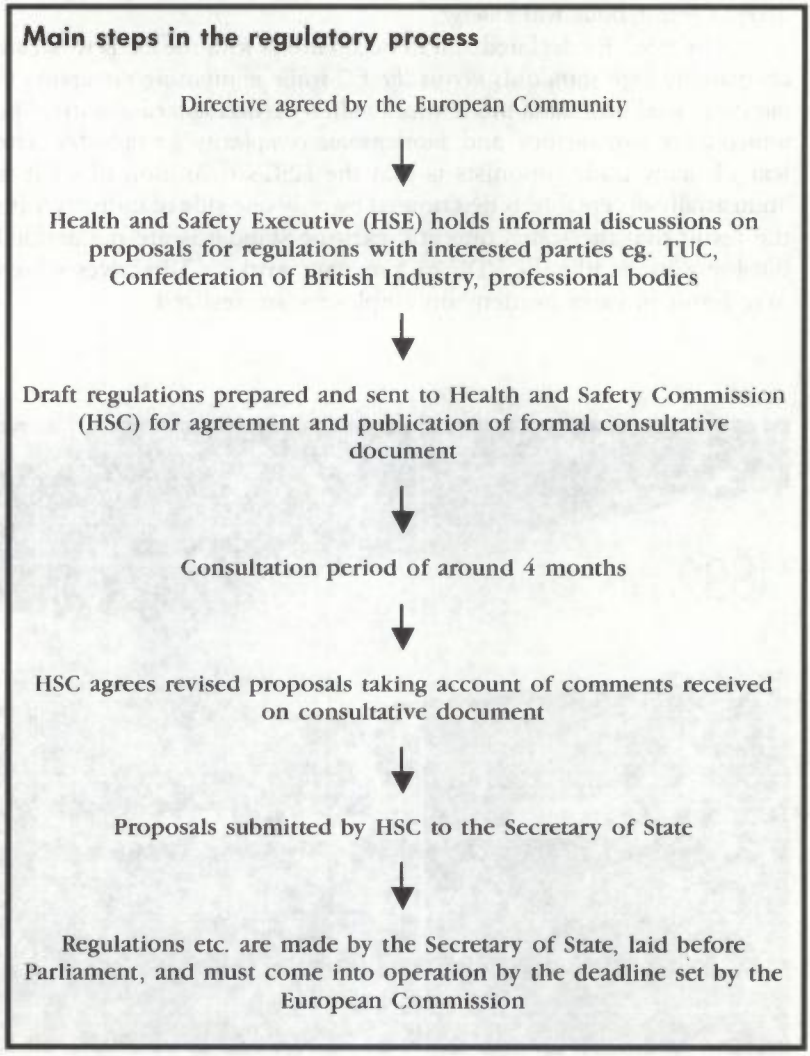
- the Framework Directive on the introduction of measures to encourage improvements in the safety and health of workers;
- the use of personal protective equipment;
- the use of work equipment; the manual handling of loads;
- the training of dangerous goods vehicle drivers;
- the provision of information to the public on radiation emergencies;
- and metrication of health and safety legislation.

The main steps in the 'transposition' process are summarised in the Box overleaf.

The standard procedure for introducing EC legislation generally involves the HSC producing a consultative document on which it invites the views and comments of employers, trade unions and independent experts or commentators. For example, in December 1991 the HSC issued the consultative document containing proposals for Regulations and guidance to implement the EC Directive (89/656/EEC) on minimum health and safety requirements for the use by workers of personal protective equipment. The consultative document proposed that, for the first time in Britain, all types of personal protective equipment in each sector would come under comprehensive Regulations.

The HSC invited comments on the consultative document to be sent to the HSE by April 1992. The HSC has adopted an approach to EC initiatives which seems to vary between open hostility and grudging acceptance. HSE director general John Rimington concedes that '*We are not introducing it [EC legislation] through choice*' (Rimington 1991) but only because health and safety is subject to the qualified majority voting procedures introduced under the Single European Act. The HSC fears

Main steps in the regulatory process



Reproduced from Labour Research Department (1992): *Health and Safety — A guide to the European directives on H & S at Work,* LRD Publications

that the limits to previously protracted negotiations under QMV means that UK provisions are *'at risk to the rapid counterplay of argument and compromise, with the risk that less carefully constructed and industrially acceptable solutions will emerge'.*

The HSC/E's declared aim in negotiations with the EC is to *'secure comparably high standards across the EC while minimising disruption to our own established standards to which industry is accustomed and avoiding unnecessary bureaucracy'* and *'burdensome complexity for industry'.* The fear of many trade unionists is that the HSC's definition of what is 'industrially-acceptable' is determined by only one side of industry with the result that the status quo and existing standards are maintained but innovations like the VDU or 'pregnant workers' Directives which may result in extra burdens on employers are resisted.

HSC Chairman Sir John Cullen launches the *European Year of Safety, Hygiene and Health Protection at Work* in the UK, but what impact will this have on Britain's Workers? Alan J P Dalton

The HSC/E have a number of objections to EC health and safety legislation, many of which are shared by the UK Government, including claims that:

- the degree of prescriptive detail is contrary to the British practice of general duties and goals supplemented by specific regulations and codes of practice;
- it will impose unfamiliar obligations on British employers, like occupational health services, which in some cases may simply duplicate existing responsibilities;
- it will increase costs to industry, estimated by the HSC at up to £300 million a year.

Nevertheless, in many cases the HSC accepts EC legislation, partly because an EC measure only makes explicit what is already implicit in UK provisions (as in the proposed Directive 89/654/EEC on minimum workplace requirements) or because UK provisions already exceed EC prescriptions. For example, the proposed carcinogens Directive (90/394/EEC) lists fewer substances than the HSC's own carcinogens code while UK control limits on asbestos are higher than those in the proposed amendment to the asbestos (worker protection) Directive.

While the HSC may have been ambivalent about some EC health and safety provisions, it has at least avoided the strident hostility of the UK Government. In the most notorious example, the UK Government secured a watering down of EC proposals covering maximum levels of noise at work. It raised the level at which employers would be obliged to introduce specific control measures from 85 dB(A) to 90 dB(A).

The example of the proposed Directive on pregnant women provides a further illustration of the UK Government's negative role. This is one of several Directives which the Government appears determined to veto, arguing that they will limit employers' flexibility, over-regulate the labour market and add to employers' costs.

In November 1991, after several months of haggling, the Social Affairs Council of Ministers agreed a compromise on the proposed Directive on pregnant women. The proposal covers protection at work for women who are pregnant or who have recently given birth, including provisions on maternity leave, working conditions and restrictions on nightwork. It would prevent exposure of pregnant or breastfeeding workers to listed physical or biological agents and processes. The UK Government argued that special risks did not arise from all of the categories and that the proposal should be less prescriptive.

The UK Government has been the main source of the disagreements, arguing that the Commission was unjustifiably using health and safety provisions subject to Article 118A (and, therefore, qualified majority voting) in order to sneak in maternity pay proposals. If such proposals were introduced under Article 235, which covers social security and requires unanimity, the UK Government could exercise its veto.

Compromise was reached at the November meeting when the UK succeeded in diluting pregnant workers' entitlement from the proposed 14 weeks' maternity leave on full pay to an unspecified level at least equivalent to national sick pay norms. Vasso Papandreou, the EC's social affairs Commissioner, protested that the agreement insulted pregnant women who are normally perfectly healthy.

The UK insistence on a lower level of maternity pay ensured that only women in the UK, Ireland and Portugal would gain from the Directive since the other member states already have more generous provisions. The UK Government claimed its amendments reduced the overall annual cost of the Directive from £500 million to £100 million. Nevertheless, it still abstained in the vote at the meeting and threatened to veto the Directive through a challenge to its legal basis. More ominously, if Vasso Papandreou decides to accept amendments by the European Parliament at second reading stage (which are likely to strengthen the Directive), the amended proposal would have to be adopted unanimously by the Council of Ministers, allowing the UK to exercise its veto. In this event, even the less contentious, manifestly health and safety aspects of the proposal (covering pregnant workers' exposure to hazardous substances) would also be lost.

The UK has taken a similar position on the working time Directive, which contends that excessive working hours and shiftwork are detrimental to workers' health and safety. As with many other aspects of the social dimension of EC legislation, the UK Government opposes the proposals on the grounds that:

- they entail excessive costs for employers — £2.5 billion in the case of the working time Directive, says the UK's Department of Employment (DoE);
- they violate the principle of subsidiarity: such issues are best left to national legislation or collective bargaining;
- and, in any case, the measures are unnecessary since, says the DoE, *'there is no evidence to show that in themselves working hours are detrimental to the health and safety of workers'* (see page 208).

The HSC faces the problem of reconciling radically different approaches between the UK and continental Europe in respect of health and safety legislation. For example, legislation in most other member states is more detailed, specific and prescriptive than in the UK and the authorities are more inclined to impose complete bans on hazardous or potentially dangerous substances or processes rather than regulating their use.

By contrast, the HSC believes that Directives should establish general principles rather than detailed technical requirements. In line with the Community's commitment to subsidiarity, it argues, more specific requirements should be left to lower level authorities at national or local levels. Similarly, the HSC and UK Government have been pressing for EC provisions to take into account the UK requirements that the requirements and duties placed on employers be 'reasonably practicable' — a provision which many trade unionists and their supporters in the Commission and Parliament see as a let-out clause for unscrupulous employers. Reasonable practicability contrasts with the prevailing approach in most member states and the EC itself — namely, to impose absolute duties on employers but give the appropriate courts the necessary discretion to interpret them flexibly in the light of an employer's specific circumstances. UK courts tend to apply legislation exactly as enacted by Parliament whereas continental courts consider what is 'proportionate to the circumstances'. This permits European legislation to specify absolute requirements since they will be interpreted flexibly. The UK Government fears that UK courts will strictly apply interpretations of EC provisions irrespective of circumstances.

Consequently, the HSC intends to implement the requirements of the framework Directive, for example, by employing regulations under the HSW Act. It considers the general thrust of the framework Directive to be largely compatible with the HSW Act and related legislation albeit in need of greater detail on risk assessment, allocation of health and safety personnel, training and the provision of information. Rather than requiring a radical overhaul of UK legislation, the HSC believes that EC legislation simply requires *'a set of regulations in line with the principles of the 1974 Act, modernising existing requirements and extending to premises other than those covered by existing provisions'.*

The HSC has made a positive contribution to EC legislation in certain areas. For example, pressure from the HSC and HSE was successful in securing the inclusion of risk assessment requirements

in the framework Directive. But in some cases, it appears that the HSC is content to give an unfavourably narrow interpretation to EC provisions. For example, it has suggested that a slight change to the 1977 Safety Representatives and Safety Committees Regulations could meet the Framework Directive's requirement for *'balanced consultation and participation with workers'*. Yet even the HSE's own figures (for 1987) indicate that this would cover only 9% of workplaces.

The HSC's proposals on the Framework and temporary workers Directives provide an example of the way in which the Commission deals with EC legislation. Wide-ranging draft Regulations intended to implement the European Community's Framework and temporary workers Directives were published by the HSC, along with an accompanying Approved Code of Practice (ACP). The draft Regulations were described by the HSC as *'the most important legislative development since the passing of the Health and Safety at Work Act'*.

The HSC/E invited comments on the draft Regulations to be sent to the HSE's Safety and General Policy Division. The HSC does not simply solicit general comment. Instead, it tends to emphasise or draw attention to issues which may prove particularly contentious or controversial. So, for example, in relation to the Framework Directive, it invites views on, firstly, the compatibility of its proposals with existing legislation; secondly, whether reg. 9 should require the appointment of a health and safety co-ordinator where more than one employer shares a workplace; and, thirdly, how provisions on worker consultation and participation should be implemented in coal mining.

Other points likely to provoke debate include:

- the question of how far Regulations, as opposed to an Approved Code of Practice, are needed to implement the Directive (a particular concern for employers who would far prefer a voluntary code of practice);
- the HSC/E's failure to provide non-union employees with statutory rights of participation and consultation;
- and the decision to include principles governing the selection of preventive measures in the draft Code rather than in the Regulations themselves.

The proposed Framework and temporary workers Directives were published in the first of of six consultative documents which sought to bring UK law into line with EC requirements by 1 January 1993.

As noted above, many of the proposed Regulations simply make explicit certain duties which are in any case implicit under the HSW Act 1974 and related legislation. Other provisions, like those on co-ordination between employers sharing a workplace, the appointment of 'competent persons' and the need for written assessments, are not covered in current UK law.

Under the draft Regulations, entitled the *Health and Safety (General Provisions) Regulations*, employers have a duty to:

- undertake assessments of risks to employees and other persons potentially affected by their operations in order to identify measures needed to meet their statutory duties;
- organise the planning, organisation, control, monitoring and review of protective and preventive measures;
- appoint 'competent persons' to provide assistance with protective and preventive measures;
- co-ordinate health and safety measures with other employers sharing a workplace;
- establish procedures to be followed in cases of serious and imminent danger;
- provide suitable health surveillance facilities;
- provide information to employees, non-employees, temporary workers and other employers;
- provide employees with adequate training both upon their recruitment and induction into the undertaking and where they are exposed to new or increased risks; and
- change the 1977 Safety Representatives and Safety Committees Regulations by specifying a range of issues on which employers would be obliged to consult with union-appointed safety representatives.

In contrast to the provisions on risk assessment, which are arguably covered by the COSHH regulations, and on health surveillance, which represent a slight change to existing statutory responsibilities, the provisions on 'competent persons' are more significant. They constitute the first move towards harmonising UK health and safety law with provisions in many other member states which require employers to provide specialist health and safety advice.

Draft reg. 6(1) would require employers to appoint one or more competent persons to assist them in '*undertaking protective and preventive measures*'. The number of persons appointed, the time available for them

to carry out their duties and the resources at their disposal would depend on the size of the undertaking, the risks to which workers are exposed and the distribution of those risks throughout the undertaking. A '*competent person*' must have '*sufficient training, experience, knowledge or other qualities*' but does not necessarily require specific skills or qualifications.

The provisions covering procedures for serious and imminent danger are noteworthy for another reason. The HSC/E's proposals in this respect have been criticised by British unions for effectively diluting EC recommendations on workers' rights to leave a job or stop work in the event of an imminent hazard.

Subsection (2) goes on to make it clear that the procedures referred to should:

a) so far as practicable, require any persons at work who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;
b) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and
c) require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.

The second of these requirements would effectively give workers a limited right to stop work in certain circumstances. But the HSC proposals do not, as required in the Directive, contain any provisions to ensure that workers are not penalised for taking such action.

The Framework Directive's requirements for worker consultation and participation are open to varying interpretations since they are couched in fairly vague and general terms. The HSC has proposed only slight changes to the 1977 SRSC Regulations to ensure that the obligations on employers to consult and provide facilities to safety representatives are compatible with the Framework's requirements. However, their impact may be to question the legality of the current situation in the UK where only union-appointed safety representatives enjoy statutory rights of participation and consultation.

In relation to Europe, the HSC/E may well have adopted a more

progressive role following a change of national Government. The pressures of operating under an anti-union, Euro-sceptic Government, faced with severely depleted resources at a time of growing demands on its services, have clearly constrained the work of the HSC/E. A Labour Government would doubtless have made a considerable difference. But, for the time being, trade union activists and safety representatives should remain aware of, but avoid dependence upon, tripartite institutions like the HSC and HSE which can provide valuable advice, guidance and codes of practice to facilitate workplace health and safety.

4

COMPARATIVE HEALTH AND SAFETY PROVISIONS IN THE EUROPEAN COMMUNITY

INTRODUCTION

The diversity of health and safety at work provisions within the European Community reflects the varying policies and practices of governments, unions and employers throughout the member states. A comprehensive examination of health and safety issues across Europe would require a book in itself. Consequently, we will focus on certain countries and specific issues in order to give at least some insight into the range of provisions and the prospects for the standardisation, or 'harmonisation', of health and safety measures to which the EC is committed.

In particular, we shall emphasise the various rights of workers' representatives throughout the member states, focusing on rights to information, consultation, inspection, facilities, protection and the right to suspend work. But, before looking in detail at representatives' rights, we shall also consider health and safety provisions in some member states in more detail, covering the three other major member states (France, Germany and Italy) as well as Denmark, which has an extensive system of workplace-based health care.

The establishment of the European Community added momentum to initiatives aimed at harmonising health and safety legislation in member states. Since the Community published its first health and safety action programme in 1978, member states have progressively come to accept the Community's role in developing health and safety legislation. The focus has gradually shifted from national legislation reflecting local practice and tradition to EC initiatives aimed at standardising provisions throughout the Community. Britain's Health and Safety Commission has itself accepted that European activity will dominate its future agenda.

Despite the diversity of member states' approaches to workplace

health and safety, most legislative provisions share three basic characteristics. Firstly, each country has a legislative framework which lays down basic principles as the foundation for more specific prescriptions. Secondly, this detail is outlined in secondary provisions like regulations and decrees. Thirdly, more flexible measures, including codes of practice and guidelines, are applied in certain member states. These are generally designed to establish codes of conduct without necessarily entailing legal action or penalties if guidelines are breached.

Health and safety provisions are enshrined in the national constitution of some member states, as in Greece, Italy, Luxembourg and Portugal. Other states employ civil and penal codes to establish basic principles, including labour and public health codes in France, the industrial code in Germany, the Netherlands' civil code and the Spanish penal code. The Belgian civil code covers the protection of all citizens both within and outside the workplace. In Britain, Denmark and Ireland, in the absence of any overall codes or constitutional provisions, the civil and common law lay down basic individual rights.

BASIC LAWS

The main laws covering health and safety vary between member states. In some countries, all major provisions are contained within a single statute or framework law, like Britain's 1974 Health and Safety at Work Act, Denmark's Working Environment Act (1975) and Luxembourg's Law on the Health and Safety of Workers (1924). As recently as 1989, Ireland passed its Safety, Health and Welfare at Work Act to provide a comprehensive and integrated legal framework and establish a National Authority for Occupational Safety and Health.

In Belgium and France, health and safety provisions are contained within general codes: for example, Belgium's General Regulations for the Protection of Labour incorporate the 1952 law on workplace health, safety and hygiene and the 1978 law on employment contracts.

In other member states the body of health and safety law is dispersed, with no single code or law covering the issue. In Germany, for example, health and safety provisions are found in a wide range of acts, codes, orders and regulations. These are issued by the federal government in Bonn, federal states (*Länder*) and accident insurance

A West Midlands toxic waste disposal plant fined repeatedly for breaches of the HSW Act. As long as member states can implement EC legislation *'in accordance with national laws and practice'*, standards will continue to be set by the dirty end of industry. Trade Union Photo Group, Birmingham

associations (*Berufsgenossenschaften*). Similarly, in Italy, Spain and Portugal, provisions are scattered in various ordinances, codes, decrees and regulations.

RIGHTS AND RESPONSIBILITIES

Most EC member states lay down essential duties for employers and employees to ensure occupational health, safety and hygiene. Laws vary widely in the specific requirements: Spain places no general obligations on employers although they are, of course, expected to obey existing law, while Germany has detailed requirements for employers to organise the workplace in a way that is conducive to health and safety protection;

to adopt the most modern standards and expertise covering, for example, occupational medicine; and to adhere to established laws and work insurance regulations.

In other states, employers' obligations include requirements to ensure employee health and safety 'so far as reasonably practicable' (Britain) or so far as the nature of the workplace permits (Greece); to protect against the inhalation of dangerous substances (Ireland); and to ensure that protection is informed by the highest standards and best practice in occupational health care, ergonomics and industrial sociology (Netherlands). Dutch law also requires undertakings with more than 100 employees to publish an annual health and safety report. Workers are obliged to work in a way which does not endanger themselves or others, including making the fullest use of protective equipment.

Under the EC's framework Directive, employers will be required to take a more pro-active approach to health and safety issues (see Chapter 5). They will, for example, be obliged to assess risks, update such assessments in the light of changing circumstances and take the necessary preventive measures. The framework's most radical provision, however, surpassing legislation in any of the member states, is its requirement that employers adapt work to the individual employee. Workplace design, equipment and working methods should be tailored to avoid monotonous labour and reduce the onerous burden of set work-rates.

The right to stop work

The impact of the framework Directive will vary considerably between member states depending on the extent to which its requirements are already met in national law. For example, it provides for the right to stop work in the event of serious, imminent and unavoidable danger. Workers who do so should not be disadvantaged and must be protected against subsequent victimisation or other harmful consequences. Employers are also required to permit workers to take pre-emptive action, using whatever technical means and knowledge are at their disposal, in the absence of the manager or any other superior who would otherwise be responsible.

The right to stop work exists in a number of member states but it is not a uniform provision (see table on page 96). The conditions in which it can be exercised differ quite markedly. For example, employees can stop work:

- in Germany, if a worker is in imminent danger to her/his health or life due to exposure to a substance in excess of a TLV (threshold limit value), if the employer has been informed about the danger before but has taken no adequate action;
- in Belgium, if a job involves risks of which s/he was not told;
- in the Netherlands and France, if a worker has cause to suspect there is imminent danger to his/her health, with the proviso that the employer is informed immediately.

Employee consultation and participation

The framework Directive requires employers to consult workers and their representatives and allow them to participate in discussions concerning health and safety. With the exception of Greece and Spain, most member states already have some statutory provision for employee consultation.

- In Britain and Denmark, workers elect safety representatives onto safety committees which have the right to relevant information and to consult the appropriate inspectorates.
- In Belgium, France and Portugal, consultative committees must be set up in organisations with more than 50 employees.
- In Germany, Italy, Luxembourg and the Netherlands, works councils enjoy certain rights in relation to health and safety (as well as other rights and powers in covering terms and conditions, company information, and so on). Works councils are entitled to approve or dismiss employer initiatives affecting health and safety, to monitor employer compliance with existing laws and regulations, to receive all relevant information, and to consult and accompany external inspectors.

Although the Directive does not deal with the role of workplace committees it does extend the right of workers and their representatives to make proposals on health and safety. Workers' safety representatives must be permitted to take time off work without loss of earnings and enjoy the right to give evidence and comment to visiting inspectors. The Directive also requires employers to consult them in advance on a range of issues, including risk assessment, training and any initiative which potentially affects health and safety.

Means of consultation and worker participation on health and

safety issues are diverse. Only Ireland, Italy and the UK lack any form of statutory employee participation which, among other things, guarantees rights of information, consultation and in some cases, co-determination on health and safety issues (see table on page 91).

In **Belgium**, undertakings with 50 or more employees must establish health and safety committees. In **Denmark**, under the 1975 Working Environment Act, employees in each department of a company elect safety representatives to represent them on a company safety group dealing with health and safety issues. Joint consultation 'co-operation committees' were set up through the 1970 central collective agreement.

In **France**, in companies with at least 50 employees (or 300 in construction) must establish a Health, Safety and Working Conditions Committee (*Comité d'Hygiéne, de Sécurité et des Conditions de Travail* — CHSCT). The committee is chaired by the employer and works closely with the company health service (compulsory in most firms). Workers' representatives are elected by the works council (*Conseil d'Enterprise*) and the general employee representatives (*délégués du personnel*). Employers have the final say but must consider the advice of the committee.

Aside from the CHSCT, the works council must be consulted over all issues relating to working conditions, including health and safety, hours, staffing levels, as well as on matters relating to employment security, such as redundancies, mergers, relocation and so on. Enough time must be allowed for the works council to consider the problem (*délai d'examen suffisant*) and consultation must precede the decision.

In **Germany**, works councils can be elected where there are at least five employees. Most medium-sized and large firms therefore have a works council (*Betriebsrat*) of elected employee representatives with rights to consultation and co-determination (joint decision-making) on a range of issues. The general duties of the works council include ensuring that legislation, safety regulations, agreements and other instruments are implemented for the benefit of employees. Works councils' rights of co-determination cover occupational health and safety, including accident prevention. Labour Protection Committees (*Arbeitsschutz-Ausschusse*), although legally required in companies with a works doctor or a safety specialist (or both), have not always been set up. If in existence they include those involved in health and safety from both management and the workforce. They are legally obliged to meet quarterly at least.

In **Luxembourg**, works councils appoint a safety officer who is entitled to carry out weekly safety checks. Joint committees have the right to make decisions on issues directly relating to the health and safety of employees, personnel policy and special bonus payments. In **Spain**, companies with less than 50 employees must establish a 'staff delegation' while companies with 50 or more employees must establish a works council. Both bodies are responsible for monitoring health and safety, and social issues within the workplace. Works councils monitor the implementation of labour legislation, including health and safety provisions.

LAWS AND INSTITUTIONS: NATIONAL PROFILES

France

The national framework is governed by two dominant principles — prevention and consultation. It is assumed that the prevention of hazards and accidents is best achieved through 'social partnership' between employers and workers at national and company levels. Consequently, most of the regulatory organisations are bipartite or tripartite with employees' representatives enjoying at least parity with employers.

The basic **legislative provisions** governing French health and safety are based on the Labour Code and the Social Security Code. The Labour Code establishes the regulations which every employer must enforce to ensure the safety of the workforce. The Social Security Code outlines the rules governing the finance necessary for the appropriate national insurance fund and for accident prevention. The Public Health Code also contains provisions governing toxic and hazardous substances.

The Labour Code incorporates the major laws governing health and safety, and the resulting rules and regulations. For example, under Article L 233-1, all workplace premises and accommodation must be safe: this covers all aspects of the workplace, from design and equipment to special clothing. The Labour Code includes a wide range of employment law provisions — including pay, working conditions, and collective bargaining — as well as health and safety. The Labour Code is supplemented by the Social Security Code which:

- requires all employers to make payments to the appropriate sickness insurance fund;
- governs both the national and regional sickness insurance funds, and the activities of the national and regional Technical Committees, bipartite bodies which advise on employers' accident insurance premiums (see below under CNAM/CRAM);
- requires the documentation of occupational diseases and hazards as the basis for assessing compensation payments by sickness insurance funds;
- empowers the regional sickness insurance funds to recommend health and safety guidelines, including 'best practice' provisions covering, for example, atmospheric limit values.

Health and safety provisions were most recently updated in 1976 and 1982, reinforcing employers' responsibilities to enhance workers' rights and improve health protection at the workplace. The 1982 legislation established the Higher Council for the Prevention of Accidents and imposed a statutory requirement for training safety representatives.

Health and safety provisions are devised, enforced and monitored by a wide range of institutions:

- The **Labour Ministry** consults the **Higher Council for the Prevention of Occupational Hazards** (*Conseil Supérieur de la Prévention des Risques Professionels* — CSRP) on all health and safety matters. The Council is chaired by the labour minister and includes the major social partners (unions and employers' associations).
- Workplace reform is researched and proposed by the **National Agency for the Improvement of Working Conditions** (*Agence Nationale pour l'Amélioration des Conditions de Travail* — ANACT). ANACT is a tripartite body, organised and funded by the Ministry of Labour but managed by a committee representing employers and employees as well as the government and independent experts. ANACT's activities are largely educational — through publications and conferences — but it also provides technical advice to companies. ANACT expertise is solicited by the companies themselves: its representatives enjoy no rights of access to workplace premises or health and safety information.
- Research, training and information for practitioners is undertaken by the bipartite **National Institute of Safety Research** (*Institut National de Recherche et de Sécurité* — INRS). The INRS was set up by the 1947 legislation which also established the first requirements for employee

consultation on health and safety matters. Its principal responsibilities include:

- health and safety education;
- research covering hazards and occupational health;
- technical training for health and safety practitioners.

▲ Exceptionally hazardous industries like the building trade are covered by the bipartite **Organisation for the Prevention of Accidents in Construction and Public Works** (*L'Organisme Professionel de Prévention du Batiment et des Travaux Publics* — OPPBTP). Employers and workers are equally represented on its governing national committee. The organisation exercises no real powers or sanctions against employers: it can only advise firms on measures for accident prevention and health promotion.

▲ The **National Sickness Insurance Fund** (*Caisse Nationale de l'Assurance Maladie* — CNAM) is financed by premiums levied on employers and administered by the Ministry of Health and Social Security. It is a bipartite organisation, managed by a national committee comprising representatives of employees, employers, government and independent consultants.

The CNAM covers most employers with the exception of the civil service, certain state-owned enterprises and local authorities which have separate but largely equivalent schemes.
The CNAM's main activities include:

- advising on proposed health and safety provisions;
- promoting accident prevention and health promotion in the workplace;
- managing the national fund for the prevention of accidents and occupational disease;
- managing the INRS budget and the Regional Sickness Insurance Funds.

▲ The 16 **Regional Sickness Insurance Funds** (*Caisse Régionales d'Assurance Maladie* — CRAMs) are similarly bipartite. All employees covered by a region's insurance system are entitled to elect the employee representatives.

The CRAMs are responsible for:

- co-ordinating workplace accident prevention and health promotion;

- establishing the criteria for employers' insurance premiums
- organising teams of technical advisers which, unlike the Labour Inspectorate's generalists, include engineers, technicians and safety specialists.

The rights and responsibilities of the CRAMs' advisory engineers and 'safety controllers' include:

- the right to enter workplaces falling within the ambit of the social security provisions;
- the right to investigate hazards and accidents, the right of access to information, including the ability to take samples and conduct tests;
- the right to issue '*dispositions générales*' — orders obliging all firms in a region undertaking the same activity to adopt standard preventive measures (which may be extended nationwide at the discretion of the CNAM);
- the right to award compensation for loss of earnings or disability to employee accident victims.

Unlike their Labour Inspectorate counterparts, CRAM inspectors cannot recommend public prosecutions. However, they can require employers to take preventive measures and, if an employer proves recalcitrant or a hazard is particularly acute, CRAM representatives do have the power to increase employers' premiums.

The bipartite and consultative nature of health and safety activity is further reflected in the activities of the regional Technical Committees. These bipartite committees advice the CRAMs on proposed premiums and financial penalties.

The coverage of health and safety provisions of the Labour Code extends to all industrial, commercial and agricultural undertakings, both public and privately owned. The Social Security Code applies to all commercial and industrial employment, including homeworking. Equivalent insurance schemes apply to workers in excluded sectors like shipping, mining and the civil service.

Employer responsibilities: Employers are held accountable as individuals for the health and safety of employees. But they are also entitled to discipline workers who flout health and safety instructions.

As noted above, French health and safety is subject to employee involvement through the consultation of employee representatives. All

firms employing at least 50 workers are required to establish a health and safety committee (CHSCT — see above, page 71). Each employer is required to:

- allow at least one committee member at least one week of safety training a year;
- inform and consult the CHSCT about health and safety plans and the last year's activity at least once a year.

The committee itself, which meets quarterly, is entitled:

- to be consulted on health and safety issues;
- to invite inspectors;
- to invite external consultants (paid for by the employer) if the committee's risk assessment work requires additional expertise or technical advice.

Responsibility for the enforcement of health and safety provisions is dispersed between different agencies. The Ministry of Labour is responsible for administering the Labour Code. The health and safety aspects of both the Social Security Code and the Public Health Code are covered by the Ministry of Health and Social Security. Hazards arising from chemical products and processes are covered by the Ministry of the Environment.

The **Labour Inspectorate** is managed by the Ministry of Labour. Health and safety concerns comprise only 30% of the activities of inspectors who are also responsible for monitoring other working conditions and industrial relations matters. Unlike their German equivalents, for example, most French inspectors lack technical expertise and tend to have been trained in employment law, economics or industrial relations.

Inspectors enjoy rights of access to premises and information. They can require employers to take specific measures to remedy or avoid a particular hazard. Unlike their regional counterparts in the CRAMs (see above), they can also recommend prosecutions to the public prosecutor's office although the final decision on whether or not to proceed rests with the prosecutor rather than the inspector.

Future developments: In the spring of 1991, the government proposed a new bill on workplace health and safety. The measure, currently working its way through the National Assembly, has three main provisions:

- reinforcement of accident prevention in construction and public works by tying the level of social security contributions to accident at work funds;
- reform of the CHSCTs, including an extension of both mandatory training rights to firms employing less than 300 workers and of worker representatives' access to external expertise;
- integration of various EC Directives into French law.

Germany

German health and safety provisions stem from two main sources: **employment law** and **social insurance legislation**. Firstly, the Industrial Code, frequently updated since 1891, requires employers to ensure that workplaces, plant, machinery and tools are organised and maintained to protect workers '*so far as the nature of the business permits*'. The Code confers on the Federal Government and the federal states (*Länder*) the right to enact more detailed provisions through orders or ordinances.

Secondly, under the State Insurance Code, workers' accident insurance is funded by employers and managed by joint accident insurance associations (*Berufsgenossenschaften*). There are some 95 associations organised in three sectors: 35 industrial associations, 41 public sector associations and 19 agricultural associations. All are managed jointly by trade unions and employers' associations.

The associations are required by the Code to take appropriate measures to prevent accidents. They are empowered to issue legally binding accident prevention regulations which, unlike the general principles of Federal laws, are usually very detailed, covering technical issues and specific processes or types of machinery and equipment. The accident insurance associations also maintain research facilities, organise company safety training and arrange tests for equipment safety standards.

As mentioned above, Germany's basic **Industrial Code** is complemented by a wide array of acts, orders and regulations covering, for example, specific hazards or technical standards like the 1980 Chemicals Act which covers hazardous substances or the 1968 Safety of Equipment Act. The Federal authorities also have the power to issue detailed advice on enforcing health and safety provisions. This guidance consists either of guidelines or general administrative regulations.

Federal laws require that plant, machinery, materials and

equipment follow certain 'technical rules' which establish minimum standards. These standards are governed by two sets of rules:

- '*generally acknowledged rules of technology*' which govern, for example, the production of equipment;
- and '*established principles of labour science*', including ergonomics and occupational psychology.

Responsibility for **enforcement** lies with two principal agencies – the Labour Inspectorate and the Technical Inspectorate. The former is run by the Labour Ministries or the Environmental Ministries of the *Länder* while the Technical Inspectorate is part of the accident insurance associations which monitor and implement their regulations. The Technical Inspectorate should not be confused with the private Technical Inspection Associations (*Technische Uberwachungs-Vereine*): these are independent consultancies with credentials under the Industrial Code to undertake statutory inspections of hazardous plant.

The **Labour Inspectorate** (*Gewerbeaufsicht*) enforces federal provisions governing health and safety. In some federal states it also covers environmental protection which, in fact, accounts for approximately half of its work: only 15% of its work concerns health and safety.

Inspectors have various powers of enforcement, including the right to issue an 'enforcement notice' which gives notice to an employer to remove or reduce a hazard within a specific time. Inspectors can fine employers in the event of a failure to comply, or, in serious breaches, they can take out criminal proceedings with the public prosecution service. However, prevention and advice are more prevalent than punitive sanctions: for example, only 900 fines and 50 prosecutions occurred in 1988.

Although inspectors tend to give prior notice of visits, they do have the right to enter and inspect workplaces unannounced.

Some 2,000 **technical inspectors** are employed by the accident insurance associations. The technical inspectorate tends to specialise in specific industries and, while its officers have no powers to enforce statutory provisions, they do enforce accident prevention regulations and counsel members on accident prevention. The insurance premium of a company is based on its accident level (since, under the State Insurance Code, employer contributions to the appropriate insurance association depend on the demands made on its compensation funds).

The legal obligations of the Labour Inspectorates of the *Länder* and of the *Berufsgenossenschaften* are overlooked by the **Federal Ministry of Labour and Social Affairs** (*Bundesministerium fur Arbeit und Sozialordnung*) which is also responsible for national health and safety initiatives. The **Federal Institute for Occupational Safety and Health** (*Bundesanstalt fur Arbeitsschutz*) advises the government, develops advisory and guidance materials for safety practitioners, undertakes research, organises training, and runs an occupational safety and health information centre. The **German Standards Institute** (*Deutsches Institut fur Normung*) drafts standards for the safe design and use of machinery, plant and equipment: a private organisation, it is jointly managed by representatives of government, trade unions, employers and consumer organisations.

Employers' responsibilities include a legal obligation to appoint certain members of personnel to fulfil essential health and safety functions — safety specialists, safety stewards, and works doctors:

- safety specialists, usually technical employees or engineers, advise employers on health and safety issues (the number of specialists to be appointed and trained depends on the size and business of the firm and is decided by the accident insurance associations; the minimum number of employees above which at least one part-time specialist is required varies between 25 and 250, depending on the kind of business);
- safety stewards (*sicherheitsbeauftragte*) who support employers on safety issues, especially by monitoring compliance with safety regulations, are recruited and appointed from its own workforce by the company (there is no requirement for a safety steward in companies with less than 21 employees);
- works doctors (*Betriebsarzte*) are obligatory for large companies. The minimum number of employees above which at least a part-time works doctor is required varies between 60 and 250 employees depending on the kind of business. In the construction industry there is no lower limit, so every construction worker is entitled to minimal medical surveillance. In practice, *half* of Germany's workforce is employed in small or medium-sized firms *without* a safety specialist or a works doctor.

Coverage: with the exception of certain provisions covering chemicals, hazardous substances and the protection of mothers and

young workers, most health and safety laws apply only to private commercial and industrial undertakings, excluding the entire public sector, agriculture and shipping. But most employees are covered by accident insurance associations and the related provisions for accident prevention.

Italy

The EC's framework Directive is likely to have as profound an effect in Italy as in any other member state. While the health and safety provisions of some other states (like Germany, Spain and Portugal) are scattered in various ordinances, codes, decrees and regulations, few are as handicapped by the lack of co-ordination and effective implementation as that which characterises the Italian system.

The basic **legislative framework** of health and safety rights is laid down in the country's **Constitution** and its **Civil and Penal Codes**. These are supplemented by certain key statutes, principally the Presidential decrees of 1955 and 1956 covering workplace health and safety and the prevention of accidents, the 1970 Workers' Statute and the 1978 Health Reform Act.

The 1955 and 1956 decrees aimed to establish a comprehensive set of rules requiring commercial and industrial enterprises to function in a manner at least not detrimental to either employees or neighbouring residents. Employers' basic duties include obligations to:

- adopt all reasonable measures for ensuring safety at work;
- educate employees in occupational hazards and accident prevention;
- provide the necessary safeguards to ensure that employees' lives are not threatened by occupational hazards.

Similarly, workers are required to:

- make full use of available safeguards, such as protective clothing and safety devices;
- inform the employer or immediate supervisor if safeguards cease to function adequately;
- avoid amending or discarding any safety procedures or equipment without the employer's permission.

The decree also covers protection against harmful substances, including a provision which prohibits employers from requiring employees to work in an area contaminated by noxious gases.

The decrees also established a permanent national **consultative committee**, chaired by the Minister of Labour and comprising union and employer representatives. The committee monitors the enforcement of existing provisions and proposes amendments and new legislation.

The national consultative committee influenced the health and safety aspects of the **1970 Workers' Statute**, under which Italian workers gained rights of workplace consultation and representation on health and safety matters. Employee representatives — both union officials and factory council delegates — received certain legal rights:

- ▲ to inspect and supervise the observation of statutory provisions governing the prevention of accidents and occupational diseases;
- ▲ to promote research into the organisation and application of preventive health and safety measures.

The 1978 Health Reform Act transferred most responsibilities for health and safety from the Labour Ministry to the Health Ministry. In effect, this move shifted health and safety responsibilities onto local health units (based on the commune or local council), with minimal co-ordination at national or regional levels. Workplace health and safety is only a small part of the health units' overall responsibilities, along with the normal activities of a national health service. Fairly sophisticated occupational health services are operated by some local health units in the more industrialised and affluent central and northern regions. But they are distributed unevenly and there are few comparable facilities in the south.

The 1978 Act also requires firms to provide an occupational hygiene and medical service. Local health units may establish such services if an employer fails to do so.

Employers are obliged to take out accident insurance through the state-run **National Employment Injuries Institute** (*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro* — INAIL). INAIL has rights to:

- ▲ compensate workers for occupational accidents;
- ▲ oblige employers to report accidents at work;
- ▲ impose higher premiums on employers if their safety provisions are inadequate.

Italy's **Higher Institute for Workplace Safety and Accident Prevention** (*Istituto Superiore per la Prevenzione e la Sicurezza del Lavoro* — ISPESL) undertakes research and establishes standards for the safe

design and use of machinery, plant and equipment. ISPESL provides technical advice to the generalist inspectors of the local health units and advises the Health Ministry on updating guidelines to keep pace with changes in materials, technology and production processes.

Italian workers do not enjoy statutory rights to enterprise works councils. But, since the 1960s, unions have negotiated extensive provisions for employee representation and consultation at company and enterprise level. Many major enterprises have adopted the precedents set by collective agreements covering the chemicals and metalworking (engineering) industries and established joint safety committees and/or special environmental committees (*commissione ambiente*). The environmental committees, consisting of delegates elected by the workforce, are responsible for monitoring health and safety practice and procedures. Nevertheless, in the absence of statutory rights, employers have sought to restrict the disclosure of health and safety information. Italian metalworkers' unions have argued that FIAT has withheld information on accidents, the incidence of occupational disease and distorted information on sickness and accident levels by excluding data on absences of less than three days.

Given the confusion and problems of enforceability surrounding national provisions, Italian unions have tended to rely on collective bargaining to secure real improvements in certain spheres. Many collective agreements have aimed to implement or improve upon national legislative provisions by, for example, requiring companies to keep a separate health and safety record covering each employee or imposing additional restrictions on heat and noise levels and the use of hazardous substances. A series of agreements at FIAT in the 1970s, for example, established:

- the right of plant safety committees to have a 'map of environmental conditions' in each plant, illustrating the presence and level of dangerous substances (1971 agreement);
- and the right of safety committees to call on public authority expertise (at the company's expense) for staff medical checks and environmental 'audits' when FIAT's own services are inadequate (1977 agreement).

A number of institutions are empowered to enact health and safety regulations (regolamenti) at national and regional levels. These include the Ministry of Labour, the Labour Inspectorate, local authorities, local

health authorities and certain specialist doctors. But the plethora of regulations has not been matched by resources and sanctions required to give them effect.

The situation is further complicated by the confusion and duplication of responsibilities of the relevant public authorities. The Labour Inspectorate, for example, a division of the Labour Ministry, operates at national, regional and local levels. But both municipal and health authorities also enjoy enforcement rights at regional and local levels — they can require firms to strengthen preventive measures.

Enforcement remains a major problem. For example, Italy is one of the few EC member states to have enacted provisions specifically covering the protection of the health and safety of homeworkers (in an Act as early as 1958). Article 13 of the Act requires homeworkers to be given the same levels of protection as industrial and commercial workers in large enterprises. However, the resources of the Labour Inspectorate have never been sufficient to give teeth to this requirement. At the time of the Seveso disaster in 1976, the region of Milan (Italy's industrial heartland) in which the plant was located, had barely 40 inspectors and 16 deputies to undertake all monitoring duties. The Labour Inspectorate covers many other aspects of working conditions and industrial relations: health and safety can comprise as little as 10% of inspectors' responsibilities.

Italian unions have long complained that Labour Inspectors lack the necessary training and expertise and, as a consequence, have failed to keep up with changes in technology, occupational hazards and work organisation.

A related problem is that employers have failed to meet their responsibilities under existing legislation. For example, the 1955 and 1956 decrees required employers to inform workers of all risks and safety rules associated with a particular job. Such requirements, say the unions, were blatantly ignored in the Seveso case.

Investigative powers were transferred from the Labour Inspectorate to the accident prevention services of local health units, under the 1978 Health Reform Act. But the Labour Inspectorate retains responsibility for areas like nuclear safety.

Health inspectors have the right to issue enforcement notices requiring employers to cease or amend certain practices. They can also call on local magistrates to prosecute employers contravening the law. Magistrates themselves investigate accidents with the support of inspectors from local health units or the Labour Inspectorate.

The government presented a health and safety Bill to Parliament in early August with the aim of harmonising Italian regulations with European Community provisions. But the Bill met with immediate criticism from the three major union confederations, the former communist democratic Left and the Greens who jointly invited the President to reject the Bill and send it back to Parliament.

The critics' main concern is that the new legislation undermines Italy's existing framework of health and safety provision which they consider superior to the proposed alternative. Current legislation, dating back to 1956, requires employers to '*adopt all the most effective safety measures that technology can provide, notwithstanding the economic costs*'. This provision is in accord with Article 41 of the Constitution which states that '*private economic enterprise...cannot develop...while damaging people's safety*'.

However, the new measure simply suggests that '*the employer adopts measures which are practically enforceable*' while, for example, working with lead and zinc. Despite its high legal standards, Italy suffers from a high rate of industrial accidents - an average of 1,100,000 accidents a year of which 2,334 resulted in fatalities in 1989.

Under the 1956 legislation, only the local public health office is empowered to appoint a doctor to investigate workplace health and safety: the new proposal cedes this right to the employers. The new decree also dilutes the effect of a number of other safeguards: the permissible workplace noise ceiling is raised from 85 decibels to 90 decibels and the level of admissible lead content in the blood is also raised.

The union confederations — CGIL, CISL and UIL — suggest that in making health and safety subordinate to economic and practicable factors, the proposed decree violates some of the basic principles contained in the Italian constitution and in existing legislation.

President Cossiga initially refused to sign the decree on the grounds that it would undermine existing legal protection. However, he relented following pressure from both the government and Confindustria, the employers organisation, which declared it unacceptable that Italy should maintain rules and standards inapplicable elsewhere in Europe.

The decree was eventually signed on 19 August 1991. But, at the time of writing, the unions are planning an appeal to the Constitutional Court.

Denmark

The 1975 Working Environment Act established extensive provision for employer-funded health facilities at company, sectoral and regional levels. The aim of the workplace health facilities (*bedriftssundhedstjenesten*, or BST) is primarily preventive: *'to prevent working environment injuries such as accidents at work, occupational diseases and gradual deterioration of health by combating elements at the workplace which have a harmful effect either physically or psychologically and to promote employees' health care in the workplace'.*

The legislation arose after a 1974 report on health and safety covering 10,000 workers in 377 different occupations. It identified the major complaints and problems as resulting from excessive noise, dust, physical strain when lifting equipment and excessive temperature variations. The report also stressed workers' complaints about the psychological effects of monotonous work.

One of the principal achievements of the Act was to end the distinction in previous provisions between industry on the one hand and commerce and agriculture on the other. Less stringent standards tended to apply in the latter.

As in other member states, the legislation largely provides a framework within which the Ministry of Labour and other appropriate agencies can formulate additional rules and regulations as circumstances change with the introduction of new technology, changes in the production process and in the use of new substances. In drafting proposals, however, the government and related agencies are required to consult with employers' and workers' organisations represented on the Working Environment Council.

The 1975 Act is designed to leave large areas of health and safety concerns for the 'social partners' to develop and enforce through collective agreement. Negotiated provisions are, however, subject to monitoring and regulation by the Labour Inspection Service. The Labour Inspection Service employs specialist industrial medical officers, manages occupational health clinics at most major regional hospitals and runs the Institute of Occupational Health.

A distinctive aspect of the Danish provisions is the emphasis upon 'non-traditional' hazards. The 1975 Act explicitly incorporates less conventional threats to workers' health, including the combined physical and mental hazards of noise, odour, monotony and depressing work environment. It stresses the importance of 'ergonomic conditions',

especially the need to adapt the production process, working environment, facilities and materials to the specific needs of individual employees.

The 1975 Act gives companies a menu of options for setting up BST schemes:

- single company facilities;
- jointly-run schemes with one or more other firm(s);
- regionally based facilities;
- sectoral schemes.

Companies employing over 500 workers are advised but not required to establish their own schemes with 'adequate' staffing to fulfil their duties. This generally entails a couple of occupational health specialists plus administrative back-up.

Few companies have taken the second option of collaborating with other firms. Regional schemes have emerged as the most popular option but sectoral schemes are popular, especially with the 26,000 individual firms in the particularly hazardous building and construction sector whose scheme now covers around 110,000 workers. Employers are expected to fund the BST schemes themselves but they can apply for generous subsidies from central and local government which can cover up to 75% of costs.

The most controversial aspect of the schemes' operation has been the means of appointing the BST schemes' directors. In most cases, however, this now requires the authorisation of both employer and employee representatives on the supervising boards.

Danish health and safety provisions explicitly encourage workers to develop individual responsibilities for health and safety, with the emphasis on shop-floor involvement. Safety committees must be established in all firms employing more than 20 workers.

Safety representatives' rights

The framework Directive requires that workers and their representatives be informed, consulted and involved in health and safety matters. A number of employers' bodies, not least the UK's CBI, have expressed the fear that this represents a 'Trojan Horse' or 'back-door' route to worker participation on the broader agenda of working conditions and industrial relations. But the EC's commitment to the principle of worker

involvement and the prevailing practice on continental Europe seems likely to prevail.

All EC member states already have laws which specifically allocate rights to workers' representatives dealing with health and safety (although in some countries — like Ireland — it currently covers only certain types of workplace).

However, the *status* of representatives eligible for such rights tends to vary:

- ▲ rights are limited to safety delegates or members of health and safety committees in Belgium, Britain, France and Ireland;
- ▲ rights apply both to the above categories and to 'non-specialist' employee representatives on works councils in Germany, Greece and Spain;
- ▲ all appropriate rights apply to works council delegates in Italy, the Netherlands and Portugal (where safety committees result from collective agreements rather than the law).

Most member states, with the exception of the UK, establish a **company size threshold** based on the number of employees before health and safety committees are required. This ranges from only 20 employees in Denmark, Greece and Ireland to 100 employees in Spain.

In most cases, employee health and safety representatives are elected from the workforce by the workforce but variations include the Belgian practice of election from trade union lists, the British system of appointment by trade unions and the French method of allocating delegates from a 'college' of other worker representatives.

Whose rights?

	STATUS AND COMPANY THRESHOLD	MEANS OF SELECTION
BELGIUM	Worker reps on H&S committees — mandatory in firms with more than 50 employees.	Elected every four years from union lists.

	STATUS AND COMPANY THRESHOLD	MEANS OF SELECTION
DENMARK	Safety reps and employee reps on safety committees — obligatory in all firms with over 20 employees. Joint consultation 'co-operation committees' set up through 1970 central collective agreement.	Elected by the workforce.
FRANCE	Worker reps on health, safety and improvement of conditions committees (CHSCT). Required in firms with 50 or more employees.	CHSCT reps chosen from 'college' comprising works council members and employee delegates (*délégués du personnel*).
GERMANY	Works council members and safety stewards (required in firms with over 20 employees) allocated H&S rights.	Works council members elected by the workforce and safety stewards selected by employer after consultation with works council.
GREECE	Workplace H&S committee members in firms employing over 20 workers. Works council reps have limited H&S rights. Works councils can be set up in firms with 50 or more employees (20 or more in firms with no union).	Workplace H&S committee and works council elected by and from workforce.

	STATUS AND COMPANY THRESHOLD	MEANS OF SELECTION
IRELAND	Safety reps and workers' reps on safety committees which are required in all firms with 20 or more employees.	Elected by employees.
ITALY	H&S rights limited to reps on workplace union organisations (rappresentanze sindacali aziendali, or RSAs), the most prevalent form of which is the factory council.	Article 19 of the Workers' Statute does not specify ways of establishing RSAs but it is normally by show of hands or (rarely) by ballot.
LUXEMBOURG	Employee reps on works council (*délégation du personnel*) in firms employing more than 15 workers. Works council nominates a safety delegate to exercise H&S rights.	*Délégation du personnel* elected by employees.
NETHERLANDS	Employee reps on works council (*ondernemingsrad*). Required in all firms with at least 35 employees. Council may delegate H&S duties to health, safety and welfare committees in larger firms.	Works councils elected every two years.

	STATUS AND COMPANY THRESHOLD	MEANS OF SELECTION
PORTUGAL	Reps on works councils (*comissóes de trabalhadores*). Separate safety committees are subject of collective agreement rather than legislation.	*Comissóes* elected by and from the workforce.
SPAIN	Rights granted to worker reps on H&S committees (CSH — *Comites de Séguridad e Higiene*). Required in all firms employing more than 100 workers and in firms with fewer workers if Labour Ministry considers H&S risks merit it. H&S rights also conferred on works council reps and workers' delegates.	Works councils elected in firms with over 50 employees. Workers' delegates elected in firms with between 10 and 40 employees.
UK	Special H&S rights limited to safety reps and employee reps on safety committees which must be set up at the request of two safety reps or through collective agreement.	Safety reps appointed by trade unions. Safety committee reps may be elected by workforce or appointed by either unions or employers.

Specific rights to **information and consultation** are legally defined in most member states, with the exception of Italy where they are generally defined by collective agreement. Although information rights are loosely defined in Denmark and Luxembourg, specific legal entitlements to particular forms of information are laid down in Belgium, Britain, Greece, Ireland, the Netherlands and Spain. In Germany and the Netherlands, worker representatives on companies' boards also enjoy the right to 'co-determination' (co-decision-making) on health and safety matters.

Legal provisions covering representatives' **inspection rights** also vary widely. Employee representatives are not entitled to undertake inspections in Ireland, Greece and Portugal but they may, at least in the first two cases, accompany inspections by outside authorities. In most other member states, representatives enjoy a general right to carry out inspections, although only in Britain, France and Luxembourg does the law specify the permissible frequency and circumstances of representatives' inspections (see table).

Information, inspection and consultation rights

	INFORMATION AND CONSULTATION RIGHTS	INSPECTION RIGHTS
BELGIUM	H&S committees have statutory right to a monthly report on H&S conditions; information on potential hazards; and reports from company's safety officer and medical service. H&S committees must be consulted on H&S policy; the employer's annual H&S action programme; changes to working environment for 'fatigue-prevention'; protective equipment purchases.	H&S committee reps have the right to monitor the implementation of H&S legislation, including the right to undertake inspections.

	INFORMATION AND CONSULTATION RIGHTS	INSPECTION RIGHTS
DENMARK	Employers legally obliged to consult with appropriate workers' reps on all H&S matters.	Workers reps have duty to monitor H&S practice, including the right to undertake inspections. But external union officials specifically not allowed to make inspections.
FRANCE	CHSCT reps have right to be informed and consulted on all employer policy and practice relating to H&S. Includes right to make observations on the employer's two statutorily required annual reports — on the firm's H&S situation and plans for accident prevention and improvements in working conditions.	CHSCT reps must make at least four inspections a year as part of their right to monitor the enforcement of H&S provisions. Must also investigate workplace accidents and bouts of occupational illness.
GERMANY	Works council members have right to co-determination (*Mitbestimmung*) on H&S issues, including appointments of company medical personnel and employee safety stewards. Must be informed and consulted, receive all relevant documentation and endorse any decisions.	Works council members and employee safety stewards may make inspections as part of their duty to monitor the enforcement of H&S provisions.

	INFORMATION AND CONSULTATION RIGHTS	INSPECTION RIGHTS
GREECE	Workplace H&S committee members have right to information covering improvements in working conditions and new equipment. Works council reps have right to information on H&S and, in the absence of a recognised union or equivalent body, to consultation on H&S issues.	No rights to undertake inspections.
IRELAND	Safety reps and workers' reps on safety committees entitled to information and consultation on H&S matters, including employer's safety statement on safety officers' duties, facilities, etc. Must be informed of inspectorate visits.	No rights to undertake inspections but may accompany visiting inspectors.
ITALY	No specific statutory rights to information and consultation. But varying provisions in collective agreements, most extensive in chemicals and the IRI state industrial holding.	No specific rights to undertake inspections but employee reps may invite inspections by Factory Inspectorate or local health unit inspectors.

	INFORMATION AND CONSULTATION RIGHTS	INSPECTION RIGHTS
LUXEMBOURG	Employee reps on works council entitled to information and consultation on H&S matters. Information required at least monthly or at works council meetings.	Safety delegates may conduct weekly inspections and accompany external inspectors.
NETHERLANDS	Employee reps on works council entitled to all information they 'reasonably' require for their duties and consultation on H&S matters. Also have right to be informed and consulted by specialists, including occupational medical staff, Factory Inspectorate and safety technicians.	Reps entitled to make inspections as part of their duty to monitor the enforcement of H&S provisions.
PORTUGAL	Reps on works councils entitled to all written information covering H&S on request. Must be consulted on H&S matters and have right to censure employer and make proposals for improvement in working conditions generally, including H&S.	No specific rights to undertake inspections.

	INFORMATION AND CONSULTATION RIGHTS	INSPECTION RIGHTS
SPAIN	Employee reps have right to 'adequate' information on company H&S measures, including accident statistics and company reports. Must be consulted on proposed improvements in working conditions.	Reps entitled to make such inspections as are necessary to ensure the enforcement of H&S provisions.
UK	Reps have general rights to information necessary for the fulfilment of their H&S duties. Specific rights outlined in 1977 Regulations on potential risks and safeguards. Employers required to consult on H&S provisions.	Reps entitled to make at least quarterly inspections. Further inspections possible after significant changes in work conditions or organisation, after an accident or incidence of occupational disease and/or after the publication of new information by the Health and Safety Executive or Commission.

Clearly, workers' health and safety representatives require time, facilities and protection in order to exercise the above rights and duties effectively. Furthermore, it has been argued that such rights are significantly diluted in effect without the right of workers and/or their representatives to suspend potentially hazardous work

As in most other aspects of health and safety practice, provisions vary considerably between member states. Only in Denmark and Spain, for example, do workers' representatives enjoy a clear right to stop work within a firm or any specific part of its operations on health and safety grounds. However, only in certain non-EC states like Norway and Sweden,

can representatives employ this sanction without fear of liability for employers' losses if the suspension of work is found to be unjustified. In the Netherlands, individual workers have the right to cease work and inform the Factory Inspectorate in the event of danger, while in Ireland and Luxembourg, workers' representatives are entitled to invite external inspectorates which are empowered to halt work in view of an anticipated hazard.

In terms of facilities, all member states provide for the appropriate workers' representatives to take time off for health and safety duties although the extent of time available is usually ill-defined as whatever is considered 'necessary' or 'reasonable'. Even where the amount is specified, provisions vary widely. In France, CHSCT members' time off is based on company size while Portuguese reps enjoy up to 40 hours a month although this covers the whole range of union duties.

Provisions for other **facilities** are equally diverse. Workers' representatives in Greece, Italy and Portugal are entitled to premises for meetings and notice boards while their counterparts in Luxembourg enjoy a statutory right to office space, administration, heating and lighting (at the employer's expense). In most other member states, the necessary facilities are left unspecified although the UK does employ a voluntary Code of Practice for guidance.

Most member states specifically provide special **protection** for workers' representatives against discrimination or dismissal as a result of exercising their rights. Dismissals of representatives must be authorised by an outside tribunal or court in Belgium, Denmark, France, Italy and Portugal. Representatives can only be dismissed for serious misconduct in Germany, Greece and Luxembourg.

	RIGHTS TO SUSPEND WORK AND TIME OFF	FACILITIES & PROTECTION
BELGIUM	No statutory rights to stop work on H&S grounds. Reps have the right to carry out duties in working time without loss of earnings. Commitments outside working hours are paid at normal pay rates.	H&S committees have the right to facilities necessary to undertake their duties. Reps can only be dismissed on grounds approved by the Labour Tribunal and only made redundant for economic or technical reasons approved by bipartite sectoral committees.

	RIGHTS TO SUSPEND WORK AND TIME OFF	FACILITIES & PROTECTION
DENMARK	No statutory rights to stop work on H&S grounds but work stoppages justified if workers' 'life, honour or welfare' are in jeopardy. Time off with pay but amount unspecified. Employers must pay all expenses in connection with safety reps' duties and indemnify them for any loss of earnings.	No statutory requirements but law implies that all necessary facilities are made available. Safety reps enjoy the same protection as shop stewards against dismissals 'and any other deterioration of conditions'. Dismissals must be reported to rep's union and are subject to disputes procedures.
FRANCE	No specific rights to halt work on H&S grounds but in the event of a 'grave and immediate danger', and if the CHSCT insists, the employer must call in Labour Inspectorate which may suspend work. Paid time off varies according to the size of the firm: from two hours a month in firms with less than 100 employees to 20 hours a month if there are more than 1,500 employees.	No specific rights for CHSCT reps but all employee reps (works council delegates and *délégués du personnel*) have right to office and notice boards. Like other employee reps, CHSCT members' dismissals must be endorsed by the Labour Inspectorate.

	RIGHTS TO SUSPEND WORK AND TIME OFF	FACILITIES & PROTECTION
GERMANY	No rights to stop work on H&S grounds. May call in factory inspectors or technical inspectors. Right to paid time off as 'necessary' for the 'proper performance' of their duties. Paid time off in lieu allowed for duties performed outside working hours.	Right to premises, staff support and expenses for works council activities, including H&S duties. With the exception of offences justifying summary dismissal, works council members may not usually be dismissed during their term of office or for the following 12 months.
GREECE	In the event of 'immediate and serious danger', workplace H&S committee members have right to insist that employers take all necessary measures, including the cessation of work, if appropriate. No specific rights for H&S committee members but works council reps entitled to 12 days time off for training during their period of office.	No specific rights for H&S committee members but works council reps entitled to office premises, including notice board. No specific protection for H&S committee members but works council reps cannot be dismissed during their term of office or for 12 months afterwards except in limited instances of serious misconduct.

	RIGHTS TO SUSPEND WORK AND TIME OFF	FACILITIES & PROTECTION
IRELAND	Safety reps and workers' reps on safety committees entitled to request inspections which may order a suspension of work on H&S grounds. Paid time off normally restricted to two hours a fortnight.	No specific rights but employers must negotiate satisfactory facilities with reps. No special protection against dismissal or discrimination.
ITALY	No rights to suspend work on H&S grounds. H&S reps entitled to paid time off for at least eight hours a month.	Reps have right to office and noticeboard facilities in enterprises employing more than 200 workers. H&S reps may be reinstated by court order if the employer's action is deemed unjustifiable.
LUXEMBOURG	No rights to stop work on H&S grounds but safety delegates may invite Labour and Mines Inspectorate to do so. Safety delegates should not face loss of earnings for carrying out H&S duties. Works council reps allowed time off (including at least one member full time) in enterprises with over 500 workers.	Works council costs to be met by the employer, including office facilities and administration. Works council reps can only be summarily dismissed for gross misconduct. If the labour court refuses to uphold the dismissal, the rep must be reinstated.

	RIGHTS TO SUSPEND WORK AND TIME OFF	FACILITIES & PROTECTION
NETHERLANDS	Representatives enjoy no specific rights to stop work on H&S grounds but individual workers may do so if there is 'grave danger'. Reps entitled to paid time off of an unspecified amount.	Works council members entitled to all 'necessary' facilities for the fulfilment of their H&S duties. Works council members must not 'suffer any disadvantage' as a result of their activities and cannot be dismissed except in the event of a legitimate plant closure.
PORTUGAL	No specific rights to stop work on H&S grounds. Reps on works councils entitled to 40 hours a month paid time off for general duties, including H&S responsibilities.	Works council members have the right to office space and the 'material and technical facilities required' to fulfil their duties. Dismissals of works council members must be upheld by a court of law. This protection applies for five years after the representative's term of office.
SPAIN	H&S committees have the right to suspend production when faced with an	Both the H&S committee and the works council have the right to all

	RIGHTS TO SUSPEND WORK AND TIME OFF	FACILITIES & PROTECTION
	imminent risk of accident. Such action must be upheld or cancelled by the local Labour Authority within 24 hours. Time off facilities specifically for H&S committees are unspecified. But works council members receive from 15 hours a month in firms employing up to 100 workers to 40 hours in firms with over 750 workers.	necessary facilities for the fulfilment of their duties. No special protection applies to members of H&S committees but works council members cannot be dismissed or disciplined for activities related to their duties, either during their term of office or for 12 months afterwards.
UK	Reps have no rights to stop work on H&S grounds. Paid time off is allowed for statutory duties and necessary training as long as it is 'reasonable in the circumstances'.	No statutory provisions but a voluntary Code of Practice recommends that all 'necessary' facilities should be provided. Safety reps enjoy no special protection other than the generally applicable provisions governing unfair dismissal or discrimination for trade union membership or activities.

The framework Directive's precise impact on the rights of workers' health and safety representatives remains unclear. But, at the very least, we may anticipate some standardisation of the basic floor of minimum rights throughout the member states. Given that no single member state provides examples of 'best practice' in each category of representatives' rights, the framework Directive seems bound to have a profound impact on national provisions throughout the Community.

5

IMPROVEMENTS AT THE WORKPLACE? THE 'FRAMEWORK DIRECTIVE'

The complete text of the Framework Directive is reproduced below.

COUNCIL DIRECTIVE
of 12 June 1989
on the introduction of measures to encourage improvements in the safety and health of workers at work
(89/391/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118A thereof,

Having regard to the proposal from the Commission drawn up after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

In co-operation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 118A of the Treaty provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers;

Whereas this Directive does not justify any reduction in levels of protection already achieved in individual Member States, the Member State being committed, under the Treaty, to encouraging improvements in conditions in this area and to harmonising conditions while maintaining the improvements made;

Whereas it is known that workers can be exposed to the effects of dangerous environmental factors at the work place during the course of their working life;

Whereas, pursuant to Article 118A of the Treaty, such Directives must avoid imposing administrative, financial and legal constraints which would hold back the creation and development of small and medium-sized undertakings;

Whereas the communication from the Commission on its programme concerning safety, hygiene and health at work provides for the adoption of Directives designed to guarantee the safety and health of workers;

Whereas the Council, in its resolution of 21 December 1987 on safety, hygiene and health at work, took note of the Commission's intention to submit to the Council in the near future a Directive on the organisation of the safety and health of workers at the work place;

Whereas in February 1988 the European Parliament adopted four resolutions following the debate on the internal market and worker protection; whereas these resolutions specifically invited the Commission to draw up a framework Directive to serve as a basis for more specific Directives covering all the risks connected with safety and health at the work place;

Whereas Member States have a responsibility to encourage improvements in the safety and health of workers on their territory; whereas taking measures to protect the health and safety of workers at work also helps, in certain cases, to preserve the health and possibly the safety of persons residing with them;

Whereas Member States' legislative systems covering safety and health at the work place differ widely and need to be improved; whereas national provisions on the subject, which often include technical specifications and/or self-regulatory standards, may result in different levels of safety and health protection and allow competition at the expense of safety and health;

Whereas the incidence of accidents at work and occupational diseases is still too high; whereas preventive measures must be introduced or improved without delay in order to safeguard the safety and health of workers and ensure a higher degree of protection;

Whereas, in order to ensure an improved degree of protection, workers and/or their representatives must be informed of the risks to their safety and health and of the measures required to reduce or eliminate these risks; whereas they must also be in a position to contribute, by means of balanced participation in accordance with national laws and/or practices, to seeing that the necessary protective measures are taken;

Whereas information, dialogue and balanced participation on safety and health at work must be developed between employers and workers and/or their representatives by means of appropriate procedures and instruments, in accordance with national laws and/or practices;

Whereas the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations;

Whereas employers shall be obliged to keep themselves informed of the latest advances in technology and scientific findings concerning work place design, account being taken of the inherent dangers in their undertaking, and to inform accordingly the workers' representatives exercising participation rights under this Directive, so as to be able to guarantee a better level of protection of workers' health and safety;

Whereas the provisions of this Directive apply, without prejudice to more stringent present or future Community provisions, to all risks, and in particular to those arising from the use at work of chemical, physical and biological agents covered by Directive 80/1107/EEC, as last amended by Directive 88/642/EEC;

Whereas, pursuant to Decision 74/325/EEC, the Advisory Committee on Safety, Hygiene and Health Protection at Work is consulted by the Commission on the drafting of proposals in this field;

Whereas a Committee composed of members nominated by the Member States needs to be set up to assist the Commission in making the technical adaptations to the individual Directives provided for in this Directive;

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

GENERAL PROVISIONS

Article 1

Object

1. The objective of this Directive is to introduce measures to encourage improvements in the safety and health of workers at work.

2. To that end it contains general principles concerning the prevention of occupational risks, the protection of safety and health, the

elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles.

3. This Directive shall be without prejudice to existing or future national and Community provisions which are more favourable to protection of the safety and health of workers at work.

Article 2

Scope

1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

2. This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.

Article 3

Definitions

For the purposes of this Directive, the following terms shall have the following meanings:

(a) worker: any person employed by an employer, including trainees and apprentices but excluding domestic servants;

(b) employer: any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment;

(c) workers' representatives with specific responsibility for the safety and health of workers: any person elected, chosen or designated in accordance with national laws and/or practices to represent workers where problems arise relating to the safety and health protection of workers at work;

(d) prevention: all the steps or measures taken or planned at all stages of work in the undertaking to prevent or reduce occupational risks.

Article 4

1. Member States shall take the necessary steps to ensure that employers, workers and workers' representatives are subject to the legal provisions necessary for the implementation of this Directive.

2. In particular, Member States shall ensure adequate controls and supervision.

SECTION II

EMPLOYERS' OBLIGATIONS

Article 5

General provision

1. The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work.

2. Where, pursuant to Article 7 (3), an employer enlists competent external services or persons, this shall not discharge him from his responsibilities in this area.

3. The workers' obligations in the field of safety and health at work shall not affect the principle of the responsibility of the employer.

4. This Directive shall not restrict the option of Member States to provide for the exclusion or the limitation of employers' responsibility where occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care.

Member States need not exercise the option referred to in the first subparagraph.

Article 6

General obligations on employers

1. Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organisation and means.

The employer shall be alert to the need to adjust these

measures to take account of changing circumstances and aim to improve existing situations.

2. The employer shall implement the measures referred to in the first subparagraph of paragraph 1 on the basis of the following general principles of prevention:

(a) avoiding risks;

(b) evaluating the risks which cannot be avoided;

(c) combating the risks at source;

(d) adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;

(e) adapting to technical progress;

(f) replacing the dangerous by the non-dangerous or the less dangerous;

(g) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors related to the working environment;

(h) giving collective protective measures priority over individual protective measures;

(i) giving appropriate instructions to the workers.

3. Without prejudice to the other provisions of this Directive, the employer shall, taking into account the nature of the activities of the enterprise and/or establishment:

(a) evaluate the risks to the safety and health of workers, inter alia in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places.

Subsequent to this evaluation and as necessary, the preventive measures and the working and production methods implemented by the employer must:

— assure an improvement in the level of protection afforded to workers with regard to safety and health,

— be integrated into all the activities of the undertaking and/or establishment and at all hierarchical levels;

(b) where he entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety;

(c) ensure that the planning and introduction of new technologies are the subject of consultation with the workers and/or their representatives, as regards the consequences of the choice of equipment, the working conditions and the working environment for the safety and health of workers;

(d) take appropriate steps to ensure that only workers who have received adequate instructions may have access to areas where there is serious and specific danger.

4. Without prejudice to the other provisions of this Directive, where several undertakings share a work place, the employers shall co-operate in implementing the safety, health and occupational hygiene provisions and, taking into account the nature of the activities, shall co-ordinate their actions in matters of the protection and prevention of occupational risks, and shall inform one another and their respective workers and/or workers' representatives of these risks.

5. Measures related to safety, hygiene and health at work may in no circumstances involve the workers in financial cost.

Article 7

Protective and preventive services

1. Without prejudice to the obligations referred to in Article 5 and 6, the employer shall designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/or establishment.

2. Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks.

Designated workers shall be allowed adequate time to enable them to fulfil their obligations arising from this Directive.

3. If such protective and preventive measures cannot be organised for lack of competent personnel in the undertaking and/or

establishment, the employer shall enlist competent external services or persons.

4. Where the employer enlists such services or persons, he shall inform them of the factors known to affect, or suspected of affecting, the safety and health of the workers and they must have access to the information referred to in Article 10 (2).

5. In all cases:

— the workers designated must have the necessary capabilities and the necessary means,
— the external services or persons consulted must have the necessary aptitudes and the necessary personal and professional means, and
— the workers designated and the external services or persons consulted must be sufficient in number to deal with the organisation of protective and preventive measures, taking into account the size of the undertaking and/or establishment and/or the hazards to which the workers are exposed and their distribution throughout the entire undertaking and/or establishment.

6. The protection from, and prevention of, the health and safety risks which form the subject of this Article shall be the responsibility of one or more workers, of one service or of separate services whether from inside or outside the undertaking and/or establishment.

The worker(s) and/or agency(ies) must work together whenever necessary.

7. Member States may define, in the light of the nature of the activities and size of the undertakings, the categories of undertakings in which the employer, provided he is competent, may himself take responsibility for the measures referred to in paragraph 1.

8. Member States shall define the necessary capabilities and aptitudes referred to in paragraph 5.

They may determine the sufficient number referred to in paragraph 5.

Article 8

First aid, fire-fighting and evacuation of workers, serious and imminent danger

1. The employer shall:

— take the necessary measures for first aid, fire-fighting and evacuation of workers, adapted to the nature of the activities and the size of the undertaking and/or establishment and taking into account other persons present,

— arrange any necessary contacts with external services, particularly as regards first aid, emergency medical care, rescue work and fire-fighting.

2. Pursuant to paragraph 1, the employer shall, inter alia, for first aid, fire-fighting and the evacuation of workers, designate the workers required to implement such measures.

The number of such workers, their training and the equipment available to them shall be adequate, taking account of the size and/or specific hazards of the undertaking and/or establishment.

3. The employer shall:

(a) as soon as possible, inform all workers who are, or may be, exposed to serious and imminent danger of the risk involved and of the steps taken or to be taken as regards protection;

(b) take action and give instructions to enable workers in the event of serious, imminent and unavoidable danger to stop work and/or immediately to leave the work place and proceed to a place of safety;

(c) save in exceptional cases for reasons duly substantiated, refrain from asking workers to resume work in a working situation where there is still a serious and imminent danger.

4. Workers who, in event of serious, imminent and unavoidable danger, leave their workstation and/or a dangerous area may not be placed at any disadvantage because of their action and must be protected against any harmful and unjustified consequences, in accordance with national laws and/or practices.

5. The employer shall ensure that all workers are able, in the event of serious and imminent danger to their own safety and/or that of other persons, and where the immediate superior responsible cannot be contacted, to take the appropriate steps in the light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger.

Their actions shall not place them at any disadvantage, unless they acted carelessly or there was negligence on their part.

Article 9

Various obligations on employers

1. The employer shall:

(a) 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;

(b) decide on the protective measures to be taken and, if necessary, the protective equipment to be used;

(c) keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days;

(d) draw up, for the responsible authorities and in accordance with national laws and/or practices, reports on occupational accidents suffered by his workers.

2. Member States shall define, in the light of the nature of the activities and size of the undertakings, the obligations to be met by the different categories of undertakings in respect of the drawing-up of the documents provided for in paragraph 1 (a) and (b) and when preparing the documents provided for in paragraph 1 (c) and (d).

Article 10

Worker information

1. The employer shall take appropriate measures so that workers and/or their representatives in the undertaking and/or establishment receive, in accordance with national laws and/or practices which may take account, inter alia, of the size of the undertaking and/or establishment, all the necessary information concerning:

(a) the safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job;

(b) the measures taken pursuant to Article 8 (2).

2. The employer shall take appropriate measures so that employers

of workers from any outside undertakings and/or establishments engaged in work in his undertaking and/or establishment receive, in accordance with national laws and/or practices, adequate information concerning the points referred to in paragraph 1 (a) and (b) which is to be provided to the workers in question.

3. The employer shall take appropriate measures so that 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 shall have access, to carry out their functions and in accordance with national laws and/or practices, to:

(a) the risk assessment and protective measures referred to in Article 9 (1) (a) and (b);

(b) the list and reports referred to in Article 9 (1) (c) and (d);

(c) the information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

Article 11

Consultation and participation of workers

1. Employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work.

This presupposes:

- the consultation of workers;
- the rights of workers and/or their representatives to make proposals;
- balanced participation in accordance with national laws and/or practices.

2. Workers or workers' representatives with specific responsibility for the safety and health of workers shall take part in a balanced way, in accordance with national laws and/or practices, or shall be consulted in advance and in good time by the employer with regard to:

(a) any measure which may substantially affect safety and health;

(b) the designation of workers referred to in Articles 7 (1) and 8 (2) and the activities referred to in Article 7 (1);

(c) the information referred to in Articles 9 (1) and 10;

(d) the enlistment, where appropriate, of the competent services or persons outside the undertaking and/or establishment, as referred to in Article 7 (3);

(e) the planning and organisation of the training referred to in Article 12.

3. Workers' representatives with specific responsibility for the safety and health of workers shall have the right to ask the employer to take appropriate measures and to submit proposals to him to that end to mitigate hazards for workers and/or remove sources of danger.

4. The workers referred to in paragraph 2 and the workers' representatives referred to in paragraphs 2 and 3 may not be placed at a disadvantage because of their respective activities referred to in paragraphs 2 and 3.

5. Employers must allow workers' representatives with specific responsibility for the safety and health of workers adequate time off work, without loss of pay, and provide them with the necessary means to enable such representatives to exercise their rights and functions deriving from this Directive.

6. Workers and/or their representatives are entitled to appeal, in accordance with national law and/or practice, to the authority responsible for safety and health protection at work if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health at work.

Workers' representatives must be given the opportunity to submit their observations during inspection visits by the competent authority.

Article 12

Training of workers

1. The employer shall ensure that each worker receives adequate safety and health training, in particular in the form of information and instructions specific to his workstation or job:

— on recruitment,
— in the event of a transfer or a change of job,
— in the event of the introduction of new work equipment or a change in equipment,

— in the event of the introduction of any new technology.

The training shall be:

— adapted to take account of new or changed risks, and
— repeated periodically if necessary.

2. The employer shall ensure that workers from outside undertakings and/or establishments engaged in work in his undertaking and/or establishment have in fact received appropriate instructions regarding health and safety risks during their activities in his undertaking and/or establishment.

3. Workers' representatives with a specific role in protecting the safety and health of workers shall be entitled to appropriate training.

4. The training referred to in paragraphs 1 and 3 may not be at the workers' expense or at that of the workers' representatives.

The training referred to in paragraph 1 must take place during working hours.

The training referred to in paragraph 3 must take place during working hours or in accordance with national practice either within or outside the undertaking and/or the establishment.

SECTION III

WORKERS' OBLIGATIONS

Article 13

1. It shall be the responsibility of each worker to take care as far as possible of his own safety and health and that of other persons affected by his acts or commissions at work in accordance with his training and the instructions given by his employer.

2. To this end, workers must in particular, in accordance with their training and the instructions given by their employer:

(a) make correct use of machinery, apparatus, tools, dangerous substances, transport equipment and other means of production;

(b) make correct use of the personal protective equipment supplied to them and, after use, return it to its proper place;

(c) refrain from disconnecting, changing or removing arbitrarily safety devices fitted, e.g. to machinery, apparatus, tools, plant and buildings, and use such safety devices correctly;

(d) immediately inform the employer and/or the workers with specific responsibility for the safety and health of workers of any work situation they have reasonable grounds for considering represents a serious and immediate danger to safety and health and of any shortcomings in the protection arrangements;

(e) co-operate, in accordance with national practice, with the employer and/or workers with specific responsibility for the safety and health of workers, for as long as may be necessary to enable any tasks or requirements imposed by the competent authority to protect the safety and health of workers at work to be carried out;

(f) co-operate, in accordance with national practice, with the employer and/or workers with specific responsibility for the safety and health of workers, for as long as may be necessary to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to safety and health within their field of activity.

SECTION IV

MISCELLANEOUS PROVISIONS

Article 14

Health Surveillance

1. To ensure that workers receive health surveillance appropriate to the health and safety risks they incur at work, measures shall be introduced in accordance with national law and/or practices.

2. The measures referred to in paragraph 1 shall be such that each worker, if he so wishes, may receive health surveillance at regular intervals.

3. Health surveillance may be provided as part of a national health system.

Article 15

Risks groups

Particularly sensitive risk groups must be protected against the dangers which specifically affect them.

Article 16

Individual Directives — Amendments — General scope of this Directive

1. The Council, acting on a proposal from the Commission based on Article 118A of the Treaty, shall adopt individual Directives, inter alia, in the areas listed in the Annex.

2. This Directive and, without prejudice to the procedure referred to in Article 17 concerning technical adjustments, the individual Directives may be amended in accordance with the procedure provided for in Article 118A of the Treaty.

3. The provisions of this Directive shall apply in full to all the areas covered by the individual Directives, without prejudice to more stringent and/or specific provisions contained in these individual Directives.

Article 17

Committee

1. For the purely technical adjustments to the individual Directives provided for in Article 16 (1) to take account of:

— the adoption of Directives in the field of technical harmonization and standardisation, and/or
— technical progress, changes in international regulations or specifications, and new findings,

the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken.

The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter.

The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission.

The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of three months from the date of the referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 18

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992.

They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

3. Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the points of view of employers and workers.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

4. The Commission shall submit periodically to the European Parliament, the Council and the Economic and Social Committee a report on the implementation of this Directive, taking into account paragraphs 1 to 3.

Article 19

This Directive is addressed to Member States.

Done at Luxembourg, 12 June 1989.

For the Council
The President
M. Chaves Gonzales

ANNEX

List of areas referred to in Article 16 (1)

— Work places
— Work equipment
— Personal protective equipment
— Work with visual display units
— Handling of heavy loads involving risk of back injury
— Temporary or mobile work sites
— Fisheries and agriculture

MAJOR POINTS OF THE DIRECTIVE

On 12 June 1989 the Council of the European Communities adopted a Directive (No.89/391) *'on the introduction of measures to encourage improvements in the safety and health of workers at work'*. This Directive, known as the 'Framework Directive', is intended to be at the heart of the European Commission's drive towards better health and safety standards across the Continent. So what is this Directive and what real impact is it likely to have in Britain?

Up to 1987, only seven workplace health and safety Directives had been adopted by the European Community, alongside more general Directives which can have a bearing on the workplace. After the Single European Act was passed that year, however, things took off. Taking the lead from Article 118A of the Treaty of Rome, the Commission proposed a 'Framework' Directive and a set of so-called 'Daughter' Directives. The Framework Directive was adopted in May 1989 and its five 'Daughter Directives' quickly followed in the next November and May.

The 'Daughter' Directives concern:

▲ workplaces
▲ work equipment
▲ personal protective equipment
▲ manual handling of loads
▲ VDUs

More Directives have followed since then, and yet more are in the pipeline, covering such issues as protection against hazardous biological, chemical and physical agents, better work conditions on

construction sites and fishing boats, and protecting pregnant workers and young people at work. Details of these other Directives are in Chapter 6.

The Framework Directive is meant to set a general standard for all Directives which follow it. EC Directives passed before the Framework Directive will also eventually have to be modified to comply with it. Most importantly, health and safety legislation in each member country of the EC has to be introduced or changed to comply with the Framework Directive. The deadline for this is 31 December 1992.

The Framework Directive of 1989 aims to support better health and safety protection for workers. Its emphasis is on encouraging improvements, particularly on preventing risks from happening in the first place. It is meant to encourage both workers and employers to '*take a far more active approach*' to health and safety at work, and for both of them to become '*efficient agents of prevention*' (Commission of the European Communities 1990).

Workers' health and safety is an objective in itself, which should not be sacrificed for economic reasons, says the Preamble of the Directive. They must be kept informed of the risks they face, and be consulted over matters affecting them.

The Directive intends to 'define systematically' the obligations on employers to take responsibility for health and safety in their enterprises. It also extends both the rights and responsibilities of workers, and imposes on them an obligation to collaborate with their employers on health and safety.

Behind the Directive lies a social democratic concept of industrial relations. This maintains that a social 'partnership' exists — or should exist — between government, employers, and workers. The Directive asks both employers and workers to behave 'in a balanced way'.

As we have seen in Chapter 4, industrial relations including health and safety matters are dealt with in many European countries through works' councils, where workers' representatives (of both unionised and non-unionised workers) sit down with employers' representatives at plant and company level. The Framework Directive reflects this by not mentioning trade unions once.

Britain is different in that health and safety matters are dealt with, by law, through negotiation between employers and the safety representatives, shop-stewards or union officials of unionised workers. In Britain, industrial relations are seen as a question of conflict and

compromise, recognising 'two sides' of industry who must reach negotiated settlements.

For this reason, the question of worker representation has been at the core of trade union discussion in Britain about the Framework Directive. Trade unionists have been alarmed by the potential of the Directive to reduce the influence of the unions. As we shall see later, this question has largely been resolved in the drafting of the new British regulations to implement the Directive.

In the pages which follow we look in detail at what the Framework Directive does and does not contain, before going on to look at its potential impact on a wide range of issues in Britain.

WHAT THE FRAMEWORK DIRECTIVE SAYS

The Framework Directive sets out the responsibilities and rights of employers and workers, some general and some specific. It is not a reflection of the best practice in Europe, but the good news for British workers is that it potentially does improve to some extent on our own Health and Safety at Work Act of 1974 and associated regulations. It imposes more duties on employers and establishes several new rights for workers. The bad news, as we shall see later, is that British workers are in danger of benefiting very little. (Numbers in the text refer to Articles in the Framework Directive).

Employers' duties

Employers have an absolute duty under the Framework Directive '*to ensure the safety and health of workers in every aspect related to the work*' 5(1). Even when the employer delegates to someone else, and even though workers have responsibilities too, the responsibility for health and safety in the workplace rests ultimately with the employer 5(3).

It is not just a question of protecting workers in hazardous situations, but preventing those situations from arising in the first place. Employers must take 'the necessary measures' not just to keep things as they are but actually improve the health and safety of all workers in their enterprises. Preventive and protective measures must cover all activities and all levels in the company 6(3)a.

Employers must:

- ▲ prevent risks wherever possible, and develop a coherent policy on prevention **6(2)a and g**
- ▲ assess those risks which cannot be avoided, and combat them at source **6(2)b and c, 6(3)**
- ▲ replace the dangerous by the non-dangerous or the less dangerous **6(2)f**
- ▲ adapt work to the worker, especially in the design of workplaces, choice of equipment and work methods (e.g. alleviating monotonous work and work at set speeds) **6(2)d**
- ▲ consult workers and/or their safety representatives, e.g. over the implications for health and safety of new technology **6(3)c**
- ▲ make sure there is one or more workers with special responsibility for health and safety in the workplace **7(1) and (6)**
- ▲ co-operate with other employers on shared sites on health and safety matters, and make sure there is a single person responsible **6(4)**
- ▲ organise prevention services, hiring in expertise if the company itself does not have the necessary skills **7(3)**
- ▲ organise emergency procedures **8(1)**
- ▲ arrange health surveillance and let workers have regular health checks **14(1) and (2)**
- ▲ inform the statutory authorities of accidents **9(1)d**
- ▲ provide health and safety training and information to workers on recruitment, transfer or change of job, introduction of new work equipment/technology; training must be specific to the job, adapted to take account of new risks and repeated regularly if necessary **12(1)**
- ▲ provide training for safety representatives, consult them and keep them informed; give them the 'necessary means' to exercise their rights and functions **11(1) (2) and (5)**
- ▲ ensure that workers on their premises who are from sub-contractors and outside undertakings get health and safety instructions **12(2)**
- ▲ make sure that only workers with adequate instructions have access to dangerous areas **6(3)d**
- ▲ not victimise workers who stop the job if faced with danger or refuse dangerous work **8(4) and (5)**
- ▲ not ask workers to go back on the job if there is still a serious and imminent danger **8(3)c**
- ▲ not victimise safety representatives **7(2) and 11(4)**

Workers' duties

Though the ultimate responsibility for workplace health and safety rests with the employer, workers must take responsibility for their own actions. They must take care of their own health and safety, and that of others affected by their activities 13(1) and (2). Workers must:

- report problems and potential dangers 13(2)d
- follow employer's instructions on health and safety 13(2)e and f
- use equipment properly 13(2)a and b
- not interfere with safety devices 13(2)c

Workers' rights

The Framework Directive establishes a number of important rights for European workers, many of which have not so far existed in Britain, either in law or in practice.

- to get 'all the necessary information' related to their health and safety, in particular when hired, transferred, or required to use different equipment 10(1)
- to be consulted on 'all questions relating to safety and health at work' 11(1)
- workers from outside undertakings must receive 'adequate information' on health and safety issues affecting them 10(2)
- to receive adequate training in working hours 12(1) and (4)
- to make proposals for health and safety action 11(1)
- to ask for health checks 14(2)
- to stop work in dangerous situations and to refuse dangerous work, without victimisation 8(4) and (5)
- all measures at no cost to workers 6(5)

Safety representatives' rights

Safety representatives' rights are also more extensive than in Britain:

- to have access to the employer's risk assessment and protective measures, to the employer's list of occupational accidents, and to information from inspection agencies 10(3)
- to be consulted in advance and in good time on 'any' appropriate

measure, including the appointment of safety representatives, the enlisting of help from other organisations, and health and safety training of workers 11(2)
- ▲ to ask the employer to take appropriate measures and submit proposals 11(3)
- ▲ to receive appropriate training 12(3)
- ▲ to have adequate time off without loss of pay 7(2) and 11(5)
- ▲ to appeal to the responsible authorities if they believe the employer's measures are inadequate, and to submit observations during inspection visits 11(6)
- ▲ not to be victimised 7(2) and 11(4)
- ▲ all measures at no cost to safety representatives 11(5)

ITS CONCEPT OF HEALTH AND SAFETY

The concept of workplace health and safety contained in the Framework Directive is not just a narrow one, relating only to specific hazards in the working environment and materials or equipment handled by workers, as has been the direction of British law to date. It includes such broader issues as ergonomics and the organisation of work itself, such as *'alleviating monotonous work and work at a predetermined work-rate'* 6(2) d and g. As we shall see in the next chapter, later Directives have continued in this vein, for example, the VDU Directive includes software as a factor having an impact on health and safety.

These trends should be welcomed, and encouraged to develop into an even broader vision. Health is not just the absence of particular hazards and diseases. It concerns the well-being of individuals, physically, psychologically and emotionally. No work should damage individuals in any of these respects.

However, as we shall see in the next section, the Framework Directive is by no means a flawless piece of legislation and many of its better intentions have been undermined by the introduction of loopholes for employers.

Lobbies and loopholes

Employers, concerned to keep labour costs as low as possible, particularly

at a time of recession, will not like the long list of obligations the Framework Directive places on them. Not surprisingly, the employers' lobby acted vigorously in Brussels, London and other European capitals during the Directive's drafting stage.

The British Government became a major protagonist, working away to water the proposals down and insert a number of escape routes for employers. It was isolated among European governments, as then Employment Minister John Cope admitted at the time (*Guardian* 1989), but it bullied its way onwards and became responsible for a number of major loopholes which make the European Directive so ineffectual:

- limiting employers' responsibility for things which happen *'due to unusual or unforeseeable circumstances, beyond the employer's control, or to exceptional events'* **5(4)**

Clever lawyers will have a field-day using this to let employers dodge responsibility.

- not burdening small and medium-sized enterprises with *'administrative, financial and legal constraints'* (**Preamble** and **10(1)**

Apart from radically reducing the health and safety prospects of millions of workers at a stroke (see page 126), this explicitly introduces economic considerations into questions of health and safety standards. This is very serious. In Italy, for example, economic considerations were explicitly banned from considerations of workers' health and safety by the Constitution. Now, the Italian Constitution has been torn open by Framework Directive and the process of creating a 'level playing field' in the interests of free trade across Europe. Italian workers are facing a lowering of health and safety standards (see page 142). So too may be British workers (see page 144). In addition the Framework directive:

- gives great flexibility to firms in appointing safety officers; in some cases employers are allowed to appoint themselves **7(7) and (8)**
- allows for measures to be implemented *'according to national legislation and/or practice'*

This is a can of worms and, as we shall see later, in Britain is being used cynically to avoid bringing in many an improvement. It is contradictory to demand measures which improve health and safety on the one hand, and to allow existing laws and practices to set the standard on the other.

Health surveillance of workers may be provided:

▲ through the national health system **14(3)**

This diverts the responsibility away from employers. In Britain, where the NHS does very little on occupational health, it makes workplace ill-health into the individual responsibility of workers and their GPs. It is highly likely that our NHS, already overstretched, would not be able to cope if workers were to insist on the regular health checks the Directive allows them. (See the Noise Directive, page 187)

The unprotected

The Framework Directive says it covers all workers, including apprentices, trainees, part-timers, temporary workers, homeworkers, the unionised and non-unionised, and so on **3(a)**. It deliberately broadens the range of workers to be protected, especially bringing in public sector workers who have traditionally been excluded in many European countries.

The Framework Directive also makes the point that *'particularly sensitive risk groups must be protected against the dangers which specifically affect them'* **(15)**. Though it does not say whom it has in mind, this leaves it open for individual Directives to be drawn up to protect special groups such as pregnant workers or young people at work.

But there are also many categories of workers *not* covered by the Framework Directive. Explicitly not included are the self-employed and domestic workers. Nor are the armed forces or the police, though their health and safety should be ensured *'as far as possible'* **2(2)**. Also, a clause insisted upon by the British Government means that in reality workers in small and medium-sized enterprises will get little protection. In the end, millions of workers across Europe fall through the net.

Workers in SMEs

Small and Medium-sized Enterprises (SMEs) are not to be *'burdened'* with *'administrative, financial and legal constraints'.* **Preamble** and **10(1)**). This clause alone makes a nonsense of the Directive's pretensions to protect Europe's workers. The trend of the 1980s has been away from large-scale enterprises, to smaller sub-contracting units, and to sub-contractors of sub-contractors.

A recent study found that in manufacturing, workers in workplaces of under 50 employees were 20% more at risk than those in medium to large establishments and 40% more at risk than those in very large workplaces. (Employment Gazette 1991). In addition, groups of workers in SMEs are less likely to enjoy union recognition than their counterparts in larger organisations.

Already, too, we can hear the employers' squeals that to implement this or that particular preventive measure will threaten their balance sheet and put jobs at risk. Who will prove them wrong? Will workers with RSI-damaged arms have to produce evidence in court that the company's profits were in fact strong enough four years earlier to pay for ergonomically redesigned workstations? The onus ought to be on companies to prove they cannot afford appropriate measures, but this is unlikely to happen.

In contradictory fashion, SMEs are a particular target of the EC's **European Year of Safety, Hygiene and Health Protection at Work**, beginning March 1992. Priority for funding goes to projects which '*provide SMEs with explicit and directly usable information on everyone's rights and obligations*'. Ironically, this information exercise, if it does its job properly, has to let workers in SMEs know that they are going to find it extra hard to win any health and safety protection.

The self-employed

Excluding the self-employed is another great cause for concern. Across Europe there is a trend towards sub-contracting work to 'self-employed' or 'freelance' workers, not only in white-collar jobs but also blue-collar jobs, especially on construction sites.

However, in Britain the HSC has specifically included the self-employed in its draft regulations, as this conforms with our existing HSW Act. The HSC is also recommending that the general public affected by a workplace has some protection, again in line with the HSW Act. In these respects alone, British law will have a wider coverage than the minimum given in the European Directive.

Temporary and part-time workers

As well as being included generally in the Framework Directive, temporary workers and those with fixed-term contracts are the subject

of a special Directive adopted in June 1991. (No. 91/383) The EC recognises that increasing numbers of workers are not on permanent full-time contracts, and are *'more exposed to the risk of accidents at work and occupational diseases than other workers'* so that they need special protection. The EC Directive is aimed at giving them better information, training and medical surveillance. **Preamble.**

Originally, the EC submitted a package of three draft Directives to cover those it calls 'atypical' workers. Not only temporary but also part-time and seasonal workers were to have the same working conditions, social security benefits pro rata, and health and safety rights as full-time or permanent workers.

Draft Directive 1:

This concerns employment contracts, training, unionisation rights, and social welfare benefits for part-time, temporary, and seasonal workers; employers would have to inform unions if 'non-standard' workers were being hired. This Directive would come under Article 100 of the Treaty, and be subject to unanimous voting and hence the British Government's veto.

Draft Directive 2:

Employment law for 'atypical' workers varies enormously between EC member states. This Directive would iron out these differences so as to prevent 'distortions of competition' between the countries in the Single European Market. It would give part-timers and temporary workers the same working terms and social security benefits pro rata as other workers. It would potentially be of enormous impact in Britain, where part-timers etc. have very little protection under employment law compared with some other European countries. It would come under Article 100A of the amended Treaty, and so be subject to qualified majority voting, not subject to the British veto.

Draft Directive 3:

Temporary workers and those with fixed duration contracts, including seasonal workers, would have the same health and safety conditions as other workers and all the rights given in the Framework Directive.

This third part, the least controversial, came under Article 118A of the Treaty and so was subject to qualified majority voting. It was

passed in June 1991 and must be implemented by 31 December 1992. It has been incorporated into the HSC's Consultative Document issued in September 1991, as Regulation 12 (see later this chapter).

The major elements of the Temporary Workers Directive (91/383) are:

- ▲ that it covers workers on fixed-term contracts and workers temporarily employed by employment agencies and assigned to other firms
- ▲ the right to be informed before taking up a temporary contract of the risks the job entails, especially any special qualifications or medical surveillance needed (Article 3)
- ▲ sufficient training appropriate to the job (Article 4)
- ▲ a ban on using temporary workers in particularly dangerous jobs, or at least special medical surveillance for them, which may extend beyond the end of the contract (Article 5)
- ▲ safety officers to be informed about temporary workers on the premises so that they can adequately include them in their health and safety measures (Article 6)
- ▲ firms contracting in workers through employment agencies must tell the agencies of any special qualifications needed and the nature of the job; the agency must pass this information on to the workers (Article 7)
- ▲ where there is an employment agency, the responsibility for health and safety rests with the user enterprise (Article 8)

In real terms, the Directive will have little impact on Britain's 1,465,000 temporary workers, about a fifth of whom are hired through 13,500 employment agencies. Employers already have a general duty under law towards all their employees, and some stronger elements in drafts of the Directive have been taken out through British Government pressure.

There is some doubt whether casual workers who are supplied rather than employed by employment agencies are covered by the wording although MEP Stephen Hughes has been advised by the European Commission that strict application of Article 1 of the Directive would cover casual workers.

The original text included an outright ban on using temporary workers in certain dangerous jobs, like in the nuclear industry. The British Government announced this was '*unjustified discrimination against*

temporary employees'. Now the Directive says that member states can choose to bring in a ban if they want. If they don't, they have to make sure there is '*appropriate special medical surveillance*', which is a far looser formulation, open to wide interpretation and 'flexible' implementation.

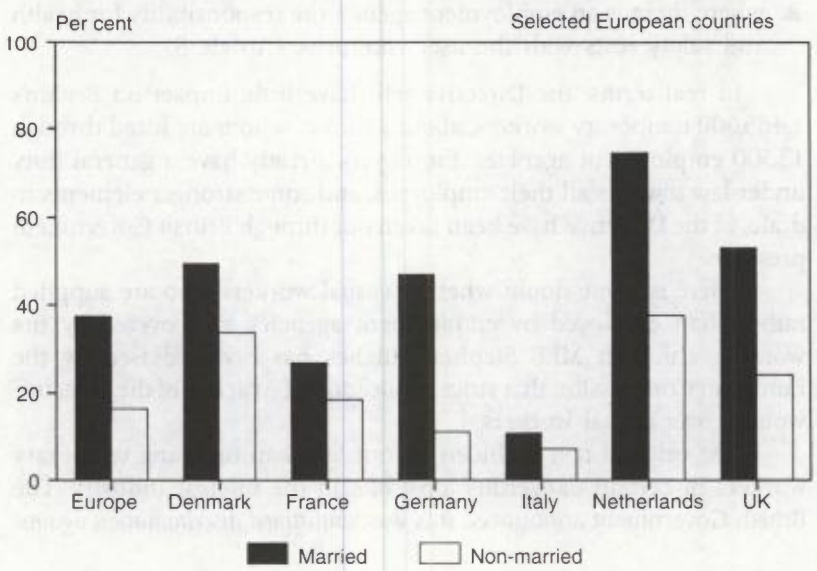
The draft ruling that medical supervision in certain dangerous jobs should continue after the job has ended has become another 'open' choice for member states.

The British Government was also against including a requirement for an employment contract which would mention, for example, hours of work. It said this was '*not necessary on health and safety grounds*', and it has indeed disappeared.

The other two draft Directives on employment rights for temporary workers are at the time of writing stuck in an impasse. Again, the British Government is particularly obstructive. In fact, it has been obstructing EC draft directives on regulating part-time work since the early 1980s.

Part-time work has been steadily increasing in most EC countries. Britain, the Netherlands, and Denmark have very high proportions of the workforce on a part-time basis, particularly women. In Britain, 46% of women in the paid workforce work part-time.

PART-TIME EMPLOYMENT AS A PROPORTION OF FEMALE EMPLOYMENT



In some EC countries, like France, Italy, Germany, Spain, and Belgium, part-time work is now regulated by law. In Italy and Belgium especially, the major trade unions have been active in protecting these workers' rights. In Britain, Denmark, the Netherlands and the rest, by contrast, part-time workers are not covered by employment protection law or national negotiations. Here, the draft Directives would bring dramatic improvements.

The British Government has thrown up its hands in horror. To give part-time workers employment protection would cost British industry £1 billion, the Government says, and make Britain less able to compete with the USA and Japan. It would '*imperil tens of thousands of jobs*' and would reduce the take-home pay of the lowest paid. The British Government has mounted a legal challenge to stop the second draft Directive. It is trying to bring it under Article 100, rather than 100A, where the British Government can exercise its veto.

Domestic workers

The Framework Directive specifically excludes 'domestic servants'. This is an outdated and ill-defined term. In Britain, the term 'domestic workers' covers thousands of workers, not only those who work in private family homes but also those in, for example, privately-run old people's homes.

The Directive is not clear whom it means, but it is a major error that it excludes any domestic workers at all. All domestic workers, wherever they work, can be exposed to hazards and ill-health. They are particularly at risk of back injury from lifting heavy loads — especially adult people (see the 'Manual Handling' Directive, Chapter 6) — skin disorders from cleaning fluids and sexual harassment. Domestic situations have a proven high accident rate.

The resistance to accepting workers in private homes as 'workers' is deep-seated and pervasive. It is the greatest pity that the European Commission was too short-sighted to take this opportunity to advance the situation for thousands of domestic workers around Europe.

Always off the agenda

'*They always miss the category of worker who is most marginalised. They always miss them off the agenda*', says Susan Cueva of the

Domestic Workers Campaign at the London-based Commission for Filipino Migrant Workers (CFMW). Thousands of women from the Philippines are working as domestic workers in London today, as are migrant workers from many other Third World countries.

Many of these workers are treated as no more than chattels, constantly at the beck and call of their employers. *'Domestic workers are not recognised as workers. But they are not part of the family, and will never be'*, says Susan Cueva.

'We see a lot of women with skin problems because they are forced to do the washing and cleaning by hand. We also see a lot of TB and diabetes. Many women have to sleep on the floor in an unheated corridor. They have irregular hours of work, no privacy and inadequate food, and they get ill. They are often sexually harassed too.'

'The most common thing we see is cancer — of the blood, womb, breast and lung. We have tried researching this in relation to the work they do, and most doctors say it is stress-related. I have seen many women die in the three years I have worked here', Susan Cueva adds.

'Unauthorised'

In 1980 the British Government stopped the work permit system for domestic workers from abroad. Now when they enter Britain with their employers, they are categorised legally as 'tourists'. This makes them 'unauthorised' and means they are not entitled to any protection which British workers have under the law.

'Unauthorised' domestic workers not only work in private homes. Many are employed as unofficial 'care assistants', living in old people's homes, to help lift the elderly and sick in and out of bed or the bath. Emma Bibal is a colleague of Susan Cueva's at the CFMW. She was an auxiliary nurse in an old people's home until her back went after months of assisting people like an elderly woman with an amputated leg and a very tall but frail man who wanted to walk the corridors.

One in ten hotel and catering workers in Britain are foreign, two-thirds of them from outside the EC. Legions of industrial and office cleaners are migrant and 'unauthorised' workers.

The health and safety protection they get is minimal. *'Where would they turn? They don't know the system'*, replies Susan Cueva.

'They are not able to go to an industrial tribunal. They cannot even register with the the NHS until they have been here for a year, and even then they only get simple treatment.'

The CFMW reports that some NHS doctors in London have begun asking for passports or other identification before treating migrant workers. Those who have been made 'unauthorised' by British Government policy are being denied minimal protection of their health and safety. Susan Cueva questions whether the EC Directives and revised British legislation will have even the slightest impact on them.

Homeworkers

In Britain there are an estimated one million homeworkers; that is someone doing paid employment at home for an employer or their agent with little or no control over what is produced and no responsibility for marketing the goods. Most homeworkers could be classified as employees but the vast majority of employers or suppliers conveniently term them 'self employed' with confusing implications in terms of legal rights, including health and safety requirements. It leaves homeworkers with the onerous task of proving their employment status before starting the fight for other rights such as safety protection. If European law is to have any teeth homeworkers must be more specifically defined and included in legislation.

Homeworking is not 'pin money'. In most cases it is at the centre of family income and involves working more than a 40 hour week when the work comes. Piecework increases the risk of strain injuries. Homeworking is mostly done by women already carrying out other jobs, including childcare, housework and cooking. Homeworking is often dangerous, involving toxic chemicals in unlabelled bottles, soldering fumes, highly reactive dyes and finishes in fabrics, badly designed equipment and tools. Children are exposed to the hazards, either by directly assisting or by being close to the mother and the work. If injured by work a homeworker will receive no sick or injury pay, she must work on or lose the income.

The legal status of homeworkers is so unclear that the Framework Directive is unlikely to help homeworkers find better protection. Homeworking groups in Britain are lobbying for proper employee status and specific inclusion in the Health and Safety at Work Act. In Europe

there are moves towards a homeworking Directive which would define much stronger duties on those supplying work.

Other European countries such as Italy, France and Germany have developed legislation on homeworking but it tends to be hard to enforce. The German system has greater strength in that it demands that employers are officially vetted before they can supply work. There is a need for a more uniform approach. But, nothing much will change for those caught up in the 'unofficial economies' unless there are corresponding and sweeping changes in other areas of social policy, primarily the provision of free childcare and increased training for unskilled women. Without these the homeworkers have no bargaining power and are doomed to work for the lowest rates of pay and in the worst conditions.

Chemicals in the home

Janet has four young children. Her husband works nights and is low waged. To help pay poll tax and supplement family income Janet works for £1.20 an hour glueing textile samples and labels into books. The work has caused her previously mild asthma to worsen; attacks have increased from once a year to once a month and are severe and disabling. The work causes skin irritation and rashes. The availability of work dictates her whole life. Children's activities, even birthdays, may be cancelled if work arrives and often she works all night and over weekends. Other weeks no work arrives. This causes stress in the family and Janet is exhausted and isolated.

Janet is angry, *'I want a proper job but there is no hope. I have racked my brains as to what I could do but I cannot afford child minding. I hate this work, it makes me feel brain dead and it disrupts my family but I've got no choice. I don't know what is in the glue or fabrics that causes my skin and body to react but I cannot ask — they might take the work away to someone else because there will always be someone who will do it. The wage has been the same for 7 years!'*

Black and migrant workers

The Framework Directive says it covers 'any person employed by an employer' 3(a). But does it really mean it? What of the 16 million people

from non-European countries who are living and working in Europe? What of the European-born black people who also suffer racism? They are disproportionately found in the most dirty and dangerous jobs and are far more at risk of occupational ill-health and accidents at work than white workers. This is true whether they are European-born or migrants to Europe, and it is true across Europe.

ABOVE: ALGERIAN WORKER IN FRANCE LOOKING FOR HIS E.C. RIGHTS

Phil Evans/*City Centre Newsletter*

Surveys of Pakistani and Afro-Caribbean workers in Sheffield show that an extremely high proportion believe that work has harmed their health, a staggering 97% among Pakistanis. The surveys, carried out in mid-1991 by the Black and Ethnic Minority Occupational Health Initiative (BEMOHI), show that Pakistani and Afro-Caribbean workers are more likely to be employed in hazardous, low-grade manual jobs than the general working population, and suffer a higher incidence of occupational ill-health as a result. 91% of the Pakistani workers interviewed and 70% of the Afro-Caribbeans thought that their work was/is dangerous. More than half (53%) of the Pakistanis, and 30% of the Afro-Caribbeans, had suffered an occupational accident, compared with one in five of the general population.

SURVEYS OF OCCUPATIONAL ILL-HEALTH IN SHEFFIELD'S PAKISTANI AND AFRO-CARIBBEAN COMMUNITIES

conducted by the Black and Ethnic Minority Occupational Health Initiative (BEMOHI), Sheffield, 1991

	PAKISTANI		AFRO-CARIBBEAN	
	No.	%	No.	%
Number surveyed	103	—	70	—
Reporting that work had made them ill	98	97	40	57
Number who have ever suffered from work-related:				
Deafness	88	85	32	45
Chest Problems	35	34	30	42
Skin Problems	20	19	19	27
Musculoskeletal Problems	70	68		
Backs			43	61
Joints			48	68
Accidents	55	53	21	30
Other Problems	18	17	—	—
Number who thought their work is/was dangerous	94	91	49	70
Number still in work	25	24	26	37
Number having finished work because of work-related ill-health	22	28	18	26
Number who had received health and safety training or information from:				
Employer	18	17	24	34
Factory Inspector	5	5	9	12
Trade Union	26	27	23	32
Number who know what the Health and Safety Executive is or does	2	2	10	14
Number who believed health and safety information in Urdu would be useful	101	98	—	—

The HSE is obliged by the 1974 HSW Act to keep workers informed on health and safety matters. However, it produces no material in any language but English. Almost all the Pakistanis interviewed thought it would be useful to have information in Urdu. John Lawson of BEMOHI says, *'The HSE has repeatedly refused to produce materials in community languages, and denies that its service in any way fails black workers. Our survey results show what complacent and essentially racist nonsense this claim is'.*

The HSE passes the responsibility for translation on to employers, but embarrassed by the adverse publicity won by Britain's first ever demonstration by black workers outside the HSE premises in Sheffield in June 1991, it has begun to admit there is problem. BEMOHI has submitted a complaint to the Commission for Racial Equality to keep the pressure on the HSE to fulfil its statutory duty.

In Denmark, the picture is virtually the same. A study by the Danish Labour Inspectorate of accidents registered in 1984 showed that Turkish, Yugoslav, Moroccan and Pakistani workers are 10% more likely to suffer an accident at work than Danish workers. For Turkish workers alone, the figure stands at 50%. The Inspectorate publicly acknowledges that even these figures will be a serious underestimate as immigrant workers tend not to report accidents or occupational ill-health for fear of the sack.

There is also a difference with Danish workers in the kinds of diseases reported. Immigrant workers are more likely to suffer musculo-skeletal disorders, pointing to the disproportionate amount of physically demanding jobs they do.

In Denmark too, immigrant workers do not receive adequate health and safety information in their own languages. There it is the employers who by law must give out information, but most of them argue that if workers do not read Danish, that is their own problem. And they seem to get away with it. Until now, neither the Danish unions — which have immigrant commissions — nor the migrant workers' associations in the country have taken up the issue of migrant workers' health and safety at work. (Information provided by Aktiongruppen Arbejdere Akademikere Specialarbejderforbundet, Denmark).

These findings in Britain and Denmark, and similar ones in France (*Plein Droit* July 1991), show how essential it is that the EC's 'social dimension', including its health and safety at work programme, takes up the issue of racism.

The rights of 'third country nationals' in the EC is a continuing battleground. In July 1987, the European Court of Justice ruled that

migrant workers' rights are included within the meaning of Article 118 of the Treaty of Rome. In a Joint Declaration against racism and xenophobia a year later, the European Parliament, the Council, the representatives of the member states meeting within the Council and the Commission together said they would '*protect the individuality and dignity of every member of society and ... reject any form of segregation of foreigners*'.

But this was only a 'declaration'. When in May 1990 the Social Affairs Council adopted a Resolution actually to fight racism and xenophobia, the British Government was so adamant that 'third country nationals' should be deleted from the text that the other eleven governments gave up and agreed. It made a nonsense of the Resolution and European Commissioner for Social Affairs and Employment, Vasso Papandreou, withdrew the Commission's support from it (Cruz 1991).

Governments pandering to xenophobia and racism in their own countries do not want the EC to have legal responsibility for migration policies, and are intending to make sure that 'third country nationals' do not have the freedom of movement around the Single European Market which (white) EC workers will. The SEM was supposed to open up borders to give employers a more flexible labour market, but non-EC migrant workers, though key providers of unskilled labour in particular, are to be penned in.

There are continuing pressures against such a 'Fortress Europe' for 16 million people living in the Continent. MEPs, trade unions, and above all migrant workers' organisations are active. The EC has been drafting a Directive which would extend the rights of migrant workers, though again the British Government was considering a legal challenge to stop this. In June 1991, the Chair of the European Parliament's Social Affairs Committee, Mr. van Velzen, renewed the call for a Charter of Rights for Third Country Migrants in the EC, to be accompanied by an EC action programme.

The European TUC has begun to be more active on anti-racism. It is lobbying for immigration to come under the 'competence' of the EC and has taken up the call, pressed for in particular by the British public sector workers' union NALGO, for an amnesty for 'unauthorised' workers after five years working in Europe.

The right for all workers to safe and healthy conditions at work is a moral issue in itself. However, there is also a pragmatic justification. A study in the USA has proven that poor health and safety conditions

for some workers drags down the health and safety conditions for all. White workers in plants where black workers suffer ill-health are themselves more likely to suffer ill-health than white workers in plants where there is no discrimination (Robinson 1985).

Workers with disabilities

There is nothing in the Framework Directive to make employers address the health and safety of workers with disabilities, revealing a lack of co-ordination with other EC initiatives on this front.

Another draft EC Directive aims to improve access for those with disabilities to transport to work (Proposed Directive COM 90/511). Two EC programmes, HELIOS (Handicapped People in Europe Living in an Open Society) and Horizon, aim to stimulate training initiatives. But if employers are not obliged to consider access and health and safety measures for them, there will still be very few jobs for people with disabilities to travel to. Even the Directive on Workplaces (see next chapter) only says that workplaces should be organised to take account of people with disabilities 'if necessary'.

With a third Community action programme for disabled people (HELIOS II) due to run from 1992 to 1995, the opportunity should be taken to bridge this gap.

Flawed

Containing so many loopholes and get-outs for employers, the Framework Directive is far from what Europe's workers could have hoped for. Like all EC health and safety legislation, it does not reflect best practices found in the different countries. In the words of Stephen Hughes MEP it has ended up with 'minimum' rather than 'optimum' standards. It should not, therefore, be taken as the best that workers could achieve.

Some MEPs like Stephen Hughes actively tried to counteract the strong pressures coming from employers and governments. They succeeded in introducing various improvements in the draft Directive but a number of their key amendments were either defeated in Parliament during its rushed through second reading (Hughes and Hughes 1990), with British Conservative MEPs being especially obstructive, or later ignored anyway by the Commission and Council.

For example, MEPs argued for but lost:

- assistance to small and medium-sized enterprises in implementing health and safety measures, rather than the escape clause for these firms won by the British Government. As the Association of Optometrists argued in 1988 in its submission to the House of Lords over the VDU Directive (see Chapter 6), *'Logically, if there is any real need for requirements in respect to health and safety then they should apply to all regardless of the size of the undertaking'.* (House of Lords 1988)
- to include workers' families at risk of illness related to the workplace, not just workers themselves
- a clear duty on employers to have a health and safety programme for each of their establishments, rather than an overall one for the whole of their enterprise
- provisions for medical care at work
- stronger provisions for the involvement and participation of workers.

Union intervention at the drafting and consultation stages of the EC Framework Directive seems not to have been significant.

Unions participate, for example, in the European Commission's tripartite Advisory Committee on Safety, Hygiene and Health Protection at Work, with two representatives from the TUC attending alongside two each from the CBI and HSE from Britain. This Committee was able to discuss the the Framework Directive draft and make some suggestions. However, it did not set up an Ad Hoc Group to discuss the draft Directive in detail, as it sometimes does with other Directives (Hodgkin 1989).

This Committee has had such difficulties with inadequate consultation procedures by the EC that it had to issue a formal complaint to the Commissioner, Vasso Papandreou (see page 34).

Changes to the overall Framework Directive are now not possible. According to Stephen Hughes MEP, the Commission is *'determined to take the Framework as fixed'* (Hughes and Hughes 1990). Improvements at the European level will have to be made through individual Directives.

Harmonising downwards?

The Framework Directive must be implemented in each member country of the EC by the end of December 1992. Across Europe, standards vary widely from country to country. Some, for example Italy, have health

and safety for workers embedded in their Constitution. In Britain it is covered by a specific law, the Health and Safety at Work Act of 1974 and related regulations (see Chapter 4).

Can such varied ways of approaching health and safety be 'harmonised' without reducing everyone to the 'lowest common denominator'? The European Parliament's Environment Committee feared that it would. Knowing that Article 118A of the European Treaty emphasises only minimum requirements and says that changes will be gradual, the Committee tried to insert an article into the Framework Directive saying that countries with stricter standards would specifically not be allowed to reduce them. But this was thrown out by the Council of Ministers.

Instead, there is a looser formulation. Paragraph 1 of Article 118A of the Treaty says:

'*Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonisation of conditions in this area,* ***while maintaining the improvements made.***'

The Framework Directive, Article 1 (3), says:

'*This Directive shall be* ***without prejudice to existing or future national and Community provisions*** *which are more favourable to the protection of the safety and health of workers at work.*'

Commissioner Vasso Papandreou is adamant that these mean that it is illegal to reduce standards where better ones already exist. Were the UK Government to try to do so this '*would run contrary to both the spirit and letter of Article 118A of the Treaty and of Article 1 of the Framework Directive*', she says (Papandreou 1991).

However, at the time of writing this has not yet been tested in court and experience is already showing the dangers for workers. For there is a basic contradiction between achieving harmonisation across the European countries and maintaining higher standards where they exist. Also, the escape clauses inserted into the Directive in the drafting stage means that as it becomes 'transposed', in the jargon, into the laws of individual countries, strong employers' lobbies are successfully getting its spirit watered down or evaded.

In Italy, for example, the introduction of EC Directives has already led to a serious lowering of standards which will deafen and poison workers. The publication of new, lower silica protection standards in Britain in January 1992, and an attempt to increase miners' working

hours (see page 144), have led to fears that the same process may be about to happen in Britain, even though it is illegal under the HSW Act.

All this means that workers and their organisations need to be vigilant at all stages: when a Directive is being drafted, during the stage at which national law is being changed to conform to it, and later in monitoring its enforcement. Even where laws are useful, they are so only to the extent that they are carried out. As we shall see in Chapter 6, Directives in place for many years can be ignored anyway by employers and governments. The British Government is already being taken to the European Court for not implementing the Directive intended to protect workers from lead poisoning.

Italy: Backwards with Europe

'Harmonising' standards to the levels set by Europe is causing Italian workers serious problems. Italian standards are now being reduced at the cost of workers' health and safety.

A bill introduced by the Italian Parliament in August 1991 to enable 'harmonisation' undermines Italy's existing framework of health and safety provision dating back to 1956. '*We know that the EC's 'Framework' Directive says that individual member states can keep better standards where they exist, but this is not happening in Italy*', Graziano Frigeri told the London Hazards Centre. According to Frigeri, who is Director of Italy's national society of occupational physicians SNOP, Italian employers argued that better standards would give them higher labour costs and make the country uncompetitive. '*And they won the argument, with the Government's backing*', he notes.

Italy's legislation of 1956 requires employers to '*adopt all the most effective safety measures that technology can provide, notwithstanding the economic costs*'. Also, Article 41 of the Italian Constitution states, '*private economic enterprise ... cannot develop ... while damaging people's safety*'. The 1991 bill, by contrast, simply states that employers should adopt measures which are '*practically enforceable*'.

According to Graziano Frigeri, the country's occupational health professionals and its three major union federations were appalled and declared the new bill 'unconstitutional'. Frigeri, who is also President of Italy's Association of Occupational Physicians and Industrial

Hygienists, said that the new law '*reduces the possibilities for us to control hygiene and safety at work*'.

Even Italian President Cossiga refused to sign the bill at first, saying publicly that it was a bad law, undermining existing legal protection. Eventually he was forced to do so, by an article which obliges the President to sign a bill if presented to him by Parliament a second time. The Italian employers' organisation Confindustria and the Government had lobbied hard. They used the argument that it was unacceptable that Italy should maintain rules and standards not applying elsewhere in Europe.

In late 1991, the unions were threatening to take the issue to the Constitutional Court. They point out that the bill introduces a concept of 'economic feasibility', ruled out by the Constitution, and it gives employers too great flexibility with words such as 'reasonable'.

The new decree also dilutes a number of specific measures. Of particular concern are the lead and noise standards. The previous blood lead level in Italy was 40 micrograms per 100 millilitres. Now it is 60 micrograms per 100 millilitres to comply with the European Directive.

As for noise, the previous limit was 85 decibels. Frigeri says that so many plants were operating at below this, that there was even a possibility of soon bringing in a lower standard, 80 dB(A). The new law gives Italian employers the right to raise it to 90 dB(A) before they must implement protective measures. As Frigeri points out, large numbers of Italian workers will now be deafened where they would not have been.

Also, under the 1956 legislation only the local public health office could appoint a doctor to investigate workplace health and safety. The new bill gives employers the right to appoint their own investigators. '*This is why I say we are going backwards with Europe*', comments Frigeri.

'*The problem is not with the general principles of the Directives*', Frigeri continues, '*but in the process of harmonising the Directives and Italian law*'. He explains that since harmonisation has given employers the opportunity to reduce production costs, they have been lobbying hard and succeeded in getting the law changed in their favour.

Health and safety in Italy is far from ideal, with a high rate of industrial accidents. Trade unions and occupational health

professionals now fear a further reduction, made legal by changes brought in from Europe.

Britain: The slippery slope

On 1 November 1991, the British Government announced that miners' underground working hours might be in for a change. Miners are one of the few workforces in Britain with regulated hours. But as Secretary of State for Energy John Wakeham unveiled his new Coal Industry Bill, he said that the 1908 Mines Regulation Act (which imposes a maximum of 7.5 hours per shift for underground miners and 8 hours for deputies) might have to be repealed on account of the new draft European Working Time Directive. With the British Government busy shouting abuses at the same Directive in the lead-up to the Maastricht summit, it was taking a particularly hypocritical position. (See Working Time Directive, page 208)

Then, on 1 January 1992, the HSC announced a new exposure standard for silica. Pneumoconiosis, or black lung, resulting from silica exposure is among the best known of industrial chest diseases, known for hundreds of years. Silica also causes lung cancer as well as other non-malignant chest diseases. Those most exposed include miners, as well as construction and quarry workers, masons, and refractory and ceramic workers. Any lowering of standards will mean more workers getting silicosis and other respiratory diseases.

Putting the two together, hazards activists fear that Britain may be on the start of a slippery slope downwards. They are worried that the British Government is using Europe as a smokescreen behind which it can slip in lower standards, even though the move is illegal both under European law and under the UK HSW Act.

The HSW Act says that new provisions must be '*designed to maintain or improve the standards of health, safety and welfare established under the enactments*'. This effectively outlaws new regulations which reduce standards. The EC's Framework Directive says that European legislation should not prejudice existing national standards which are better.

Britain has had among the best silica protection standards in Europe. A new single standard will now replace the different maximum exposure levels for different types of silica which were based on Occupational Exposure Standards. The HSC says companies will find

it easier to implement one absolute figure of 0.4 mg/m^3 and it has been introduced to take account of 'socioeconomic factors'.

This shift from a health-based standard to one influenced by economic factors is very dangerous. It opens the door for firms to argue that a worsening balance sheet means they have to lower health and safety standards even further. And why is the HSE bending over backwards to accommodate itself to companies rather than enforcing existing legal standards? If companies were to fail to implement the new standard, would this lead the HSE to reduce it even further?

With the HSE about to review seventy substances over a two year period to 1994, the British Government may be setting a precedent to undermine other standards, particularly those which in Britain are higher than in most other European countries. The Government may increasingly argue that economic considerations, particularly the competitiveness of British industry in the Single European Market, must outweigh health considerations.

The Hazards Campaign has begun preparing a complaint to the Parliamentary Ombudsman about infringements of the HSW Act, and the European Commission has said that a repeal of the 1908 Mines Regulation Act, without an equivalent being put in place, could lead to proceedings in the European Court of Justice. And so the battle lines are drawn. If the British Government gets away with it, its latest attempts to reduce health and safety standards would make Britain's mines even more ripe for privatisation.

The Impact in Britain

The arrival of the Framework Directive is the most important opportunity since the Health and Safety at Work Act of 1974 to change and improve workplace health and safety legislation in Britain.

At the time of writing, the Health and Safety Commission's Consultative Document, *Proposals for Health and Safety (General Provisions) Regulations and Approved Code of Practice* on implementing both the Framework Directive and the Temporary Workers Directive has been issued and the consultation period ended on 21 February 1992. If this consultation is a repeat of most others, only minor tinkering to the proposed regulations is likely before they are passed by Parliament. So what does the HSC's Consultative Document tell us about the likely impact of these important Directives on British legislation?

British health and safety law is loose and generalised. The duty on employers is to assure the health and safety of workers as far as 'reasonably practicable'. The Health and Safety Commission, a government body in which government, employers (represented by the CBI) and workers (represented by the TUC) co-operate, maintains that this ensures a 'flexible' approach to such very complex issues.

In fact, health and safety law in Britain is applied on a cost-benefit basis. Employers should take steps to avoid risks and improve conditions, but they may decide whether to do so after weighing up the costs versus the benefits to themselves. An employer has discharged his duty under British law if, after carrying out a risk assessment, s/he judges that it would cost too much to make the improvements compared with the level of risk. Risk is viewed far more from the point of view of the employer than of the worker(s). The likelihood of a hazard occurring and the cost of putting things right are seen as much more important than how much risk any worker is facing, under British law.

The HSC maintains that in Britain, with our Health and Safety at Work Act, Safety Reps and COSHH regulations, we have it about right. In fact, says the HSC, Europe has learned from us. Sir John Cullen, the HSC's Chair, has gone so far as to say that the Framework Directive '*is really a clone of Britain's HSW Act*' and that Britain more than any other European country can take the credit for the Directive's final shape.

The new European legislation does extend the boundaries rather too far, according to Sir John. '*It is more detailed and we would rather not have had that detail*', he says, admitting that Britain was in a minority in Europe in not wanting that 'detail'. The Directive is too prescriptive where Britain prefers to set 'general objectives', Sir John believes. His words mirror precisely those of the then Employment Minister John Cope in his Memorandum to MPs in early 1989. But in general Sir John is content with a good job done in 'ironing out any nonsenses' which others in Europe might have wanted (Cullen 1991).

The HSC intends to meet the Directive but generally not go beyond it '*so as to minimise the impact of alterations in the law*'. '*Our strategy*', says the Consultative Document, '*is to avoid disrupting the basic framework established by the HSW 1974, and also minimising change to the most recent regulations*'. Above all, the HSC intends to continue with its philosophy of '*introducing control measures* ***appropriate to the risk***'.

Employers will have to appoint competent health and safety officers. There are also 'modest extensions', in the words of the HSC, to the existing Regulations on safety representatives, who are to be

consulted on a wider range of issues and be given more facilities and assistance by employers. Health and safety legislation in Britain will also now include physical factors, like the damage done by repetitive movement.

Overall, however, the HSC has taken '*great care*', it says, to ensure the Directive is implemented '*in as constructive and flexible a way as possible, without imposing unnecessary burdens on industry*'. So, the HSC is doing the least it thinks it can get away with and British employers need not fear too great an impact.

Where possible, the HSC uses the opportunities given it by the Directive to refer back to existing law and practice and to define terms (e.g. Articles 7(7) and (8), and 9(2)) in ways which suit employers rather than workers. It also changes the language used. For example, in the case of outside experts brought in by an employer, 'necessary' competence in the Directive becomes 'sufficient' or 'adequate' in the draft British regulations, which is not the same thing at all.

And so, with the necessary modifications 'minimised', we in Britain are to continue very much as we were before. This is even though, as the consultative document admits, HSE Inspectors find 'all too often' no structured, well-thought out approach to health and safety, in enterprises of all sizes. '*Top management has often failed to recognise and accept its responsibilities ... sometimes with very serious consequences*', it says. (paras 20 and 21)

Indeed, hundreds of thousands of workers are damaged and even die at work every year. It is difficult to see how the HSC's complacent interpretation of the EC's Framework Directive will reduce this suffering.

Export of hazards to Britain

Louis Drake died in Bradford as this book was being written. He worked for the firm A.H. Marks, and was dead within a day of being splashed by chemicals used in making Agent Orange, one of the most toxic substances known to humankind, produced at the factory.

The HSC likes to claim that Britain leads the way in health and safety among European countries. In fact, the production line on which Louis Drake died had come from Denmark, disassembled and sold by the Danish firm KVK, and reassembled in Bradford. KVK was unwilling to meet the more stringent environmental controls in Denmark and sold the plant to a more accommodating country, Britain.

In the following section, which looks in some detail at the HSC's Consultative Document on implementing the Framework Directive, Reg.(no.) refers to articles in new draft Regulations and CP (no.) refers to paragraphs in the Code of Practice.

Scope

It is unlikely that there will be any great change in the range of workers affected by the new health and safety legislation. In Britain, the HSW Act places a general duty on employers to be responsible for the health and safety of all their employees. Trainees have had their status improved by the Health and Safety (Training for Employment) Regulations of 1990. The problem has been, and still is, not who is or is not covered by the law, but who can get it enforced.

It is worth repeating here that the new Regulations do not apply to those who are excluded by the Framework Directive, i.e. sea and air transport workers (who are the responsibility of the Department of Transport), sea fishing workers, 'domestic service' workers, and the police and Ministry of Defence.

However, firefighters are to be covered. According to Dave Matthews, health and safety officer of the Fire Brigades Union, the HSC is ignoring the Directive's exclusion of firefighters.

The new Regulations have been drafted to include the Temporary Workers' Directive. Therefore sub-contracted workers are largely included. However, according to Phil James of Middlesex Polytechnic, the question of information and instruction to non-employees in the new Regulations is 'complex and rather confusing'. Roughly speaking, temporary workers employed by an agency or other sub-contractor have rights to information on special qualifications or skills needed to do a job safely and to health surveillance. 'Casuals' who are supplied rather than employed by an agency do not.

The most important factor determining who will in reality be protected by the law will be whether or not they work in a '*Small or Medium-Sized Enterprise*' (where employers are likely to argue that they cannot afford preventive measures), and most importantly whether or not they are unionised so that the union can help them enforce it.

Improvements?

Throughout its draft Regulations, the HSC takes every opportunity given

to it by the Directive to refer back to '*relevant statutory provisions*' already operating in Britain.

The overall result is that existing British legislation is to continue setting the standard rather than being changed to meet any improvements which the Directive contains. Peter Jacques, Head of Social, Health and Environmental Protection Department at the TUC, and an HSC Commissioner since 1974, confirmed as much to the London Hazards Centre in November 1991. This may fulfil the letter of the Directive, but it breaches that part of it which intends to bring about improvements.

Existing laws in Britain do not make employers take the 'necessary measures' to improve health and safety of all workers. They allow employers to get away with far, far less.

This will continue under the proposed new regulations. Employers are asked to take 'appropriate' measures rather than the ones 'necessary' to achieve improvements. (Reg.4) 'Progressive improvement' is advocated, but in the Code of Practice rather than the regulations. (CP 10)

Prevention?

The spirit of the Directive is preventive, as Article 6 makes clear. Here is an opportunity to improve the situation in Britain, where the law's emphasis has been on protection rather prevention. But the opportunity is missed. In the HSC's proposals prevention becomes only a principle and is not given weight in law.

The whole of Article 6(2) of the Directive, with its long list of what the employer *shall* do in order to *prevent* occupational hazards and diseases, goes into the Code of Practice rather than into the new Regulations. The Code carries nothing like the necessary weight, for infringements cannot be prosecuted. Only infringements of the Regulations themselves can lead to prosecution. (If an employer is prosecuted under the Regulations, and it is shown that s/he has failed to observe the Code of Practice then this is counted against him/her, but it is not in itself an offence.)

Prevention has gone out the window.

RIGHTS AND RESPONSIBILITIES

As we have seen, the Framework Directive clearly identifies a wide range employers' duties and workers' rights. The HSC's draft Regulations

bring in some minor expansion of employers' duties. However, when it comes to workers' rights, key articles of the Framework Directive are omitted and others are re-interpreted only weakly. Here are some examples:

Employers duties

- Workplace design:
  The Directive says that ergonomics should be used in all aspects of workplace design. 6(2)(d) Reg. 3(5)(b), however, treats it only as a question of exceptional risk, as the miners' union NUM has pointed out.
- Assessment of risk:
  Under the Directive, employers are given an absolute duty to assess risks, keep a written assessment and make this available to safety representatives. Under the HSC's proposed Regulations, British employers who previously only had to have a statement of 'general safety policy', must now have a written risk assessment if they employ five or more workers as part of this policy (Reg. 3(5)).
- Avoiding risk:
  The measures an employer takes need only be 'appropriate, having regard to the nature of his activities and the size of his undertaking'. This leaves it open for employers, especially the owners of small firms, to argue they cannot afford risk-avoiding measures (Reg. 4).
- Who assesses risk?
  A risk assessment can be '*a very common sense process*', says the Code of Practice, though employers may want to bring in experts. This makes employers entitled to self-regulation, and to define who is competent to assess risks, i.e. s/he appoints whomsoever s/he likes. This is allowed under Article 7(7) of the Directive. In Britain, discussions are under way towards establishing a system of proper qualifications for health and safety inspectors. The current proposals take this no further forward, another missed opportunity.
- Co-operation and co-ordination:
  The European Directive says that on sites where there are several companies, health and safety shall be co-ordinated and under the responsibility of a named supervisor, with full authority. 6(4) and 7(6) This is potentially a big advance on the situation in Britain.

However, it has been watered down in the HSC's proposal. *'In principle, there could be a duty on someone'*, it says, going on to invite opinions on the question, an open invitation for some serious lobbying by employers. Para 36.

Workers' duties

▲ to report problems

Workers should report anything at work which has immediate and serious danger or any shortcoming in the employer's health and safety measures (Reg. 11(2)).

Workers reporting problems must beware they do not put their jobs in jeopardy. According to David Stevenson, a solicitor with Robin Thompson and Partners in Ilford, companies are increasingly using a new legal defence called 'frustration of contract'. If workers report symptoms such as repetition strain injury (RSI) they may be told that they are incapable of carrying out their contract of employment and lose their jobs.

If the worker is fired before two years in the job, s/he cannot claim the protection of the Employment Protection Act. According to Stevenson, 30-40% of workers who develop RSI lose their jobs as a result (Stevenson 1991).

Workers' rights

▲ to training

Health and safety training is to be provided on recruitment, when there are new or increased risks, e.g. because new technology or new working methods are being introduced, and repeated periodically, during working hours (Reg.10). The employer can decide what level of training is needed, as identified through the risk assessment. (CP 37).

This is potentially a significant advance. A duty to provide repeated training, especially when the job changes, is much more specific than before. The HSW Act Section 2 only placed a general and unspecific duty on each employer to give training *'as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees'*.

▲ to information
Workers have the right, under the HSC's draft Regulations, only to the employer's risk assessment, the related measures and emergency procedures, based on what they 'need to know' for their own health and safety (Reg.8, CP 26).

This does not meet the Directive which gives workers the right to the health and safety record of the whole undertaking and to each type of work station and/or job. 10(1)a. Once again the HSC is covered by the escape clause in the Directive on national laws and practice.

There is, however, a new duty in the draft Regulations on employers to make the information understandable, including by those with *'language difficulties or physical disabilities'*. (CP 27).

▲ to be consulted
No rights of consultation for workers are mentioned in the HSC's consultative document, in breach of the Directive.

▲ health surveillance on request
There is no mention of the workers' right to health surveillance on request. What is appropriate health surveillance is to be determined by the employer, through his/her risk assessment (Reg. 5, CP 12). A dissatisfied worker can go and see his/her GP, as allowed by the Framework Directive, but the employer has escaped responsibility.

▲ to stop the job or refuse dangerous work without victimisation
The Framework Directive clearly gives workers the right to down tools when facing imminent danger 8(4). In Britain, workers and even safety representatives have never had this right. Any British worker who stops work because they believe that there is about to be an accident, or they are being asked to do something dangerous, runs the risk of losing their job or being otherwise penalised. It happens all the time.

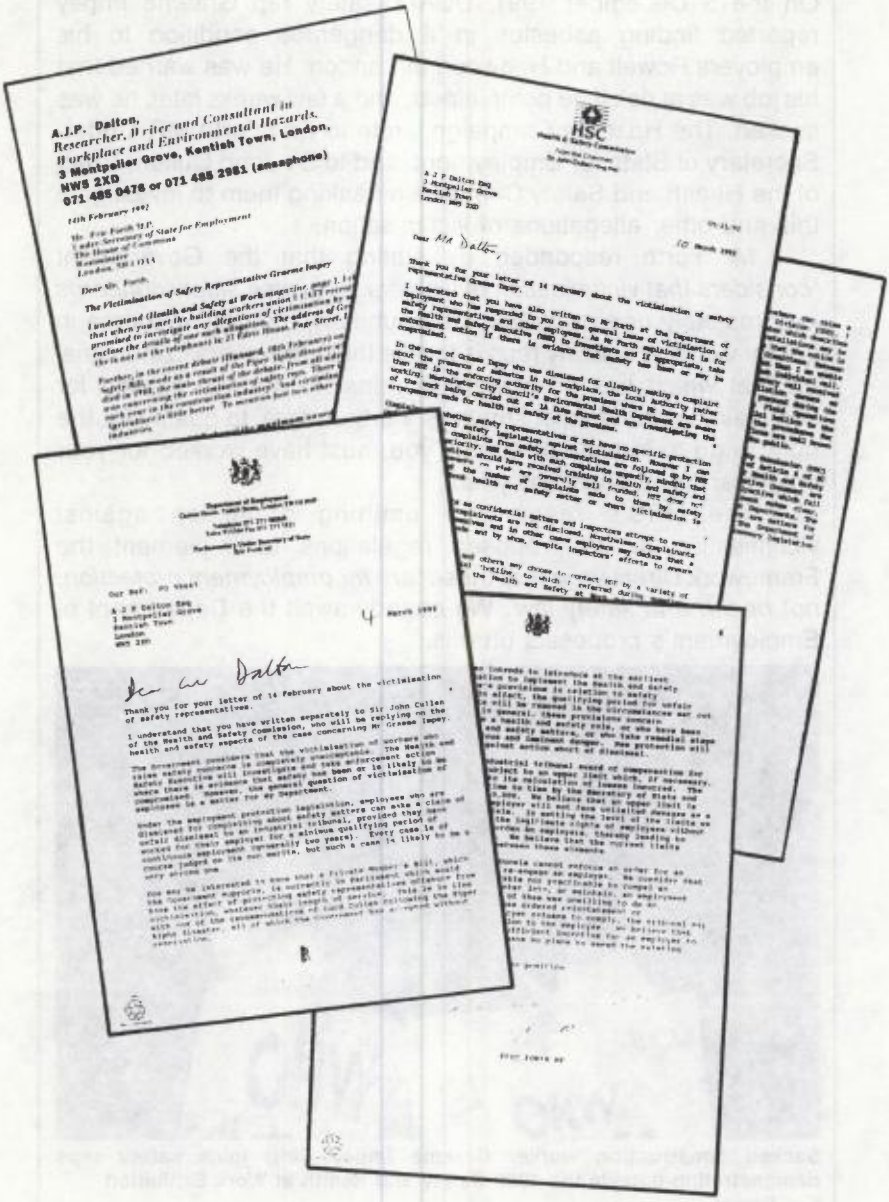
The HSC ignores this proposed right. Their draft Regulation refers only to the employer's duty to set up evacuation procedures, which should include saying when and how workers can act without waiting for further guidance. It omits any mention of workers' rights or protection from victimisation. (Reg.7, CP23). The miners' union has complained that *'without the essential protection from victimisation, the safety procedures for dealing with serious, imminent and unavoidable danger are undermined'*.

On the 5 December 1991, UCATT safety rep Graeme Impey reported finding asbestos in a dangerous condition to his employers Rowell and Henwood of London. He was warned that his job was at risk if he complained, and a few weeks later, he was sacked. The Hazards Campaign wrote to Eric Forth MP, Under-Secretary of State for Employment, and to Sir John Cullen, Chair of the Health and Safety Commission asking them to investigate this and other allegations of victimisation.

Mr Forth responded by stating that the Government '*considers that victimisation of workers who raise safety concerns is completely unacceptable*'. Unfortunately, the only recourse in law for victimised safety reps is to take their employers to industrial tribunal which has no powers to reinstate workers sacked for complaining about safety matters. Furthermore, to qualify for the right to go to industrial tribunal you must have worked for your employer for at least two years.

The HSC's reason for omitting protection against victimisation in its proposed regulations to implement the Framework Directive is that these '*are for employment protection, not health and safety law*'. We eagerly await the Department of Employment's proposals on this.

Sacked construction worker Graeme Impey (left) joins safety reps demonstrating outside the 1992 Safety and Health at Work Exhibition
Eve Barker



Peter Jacques of the TUC told the London Hazards Centre that he agrees with the HSC proposals. '*You cannot just give workers the right to stop work. It can be more dangerous for workers to abandon machinery than to continue working and be brought off the job in a controlled way. It should be the responsibility of the employers to organise this*', he said.

This gives workers no protection against reckless employers who refuse to stop production even where there is imminent danger. It treats workers as incapable of taking responsibility in a dangerous situation, and is against spirit of the Framework Directive.

The HSC's proposals also ignore the right given in the Directive for workers to refuse dangerous work without victimisation 8(4). Peter Jacques agreed this should not be omitted and trade union activists should make sure it is inserted. Victimisation of workers who walk away from hazardous situations happens all the time.

More than this, the new Employment Protection Act of 1990 gives employers the right to sack any worker for taking unofficial action, including stopping the job in a dangerous situation.

The Framework Directive cannot be used to challenge this, for the phrase '*national laws and/or practices*' has been inserted into the Directive's paragraph which would otherwise have given protection.

Lisa Malben, a 20 year old worker in Sheffield, asked her employer Pneumatic Components Ltd. to remove her from working on a 'Loctite' machine. Loctite 638 adhesive had got on her hands, giving her blisters. Her doctor confirmed it was also responsible for giving her headaches, a sore throat and drowsiness when later operating the machine. Chemicals in Loctite 638 are known to cause allergic dermatitis and irritation to the eyes, nose and mouth.

Lisa's boss would not move her and, when she refused to stay on the machine for a full 8-hour shift, he dismissed her for 'gross misconduct'. Lisa's appeal to the firm was rejected. With the help of Sheffield Law Centre, she took the case to an industrial tribunal. Two days before it was heard, Lisa accepted a £500 settlement. (*Hazards* 1990)

Safety reps' rights

The HSC's proposed Regulations are very quiet on the subject of safety

representatives. Proposed Regulation 15 is a very modest response to the wide-ranging rights given in the Framework Directive.

▲ to be consulted

Employers in Britain are already legally bound to consult safety representatives. Now they will have to do it 'in good time'. They will also have to consult over who they are nominating as their health and safety officer and emergency evacuation team, over health and safety training of workers, and the health and safety implications of new technology introduced into the workplace. These are steps forward.

However, the HSC's draft Regulations do not adequately cover the whole of the Directive's Article 11. For example, the right for safety representatives to submit their observations during HSE inspection visits is absent.

▲ to information

The Framework Directive gives safety representatives access to the employer's accident lists and reports, and to information from the statutory body, the HSC in Britain. 10(3)b and c. The HSC has completely missed these rights out from its draft proposals.

The phrase '*in accordance with national laws and/or practices*' has once again provided the let-out. The HSC's practice is not to divulge information to safety representatives. In fact, many of its Advisory Committees interpret Section 28 of the HSW Act as if it makes their information an official secret.

The HSC argues that were it to make information available, it would not maintain the confidence and involvement of employers. An HSC spokesperson has said, '*It is a necessary evil which does sometimes have its downside, but if inspectors were duty-bound to publish all the information they collected from an investigation, they would find that the level of co-operation which they received from companies was much lower*'.

Never mind John Major's Citizens' Charter, the HSC is intent on continuing to keep workers' representatives in the dark.

▲ to halt dangerous work without victimisation

The right for safety representatives to halt or refuse dangerous work without victimisation is missing from the draft Regulations.

This is all the more serious because victimisation is more possible than ever under the new Employment Protection Act of

1990, as we have seen above. Trade union immunities, already diminished by earlier Thatcherite legislation, are reduced even further. The Act makes unions responsible for any industrial action by any union official, which includes stewards and safety representatives. This leaves workplace representatives with potentially less support from the union, and those sacked will be unable to apply to industrial tribunals for unfair dismissal. It will be very hard for workmates or anyone else to take official or unofficial industrial action to support them.

The Secretary of State for Employment, questioned over the Act's potential impact, said that employers who use it to sack safety representatives would not be acting within the 'spirit of the agreement'. However, there is a danger of misinterpretation and it will be up to the courts to establish a ruling. With the poor record of industrial tribunals on employment law, trade unionists would be unwise to be confident. (*Hazards* 1991).

▲ who chooses safety representatives?

The Framework Directive specifically refers to 'workers'. Trade unions, or any other type of workers' organisation, are never mentioned once. This reflects the practice in many European countries where works councils, which deal with health and safety matters, involve both unionised and non-unionised workers.

In Britain, however, it is trade unions which are specifically given rights and responsibilities on questions of health and safety at work, under the Safety Representatives and Safety Committees Regulations of 1977. Safety representatives are elected by unionised workforces.

British trade unions have therefore seen the Framework Directive as potentially very dangerous. It could remove union rights and give them to employers who, time and again the Directive says, can 'designate' health and safety representatives.

However, this is not going to happen. Under the HSC's draft Regulations, British trade unions, particularly the TUC, have retained their rights. The discussions were behind closed doors, but Peter Jacques of the TUC has confirmed that it was the subject of careful negotiations in the HSC. For British workers who are unionised, the right to elect safety representatives has been preserved. However, this leaves non-unionised British workers unprotected. As the HSC's draft Regulations stand, employers have no obligation at all to consult non-unionised workers over health and safety.

Victimised for refusing dangerous work

A TGWU Safety Representative at a biscuit factory in Staffordshire was severely disciplined for refusing to unjam a machine. A few hours earlier the same machine had almost chopped him to pieces. He told the magazine *Hazards*:

'*The hopper on which I was working jammed and two of us were instructed to climb up and free the mechanism. The guard had been left off by the maintenance department because of the regularity of this jamming problem.*

While we were still inside the machine, an electrician was instructed to switch the machine on. To our amazement and horror there was a deafening screeching noise as the unguarded hammers were activated. We managed to scramble to safety and the machine was switched off. We could easily have been cut to pieces.

I was still shaken when, a couple of hours later, I was asked to free the same piece of machinery. I obviously refused. Management were livid and threatened to discipline me.

I managed to gain some time by refusing to be disciplined without another union rep being present and quickly contacted the local HSE Inspector to report the incident. Unfortunately the Factory Inspector contacted the firm while I was in the manager's office and the Safety Officer came in in a rage because I had contacted the HSE without letting her know.

Like most industrial workers we do silly things that make us easy targets for management. Sugar dust gets under your arms, down your legs and even into your underwear. We blow the dust off with the air line. Although this is a regular if stupid and potentially dangerous practice it has been ignored by the company in the past.

The Safety Officer saw me use the air line. I was disciplined, given a final written warning, suspended for two days, removed from the company safety committee, removed from the negotiating committee and the company used the incident to warn other workers that the misuse of the compressed air line would, from now on, be a serious offence resulting in automatic suspension.' (*Hazards* 1990)

Peter Jacques told the London Hazards Centre that the TUC has no interest in seeing non-unionised workers have greater health and safety rights. The TUC's position is that all workers should fight for union recognition first and then win the right to elect their own safety representatives. This is not a position held by all trade unionists, particularly in other European countries where unionists on works councils are used to negotiating for all workers. Franco Bisegna, General Secretary of the European Chemical Workers Federation (EFCGU) told a meeting at the British TUC on 6 November 1991 that unions have a duty to help protect non-unionised workers as well.

Workers who do not wish to be union members may sacrifice a certain degree of sympathy, but they do not deserve to work in unhealthy and dangerous conditions.

For the thousands of British workers who would like to be in unions but for whom unionisation would mean the sack, the British TUC's attitude seems particularly harsh. It infringes the spirit of the European Directive. It also ignores a recommendation of a recently published HSE-financed study by Walters and Gourlay, researchers at South Bank Polytechnic in London.

What was revealed by Walters and Gourlay is that the number of workplaces in Britain with a health and safety representative is declining. They showed that in 1987 only 9% of workplaces surveyed had a safety representative, compared with 17% in 1979. The situation is holding good in very large firms. However, it is bad and declining in the growing number of small workplaces.

Over two-thirds of safety representatives spend less than two hours a week on health and safety matters, and fewer of them are going on TUC courses, according to the study. It shows that about one-third of safety representatives surveyed were untrained, with the proportion in small firms rising to two-thirds. There is a decline too in the number of workplace safety committees, again particularly in small firms. The report points to inadequate trade union organisation and employer support, and insufficient HSE enforcement of the 1977 regulations (Walters and Gourlay 1990)

The study goes on to recommend that workers in non-unionised workplaces should have the right to elect safety representatives. As one of the authors has since stressed, this should not be used to justify interfering with union representation where it currently exists.

WHAT TO DO

The HSC's proposed Regulations introduce some minor improvements for British workers but they ignore some key rights, unless by some miracle serious lobbying succeeds in having them inserted before they go through Parliament. The most important of these are:

- the right to stop the job and to refuse dangerous work without victimisation
- the right to information and consultation, with both the employer and the HSC

For British workers to gain a real advance in their conditions of work, these rights are a must, and should be fought for, both in law and in practice.

It is also important that unions in Britain take a more open approach to non-unionised workers. This would not only bring real health and safety benefits to those workers; assisting them to improve their working conditions is also an important route to encourage non-unionised workers into unions.

This includes black workers, migrant workers and especially the 'unauthorised', some of whom are being used virtually as slaves, in the most unhealthy, unsafe and inhuman conditions. The defence of their health and safety begins with giving them legal status under a proper work permit scheme, and combating racism.

But will it be enforced?

It is one thing to unpick what rights workers do or do not have under legislation, whether British or European. It is another to see those rights enforced. The Framework Directive is supposed to be binding on EC member states, but there are no legal sanctions against non-implementation. Only political and industrial pressure can win real improvements in workplace health and safety.

The best protection for workers is to negotiate health and safety agreements collectively with their employers.

6

EC DIRECTIVES ON HEALTH AND SAFETY

The following is a list, arranged alphabetically by subject, of adopted health and safety directives, including a summary of the current status, the EC reference number and the OJ number when available. (OJ=*Official Journal of the European Communities*, available from HMSO, see Contacts and Resources). Directives still at the drafting and approval stage may be requested from your local European Information Centre or MEP (see Contacts and Resources).

Adopted EC Directives on health and safety

ACCIDENT HAZARDS
Major accident hazards of certain industries
Adopted June 1982. Implemented January 1984.

ASBESTOS
Protection of workers from the risks related to exposure to asbestos at work
Adopted 1983. Implemented January 1987, except for asbestos mining which was implemented January 1990. Amended June 1991, to be implemented January 1993.
83/477/EEC and 91/382/EEC OJ C161/90

BANNING OF CERTAIN AGENTS/ACTIVITIES
Protection of workers by banning certain agents and activities
Adopted June 1988. Implemented January 1990.
88/364/EEC

BIOLOGICAL AGENTS
Protection of workers from the risks related to exposure to biological agents at work
Protection of workers, such as those in food production, agriculture, health and veterinary care, laboratories, refuse disposal and sewerage,

from contamination by biological agents, including micro-organisms, cell cultures, parasites and rodents. Common position adopted May 1990. Implementation by November 1993.
90/679/EEC OJ L374/90

CARCINOGENS
Protection of workers from the risks related to exposure to carcinogens at work
Adopted June 1990. Implementation by December 1992.
90/394/EEC OJ L196/90

CHEMICAL, PHYSICAL AND BIOLOGICAL AGENTS
Protection of workers exposed to hazardous agents
Adopted November 1980. Implemented December 1984. Amended 1988.
80/1107/EEC and 88/642/EEC

CLASSIFICATION, PACKAGING AND LABELLING OF DANGEROUS SUBSTANCES
Adopted 1967; 6th amendment implemented September 1983; 7th amendment at common position March 1991

ELECTRICAL EQUIPMENT
Concerning electrical equipment for use in potentially explosive atmospheres employing certain types of protection
Use of equipment in potentially explosive atmospheres.
Adopted 1976. Implemented August 1980. Amended September 1990
90/487/EEC

EUROPEAN AGENCY ON HEALTH AND SAFETY AT WORK
Adopted September 1991
COM 91/564

EUROPEAN YEAR OF SAFETY, HYGIENE AND HEALTH PROTECTION AT WORK
Adopted July 1991. Year to begin 1 March 1992
91/388/EEC

FRAMEWORK DIRECTIVE
Introduction of measures to encourage improvements in the safety and health of workers at work
Adopted June 1989. Implementation by December 1992.
89/391/EEC OJ L183/89

GENETICALLY MODIFIED ORGANISMS
90/219/EEC on contained use, 90/220/EEC on deliberately released organisms, adopted April 1990 under Article 100A.
OJ L117/90

IONISING RADIATION
Euratom Directive to protect workers exposed to radiation risks Adopted July 1980. Implemented December 1982. Amended 1984.

IONISING RADIATION
Operational protection of outside workers exposed to ionising radiations during their activities in controlled areas
Euratom Directive on the protection of 'outside' workers (e.g. employees of a subcontractor) exposed to radiation risks.
Adopted December 1990.
641/90/EURATOM

LEAD
Protection of workers exposed to lead risks
Adopted June 1982. Implemented January 1986.
82/605/EEC

MANUAL HANDLING OF LOADS
Minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers
Adopted May 1990. Implementation by December 1992.
90/269/EEC OJ L156/90

MEDICAL ASSISTANCE ON BOARD SHIPS
Adopted June 1991.
COM 90/272 and COM 91/65

METRICATION
Metrication of health and safety measurement.
Adopted 1980, amended 1985 and 1989. Implementation by January 1985.
80/181/EEC, amended 85/1/EEC and 89/617/EEC

NOISE
Protection of workers exposed to noise risks.
Adopted May 1986. Implemented January 1990.
86/188/EEC

OCCUPATIONAL DISEASES
A European schedule of recognised and suspected occupational diseases caused by chemical, biological and physical agents. Recommendation issued May 1990. Member states to report on measures taken in response to the recommendation at the end of three year period, ie. by May 1993.
90/326/EEC

OCCUPATIONAL EXPOSURE LIMITS
Establishing indicative limit values to protect workers from the risks related to exposure to chemical agents at work
Sets occupational exposure limits for 27 substances or groups of substances.
Adopted May 1991. Implementation by December 1993.
91/322/EEC OJ L177/22

PERSONAL PROTECTIVE EQUIPMENT
Minimum health and safety requirements for the use by workers of personal protective equipment at the workplace
Adopted November 1989. Implementation by December 1992.
89/656/EEC OJ L373/89

TEMPORARY WORKERS
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
Adopted June 1991. Implementation by December 1992.
91/383/EEC OJ C224/90

SAFETY DATA SHEETS
Laying down detailed arrangements for information on dangerous preparations.
Adopted March 1991. Implementation by June 1993.
91/155/EEC OJ L76/35

VINYL CHLORIDE MONOMER
Protection of workers exposed to VCM risks.
Adopted June 1978. Implemented December 1979.
78/610/EEC

VISUAL DISPLAY UNITS (VDUs)
Minimum safety and health requirements for work with display screen equipment Adopted May 1990. Implementation by December 1992.
90/270/EEC OJ L156/90

WORK EQUIPMENT
Minimum safety and health requirements for the use of work equipment by workers at work
Adopted November 1989. Implementation by December 1992.
89/655/EEC OJ L393/89

WORKPLACES
Minimum safety and health requirements for the workplace
Adopted November 1989. Implementation by December 1992.
89/654/EEC OJ L393/89

Phil Evans/*Red Tape*

Proposed EC Directives on health and safety

CHEMICAL AGENTS AT WORK
Exposure to risk from chemical agents at work.
SEC 91/1157 of 14 June 1991

CONSTRUCTION SITES
Protection of workers on temporary and mobile sites.
Possible adoption early 1992. Implementation by December 1992.
COM 90/275 and COM 91/117 OJ C213/90

FISHING VESSELS
Minimum health and safety requirements on board fishing boats.
V/E/3/90/LO 4th draft

MEDICAL ASSISTANCE ON BOARD SHIPS
Sets down medical supplies and equipment to be carried on ships, plus training/information and inspection procedures.
Common position reached 25.6.91

OFFSHORE WORKERS
Minimum requirements for improving health and safety protection for workers in the extractive industries, onshore and offshore.
COM 90/663 OJ C32/91

PHYSICAL AGENTS AT WORK
Exposure to risk from physical agents such as noise, vibration, electric and magnetic fields, ultraviolet rays and non-ionising radiation.
Implementation by end 1993.

PREGNANT WORKERS
Protection at work of pregnant women and those who have recently given birth. Adoption not likely until mid-1992. Implementation will be two years after adoption.
COM 90/406, amended COM 90/692 OJ C281/90 and C25/91

SAFETY SIGNS
Minimum standards for safety signs at work. Amends Directives 77/576 and 79/640.
Implementation before January 1993.
91/C279/08 OJ C53/91

SEXUAL HARASSMENT
Protection of the dignity of women and men at work.
Recommendation and Code of Practice provisionally adopted July 1991

TRANSPORT
Minimum health and safety requirements for transport activities and workplaces on means of transport. Would apply to workplaces specifically excluded from the Workplace Directive.

WORKING TIME
Laying down maximum limits for the working day and week, with minimum rest periods and restrictions on night work.
COM 90/317 and COM 91/130 OJ C254/90

YOUNG PEOPLE AT WORK
Two Directives on the protection of young people at work proposed: on a minimum age for child workers and on employment conditions including medical checks for workers under 18 years.

INTRODUCTION TO THE KEY HEALTH AND SAFETY DIRECTIVES

In this Chapter, we take a look at some of the most important health and safety Directives being adopted by the European Commission, both those already passed and those still being drafted or discussed.

We look at what they contain, their impact on British law, and the battles that have been fought over them. We also describe the kinds of problems faced by British workers which these changes in European and national law are meant to address.

So far, there are individual EC Directives dealing with:

- particularly hazardous substances or agents, e.g. asbestos, lead, noise, carcinogens, and specific biological, chemical and physical agents
- workplaces, in general and in particularly high-risk industries, e.g. construction sites and fishing vessels
- work equipment, in general and that with special characteristics e.g. VDUs
- standards, e.g. of electrical equipment, safety signs, and personal protective equipment
- workers at particular risk, e.g. pregnant workers, young people
- the organisation of work, e.g. working time
- action on occupational health and safety, e.g. the European Year for Safety, Hygiene and Health Protection at Work, and the European Agency on Health and Safety at Work

Some were adopted before the 'Framework' Directive of 1989, detailed in Chapter 5. Some were specifically mentioned in the Framework Directive and are known as its 'Daughter Directives':

- Workplaces
- Work Equipment
- Personal Protective Equipment
- Manual Handling of Loads
- VDUs
- Construction Sites
- Fisheries and Agriculture

Of these the first five were adopted by early 1992, and the last two were still being discussed. Yet more Directives are being adopted or in the pipeline as this book goes to press, at a breathtaking speed difficult for workers and trade unions to keep up with.

Other Directives

There are many other Directives, adopted under the Social Action Programme and the Environment Action Programme for example, which also have an impact on health and safety in the workplace. Some of them are given in our list on page 161. However, because there are so many, over 250 on environmental protection alone since 1972, it is impossible to cover them in this book.

More information on these can be obtained from your local European documentation centre or MEP (see Contacts and Resources).

SCOPE

It is important to remember that each individual EC Directive includes all workers covered by the Framework Directive and the Temporary Workers' Directive (see Chapter 5). This means the unionised and non-unionised, permanent and temporary or sub-contracted, full-time and part-time workers, in factories, offices and elsewhere, including homeworkers.

Employers are not allowed to discriminate against particular types of workers, putting them at higher risk than any others. Only domestic workers and air or sea transport workers are excluded from many individual Directives, as are services like the police and the army. In some countries, the self-employed are also not covered, though they are in Britain.

Though employers are not allowed to discriminate against any particular sections of the workforce, there are as yet no special provisions to end the discrimination which already exists against black and migrant workers, or those with disabilities, as discussed in Chapter 5.

It is also worth remembering that there are plenty of workers who will not be covered, because of the let-out clauses for employers given in the Framework Directive.

MINIMUM STANDARDS

The Directives contain minimum standards and where higher standards already exist they should not be reduced. This would be illegal under both European and British law. Those minimum standards are themselves usually extremely poor.

Sometimes these standards are worse than those already existing in Britain, sometimes they are better. The important point for British workers and trade unions is to make sure that better European standards are brought in **and** *better British standards are not reduced.*

ENFORCEMENT — THE KEY

With each Directive, it is first important to see how it is being 'transposed' into British law. Where a Directive has higher standards, are these being carried over into British law? Where a Directive has lower standards, are these being used to reduce standards in Britain even though this is in theory illegal under both European law and the HSW Act Section 1?

As always, we must also assess whether the law is being enforced, for without enforcement any law is meaningless.

The EC admits that across Europe monitoring and enforcement of the many environmental Directives suffer from 'mounting problems'. (TUC 1991). We should expect the same for its health and safety Directives. It is a huge task for workers and trade unions, battered after thirteen years of Tory rule, to undertake.

The cases of lead and noise hazards, already covered by Directives for several years, show how difficult it is for workers in Britain to obtain the protection they are supposed to have under law.

There are ways in which unions worried about non-implementation can raise it in the EC. Member states must report to

the Commission regularly, usually every five years, on how each Directive is being implemented, and must include in the report the views of both employers and workers. Also, certain MEPs are very keen to pass information on. The EC is, for example, gathering evidence on problems with getting proper hearing tests in Britain (see Noise Directive, page 187).

UPDATING

If workers in trade unions want to have an input into revising Directives which come under Article 118A, they can do this through the Advisory Committee on Safety, Hygiene and Health Protection at Work, which meets in Luxembourg and to which the TUC sends two representatives (see page 31). So, union members wanting to suggest improvements should take it up with their union, to take it up with the TUC, to take it up in the Advisory Committee.

Another route is to contact your MEP directly and put pressure on him/her to take it up in the European Parliament.

Directives under Article 100A, by contrast, are updated by the EC's Standards Committees, *Comité Européen de Normalisation* (CEN) and *Comité Européen de Normalisation Eléctrotechnique* (CENELEC). These are technical bodies comprising national standards bodies, the British Standards Institute (BSI) in the case of Britain. The European Parliament is worried about this procedure, especially where technological development means Directives need large changes. There is no reference back to Parliament and no involvement of trade unions. The Machinery Directive and PPE Directive may prove test cases in the near future.

NEW DIRECTIVES

To the anger of many MEPs, the European Parliament has no right to initiate new Directives. Only the European Commission can do this. Stephen Hughes MEP, who is the rapporteur for the Parliament's Committee which deals with health and safety, calls it a 'democratic deficiency'. He says the next opportunity to get this changed will be the inter-governmental meeting, the next 'Maastricht', in 1996.

So, how does the EC decide what the priorities are? What influences them? It's a question which even MEPs find difficult to answer and so is a mystery for the rest of us.

Those adopted over the past few years are apparently Directives which had been blocked by one government or another when a unanimous vote was required. To these have been added Directives where the Commission can see there is a particularly high-risk industry, section of the workforce, or hazardous situation. It may be important for trade unions to establish a relationship with Commission officials so that they can suggest future Directives.

THE KEY HEALTH AND SAFETY DIRECTIVES

Asbestos

Directive 91/382, amends 83/477/EEC: *On the protection of workers from the risks related to exposure to asbestos at work*

Knowledge of the damage caused to workers by asbestos goes back at least 150 years. Today, some 1,500 people still die in Europe every year from exposure to asbestos at the workplace.

The EC's Directive of 1991 amends a previous one adopted in 1983. It must come into force by January 1993.

- ▲ sets lower action levels for some types of asbestos and lower limit values for all types
- ▲ bans the use of friable asbestos in buildings
- ▲ bans the spraying of asbestos
- ▲ bans the use of low-density insulating or soundproofing materials containing asbestos

The British Government welcomed these standards, calling them a '*sensible and achievable package for the Community as a whole*', while congratulating itself that British standards are higher.

Things are not quite that simple, however. British limit values are indeed better for blue asbestos, but for white asbestos the new EC standards are better.

Shown overleaf are the standards in the UK and in the new Directive for different types of asbestos.

	EC (8 hr TWA)		UK (4 hr TWA)
	Limit value	Action level	Limit value
Chrysotile (white)	0.6	0.2	1.0
any Amosite (brown)	0.3	0.1	0.5
any Crocidolite (blue)	0.3	0.1	0.2
any other asbestos	0.3	0.1	1.0

(levels shown are in fibres per millilitre).

There is also a cumulative standard based on the number of days a worker is exposed at a given time waited average (TWA). For chrysotile the equivalent of 60 days at a TWA of 0.2 fibres per millilitre of air must not be exceeded. For all other types of asbestos the cumulative amount must be less than the equivalent of 60 days at 0.10 fibres per millilitre (that is 6.0 so-called 'fibre days').

The important point for British workers is to make sure that the British Government does not attempt to use the new Directive to reduce the better standard which exists here for blue asbestos.

Britain has various regulations governing asbestos:

- 1983 Asbestos (Licensing) Regulations, requiring contractors working with asbestos to obtain an HSE licence
- 1985 Asbestos (Prohibition) Regulations, banning the import, supply and use of blue (crocidolite) and brown (amosite) asbestos, the spraying of asbestos and the installation of asbestos insulation. However, white asbestos is still commonly used.
- 1987 Control of Asbestos at Work Regulations.

British workers must make sure that the better EC standards for white asbestos are brought in by 1 January 1993, as the Directive instructs, and that existing standards for blue asbestos are not reduced.

There is also an opportunity to lobby Europe hard for higher standards. When the Directive was being drawn up, the European Parliament tried unsuccessfully to get a limit value of 0.1 fibres per millilitre for all forms other than white asbestos. The Commission refused then, saying that reducing limit values to action levels '*would upset the architecture of the basic Directive too much and make transposition difficult*'.

However, the whole Directive is to be reviewed by 31 December 1995, including its 'architecture' and the limit/action values. According to Stephen Hughes MEP, there is considerable support in the European Parliament for a phased ban for all uses for which a safe alternative exists. Danish and Dutch MEPs go even further, wanting a total ban in the workplace, which is already in process in their countries.

This is an opportunity which is going to be taken up by the 'Ban Asbestos Federation', formed by campaigners from across Europe after a meeting in Strasbourg in 1991. They want the most stringent controls for asbestos which already exists, and a total ban on new production.

According to Dick Jackson, an anti-asbestos campaigner in the UK, *'White, blue or brown, they're all the same. Fourteen people died in Hull last year of asbestosis. Multiply that across all the towns and cities of Europe, with people still dying in thirty years' time from being exposed to asbestos now, and it's a lot of terrible and unnecessary deaths.'*

Biological Agents

Directive 90/679/EEC: *Protection of workers from risks related to exposure to biological agents at work*

What the EC Directive Says:

This is the seventh individual Directive under the Framework Directive and is to come into force by 28 November 1993.

The Directive covers most biological agents including micro-organisms and those which have been genetically modified, cell cultures and any human endoparasite capable of causing infection, allergy or toxicity.

The Directive classifies biological agents into four risk groups:

Group 1	unlikely to cause human disease
Group 2	can cause human disease but is unlikely to spread to the community — can be treated
Group 3	Can cause severe disease and is a serious hazard to workers — may spread to the community but likely to be treatable
Group 4	Can cause severe human disease and serious hazard to workers, high risk of spreading to the community — no specific treatment available

The Directive applies to all activities in which workers may be exposed to biological agents as a result of their work and employers must conduct a risk assessment, specify measures to be taken and re-assess the risk regularly.

Article 5 of the Directive obliges employers to avoid the use of harmful biological agents whenever possible or replace them with less harmful ones and, in any event, the employer must:

- ▲ keep to a minimum the number of workers exposed
- ▲ design work processes to avoid or minimise release of biological agents into the workplace
- ▲ (only) where exposure cannot be avoided by other means, provide individual protection measures

Employers must inform and train workers and their representatives, and display notices of procedures to be followed in the event of any serious accident or incident involving a biological agent and handling a Group 4 agent. In addition, in cases of exposure to Group 2, 3 or 4 biological agents medical records must be kept for up to 40 years following the last known exposure.

In Britain:

The Control of Substances Hazardous to Health (COSHH) Regulations will provide the legislative framework for this Directive although there will be some amendments as the scope of the Directive is wider than for COSHH.

Although COSHH promises a great deal, as huge numbers of workplaces in the UK have yet to comply with its most basic provisions there is only limited scope for the impact of this Directive unless proposals for its implementation and enforcement are radically changed.

The HSC's Consultative Document on Regulations to implement the Directive is due around mid-1992.

Carcinogens

Directive 90/394/EEC: *Protection of workers from the risks related to exposure to carcinogens at work*

What the EC Directive says:

- ▲ where workers are likely to be exposed to carcinogens, the nature,

degree and duration of their exposure must be determined, the risk to their health assessed regularly and measures taken; '*where the results of the assessment ... reveal a risk to worker's health or safety, workers' exposure must be prevented*' (Article 5(1)).

- employers must inform the authorities, if requested; all cases of cancer identified '*in accordance with national laws and/or practices*' as resulting from occupational exposure to a carcinogen must be notified to the authorities.
- workers at particular risk must be given '*special attention*' and employers must '*take into account the desirability*' of not employing them where they may come into contact with carcinogens.
- employers must replace or reduce the use of carcinogens wherever possible; where a carcinogen has to be used, this must be in a closed system wherever possible, and the employer must carry out the protective measures given in a long list, limiting the quantities used and the number of workers exposed, informing the workers and providing them with protective clothing, and so on.
- workers and/or their representatives must be able to check that the Directive is being carried out and be kept informed of abnormal exposure.
- where appropriate, each worker must be able to have regular health surveillance; the nature of this health surveillance is to be determined '*in accordance with national law and/or practice*', as is the subsequent information given to workers.

For British workers, Articles 7 to 13 of the Directive contain a few potential improvements, for example:

- workers must have personal protective clothing for free
- employers must keep undesignated workers out of risk areas
- records must be kept for 40 years, a marginal improvement on the current British standard of 30 years; this will increase the chances for workers gaining compensation, and improve epidemiological studies.

However, for the rest, this Directive is woolly and flawed, and provides far too little protection. It allows employers many possibilities of discretion and interpretation. Many otherwise useful articles contain the phrase '*in accordance with national law and/or practice*'. In Britain this means that the status quo can continue, with cancer being

occupationally induced in untold thousands of workers, largely without them knowing.

Here are some of the Directive's defects:

- assessment: it does not say how regularly this should be carried out; frequent assessment is particularly important for carcinogens with low occupational exposure limits
- reduction and replacement of use: this is apparently at the employer's discretion, and contingent on technical feasibility, leaving employers wide scope for abuse
- reporting: employers are under no obligation to report, making the Directive unworkable. In Britain, the HSE cannot possibly monitor all workplaces in order then to request information
- surveillance: there is no definition of 'regular', which is important to detect the early signs of cancer.

We cannot therefore expect that this Directive will significantly improve the situation for British workers.

In Britain:

Consultative Document: *Draft Control of Substances Hazardous to Health (Amendment) Regulations 1992 and Draft amendments to the Control of Carcinogenic Substances Approved Code of Practice and the Control of Substances Hazardous to Health Approved Code of Practice.* [Consultation period ends 21 April 1992].

The HSC's proposals to implement the Directive amend the COSHH Regulations and their supporting Approved Codes of Practice. As the HSC was successful in getting most of the Directive to follow existing legislation, not surprisingly, the Consultative Document closely follows the Directive.

In one respect the Consultative Document improves on the Directive: it requires employers to specify the intervals between assessments and says this should be between two and five years.

Chemical Agents at Work

At the time of writing this is a proposed Directive to consolidate various pieces of legislation on the use of chemical substances in the workplace.

GERMANY: NOT IMPLEMENTED

In Germany, legislation based on EC Chemical Directives has been in place for several years but is not being properly implemented at workplace level.

In 1991 a survey was carried out by a project group of the Hamburg University of Economics and Politics. Questionnaires were sent to 100 medium and large companies with 100 employees and over in the Hamburg metal industry asking about the implementation of the German Chemical Regulations (*Gefahrstoffverordnung*). From 300 copies distributed, 55 were completed, covering 53 different firms with about 85,000 employees.

The results were as follows:

Information: according to the regulations, the employer is required to prepare written notices (*Betriebsanweisung*) on the handling and the hazards of each substance, which must be accessible to the worker, and in their own language. The survey found that only about half the enterprises had any such notices. About half the chemicals in use were being used without notices.

Instruction: employers are required to instruct workers on chemical hazards before they start using a substance, and repeat the instruction at least once a year. This was only done correctly in 27% of firms. Just over half the companies surveyed reported even initial instruction on safe handling.

Substitution: the employer must substitute less hazardous substances where practicable. Substitutions had been made in less than 10% of workplaces in the previous year.

Works Councillors' proposals: works councillors are entitled to suggest solutions to chemical hazard problems. Only 58% of works councillors, 35% of managers and 14% of safety specialists reported that this had been done in the firm in question.

In evaluating the survey, the authors noted that the situation is even worse in most small firms and trades.

DENMARK: NO GUARANTEE

The Danes have much stricter labelling of dangerous products than other European countries and were worried that European integration would drag their standards down. The EC gave them an 'understanding' that nothing in the new Chemical Directives would endanger Danish environmental protection.

It has proved to be an impossible guarantee. The Single European Market is based on the free movement of goods, and labelling at source by manufacturers in other countries means that when products and components enter the country the Danes are not now able to demand the full data sheets, clearly showing hazardous contents, which they previously could. Danish trade unions and occupational health specialists see this as very threatening to the standards they fought hard to establish.

Construction sites

Proposed Directive on the implementation of minimum safety and health requirements at temporary or mobile worksites

What the EC Directive says:

A Common Position was adopted by the Social and Labour Affairs Council at the end of 1991. The proposed Directive is the eighth under the Framework Directive and will necessitate a major reworking of UK construction legislation. It covers any building site except extractive industries, eg. mining.

In particular, the Directive calls for a named health and safety co-ordinator to be appointed at the project design and project execution stages.

However, members of the construction union UCATT believe that there are a number of major flaws in the proposed Directive:

- it will be unenforceable without an increase in the number of HSE inspectors
- works planned for less than 30 days won't have to be notified to the enforcing authority before starting (unless they involve certain specified especially risky activities)
- Article 8 requires employers to take steps to protect their 'own workers' and this fails to take account of the normal situation of sub-contracting on building sites.

At the time of writing, the progress on the Directive which had been expected at the December 1991 meeting of the EC Council had been delayed.

European Agency on Health and Safety at Work

Proposed Directive COM 90/564: *Proposal for the establishment of a safety, hygiene and health agency*

The EC is well aware that enforcement of its Directives is a major problem. All the Directives and Regulations in the world will not of themselves bring about change for the better without the means to enforce them.

The Commission first launched the idea of a pan-European Agency with the intention that it would have be an enforcing body. National states, however, were appalled. '*There are suggestions that what we need is a European Inspectorate General or something ghastly like that*', commented Sir John Cullen, Chair of the HSC (*Health and Safety at Work* 1991). Member countries saw it as an encroachment on their rights.

The intention now is that the European Agency will have a role limited to monitoring, research and information. Sir John believes it should monitor to what extent procedures are uniform across the Continent, '*whether the levels of fines are similar*' and so on. This would turn the Agency into a body to ensure harmonisation, reducing intra-European competition and serving the interests of employers, rather than to help implement Europe's Social Policy in the interests of workers.

A number of countries are now lobbying to have the Agency established on their own territory. The British Government has suggested Edinburgh.

At the time of writing, the Commission is attempting to devise some other way of extending its powers to enforce, perhaps through a special Directive on Enforcement.

Lead

Directive 82/605/EEC

It has been known for 2,000 years that lead is toxic. It:

- ▲ damages the nervous system and can lead to dementia
- ▲ impairs visual intelligence and motor co-ordination
- ▲ increases fatigue and short-term memory loss
- ▲ causes sterility in both women and men.

Lead is either inhaled through particles in the air or inadvertently

eaten from dirty hands. Control through ventilation and cleaning is comparatively easy. Poisoning is entirely preventable.

If we cannot protect workers from lead poisoning, then we have little hope for protection from other toxic substances.

In 1982, the EC passed its Lead Directive. Its standards improved on those contained in the UK's Control of Lead at Work Regulations 1980 and by 1985 the Regulations were changed accordingly.

In Britain, if you are a man you should be suspended from work if a second measurement shows 70 micrograms per 100 millilitres of blood. If you are a woman 'of reproductive age' the figure is 40 micrograms.

These levels are not scientifically based. In the USA, men should be suspended at 50 micrograms and not permitted to return to work until the level has dropped to 30μg/100ml. Scientific evidence shows that male fertility declines at 30μg/100ml. Individuals vary considerably and setting standards for acute exposure ignores the effects of chronic build-up of lead in the body.

Even the standards which do exist are not being implemented, however, as the notorious case of Stallite Batteries in Barnsley revealed.

FAILURE TO ENFORCE

'*Conditions at Stallite were so infamous in the Barnsley area, the Unemployment Benefit Office was known to waive the cutting or suspension of benefit to people who left or refused a job at Stallite*', Carol Holt, Organiser of Sheffield Trade Union Safety Committee. (*Hazards* 31 1990)

Stallite Batteries is a small factory in Barnsley, employing about 50 workers. It must have been one of the most visited factories in the UK. From 1971 to 1986, a factory inspector turned up at least every three months, sometimes more often. They found conditions extremely bad and a number of Improvement Notices were served. But the managers largely ignored them and a doctor employed by the company failed miserably to do his job.

The HSE knew as early as Spring 1980 that medical testing was not being conducted properly. The company doctor, who had been chosen by the employer, did not undertake regular blood level tests, or issue proper notices suspending workers on medical grounds, or keep the HSE properly informed. Over a six-year period, the Employment Medical Advisory Service warned the doctor many times

but still reappointed him and gave him two 'last chances'. It finally sacked him in 1985.

Keith Hopkinson had been working at Stallite for a couple of years when in October 1983 the Factory Inspector wrote again to Stallite managers about their '*totally inadequate control of the exposure of the workforce to lead*'. Over that period, Keith Hopkinson's blood level exceeded 80 micrograms on the four occasions samples were taken, at one point reaching 94μg/100ml.

The HSE knew that Stallite workers like Keith were being poisoned but it never informed them. As worker after worker registered high readings but was not properly suspended with medical suspension pay, it failed to do anything more than have inconsequential meetings with the managers.

In late 1984 Keith Hopkinson was advised to stop working until his lead levels went down again. About a year later he returned to the factory. Within months Barnsley Hospital had confirmed he had lead poisoning. Because the company doctor failed to sign a medical suspension certification, however, Keith could not get medical suspension pay and was forced back to work. In November 1985 he was sacked for being 'unfit', ie. for being poisoned. He later received £5,000 from Stallite's insurers in an out-of-court settlement for unfair dismissal.

Keith Hopkinson complained to the Government's Ombudsman, accusing the HSE of maladministration and of failing to protect him and his co-workers from lead poisoning. The HSE's Director General Sir John Rimington disagreed, maintaining that the HSE '*had done all that they could have been expected to do to protect Mr. Hopkinson and his colleagues*'.

The Ombudsman was not impressed by Sir John's argument. He considered data on Stallite workers, with readings such as 211 micrograms per 100 millilitres in one man and 113 in a woman, and described the six-year saga of the incompetent doctor as 'inexcusable'. His own enquiry took two years but eventually he issued his report, the most critical ever against the HSE. It was enough for Tony Lloyd MP, the Labour Party's Shadow Minister for Employment, to call for Sir John's resignation.

In the end, the Ombudsman accepted Sir John's apology and assertion that the HSE had since been reorganised. He advised the HSE to revise its procedures for appointing doctors. He decided not to award Keith Hopkinson any compensation.

Sir John later wrote to Keith Hopkinson on behalf of the HSE, lamenting weakly, '*it is not possible for inspectors or doctors to keep track of everything that is happening at firms like Stallite*'.

What price did Stallite's owners pay for poisoning their workers? In 1988 they were prosecuted for failing to suspend a worker certified unfit to work with lead. They were fined just £750.

The Stallite case shows up a number of important issues, among them:

- ▲ employers cannot be trusted with the responsibility of providing medical supervision
- ▲ the HSE deals with employers not workers, especially non-unionised ones; even workers being seriously poisoned do not receive information or assistance from the HSE
- ▲ the HSE depends on co-operation from employers; where employers are not co-operative, they are still given the benefit of the doubt; HSE action against employers takes months or even years
- ▲ doctors tend to form a professional 'club', unwilling to take disciplinary action against 'a colleague'
- ▲ EMAS (the Employment Medical Advisory Service) has only one doctor per 16,000 workplaces, insufficient to enforce health and safety regulations.

Following the Ombudsman's highly critical findings against the HSE over the Stallite case, the British Government is being taken to the European Court for its failure to implement the EC Lead Directive. This will at the same time test the EC's complaints procedures.

What To Go For:

- ▲ remove lead from all but essential uses
- ▲ control lead in air, through proper ventilation, and monitoring by air sampling and observations with a dust lamp
- ▲ control how much lead is inadvertently eaten, by thorough cleaning of surfaces which workers touch, washing and changing facilities
- ▲ lobby to reduce levels to those operating in the USA.

Manual handling of loads

Directive 90/269/EEC: *Minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers*

Nearly a third of all injuries reported to the HSE in Britain, 54,000 in 1989/90 (*HSIB* 190) are caused by lifting or carrying large, heavy, awkward or unstable loads by hand. But the scale of the problem is even greater. Back pain is often seen as an inevitable part of the job. As much as 40% of it is not reported, according to the HSE.

Many injuries are not caused by a single accident. People become damaged because their job entails repeatedly lifting up too high or down too low, handling goods where there is not enough room or where the floor is uneven or slippery, and so on. All of it is preventable. Yet, well over 52 million working days are lost through back pain alone every year (*Health and Safety at Work* 1991). This is a huge toll in human suffering.

NURSING BACK PAIN

'One of the most difficult objects to lift or move is another human being ... it's the wrong shape and weight distribution, it has no conveniently placed handles and it sags in all directions' (Health and Safety at Work 1991).

An adult body of only 10 stone (64 kg) is well above the recommended weight for three women lifting together. Yet nurses, health visitors and those who care for the elderly are expected to lift adult people unaided time and again, often in awkward uniforms. The health workers' union COHSE is particularly concerned. One COHSE survey showed that in the course of an hour's work, two nurses in a geriatric hospital had lifted the equivalent of two and half tons. Of all nurses who leave the profession, 40% do so because of back pain, according to the union.

In June 1991, the Labour Research Department carried out a second survey for COHSE, covering 921 health service workers, three-quarters of them women. More than a quarter reported regularly experiencing back pain at work or at the end of the working day. This mirrors figures from Sheffield, where GP records show that one in four nurses who visit their GP has a history of back pain or injury. Almost one in five in the COHSE survey had taken time off work in the previous 12 months due to back pain or injury which they believed was caused by their work.

A third of those whose jobs involved manual handling and lifting had not received any training in safe lifting or handling whilst working in the health service. Nearly three-quarters mentioned staff shortages

as putting them at risk. Only 43% had been told how to report manual handling problems, and then usually accidents rather than cumulative back pain. Complaints which are registered are more often than not ignored anyway, according to the survey.

The survey confirms that it is not how old you are but how long you have worked in the job which is at the root of your back pain. COHSE wants cumulative back injury to be classified as an industrial disease recognised by the DSS, entitling the sufferers to special allowances.

What the EC Directive Says:

- employers must do all they can to avoid manual handling of loads in the first place
- where handling is unavoidable, employers must reorganise work to keep it to a minimum and *'organise workstations in such a way as to make such handling as safe and healthy as possible'*. In the Annex, factors include appropriate floor surface and foot rests, room to carry out the task, temperature, humidity and ventilation, as well as assessment of the activity itself, the effort required and appropriate rest periods
- workers must receive advice, and preferably precise information, about the load's weight and where its centre of gravity is
- workers must receive any necessary training and be told about the risks they run if they do not carry out their work correctly
- 'handling' is defined ergonomically. It includes lifting, putting down, pushing, pulling, carrying or moving. Body posture is important, like twisting of the trunk, stooping and reaching, as is the distance travelled or the frequency of the handling.

In Britain:

Consultative Document: *Manual handling of loads — Proposals for Regulations and guidance* [Consultation period ended 9 March 1992].

The EC Directive has given the necessary impetus to bring in long overdue legislation. The HSC admits that *'consultation on our domestic proposals has been ongoing for nearly 20 years'* (*HSIB* 187). Employers stalled on proposals in 1982. Revised proposals in 1988 allowed employers to act *'so far as is reasonably practicable'* but were then held over to await the Directive.

At the time of writing, the HSC has issued its Consultative

Document containing its draft manual handling Regulations. The consultation period ended on 9 March 1992, and the new Regulations must be in place by 31 December 1992. The HSC is planning an extensive guidance booklet alongside the Regulations and has included manual handling in its campaign '*Lighten the Load*' launched in September 1991 against musculoskeletal injuries at work.

Far more workers in Britain will now be covered by manual handling legislation. Previous law only applied to certain sectors, and was scattered through several Acts. Now, all industries and sectors are covered except air and sea transport, the police and armed forces. Also, the ergonomic approach to manual handling contained in the Directive is accepted. The redesign of workplaces and handling tasks is included.

Employers must meet the obligations given them by the Directive to avoid manual handling wherever possible, and if not to assess the risks and reduce them. The HSC hopes to persuade employers that the costs of doing this '*will not be grossly disproportionate to benefits*'. Luckily for employers and unluckily for workers, however, the changes still only have to be '*so far as is reasonably practicable*' (Reg.4). The ubiquitous phrase giving British employers dangerously wide scope has crept back in.

Workers also have their obligations. They must use equipment or the work system properly (Reg.5 c). As Sarah Copsey, Health and Safety Officer for the healthworkers' union COHSE, points out, there is a danger that this means workers have an absolute duty, whether or not they have received proper training.

COHSE's Sarah Copsey is also worried about Regulation 5 b. This says that a worker must '*inform his (sic) employer about any physical conditions suffered by him which might reasonably be considered to affect his ability to undertake manual handling operations safely*' (Reg.5 b). '*In the NHS*', she says, '*if you report any physical inability or ailment you would be throwing your job away*'.

It appears that employers, not happy with being made responsible for back injuries at work, want to shift the onus onto individual workers. Regulation 5 b does not take account of:

- the long-term build up of a back condition; nor pain as a complicated mechanism; you may not feel it when you should
- that workers reporting an inability to do the job are at risk of the sack
- that workers not reporting a back problem might not be able to prove unfair dismissal

▲ that if people are required to own up at interview, they may disqualify themselves from a job.

Regulation 5 b is a British addition not appearing in the Directive, whose Annex only goes so far as to say that a worker may be at risk if he/she is physically unsuited to the task. Sarah Copsey believes that 5 b may have been transported from workers' duties contained in the Framework Directive. It is an example of the dangers of European legislation which assumes a consensus between employer and workers which does not in fact exist.

Missing from the HSC's Consultative Document are the Directive's elements concerning workers' rights to information and consultation. The HSC says that these are sufficiently covered in the draft Regulations implementing the EC's Framework Directive but, as we have seen in Chapter 5, they are not. COHSE is asking the TUC to lobby hard on this question.

What To Go For:

▲ better design of the workplace
▲ better design of the task
▲ suitable handling/mechanical aids
▲ splitting up of loads where possible
▲ better training. An emphasis on training can, however, be a red-herring. Research shows that training workers in 'safe' lifting techniques often cannot be applied to real working situations. A patient, for example, can suddenly have a spasm. Nurses need many more mechanical aids such as hoists, alongside better bed design and/or ward layout, and higher staffing levels.
▲ recognition of back injury as an industrial disease.

Noise

Directive 86/188/EEC: *Protection of workers from the risks related to exposure to noise at work*

What the EC Directive says:

In Chapter 3, we saw how Conservative MEPs successfully watered down the EC's Directive on noise as it was passed in 1986, setting the action level at a deafening 90 decibels. One in two workers exposed to 90 dB(A)

averaged through the day will retire deaf. At 85-90 dB(A), over one third will suffer similar hearing damage.

The EC standards have already led to changes for the worse in one country where standards were better. In Italy, a previous legal maximum of 85 dB(A) — with many plants operating at well below this — has now been raised to 90 dB(A), in spite of outcry among unions and occupational health professionals. (See page 84). As the dB scale is logarithmic, a rise from 85 to 90 dB(A) means a doubling in actual noise levels.

We have also seen how inadequate EC consultation procedures were. Despite urgent alerts, the EC was unable to stop the British Government from bringing in regulations which do not meet the Directive. It is now engaged in a long process of deciding whether to take the British Government to the European Court.

The Noise At Work Regulations 1989 in Britain do not meet the Directive in three main areas:

- the Directive emphasises the needs to reduce noise at source (Article 52), while the British Regulations emphasise the wearing of ear protection. As a result, the HSE will find it difficult to prosecute employers who provide hearing protection but nothing else, in breach of the spirit of the Directive. On the other hand, it will be easier to prosecute workers for not wearing ear protection, and workers stand to lose compensation claims.
- the British Regulations effectively ignore the worker consultation/participation requirements of the Directive.
- the claim underlying the Regulations that the NHS can meet audiometric testing requirements of the Directive is, in the words of Stephen Hughes MEP, 'patent nonsense'.

Under the EC Directive, workers have a right to timely examination of their hearing (Article 7(2)). In Britain, employers are not made responsible for monitoring the damage they may be causing. The opportunity to include this in the Noise at Work Act 1989 was missed. According to the HSC, '*Workers, like anyone else, can approach their general practitioners if they're worried about health problems*' (*Financial Times* 1991). But delays of 12-18 months waiting for an audiometry test on the NHS are common. Meanwhile, private medical companies have started to step into the breach, not always in workers' interests, as David Kirk of Chesterfield found out.

HEALTH CHECKS FOR WORKERS: EMPLOYERS' DUTY?

'*What we have said in all our Directives is that the obligation is to provide for the workers to have this examination. That has been true in all the individual Directives that we have had on asbestos, on lead, on noise and so on ... You cannot oblige a worker to have the examination. You can oblige the employer to make sure that those facilities exist, and that is what that is intended to say.*'
Dr. W. Hunter, Directorate-General V, European Commission, in evidence to the House of Lords, 19 October 1988.

But the British Government successfully had it inserted into Directives that health checks may be carried out by National Health Systems. This removes the obligation and costs from employers, shifting them to the public purse instead. It also makes occupational health the responsibility of the worker as an individual.

CONFLICT OF INTEREST

David Kirk works for the engineering firm GKN at Sheepbridge in Derbyshire. Amongst other very loud machinery, he operated a Bullard turning machine so old it was used to turn artillery shells during the Second World War. Every shift for 14 years David had to withstand a whining and whistling noise so loud and shrill it turned him severely deaf. In 1989, he won over £2,000 in compensation from GKN's insurers, in a case which proved that he had been made deaf by his work.

His solicitors then advised David to seek disability benefit. But the DSS in Chesterfield did not accept the existing evidence. It insisted on its own audiometry tests, and sent him to a private health company. This turned out to be GKN Occupational Health Ltd., a company owned by the very employers who had just made David deaf.

GKN's test results revealed, unsurprisingly, no evidence that David's deafness had been caused by his work after all. As a result, in December 1991 the DSS was still refusing to pay him disability allowance.

The EC is well aware that the NHS cannot cope if workers exercise their right to hearing tests given by the Directive. The Commission is therefore gathering evidence, from cases like David Kirk's, to present in a legal action against the British Government in the European Court in Luxembourg.

Workers exposed at work to over 85 dB(A) who are having problems getting 'timely' hearing tests should petition the European Parliament and lodge a formal complaint with the European Commission in Brussels. Advice on how to do this can be obtained from your MEP.

The outcome of this could have an impact on Britain's implementation of the EC Directive on VDUs, which provides for workers having regular eye tests (see page 200).

The HSE has also been criticised for failing to prosecute employers. The whitecollar workers' union MSF has discovered that there was only one prosecution on noise at work in 1989/90. In the seven years from 1981-1988/89 there were only eight prosecutions, with just five resulting in fines against the employer. An MSF-sponsored MP Martin Flannery found through a parliamentary question that there has never been a single improvement notice, prohibition notice or prosecution for noise at work in the mining industry. (*Hazards* 1991)

What To Go For:

- noise control: the HSE calculates a worker's hearing is worth £2,000-3,000, the current level of damages awarded to a deafened worker. If firms spend £3,000 per worker installing noise control measures instead, industrial deafness could be finished. Under the regulations, the employer must at least produce a plan of noise control measures, starting with the noisiest processes or those affecting most people. (Guidance Notes, para 30)
- new machinery: the noise control programme 'should include a positive purchasing policy' for replacing noisy machinery (GN, para 37)
- noise surveys: if it is so noisy that you have to raise your voice to speak to someone nearby (about 85 dB(A)), a noise survey should be carried out by a 'competent' person, i.e. someone who has completed an appropriate course in Acoustics and Noise Control. (Reg.5)
- hearing protection: where control measures fail, insist on proper hearing protection. Remember that inspectors will find it easier

to blame workers for not wearing protection than to get the firm to control noise

- ▲ workers' information and training: employers must provide information and education to all workers exposed to 85 dB(A) or more. (Reg.10) Safety representatives are entitled to further training whenever there is a change in the regulations
- ▲ reducing intolerable legal levels: the deafening 90 dB(A) standard set in the EC Noise Directive could be changed as the Directive is due to be re-examined before 1 January 1994. There also appears to be a move to set a more reasonable 80 dB(A) level in the forthcoming Physical Agents Directive, (see page 195).

Occupational diseases

EC Recommendation 90/326/EEC

Occupational diseases are to be collated into one list recognised throughout Europe. The list will include both recognised and suspected occupational diseases caused by chemical, biological and physical agents. The Schedule will be introduced into national legislation in each EC country and governments must make sure that statistical data on these diseases are collected, and the necessary training and research carried out.

Any worker suffering from one of the listed diseases, and even from an ailment which is not listed but can be proven to be occupational 'in origin and nature', must have the right to compensation.

The Schedule (Annex I) includes:

- ▲ ailments caused by over 50 named chemical agents such as chromium, mercury, ammonia, and acetone
- ▲ skin diseases and skin cancers caused by nine substances like tar and crude paraffin
- ▲ 13 diseases caused by inhaling substances like asbestos and coal dust
- ▲ named infections and parasitic diseases from animals
- ▲ named diseases and conditions caused by physical agents like vibration, noise, muscular overstraining, and ionising radiation.

Annex II is an additional list of ailments suspected of being occupational in origin. These include ailments caused by: ozone, thallium, ethers, esters, copper, zinc, and hormonal substances and bronchopulmonary ailments from soot, tar, and synthetic fibres.

All the substances listed in both Annexes deserve to be there, but the lists seem randomly chosen. Some important, widely used agents are not listed, e.g. epoxy compounds, PVC, hydrochloric acid and hydrobromic acid. Skin diseases from wood are not listed, nor is Q Fever, a disease contracted from cows which should be among the infection diseases and parasites. Some of those in Annex II should be in Annex I, e.g. hydrogen sulphide and ozone.

Unfortunately, this document is a **Recommendation** not a **Directive** (see page 39) and allows for Member States to: *'themselves determine the criteria for recognising each occupational disease in accordance with their current laws or practices'.*

In Britain there is already a long list of diseases and conditions waiting in the pipeline to be recognised as occupational in origin.

Occupational exposure limits

Directive 91/322/EEC

This Directive sets the occupational exposure limits for 27 hazardous substances or group of substances, which should be incorporated into national legislation by the end of 1993.

There is no industrial or scientific basis for the list as it stands. It is merely a list of the most uncontroversial agents and values across the member states. Agents for which there is no consensus, those with a wider range of existing limit values in different European countries or in widespread industrial use where employers fear the cost implications, have not been included.

There was an attempt to lay down exposure limits for 100 dangerous substances, in the proposed 1988 Directive on protecting workers from chemical, physical and biological agents at work. At the time, the European Parliament's Social Affairs and Employment Committee recorded it was '*deeply disturbed*' because '*where no general agreement on limit values exists, the Commission had adopted not the lowest but the highest values applicable in the Community, i.e. those least favourable from the point of view of worker protection*' (Hughes and Hughes 1989). But even this floundered as governments and industrialists balked.

By comparison with the 1991 Directive, the existing British list is longer. At the very least the following agents, which are on the British Table 1 for those of maximum danger, should be added to the EC list:

arsenic	man-made mineral fibres
benzene	trichloroethane
formaldehyde	vinyl chloride
hydrogen cyanide	wood dust
all isocyanates	

The Directive says the list should be expanded, but not how this is to be done. (See 'Updating', page 170)

Meanwhile, the European Commission has signalled that it will later consider including shorter periods of exposure, and a wider range of absorption pathways including through the skin.

Under the Working Environment Act of 1977 in Denmark it is compulsory to abandon using dangerous agents if harmless or less dangerous alternatives exist. Frits Nielsen, an occupational hygienist in Denmark, says that this has successfully encouraged the use of substitutes as an alternative to concentrating on limit values. Some successful substitutions he reports are:

- ▲ basic compounds such as thinned sodium hydroxide have replaced chlorinated organic solvents for de-greasing in the metal and electronics industries
- ▲ soyabean oil is widely used for cleaning rolls on offset printing presses
- ▲ water-based paints have largely replaced organic solvent based paints (which are banned indoors) in the construction industry.

However, Danish health and safety activists have reported that the labelling of carcinogenic solvents in paint has now been stopped. Manufacturers argued that it was '*against free competitive trade*' and put them at a disadvantage because dangerous paint solvents are not labelled in other countries of the EC.

Offshore work

Proposed Directive COM 90/663: *Proposed Directive concerning minimum requirements for improving the safety and health protection of workers in the extractive industries*

For years the UK Offshore Operators Association and the British Government ensured that workers in the UK's offshore sector were denied the collective bargaining rights and health and safety provisions that onshore workers had. Then came Piper Alpha, the disaster which killed 167 oil workers, followed by massive industrial unrest offshore and the Cullen Report. The HSC now has a remit over offshore health and safety, and there are to be 400 staff in its offshore division.

The proposed Directive will cover some of the workplaces excluded from the Workplace Directive, namely oil rigs, mines and quarries. It lays down minimum requirements for working methods, equipment and provision of sanitary and rest facilities.

The Directive *does* include small and medium-sized enterprises but *excludes* transport and diving operations. Its purpose is to extend to the extractive industries requirements similar to those in the Workplace Directive.

At the time of writing, negotiations on the proposals within the Council had not yet begun.

Personal Protective Equipment (PPE)

Directive 89/656/EEC: *Minimum health and safety requirements for the use by workers of personal protective equipment at the workplace*

What the EC Directive Says:

- ▲ Personal Protective Equipment (PPE) means any equipment or accessory worn or held by a worker to protect him/her from one or more hazards
- ▲ PPE is only to be used when risks cannot be avoided or limited well enough by collective protection methods or by work organisation; PPE is only a second line of defence
- ▲ where it is necessary, PPE must:
  - comply with European standards of design, manufacture and testing
  - be appropriate for the risks involved, and not itself lead to any increased risks
  - suit the workplace conditions
  - take account of ergonomic factors and the worker's state of health
  - fit the worker correctly

- employers must provide PPE appropriate to the seriousness of the risk, the frequency of exposure and the characteristics of the workstation; it must be provided free, except where it is also used outside the workplace; employers are responsible for making sure it is working properly and in a hygienic condition
- not covered: ordinary working clothes and uniforms, PPE used by emergency and rescue services, the military, police and other public order agencies, PPE for means of transport; portable devices for detecting/signalling risks
- member states must have adequate rules, drawn up in consultation with employers and workers, to cover when employers must provide PPE
- workers must be given information on all PPE measures, including the risks they are facing and the PPE provided; they must receive training in using the PPE; they and/or their representatives must be consulted in line with the Framework Directive's Article 11.
- annexes contain:
  - a specimen risk survey table
  - a non-exhaustive list of PPE
  - a non-exhaustive list of activities which may require PPE.

An EC Communication published on 30 December 1989 (OJ C 328) contains an additional annex to help with the choice and use of PPE. It covers nine categories of PPE and three aspects of risk (that covered by the PPE, that arising from the PPE itself, and that arising from its misuse).

Because there are so many products covered by the Directive, it needs to be complemented by a huge number of European Standards. This task has been handed to the CEN (*Comité Européen de Normalisation*), the body co-ordinating the work of national standardisation institutes including the British Standards Institute (BSI). The CEN has technical committees which work on particular PPE standards such as eye, head, hearing, and foot/leg protection, respiratory protective devices, protection from falls from heights, and protective clothing.

In Britain:

Consultative Document: *Personal Protective Equipment at Work Proposals for Regulations and guidance* [Consultation period ends 5 April 1992]

HSC Regulations on the use of PPE must be implemented by 31 December 1992. However, regulations to implement the PPE Product Directive (89/686/EEC) have yet to be produced by the Department of Trade and Industry and this delay may prevent PPE purchasers from obtaining CE-marked products as required by the PPE Use Directive.

The proposed Regulations broadly follow the Directive and actually *include* some groups of workers *excluded* from the Directive eg. emergency and rescue workers, the military and the self-employed.

Significantly, the proposed Regulations omit the General Rule set out in Article 3 of the Directive that PPE should only be used '*when the risks cannot be avoided or sufficiently limited by technical means of collective protection or by measure, methods or procedures of work organisation*'. ie. use of PPE is a last resort. In the Consultative Document this has been watered down to read: '*Every employer shall provide suitable personal protective equipment to each of his employees who may be exposed to any risk while at work except where and to the extent that any such risk has been adequately controlled by other means which are equally or more effective*'.

There are a number of other unwelcome differences from the Directive which include some changes of emphasis in responsibility for PPE use from employers to workers:

- ▲ the requirement for workers to '*make full and proper use*' of the PPE
- ▲ the requirement for workers to report loss or defect in the PPE.

Physical Agents at Work

Proposal for a Council Directive on the minimum safety and health requirements regarding the exposure of workers to the risks caused by physical agents

What the Proposed EC Directive says:

The European Commission is planning a Directive to reduce risk of exposure of workers to physical agents such as noise, vibration, electric and magnetic fields, ultraviolet rays and non-ionising radiation.

The EC will set 'action' and 'ceiling' levels for these physical agents. Among the proposals, the Commission is believed to be suggesting setting noise action levels at 80 dB(A), taking the opportunity to reverse the dangerous 90 dB(A) level set in the Noise Directive (see page 186).

Where workers are exposed, employers will have to carry out risk assessments and health surveillance.

Where there is a health risk, employers must provide specific information to workers.

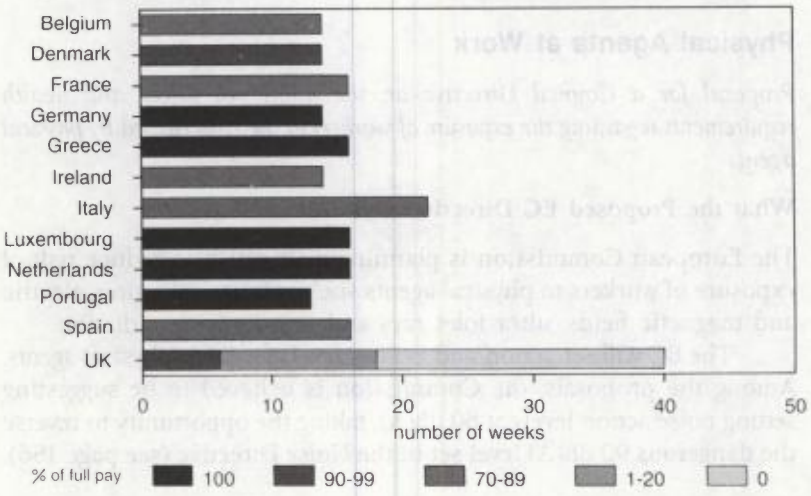
With implementation expected by the end of 1993, this is a key Directive, being drafted through 1992. Workers and trade unions can intervene and try to prevent dilution by employers and governments and bring some significant improvements to Britain.

Pregnant workers

Proposed Directive COM 90/406, amended COM 90/692: *Proposal for a Council Directive concerning the protection at work of pregnant women or women who have recently given birth*

Women in Britain have the worst maternity rights in Europe. Denmark provides 28 weeks maternity leave at 90% pay, while German women get 14 weeks at full pay. Even Greece and Portugal, Europe's two poorest members, give 15 weeks and 90 days respectively at full pay. British women are entitled to a measly 6 weeks at 90% pay and 12 weeks at a fixed reduced sum, only if they have worked with their present employer for at least two years, or five years for part-timers and then only if their earnings meet the National Insurance threshold.

Statutory Maternity Leave in the European Community



A proposed EC Directive would give all women in Europe, including part-timers and temporary workers, at least 14 weeks at full pay. This would mean a big advance for women in Britain, which has the largest proportion of women workers in Europe on part-time. But the British Government stood alone in Europe in its opposition to the Directive, and at the time of writing, instead of being already on the European statute books, the Directive is stuck in an impasse.

What the Draft EC Directive says:

- ▲ maternity leave of at least 14 weeks on full pay, with further leave possible on 80% pay
- ▲ two weeks' compulsory rest before birth, on full pay
- ▲ no loss of earnings for attending ante-natal appointments during working hours
- ▲ periods of sickness during pregnancy, unrelated to the pregnancy, cannot be deducted from maternity leave
- ▲ all work-related rights maintained during pregnancy and maternity leave
- ▲ no dismissal during pregnancy and maternity leave
- ▲ employers must improve the working conditions or hours of pregnant and breastfeeding workers where there is a health and safety risk; if this is impossible, they must suspend them on full pay
- ▲ there must be a real alternative to night work for pregnant women for at least 8 weeks before the birth
- ▲ Annexes give lists of hazardous agents to which pregnant women and those who have recently given birth should not be exposed; employers must provide alternative work for potentially exposed women.

In its lone attempt to derail the Directive, the British Government tried to split it in two. It wanted to keep only what it sees as strictly health and safety related issues in a Directive based on Article 118A (qualified majority voting), and to transfer 'social' provisions such as maternity leave to a separate Directive under Article 235 (subject to unanimous voting) so that it could exercise its veto. It maintained that it was illegal to bring employment matters under Article 118A and threatened to take the matter to the European Court, which would snarl it up for years.

Meanwhile, the Government told the British public that the Directive would cost British industry an extra £400 million a year. It

would *'impose unnecessary regulations which would damage the employment prospects of women in general'* and *'act as a disincentive for employers to recruit women of child-bearing age.'* (Eric Forth, Under-Secretary of State for Employment, in a letter to Anita Pollack MEP, 28 June 1991)

Phil Evans/*T & G Record*

The Dutch, then holding the EC Presidency, tried to work out a compromise in November 1991. Pay levels during the 14 weeks of maternity leave should be set at at least the level of benefits which workers on sick leave get. An agreement was achieved in principle but still the Directive was not adopted at the Maastricht summit in December 1991. The next opportunity is, at the time of writing, the Social and Economic Affairs Council in June 1992.

There is, however, an even more intriguing possibility that this Directive and the one on Working Time (see page 208), the other Directive so hated by the British Government and employers, will be withdrawn by the Commission and then reintroduced, restrengthened by putting back what the British had negotiated out, under the Social Chapter. Though the British 'opted out' of the Social Chapter at Maastricht, they will eventually sign and then the provisions will apply also to British women, retrospectively.

Once Europe gets its way and brings to British women the benefits which other European women get, workers and trade unions will have to make sure that the HSE implements them to the full.

Transport Workers

Proposal for a Council Directive on the minimum safety and health requirements for activities in the transport sector

Recognising that transport workers are another special category needing health and safety protection, new proposals are making their way through the European Commission, though at the time of writing details are not available.

VDUs

Directive 90/270/EEC: *Minimum safety and health requirements for work with display screen equipment*

According to Sir John Cullen, Chair of the HSC, VDUs are *'a simple problem that could have been handled by each of the countries concerned, without any need for an EC Directive'* (*Health and Safety at Work* 1991). This is also what the House of Lords thinks. Its Select Committee on the European Communities took a particular interest when this Directive was still a draft, and concluded that there is 'inadequate justification' for it (House of Lords, 1988). Meanwhile in Europe, the British furniture makers' lobby in particular was extremely active in trying to reduce the impact of the Directive on their trade.

The British Government was opposed to a Directive on VDUs from the outset. Rather than bringing out Regulations, it continues to maintain that the HSE's Guidance Notes on VDUs of 1983 and its leaflet 'Working With VDUs' of 1986 are all that is needed. But the EC has forced its hand and Regulations must be brought out.

In fact, the dangers from VDUs are several and far from simple. Working on VDUs can induce musculo-skeletal disorders like RSI (Repetition Strain Injury), epilepsy, dermatitis and stress and may harm the unborn foetus and eyesight. While the link between some of these and VDUs is not yet scientifically proven, stronger legislation would help combat the harmful free-for-all which employers have been enjoying until now, and the EC Directive is a step in the right direction.

Millions of workers use VDUs in British workplaces. The HSE's own 'guesstimate' is nearly 7 million workstations with VDUs. Some workers spend their entire day inputting data via a terminal, others use a VDU from time to time as part of their job. Many employers have introduced VDUs into the workplace with no consideration at all for the health and safety of the workers, let alone consultation or training.

The whitecollar workers' union MSF, with 40% of its 650,000 members working in offices, reports a significant rise in the number of health and safety complaints reported by office workers since the introduction of VDUs. But the HSE does not collect data on one of the most common and debilitating conditions, RSI, and employers say that workers reporting symptoms, especially women, are being 'hysterical'.

What the EC Directive says:

The Directive, adopted in May 1990, must be implemented in national legislation by 31 December 1992. It must apply immediately to workstations put into service after 31 December 1992; workstations in use before that date must comply within four years.

Its minimum requirements are:

- work assessment: employers must analyse VDU workstations for their impact on workers' health and safety, particularly eyesight, physical problems and mental stress, and they must take appropriate steps to remedy the risks they find
- information/consultation: workers must receive information on all aspects of safety and health relating to their workstation, including the measures the employer is taking. They must also receive training before beginning to work with VDUs or when their work is substantially reorganised. They and/or their representatives must be consulted, in accordance with the Framework Directive of 1989
- rest breaks: the employer must plan the worker's activities so that their work is '*periodically interrupted by breaks or changes of activity reducing the workload at the display screen*'
- eye-tests: employers must provide workers with appropriate eye and eyesight tests by '*a person with the necessary capabilities*'. This must be done before starting VDU work, at 'regular intervals', and if workers experience visual difficulties which may be due to VDU work. Workers must be entitled to ophthalmological examination if the test results show this is necessary. If either test shows it is necessary and normal corrective appliances cannot be used, the worker must

be given a special appliance. Workers must have the tests and the appliances for free. Tests may be done as part of the national health system.

▲ an Annex lays down minimum requirements for:
- VDU equipment (display screens, keyboards, work desk/surface, chair)
- the work environment (space, lighting, reflections/glare, noise, heat, radiation and humidity)
- the operator/computer interface (software and systems). Here it specifically makes illegal any clandestine monitoring of the worker's work performance.

FIET, the Geneva-based international federation of unions in the white-collar sector, has called the Directive 'half-baked' for not including guidelines on maximum daily work time, rest pauses and job design.

The Directive also deliberately contains no provisions for pregnant workers. The European Parliament and Economic and Social Affairs Committee tried to insert a clause so that pregnant workers would have the right to remove themselves from working with VDUs. But the Commission refused, saying there is not enough evidence of the risks (House of Lords 1988). Since then, the draft Pregnant Workers Directive (see page 196) has had a clause inserted on VDU work.

The union view is that there is so much circumstantial evidence that it is now up to employers to show that VDUs pose no risk to pregnant operators, rather than to workers and trade unions to prove that they do. But employers and governments continue to be prepared to put women and their unborn children at risk for the sake of profits.

As an added complication, alongside this Directive, are new standards for the ergonomic aspects of VDU workstations and the way VDU work is organised, set by the International Standards Organisation (ISO) and the European Committee for Standardisation (Comité Européen de Normalisation, CEN). ISO standards are advisory but CEN standards are binding. In the UK, the current standard BS7179 will be changed accordingly.

In Britain:

Consultation Document: *Work with Display Screen Equipment — Proposals for Regulations and guidance* [Consultation period ends 21 May 1992].

At a packed press conference at its London headquarters to launch the

draft Regulations, the HSC continued to play down the dangers associated with VDU work. Sir John Cullen said that *'the health risks to most users are relatively low'*. His colleague Dr. Tim Carter said their concern was *'to reduce the risks in a lowish risk activity'*. But the concerted effort made by the HSE and the CBI, for the employers, during the drafting stage to minimise the impact of the Directive showed their real concerns. They fear a coming wave of compensation claims against employers, particularly for upper-limb disorders like RSI, and the cost implications of having all VDU workstations ergonomically designed and of having to pay for large numbers of eye tests.

In the Special Working Party set up by the HSC to draft the VDU regulations, the TUC representatives were appalled. The HSE and CBI formed a pact and faced the union members with entrenched positions in meeting after meeting. They focused on trying to limit the number of workers covered by the new regulations, concentrating on two elements: the time the worker spends at the VDU and how significant VDU work is to the worker's overall tasks on the one hand, and the definition of a VDU workstation on the other.

In the end, the union representatives were so disgusted that the usual tripartite consensus fell apart. For the first time ever, a special paragraph has been inserted into the Consultative Document saying that in the TUC's opinion *'the proposed regulations do not fully implement both the letter and the spirit of the Directive'*.

Major points:

▲ what is a 'VDU worker'

The HSE Consultative Document says, *'user means an employee who habitually uses display screen equipment as a significant part of his normal work'* (Reg.1(2)c)

Words like 'habitually', 'significant' and 'normal' mean that vast numbers of workers who should be covered will not be. Most of the phrase comes from the Directive itself. The unions could not persuade the HSE/CBI to come up with a more useful formula.

Instead the HSE/CBI changed it for the worse. 'Any worker' in the Directive has become 'employee' in the draft Regulations. With the EC's Temporary Workers' Directive in place (see page 127), those covered ought to include the thousands of office 'temps' hired through agencies and other sub-contracted workers like freelance journalists, and so the draft regulations could be in breach of the European Directive.

According to HSE officials at the press conference, ultimately the question will revolve around how much time is spent looking at the screen. The reality is that if you cannot get access to a lawyer capable of arguing that you fit into the definition, you will not win a case for RSI or anything else against your employer. Non-unionised workers will have no chance.

▲ what is a VDU workstation

There was a long battle in Europe over what a VDU workstation is, and it was supposedly settled by the Directive. But it was brought across the Channel and revived again in the HSE's Working Party.

The TUC believes that the Directive clearly applies to all workstations with a VDU. The HSE and CBI, however, has added a phrase so that the Regulations cover only those workstations with VDU workers as in their narrow definition. The key words in the Regulations are *'any workstation .. which may reasonably foreseeably be used by a user'* (Reg.3).

Workstations do include cash-out equipment and other non-office based equipment which have VDUs, depending on how much time is spent looking at them, according to the HSE.

▲ eye tests

The Regulations give each employee the right to request an eye and eyesight test before using a VDU, regularly after that and when s/he is having visual difficulties which s/he thinks is related to the VDU work. Attempts by employers to turn this into eye-screening only, which would have been much more superficial, seem to have floundered.

The wording of the Consultative Document is very precise. It makes the employer liable for eye and eyesight tests, and information about them, only for employees and not for *'those working in his undertaking'*, e.g. temps and freelancers, who must get them from their 'own employer'. Temps and freelancers supplied rather than employed by an agency would not be covered. The Directive makes no such distinction.

Employers are responsible for repeat tests, but the Guide to the Regulations says these need only be offered every 10 years.

Employers are responsible for providing 'special' corrective appliances which mean glasses or lenses which make reading the VDU easier. They are not made responsible for 'normal' glasses or lenses for everyday use Reg.5(3). The HSE does not accept that VDU work can damage eyesight.

▲ rest breaks

The HSE has refused to lay down any criteria for rest breaks. It says that the range of VDU-related tasks and working practices across the country is too vast. What constitutes a break 'depends on the individual', for example. The Executive does not agree that upper limits could be set beyond which employers would simply not be allowed to exploit women data-entry operators, for example.

Instead, the guidance notes tell us that rest breaks 'should' be taken before the onset of fatigue, '*if possible away from the screen*', and so on. '*Employers should decide what is appropriate*'. However, in the Guide to the Regulations it does admit that: '*Short, frequent breaks are more satisfactory than occasional longer breaks; eg. a 5-10 minute break after 50-60 minutes is likely to be better than a 15 minute break every two hours.*' Also: '*Periods of rest should be included in working time and not result in longer hours.*'

There is one new step worth noting. The HSE now accepts that VDU work-related stress is a big problem, and that this is related to workers having little control over their work patterns. In the Consultative Document it suggests employers should allow VDU workers '*some discretion as to how they carry out tasks*'.

This is a path which, according to Dr. Pamela Buley of the HSE's Health Policy Division, the Executive has in the past 'feared to take'. It turns what previously would have been considered an industrial relations issue into a health and safety one. Now the HSE is concerned not just with hazardous equipment, workplaces or substances, but also work patterns and speed, and workers' control over their work environment. To the extent that they are, however, their concern seems to be more towards persuading employers that productivity will increase than protecting workers as such.

▲ reduction of risk

For those workers covered by the Regulations, employers will have to undertake assessments of risks. They must then '*reduce the risks .. to the lowest extent reasonably practicable*', paying particular attention to positioning of chairs, screens, and lighting, say the guidance notes.

Employers are reassured that the changes should not cost industry too much. Averaged out, the HSE has calculated a cost of £42 per workstation. As one commentator put it, this would buy about one leg

of an ergonomically-designed chair. Nevertheless, workers should use the new Regulations to press their employers for better workstations.

▲ radiation

The Schedule repeats the Directive by saying that *'all radiation with the exception of the visible part of the electro-magnetic spectrum shall be reduced to negligible levels from the point of view of the protection of users' health and safety'.*

The HSE says there is no evidence that VDU radiation emissions affect unborn children. In fact, the *'epidemiology is particularly reassuring'* that there are no risks to pregnant women, said one official. Therefore, women have no right to be be moved from VDU work, and employers do not have to monitor radiation levels. For the *'small proportion of women who are not reassured by the evidence, it may be sensible for them to transfer.. it is a situation engendered by their anxiety, not by any objective view'*, said the official. A question at the press conference on the more stringent anti-radiation practices in Sweden and the USA went unanswered.

▲ monitoring of workers

The Schedule to Reg.3 bans the use of software to monitor VDU users, e.g. their work-rate, without their knowledge.

With some 7 million workstations to be monitored, and as few as 50 new factory inspectors trained every year, how is the HSE going to enforce the new regulations? Sir John Cullen does not see the need to request more resources from the Government. For him it is a question of education through updated guidance pamphlets, available to employers 'on request', and persuasion through improvement notices, with penalties only a very last resort. It seems a complacent response to the rash of RSI cases hitting the country.

As the Banking, Insurance and Finance Union (BIFU) says, *'It is the courts which will force employers to act by awarding compensation, not this Directive'.* And the only way for workers to fight for compensation in the courts is to join a union and get the union's lawyers behind you.

The story of the VDU Directive and its counterpart British Regulations is, then, one of a huge confrontation as both sides of industry begin to realise the impact on health and safety of the technological revolution of the 1980s. The Directive itself is badly flawed; the draft British Regulations even worse. It is quite possible that the matter will go to the European Court and drag on there for years.

BT — BITTER TESTIMONY

In a case against British Telecom taken by the National Communications Union on behalf of two data processing operators suffering from RSI, a British Court found that BT had breached Section 14 of the Offices, Shops and Railway Premises Act 1963, and this breach substantially contributed to the operators' injuries.

This establishes a precedent for legal recognition of a phenomenon VDU workers have known about for years — that there is a link between VDU keyboard work and disabling upper limb disorders or RSI.

Both women were awarded £6,600. BT and the NCU have both appealed.

Work equipment

Directive 89/655/EEC: *Concerning the minimum safety and health requirements for the use of work equipment by workers at work*

What the EC Directive says:

- work equipment must be suited to the work to be carried out; it must not constitute a hazard to the worker using it; work equipment must be maintained to a level of safety which complies with the Directive, throughout its working life
- employers must make the 'right' choice of equipment, taking into account the specific working conditions and hazards in the premises, and ensure that it is used properly used
- where risks cannot be completely avoided, employers must take measures to minimise the risk; only designated and trained workers can use, repair, modify or maintain work equipment which involves a specific risk
- 'work equipment' means any machine, apparatus, tool or installation used at work
- 'use of work equipment' means any activity involving work equipment such as starting or stopping it, its use, transport, repair, modification, maintenance, servicing and cleaning
- minimum requirements contained in the Annex include:
  - protection against specific hazards such as the risk of fire and

explosion, disintegration, contact with hot or cold surfaces or with dangerous parts of machinery
- the nature of emergency control and warning devices and where they are located
- work equipment which emits hazardous gas, vapour, liquid or dust must be fitted with containment/extraction devices
- work equipment must be stabilised with clamps, and fitted with guards, warning devices and the means to isolate it from its energy source
- maintenance logs must be kept up-to-date.

Work equipment provided to workers after 31 December 1992 must comply with the Annex (unless other Directives supercede). Equipment already in use by that date must comply no later than 31 December 1996.

▲ information/consultation: workers must have adequate information that they can understand, concerning at least the conditions of use of work equipment, foreseeable abnormal situations, and past experiences with the equipment where relevant; operators and maintenance workers must be adequately trained; workers and/or their representatives must be consulted according to Article 11 of the Framework Directive (see Chapter 5)

There is some overlap between this Directive and the Machinery Directive (89/392/EEC, amended 91/368/EEC) which concerns trade and installation of new machinery in Europe, and is part of the harmonisation process of the Single Market under Article 100A. In Britain, the Department of Trade is the authority responsible for implementing the Machinery Directive.

Meanwhile, the European Commission is already working on more proposals for specific equipment (e.g. woodworking machinery) and developing more rules for the use of equipment.

In Britain:

Consultative Document: *Provision and Use of Work Equipment — Draft Proposals for Regulations* [Consultation period ended 6 March 1992]

Past protection against hazardous work equipment has been generally covered by the HSW Act. COSHH and many other Regulations and codes have also covered specific situations. Overall, the law has become

confused, with some provisions technically well outdated, and some conflicting with each other.

The HSC has taken the opportunity to rationalise the situation with a new set of Regulations – the Provision and Use of Work Equipment Regulations. These repeal, modernise and streamline the old ones with a single code. Also, a wider range of industries and services are now covered, (but not air and sea workers, for whom the Department of Transport is responsible).

'The prevention of industrial accidents and ill-health caused by unsafe or unsuitable work equipment requires unremitting and careful attention, particularly as technology changes.' Sir John Cullen, Chair of the HSC

The draft Regulations generally meet the Directive, though the general principle of the EC Directive that risks should be avoided wherever possible is not specifically stated in the draft Regulations. The Regulations go beyond the Directive by:

- ▲ placing duties on the self-employed
- ▲ protecting the public using work equipment in non domestic premises (e.g. launderettes)
- ▲ including protection against splashing of hot material (Reg.4).

The general provisions (Nos. 5-11) come into force by 1 January 1993. The specific ones (Nos. 12-25) apply immediately to new equipment and four years later to existing equipment, as the Directive stipulates.

In Germany the safety assessment of work equipment has been carried out by the *Berufsgenossenschaft*, union/management bodies responsible for a wide range of issues such as work insurance and workplace inspections.

With the European standardisation committee (CEN) co-ordinating the implementation of Article 100A Directives, such as the Work Equipment Directive, German trade unionists fear that they are being displaced.

Working Time

Proposed Directive COM 90/317, amended COM 91/130: *Proposal for a Council Directive concerning certain aspects of the organisation of working time*

'Many workers are driven to work long hours, mainly in order to achieve a decent level of income, even though the nature and duration of such extra work may have an impact upon their health and safety and that of their fellow workers'.
(European Parliament Session Document A 3-0378/90/B)

'There is no evidence that working more than 48 hours per week injures health and safety.'
Employment Secretary Michael Howard (*Daily Telegraph* 4 December 1991)

'We have looked into this on several occasions and there is no good evidence to suggest that, within reason, hours of work or patterns of work have any effect on health and safety'.
Sir John Cullen, Chair of the Health and Safety Commission (*Health and Safety at Work* 1991)

In allocating responsibility for the Clapham Rail disaster which resulted in the deaths of 35 people in 1988, the investigator Anthony Hidden QC found that the cause of the poor signal maintenance work (which in turn caused the accident) was the *'constant repetition of weekend work in addition to work throughout the week which had blunted his working edge, his freshness and his concentration ... in the three months before the accident he had had one sole day off in the entire 13 weeks. I find this to be totally unacceptable ... it was a practice which had in fact been going on for years in British Rail and was one which was well known to management. It should not have been countenanced and it was a contributory cause to the accident.'*

Britain is the only EC member state to have almost no regulation of the working week, overtime or night work. It also has the fewest national rules on public holidays and statutory leave (*Health and Safety at Work* 1991). British workers tend to work longer hours than their counterparts elsewhere in Europe.

In contrast to the British, French employers manage to run their businesses on an official working week of 39 hours. In Germany, the metalworkers' trade union IG Metall, the largest in Europe, won a 35-hour working week for its 2.7 million members (before German reunification). However, the attempt to introduce a European Directive on Working Time limiting the working week to 48 hours was received with near apoplexy by the British Government and employers.

What the Draft EC Directive says:

- a working week of not more than 48 hours per 7 days, calculated over a 2-month period
- a minimum rest period of 11 consecutive hours per 24 hours; those who work more than 6 hours must be given a break
- a minimum of 35 uninterrupted hours rest per 7 days on average, calculated over a two-week period; the 35 hours can be reduced to 24 hours where '*objective, technical or work organisation*' justify it
- an annual paid holiday of 4 weeks, which cannot be replaced by payment in lieu
- overtime must not interfere with minimum rest periods
- an average night shift of no more than 8 hours in every 24, which can be calculated over a two-week period; night workers whose work involves special hazards of heavy mental strain (to be defined by national law or collective agreement) are banned from working more than 8 hours in any 24-hour period
- night-shift workers entitled to free health assessment before beginning work and then regularly
- a night-shift worker suffering from work-related ill-health to be transferred to day-work, when possible
- where the 'competent authorities' (in Britain, the HSE) request it, employers must inform them of the regular use of night workers.

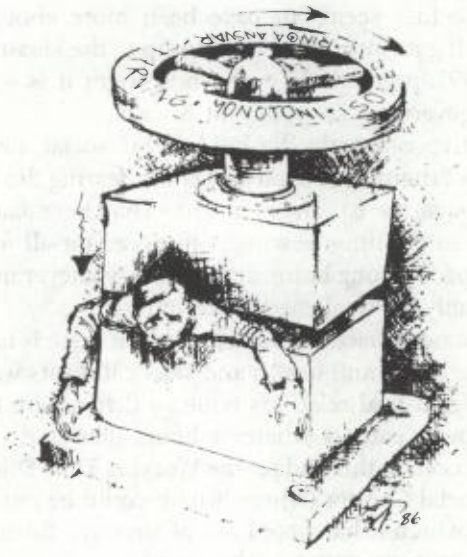
However, the draft Directive has several serious defects. An article on the consultation and participation of workers has been deleted after pressure from opponents. It also allows so many get-outs for employers ('derogations' in the jargon) that vast numbers of workers at most risk will not be covered at all.

Many of those excluded are workers who have to take their rest-breaks at their place of work, perhaps because it is impractical to travel home or because employers argue, rightly or wrongly, that there must be 'continuity of service'.

This includes transport workers, offshore installation workers, security guards, prison warders, residential care workers, media and post/telecoms workers, gas/electricity/water production or distribution workers, and workers in industries where work '*cannot be interrupted on technical grounds*'!

Also excluded are workers where there is a 'surge of work', which would include seasonal workers in agriculture or tourism, but might

well also include production workers where a big order has just come in! 'Technical grounds' and a 'surge of work' are, of course, precisely the kinds of reasons which employers give to extract dangerously long working hours out of their workers.



Reproduced from Gardell B (1987): *Work Organisation and Human Nature*

At the time of writing, the text has not been finalised and the process of the Directive is held up. When or if it moves again, the European Parliament is expected to try to challenge the list of 'derogations'. But, if passed, the final Directive will probably not be far from the draft. For most British workers, therefore, a Directive which might have brought real benefit by introducing limits on at least the most exploitative working hours, will probably now bring little, even if it does get onto the European statute books.

To Britain's Employment Secretary Michael Howard, by contrast, the proposals were 'completely unreasonable'. He alleged they would cost British industry £5 billion. Curbing Sunday working, proposed by the French and German Governments, could not be applied in Britain, he announced, because Britain is a 'multicultural' society, an unusual excuse for a Tory Minister.

The Government seized on the question of overtime. British workers, particularly men, have traditionally concentrated on doing overtime to maximise their take-home pay and could well be made hostile to the idea of 'Eurocrats' in far-off Brussels curbing their rights to a better pay-packet. The press carried reports on how those dependent on overtime to pay off mortgages would suffer.

In fact, the fuss seems to have been more about the British Government flexing its muscles in the run-up to the Maastricht summit in December 1991, particularly over whose right it is — Brussels' or London's — to govern social policy in Britain.

The Directive is exactly the kind of EC social measure which Conservatives in Britain have been so against, fearing the introduction of '*socialism through the backdoor*', in Mrs. Thatcher's famous phrase. They are happy to continue leaving it to a free-for-all for employers to assess the impact of long hours and to take whatever measures they see fit, curbed only by weakened trade unions.

The Government's tactic is to maintain that there is no connection between working hours and health and safety. It wants working hours to be solely an industrial relations issue so that, where trade unions are weak, employers can set whatever hours they like.

If it can succeed in this and get the Working Time Directive shifted from the EC's Social Charter (where Britain could be outvoted) to the Social Chapter (which it has opted out of anyway), British employers will be free to continue doing as they want.

The HSC could not have been quicker off the mark to back up the Government's argument. At a press conference on 12 December 1991, the day after the Maastricht summit, HSC officials maintained that they were not able to answer questions on the Working Time Directive or the Pregnant Workers Directive (see later) as these are 'industrial relations issues only' handled by the Department of Employment.

At the very same moment, the British Government was using the Working Time Directive to justify repealing one of the few Acts in Britain which does regulate working hours, the 1908 Mines Regulation Act, which sets maximum hours for underground miners. The Government, again backed up by the HSE, is arguing that the 1908 Act has nothing to do with safety, but EC officials disagree and say that the move would be illegal under European law. The miners' union NUM, Labour MPs and MEPs are getting ready for another pitched battle in the law courts. (see 'Britain: The Slippery Slope', page 144)

With the Directive stalled, there is some doubt how or whether it will be revived in its current form any way. The Portuguese may reintroduce it after they take over the EC Presidency in April 1992. Alternatively, the Directive may get withdrawn and reappear, restrengthened, under the Social Chapter, which will eventually apply to Britain even if not now (see Pregnant Workers' Directive, page 196). If ever they get adopted, the measures are due to be implemented in EC member states by the end of 1994.

Workplaces

Directive 89/654/EEC: *Concerning the minimum safety and health requirements for the workplace*

What the EC Directive says:

New workplaces and those altered, extended or converted after 31 December 1992 must comply with many conditions, including:

- emergencies: workers must be able to evacuate as quickly and safely as possible; emergency doors must open outwards and must not be locked; emergency routes must be indicated by signs; there must be appropriate fire-fighting equipment; safety equipment must be regularly maintained and checked.
- maintenance: the workplace must be maintained and faults liable to affect workers' health and safety put right; the buildings must be solid and stable; electrical equipment must be properly designed and installed; the workplace and its equipment must be regularly cleaned.
- environment: there should be adequate ventilation, room temperature and lighting; workers must be able to open and close windows; floors must not be slippery or bumpy or have holes; '*workrooms must have sufficient surface area, height and air space to allow workers to perform their work without risk to their safety, health or well-being*'; workers must have sufficient freedom of movement.
- facilities: there should be properly equipped rest rooms (except for office workers who are supposed to be able to relax during breaks), changing rooms, toilets, showers where appropriate; pregnant women and nursing mothers '*must be able to lie down to rest in appropriate conditions.*'

- disabled workers: employers must organise workplaces to take account of any disabled employees they have, particularly in relation to toilets, washing facilities, workstations and means of access.
- information/consultation: workers must be kept informed and they/their safety representatives must be consulted over health and safety measures.

Workplaces already in use must also comply with most of these conditions (except those concerning the building's infrastructure), by the beginning of 1996. Workplaces not covered:

- workplaces inside means of transport, e.g. bus-drivers' cabins
- means of transport outside the workplace
- agricultural and forestry land

Workplaces covered by separate directives:

- temporary or mobile (construction) sites
- extractive industries e.g oil-rigs
- fishing boats

In Britain:

Consultative Document: *Proposals for Workplace (Health, Safety and Welfare) Regulations and Approved Code of Practice.* [Consultation period end 15 May 1992].

Up to now, the HSW Act has placed general duties on all employers, and specific types of workplaces have been covered by specific legislation, for example the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963. The EC Directive will now make almost all places of work subject to specific rather than general provisions, for example schools and hospitals.

The HSC admits in its Consultative Document that its desire for a non-prescriptive approach to health and safety legislation has been constrained by the level of detail included in the Workplace Directive.

However, many of the detailed provisions (eg. provision of toilets and size of workrooms) have been relegated to an Approved Code of Practice which will carry less weight than if they were included as an annex to the Regulations, as is the case in the original Directive.

Significantly, the provisions for disabled workers and rest facilities for pregnant women should apply to existing as well as new workplaces once the Regulations have been implemented.

SICK BUILDING SYNDROME

- 'Fresh air' ventilation systems recirculating polluted air, passing over dead mice and birds and sweeping up bacteria and mites as it goes
- Water in humidifiers alive with micro-organisms
- A cocktail of vapours from synthetic materials used in modern building construction mixed with typing correction fluids and hairsprays

All these can cause headaches, nausea, eye strain, allergies and asthma among workers. Employers call it 'Monday morning sickness', as if misspent weekends are to blame. But increasingly it is being recognised that it can be the workplace which is 'sick'.

The HSE says that existing Regulations and guidance are good enough to deal with Sick Building Syndrome. A House of Commons Select Committee has disagreed.

> '*The Government states quite firmly that the HSE and the local authorities between them have full powers and responsibilities to deal with 'sick buildings' ... this is not the view expressed to us by the HSE who sees its responsibilities confined to dangers from working machinery or emissions within particular industries*', complained Conservative MP Sir Hugh Rossi in his capacity as Chair of the Committee on the Environment, which had just carried out an enquiry into indoor pollution.
>
> '*Insofar as offices and their air quality are concerned*', Sir Hugh continued, '*the HSE washes its hands, stating that this is a matter for the employer or the local authority, which in turn do nothing. The Government must do more to ensure that there is a responsible body in charge which is alive to its duties and acts upon them.*' (Environment Committee 1991)

Protection of Young People at Work

Two Directives are being proposed, one setting a minimum age for child workers, and another on employment conditions for young workers

including medical checks and a ban on certain types of work for people under 18.

EXCLUDED: Workplaces inside means of transport

Drivers' cabs in lorries and buses have never been covered by health and safety law in Britain. The EC Directive continues to keep them excluded.

Pete Gibson, Chair of the Passengers' Services Group of Region 1 of the transport workers' union TGWU, told the London Hazards Centre, *'There's no legislation at all covering the conditions in which drivers work, even though they have the lives of passengers in their hands as well as other road users.*

Most lorries and buses have no clutch these days, so the left leg doesn't get used. Pressure of the seat under the thigh makes it go numb. We call it the 'left leg problem'.

Then there's the question of temperature. We have drivers stuffing newspapers up their trouser legs to try to keep warm. In hot summers the temperature in a cab can rise to 43°C. You can be sweltering above the waist and numb with cold below.

When drivers are distracted by that kind of discomfort there is always the danger that it will have an impact on passenger safety, apart from their own health.

In the TGWU we are running a campaign to improve the design of cabs, but employers are always trying to squeeze more space for more passengers or goods. We argue with them that under Section 1 of the HSW Act they have a general duty to look after their employees, but it isn't enough. Things might improve with a special Directive through Europe but I haven't heard of one yet.''

7

WHERE DO WE GO FROM HERE? IDEAS AND INITIATIVES FOR ACTION IN EUROPE

Previous chapters have illustrated how the decision-making process on health and safety has shifted from the UK to the EC. It's worth noting that, out of the 248 Articles contained in the Treaty of Rome, less than 20 are to do with social provisions, since the main purpose of the internal market is to free the movement of capital and goods. Until the introduction of Qualified Majority Voting in 1987, the the debate over most new pieces of legislation took seven to eight years and resulted in a series of Directives extensively watered down to achieve the unanimity required to become law. Since 1987, the whole process has accelerated and has resulted in much more exacting and useful Directives. Cumbersome though the process is, the European Commission is still more responsive, and certainly more sympathetic, to workers' rights than Whitehall.

We're still learning how best to deal with the EC, and many problems facing trade unionists are only just coming to light. A long process of education, information collection and exchange, and consolidation lies ahead.

In this chapter, we look at some of the obstacles to progress, some examples of the ways in which organisations in other EC countries have used the new legislation, and offer some ideas for the future.

Problems for British trade unionists:

- ▲ getting information quickly enough to exert influence in shaping Directives
- ▲ getting information into the Commission to suggest areas for legislation
- ▲ the Government's lack of willingness to transpose Directives fully into UK law
- ▲ hostility of some employers to implement health and safety measures
- ▲ lack of enforcement of UK health and safety laws

- lack of workers' rights to insist on implementation in the workplace
- lack of basic trade union organisation on health and safety
- low profile given to health and safety by trade unions
- lack of resources for workers to exercise the rights they do have
- lack of communication and co-operation between trade unions both within the UK and throughout Europe.

These and many related problems are inhibiting progress, and health and safety activists have a massive task ahead to set about resolving them. A combination of the take-up of existing legislation, particularly the 1977 Safety Reps and Safety Committees Regulations; a vigorous approach to using new EC legislation; and campaigning here for the adoption of the best features of safety organisation and standards in other EC countries, points the way forward.

STRONG LAWS — ON PAPER

European legislation provides some positive opportunities for improvements in occupational health and safety. However, many employers will ignore the new legislation wholesale, in the same way as they fail to abide by their existing legal duties, and many employers who are aware of their duties will do the minimum in terms of cost, time and trouble. Even the best employers will fulfil only the letter, not the spirit of the new laws. The has been been amply illustrated by the failure to implement the Lead Regulation (see page 180): the Parliamentary Ombudsman's report into lead poisonings at Stallite Batteries was highly critical of the Health and Safety Executive, but no steps appear to have been taken by the HSE to remedy the problems in getting employers to control lead exposure. The hazards of lead have been known for thousands of years, and if lead isn't being controlled, then it's hard to have confidence that other hazards will be controlled either.

The political intention of the European legislation is to provide greater industrial democracy, with increased workers' rights to information, training, consultation and representation. All the Directives contain clauses on balanced participation in decision-making on health and safety at work. The Framework Directive explicitly provides for all workers to have these rights and for the right to refuse dangerous work without the fear of victimisation. In the proposed UK enactment

of the European Directives, these rights for workers have either been re-interpreted (so as to weaken them) or they have been omitted altogether.

LAWS WITHOUT RIGHTS

It is futile to have legislation which sets specific standards on health, safety and welfare, without provision for arrangements by which those standards can be achieved. That is, by providing structures for worker representation and consultation. It must be ensured that all workers have the right to receive full and proper information on all matters relating to health and safety in sufficient time to be able to comment on them, so that they are genuinely consulted, not just kept informed. Whatever is said about a common identity of interest on health and safety, there remains a fundamental conflict between improvements in health and safety on the one hand, and profits and production on the other.

All UK legislation allows employers to make a cost-benefit analysis to determine what is 'reasonably practicable.' So, whilst clear duties on employers exist, they are tempered by economic considerations, which need to be countered by equally weighted arguments from workers' representatives on the costs to workers' health.

Since European Directives are to be interpreted by member states in accordance with national laws and practice, in the UK they are invariably subject to the qualifying clause 'as far as is reasonably practicable' that is 'provided that the employer doesn't think it costs too much.' The shift in employment patterns from large, direct employing concerns to small and medium-sized enterprises (SMEs) will be reinforced. The SME sector will be largely unregulated, the most hazardous jobs will be concentrated there, and will have the effect of allowing the dirty end of industry to set the standards.

LEARNING THE LESSONS — THE TRADE UNION RESPONSE

A recent report on worker participation in health and safety commissioned by the HSE (Walters and Gourlay 1990) found that the trade union movement has not fully exploited the organisational

potential of health and safety. However, the TUC has in part responded, following the 1990 TUC Congress, by setting up a new TUC Health and Safety Project (TUC 1991).

Objectives of the TUC Health and Safety Project

The first and most fundamental objectives are to promote the role of safety reps, and basic organising, and to make improvements through co-ordinated action in the following areas:

- appointment, training and organising of safety reps, and to increase numbers of reps
- establishment and functioning of more safety committees
- the relationship of trade union safety reps to union structures and wider organisation
- facilities from employers
- take up of rights to information, training and consultation
- recording of successes
- gathering information on collective agreements
- ensuring that every trade union member has access to a safety rep.

February 1992: safety reps prepare for the European Year of Health and Safety by attending a TUC seminar co-ordinated by the London Hazards Centre on all aspects of European legislation. Alan J P Dalton

Hesitation creeps into the TUC proposals when the subject of roving or regional safety reps is raised. But how else are members in industries which are scattered or transitory, like construction, agriculture and the service sector to have access to a trained safety rep? The right to appoint roving safety reps is already enjoyed by Equity and the Musicians' Union, and needs to be extended to all unions. Similar reluctance is shown towards giving safety reps the right to stop the job in the face of imminent and serious risk. The opportunity presented itself in the Framework Directive and was lost because of the failure of the trade union movement to take this right seriously and insist on it.

The second priority of the TUC Project is participation in the European legislation-making process and maximising trade union influence over standards. The third is how to maximise implementation of laws already in place, such as COSHH, and the Noise Regulations, as well as the forthcoming UK Regulations on the Framework Directive and its five daughter Directives.

EUROPE AND THE TRADE UNIONS

So, how can we exert the maximum trade union influence over EC proposals, as well as over their transposition into UK law and their subsequent implementation? Two fundamental problems emerge in the struggle to get to grips with the very wide range of issues in the EC's current health and safety programme. Firstly, the difficulty of getting early information on new EC proposals from the Commission. The TUC has begun to produce regular updates on the programme, and is pressing the European Trade Union Confederation (ETUC) in Brussels to take on this role. Secondly, there's a lack of co-ordinated input from the UK trade unions on proposals. Again, the main channel being used is the ETUC, and in particular the trade union group on the 'Luxembourg Committee', or Advisory Committee on Safety, Hygiene and Health Protection at Work (see page 31).

The British TUC has representatives on this committee, and the European Commission is supposed to resource and service this group, consulting them on everything that's being proposed, and giving opportunities to comment at all stages. The hope is to agree a common approach with trade unions from other member states. However, the Advisory Committee has been unable to deliver, partly as a result of the inadequate resourcing and servicing of the committee by the EC which has been responsible for documents being received too late to

be of any use, not translated into all the community languages, and texts having altered radically from one meeting to the next. All this has made consultation of committee members impossible. The Advisory Committee as a whole (including employer representatives) registered a formal complaint with the Commissioner for Social Affairs, Vasso Papandreou. However, there are few signs of improvement a year after the complaint was made.

Ideas for developing TUC action in Europe

- The TUC should improve and develop its co-ordinating role on Europe — TUC representatives occupy some key positions in Europe, but are not yet getting the information in or out effectively
- Providing training, briefings and guidance for negotiators on forthcoming legislation
- Using their influence on the Health and Safety Commission's Industry Advisory Committees to follow Directives affecting particular sectors and in setting technical standards
- Improving consultation arrangements with the HSC on the transposition of EC Directives into UK law. Negotiations over the VDU Regulations resulted in an impasse, and a breakdown in the consultative procedure (see page 202). Working parties should be formal, not ad hoc. There is little point in a tripartite system where the views of one of the social partners, ie. the unions, can be freely ignored. This has resulted in allowing the HSC to omit and reinterpret key clauses of Directives by excluding the clauses in question from the Regulations and instead including them in the Guidance Notes, which carry far less legal weight.
- The TUC should use the Advisory Committee to comment, criticise, and contribute to ideas, and to propose specific amendments to proposed and draft legislation. Co-ordination of their responses with the trade unions from other member states should be improved
- The TUC should develop contacts with the key Commission officials who have responsibilities for particular Directives.

Ideas for Trade Union action in Europe

- Trade unions should make better use of MEPs for input via the Economic and Social Affairs Committee. MEPs welcome input from

trade unionists. The Bakers' union worked with Durham MEP Stephen Hughes to introduce an 'own initiative resolution' (like a private members bill) on repetition strain injuries (RSI). This is currently being considered by the Commission, who are investigating RSI as a European-wide problem.

- Trade unions should also use their International Trade Secretariats to feed into the ETUC, instead of relying solely on the TUC to carry forward their views. This tactic has been used very successfully on health and safety by the print unions and by the Bakers' union among others (see Contacts and Resources).
- Trade unions should use the Trade Union Technical Bureau and its Industry Advisory Committees as a source of information on standard setting (see Contacts and Resources).
- Complain about the inadequate transposition of Directives. Trade unions must have effective consultation on draft legislation. They need an opportunity to scrutinise it to ensure it embodies both the intention and the content of the Directive. If it doesn't, then MEPs on the specialist committees should be alerted, as should the European Commission, which has the responsibility of ensuring that Directives are properly transposed and implemented.

PROGRESSIVE PRACTICES

In the following section we look at some alternative models to the UK health and safety system in Germany, the Netherlands and Denmark.

Germany

Works Councils can be elected in any workplace where there are five or more employees. A Works Council has the right to co-determination on health and safety measures and a right to check that health and safety regulations are being implemented and complied with. In addition, Works Councils can propose improvements on health and safety and can negotiate such agreements with management. If a Works Council files a complaint and the management fails to respond to it, the Council can call in the Labour Inspectorate or the Technical Inspectorate of the accident insurance association. *Inspectors must carry out their duties in close co-operation with the Works Council, whose members have legal protection against dismissal or other forms of victimisation.*

Ordinary workers, however, don't enjoy this protection and workers in organisations where there is an ineffective Works Council, or in small organisations, may be reluctant to raise health and safety matters for fear of victimisation. Some unions are trying to redress this shortcoming by introducing health and safety rights into their general work relations agreements with employers. Under German law, such agreements are legally binding, although they only cover single industries and trades. A pioneering agreement has been reached for the printing industry. If this attempt works, it will give workers the same protection as they would have through a State Act.

Another recent development in Germany is the activity of Health Insurance companies on ill-health prevention and health promotion. Besides more conventional approaches based on individual life-style, a few projects have tried to inform workers on occupational health risks and their basic health and safety rights. These initiatives may open up new possibilities to reach workers, especially in small firms and in trade which are poorly unionised, and so make vital information accessible to them.

The Netherlands

The Netherlands' 1981 Act on Working Conditions sets out standards and procedures, including the right to stop dangerous work. It is enforced by the Labour Inspectorate, which has similar powers to the HSE, but which must contact the works council and safety committee when they visit a workplace.

An occupational health service (*Bedryfsgezondheitsdiensten*) is responsible for individual health checks and carries out research on working conditions, monitoring, and ergonomics. All companies with more than 500 employees must have its own occupational health service or subscribe to a regional one.

Worker-oriented research in the Netherlands — Science Shops

Since 1977, each major university has a Science Shop which can carry out worker-oriented research for works councils and safety committees. Some have faculty-based shops, like the chemistry shop at the university of Amsterdam. Science shops are strictly client and demand oriented, they can be used by organisations that meet the following criteria:

- inability to pay for research
- having no commercial aims
- being able to implement the results

Science Shops work mainly with trade unionists and environmental groups. The following is a typical example of a Science Shop study:

> In co-operation with the main cleaners' union, a cross-sectional study was made of the workload and stress of office cleaners. It found that the heavy workload, the fact that cleaning had to be done in a short time, as well as exposure to cleaning agents were important factors influencing working conditions.
>
> At the same time an inventory and assessment of all the chemicals used as cleaning agents in the Netherlands was completed.
>
> These two studies were brought together in *The Big Clean Up*, a book which was distributed to the trade unions as well as to the employers. The book is used on trade union training courses.

The Institute of Work and Health

In addition to the Science Shops, a multi-disciplinary institute that can carry out long-term research has been set up in the medical faculty of the University of Amsterdam. Its aims are:

- promotion of health and safety of the workforce
- co-operation with the trade unions
- to carry out long-term research to identify problems arising from long-term exposure
- to provide education and training to students and trade unionists

Denmark and the Scandinavian system

By far the most participative system for improving occupational health and safety is in operation in Denmark, and very similar systems are used in Sweden and in Finland.

The countries operate **Working Environment Funds** (WEFs), based on mandatory contributions from all employers via a very small pay roll levy. The Fund is separate from and additional to treasury funding

for the Inspectorate, and is used to pay for health and safety information, training, research and development of safer substitutes for hazardous substances, and occupational health services.

Denmark's Working Environment Act sets out to *'Create a safe and sound working environment which shall at any time be in accordance with the technical and social development of society'.* It places great emphasis on local health and safety activities, rather than national standards on paper, without implementation.

The Working Environment Act describes a safe and healthy working environment as being free from any effects that may in the long term, or in combination, be physically or psychologically damaging to health, even if they don't pose an immediate risk of accidents or sickness.

Occupational health services

Selected industries must establish an occupational health service which must provide a high degree of prevention, with the focus on the workplace, ie production processes, rather than patching up workers. The occupational health service provides advice on all aspects of industrial hygiene including:

- ▲ working conditions analysis ie. ergonomics and workplace arrangements
- ▲ consultancy when buying new equipment of any kind
- ▲ health surveillance and examinations
- ▲ noise, vibration, lighting, ventilation, air monitoring etc.

In a recent project on back injuries in construction, the occupational health service filmed workers and analysed the kind of equipment and mechanical aids required to eliminate the need for manual handling, or where that was really not possible, to reduce loads to safe levels. In close co-operation with the construction trades unions, they produced a video for use in union branches and safety committees to show how ergonomically designed equipment (mainly hydraulic equipment, lightweight materials and trolleys) could reduce loads carried by over 60%. As a result of the project, and years of arguing from the trades unions, cumulative back injuries in construction are now on the Danish schedule of prescribed industrial diseases.

Workers' research and the development of *Aktionsgruppen Arbejdere Akademikere* (AAA or Work Environment Action Group of Workers and Academics)

As the working environment movement developed in the 1970s, one of the major barriers for workers' groups was the lack of knowledge about the complex hazards at work. Faced with the need for independent information, trade unions contacted the students' organisations at the universities and invited them to work with the unions on industrial hazards. The co-operation that developed stills exists, although in a more formalised structure.

Some outstanding reports were produced by AAA in the 1970s based on workers' experiences of occupational disease, supplemented by official figures and occupational health studies. The report on noise and shiftwork in Copenhagen's breweries compelled the employers to reduce dangerous noise levels for more than 750 jobs.

AAA has over 300 members: workers, safety reps, shop stewards and trade union officials and branches as well as doctors, engineers, chemists and other academics. They give advice on specific hazards; publish pamphlets on different hazards and distribute them; they also publish a newsletter; and they organise meetings, including the 1990 European Work Hazards Conference.

The case for a Working Environment Fund in the UK

A central demand of the Hazards Campaign is the establishment of a working environment fund (WEF) in the UK (Jackson 1991) paid for, as in the Scandinavian model, by a small proportion of employers' payroll tax. It would provide not just a safeguard against accidents, but also promote the prevention of occupational illness. Using WEF resources, trade unions could have a direct influence on the type of research undertaken, mount major campaigns and provide free information and training for members.

More comprehensive safety rep cover could be provided, such as roving/regional safety reps for diverse workforces such as agriculture, construction and small workplaces. Furthermore, by spreading the burden of cost thinly across all employers, it could provide resources for employers to go well beyond their current legal obligations.

To complement existing workplace safety organisation, such as election of safety reps and setting up of safety committees, a WEF would provide training, research, occupational health services, independent advice and information and resources for trade unions.

Occupational health research

This would include workplace inspections and identification of hazards, as well as research into hazardous substances, environments, processes and systems of work. Currently there is very little independent research, especially after government cutbacks in university funding. Research findings are worth nothing unless they have a practical application in the workplace, and the fund would provide a system for dissemination of information to workers' reps and advisors.

Occupational health services

The role of occupational health services would primarily be preventive and include carrying out surveys of the working environment in order to identify, measure and eliminate or control hazards; and to carry out health monitoring and provision information and education. Currently, about 90% of workplaces have no occupational health services. Those that do exist have a deservedly bad reputation in the Labour movement, because of their role in policing the workforce.

Information

The HSE targets its information at employers. The HSE produces information only in English. A WEF would produce worker-oriented publications, videos and other materials in languages other than English. Trade unions and workers' health and safety organisations would have access to computer databases on occupational health and safety, and resources to employ independent advisers and specialists.

Training

At the moment, few workers have any health and safety training. The Fund would resource training for reps going well beyond the current

stage one and stage two TUC courses, and including courses on specific hazards and legislation.

Trade unions

Few trade unions have full time health and safety officers at their head offices, fewer still exist at regional level. Those trade union publications that are available are paid for out of members subscriptions. The Fund would make resources available to finance trade union health and safety officers at national and local level. Health and safety publications, research and surveys on work hazards faced by their members could be commissioned and distributed to the members.

Campaigning for a Working Environment Fund

Despite two TUC Congress decisions to support the establishment of a working environment fund, and a positive decision from the 1991 Labour Party conference, there's no mention of a WEF in the TUC Health and Safety Project proposals. Activists will have to campaign vigorously to achieve progress on this. The TUC appears to be concerned that a WEF might in some way undermine the sterling work of the HSE. The same concerns were expressed in Scandinavia, and have proved to be without foundation. The treasury would continue to fund the statutory enforcement authorities.

A WEF would be paid for by employers' liability insurance, and given that the estimated cost of time lost through *prescribed* industrial disease and *reported* industrial accidents is £25 billion every year, a contribution from employers' liability insurance would be money well spent.

One way for activists to push the issue is to discuss WEFs at trade union branch and regional meetings, and to put through motions. such as:

> *'This organisation welcomes the TUC support for a Working Environment Fund in composite motion 7 of the 1988 TUC Congress, and will campaign for the establishment of such a fund. A WEF will be financed by mandatory contributions from employers, and would make resources available to trade unions for health and safety training, research and facilities'.*

THE HAZARDS CAMPAIGN IN THE UK

The Hazards Campaign is a loose coalition of groups whose aim is to publicise the preventable nature of deaths, injuries and disease at work, and to use the knowledge of academics combined with the expertise of safety reps to promote good practice.

Hazards groups include:

- health and safety advice centres
- trade union safety committees
- trade union health and safety specialists
- safety reps
- trade union resource centres
- occupational health projects
- campaigns to combat the hazards of asbestos, pesticides, repetition strain injuries.
- Construction Safety Campaign
- Bereaved Relatives Support Group

The Campaign wants basic rights for workers to:

- refuse dangerous work
- to know what they're working with
- get trade union recognition from employers
- paid leave to attend health and safety training organised through the union

Safety reps should have the right to:

- stop the job
- be involved in health and safety planning at all stages
- receive all information on health and safety from employers and the HSE
- regular paid leave for health and safety training
- the right of appeal to an against HSE inspectors or environmental health officers who have not enforced the law in their workplace
- roving safety reps

The law

The Campaign has called for changes in the law to:

- abolish crown immunity
- provide a Freedom of Information Act

- provide a working environment fund from employers' liability insurance

Injured workers

- There needs to be an urgent review of the present system of compensation. Disablement benefits are meagre and very difficult to qualify for. Obtaining compensation requires injured workers or bereaved relatives to prove negligence on the part of the employer. The Campaign supports no-fault compensation, and a much wider range of prescribed diseases.
- Deaths from 'accidents' at work should be the subject of a thorough investigation to rule in or rule out the possibility of manslaughter.
- Inquests into industrial deaths should be much more detailed, and recommendations should be made by the trade unions, the HSE, the coroner and the coroners jury on preventive measures. At present, inquests are cursory, almost always return a verdict of 'accidental death', and do nothing to learn from the circumstances of industrial deaths.

The Campaign organises:

- an annual national conference, attended by over 500 safety reps, and always over-subscribed
- events and seminars organised by the various campaign groups all the year round, and National Hazards Week in June each year, which is the main focus for co-ordinated events
- *Hazards Bulletin* the National magazine for trade union safety reps

Get involved:

- get delegated to attend hazards campaign events
- support your local hazards centre
- start your own local campaign group as a regional trade union safety campaign

International Hazards Campaign

The Hazards Campaign is successfully building international contacts with related organisations in Europe. At the time of writing, the main

focus for its activities is the **European Work Hazards Conference** to be held in Sheffield in September 1992. The first European Work Hazards Conference was held in Strasbourg in 1987, since then conferences have been held in Hamburg and Copenhagen, each year with increasing success. The conferences are part of a rolling programme of meetings and information exchange. There is a Steering Committee with members based in France, England, Scotland, Ireland, Italy, Austria, Denmark, Holland, Germany, Finland and Spain, and the network of contacts is growing and formalising. Improved communication is being facilitated by the availability of electronic mail or E-mail which allows organisations with small computers to correspond quickly and cheaply via national and international telephone lines. (Contact your nearest hazards centre for further information on E-mail.)

The aims of the International Hazards Campaign are to:

- build firm and continuing links between trade union and other health and safety organisations across Europe
- encourage awareness of occupational health and safety amongst workers throughout Europe
- develop a charter of health and safety rights to cover access to information, the role of health and safety enforcement agencies and to discuss common approaches to the development of occupational health and safety
- to exchange information on safer processes, substances, environments and systems of work between local and international workers' health and safety groups.

Development of contacts and exchange of information via the International Hazards Campaign has enabled British trade unionists to use examples of good practice to campaign for improvements in UK workplaces. For example, the progress won in Denmark on substituting safer substances for the use of organic solvents helped a construction union campaign against solvent-based paints in the UK.

Sectoral exchange visits

The international conferences provide valuable opportunities to discuss hazards common to particular industries, but also to organise visits to workplaces and trade union safety committees. From these direct contacts there have been several exchange visits in the engineering, construction and health sectors, with more planned for the future.

The South Hampshire Hazards Group has built strong links with the French trade union confederation the CFDT. Through the local trades council and WEA, they got their exchange visit on health and safety in 1991 recognised as a trade union education course, allowing the UK reps to have facility time and expenses paid.

Workers' Health International Newsletter (WHIN)

WHIN reports on the health and safety movement worldwide. WHIN is distributed throughout Europe. It is translated into Spanish and distributed in Latin America (see Contacts and Resources).

Workers' memorial day

On 28 April each year there's an international day of events to highlight the preventable nature of deaths from industrial accidents and disease. Demonstrations and other events are organised, such as the planting of commemorative trees or putting up plaques.

A construction worker displays a Construction Safety Campaign banner for Workers' Memorial Day Eve Barker

Campaign for implementation of European legislation

Several unions are now gearing up for implementation of European legislation. Get your union to provide:

- training — the TUC and the WEA are already running courses on Europe. Make sure reps are trained, and ask your union to provide more of its own courses which are industry specific
- briefings on new legislation and the implications for your industry
- action plans for implementation, and on how to use your union structure for information and support
- negotiators' guides to get the best from the Regulations
- trade union bulletins on success stories
- sectoral exchange visits
- mechanisms for consultation on forthcoming legislation
- regional trade union safety campaigns on hazards, including co-operation with all unions and hazards campaign groups
- regional trade union safety committees
- health and safety on all branch agendas
- contact with your International Trade secretariat
- contact with MEPs
- help in getting motions through conferences
- complaints when directives are not properly transposed
- support for the TUC Health and Safety Project
- support for hazards centres and the hazards campaign
- support for *Hazards* and *WHIN*

From your employer

Through your union, push for:

- take up of new rights to information, training and consultation
- more safety reps
- more facility time
- more inspections
- more meetings with members
- establishment of safety committees, and more meetings where they're already in operation
- more time off for trade union training
- training from employers for all workers on hazards of the job eg. lifting, VDUs, ergonomics, RSI, noise reduction. You decide what you need

- involvement in risk assessment
- trade union consultation on who is a 'competent person' to carry out hazards assessments and to be the designated safety officer for the employer
- copies of all HSC/E guidance

From the HSC/E

Through your union push for:

- effective consultation on new laws
- information from Industry Advisory Committees
- guidance on assessments
- guidance on elimination of hazards eg. using mechanical aids to avoid the need for manual handling
- guidance on controlling hazards eg. practical guidance on ergonomic principles
- commitment to support the work of trade union safety reps in preventing occupational accidents and ill-health, and to push for full implementation of the Safety Reps and Safety Committees Regulations including the protection of victimised safety reps
- annual inspections from the enforcement authority, with full co-operation with trade union reps
- more vigorous enforcement policy — improvement and prohibition notices should be issued and followed up to make sure regulations are complied with
- more vigorous prosecution policy towards negligent employers. Currently, only around 2,000 prosecutions a year are taken, and nearly all of them are heard in the Magistrate's Court, where fines are so low as to be no deterrent at all.

With the rejection of a change of Government in the 1992 General Election it remains to be seen whether the result of that election will radically alter the prospects for progress on health and safety through Europe for the better ... or for the worse.

8

CONTACTS AND RESOURCES

UK WORK HAZARD GROUPS, LOCAL TRADE UNION HEALTH AND SAFETY GROUPS AND RESOURCE CENTRES

Contact your local centre for information on support groups or campaigns in your area on particular hazards such as asbestos, construction safety, repetition strain injuries (RSI), pesticides.

Birmingham Region Union Safety and Health Campaign (BRUSH), Unit 304, The Argent Centre, 60 Frederick Street, Birmingham B1 3HS; Tel: 021 236 0801

Birmingham Trades Council Work Hazards Committee, 8 Milk Street, Digbeth, Birmingham B5 5SU; Tel: 021-236 0801

Greater Manchester Hazards Centre, 23 New Mount Street, Manchester M4 4DE; Tel: 061 953 4037, EMail: MCRI:GM-HAZARDS

Health and Safety Advice Centre, Unit 304, The Argent Centre, 60 Frederick Street, Birmingham B1 3HS; Tel: 021 236 0801

Health and Safety Project, Trade Union Studies Information Unit, Southend, Fernwood Road, Jesmond, Newcastle NE2 1TJ; Tel: 091 281 6087

Hull Action on Safety and Health, 3 Ferens Avenue, Cottingham Road, Hull HU6 7SY; Tel: 0482 471731/213496

Liverpool TUC Health and Safety Committee and Trade Union Resource Centre, 24 Hardman Street, Liverpool L1 9AX; Tel: 051 709 3995

London Hazards Centre, 3rd Floor Headland House, 308 Gray's Inn Road, London WC1X 8DS; Tel: 071 837 5605; EMail: GEO2: london-hazards

Lothian Trade Union and Community Resource Centre, 2a Picardy Place, Edinburgh EH1 3JT; Tel: 031 556 7318; EMail: GEO2:LOTHIAN-TUCRC

Milton Keynes Health and Safety Group and Resource Centre, Labour Hall, Newport Road, New Bradwell, Milton Keynes; Tel: 0908 606139

Nottingham TUC Safety and Health Committee, c/o 118 Mansfield Road, Nottingham; Tel: 0602 281898

Portsmouth Area Health and Safety Group, 32 Rowner Close, Gosport, Hants PO13 0LY; Tel: 0329 281898

Sheffield Area Trade Union Safety Committee, 18 Halsall Road, Sheffield S9 4JF; Tel: 0742 422608

South East Scotland Hazards Group, 10 Fountainhall Road, Edinburgh; Tel: 031 667 1081 x 2932

South Hants Work Hazards Group, 55 Garstons Close, Titchfield, Hampshire PO14 4EP; Tel: 0329-42932

Tyneside Hazards Group, 3 Grasmere Road, Wallsend, Tyne and Wear NE28 8PX

Walsall Action for Safety and Health, 7 Edinburgh Drive, Rushall, Walsall WS4 1HW; Tel: 0922 25860

West Yorkshire Hazards Group, Box 22, Bradford Resource Centre, 31 Manor Row, Bradford BD1 4PS; Tel: 0274 725046

Wolverhampton Law Centre, 2/3 Bell Street, Wolverhampton; Tel: 021 236 0301

Women and Work Hazards Group, London Women's Centre, Wesley House, 4 Wild Court, London WC2B 5AX

Occupational Health Projects

Bradford Occupational Health Project, 23 Harrogate Road, Bradford, South Yorkshire BD2 3DY; Tel: 0274-626191 4

Camden Occupational Health Project, c/o Bloomsbury Health Promotion Department, St Pancras Hospital, 4 St Pancras Way, London NW1 0PE; Tel: 071-383 0997

Liverpool Occupational Health Project, c/o Merseyside Trade Union Resource Centre, 24 Hardman Street, Liverpool L1 9AX; Tel: 051-709 3995 x 246

Sheffield Occupational Health Project, Mudford Buildings, 37 Exchange Street, Sheffield S2 5TR; Tel: 0742 755760

FURTHER SOURCES OF INFORMATION AND HELP

CAITS (Centre for Alternative Industrial and Technological Systems), 404 Camden Road, London N7 0SJ; Tel: 071 607 7079. CAITS carries out national and international research for local authorities and trade unions.

City Centre, 32-35 Featherstone Street, London EC1; Tel: 071 608 1338. City Centre is an advice and information centre for office workers in London

Labour Research Department, 78 Blackfriars Road, London SE1 8HF; Tel: 071 928 3649. LRD provides regular publications, information on employment conditions and company reports to affiliated organisation.

HAZARDS GROUPS AND CONTACTS IN EUROPE

Austria

PPM., Consulting Team on Chemistry and Industry, Weingartshofstrasse 38, Linz, A-4020, Austria, Tel: 010-43-732-55533

Denmark

AAA, Work Environment Action-group of Workers and Academics, Valby Langgade 55, Valby, 2500, Denmark, Tel: 010 453 116 6043

Danish Workers Health Centre, BST — Bedriftssundhedstjenesten, Enghavevej 80,1, Copenhagen, 2450, Denmark, Tel: 010-45-0121-2110

NNS, C.F.Richs Vej 103-3, Copenhagen, 2000 F, Denmark, Tel: 010-45-3186-1885

France

Le Collectif Maladies et Risques Professionnels, Batiment H, 4 Place Jussieu, 75230 Paris Cedex 05, France

Germany

Arbeit und Gesundheit, Informationsstelle Arbeit und Gesundheit, Schanzenstrasse 75, 2000, Hamburg, 36, Germany, Tel: 010-49-40-439-2858

Bilag Brief, Berliner Infoladen fur Arbeit und Gesundheit Gneisenaustr. 2a, Berlin 61, D-1000, Germany, Tel: 010-49-30-693-2090

DGB Bundesvorstand: Abt. Umwelt und Gesundheit, Hans-Bockler Strasse 39, D-4000, Dusseldorf 30, Germany, Tel: 010-49-211-430-1277
DGB-Kooperationsstelle Hamburg, Besenbinderhof 56, D-2000, Hamburg 1, Germany, Tel: 010-49-40-285-8290/1

Forschungs und Beratungsinstitut Gefahrstoffe, Gerberau 2, Freiburg D-7800, Germany, Tel: 010-49-7612-89579 9

IFAF, Informastionsstelle fur Arbeitsmedizinische Fragen, Neuhofstrasse 41 (Hinterhaus), D-6000, Frankfurt 1, Germany, Tel: 010-49-6959-70721

IG Metal: Abt. Arbeitsschutz, Wilhelm Leuschner Strasse 79-85, Postfach 11 10 31, D-6000, Frankfurt, 11, Germany, Tel: 010-49-6926-47621

Italy

AEA, Associazione degli Esposti all'Amianto, c/o Medicina Democratica, via del Carracci, 2, Milan, 20149, Italy, Tel: 010-39-02-498-4678

The Netherlands

Chemiewinkel UvA; Risikobulletin, Chemistry Shop, Nieuwe Achtergracht 166, Amsterdam, 1018 WV, Netherlands, Tel: 010-31-20-525-607, Fax: 010-31-20-525-5698

Risikobulletin, De Wetenshcopswinkel, Herrengracht 530, Amsterdam 1017 CC, Netherlands

Spain

Salud Laboral, Ajuntamento de Badalona, Ave Marti Pujol 86, Spain

INFORMATION ABOUT TRADE UNIONS

Trades Union Congress, Congress House, Great Russell Street, London WC1B 3LS; Tel: 071 636 4030

Scottish TUC, Middleton House, 16 Woodlands Terrace, Glasgow G3 6DF; Tel: 041 332 4946

Wales TUC, Transport House, 1 Cathedral Road, Cardiff CF1 9SD; Tel: 0222 372345

Irish Congress of Trade Unions, 19 Raglan Road, Dublin 4, Ireland; Tel: 0001 081 680641

Irish Congress of Trade Unions, Northern Ireland Committee, 3 Wellington Park, Belfast BT9 6DJ; Tel: 0232 681726

Information on local trade union organisations and on trades councils can be obtained from the Regional Councils of the TUC:

Northern, TUC Northern Regional Office, Swinburne House, Swinburne Street, Gateshead NE8 1AX; Tel: 091 490 0033

Yorkshire and Humberside, TUC Regional Office, 30 York Place, Leeds LS1 2ED; Tel: 0532 429696

North West, TUC Regional Office, Baird House, 41 Merton Road, Bootle, Merseyside L20 7AP; Tel: 051 922 5294

West Midlands, TUC Regional Office, 10 Pershore Street, Birmingham B5 4HU; Tel: 021 622 2050

East Midlands, TUC Regional Office, 61 Derby Road, Nottingham NG1 5BA; Tel: 0602 472444

East Anglia, TUC Regional Office, 119 Newmarket Road, Cambridge CB5 8HA; Tel: 0223 66795

South East, TUC Regional Office, Congress House, Great Russell Street, London WC1B 3LS; Tel: 071 636 4030

South West, TUC Regional Office, 1 Henbury Road, Westbury-on-Trym, Bristol BS9 3HH; 0272 506425

INTERNATIONAL TRADE UNION ORGANISATIONS

International Confederation of Free Trade Unions, (ICFTU), Rue Montagne aux Herbes Potagères 37-41, 1000 Brussels, Belgium 010-322 217 8085 Telex: 26785 ICFTU B Fax: 010-322 218 8415. The ICFTU is the world trade union body to which the TUC is affiliated

International Trade Secretariats

The following secretariats are associated with the ICFTU:

Agriculture: International Federation of Plantation, Agricultural and Allied Workers (IFPAAW), 17 Rue Necker CH-1201, Geneva, Switzerland 010-4122 7313105 Telex: 28775 ifpa ch Fax: 010-4122 7380114

Building and construction: International Federation of Building and Woodworkers (IFBWW), ICC-Building A, 20 Route de Pre-Bois, Geneva-Cointrin, Postal Address: PO Box 733, CH-1215 Geneva 15 Airport, Switzerland 010-4122 7880888 Telex: 415327 fitbb ch Fax: 010-4122 7880716

Chemicals and petroleum: International Federation of Chemical, Energy and General Workers' Union (ICEF), 109 avenue Emile de Béco, 1050 Brussels, Belgium 010-322 647 0235 Telex: 20847 Fax: 010-322 648 4316

Commercial: International Federation of Commercial, Clerical, Professional and Technical Employees (FIET), 15 avenue de Balaxert, CH-1219, Geneva-Chatelaine, Switzerland 010-4122 7962733 Telex: 418736 Fiet ch Fax: 010-4122 7965321

Diamonds: Universal Alliance of Diamond Workers (UADW), Langekievitsstraat, 57 — Bus 1 B — 2018 Antwerp, Belgium 010-323 2329151

Education: International Federation of Free Teachers' Unions (IFFTU), N2 Voorburgwal 120-126, 1012 SH Amsterdam, Netherlands 010-3120 6249072 Telex: 17118 ifftu nl Fax: 010-3120 6381089

Food: International Union of Food and Allied Workers' Association (IUF), Rampe du Pont-Rouge 8, CH-1213, Petit-Lancy, Switzerland 010-4122 7932233/37 Telex: 429292 uita ch Fax: 010-4122 7932238

Journalism: International Federation of Journalists (IFJ), IPC, Boulevard Charlemagne 1 — Bte 5, 1041 Brussels, Belgium 010-322 2380951 Telex: 61275 ipc

Metalworking: International Metalworkers' Federation (IMF), Route des Acacias 54 bis, Case Postale 563, CH-1227 Carouge-Geneva, Switzerland 010-4122 436150 Telex: 423287 metl ch, Fax: 010-4122 431510

Mining: Miners' International Federation (MIF), 109 Avenue Emile de Beco, B-1050 Brussels, Belgium010-322 646 2120 Fax: 010-322 648 4316 Attention MIF Telex: 20847 IceFbx b attn MIF

Post and telecommunications: Postal, Telegraph and Telephone International (PTTI), 36 Avenue du Lignon, CH-1219, Le Lignon-Geneva, Switzerland 010-4122 7968311/2/3 Telex: 28142 Fax: 010-4122 7963975

Public services: Public Services International (PSI), Centre d'Aumard, 45 avenue Voltaire, F-01210 Ferney-Voltaire, France 010-3350 406464 Telex: 380559 isp F Fax: 010-3350 407320

Textiles: International Textile, Garment and Leather Workers' Federation (ITGLWF), 8 rue Joseph stevens, Bte 4, B-1000 Brussels, Belgium 010-322 5122833/5122606 Fax: 010-322 5110904

Transport: International Transport Workers' Federation (ITF), 133-135 Great Suffolk Street, London SE1 1PD 071-403 2733 Telex: 8811398 itfldng Fax: 071-357 7871

HEALTH AND SAFETY EXECUTIVE

Head Office:

14 Baynards House, 1 Chepstow Place, Westbourne Grove, London W2 4TF; Tel: 071 221 0870

Area Offices:

South West, Inter City House, Mitchell Lane, Victoria Street, Bristol BS1 6AN; Tel: 0272 290681

South, Priestley House, Priestley Road, Basingstoke RG24 9NW; Tel: 0256 473181

South East, 3 East Grinstead House, London Road, East Grinstead, West Sussex RH19 1RR; Tel: 0342 326922

London North, Maritime House, 1 Linton Road, Barking, Essex IG11 8HF; Tel: 081 594 5522

London South, 1 Long lane, London SE1 4PG; Tel: 071 407 8911

East Anglia, 39 Baddow Road, Chelmsford, Essex CM2 0HL; Tel: 0245 284661

Northern Home Counties, 14 Cardiff Road, Luton, Beds LU1 1PP; Tel: 0582 34121

East Midlands, 5th Floor, Belgrave House, 1 Greyfriars, Northampton NN1 2BS; Tel: 0604 21233

West Midlands, McLaren Building, 2 Masshouse Circus, Queensway, Birmingham B4 7NP; Tel: 021 200 2299

Wales, Brunel House, Fitzalan Road, Cardiff CF2 1SH; Tel: 0222 473777

Marches, The Marches House, Midway, Newcastle-under-Lyme, Staffs ST5 1DT; Tel: 0782 717181

North Midlands, Birkbeck House, Trinity Square, Nottingham NG1 4AU; Tel: 0602 470712

South Yorkshire, Sovereign House, 40 Silver Street, Sheffield S1 2ES; Tel: 0742 739081

West & North Yorkshire, 8 St. Pauls Street, Leeds LS1 2LE; Tel: 0532 446191

Greater Manchester, Quay House, Quay Street, Manchester M3 3JB; Tel: 061 831 7111

Merseyside, The Triad, Stanley Road, Bootle L20 3PG; Tel: 051 922 7211

North West, Victoria House, Ormskirk Road, Preston PR1 1HH; Tel: 0772 59321

North East, Arden House, Regent Centre, Gosforth, Newcastle-upon-Tyne NE3 3JN; Tel: 091 284 8448

Scotland East, Belford House, 59 Belford Road, Edinburgh EH4 3UE; Tel: 031 225 1313

Scotland West, 314 Vincent Street, Glasgow G3 8XG; Tel: 041 204 2646

Public Enquiry Points, Library and Information Services:

Baynards House, 1 Chepstow Place, Westbourne Grove, London W2 4TF; Tel: 071 221 0870; Telex: 25683

St. Hugh's House, Stanley Precinct, Trinity Road, Bootle, Merseyside L20 3QY; Tel: 051 951 4381; Telex: 628235

Broad Lane, Sheffield S3 7HQ; Tel: 0742 892345 Telex: 54556

Health and Safety Commission Consultative Documents are available from:

Sir Robert Jones Memorial Workshops, Units 3 and 5-9, Grain Industrial Estate, Harlow Street, Liverpool L8 4UH. Tel: 051-709 1354/5/6

Environmental Health Officers

EHOs are employed by local authorities. Phone numbers will be in the Business and Services Directory or in the Thomson Local Directory.

Institution of Environmental Health Officers (IEHO), Chadwick House, Rushworth Street, London SE1 0QT; Tel: 071 928 6006 18

Royal Environmental Health Institute of Scotland (REHIS), Virginia House, 62 Virginia Street, Glasgow G1 1TX; Tel: 041 552 1533

HMSO Publications Centre

(mail and telephone orders only): PO Box 276, London SW8 5DT; Tel: 071 873 9090 (orders), 071 873 0011 (general enquiries)

HMSO Bookshops:

49 High Holborn, London WC1V 6HB (counter service only); Tel: 071 873 0011

258 Broad Street, Birmingham B1 2HE; Tel: 021 643 3740

Southey House, 33 Wine Street, Bristol BS1 2BQ; Tel: 0272 264306

9-21 Princess Street, Manchester M60 8AS; Tel: 061 834 7201

80 Chichester Street, Belfast BT1 4JY; Tel: 0232 238451 19

71 Lothian Road, Edinburgh EH3 9AZ; Tel: 031 228 4181

MEPs

All local reference libraries carry lists of Members of the European Parliament

European Commission

Contact the nearest Commission office for the address and phone number of your local European Information and European Documentation centres.

European Commission: Edinburgh Office, EC, 9 Alva Street, Edinburgh EH2 4PH, Tel: 031-225-2058, Fax: 031-226-4105

European Commission: Cardiff Office, EC, 4 Cathedral Road, Cardiff CF1 9SG, Tel: 0222-371631, Fax: 0222-395489

European Commission: Belfast Office, EC, Windsor House, 9/15 Bedford Street, Belfast, BT2 7EG, Tel: 0232-240-708, Fax: 0232-248-241

European Commission: London Office, EC, Jean Monnet House, 8 Storey's Gate, London, SW1P 3AT, Tel: 071-973-1992, Fax: 071-973-1900 & 1910, TLX: 23208 EURUK G

European Commission: Belgium, EC, Rue Archimede 73, Brussels, 1040 Belgium, Tel: 010-322-235-3844, Fax: 010-322-235-0166

European Commission, EC, Rue de la Loi 200, Brussels, 1049 Belgium, Tel: 010-322-235-1111, TLX: 21877 Comeu B

European Commission: Denmark, EC, Ostergade 61, Postbox 144 Copenhagen, 1004, Denmark, Tel: 010-4533-144140, Fax: 010-4533-111203

European Commission: France-Marseille Office, EC, CMCI, 2 rue Henri-Barbusse, Cedex 01, Marseille, 13241, France, Tel: 010-33-9191-4600, Fax: 010-33-909807

European Commission: France — Paris Office, EC, 61 rue des Belles-Feuilles, Cedex 16, Paris, 75782, France, Tel: 010-331-4501-5885, Fax: 010-331-4727-2607

European Commission: Germany — Munich Office, EC, Erhardstrasse 27 Munich 2, 8000, Germany, Tel: 010-498-9202-1011, Fax: 010-498-9202-1015

European Commission: Germany — Berlin Office, EC, Kurfurstendamm 102 Berlin 31, 1000, Germany, Tel: 010-493-0892-4028, Fax: 010-493--892-2059

European Commission: Germany — Bonn Office, EC, Zitelmannstrasse 22 Bonn 1, 5300, Germany, Tel: 010-492-285-30090, Fax: 010-492-285-300950

European Commission: Greece, EC, 2 Vassilissis Sofias Avenue, P O Box 30284, Athens, 10674, Greece, Tel: 010-301-724-3982, Fax: 010-301-724-4620

European Commission: Ireland, EC, 39 Molesworth Street, Dublin 2 Ireland, Tel: 010-353-171-2244, Fax: 010-353-171-2657

European Commission: Italy — Milan Office, EC, Corso Magenta 59 Milan, 20123, Italy, Tel: 010-392-801-505/6/7/8, Fax: 010-392-481-8543

European Commission: Italy — Rome Office, EC, Via Poli 29, Rome 00187, Italy, Tel: 010-396-678-9722, Fax: 010396-679-1658

European Commission: Luxembourg, EC, Batiment Jean Monnet, Rue Alcide De Gaspari, 2920, Luxembourg, Tel: 010-352-43011, Fax: 010-352-43014

European Commission: Portugal, EC, Centro Europeu Jean Monnet Largo Jean Monnet 1-10, Lisbon, 1200, Portugal, Tel: 010-351-1154-1144

European Commission: Spain, EC, Calle Serrano 41-5a planta, Madrid 28001, Spain, Tel: 010-341-435-1700, Fax: 010-341-576-0387

European Commission: The Netherlands, EC, Korte Vijverberg 5, The Hague, 2513 AB, The Netherlands, Tel: 010-317-0346-9326, Fax: 010-317-0364-6619

EUROPEAN HEALTH AND SAFETY, INFORMATION, AND ADVISORY COMMITTEES

Advisory Committee on Safety, Hygiene and Health Protection at Work, Secretariat, Office C4/78, Jean Monnet Building, rue Alcide De Gasperi, L-2920, Luxembourg. Tel: 010-352-43 01 23 45/28 02.

European Information Service, TUC Library, Congress House, Great Russell Street, London WC1B 3LS, Tel: 071 636 4030

European Trade Union Confederation, Rue Montagne aux Herbes Potageres 37, 1,000 Brussels, Belgium. Tel: 010 322 218 3100

Trade Union Technical Bureau for Health and Safety, 27 Rue Leopold, B 1,000, Brussels, Belgium, Tel: 010-322-218-5298

International Labour Organisation, CH-1211 Geneva 22, Switzerland, Telex: 415647 ILO CH Tel: 010-4122 799 6111 Fax: 010-4122 7988685

FURTHER READING AND VIDEOS

General health and safety information

London Hazards Centre, *Daily Hazard*, Newsletter of the London Hazards Centre (four issues per year) and *Hazards Networker* — a guide to information on workplace and community health and safety (ten issues per year)

Hazards, *Hazards Bulletin*, a magazine for safety representatives, (five issues per year)

Labour Research Department, *Labour Research* and *Bargaining Report*, LRD Publications, Monthly magazines

City Centre, *Safer Office Bulletin*, City Centre, (four issues per year)

Trades Union Congress, *Hazards at Work: TUC guide to health and safety*, TUC Publications, 1988, ISBN 1 85006 158 0, £7

Marianne Craig and Eileen Phillips, *Office Worker's Survival Handbook: Fighting health hazards in the office*, Women's Press, 1991, ISBN 0 7043 4201 4, £5.95

Health and Safety Executive, *Essentials of Health and Safety at Work*, HMSO, 1989, ISBN 0 11 885494 1, £2.95

WHIN (Workers' Health International Newsletter), c/o Hazards, PO Box 199, Sheffield S1 1FQ. Covers the international hazards movement.

Other London Hazards Centre publications

Basic Health and Safety: Workers' rights and how to win them, £6.00

Sick Building Syndrome: Causes, effects and control, £4.50

Toxic Treatments: Wood preservative hazards at work and in the home, £5.95

Repetition strain injuries: Hidden harm from overuse, £6.00 (£3.00 to trade unions and community groups)

VDU Hazards Handbook: A worker's guide to the effects of new technology, £5.45

Fluorescent Lighting: A health hazard overhead, £5.00 (£2.00 to trade unions and community groups)

Health & Safety: A guide for women workers in the cleaning & catering industries, £5.00 (£2.00 to trade union and community groups)

PAAC *Fact Pack on Asbestos*, £5.00

All prices include post and packing. For bulk orders, contact the London Hazards Centre for discount details.

Further reading and videos on Europe

Trade Films (1991) *European Health and Safety at Work* from 36 Bottle Bank, Gateshead, Tyne and Wear, NE8 2AR. Tel: 091-477 5532. An excellent set of short films including an introduction to Europe and health and safety, the Framework Directive, Manual Handling and Noise.

Trade Union Information Bulletin from the Trade Union Division of the DG for Information, Communication and Culture, Commission of the European Communities, 200 rue de la loi, B-1049 Brussels.

Commission of the European Communities, Directorate-General for Employment Industrial Relations and Social Affairs (1990) *Social Europe: Health and Safety at Work in the European Community* Luxembourg, 1990

Department of the Environment (1990) *Fact Pack on the European Commission's Social Action Programme*, December 1990

European Foundation for the Improvement of Living and Working Conditions (1991) *Programme of Work for 1991: 1992 and Beyond*, Shankill, Co. Dublin, 1991

Janus DG V's health and safety bulletin: further details from Mrs Sheila Pantry, HSE, Broad Lane, Sheffield S3 7HQ. Tel. 0742 755792. Subscription details from Nuria Urriens Morera, Instituto Nacional de Seguridad e Higiene en el Trabajo, CNCT, C/. Dulcet, 2-10, E-08034 Barcelona. Tel. 34/3 280 0102.

ETUC/Trade Union Technical Bureau *Promoting health and safety in the European Community: Essential Information for Trade Unions* (1991). Available from TUTB, 27, rue Léopold, B-1000 Brussels.

TUC (1991) *Unions and Europe in the 1990s: trade unions and the European Community*, TUC, May 1991

HSC *Euronews* [bi-monthly supplement to *HSC Newsletter*,] summarises state of play of Directives, Consultative Documents and enacting UK Regulations.

REFERENCES

BEMOHI (1991) *Occupational Ill-Health in Sheffield's Pakistani Community: Results of a Survey June 1991 and Occupational Ill-Health in Sheffield's Afro-Caribbean Community: Results of a Survey* July 1991, Black and Ethnic Minority Occupational Health Initiative, Sheffield.

Budd A and Jones A (1990) *The European Community: A Guide to the Maze*. Kogan Page, p.25.

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