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From: General Secretariat of the Council
To: Delegations
Subject: Implementing OSH policy for a safer and healthier workplace

Delegations will find attached the Presidency background note on the above subject, with a view to the lunch discussion at the EPSCO Council on 3 March 2017.

Implementing OSH policy for a safer and healthier workplace

Lunch debate

EPSCO Council on 3 March 2017

In its Communication on the modernisation of the EU's occupational safety and health (OSH) legislation and policy (January 2017), the Commission concludes that modern OSH policy relies on many stakeholders working together. Policy must consist of clear, up-to-date rules at EU and national level. Businesses must be helped in complying with the rules and in drawing maximum benefits from their OSH efforts. This is particularly true for micro- and small enterprises. While enforcing rules at the workplace is crucial, a culture of compliance in businesses and amongst workers is also needed. Education, including in professional education or management training, contributes to this culture. The social partners have a role at EU, national, sectorial and company level.

EU-level action

The recent Regulatory Fitness and Performance Programme (REFIT) evaluation of the EU acquis, checking its relevance as well as efficiency, effectiveness, coherence and EU added value, confirms that the acquis '*meets its ambition to adequately protect workers*'¹. It concludes that the overall structure of the OSH acquis, consisting of a framework directive complemented by specific directives, is generally effective and fit-for-purpose. However, some provisions of individual directives have become outdated or obsolete, and effective ways to address new risks need to be found. Based on the evaluation, it is clear that the EU must continue investing in OSH to ensure effective worker protection.

¹ See SWD (2017)10 Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation).

The Commission has therefore launched a two-year programme for removing or updating outdated provisions in the EU OSH legislation. This programme seeks to have clearer and more relevant rules, reducing administrative burden, where possible, for businesses and enforcement agencies, while maintaining or improving workers' protection.

The EU-wide OSH legislation contributes to an improved level playing field for businesses and helps companies operating across borders. Companies can save compliance costs by using the same methods to protect their workers at different sites. There is also an important element of economies of scale in the complex scientific assessments needed for a number of OSH directives (e.g. on chemicals), which allows Member States to shift more financial resources to protection and prevention measures.

The Communication is accompanied by a practical guidance document² addressed directly to businesses and intended to help them with their OSH risk assessments, preventive measures and training. In addition to this general guidance, the Commission has announced that in 2017 it will publish more targeted guides on risk management in agriculture and fishing, as well as an e-guide on work-related vehicle safety. OSH implementation in these high-risk sectors is especially challenging and the numbers of accidents are among the highest.

Member State level

In the OSH legislation, the EU sets minimum requirements which Member States can go beyond by adopting more detailed and favourable provisions which bring additional protection for workers. Member States have transposed the OSH directives in different ways and therefore compliance costs vary and cannot be easily dissociated from more detailed national requirements.

² See SWD (2017)9 - Health and Safety at Work is Everybody's Business – A practical guidance for employers.

The Framework Directive also gives flexibility to Member States as regards (administrative) provisions such as the documentation of the risk assessment, to allow adaption of the measures for example to the size of undertakings, the nature of their activities and the nature and extent of the risks. The Communication notes positively that some Member States have screened their legislative frameworks in order to simplify them, while maintaining or improving protection. The Commission considers that the perception by businesses of the degree of complexity of the OSH rules varies from 14 % to 67 % across the EU.³ This suggests that a significant proportion of the administrative burden on businesses originates in national differences rather than in the EU minimum requirements. There is no indication that there would be more work accidents and occupational diseases in systems with less perceived burden.

The way in which inspections are carried out also varies greatly between Member States and sometimes within Member States. In some cases inspections focus on checking compliance and imposing sanctions only. In other cases, they go further, helping companies identify better ways to achieve compliance.

Enterprise-level

Legislative action needs to be followed by effective implementation in the workplace. Clearly, OSH is not only a cost: for every euro spent on OSH, the employer will receive two in return.⁴ However, overall, the evaluation clearly concluded that compliance with the OSH directives is more challenging for SMEs than large establishments, while the injury rates are higher for SMEs. Therefore, the Commission considers that specific support measures are necessary to target SMEs and help them increase their compliance.

³ EU-OSHA, European Survey of Enterprises on New and Emerging Risks - 2 (ESENER-2), 2014. Available at: <https://osha.europa.eu/en/surveys-and-statistics-osh/esener>

⁴ *Calculating the international return on prevention for companies: costs and benefits of investments in occupational safety and health*, International Social Security Association; 2013.

Even more worryingly, the evaluation showed that only around 69 % of microenterprises perform regular risk assessments or put in place the necessary risk management measures (compared with 96 % of large enterprises)⁵. Microenterprises often have limited financial, technical and human resources, and the levels of awareness and expertise may be lower than in bigger establishments. In addition, smaller establishments are rarely the main focus of national enforcement strategies.

The Communication stresses that OSH measures should reach the widest number of people at work, no matter what type of working relationship they are in, and no matter what size of company they work for. Compliance with OSH rules should be manageable for all businesses and effectively monitored on the ground. The Communication pays specific attention to result-oriented measures and to digital tools to facilitate implementation.

Role of the social partners

The social partners at the EU, Member State, sector and enterprise-level are involved in OSH implementation.

There is a strong tradition of tripartite dialogue on OSH at EU level, where any legislative proposal is prepared in close cooperation with the Advisory Committee on Safety and Health at Work, the social partners and government experts. The social partners are specifically consulted on all legislative proposals.

Similarly, in the implementation of OSH legislation, the role of the social partners is crucial. Cooperation between social partners, trade organisations and inspectorates is essential for the prevention of accidents and diseases, notably in microenterprises and SMEs.

Against this background, ministers are kindly invited to share their views on what further efforts should be made to enhance implementation of OSH.

⁵ EU-OSHA, ESENER-2.

1. Healthy and safe workplaces require action by several stakeholders, in particular by the employer and by the workers themselves. However, the overall legislative framework and its enforcement, including by inspections, education and training systems, industrial organisations, to name but a few, also play a role in OSH implementation (e.g. studies show that smaller enterprises are less compliant, and that some industries or workplaces are more dangerous than others).
 - *Where is the greatest need to act in order to improve the implementation of OSH legislation? Have you set up any national or industry-based monitoring tools or indicators to enhance OSH implementation? Have you already introduced the web-based risk-assessment tools in your national legal systems?*

2. The Commission Communication stresses the importance of giving guidance to enterprises, exchanging best practices between Member States and conducting peer learning among businesses in order to enhance OSH legislation implementation.
 - *What is the scope for Member States to learn from each other and exchange best practices in promoting OSH implementation? What can and should be done to better involve other stakeholders, including social partners, in the process? What are the most relevant areas to consider in the peer learning process?*