

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)

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⁽¹⁾, drawn up after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

In cooperation with the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

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 harmonizing 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⁽⁴⁾ 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⁽⁵⁾, took note of the Commission's intention to submit to the Council in the near future a Directive on the organization 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

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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⁽⁶⁾, as last amended by Directive 88/642/EEC⁽⁷⁾;

Whereas, pursuant to Decision 74/325/EEC⁽⁸⁾, 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 I

GENERAL PROVISIONS

Article 1

Object

1 The object 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' representative 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.

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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 organization 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.

SECTION II

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- 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, organization 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 cooperate in implementing the safety, health and occupational hygiene provisions and, taking into account the nature of the activities, shall coordinate 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 Articles 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.