Registered stakeholder ID Nr 59513031434-92

CEEP.2014/Opinion.01
Brussels, 13 March 2014

CEEP position related to REFIT process in OSH field

Introduction

On 3rd October 2013, the European Commission published its REFIT process.

Part of a whole EU regulation, the entire acquis on Occupational Health and Safety (Directive 89/391/EEC and its 23 related directives) is currently submitted to a full evaluation which will include specific consultations of social partners including organisations representing SMEs. The conclusions of this ex-post evaluation should be available before the end of 2015. Member States will feed into this evaluation with implementation reports by December 2013.

By launching this process, the European Commission is opening up a number of issues and questions and CEEP's positions related to this process follow below.

Link with an EU OSH strategy

CEEP considers that the REFIT process linked to Occupational Health and Safety has an impact which could justify delaying the elaboration of a new EU OHS strategy.

However, CEEP reiterates our position on this important issue: in a crisis period, abolishing an EU OSH strategy gives the wrong signal to enterprises and their employees and more generally to all stakeholders. An EU OSH strategy gives EU Member States a framework to promote equal rules for competition, coherent targets and indicators to measure improvements.
We need goals and, if necessary, priorities, and these should take account of the very different starting points of the Member States. Goals should inspire continual improvement and encourage Member States to measure improvements in both process and outcomes.

An EU OSH strategy sends out a positive signal to all stakeholders. It sets the overall direction and priorities, gives EU Member States a framework to promote equal rules for competition, and enables them to set appropriate targets and indicators to measure improvements. However, detailed objectives, actions, timescales and actors are for Member States to decide – Member States have to find the best way to reach strategic goals and implement policies. The form of the previous strategy appears to be favorable.

Because 80% of EU employees work in SMEs, CEEP considers that the key challenges are:

- to integrate occupational safety and health into education and training programmes, especially manager's high school programs: a Test On Occupational Health & Safety (TOOSH) in order to improve competence in health and safety at all levels is welcomed (e.g. French large enterprises work on this issue),
- to improve OSH performance of contractors and subcontractors: good practices need to be encouraged through incentive actions,
- to facilitate SME's improvement in their OSH performance.

The REFIT process impacts on administrative burdens and the competiveness of enterprises in the EU

Concerning SMEs, before be required to perform a formalized risk assessment and its associated actions plan, they could implement actions concerning their currently known branch risks. These simple actions could be identified with an analysis of the branch statistics. Once these core risks are under control (and these represent nearly 80% of the injuries…), risk assessment can be performed to initiate complementary action to enlarge the mitigation of all occupational risks.
In order to help SMEs to implement these core actions and to perform in the Health and Safety field, EU can develop more operational guidelines linked with core branch risks statistics.
These simple guidelines at EU level could integrate some milestones and a kind of "scorecard" (e.g. level of maturity of management of each risk) to be achieved (e.g. level 1= poor management of the risk, level 4= high level of management of the risk).
So, SMEs could measure their control of their core risk activities.

Such a pragmatic approach doesn't replace risk assessment but could be a first step. It is for Member States to decide on their regulatory and inspection regimes.

REFIT can also be an opportunity to see how the EU can deal with contractors' work situations in order to achieve an alignment with the rest of employees work situations (e.g. asbestos). The main idea is that there will be a comparable level of OSH for both regular employees in an organization and those employed by contractors the organization has retained. Each part will, of course, have its individual legal responsibilities.

When Directives are necessary, they should ideally outline overarching principles and what is to be achieved rather than describing in detail how efforts are to be carried out and creating any unnecessary administrative burdens. The "bottom lines" should allow flexibility for more detailed and/or stringent provisions to be negotiated at national or local level by social partners in accordance with national (Member State) legislation and practices.

This model also respects the principle of subsidiarity and of Member State competencies in appropriate areas, whilst respecting minimum European safeguards.

REFIT process impacts the existing EU set of legal requirements

Any action to simplify and encourage better management of health and safety risks is welcome. Some key principles could be reminded:
- Prefer references to the framework directive rather than more and more specific regulations for specific risks,
- Prefer further support for the implementation of existing regulations rather than developing new ones, i.e. no expansion of EU activities is necessary,
- Allow time to implement existing regulations before reviewing or modifying them,
- When a new text is deemed necessary, develop content on scientific based evidences and carry out an impact study (short, medium and long term impact) in order to analyse costs and benefits,
- Prefer social partner agreements rather than specific directives on separate topics. Social partners are in the best position to understand the "real" issues which affect workers and their employers on a daily basis. They are therefore in a strong position to know what will and will not work in practice in a work context. In addition, they are well placed to decide which principles or standards should be absolute and apply across the board, and which can be interpreted flexibly depending upon local practice.

REFIT process impacts the coherency of EU legal requirements in all fields

CEEP considers that the REFIT process provides an opportunity to re-confirm the advantages of a holistic approach and to challenge all EU regulations (independently of their fields) to see if OSH impacts are identified, acceptable and consistent with the existing OSH legislation.

REFIT process impacts social dialogue and the structure of existing committees

CEEP considers that the REFIT process impacts on the quality of social dialogue and in this respect the composition of various committees also needs to be reviewed.
Times have changed; evolutions and progress have been made. For example, the Advisory Committee in Safety and Health (ACSH) should include public service employer social partner representatives.
Social dialogue should cover **all** social partners, not just one part of the economy and social partners should be consulted in accordance with Art 154 TFEU in areas within their sphere of influence (social partner consultations rather than public consultations).

REFIT process impacts on the efficiency of the EU legal requirement's "paquet"

CEEP considers that the existing legal framework set of requirements, including OSH set, at EU level is acceptable. The way it is implemented in each country is very important in order to ensure that EU levers are effectively implemented in each Member State, while taking

into account different levels and situations of the Member States, and to provide coherency across all Member States i.e. a level playing field for competition.

CEEP considers that there must be a balance between investment in prevention and the expected return. It must be reminded the existence of different studies which demonstrate the global interest to invest in prevention when relevant measures are available (ISSA study, in France OPPBTP study, an Italian study,…). The synthesis of these studies shows that for 1 € invested in Prevention, the Return On Investment is in average 2.2 €.

To continue having this benefit, it means that each new requirement has to be assessed to demonstrate and justify its real added value for Prevention.