

HEALTH AND SAFETY AT WORK IN THE EUROPEAN UNION: A CRITICAL POINT OF VIEW BASED IN TRADE UNION EXPERIENCE

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Health at work is one of main issues raised by social community law. The labour contract is the sole one which by its nature, is a threat to physical integrity, to health and in certain situations, to the life of one of the parties. The role of law is establishing social limits to freedom to undertake and provide for workers incentives by workers allowing working conditions control. It is not a coincidence that from the XIX century, health at work became a priority in the process of setting labour law as an autonomous legal branch to develop different principles from those of Civil law.

Since the incorporation of the European Union², health at work has been one of trade union movement's priorities. The purpose was to avoid the creation of a wide European market that would prevent workers competition, based in worsening working conditions. Trade union intervention has had limited influence in this issue during first twenty years of the history of the Community. It was strengthened thanks to the advance of workers struggle in all European countries, especially at the end of the 1960s, and during the 1970s. There was an increase in militancy of the trade union strategy, when they became aware of health dimension conflict at work, and greater reticence to accept occupational risk monetization. It was particularly the so called «Italian worker's model»³ that exercised deep influence in all European countries and drove union organizations to give more value to working conditions and claims to increase controls of work organization⁴.

Trade union strategy was based in demanding European laws to define minimum compulsory rules for all member states. This strategy can easily be explained by European Union features, whose budget is negligible when compared to the sum of national budgets. Therefore laws are a privileged instrument of politics for harmonizing social conditions. It has a traction force favoring member states to achieve its community objectives. And can be completed through other means (European collective bargaining, cohesion funds, defini-

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2 Current paper will study the experience of the European Community for coal and steel, created in 1952, first version of the European Common Market, in two specific sectors of its economy.

3 Carcoba Angel (comp.), *La salud no se vende ni se delega, se defiende. El modelo obrero*, Madrid, Ed. GPS, 2007.

4 Main documents adopted by the European Confederation of Trade Unions during the 1980s, regarding health at work issues, are in Hinterscheid, Mathias, *Viver e trabalhar de outro modo em Europa, balanço e perspectivas de um espaço social europeu (Living and working in another way in Europe. Assessment and perspectives of an European social space)* Paris, Syros 1987.

tion of statistical indicators, etc.). However there is no economic mechanism of massive resource reallocation among the states and no strong “economic government” with industrial policies, investment planning or creation of European public services. Therefore, legal provisions must be created to go beyond a simple free exchange space.

When analyzing social community law, producing regulations regarding health at work, they are usually described as a set of technical rules which apparently do not raise principle issues. We do not share this point of view. Health at work laws include fundamental issues, and establish limits to corporate freedom through public and social control (worker’s participation) over employer’s organization power. That is the reason why still today lawmaking regarding health and safety at work is one of best quality indicators in European social affairs. The objective of current paper is to analyze the evolution of this community policy within the context of a global rise of social inequalities in European societies.

Section 1. The evolution of community treaties

1.1. The Treaty of Rome

The Treaty of Rome⁵ was based in an optimistic virtuous chain view of competition, economic growth and social progress. The article 117 is currently part of article 151 of the Treaty on the Functioning of the European Union: «The member states recognize the need to promote improvement of living and working conditions of labor, allowing equality in progress. They consider this evolution as a result of the operation of the common market, encouraging harmonization of social systems, procedures foreseen in this Treaty and an approach to laws, rules and administrative provisions»

Here we face a double ambiguity: political and legal. From the political point of view, the Treaty assumes there will be a spontaneous chaining between the creation of a big market and harmonization of social conditions within it, a movement named spillover effect by the economists. This is partially explained by the specific historical context known as the Thirty Glorious years, from 1945 to 1975 following the end of the Second World War, when Western Europe began to rebuild its national economies. During this period we saw an economic cycle upheaval, the rise of social protest and the slow dismantling of the Soviet bloc. In that relatively short time, liberalism was appeased by important social concessions within European Union founding states, while economic growth hold a privileged position in the international division of labor. This leads to an accumulation of material wealth, and under the constant pressure of social struggle, to a less unequal distribution of these goods, compared with previ-

⁵ The Treaty of Rome, established in 1957 and entered into force in 1958, created the European Economic Community. At the beginning, six countries were part of the EEC: West Germany, Belgium, France, Italy, Luxembourg and the Netherlands.

ous and later times⁶, creating a favorable climate for a culture of commitment. And also allows important development of social security and institutionalization of collective labor relations, in both corporations and political sectors. Labor is more important than its own quality.

Within this context, we may analyze the creation of the European Economic Community under two aspects: an internal process - in Western Europe, of approximation between states around a common project. And the affirmation of certain specificity opposing to Stalinist regimes of the soviet bloc, and relations of alliances and differences faced with United States. We do not see in the European project any major political divergences between traditionally majority political forces. It is true that there are tensions arising from the magnitude and speed of the process to be developed (considering that a priority could be granted to a federal Europe or to national sovereignty) However the agreement on political content is intense. The only area facing major tensions between founding states during this first period is the agricultural policy.

Further developments showed that unification of the market was compatible with an increase of inequalities between European Union members and within their countries. Far from taking spontaneously to an «equalizing of progress regarding living and working conditions» (objective stated in article 117 of Treaty of Rome), an unhindered competition may use social conditions and also variables adjusted, and its reduction will create a competitive advantage. Huge salary differences currently seen in the European Union as well as social security benefits in GDP confirm this.

This legal ambiguity is not only limited to the social chapter of Treaty of Rome. In its principles, it is dedicated to the preeminence of law limited to economic functions. The Treaty mentions four fundamental freedoms: legal aspect of competition of workers, goods, corporations and capitals. The only important social competences clearly defined since the beginning of community development are functional, related with free movement of workers, and subordinated to them⁷. These competences deal with the creation of a market common labor market and its consequences: coordination of social security systems, exercised through large secondary legislation. The principle of equal pay for men and women was adopted after economic considerations on competition⁸. The article 119 of the Treaty of Rome was negotiated not because it represented a fundamental social right, but because through it could be avoided distorting competition. This pragmatic concern made the article becoming a simple declaration of intent during the first fifteen years of community building. It was the rise of feminism and long strike at Belgian weapons factory FN

6 This more equalitarian parenthesis in the history of capitalism is extensively documented in the book of Thomas Piketty: Capital in the 21st century (Le capital au XXIe siècle), Paris, Seuil, 2013.

7 Jurisprudence grants privileged attention to economic characterization of labor relations regarding market competition among people, be it issues related with free movement of workers or equal pay for men and women. This definition may also be extended to the whole labor market and free movement, or be limited to a corporation regarding equal pay issues.

8 Jacquot, Sophie, L'égalité au nom du marché ? Emergence et démantèlement de la politique européenne d'égalité entre les hommes et les femmes, Bruxelles-Francfort, Peter Lang, 2014.

Herstal in 1966⁹ that made article 119 of Treaty to be progressively put into practice.

The Treaty of Rome does tackle explicitly other dimensions of labor law, except in case of minor provisions (such as the standstill rule regarding paid holidays) or eventually the set of sectoral specific policies (transport, agriculture). The article 117 also mentioned that social competences would be exercised «in the set of procedures foreseen by the present Treaty». But any specific procedure had been provided except dispositions regarding free movement of workers and the coordination of social security systems. In practice, lack of a specific legal basis regarding social issues generated a modest production of comparative studies, seminars and declarations in a period exceeding fifteen years. Maximum exposure was recommendations without legal binding effects over the member states.

1.2. From last social action program to the Single European Act

It was only in 1974 when first social action program was adopted, after major rebellion demonstrations that shook Europe from 1968. There was an urgent issue which had to be solved: how to reconcile social situations in different countries? Due to this fact, the program faced an important legal production. The Treaty was not modified; it was reinterpreted in a way allowing adopting social guidelines, justified by economic reasons: the creation of the common market. They were subsidiary social competences.

Situation changed with the arrival of the Single European Act, which went into force July 1st, 1987. The revision of the Treaty provided a more solid foundation for the development of a real community social legislation and set a better balance between its economic and social dispositions. This revision, in a certain way, «constitutionalized» the request of protecting workers' health within the dynamics of a single market, through introduction of new article 118A.

Nevertheless, its wording is ambiguous¹⁰, due to community's engagements; legal quality of the text needed approval of political negotiation requirements. Each state member intended to insert its own words in final text, to be able – in case of need, to discuss the exact extent of what was decided.

The intelligible part of article 118A foresees legislative harmonization of working conditions by means of guidelines adopted by qualified majority: a shared competition and a minimum harmonization - member states can keep or adopt measures, thus granting a higher level of protection to workers.

The object of this competition does not remain quite clear, since article 118A refers to «working environment», concept hitherto unknown in eleven of the member states. Taken from Danish laws, its name is *arbejdsmiljø*. It re-

⁹ Coenen, Marie-Thérèse, La grève des femmes de la FN en 1966, Bruxelles, De Boeck, 1991.

¹⁰ European Court of Justice - November 12, 1996, United Kingdom vs. Council, C-84/94 Rec., 1996, p. I-5755. This is a main ruling to interpret article 118A. The Court of Justice refuses British government arguments stating that article 118A does not provide a correct legal basis to establish working hours.

fers to a broader public health and safety approach, covering at the same time risk material and intangible factors depending on labor organization. And also favors a broad and evolutionary definition of this competence. By instituting a justified social competence through an autonomous worker's health protection objective, article 118A also refers to an economic clause drawn in cryptic terms: guidelines adopted in this base would not include constraints «that would upset creation and development of small and medium-sized companies». This restraint formulation breeds uncertainty and can serve as a pretext to put into question the objective that the Treaty recognizes: improve working conditions.

The whole subsequent history of labor health community normative production carries this contradiction. This may be seen in texts sometimes ambitious that went beyond requirements of previous national laws. But there are also major gaps, such as psycho-social risks, being confined to two frame agreements adopted by European trade union and employer's organizations, both modest texts. The community law could not develop rules to prevent musculo-skeletal disorders. An efficient prevention implies in questioning employer's power to establish labor organization. Then priority would be fighting against labor intensification, as registered in all surveys about European labor conditions¹¹. Instead of tackling this issue, community law tried to avoid the obstacle, only ruling isolatedly about some risk factors: weights to be carried, work in front of the computer display and vibrations.

Section 2. Historical synthesis of health and safety community normative production

Community laws regarding health and safety at work are most comprehensive set of guidelines adopted on social issues. Between 1977 and 2013, thirty of these guidelines were approved¹².

First of them privileged adopting substantial rules allowing to know what was expected from their addresses, for example, guidelines establishing limit values or forbidding the processing of bonded asbestos fiber. Progressively, community law evolved to the so called reflexive law¹³. Some substantial rules are defined in a much more systematic manner; guidelines produce a general safety commitment with requirements organizing precise procedures. These procedures have two functions. On one side, it is imposed that any relevant information must be taken into consideration to obtain appropriate decisions. On the other side, they frame employer's activities by establishing a written hierarchy of prevention measures, imposing consultation mechanisms of workers or their representatives, and setting traceability tools such as risk

11 Parent Thirion Agnès et al. (2012), Fifth European Working Conditions Survey, Luxembourg: Eurofound, 2012.

12 In community law, a guideline is a law text setting obligations, pointing to objectives which must be attended. The member states have to fulfill different stipulated terms in each guideline to adapt its laws to these requirements.

13 Teubner, Gunther, Droit et réflexivité. L'auto-référence en droit et dans l'organisation, Paris-Bruxelles, L.G.D.J.-Bruylant, 1996.

assessment written documents, records of accidents at work or of workers exposed to carcinogens, etc.

2.1. An attempt to establish stages for period 1962-2004

There are five stages related to health at work in community normative production. However this must not be considered as a strictly chronological limitation. Community rules were developed in successive stages; in each one of them we can see traces of a different period.

a) The first three stages

The first stage has an early beginning in community history. In July 20, 1962 the Commission adopted a recommendation regarding occupational health services in companies, followed in July 23, 1962 by a recommendation related to occupational diseases. We must say that the outcome of this stage is not encouraging. Up today, national systems of recognition of occupational diseases are characterized by its profound divergences and discrimination regarding women, whose occupational diseases are usually less declared and compensated than those of men¹⁴.

Health at work almost disappears from community activities between 1966 and 1977. This interval coincides with the most fruitful period of social demonstrations against working conditions. Major reforms are done in almost all the member states; however they do not directly impact in community law.

Third stage began at the end of the 1970s, acting around industrial hygiene. The starting point was a scandal arising because of workers' exposition to vinyl chloride monomer, a substance widely used in the plastics industry. Main industrial groups involved in this issue in Europe and in the United States, hid from public authorities' information they had collected irrefutably proving that workers' exposition to this substance caused cancer¹⁵. The Commission gave priority to the elaboration of community instruments creating liabilities.

The community priority was to establish compulsory occupational exposure limit values to vinyl chloride monomer, through guideline 78/610 of June 29, 1978. This guideline included an unusual disposition in the scope of law texts which were based in article 100 of Treaty of Rome: it stated minimum prescriptions. Member states could adopt enhanced measures to grant prevention in the workplace. This fact shows how the specific objective of intervene in one aspect of labour law compelled to accomplish a different logic

¹⁴ Tieves, Daniela, *Women and Occupational Diseases in the European Union*, Bruxelles: ETUI, 2010.

¹⁵ Livock, Rowland, *Science, Law and Safety Standards: A Case Study of Industrial Disease*, *British Journal of Law and Society*, vol. 6, n° 2, 1997, p. 172-199 ; M. Soffritti, Morando et al., « Vinyl Chloride: A Saga of Secrecy », *Late Lessons from Early Warnings: Science, Precaution, Innovation*, Luxembourg, European Environment Agency, 2013, p. 179-202.

than prevailing for rules of movements of goods.

Fundamental part of the community provision for industrial hygiene was guideline 80/1107 of November 27, 1980, regarding chemical, physical and biological risks. This guideline binds the Community to perform a program of systematic production of compulsory limit values. Nine agents or groups of chemical agents were considered priority. Legislative developments aimed only two: lead, through guideline 82/605, and asbestos, guideline 83/477. A physical agent – regarding noise, was also regulated through guideline 86/88. The negotiation of each one of these was arduous. The employers held continual controversies regarding the supposed costs of these actions.

Guideline 88/364 banning four aromatic amines was based on guideline 80/1107. This guideline foresaw interdiction of certain agents or certain activities recorded in a list to be progressively completed. In fact, that was the final effort or *swan-song* (in the original) of this period of the legislative development. After breakdown of negotiating a guideline regarding benzene, compulsory limit values fixing were cancelled, due to revision in December 16, 1988 of a guideline of 1980¹⁶. From then, limit values would stop being compulsory, but only suggested. While in 1986 the Treaty mentioned for first time need of having guidelines to match working places, the lawmaker modified from 1988 main guideline central to provide these values a simple suggested orientation. Let's see the paradox, the ecclesiastic say: «You are a rabbit, I baptize you carp» to bypass fasting days rule.

b) 1989-2004: A decisive impact on national reforms

The fourth stage goes from 1989 to 2004. It was the most dynamic period, culminating with an important normative production. These guidelines introduced a reform dynamics which improved different national laws. The depth of each one of these reforms was influenced by social and political context of each country. In some countries there was a concern regarding a minimalist transposition of texts (in Great Britain, and also a lot in Germany). On the contrary, in other countries reform was global and ambitious (Italy, Spain). In France, law reform was limited, but court decisions had an important evolution in the years following asbestos scandal¹⁷. From 2002, it was clearly established that safety requirements to be fulfilled by employers was an obligation of results, and this consolidated consultation procedures at the safety and hygiene committees, for any modification in labor organization able to impact on workers health.

Currently, frame guideline of June 12, 1989 is main element of central

16 Nevertheless, the fixing of a reduced number of compulsory limits was lately reintroduced, based in other guidelines. Last compulsory professional exposition limit value was adopted by guideline 2003/18 of April 27, 2003. It establishes a professional exposition limit value for the asbestos, thus allowing subsistence of a very high cancer risk.

17 Henry, Emmanuel, *Amiante : un scandale improbable*. Sociologie d'un problème politique, Rennes, Presses universitaires de Rennes, 2007.

community law regarding health at work¹⁸. It partially reintroduces rights acquired by social movements that during previous decade managed to put labor conditions in the center of worker's claims. Claims converging from Italy until Scandinavian countries contributed to burst Fordist principles of mass production commitment: rejection of repetitive strain, workers forced to work at a furious pace, division of labor not allowing unskilled men and women workers to have autonomy to organize its tasks, etc. The high level of requirements stated in the frame guideline may be partly explained because in parallel with the guideline, it was negotiated use of machinery allowing free movement of work equipment in the European market. In this context, employer's organizations were willing to make important concessions. On the other side, the frame guideline had not been exactly copied from national law of one member state, it was an original development. Even if each one of its constitutive members was inspired in similar norms of some countries or international labor conventions, there was a joint effort which helped to the good quality of text.

After the frame guideline, around twenty other specific guidelines were adopted to cover different risk factors and categories of workers. There were other guidelines regarding health and safety of temporary workers, and with fixed-term contracts, such as labor for young people.

A certain number of other guidelines aim at regulating crosscutting issues related with health at work. Most important among them is guideline 93/104 of November 23, 1993 on certain aspects related with working time arrangements¹⁹. Its revision, announced after more than a decade, brought major clashes among state members, the Council and the Parliament, as well as among trade union and employers' organizations.

Between 1989 and mid-1990s, community law activity kept developing with certain efficiency. But after that period, this movement clearly cooled down. The guideline on protection of workers against chemical agents' risks was heavy negotiated during eight years before being adopted in April 1998.

Section 3. The current stage: stalemate of the legislator and lack of real strategy

3.1. Law activity almost paralyzed

The fifth stage is the one we currently know. It corresponds to last two terms of office of the European Commission, between 2004 and 2014. The normative production on health and safety practically remained paralyzed. If we consider that political orientation of the Commission during this Durão Barroso period was crucial²⁰, it would be a mistake disregarding legal dimension of

¹⁸ For a detailed analysis of the frame guideline and its impact on member states, see Vogel, Laurent, *L'organisation de la prévention sur les lieux de travail*, Bruxelles, Bureau Technique Syndical, 2 volumes, 1994 et 1998.

¹⁹ Current text in force is guideline 2003/88 of November 4, 2003. A review of this guideline is expected to be done since 10 years ago, but it was not yet concluded due to highly conflicting positions regarding definition of working hours and the possibility of abolishing maximum time in individual employment contracts.

²⁰ Vogel, Laurent «Estratégie communautaire pour la santé et la sécurité. L'Europe en panne», *HesaMag*, 2013, n° 6,

this debate.

Unusual guidelines yet being adopted are amendments to previous guidelines or late conclusions of older proposals. It is the case of two guidelines concerning physical agents adopted in this period: guideline 2006/25 on artificial optical radiations and guideline 2013/35 regarding EMF (electromagnetic fields)²¹. The process of adopting guidelines on physical agents began in 1992. We must add guideline 2010/32 adapting an agreement derived from social European dialogue on prevention from injuries caused by sharp objects in hospitals.

The decline of community activity in health at work can only be explained by legal modifications on the Treaty. Dispositions introduced by the Single European Act are still in force. Terminological changes did not affect its content. This community regulations crisis may be mostly seen within a wide frame of renouncing due to political causes of foundation of laws related to working conditions. The main argument is an economic one: some high levels were unfavorable for the European industry coping global competition²². The essential reason must be found in internal conception of the European Union, and less in the relations between the EU and the rest of the world. To harmonize working conditions is considered a hindrance to the development of free competition in the domestic market. At the heart of each member state, increase of inequalities is based in a rise of differences' at work. Among mechanisms of fragmentation of protection levels regarding workers health, we can mention greater job insecurity, outsourcing in high risk activities, and increasing segregation between men and women regarding labor norms (currently, women's part-time work is quite usual in some European Union country members).

3.2. The bureaucratization of de decision-making process

More and more formal criteria make any new law production to be submitted to the impact assessment of cost-benefit calculations²³ and propose a global revision of the acquis, to verify administrative burden supposedly influencing corporations²⁴. There is then a contrast between stability of formulations of Treaty²⁵ and the practical exercise of this normative. This causes a hindrance, because laws consider economic efficiency as main criteria of its

p. 6-11.

21 It was in 2004 when first guideline related with this issue was adopted, but it never went into force.

22 This argument is already mentioned in Wim Kok report of 2004 regarding reorienting the «Lisbon strategy». This proves that the idea of a better regulation – is not exclusive from conservative or liberal political parties. Wim Kok was a first level trade union leader, before becoming the last social democrat Prime Minister in Holland's history.

23 The Commission is far from having an exclusive liability in this evolution. There was a convergence among all institutions implied in the Law process. (Council, Parliament and Commission).

24 Vogel, Laurent et Van den Abeele, Eric, *Better Regulation: perspectives critiques*, Bruxelles, ETUI, 2010 ; Van den Abeele, Eric *La réglementation « intelligente, affûtée et performante » de l'UE : une nouvelle bureaucratie au service de la compétitivité*, Bruxelles, ETUI, 2014.

25 The article 118 A, introduced by the Single European Act was integrated without substantial modifications to current article 153 of the Treaty on the functioning of the European Union.

legitimacy²⁶.

This point of view considering law norms under the exclusive angle of cost-benefit calculations has deeply affected decision taking mechanisms at the heart of European Union. Formally, tripartite consultations are still being organized on a regular basis. In contrast, real impact of these consultations became secondary. Only voice heard is the one of employer's organizations. The Commission uses monopoly of law initiatives as a privilege, refusing to submit guideline proposals. This prevents the Council and the European Parliament of debating them.

As a matter of fact, other mechanisms and bodies assume a main role base in procedure foreseen by Treaties. Both Durão Barroso Commission periods have been characterized by a double process: the political obliteration of a Commission more and more reluctant to define ambitious projects and increasing power - within the Commission, of a bureaucracy gathered together around its President and responsible for the control of other services in the frame of the so called «Better Regulation». Due to the lack of real competences in different processes where it was intervening, this new bureaucracy developed a lucrative market of private consultants, whose capacity of analysis seems to be inverse in proportion to the quantity of delivered reports.

The two best examples of this decision process bureaucratization are Impact Assessment Board, and the Stoiber group. The IAB was created at the end of 2006 with a task: to make a previous Assessment of each guideline proposal, even before being officially formulated by the Commission. The assessment criterion is established in an extremely vague way and allows performing an arbitrary management of these procedures. Thus, the IAB could block the guideline proposal on prevention of musculo-skeletal disorders. Legally, nothing prevents the Commission of delivering a negative opinion of this body. However, in practice this tends to confer a power to block, thus acting as a guarantee and preventing the European Parliament, sole community body elected by universal suffrage, of giving opinions.

The creation of Stoiber²⁷ group in August 2007 may be considered a case of political manipulation techniques regarding regulation. In its origin, Stoiber group should be a gathering of high-level experts, in charge of checking «administrative costs» of existing law, with term predicted for 2010. In practice, the group developed its own strategy, clearly exceeding limits of its mandate. Thanks to its political relationships, Edmund Stoiber got two extensions of activities of the group, until 2014. In June 2014, he draws some recommendations clearly deregulatory. The group evaluated that these recommendations would allow saving more than 40 billion euro²⁸, fanciful estimates since were based

26 To see a legal discussion of effects of this «totalitarianism» in market economy, see Supiot, Alain, *L'esprit de Philadelphie. La justice sociale face au marché total*, Paris, Seuil, 2010.

27 Edmund Stoiber is a conservative catholic Bavarian politician. He strongly opposes any European social and environmental regulation. His nomination to be chief of a group of European specialists was required by German Chancellor Angela Merkel.

28 The members of Stoiber group representing workers, environmental protection consumer protection organizations adopted a dissident opinion enlightening weakness of figures presented by the group where employers'

in a simplistic method. Some private consultants interviewed business leaders on supposed costs of different regulations. From that, they extrapolated declared costs throughout European Union corporations. There are no verifications enabling to establish if these data from interviews corresponds to real figures. The symbiosis between bureaucracy and the consultants manifests symbolically by the fact that in November 2009 Edmund Stoiber becomes Chairman of Deloitte's Advisory Board, which had received millions of euro to do a research of questionable quality on «administrative costs» of the law.

When REFIT program is announced in October 2, 2013, a deep crisis arises in community regulation.²⁹ In this document, the Commission announces suspension of any law proposal related to health at work for a period ending at the final term of second Durão Barroso Commission.

The seriousness of this decision may be illustrated through the professional cancer question, which the Commission recognizes to cause around 100,000 deaths per year at the European Union. After many years, it is discovered that current Law frame was not adapted; it was insufficient and based in a level of scientific knowledge going back to the 70s, a period when it was completely ignored the role of endocrine disrupters and epigenetic processes in cancer development³⁰. The guideline in force is not even coherent regarding the definition of deeply worrying substances in REACH (Registration, Evaluation & Authorization of Chemicals) regulation, since excludes substances toxic for reproduction. This guideline only defines compulsory limit values for three substances, falling below prevention currently required by techniques. They cover less than 20 % of workers real situations of exposition to carcinogenic. The experience shows that most dangerous situations are related to multiple exposures, and exposures caused by production processes such as crystalline silica and diesel fuel vapors. It is not enough watching health as foreseen in the guideline. It is known that there are very long latency periods between exposure and development of cancer. Therefore is essential foreseeing worker's health all along their lives – when exposed to these illness risks. But today this is not stated in the community guideline, and it has not been applied in most of the member states. For more than ten years, trade union organizations and several member states draw attention of the Commission regarding importance of this matter. An efficient prevention of professional cancer includes an overall strategy for the domestic market, environmental protection, workers protection and public health. This must be at the core of community competences. In such a crucial issue, preference displayed by the European Commission for a «flexible law» is unsustainable. Professional cancer is terribly expensive, and it is not paid by the corporations causing the risks, but for the society and own victims. Therefore, the resource of using voluntary contributions or limit values interests are over-represented. Total members of the group are 15, while 6 of them are employers' representatives.

29 Final communication COM 2013(685) of October 2, 2013.

30 Regarding insufficient prevention of professional cancer, see Héry, Michel et Goutet, Pierre, Construire en permanence la prévention des cancers professionnels, Paris, INRS-EdP Sciences, 2015.

purely referential will not improve the situation.

The «flexible law» dead end and voluntary approaches are not only limited to this example. It is a characteristic of all the historical experience of health at work since one and a half century ago. Employers are aware of this. According to the ESENER (European *survey* of enterprises on new and emerging risks) research, performed by the Bilbao agency based in a sample of 36,000 companies, main factor driving companies to develop a prevention policy is existence of legislation.³¹ Ninety percent of the companies declare that it is the respect to the law what prompts them into action. In 22 of the 27 countries, this is main factor mentioned in replies. The second most frequently mentioned factor to enable preventive action is workers' demands and also from their representatives. This is mentioned by three companies in four. To this respect, we must remember that half of European workers don't have any representation, a particularly critical fact in small and medium enterprises. However, there are concrete solutions to face this problem, for example in Sweden or in Italy, where safety workers representatives are chosen at a territorial level.

3.3. A replacement strategy for the period 2014-2020

In 1978 the Commission adopted a multiannual strategy for community health at work policies. There were different formulations: between 1978 and 2001 were «action programs» followed by «strategies » in periods 2002-2006 and 2007-2012. The existence of a community strategy had an important positive role in many member states up to 2012: it fostered tripartite debates to define national strategies of health and safety at work in most of member states. At the end of 2012, a new strategy was announced for the period 2013-2020. There were detailed proposals made by the European Parliament and the Community Advisory Committee gathering member states, trade unions and employers of the European countries. The Commission delayed publication of the communiqué until June 2014, and its content is notoriously poor.³² It establishes to define a «strategic frame for health and safety at work». The communiqué does not make reference to almost any of the concrete proposals of the European Parliament or the Tripartite Consultative Committee.

The document was supposed to suggest three axes for community's institutions actions up to 2020. First axis chosen by the Commission should give priority to small and medium-size companies, following a clear deregulating approach considering health at work an administrative obligation. It is not a matter of improving working conditions, but of favoring employers, providing them competitive advantages and reducing their duties. If we consider outsourcing chains, this policy will drive set of working conditions to a downward spiral.

31 Rial González Eusebio, Cockburn William et Irastorza, Xavier, European Survey of Enterprises on New and Emerging Risks. Managing safety and health at work, European Agency for Safety and Health at Work, 2010.

32 Final communication of the Commission - COM 2014(332) in June 6, 2014 regarding European Union's strategic frame of health and safety at work (2014-2020).

The Commission recognizes importance of prevention of work related illnesses, causing approximately 160,000 deaths each year in the European Union. Nevertheless, it does not express any opinion regarding deadlock of two guideline proposals being processed for more than ten years: the revision of a guideline allowing better prevention of work-related cancer, and the guideline on musculo-skeletal disorders, affecting one worker in four in Europe.

The Commission also calls attention on the «demographic challenge» represented by ageing population, but does not analyze it as a social process. This is why the European research on working conditions shows increasing difference among social groups. For large categories of workers, labor conditions are not compatible with keeping the job until retirement age. Between 2000 and 2010, percentage of workers considering able to keep their jobs up to 60 years, had a very small increase, going from 57.1 % to 58.7 %. This is a modest progress, concerning only to employees and not to workers, for whom situation has deteriorated. Less than half of workers consider their working conditions will allow them keep jobs up to 60 years. Among skilled workers, they were 52 % in 2000. In 2010 they are 49.3 %. Among low skill workers, they were 46.2 % in 2000 and in 2010 44.1 %. Facing this reality, the Commission merely foresees the creation of a network of specialists, promoting exchange of good practices and helping to spread information. There are no main political initiatives in the agenda.

When I wrote this text (February 2015), the future of health and safety at work community policy was uncertain. The new Commission, headed by Jean Claude Juncker adopted a less aggressive speech than previous Commission, in opposition to social Europe, but it is very vague in defining concrete priorities. The new Commission's working program for 2015 does not include any law initiative on health at work. Critical test for this year will be the eventual presentation of a guideline proposal related with protection measures for workers against professional cancer. If the Juncker Commission decides to ratify previous Commission orientation, the objective of harmonizing working conditions will disappear from the horizon of European policies.

3.4. The contribution of European social dialogue and court decisions

In parallel with classic legal ways, contribution of European social dialogue to community rules of health has been modest. There have been only two European cross-cutting agreements on health at work: one related to stress (2004) and other related to violence at work (2007). There are also sectorial agreements. We can mention the agreement on prevention of injuries by sharp objects in hospitals, in force through a community guideline: 2010/32, and the agreement on health and safety for the beauty sector (2012).

This last agreement is result of an autonomous initiative of workers' representative organizations, and employers. It is inspired in principles of pre-

vention of frame guideline of de 1989 on safety and health at work. It foresees applying principle of substitution of dangerous chemical products by less harmful alternatives for workers' health, and individual protection measures to avoid prolonged contact with water or irritants to the skin, sufficient to cause allergies. What is in stake in this substitution is considerable. Different researches prove that, in effect, for certain types of cancer there are aggravated risks, due to the use of dangerous substances in the beauty sector. The agreement stipulates measures to reduce musculo-skeletal disorders of people working in hairdresser salons: rotate tasks to avoid repetitive movements and intensive work for long periods. And states good ergonomic practices: for example, use of light hairdryers, with low level of vibration. The psychosocial risks are also considered: the employer must grant a careful work preparation, an appropriate planning of time and work organization, to prevent burn out.

European Union Justice Court rulings also helped to develop community laws for health at work, particularly frame guideline of 1989, guideline on working time of 1993, and later developments. On the other side, it was discussed escalation of tension between domestic market total harmonization rules and national dispositions on health at work and other issues such as chemical substances³³ and working equipment³⁴.

Most of rulings on the frame guideline are result of infringement procedures. For other guidelines on health at work, as for most rulings regarding social rules, preliminary matter procedures are the ones that most contributed to ruling's issues of the Court. It would be useful trade union organizations to develop more ambitious legal strategies to consolidate the *acquis* related to community law.

Conclusions

The ILO evaluates that every each year 160,000 people die in the European Union as a consequence of poor working conditions; main cause of mortality is professional cancer.

We see significant inequalities between men and women. Women are concentrated in relatively few sectors and activities, and generally hold less senior positions in work hierarchy. An equal access to jobs for men and women necessarily involves an improvement of working conditions. It is in this area where health at work and equal access policies must develop a complementary role.

The future of European health and safety at work policies is uncertain. In a general way, increase of social inequality is related to public policies favoring the employers. The community legislative inertia helps to deteriorate working conditions and to increase social health inequalities. The European Union is

33 C.J.C.E., ruling of December 17, 1998, *IP c. Borsana*, C-2/97, ruling of July 11, 2000, *Kemikalieinspektionen c. Toolex Alpha AB*, C-473-98.

34 C.J.C.E., ruling of January 28, 1986, *Commission c. France*, C-188/84, ruling of September 8 2005, *Yonemoto*, C-40/04 ; ruling of April 17, 2007, *AGM-Cosmet SRL*, C-70/03.

a single market where lack of common rules regarding health and safety can only drive to a downward spiral, by using life and health of workers as an element of economic competition.

The community law for health at work had a positive role in the evolution of national situations. Current blockades make us ask: will they be in future years a brake or an accelerator for national policies of health at work? Trade union organizations are interested in drawing up their strategies taking both possibilities into account.

Independently from institutional answer, it remains obvious that workers mobilizations in health at work issues will be an important element of social conflicts in the near future. The intervention of workers associations will help overcoming blockades related to an insufficient regulation and to a unilateral focus of perspectives developed around a single discipline. Collective actions come most of the times from informal workers' knowledge, based on working conditions and its impact on health.

We are not denying difficulties arising from collective actions regarding working conditions. But the fact is that its efficiency will never be granted in advance. They demand a critical meditation, debates, elaboration of a strategy and an exchange of experiences. We can learn as much from defeats and victories. Sometimes, the clash regarding working conditions looks as being in contradiction with other priorities of the trade union action, regarding salaries or jobs. It generates many immediate questions, but some of them will only be replied in the long term. In current context of paralysis of European policies European of health at work, workers collective action role is increased. The "from above" reform movement related to European guidelines will not will no longer be able to provide important changes, in the same way that pressure from under will not establish a more favorable balance of power.

The whole story of the labor movement testifies a tension between quantitative claims (working hours, salaries) and qualitative (control of working organization, review of hierarchies and despotism of the factory, contesting of sexual division of labor and generated inequalities). These qualitative claims lead to a project of a different society, emancipated of the approach transforming human labor in goods. In this sense, the fight for health at work holds a considerable subversive potential, since expresses concretely the articulation between long term political objectives and daily battles at workplaces.

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