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HEALTH AND SAFETY COMMISSION

The Way forward in Europe and plans for the UK Presidency

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Issue

1. To invite the Commission's views on HSE's current European work, in light of the opportunity for influencing the content of the successor European Union (EU) Occupational Safety and Health (OSH) strategy that will run from 2007-2011.

Timing

2. Immediate. A key opportunity for significantly influencing the shape of the new EU strategy will come during the UK Presidency of the EU in the second half of 2005.

Recommendation

3. That the Commission agrees: -
 - i) the broad policy approach set out in paragraphs 4 and 9;
 - ii) that HSE should increase its efforts to influence strategically the direction of EU issues, not least to ensure they do not undermine its domestic strategy (see paragraphs 8 & 10);
 - iii) that HSE should where possible limit routine European work which does not contribute to high level strategic objectives;
 - iv) that HSE should strengthen relationships with key stakeholders and like-minded Member States (MS) to try and pursue as far as possible a common approach in the EU.

Background

4. HSE's EU objectives and negotiating strategy were last set out in HSC/03/107. In general it is our aim actively to support measures: (i) that will achieve real improvements in health and safety standards across Europe, as long as consequences for the UK are not unacceptable; and (ii) where standards in the UK are already acceptable, that will raise standards elsewhere in Europe, thus to achieve a level playing field for UK business. Annexes to HSC/03/107 gave further details of HSE's EU and International activities planned up until 2006. Current key European work is set out in **Annex 1**.
5. In recent years HSE's strategy in Europe has been to influence on a defensive basis - either to head off unwelcome legislative proposals or where legislation is unavoidable to seek to ensure that it is compatible with the UK system and does not impose excessive burdens on business for little or no safety gain. We need to review this approach, given the changing face of the EU (enlargement, the Lisbon agenda, migration, etc.). Do the traditional OHS approaches still work? Do we need to adopt new policies in order to ensure current or improved levels of protection? And does the UK need to regain its leading role, to ensure that we both retain a fair labour market and protect our own OSH system?
6. There are risks in the new EU environment. These include the European Commission (EC) reverting to its traditional mode – and pushing for more regulation, the dialogue between the EC and the social partners on new issues that exclude MS Governments, stagnation through the wrong response to enlargement.
7. HSE sought to influence the shape of the current EU OHS strategy (see HSC/02/21) but its efforts were probably too late to achieve a major impact. The development of that strategy was marked by a lack of real and timely consultation and transparency. Far from being strategic, it has neither clear priorities nor any action programme, and has no follow-up mechanisms. It appears to be comprehensive and far reaching but has allowed the EC to carry on doing, or not doing, more or less what it wants.

Argument

8. If HSE takes too low a profile on EU work it runs the risk of the next strategy reverting to a more traditional approach that could divert HSE resources from delivering its own strategy. Equally the resources that are applied to this work need to be directed where they can achieve the outcomes we want, rather than being dissipated in relatively low-level activity. We need to move to a more "high level" proactive influencing strategy, with our resources focused more effectively than at present.
9. If HSE, with the help of other MS who share our general aims, wish to influence the next EU strategy, then the UK Presidency offers an opportunity to do so. Further comments on the current strategy and thoughts about the next one are given in **Annex 2**. Essentially we consider that our broad approach should be:
 - to argue against the need for new regulation unless a clear case is made on the balance of costs and benefit with the thrust rather on better evaluation of existing law, and where appropriate to encourage "soft law" approaches (e.g. as on stress).

- to encourage continued efforts to improve the EC evidence base, working with the relevant Directorates General and the Bilbao Agency.
- to encourage continued sharing of best practice on enforcement and peer review, using the Senior Labour Inspectors Committee (SLIC) and other fora.
- to improve our links with key partners, at EU level, especially the TUC and CBI given the likely renewed emphasis on social partners.

DWP Ministers have indicated that they are keen to play a part in this, which they see as promoting the Lisbon Agenda (see **Annex 2**). They clearly see the role of OSH in achieving the Lisbon objectives.

10. Apart from the next EU OSH strategy, HSE will need to have a key influencing role in a number of specific areas over the next 4 years or so. These include:

- i. the proposal for a physical agents/optical radiation directive;
- ii. the expected revised Carcinogens Directive;
- iii. monitoring the progress of the proposed Services Directive - to ensure UK levels of health and safety are maintained;
- iv. Seveso II;
- v. seeking a satisfactory outcome to the UK's SFAIRP infraction case;
- vi. the EC's Chemicals Strategy (the Commission will be considering a separate paper on this – HSC/05/15 'Update on the European Commission's Chemicals Policy');
- vii. any legislative proposal that may emerge from the Social Partner consultation on musculoskeletal disorders, initiated by the EC in November 2004.

11. It is proposed to hold an event, targeted at key EU OSH stakeholders during the UK Presidency as a key element of the influencing campaign. **Annex 3** describes this and other events planned for the Presidency.

Consultation

12. These proposals have been developed within HSE and discussed by the HSE Board. HSE officials have also consulted DWP Ministers and the EC about staging the Presidency OSH event.

Presentation

13. Stakeholder analysis work by Communications Directorate has identified the EU/EC as key corporate stakeholders. Overall our approach to Europe should be proactive, demonstrate that we are prepared to play our part and contribute actively subject to the need to operate within restricted resources.

Costs and Benefits

14. A more sharply focused direction on European work will permit to greater operational and policy resource to be directed towards meeting strategy goals and PSA targets.

Financial/Resource Implications for HSE

15. The EC's DG Employment will fund 80% of the costs of staging the proposed Presidency OSH event, the remainder can be found from HSE's budget. HSE's International Branch will be temporarily strengthened to support UK Presidency efforts during 2005.

Environmental Implications

16. None.

Action

17. The Commission is invited to support the recommendations

Key areas for HSE to influence in Europe

Paragraph 10 of paper HSC/05/23 identified a number of key areas where it would be important for HSE to exercise influence over the next four years. The current situation on these areas is summarised below: -

- ◆ **The successor OSH Strategy 2007-2011** – As indicated in the paper, this will be a critical area to influence and a major opportunity to achieve this exists in the forthcoming UK Presidency.
- ◆ **The proposal for a Physical Agents Optical radiation Proposal** – The proposal received political agreement at Council on 5 December. The Luxembourg Presidency would like to achieve a 2nd reading deal. We need to consider carefully how to transpose it.
- ◆ **The Carcinogens Directive** – A proposal for a revision of the Carcinogens Directive is anticipated some time in 2005 but there is no firm news yet on when it may appear.
- ◆ **The proposed Services Directive** – The UK negotiating strategy is aimed at ensuring health and safety is excluded from the Directive's coverage. HSE will be monitoring developments carefully and as well as closely liaising with DTI who lead on negotiations. We will exert influence through the Luxembourg Advisory Committee and the Senior Labour Inspectors Committee.
- ◆ **Seveso II and societal concerns** – HSE will be working in the short term with the EC on developing guidance on land use planning around Seveso II sites in order to respond to the European Parliament resolution by December 2006, and in the longer term, bilaterally, with key MS to establish an agenda and direction for the work.
- ◆ **SFAIRP infraction case** – Following reference to the ECJ last Autumn, the UK awaits receipt of the European Commission's formal application to the ECJ.
- ◆ **The EC's Chemicals Strategy** - the Commission is considering a separate paper on this – HSC/05/15 'Update on the European Commission's Chemicals Policy').
- ◆ **Social Partner consultation on Musculoskeletal Disorders** – The EC initiated this consultation in November 2004, so it is too early to know what the outcome will be. HSE is lobbying for a non-legislative agreement, based e.g. on its guidance on WRULDs (*Upper limb disorders in the workplace* HSG60). If an agreement is not reached a legislative proposal is likely to emerge.
- ◆ **Railways** - continuing work on the effective implementation of existing European Directives (here the key elements are finalising the regulatory package to implement the European Railway Safety Directive and further work with DfT and other stakeholders on the implementation of both the conventional and high speed interoperability directives). Keeping a watching brief on other EU initiatives which may affect Health and Safety on the Railways (e.g. there is some talk of a proposal for an urban railway directive);
- ◆ **Standards work** – HSE's involvement in standards work is currently under review, to explore how HSE could make better use of resources devoted to standards work, to advance HSC's strategy.

Early thoughts on the content and shape of the next (2007-11) European Union Occupational Safety and Health (OSH) Strategy, and on how HSE may influence it

1. The current EU OSH strategy 'Adapting to change in work and society: a new Community strategy on health and safety at work 2002–2006', appeared in March 2002. HSE sought to influence the content of the strategy (see HSC/02/21) but its efforts were probably directed too late to achieve as big an impact as we would have wished. Its development by the EC was marked by a general lack of real and timely consultation and transparency. As a result it is far from strategic, has neither clear priorities nor any action programme, and has no follow-up mechanisms. So although it appears to be comprehensive and far reaching, apart from modernising and tidying some of its consultation arrangements (mainly to reflect enlargement), it has allowed the EC to carry on doing, or not doing, more or less what it wants.
2. There are currently moves to review progress of the current strategy and evaluate its effects. The EC has set this in train and has given the task to its "Brussels Antenna". This is a small unit of DG Employment, based as its name implies in Brussels rather than Luxembourg. Its main task is to monitor the OSH implications of directives and other initiatives brought forward by other DGs, and also to try to "mainstream" OSH into other DGs' initiatives, for example by linking OSH with the distribution of the EU Social Fund.
3. In trying to shape the Current EU OSH strategy, we argued that it should aim to ensure that OSH was strongly linked to the wider economic agenda, contribute to competitiveness and be central to a well founded economic policy; for example by:
 - ensuring a fit, available and motivated workforce
 - preventing economic and social exclusion of families
 - minimising the costs of accidents and lost working time
 - promoting mobility of labour and good functioning of the single market, and
 - promoting productivity and competent management
4. We argued for the concept of "Quality in Work", to recognise the positive contribution OSH can make to a dynamic and productive economic system, and stressed that it is most successful when introduced by effective and developed systems of risk control and prevention, based on risk assessment - an approach which targets the real problems, balances risk and response, and where the effectiveness and impact of interventions are measured and monitored. We also promoted the use of a variety of tools: not only regulation, effective law linked to inspection and enforcement, but also stakeholder engagement. Some of this thinking was incorporated in the resulting strategy and has now become widely accepted in the OSH world but still needs embedding into EC thinking.

The Lisbon Agenda

5. The current EU OSH Strategy notes and acknowledges the Lisbon Strategy (or Agenda), which was adopted by the European Council in March 2000. The Agenda commits the EU to a 10 year strategy to bring about economic, social and environmental renewal, and to make it the world's most dynamic and competitive economy. By achieving a stronger economy it is intended to drive job creation alongside social and environmental policies that ensure sustainable development and social inclusion. It is clearly recognised that the drive to achieve these aims should not be at the expense of the health and safety of the EU's workforce, although in practice there is likely to be conflict. Progress towards the Lisbon aims is reviewed at every spring council, when the commitment to quality work and good OSH has been reinforced.

Simplification and Better Regulation

6. At the last Spring review other issues started to assume a far greater importance. High among these was better regulation, which the Council decided was needed, at both European and national levels, to enhance competitiveness and productivity. It welcomed the "Four Presidencies" initiative (recently extended to "Six" to include those of Austria and Finland) on better regulation, called for a programme of actions to drive this forward and welcomed the Commission's commitment to refine further the integrated impact assessment process. Although the current EU OSH strategy commits the Commission to making "the necessary legislative proposals for consolidating the Community Directives and for rationalising implementation reports", as yet there has been little sign of activity.

Enlargement

7. The enlargement of the EU has overshadowed EU OSH issues as much as it has others. It has been argued that OSH in the EU needs to pause until the new members "catch up" to the standards of the old ones. There are also concerns that the adoption of a better regulation agenda for EU OSH will prevent this and result in the new MS having an inferior, high hazard work environment. There will continue to be pockets of antiquated working, with associated OSH practices, in the new MS (just as there are in the older ones) but it is far more likely that factors such as globalisation and trans-EU enterprises have the potential to spread good OSH practices to every corner of the EU.

The Amsterdam Conference

8. A milestone in the new EU OSH thinking should have been the Conference held under the Dutch Presidency. Titled "Effective Intervention and Sector Dialogue in OSH", it strongly promoted "soft law" and voluntary initiatives. The UK provided a number of speakers, to promote the philosophy of the new HSC/E strategy, as a model for the future of OSH in Europe. The conclusions may influence the new European Social Agenda that is to be published this year.

Law

9. The current framework of OSH law (the Framework, daughter and related Article 137 worker protection and Article 95 / 175 single market and environmental Directives) have established a solid foundation on which to base the EU's OSH system and sound basis for the protection of workers and the prevention of risk. A key aim should now be to make sure this law is working effectively across the EU, focusing on reviewing progress and studying the practical results on the ground, for example, by MS evaluations of each other's inspection regimes, as currently carried out by SLIC. It would be tempting, under the better regulation agenda, to press for the complete revision and simplification of this law. However, this would risk not only diverting resources from other initiatives which could make a difference but would also give an opportunity to others, who do not share our thinking on the way forward, to introduce new burdensome legislation which would not necessarily improve OSH in practice.

The way forward – What?

10. As with HSC's new strategy, the EU's next one needs to focus more on outcomes. Essentially we consider that our broad approach should be to:

- argue against the need for any new regulation unless clearly justified on a cost benefit basis with the thrust rather on better evaluation of existing law, and more "soft law" approaches, such as those on stress and teleworking.
- call for all proposals, whether hard or soft, to be accompanied by rigorous impact assessments.
- encourage further moves to mainstream OSH into social and other EU policies.
- encourage continued efforts to improve the EC evidence base, working with the relevant DGs and the Bilbao Agency.
- encourage continued sharing of best practice on enforcement and peer review, using SLIC and other fora.
- resist any unnecessary simplification of existing legislation unless it can be demonstrated that this will bring real benefits in terms of successful OHS outcomes or significant reduced costs to EU business.
- improve our links with key partners, at EU level, especially the TUC and CBI given the likely renewed emphasis on social partners.

The way forward – How?

11. It is proposed that a UK Presidency event, incorporating a meeting of the EU OSH DGs, should strongly focus on the next EU strategy, see Annex 3. The EU DGs group is the body that has the widest oversight of the future direction for OSH in the EU. Although it has no official EC status, it first met under the Irish Presidency and is due to meet again in March, under Luxembourg's. The Irish meeting was intended to be forward looking, concentrating on how OSH should develop in the future but it was essentially a stock take with a few ideas for the future. The Luxembourg event is due to discuss promoting excellence in OSH.

12. The Government Interest Group (GIG) of Luxembourg Advisory Committee (LAC) has also identified the need for early thinking on the next strategy, with the UK and Denmark leading the way. It is likely that a virtual working group will emerge to produce a paper for the GIG, and then the LAC to consider. In the same way SLIC is likely to start considering the way forward on ways of achieving better prevention and securing compliance; and the Bilbao focal point and Board groups will be considering what role the Agency and its communication activities are likely to have.

The way forward – Who?

13. In addition to the EU OSH DGs and the members of the above mentioned fora, it will be necessary to engage with and influence the key EU players. These include Commissioner Špidla, Commissioner for Employment, Social Affairs and Equal Opportunities, Mme Quintin and other key players in DG Employment. Other players, such as the Head of the Bilbao Agency and the Head of DG Employment's Brussels Antenna appear to have embraced a better regulation approach to OSH in the EU. We could support them by offering them a suitable platform, e.g. at our presidency event.

14. We may also need to go wider. In order to make the case for good standards of OSH across the whole of the EU being an essential element of a high performing economy, such key players as Commissioner Mandelson, DG Trade and Commissioner Kroes, DG Competition, and their teams, may need to be brought on board.

HSE Events scheduled for the UK Presidency of the Council of the European Union, July – December 2005

Summary

HSE will be hosting three events as part of the UK Presidency of the EU. They are outlined below with detailed information about the planned occupational safety and health (OSH) conference. Commissioners are asked to note the proposed themes (paragraphs 4-6) and proposed invitees (paragraph 3).

Background

1. HSE is planning 3 events during the UK Presidency of the EU.
 - UK Presidency occupational health and safety conference incorporating a meeting of the EU OSH Director Generals (DGs). It is proposed to hold this event either early in September or mid October, probably 11-12. 2005. Further details of the plans for this event are given below.
 - Committee of Competent Authorities (CCA) meeting and seminar/conference, on the implementation of the Seveso (control of major-accident hazards) Directive and future strategies to ensure consistent compliance. This will be held over two days at the Health and Safety Laboratory (HSL) Buxton, Derbyshire in September or October 2005.
 - 49th Meeting of the Senior Labour Inspectors' Committee (SLIC) to be held in London 9-10 November 2005.
2. A submission was made to DWP Ministers on 1/11/04 inviting Ministerial agreement to the UK's staging an OSH event, in addition to the latter two detailed above, during the UK's Presidency. The response was very positive.
3. As well as the current, recently expanded, 25 EU MS, it has been indicated that candidate countries could also be represented (Bulgaria, Romania, Turkey, Macedonia and Croatia). Invitees would include OSH DGs and some EU OSH officials, including EC Commissioner Špidla, Director of DG Employment Directorate D (Adaptability, Social Dialogue and Social Rights) Bernhard Jansen. EU and Member States social partners would be invited. A Minister or the Secretary of State for Work and Pensions would be asked to speak during day 1. A major figure from each of industry and Unions would be asked to speak. A few non-EU OSH professionals could be invited to attend.
4. It is proposed for the event to take place over 2 days. The current working title of the event is 'Occupational Safety and Health in EU Member States – to Lisbon and beyond' and look into issues such as:
 - 'What does the working environment look like in 2015?' and
 - 'What is needed to deliver the Lisbon Agenda in terms of OSH and business performance?'

5. Day 1 would be a conference event with Plenary and workshop sessions, utilising a cross section of UK and EU speakers, including from business as well as OSH organisations.

The day could be chaired by the HSC Chair and include:

- a. Meeting opened by Chair;
- b. Keynote address from a Minister;
- c. Keynote address from Commissioner Špidla;
- d. Keynote address from a major business executive;
- e. Keynote address from a senior trade unionist;
- f. Breakout sessions in the afternoon on each of the following themes:
 - i. Tackling occupational health
 - ii. Measuring progress
 - iii. Genuine worker involvement
 - iv. Regulatory approaches vs self-regulation.

EC DG Employment is keen that the event adds value to the EU OSH agenda and that examples or discussions should not focus heavily on a few individual MS activities.

6. On day 2 a MS OSH DGs' meeting is planned. At it we propose that the current Community strategy on safety and health at work be evaluated – with the help of Paul Glynn, head of DG Employment's Brussels antenna. Those in attendance will then propose a framework for the next Community strategy on safety and health at work from 2007-2011, taking account of the conclusions of the previous day's event.
7. Possible locations are currently being investigated for this event including Liverpool (the new Merseyside HQ could be used for day 2), London (more invitees likely to attend due to location and ease of getting there) and others.
8. Funding for the event has been pledged from the EU, which has offered to provide 80% of costs up to a maximum of €200,000. The remaining 20% and any excess will need to be found from HSE's budget.

Conclusion

Commissioners are asked to note the proposed content and attendees for the event.