

Health and Safety Executive Board		HSE/13/100	
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Type of Paper:	Above the line	Exemptions:	Not applicable
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HSE's recent interaction with the European Union on dossiers

Purpose of the paper:

1. The Board is invited to note the paper.

Background:

2. The Coalition's programme for government sets out the key objectives of the government's European Union (EU) policy. These focus on the United Kingdom (UK) continuing to play a leading role in the EU while ensuring that there are no further transfers of power or sovereignty from the UK to the EU during the present Parliament.
3. Underlying the government's approach to the EU is a range of guiding principles aimed at maximising the UK's influence in Europe. These are:
 - Arguing for alternatives to regulation, where possible.
 - Building alliances with like-minded member states, members of the European Parliament (EP) and other EU-level stakeholders to increase the UK's effectiveness in negotiations.
 - Engaging early with the European Commission ('the Commission') to influence draft proposals before they are adopted formally.
4. These principles are supported by a number of operating principles:
 - Twice a year, Ministers must report to the Foreign Secretary on their department's influencing priorities and engagement priorities (HSE dossiers are included in the Minister for Employment's return).
 - Departments will endeavour to seek clearance for their proposed UK negotiating positions promptly.
 - The government will work with EU partners to hold the EU institutions to account on the commitments they have made on consultation, impact assessment, the 'think small first' principle and reviews in order to improve the quality of EU regulation.
5. HSE's engagement with the EU is governed by these principles and they form the basis of our influencing and negotiating mandates to ensure that a reasonably practicable balance is achieved in delivering the necessary protections for workers (and others). Mandates are key documents as they set out agreed UK objectives/positions and what actions will be taken to achieve them. The issue of mandates is a matter for ministers and in the past was always dealt with through a write-round of the Cabinet committee dealing with European affairs. Now there is a slightly different approach to collective agreement, with write-rounds of the Cabinet's European Affairs Committee reserved for specific issues, for example, where strategic or coalition interests are at stake. This has delegated clearance of single-issue dossiers to departments, with UK positions on HSE dossiers

continuing to be a matter for Department for Work and Pension (DWP) ministers. Regular updates on dossiers are annexed to the monthly Chief Executive's report to the Board.

6. The practicalities and tactics of engagement are determined by the dossier at hand. However, most of HSE's dossiers are co-legislated by the EP and the Council. The exceptions are Euratom dossiers which touch on HSE's interests in ionising radiation, where the Council decides alone. In addition, we are operating in areas subject to qualified majority voting. Therefore, flexibility, both in working with others and in deal-making, provided it is in the UK's interest, is a major element of HSE's approach to dossier engagement. This, coupled with the experience HSE has built up over the years in EU matters, and the high regard the organisation is held in, has enabled us to help ensure the UK is an effective player in Europe.

Early influencing:

7. Early influencing or 'upstream engagement' of the Commission before it takes decisions on issues is a particular focus of the UK government. This is because the ability to secure changes reduces considerably once a legislative proposal is formally published. This type of engagement has been standard operating procedure for HSE for many years and we have been in the forefront of lobbying the Commission to rethink initiatives judged to be disproportionate to British business without compromising worker protection. This has been undertaken through a variety of methods, including our membership of the EU's Advisory Committee on Safety and Health at Work (ACSH) and senior managers engaging with their Commission counterparts. Also seconding staff as national experts to the Commission has enabled it to benefit from UK expertise, for example, on offshore matters. Two recent examples of this engagement stand out.

Ergonomics in the workplace:

8. A resolution of the EP in 2005 called on the Commission to pay particular attention to 'ergonomically unsound working conditions' in its action programme. In 2008 the Commission consulted the social partners on options to reduce cases of work-related musculoskeletal disorders (WRMSDs) and subsequently discussed a draft Ergonomics Directive with a working party of the ACSH. This draft Directive would have replaced the Directives on the use of display screen equipment (DSE) and manual handling of loads but more significantly would have extended the categories of equipment subject to DSE requirements, addressed psychosocial risks, and introduced health surveillance for ergonomic risk factors. Our analysis of the measure concluded that there was no significant evidence to support the Commission's view that it would reduce cases of WRMSDs. Moreover, it was not proportionate in its effect on SMEs given that 90% of the costs would be paid by them. British business alone would have faced estimated additional costs of between £45m-£220m over 10 years.
9. However, following interventions by UK officials (mainly from HSE but also the United Kingdom's Permanent Representation to the EU and other government departments with an interest in better regulation) and UK business organisations, the Commission undertook to reconsider the

proportionality of its plans. The Commission subsequently announced that it will not propose legislation on WRMSDs during its current mandate.

Hairdressing:

10. Social dialogue has also been a focus for our upstream engagement, particularly as initiatives by the social partners have the potential to lead to directives. The request of Coiffure EU and UNI Hair and Beauty Section to the Commission to submit their agreement on the improvement of occupational safety and health in hairdressing to the Council for implementation by a Directive is one such example. Our analysis of the agreement showed that it duplicated protections already in place for workers and contained measures that will be difficult for duty-holders and enforcing authorities to implement. We estimated that a Directive would lead to additional costs of around £75m a year to the British hairdressing sector without any extra benefit to worker protection. British employers are also opposed to the agreement having the force of law. Whilst respecting the autonomy of Coiffure EU and UNI Hair and Beauty to make their agreement, HSE and DWP had put together a group of like-minded member states to block implementation of the agreement by a Directive, in the event that the Commission granted the request of the social partners. However, the Commission recently announced that it will not propose legislation to implement the agreement during its current mandate but will continue its assessment of the agreement.

Negotiating proposals:

11. HSE has been active in negotiations in a number of areas on behalf of the UK, including on occupational safety and health, environmental, internal market and energy matters.

Electromagnetic fields:

12. We played a significant role in ensuring that the 2013 Directive replacing the 2004 Directive on protecting workers from the risks from exposure to electromagnetic fields remedied the faults of its predecessor without compromising necessary protections for workers. We protected the derogation for magnetic resonance imaging activities from attempts by some other member states to remove it and secured flexibility for other activities to temporarily derogate from exposure limits, where justified. We also secured a three year transposition period to provide business with time to put in place the required control measures. This action reduced the costs of the Commission's original proposal by 20%.

Offshore oil and gas activities:

13. The UK, in the form of HSE and the Department for Energy and Climate Change, persuaded the Commission to change its proposals in response to the Deepwater Horizon disaster in 2010 from a directly-acting European Regulation to a Directive. This change helped to preserve the UK's world-leading offshore safety regime from wholesale change and the disruptive effect this would have had on duty-holders and their employees.

Control of major accident hazards:

14. Impending changes to the EU's chemicals classification system through the coming into force of the European Regulation on the classification, labelling and packaging of substances and mixtures (the 'CLP Regulation') required modifications to the EU system regulating sites storing quantities of chemicals with major accident potential (the 'Seveso Directive'). We played a key role to ensure that the "Seveso III" Directive, through its alignment with the CLP Regulation, did not expand its scope unnecessarily; had proportionate public information requirements that respected national security concerns; and retained the ability of member states to use flexible, hazard-based inspection regimes to protect workers, the public, and the environment. Through this action we managed to reduce the costs of the Commission's original proposal by £40m over 10 years.

Biocidal products:

15. Though a European internal market in biocides has been in operation since 2000, there have been delays and high costs to business in the process of evaluating and authorising biocidal products for placing on the market. The Commission sought to remedy these problems through a directly-acting European Regulation. This includes a simplified authorisation procedure; a new EU-level authorisation system; and an improved mutual recognition procedure. We supported the Commission in its early thinking on these improvements and were at the forefront of defending them in the negotiations whilst securing for them the widest possible scope. We also secured reductions in the scope of new rules regulating treated articles (e.g. articles that might be treated with a biocide but their primary function is not to act as a biocide), and successfully defended the principle that decisions to approve or restrict active substances are not purely hazard-based but take into account wider risk-benefit considerations. This action has resulted in estimated savings to British business of between £30m-£230m over 10 years.

Forward look:

16. We are not expecting any new substantive proposals from the Commission in the near future affecting our interests. This is because the terms of office of the current Commission and EP expire in 2014. We remain involved in a number of negotiations but these are mainly technical in nature.

Devolved administrations:

17. Relations with the EU are a matter for the UK government. Where matters are devolved, such as occupational safety and health policy to Northern Ireland, then engagement is undertaken with the relevant devolved administration to come to a UK position on the issue under consideration.

Action:

18. The Board is invited to note the paper.

Clearance:

19. Cleared by Kevin Myers on 18 October 2013.