

UEAPME¹ Position

Commission communication and related proposals on Safer and Healthier Work for All – Modernisation of the EU Occupational Safety and Health Legislation and Policy COM(2017)12

The European Commission on 10 January 2017 published its Communication on “Safer and Healthier Work for All – Modernisation of the EU Occupational Safety and Health Legislation and Policy”. This includes an ex-post evaluation of EU occupational safety and health Directives (REFIT evaluation), a practical guide for employers, and proposals for setting further exposure limits for carcinogens or mutagens at work.

I. Key messages

- UEAPME welcomes the Commission’s Communication and its **focus on guidance and support for SMEs**. With the Commission, UEAPME believes that the current EU legislative framework is largely adequate and sufficient.
- A ‘Think Small First’ approach is essential with regard to all legislation in the field of health and safety. **UEAPME expects a lot from the Commission’s initiative for reducing and avoiding excessive administrative burdens at national level.**
- **UEAPME supports in principle updating EU legislation where it is proven to be outdated on the condition that it concerns a strictly targeted initiative.** SME representatives need to be involved in the process and clarification needs to be the driving principle.
- UEAPME takes note of the Commission’s focus on carcinogenic substances and insists that the particular **impact on SMEs and micro-companies needs to be more thoroughly assessed** in terms of compliance costs.
- For promoting a culture of prevention, SMEs need support for compliance with health and safety rules. At local level, outreach to support micro-enterprises is needed. **UEAPME points to the need of building capacity of SME organisations** to provide guidance and support.

¹ UEAPME subscribes to the EC’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35

II. General comments on Occupational Safety and Health and the EC Communication

- **UEAPME welcomes the Commission's Communication and in particular the overall approach focussing on guidance and support for micro-companies and SMEs for compliance with existing rules.** With the Commission, UEAPME believes that the current legislative framework is largely adequate and sufficient. A good health and safety environment for all, depends amongst others on the right conditions such as a legislative framework that is fit for purpose, and support for compliance.
- UEAPME reiterates its support to the principle that all employers should respect the obligation to eliminate or reduce occupational health and safety risks to a minimum, for the sake of protecting workers. Taking into account that SMEs employ more than 60% of the workforce in Europe, **it is of major importance that legislation truly respects the 'Think Small First' principle**, avoiding disproportionate burdens for implementation in SMEs and micro-companies, and facilitating higher compliance levels. The main challenges for SMEs to comply with the rules are a lack of awareness and too excessive burdens.
- Transposed legislation at national level should ensure that compliance costs in small businesses are reduced to a minimum.² Therefore, **UEAPME expects a lot from the Commission's exercise aiming at reducing and avoiding excessive administrative burdens** through peer reviews and bench-learning.
- UEAPME supports in principle removing or updating EU legislation where it is proven to be outdated, and on the condition that it concerns a strictly targeted initiative. The process of identifying which directives and provisions need to be updated should be based on **thorough consultation of social partners and involvement of SME representatives**. New rules should be clear and realistic to avoid uncertainty and unjustified burdens.
- **In tackling health and safety risks, UEAPME favours a culture of prevention, rather than controls.** Health and safety of employees is a true concern of SME employers, however raising awareness of health and safety risks and legal requirements might help to improve risk handling. This starts in education and training, notably in vocational education and training.
- **SMEs need support for effective implementation of legislation and compliance with the rules.** To achieve this, **close partnerships are necessary at national level between the companies and labour inspectorates**, as well as public authorities, OSH agencies, social partners, and SME organisations with sufficient capacity. At local level, dedicated actions and outreach should take place to support micro-enterprises, including through SME business organisations. This is in line with the emphasis placed by the Commission on guidance and support, as well as tailor-made (online) tools for simplified risk assessment and prevention.
- UEAPME welcomes the Commission's **focus on carcinogenic substances** as one of the highest risk factors at work. UEAPME insists however that the thorough process of defining limit values is maintained for future proposals for revision of the Directive on Carcinogens and Mutagens. At the same time, **the particular impact on SMEs and micro-companies needs to be more thoroughly assessed** to ensure the proportionality and feasibility of limit values, and to keep compliance costs of micro-companies and SMEs to a minimum.

² See further: [UEAPME position on an EU Strategic Framework on Health and Safety at Work 2014-2020 \(2014\)](#)

III. Comments on specific sections of the EC Communication

1. Helping small businesses comply with OSH rules

- **A good health and safety environment in small businesses depends on the right conditions**, effective legislation, and support for compliance. The best way to ensure compliance with OSH rules is by fully applying the ‘Think Small First’ principle, enshrined in the Small Business Act, so that legislation is designed according to the specific needs of SMEs. **With the Commission, UEAPME believes that the current European legislative framework on OSH is largely sufficient.**
- Existing legislation is to be applied more consistently at national level to create a level playing field for companies and avoid “gold-plating”, creating excessive burdens for micro- and small companies. **Legislation should be proportionate and take a risk-based approach.** It should carefully balance the worker’s protection and the costs of investment in OSH measures with the potential risk of non-compliance. Simplification is needed in most cases whilst avoiding exemptions for SMEs and at the same time safeguarding the protection of workers.
- **UEAPME favours a culture of prevention, rather than controls.** Investment in health and safety at the workplace is a true concern of employers in SMEs. Prevention and protection is a shared task: building on the legal obligation of employers and involving constructive engagement of workers. Raising awareness of health and safety risks and requirements, and investing in expertise for handling such risks, is the first step which should be fostered from an early age and starts in schools, notably in **vocational training (VET) through apprenticeship and other forms of work-based learning.**
- Specific efforts are needed to facilitate effective implementation at national level and support micro- and small companies in complying with the rules. **Targeted guidance and support are necessary** for the development of prevention strategies and cooperation at the workplace. It should be done in close partnerships at national level between the companies and labour inspectorates, as well as public authorities, OSH agencies, social partners, and SME organisations,.
- In line with the key challenges identified in the **2014-2020 Strategic Framework**, enhancing the capacity of micro- and small enterprises is key for improving the implementation record of Member States. SME organisations (such as chambers of crafts, or other sectoral organisations) and other intermediaries play a crucial role in supporting micro- and small companies through dedicated outreach. They are the ones guiding, assisting, and advising companies to comply with the rules and handle OSH risks in an efficient and adapted manner. **UEAPME requests to step up efforts for capacity building** of these organisations in terms of staff, finances, and expertise. This needs to be done including through **targeted use of available funding.** The European Social Fund (ESF) has played an important role notably for adapting workplaces in many Member States, but it is important to assess the extent to which SMEs really benefit from this funding.

Risk Assessments and tailored support

- **Risk assessments** are an essential part of health and safety at the workplace, but involve substantial legal, financial and administrative burdens for micro- and small companies. The return on investment in risk-assessment is not always obvious in small companies, especially those with no or low risks, and needs to be promoted. The challenge is in finding solutions which are easy to implement and adapted to the activities of the company. **Tools and instruments should be simple enough to use for a micro-enterprise without having to rely on external consultancy.**
- UEAPME supports the Commission's objective to reduce compliance costs of SMEs and thereby increase compliance i.a. through further development of (web-based) tools for risk-assessment. Tools need to be translated to be adaptable for SMEs according to their size, sector, and specific risks. The web-based OiRA tool is a relatively good example, but its potential is currently not fully tapped. They have not yet been developed everywhere and are not always used by SMEs. **OiRA needs to be better promoted, simplified, and made adaptable to the specifics of the companies.** SMEs and their representatives should be involved from the beginning in the development of such tools so that they fit the needs of the enterprises. Finally, more coordination and support will be needed for SME organisations in developing the tool further at national and sectoral level, and also protecting the investments of those who develop it, in order to lower the barriers for risk assessment especially in small companies.
- UEAPME supports also the exchange of good practices in the field of health and safety and employers' incentives for compliance. The starting point however should be that **every company is different and deals with specific OSH risks.** For the comparability of situations, a similar context is often lacking. The individual business case for investments in health and safety varies widely, and therefore every initiative needs to be tailored to the end-user.

2. Covering increasing OSH risks

- UEAPME shares the Commission's approach with regard to work-related **psychosocial risks**, i.e. focussing on sensitising employers about such risks. UEAPME agrees that the OSH Framework Directive already covers the legal obligation to protect workers from all workplace risks. Specific legislative action is hence not necessary.
- Risks related to **musculoskeletal disorders (MSDs)** are equally covered by existing legislation. Whilst acknowledging that ergonomic risk factors are among the major OSH problems, it is important to recall that the costs of new legislation would mainly impact micro- and small companies.³ The right approach is to focus on clarifying existing rules and support to companies for compliance.
- **Diversity-sensitive risk assessments** can be useful but should be considered part of overall risk assessment which is mandatory for safeguarding the health and safety of all workers, regardless of gender, age, or other characteristics. UEAPME points to the 2017 **social partner agreement on Active Ageing** and an intergenerational approach, providing for tools to facilitate healthy and longer working lives.

³ An impact assessment undertaken on behalf of the Commission on MSD in 2013 showed that a new ergonomics directive would have created high costs: namely 3.7 billion Euros affecting over 90% of SMEs.

3. Removing or Updating outdated rules

- Acknowledging that specific provisions in some of the directives may be outdated, a programme for removing or updating such provisions can be useful. However, **UEAPME insists that this program needs to be a strictly targeted initiative, with clarification as a driving principle.** A careful approach is essential, since not everything is outdated and balanced solutions are necessary to make OSH actions future-proof.
- The process of identifying which directives and provisions need to be updated should be based on **thorough consultation of social partners with notably the involvement of SME representatives.** Additional burdens for micro- and small companies and legal uncertainty have to be avoided.

4. Reducing Administrative Burdens/ Reviewing national OSH legislation

- **UEAPME expects a lot from the Commission's intention to reduce and avoid excessive administrative burdens** through peer reviews and bench-learning in the Member States. Administrative burdens and disproportionate requirements are the top concerns of Crafts and SMEs in Europe. This initiative should be one of the core and immediate exercises in the field of health and safety.
- It is important that the Commission takes **a proactive approach towards the Member States** with regard to reducing 'gold-plating' and other forms of administrative, financial and practical obstacles for micro- and small companies. The REFIT exercise has limited impact on real reduction of administrative burdens and 'gold-plating' for micro-companies at national level. SME organisations should be consulted, in cooperation with the Member States, to identify which provisions in national legislation cause unnecessary burdens.
- It is **essential that national transposition of EU legislation is rationalised towards feasible requirements for implementation in micro- small businesses.** This process should ensure that compliance costs in small businesses are reduced to a minimum, since such costs are greater for micro- and small businesses in relative terms.⁴ Without reducing red tape and facilitating investments in health and safety it will remain difficult to improve OSH performance.
- The process of rationalising national OSH legislation should go hand in hand with **more efficient and proportionate enforcement** at national level. UEAPME would like labour inspectors to play a more pertinent role for raising awareness on OSH legislation, including in pedagogical terms, and for providing support and advice for SMEs on health and safety issues. These functions should be carried out proportionately by the labour inspectors, since a culture of prevention and voluntary investments in the health and safety domain are more effective than excessive controls or sanctions. **Cooperation between social partners (including SME organisations), authorities, and labour inspectorates is crucial.**

⁴ See further: [UEAPME position on an EU Strategic Framework on Health and Safety at Work 2014-2020 \(2014\)](#)

5. Ensuring a broad coverage of OSH policies

- **UEAPME believes that coverage of OSH policies is sufficient with regard to self-employed and domestic workers.** UEAPME recognises the importance of ensuring that persons in all forms of employment are covered by OSH policies. However, the current OSH legal framework is sufficiently clear in its requirements. By nature, the self-employed are and should be responsible for their own working environment. Additional burdens for self-employment should be avoided
- In some sectors, national legislation provides for derogations to ensure that self-employed are following the rules of the workplace (e.g. on construction sites). It is important in such cases that self-employed remain responsible for these OSH requirements.

6. Fighting occupational cancer and dealing with carcinogens

- UEAPME takes note of the Commission's focus on carcinogenic substances as one of the highest risk factors at work. Addressing real risks and providing a level playing field for companies and Member States through clarity and compliance benchmarks is important.
- **UEAPME insists that the thorough process of defining limit values is maintained** for future proposals for revision of the Directive on Carcinogens and Mutagens. Proposals need to be evidence-based, handled on a case-by-case basis, underpinned by thorough impact assessments including investment costs of and practical feasibility in SMEs, and based on opinions of the tripartite Advisory Committee on Safety and Health (ACSH).
- Specific attention, however, is needed for the **proportionality of limit values and the costs of investments to be born by micro-companies and SMEs**. Too restrictive limit values will not be reachable or simply lead to excessive investment requirements. This will have more negative consequences on small than on large businesses. In fact, many of the Commission's proposals already cause substantial challenges. The costs of investment should not be too high compared to potential long-term costs of non-compliance.
- UEAPME therefore insists that **the particular impact on SMEs and micro-companies needs to be more thoroughly assessed**, especially with regard to replacement costs of tools and machines to comply with the proposed limit values for carcinogen/mutagen substances, increased burdens of measuring limit values, and increased investment in tools for risk assessment and reduction etc.

01.06.17