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FEATURES OF HEALTH AND SAFETY LEGAL REGULATION AT WORK AT THE EUROPEAN UNION

The article studies the EU labour law, especially its institute of providing the health and safety at work. The peculiarity of the EU legislation in the field of providing health and safety at work is a framework directive. This directive is the basis of legislation in this area. Other directives in this sphere must correspond to the basic principles of this framework directive and complement its provisions in the special areas. These areas are indicated in an annex for framework directive. Also, one more feature of providing health and safety in work legislation is wide participation of workers in safety measures on enterprises by informing and consultation of the workers' representatives about the choice of equipment, providing the working conditions and environment of the workers' safety and health. The main principle of framework directive is that the measures related with the safety, hygiene and health at work cannot be resolved with the workers' financial costs, in any case.

Key words: health and safety at work, framework directive, working conditions and environment, informing and consultation, occupational risks, accident factors, technical progress.

The need to improve working conditions is the collective concern, prompted by both humanitarian and economic considerations. To create more jobs and of better quality is one of the main objectives of the EU social policy. A safe and healthy working environment is an essential element of the quality of work.

The EU action in health and safety at work has its legal basis in Article 153 of the EU Treaty. Community action is not limited to legislation. The Commission has widened the scope of its activities, in favour of information, guidance and promotion of a healthy working environment by paying particular attention to small and medium-size enterprises.

The European Union has embarked on a series of Directives in the field of health and safety, all of which when agreed by the Council of Ministers and the Commission become binding on all the member countries. They have proceeded on the basis of individual hazards, setting standards which are then enforced by the appropriate national agencies. Recent ones include Directives on noise, visual display units, the manual handling of loads, carcinogens and biological agents. The European Directives are arrived at by consensus between representatives of the national governments and their experts and, once promulgated, give a time limit within which member nations must comply¹.

The main characteristic of the EU strategy about the safety and health at work is the directive framework and according to it, the directives in the field covered by this Directive should be adopted.

Such directive is the Council Directive of 12 June 1989 about the introduction of measures to encourage the improvements in the workers' safety and health at work (89/391/EEC)².

The object of this Directive is to introduce measures to encourage improvements in the workers' safety and health at work.

To that end it contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles.

This Directive shall be without prejudice to existing or future national and Community provisions which are more favorable to protection of the safety and health of workers at work.

Directive 89/391/EEC shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

This Directive shall not be applicable where characteristics peculiar to certain specific public service

¹ Health and safety at work legislation. <www.agius.com/hew/resource/hswlaw.htm>.

² Directive 89/391/EEC of 12 June 1989 about the introduction of measures to encourage the improvements in the workers' safety and health at work. <eur-lex.europa.eu/legal-content/EN/TXT/HTML>.

activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.

Directive 89/391/EEC charges some duties on the employer in the field of safety and health at work.

The employer shall have the duty to ensure the workers' safety and health in every aspect related to the work.

Where, pursuant to Article 7 (3), an employer enlists competent external services or persons, this shall not discharge him from his responsibilities in this area.

The workers' obligations in the field of safety and health at work shall not affect the principle of the responsibility of the employer.

Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means.

The employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations.

The employer shall implement the measures referred to in the first sub-paragraph of paragraph 1 on the basis of the following general principles of prevention:

- a) avoiding risks;
- b) evaluating the risks which cannot be avoided;
- c) combating the risks at source;
- d) adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health.
- e) adapting to technical progress;
- f) replacing the dangerous by the non-dangerous or the less dangerous;
- g) developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment;
- h) giving collective protective measures priority over individual protective measures;
- i) giving appropriate instructions to the workers.

The employer shall, taking into account the nature of the activities of the enterprise and/or establishment:

- a) evaluate the risks to the workers' safety and health, inter alia in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places.

Subsequent to this evaluation and as necessary, the preventive measures and the working and production methods implemented by the employer must:

- assure an improvement in the level of protection afforded to workers with regard to safety and health,

- be integrated into all the activities of the undertaking and/or establishment and at all hierarchical levels;

- b) where he entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety;

- c) ensure that the planning and introduction of new technologies are the subject of consultation with the workers and/or their representatives, as regards the consequences of the choice of equipment, the working conditions and the working environment for the safety and health of workers;

- d) take appropriate steps to ensure that only workers who have received adequate instructions may have access to areas where there is serious and specific danger.

The main principle of Directive 89/391/EEC is that the measures related to safety, hygiene and health at work may, in no circumstances, involve the workers in financial costs.

Without prejudice to the obligations referred to in Articles 5 and 6, the employer shall designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/or establishment.

Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks.

Designated workers shall be allowed adequate time to enable them to fulfill their obligations arising

from this Directive.

If such protective and preventive measures cannot be organized for lack of competent personnel in the undertaking and/or establishment, the employer shall enlist competent external services or persons.

Where the employer enlists such services or persons, he shall inform them of the factors known to affect, or suspected of affecting, the safety and health of the workers and they must have access to the information referred to in Article 10 (2).

In all cases:

- the workers designated must have the necessary capabilities and the necessary means,
- the external services or persons consulted must have the necessary aptitudes and the necessary personal and professional means, and
- the workers designated and the external services or persons consulted must be sufficient in number to deal with the organization of protective and preventive measures, taking into account the size of the undertaking and/or establishment and/or the hazards to which the workers are exposed and their distribution throughout the entire undertaking and/or establishment.

Directive 89/391/EEC determines the employer's duties in the field of first aid, fire-fighting and evacuation of workers, serious and imminent danger.

The employer shall:

- take the necessary measures for first aid, fire-fighting and evacuation of workers, adapted to the nature of the activities and the size of the undertaking and/or establishment and taking into account other persons present,
- arrange any necessary contacts with external services, particularly as regards first aid, emergency medical care, rescue work and fire-fighting.

The employer shall, inter alia, for first aid, fire-fighting and the evacuation of workers, designate the workers required to implement such measures.

The number of such workers, their training and the equipment available to them shall be adequate, taking account of the size and/or specific hazards of the undertaking and/or establishment.

The employer shall:

- a) as soon as possible, inform all workers who are, or may be, exposed to serious and imminent danger of the risk involved and of the steps taken or to be taken as regards protection;
- b) take action and give instructions to enable workers in the event of serious, imminent and unavoidable danger to stop work and/or immediately to leave the work place and proceed to a safe place;
- c) save in exceptional cases for reasons duly substantiated, refrain from asking workers to resume work in a working situation where there is still a serious and imminent danger.

Workers who, in the event of serious, imminent and unavoidable danger, leave their workstation and/or a dangerous area may not be placed at any disadvantage because of their action and must be protected against any harmful and unjustified consequences, in accordance with national laws and/or practices.

The employer shall ensure that all workers are able, in the event of serious and imminent danger to their own safety and/or that of other persons, and where the immediate superior responsible cannot be contacted, to take the appropriate steps in the light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger.

Their actions shall not place them at any disadvantage, unless they acted carelessly or there was negligence on their part.

Directive 89/391/EEC determines various employers' obligations.

The employer shall:

- a) be in possession of the assessment of the risks to safety and health at work, including those facing groups of workers exposed to particular risks;
- b) decide on the protective measures to be taken and, if necessary, the protective equipment to be used;
- c) keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days;
- d) draw up, for the responsible authorities and in accordance with national laws and/or practices, reports on occupational accidents suffered by his workers.

According to this Directive the employer shall take appropriate measures so that workers and/or their representatives in the undertaking and/or establishment receive, in accordance with national laws and/or

practices which may take account, inter alia, of the size of the undertaking and/or establishment, all the necessary information concerning:

- a) the safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job;
- b) the measures taken pursuant to Article 8 (2) of Directive.

The employer shall take appropriate measures so that workers with specific functions in protecting the safety and health of workers, or workers' representatives with specific responsibility for the safety and health of workers shall have access, to carry out their functions and in accordance with national laws and/or practices, to:

- a) the risk assessment and protective measures referred to in Article 9 (1) (a) and (b);
- b) the list and reports referred to in Article 9 (1) (c) and (d);
- c) the information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

Directive 89/391/EEC determines that the employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work.

This presupposes:

- the consultation of workers,
- the right of workers and/or their representatives to make proposals,
- balanced participation in accordance with national laws and/or practices.

Workers' representatives with specific responsibility for the workers' safety and health shall have the right to ask the employer to take appropriate measures and to submit proposals to him to that end to mitigate hazards for workers and/or to remove sources of danger.

Employers must allow workers' representatives with specific responsibility for the safety and health of workers adequate time off work, without loss of pay, and provide them with the necessary means to enable such representatives to exercise their rights and functions deriving from this Directive.

Workers and/or their representatives are entitled to appeal, in accordance with national law and/or practice, to the authority responsible for safety and health protection at work if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health at work.

Workers' representatives must be given the opportunity to submit their observations during inspection visits by the competent authority.

According to this Directive the employer shall ensure that each worker receives adequate safety and health training, in particular in the form of information and instructions specific to his workstation or job:

- on recruitment,
- in the event of the transfer or the change of job,
- in the event of the introduction of new work equipment or the change in equipment,
- in the event of the introduction of any new technology.

The training shall be:

- adapted to take account of new or changed risks, and
- repeated periodically if necessary.

The employer shall ensure that workers from outside undertakings and/or establishments engaged in work in his undertaking and/or establishment have in fact received appropriate instructions regarding health and safety risks during their activities in his undertaking and/or establishment.

Workers' representatives with a specific role in protecting the safety and health of workers shall be entitled to appropriate training.

The training may not be at the workers' expense or at that of the workers' representatives.

The training must take place during working hours.

Directive 89/391/EEC reserves also workers' obligations.

It shall be the responsibility of each worker to take care as far as possible of his own safety and health and that of other persons affected by his acts or Commissions at work in accordance with his training and the instructions given by his employer.

To this end, workers must in particular, in accordance with their training and the instructions given by their employer:

- a) make correct use of machinery, apparatus, tools, dangerous substances, transport equipment and

other means of production;

b) make correct use of the personal protective equipment supplied to them and, after use, return it to its proper place;

c) refrain from disconnecting, changing or removing arbitrarily safety devices fitted, e.g. to machinery, apparatus, tools, plant and buildings, and use such safety devices correctly;

d) immediately inform the employer and/or the workers with specific responsibility for the workers' safety and health of any work situation they have reasonable grounds for considering represents the serious and immediate danger to safety and health and of any shortcomings in the protection arrangements;

e) cooperate, in accordance with national practice, with the employer and/or workers with specific responsibility for the safety and health of workers, for as long as may be necessary to enable any tasks or requirements imposed by the competent authority to protect the safety and health of workers at work to be carried out;

f) cooperate, in accordance with national practice, with the employer and/or workers with specific responsibility for the safety and health of workers, for as long as may be necessary to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to safety and health within their field of activity.

The Annex of the Directive lists some of the areas where individual directives were adopted.

In the summary we should say that the Directive 89/391/EEC consolidates the general principles of prevention as the avoiding risks, evaluating the risks, combating the risks at source, adapting the work to the individual, adapting to technical progress, replacing the dangerous by the non- or the less dangerous, developing a coherent overall prevention policy, prioritizing collective protective measures (over individual protective measures), giving appropriate instructions to the workers. These principles are the basis for the EU legislation of health and safety at work.

References

1. Health and safety at work legislation <www.agius.com/hew/resource/hswlaw.htm>.
2. Directive 89/391/EEC of 12 June 1989 about the introduction of measures to encourage the improvements in the workers' safety and health at work <eur-lex.europa.eu/legal-content/EN/TXT/HTML>.