

ETUC position on the EU strategic framework on health and safety at work 2021-2027

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On June 28th, the European Commission presented its Strategic Framework on Health and Safety at Work 2021-2027. ETUC has contributed extensively to this policy with the resolutions of October 2019 and December 2020. Based on the lessons learnt from the current strategic framework, and considering new and emerging risks, the ETUC Executive Committee, in October 2019, adopted a position indicating what the future strategy should include. This was based on the following priorities: Promote new and improved national OSH strategies; social partners' involvement; support implementation in micro, small and medium-sized enterprises and enlarging the scope of the EU OSH strategy to self-employed; enforcement; new work patterns; prevent work-related diseases, accidents, violence and harassment; improve statistical data collection and OSH evidence base; strengthen international cooperation; and mainstream OSH.

In light of the severe challenges posed by Covid-19, ETUC revised these priorities in December 2020. The gender perspective was also given more prominence. ETUC believes that the EU Strategic Framework should acknowledge that the Covid-19 pandemic is not only a public health issue but very much an occupational health issue. Evidence showing that some economic sectors became major vectors for the spread of Covid-19 is an added reason for this approach. The appropriate preventive measures (including risks assessment and risk management), of which employers are liable as foreseen in the Framework Directive, should equally apply in the framework of the contagion of the Covid-19 pandemic and the protection of the health of workers.

With its Strategic Framework presented in June, the European Commission has taken on board much of the trade union analysis concerning health and safety failures that have put workers' lives at risk. However, as developed further below, ETUC is disappointed that the Commission has remained very limited in the actions proposed.

ETUC welcomes the announcement of a new Strategic Framework on Occupational Safety and Health, and more particularly of its three key objectives: Anticipating and managing change in the new world of work; improving prevention of work-related diseases and accidents; and increasing preparedness for possible future health threats. ETUC would have preferred a strategy as compared to a strategic framework. This would have given more political weight to the goals and actions proposed, and ensured their proper follow-up.

The previous EU OSH strategic framework played a major role in the development of national OSH strategies. The new strategic framework should continue to develop and improve their current national strategies in cooperation with social partners and be specific, focusing on implementing effective measures. ETUC will support its affiliated organisations in the deployment of these national strategies.

Preventing work-related diseases, accidents and harassment

ETUC welcomes the "vision zero" on work-related accidents and the much-needed gender focus on occupational safety and health, put forward by the European Commission. ETUC believes that vision zero should not be restricted to work-related deaths, but should include all work-related accidents and diseases. The vision zero approach should also seek to be more proactive in focusing on risk prevention and elimination, building on the Framework Directive's prevention principles. Any European policy and legislative strategy which is OSH related should abide to the principle of prevention of risk, developed and delivered through consultation, social dialogue and underpinned by strong regulation and enforcement. ETUC also calls on the European Commission to clarify that the actions foreseen in the Strategic Framework to fight against workplace violence and harassment, apply regardless of the reason of the harassment. Since the Strategic Framework limits actions to those cases which are based on a discriminatory ground. All workplace violence and harassment are harmful for the workers and their family. This will also be in line with the ILO Convention 190 on violence and harassment in the world of work, which covers all work-related violence and harassment.

The European Commission should have been more ambitious in combating work-related cancer. Whereas the Commission commits to establishing occupational binding exposure limits on a few more cancer-related substances, this does not cover all 50 priority carcinogens upon that workers are widely exposed in Europe. It should be recalled that currently only 27 such carcinogens are subject to limits. Some of the limits are still far too high and need to be lowered as soon as possible; and the scope of the Carcinogens and Mutagens Directive (2004/37/EC) should be extended to reprotoxic substances and also include hazardous medicinal products. Also, a risk-based approach should be adopted to set limit values for carcinogens, not a methodology that considers the protection of workers as a cost. In addition, on chemicals exposure prevention, ETUC regrets that combined exposure to hazardous chemicals, endocrine disruptors and the revision of the BOEL for Respirable Crystalline Silica are absent in the Strategic OSH framework. When it comes to asbestos, the Strategic Framework only speaks of a revised limit value. The ETUC considers it imperative that the asbestos directive in modernised thoroughly, as this would protect workers better.

The approach of the European Commission on Psychosocial Risks and Musculoskeletal Disorders is not ambitious enough. ETUC has been calling for an EU Directive on work-related musculoskeletal disorders (MSDs) and will continue supporting the Eurocadres – ETUC platform EndStres.EU. This issue has become more urgent during the Covid-19 pandemic due to the significant rise of teleworking and work from home, which has had an impact on MSDs. Women workers are more affected by MSDs, and therefore a gender dimension in the assessment, prevention, and treatment of these diseases is necessary.

With regards to the incidence of stress at work, EU-OSHA research shows that the main reason that motivates enterprises to manage OSH is fulfilling the legal obligation (89% in 2019 up from 85% in 2014). The degree to which psychosocial risks are included or explicitly mentioned in the legislation varies significantly between the Member States. Consequently, workers are not protected to the same level across the countries. Mere guidance on psychosocial risks – as proposed by the Strategic Framework – is, alas, highly unlikely to protect workers from such risks. The Strategic Framework tackles mental health from an individual approach and fails to address the implications of work organisation. While the new Strategy rightly notes

that changes in the work environment are required to tackle hazards affecting psychosocial wellbeing, the initiatives that are mentioned (e.g. the Horizon 2020 projects) focus on individual level mental health interventions. This is only one approach to mitigating psychosocial risks, and does not suffice to prevent the numerous risks that cover how work is organised, and the work and employment conditions. A recent ETUI meta-review of high-quality evidence, which has been published over the past two decades on psychosocial work factors, provides convincing findings for the association between PSR and negative health outcomes that cannot be addressed by individual level interventions. The individualistic approach is also not coherent with the prevention principles of the OSH Framework Directive, which clearly states to the employer must first and foremost seek to eliminate and prevent the risks and that collective measures should be chosen over individual measures. With the Strategic Framework, the European Commission asks the social partners to take action and update existing agreements relating to psychosocial risks. It should be noted that this has already been addressed through a joint fact-finding seminar during the past autonomous work programme of the European social partners. Also, the autonomous framework agreement on work-related stress has been in place since 2004, but its incomplete implementation makes the need for European legislation evident.

Lastly, female-dominated sectors (e.g., health and social care, education, retail, and service) are particularly exposed to psychosocial risks, making this area an important intersection of gender equality and OSH. The shortcomings in occupational safety and health measures that would address PSR replicate structural gender inequalities in society. A gender dimension should be taken across the development of OSH strategies to prevent occupational stress, starting from the design of the risk assessment.

The European Framework Directive 89/391/EEC on Safety and Health of Workers at Work is not effective for the assessment and management of psychosocial risks, as expressed by more than half of trade unions and employers in Europe. This shows that the awareness raising activities, guidance and use of best practice in this area, which have been implemented in the last 3 decades, have had a limited reach. ETUC calls on the European Commission to put forward a directive on Psychosocial risks.

Enforcement

It is positive that the European Commission is asking Member States to step up on enforcement. The EU Strategic Framework calls on Member States to “address the downward trend in the number of labour inspections in some Member States by strengthening field inspections”, but no further concrete measures are put forward. Member States must provide adequate support to labour inspectorates – and live up to the ILO recommendation of 1 labour inspector per 10 000 workers - there is also a need to strengthen the sanctioning mechanisms. It is also key that data and knowledge on what the labour inspectorates are enforcing, are gathered and disseminated. Today it is unclear as to what extent the Labour inspectorates in the Member States are inspecting OSH risks and which OSH risks they inspect. Also, the role of trade union workplace health and safety representatives should be strengthened. Finally, social partners should be properly involved in designing and implementing sound health and safety measures at all levels, in accordance with the rules and principles of the EU Framework Directive.

ETUC calls on the European Commission to give enforcement a high priority in the Strategic Framework. ETUC also calls for the European Commission to set up a dedicated working party under the ACSH to advise the Commission on further on enforcement. When tackling the challenge of improving prevention of work-related

diseases and accidents, the Commission states that "preventing work-related deaths will only be possible by: (i) thorough investigation of accidents and deaths at the workplace, (ii) identifying and addressing the causes of these accidents and deaths, (iii) increasing awareness of the risks related to work-related accidents, injuries and occupational diseases; and (iv) strengthening enforcement of existing rules and guidelines." ETUC believes that the latter should be considered the main concern before any accident occurs. Otherwise, European legislation on OSH is limited to a remedial application operating when an accident or occupational disease occurs and not prevention, which is its primary aim. ETUC believes that unless enforcement is set as a priority, it will not be possible to achieve the pursued vision zero on work-related accidents and diseases.

New work patterns

The Commission takes a stand on the need to modernise and simplify EU OSH rules in the context of the green and digital transitions. In this respect, ETUC will note accept that the narrative of the "better regulation agenda" might debilitate the European OSH acquis by identifying this legislation as an obstacle for business to grow and operate more freely in the market.

The European Commission refers to the need to enact new OSH Directives in the field of digitalisation, yet it refers then to regulation on machinery products and the Artificial Intelligence Act. ETUC recalls, nevertheless, that both pieces of legislation are not an Occupational Safety and Health Directive, though they will have impact in this field. ETUC calls for OSH to be integrated into this legislation. One specific example is that the Artificial Intelligence Act does not deal with the use of AI as a measure of control and surveillance of workers.

In matters of the personal scope of the Strategic Framework and the European OSH acquis, the Commission excludes self-employed workers from its range of application. This is unacceptable. The Covid-19 crisis has exposed the vulnerability of non-standard workers, including workers in platform companies, and self-employed workers. These workers should therefore fall under the scope of protection of OSH legislation and policies. It is equally important to pay attention to the situation of workers with disabilities and chronic diseases.

Workers in platform companies may be subject to increased health and safety risks for both on-location platform work (such as road accidents or physical injury caused by machinery or chemicals) and online platform work (for example related to ergonomics of computer workplaces). These are not limited to physical health but can also affect psychosocial health with unpredictable working hours, intensity of work, competitive environments (rating systems, work incentive through bonuses), information overload and isolation as emergent risk factors.

The EU initiative to improve the working conditions of people working in platform companies was also announced in the new EU Strategic Framework that the Commission presented in July 2021. One key aim of the initiative will be to ensure adequate working conditions, including health and safety, of all people working in platform companies. ETUC calls on the Commission to propose an ambitious Directive based on Article 153(2) TFEU that provides for a rebuttable presumption of employment relationship where the burden of proof should be borne by the company, (the platform company) and which must respect national traditions and practices and the autonomy of social partners. A presumption of employment relationship with a reversal of the burden of proof (from the worker to the employer) will not affect the business model of platform companies operating with genuine self-employed workers, upon validation of the relationship from the platform company side towards

the relevant ad hoc administrative or judicial body. For those platform companies that are employers or temporary work agencies, the general employers' obligation of a company should be a requisite for their operation in an EU member state and therefore their workers will enter directly into the domain of the OSH legislation, where employers have the responsibility to protect their workers.

Improving the OSH regulatory framework to tackle Covid-19 and future pandemics

ETUC welcomes the strong recommendation of the European Commission towards Member States to acknowledge COVID-19 as an occupational disease. The Strategic Framework limits its actions to assess if Member States transposed the classification of the Covid-19 virus in the context of the Biological Agents Directive. It does not take steps to evaluate if the legislation is fit for purpose to tackle potential future pandemics.

The pandemic has highlighted the need to improve the existing regulatory EU OSH framework and to have new legislation in place. Shortly after the outbreak, the Covid-19 virus was enlisted in the Biological Agents Directive. While this was a welcome move, there is a need to urgently update the Directive to be fit for purpose in terms of dealing with a pandemic. ETUC welcomes that the Commission wants to add COVID-19 to the Commission recommendation concerning the European schedule of occupational diseases. The recommendation should, however, be revised to specifically include Covid-19 as applying to all workers who are exposed to infection without adequate protection.

The strategic framework also refers to the need to monitor the application of correct measures to prevent the contagion of Covid-19 as a biological agent of category 3. This measure is late, after one year and half of the pandemic. Again, ETUC calls on the Commission to put forward ambitious measures to provide for enforcement of OSH legislation.

The crisis has also uncovered and exacerbated the deplorable working and living conditions of mobile and migrant workers, including seasonal workers, in Europe, with unsafe workplaces and unsanitary accommodation. They are therefore easy targets for the virus. The new strategy should, therefore, address the specific conditions of these workers by reiterating employers' obligations. It should set out the protective and precautionary measures needed to ensure their decent working and living conditions, including e.g., quality accommodation, safe transport and decent meals. In this regard, there should also be a close cooperation between the European Labour Authority and EU-OSHA.