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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.11.2008  
COM(2008) 698 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE  
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**on the practical implementation of Health and Safety at Work Directives 92/57/EEC  
(temporary and mobile sites) and 92/58/EEC (safety signs at work)**

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## **1. INTRODUCTION**

This communication follows a Commission undertaking<sup>1</sup> to assess the implementation of the regulatory framework with a view to improving it.

It is based mainly on the national reports supplied by the Member States<sup>2</sup> and an independent experts' report analysing implementation of the two Directives in all the private and/or public economic sectors concerned. It also draws on the results of European inspection campaigns on safety in the construction sector carried out in the 15 Member States in 2003 and 2004, on recent European statistics on accidents at work, and on the lessons that the Commission has learned from monitoring the transposition and application of the Directives.

The assessment covers the transposition and implementation of two Directives: Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites<sup>3</sup> and Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work<sup>4</sup>, in the EU-15 countries only. The Commission believes that this assessment will also be a source of much useful information for the 12 new Member States in applying the two Directives.

## **2. LEGAL EFFECTS**

### **2.1. Directive 92/57/EEC**

The national reports by the Member States<sup>5</sup> show that the *formal* impact of Directive 92/57/EEC (simplification, streamlining, consolidation and codification) enabled the Member States to unify, consolidate and update existing national legislation. However, some Member States say the Directive has had no impact on legal/administrative principles.

The *substantive* impact on national legislation has been considerable in all Member States. Even those Member States that said they already had sophisticated national legislation

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<sup>1</sup> In the communication *Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work*, COM(2007) 62 final, 21.2.2007.

<sup>2</sup> Sent to the Commission under Articles 14 and 11 of the two Directives. Those Articles were subsequently repealed by Directive 2007/30/EC.

<sup>3</sup> OJ L 245, 26.8.1992, p. 6.

<sup>4</sup> OJ L 245, 26.8.1992, p. 23.

<sup>5</sup> Two Member States, which were keen to ensure that the Directive was assessed objectively, used surveys/studies carried out by independent external consultants; in almost all the Member States the social partners played a very important part in drafting the report.

introduced amendments to cover the Directive's basic concepts. The Directive led to substantial additions to all national occupational health and safety legislation, in particular regarding design and site coordination, the safety and health plan and the safety and health file.

The new approach to prevention, in particular, defining the obligations and responsibilities of the various parties on a construction site, is seen as having had a major impact.

### **Directive 92/58/EEC**

Most Member States simply repealed earlier provisions on safety signs transposing Directive 77/576/EEC and replaced them with new legislation transposing Directive 92/58/EEC. Some say the new provisions supplemented, broadened or updated their legal framework and also enabled national provisions to be consolidated.

The main substantive amendments introduce new rules on signs, including verbal communication and hand signals, health signs not covered by the previous Directive, and new obligations on the employer to inform, train and consult workers; they also extend the scope of the Directive to all sectors of activity.

### **3. AWARENESS-RAISING AND FLANKING MEASURES FOR DIRECTIVES 92/57/EEC AND 92/58/EEC**

Once the two Directives had been adopted, the Commission and the Member States publicised them and provided advice on implementing them on construction sites and on signs at work. The European Year of Safety, Hygiene and Health Protection at Work in 1992, the European Health and Safety Weeks and national awareness-raising campaigns were particularly instrumental in disseminating information and making duty-holders aware of their obligations. The European Agency for Safety and Health at Work, set up in 1994<sup>6</sup>, engaged in Europe-wide information and awareness-raising and in turn set up the European Construction Safety Forum to promote the exchange of experience between players in the sector and, in particular, between small and medium-sized enterprises (SMEs). The Senior Labour Inspectors Committee (SLIC)<sup>7</sup> also came up with enforcement and awareness-raising initiatives (European inspection campaigns).

The Member States introduced extensive plans to promote active prevention, to raise awareness of integrated prevention, and to draft practical guidelines to help employers and workers comply with the new legislation. In some Member States these activities were targeted at key players such as clients. Professional federations, workers' trade unions and associations of architects and engineers also informed their members about the new legislation, through seminars, meetings, leaflets and other written media. Lastly, some large construction companies drafted their own information for their workers and their subcontractors.

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<sup>6</sup> Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work (OJ L 216, 20.8.1994, p. 1). Last amended by Regulation (EC) No 1112/2005 (OJ L 184, 15.7.2005, p. 5).

<sup>7</sup> Commission Decision of 12 July 1995 setting up a Senior Labour Inspectors Committee (OJ L 188, 9.8.1995, p. 11).

#### 4. TRANSPOSITION

Despite in-depth prior consultation of the social partners, and unanimous adoption by the Council, the majority of the Member States failed to meet the transposition deadlines for the two Directives, which had considerable repercussions on the levels of practical implementation at workplaces<sup>8</sup>.

Following transposition, the Commission monitored conformity and began discussions with the national authorities to clarify and resolve any problems and to make the necessary corrections. Where necessary, it began infringement procedures under Article 226 EC. Complaints to the Commission also provided valuable information enabling it to identify weak points in national legislation.

##### 4.1. Directive 92/57/EEC

Implementing Directive 92/57/EEC is a complex technical and administrative matter; Member States regularly revise and update their legislation. This explains why, in some Member States, the Directive has been transposed in a highly fragmented fashion in several pieces of legislation (more than 40 in some cases) which complicates assessment. The assessment revealed differences in national legislation stemming from the previous regulatory framework and from the fact that the Directive lays down minimum requirements and leaves the Member States free to maintain or establish higher levels of protection<sup>9</sup>.

The main compliance problems identified related to the scope of the legislation, definitions, the designation of coordinators, project preparation and execution, and the responsibilities of clients, project supervisors, coordinators and employers.

However, in a number of Member States, the legislation went further than the minimum requirements of Directive 92/57/EEC, clarified certain coordination issues and set out procedures for effective compliance.

The compliance problems identified and the extremely high rate of accidents at work in the construction sector suggest that there are difficulties in understanding Directive 92/57/EEC which are exacerbated by the complexity of the national implementing measures.

Additional non-binding instruments at European level to help all players understand their obligations and rights better might be a useful means of improving national application of the Directive. The Commission has therefore started work, in close cooperation with the Advisory Committee<sup>10</sup> and the various professionals in the sector, on drafting a non-binding guide to applying the Directive.

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<sup>8</sup> In most of the Member States all representatives of the construction sector (social partners, architects, clients, project supervisors, etc.) were consulted beforehand and given the chance to participate in the transposition of the Directive.

<sup>9</sup> See paragraph 17 of the Court of Justice judgment in Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755.

<sup>10</sup> Council Decision of 22 July 2003 setting up an Advisory Committee on Safety and Health at Work (OJ C 218, 13.9.2003, p. 1).

## 4.2. Directive 92/58/EEC

By its very nature, this Directive has been transposed virtually to the letter in the vast majority of the Member States. The very few cases of potentially incompatible transposition were resolved through contacts with the competent authorities, without the need for further legal action.

## 5. ACTION IN THE FIELD: THE PRACTICAL IMPLEMENTATION OF DIRECTIVE 92/57/EEC

An assessment of the situation on sites yields an uneven picture: in some Member States, implementation of the Directive has indeed helped to improve health and safety conditions and prevent accidents, while in others much still needs to be done to meet the requirements and to reap the full benefits of effective prevention.

Despite all the efforts made, the occupational accident statistics are indisputable: construction is still a high-risk sector, with twice as many accidents as the average rate for all sectors of activity and 2.5 times as many fatal accidents<sup>11</sup>.

The Directive gives all those active on a construction site key roles in prevention. Its implementation was therefore assessed in terms of the influence that each group has on prevention of and protection from occupational risks. The main conclusions are as follows:

### Clients

The Directive imposes various obligations on clients to implement prevention measures for health and safety. These obligations cause them some unease.

Clients fall into various categories, depending on:

- the sector concerned: public or private;
- the size of the site: large, medium or small;
- the frequency of performance of construction or civil engineering works: regular or occasional;
- the legal entity: individuals, construction companies or developers, public housing agencies.

The effort that different categories of clients put into prevention varies considerably, because of differences in their knowledge of the legislation, in their allocation of resources for prevention and in their motivation. Individuals acting as clients on occasional, small sites generally do not know about their prevention obligations, whereas major clients working regularly on large sites normally know what their obligations are and take an active role in preventing occupational risks. The latter clients are convinced that prevention is essential and will ultimately result in savings, even though they seek to reduce the cost as far as possible. The main problem these clients say they have is the rise in costs caused by the new legislation

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<sup>11</sup> Source: Eurostat ESAW 2005 data.

and, in particular, by coordination. In contrast, individuals carrying out occasional work are very reluctant to engage in prevention, which they see as a financial and bureaucratic constraint, and believe that their responsibility ends when they sign a construction contract. This problem, however, does not stem directly from the Directive, which allows the Member States to assign responsibility for prevention according to the type and size of the construction project.

Poor planning and time constraints were mentioned several times as factors which greatly undermine the prevention of accidents and ill-health. Clients who insist on excessively short execution deadlines were often cited as the cause of these problems.

Although the Directive does not forbid a natural or legal person from taking on several tasks at the same time, combining roles such as those of client and coordinator appears to create practical problems. A client is often not in a position to perform a coordinator's role, for example, because he or she does not have the relevant skills or knowledge.

The situation in some Member States reveals a need to inform, train and raise awareness among the different categories of clients according to the size of the site (small), the legal entity (individuals), and the nature of the work (occasional or regular). National authorities and professional associations need to take the lead in this area.

Some Member States have already taken steps to ensure that good standards of occupational safety and health feature appropriately in public procurement contracts. This practice should be followed by other Member States.

Clients — as those with the economic and financial resources to carry out the works — were intended to have the leading role in the prevention system under the Directive. However, they often lack the requisite knowledge and skills, so the Directive provides for them to involve other players, without evading their responsibility.

### **Project supervisors**

Very often the client also takes on the role of project supervisor. To improve prevention management where several enterprises work on a site as subcontractors, the main contractor responsible for the work may act as project supervisor within the meaning of Directive 92/57/EEC.

As a rule, project supervisors are familiar with coordinating safety and health matters during project execution but regret that safety is not taken sufficiently into account in the design and preparation, and feel that the responsibilities of the supervisor and the client ought to be more clearly defined. Some enterprises appreciate the value of coordination but not the administrative formalities it entails, and point to confusion between the tasks of coordinators and those of prevention services.

The large enterprises that were visited know the requirements well. They often use prevention services, and their professional associations provide them with regular information. Small and micro-enterprises tend not to know the regulations so well, and even those who do are still reluctant to undertake prevention in general and coordination in particular. SMEs that are not members of professional associations lack information, which restricts their knowledge of occupational safety and health. Moreover, the longer the subcontracting chain, the greater the information shortfall. In the eyes of clients and project supervisors, long subcontracting

chains dilute responsibility. Only the small enterprises at the start of the subcontracting chain can benefit from the main contractor's experience and good practice.

Prevention is often highly developed in subcontracting companies which specialise in particular tasks (e.g. gas installation or lift maintenance).

Strong collaboration throughout the supply chain reflects the fact that effectively planned, managed and coordinated construction projects are more likely to be healthy and safe. They are also more likely to reap commercial benefits in terms of less time lost through days off work, less waste and less chance of failing to come in on budget. Everyone in the supply chain — clients and contractors alike — should remember this and act accordingly.

Given the difficulties in reaching enterprises that are furthest along the chain from the main contractor, subcontracting remains an issue to be dealt with in depth. It also affects the enforcement of health and safety provisions. As part of the Community strategy for 2007-12 the Commission has to consider this problem.

### **Architects, engineers and consultancy firms**

While the Directive does not refer explicitly to architects, engineers or consultancy firms, this group was evaluated because the designer plays a key role in the project preparation stage, and is so important in preventing occupational risks on construction sites.

The architects and engineers who design projects have made it clear that they know the requirements but do not totally agree with the new measures imposed. Some are not in favour of the client appointing a coordinator for the design stage as, in their view, this hampers their creative freedom.

In some Member States, however, architects and engineers often act as coordinators at the design stage. This has greatly improved on-site working conditions, by providing for collective protection and signs. The majority of project designers accept the philosophy behind coordination but are reluctant to assume additional responsibilities. Some report problems in convincing clients and project supervisors to take the necessary preventive measures. Architects also criticise the formalism of certain national rules on small sites and the different interpretations to which these are liable to give rise.

Preventative health and safety is often not integrated into the project at the design stage because safety conditions during execution and subsequent use and maintenance are not a major factor in design/architectural choices.

There is a long way to go in all the Member States before the culture of prevention effectively takes root at the design stage.

To achieve this, the competent national authorities must make an effort to train project designers at vocational schools and at university, making prevention a key part of the curriculum.

## Coordinators

The role of the coordinator under Directive 92/57/EEC is to coordinate the implementation of various health and safety provisions by those involved in project preparation and project execution stages.

The Directive does not define the competencies required to act as coordinator during project preparation and execution stages. There are big differences from one Member State to another. Some have defined the competences and/or skills of coordinators in great detail, sometimes even requiring that they have specific training or a combination of training and experience. Others simply require that there be coordinators, without formally requiring any specific level of competence.

The competencies required of coordinators by the Member States to fulfil their duties differ greatly, and so the standard of coordination varies from one Member State to another.

The assessment carried out in the field suggests that implementation would benefit if the Member States introduced some minimum criteria for competence depending on the size and/or type/nature of the risks at the site. Core criteria for assessing and demonstrating coordinator competence are essential. The Commission will, in cooperation with the Member States, encourage the development of such criteria.

All the players in the construction sector indicate that the coordinator is appointed at too late a stage in the proceedings. Workers' representatives pointed to a real lack of coordination at the design stage. The assessment also shows that in the project preparation phase there is a widespread lack of coordination (and control); coordination is only effective at the execution stage.

Because project preparation does not take prevention of occupational risks into account before the design is finalised, the lack of planning for prevention has to be remedied at the execution stage. This may be one of the reasons for the extremely high accident rates in this sector by comparison with others. This situation also hampers the prevention of occupational risks throughout the life of a site, particularly with regard to operation, upkeep, maintenance and even demolition.

If national legislation made it a requirement for prevention measures linked to the subject-matter of the contract to be systematically incorporated into the technical specifications for invitations to tender and in the contract performance clauses and quality contract management by the contracting authorities, this could help to change attitudes in this area.

At the project execution stage there are several scenarios. Some Member States stipulate that the coordinator must be the architect or engineer who designed the building or the main contractor on the site (project supervisor). In other Member States, coordinators may be independent natural or legal persons or may belong to clients' organisations or companies.

Even when there is coordination on site, very often it is still minimal. A lack of coordination in design affects the quality of the coordinator's work at the execution stage. Designated on-site coordinators often encounter health and safety problems which are difficult to resolve because they have not been taken into account during project preparation. This is compounded by problems of authority: sometimes other players do not understand what the

coordinator's job is, and self-employed workers and subcontractors on the site are even less inclined to acknowledge the coordinator's authority.

By contrast, relations between the coordinator and workers are very good when the coordinator is independent (i.e. is linked neither to the project supervisor nor to the architect or engineers, etc.), which makes it easier for workers to tell him or her about any prevention problems which they might be disinclined to report to the person in charge of the site. It is easier to build up this trust if the coordinator visits the site regularly.

On large sites the situation as a whole is acceptable, and there is effective and efficient coordination. However, on small or medium-sized sites the situation is very different, and the Directive is seldom implemented. On small private sites, coordination is almost invariably ignored and is restricted to 'administrative compliance'; the coordinator is often designated late and small enterprises generally regard coordination as 'optional'.

The difficulties of effective coordination on small sites should be dealt with when developing non-binding instruments, so that the essential prevention tasks are carried out in a simple and proportionate manner in keeping with the site's size and risks.

## Workers

In many Member States, workers in the construction sector are of various nationalities, which gives rise to communication and comprehension problems. Language barriers make it more difficult for workers to follow safety and health instructions for the use of machinery and chemical substances. Migrant workers appear to be less well trained and informed than others regarding the prevention of occupational risks. Often the lack of a prevention culture and a different perception of fundamental values may lead to workers taking unacceptable risks. Training and education on health and safety prevention are fundamental to improving this situation.

Construction workers' representatives are key to day-to-day compliance with good prevention practices, particularly on small sites where the project supervisor and coordinator are not always present. Workers' representatives are seeing genuine progress on hygiene measures (changing rooms, canteens, sanitary facilities) and access to sites, thanks to the Directive.

Workers report they do not understand the coordinator's role or obligations at the design stage, but they are more familiar with the coordinator's job at the execution stage.

Clients say workers do not adopt a proactive attitude to prevention, but are content to carry out their duties without worrying about the effects on their health and safety.

The on-site assessment shows that, in addition to a general lack of training, there are major communication and comprehension problems, which are exacerbated when migrant workers work on the site. Training programmes of the 'Safe Pass'<sup>12</sup> type might be an example to follow.

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<sup>12</sup> The Safe Pass Health and Safety Awareness Training Programme is a one-day programme run by Ireland's training and employment authority. Safe Pass aims to ensure that all construction workers in Ireland have a basic knowledge of health and safety, so they can work on construction sites without being a risk to themselves or others who might be affected by their actions.

Having workers' representatives on the site could improve working conditions.

Workers often see the coordinators' duties as including on-site inspections, in particular with regard to the use of personal protective equipment.

### **Self-employed workers**

The number of self-employed workers on sites is steadily increasing in all the Member States as a result of a growing trend towards subcontracting. This situation is addressed in Article 10 of Directive 92/57/EEC, which requires self-employed workers on sites to meet certain obligations and to follow the instructions of coordinators.

Self-employed persons engaged in renovation for private clients pose a major problem because they are service providers, not subcontractors; they usually work without any technical supervision and often are not even familiar with the legislation.

The competent authorities should conduct specific awareness-raising campaigns targeting self-employed workers. Clients or companies that hire self-employed workers must assume responsibility for their health and safety and for the impact of their actions on other workers.

### **Prevention services**

In general, the new legislation has encouraged an increase in the number of consultants in occupational safety and health, but they are involved only in the execution phase of the project, not in the design and preparation phases.

In some Member States, prevention services have been very active in providing training and information, in particular for coordinators and clients. However, they claim that they lack the necessary resources to intervene at the design stage.

Prevention services should be given a more active role in on-site training and information for workers.

#### **5.1. Documents required: real prevention or just red tape?**

One of the major criticisms levelled at Directive 92/57/EEC is the increase in the administrative burden and disproportionate costs that it entails for enterprises, in particular SMEs.

The Directive provides for three types of document designed to take full account of health and safety matters in all phases of construction: from design to execution, during use and maintenance, during renovation and fitting-out and, where appropriate, through to demolition.

#### **Prior notice**

Under Article 3 of Directive 92/57/EEC, in certain cases prior notice giving administrative information on the site must be drafted by the client or project supervisor and displayed on the site. In the vast majority of cases, this prior notice has to be given to the competent authorities within time limits laid down by national legislation. It is often the coordinator, who is only

appointed when the project has reached an advanced stage, who urges the client to comply with this requirement.

The way in which prior notice is drafted and sent to the competent authorities differs from one Member State to another. Often, the coordinator does this job although the Directive stipulates that it is the task of the client or the project supervisor.

Under the Directive, prior notice is intended to provide basic information identifying the site and key players, and the number of workers, enterprises and self-employed workers on the site, but it is needed only for certain categories of site. From a prevention point of view, this document alerts the client and/or project supervisor to their obligations and enables the competent authorities to ensure that these obligations are met from the design stage onwards, before work is started.

The majority of the Member States systematically require prior notice, although under the Directive it is required only for certain sites.

To reduce red tape, the Member States could consider combining prior notice with other administrative procedures, such as granting a construction permit.

### **Safety and health plan**

Article 3(2) of Directive 92/57/EEC provides for the client or the project supervisor to ensure that a safety and health plan is drawn up before a construction site is set up. The coordinator drafts the plan, specifying the rules applicable at the site.

The assessment shows that plans vary in quality from excellent to barely acceptable. In some cases, the coordinator at the preparation stage brings in the coordinator for the execution stage to help define the safety measures to be applied. The safety and health plan should cover safe working methods to be used on the site and must be updated if necessary. It is especially important if a large amount of work is being subcontracted.

The plan is often based on standard documents, particularly in the case of small sites and small enterprises, and so becomes an administrative formality rather than reflecting specific measures needed for a particular site. In other cases, it is no more than a list of good general prevention practice, regardless of the site.

The enterprises adopting this attitude argue that a construction site constantly changes and does not justify very detailed planning which could very rapidly become obsolete.

However, a large number of accidents in the sector are due to poor planning and lack of foresight. This proves that the safety and health plan is not just a bureaucratic requirement but is crucial to improving working conditions, where the plan evolves in line with changes in the site situation.

Moreover, in practice, Member States have rarely used the possibility afforded by the Directive for exempting enterprises from drafting a safety and health plan, although this is an option in all cases except those specified in the Directive (work involving particular risks and work for which prior notice is required). This is all the more striking because there is no knowledge of or reference to this possibility when the administrative burdens of the Directive are discussed.

To facilitate the tasks of clients and project supervisors, a non-binding guide will cover the various aspects of the safety and health plan and the possibilities afforded by the Directive for exempting enterprises from the obligation to draw up certain documents in cases where the risks do not justify it.

### **Safety and health file**

Under Article 5 of the Directive, the project coordinator prepares a file containing relevant safety and health information to be taken into account during any subsequent works on the project. This is seldom produced at the end of the design phase. Often it is the coordinator for the execution stage who draws it up and gives it to the client when the work has been completed.

This file is very often confused with the safety and health plan, and tends to be drafted as a routine operation. In the case of small sites, however, the safety and health file should suit the type of project, be kept simple and contain only the relevant safety and health information needed for subsequent use. The Directive explicitly allows the contents of the file to be adjusted to suit the project.

Some players regard the safety and health plan and the safety and health file as administrative formalities that add no value to health and safety on the site.

It is clear that the purpose and importance of the safety and health file in preventing occupational risks during subsequent work is not yet properly understood.

For small sites, the documents are often copies of standard models that do not reflect the actual conditions on site and add no value in terms of improving working conditions.

A non-binding guide will address this problem with a view to easing the administrative burden on enterprises without reducing protection, and to improving commitment to and ownership of the health and safety documents.

### **5.2. The responsibility of the various players on the site**

Article 7 of Directive 92/57/EEC lays down the responsibilities of clients, project supervisors and employers.

In some cases, national laws transposing the Directive do not clearly describe the duties and responsibilities of clients, project supervisors and employers. In practice, this means that each player interprets his or her responsibilities subjectively, and tasks and responsibilities may therefore be delegated by one player to another: designers pass on their responsibilities to enterprises, who then pass them on to subcontractors; the coordinator in the preparation phase withdraws as soon as the plans and specifications have been completed, even if the detailed design has not yet been prepared.

On-site assessment shows that clients often think they can delegate responsibility for occupational safety and health to the architect or the project supervisor. This is not allowed in Member States where the transposing legislation stipulates that the client and not the project supervisor is responsible for prevention. Clients still believe that only the project supervisors

are responsible for health and safety on the site. This phenomenon is particularly widespread on small private sites.

### **5.3. Enforcement**

Enforcement of national legislation transposing Directive 92/57/EEC is in general the responsibility of the labour inspectorates in the Member States.

In 2001, the Senior Labour Inspectors Committee (SLIC) decided to conduct an EU-wide enforcement campaign in the construction sector. The first campaign took place in 2003 in the then 15 Member States. It was an inspection and information campaign on the implementation of Directive 92/57/EEC, with particular emphasis on preventing falls from heights. The 2003 inspection campaign was repeated in 2004 and widened to include transport at the workplace, falling objects and lifting.

The results of the 2003 campaign indicated that, in relation to coordination, the safety and health plan, prior notice and the project file, there is a positive correlation between the size of the site and the degree of compliance with the Directive, with large sites (over 50 workers) obtaining far better scores than small ones. Although large sites are safer than small ones in practice, the degree of compliance is still unsatisfactory (20-30% of large sites are not in compliance, as against 40-50% of small sites).

The results of the 2004 campaign were no better. On the contrary, there is evidence that the situation on small sites may even have worsened slightly, confirming the 2003 conclusion that it is imperative for the construction sector to pay greater attention to safety and health matters and improve working conditions.

## **6. ACTION IN THE FIELD: PRACTICAL IMPLEMENTATION OF DIRECTIVE 92/58/EEC**

In the majority of the Member States, the players are familiar with safety and health signs, as these were already being used before the adoption of Directive 92/58/EEC. There were very few changes in the form, logos, colours, etc., of previous signs, the only exception being those indicating the location of emergency exits in the event of a fire.

In most Member States, employers ask for advice before purchasing certain types of signs. Generally, they ask about the type of signs to be used and the best place to put them.

While enterprises in most Member States were well aware of the legislation, they did not always comply with it because of a widespread assumption that the legislation was marginal and supplementary.

As a rule, enterprises were more familiar with fire and evacuation signs, as these are the risks most often highlighted by the competent authorities and by insurance companies.

While most enterprises knew they must signpost hazards, small enterprises were less well informed than large ones, and in some sectors (e.g. agricultural holdings, restaurants and hotels, construction sites), compliance was less widespread.

Risks directly linked with the enterprise's main activity (for example, chemical risks in chemical companies) are signposted more than other risks (such as those of road

traffic or transporting heavy loads).

The legislation is applied more consistently in new enterprises than in older ones. However, even in cases where the new signposting legislation is obeyed, many shortcomings are noted in practice. Often signs are not renewed.

The consequences of non-compliance may be very serious. A lack of signs indicating vehicles at the place of work, suspended loads, open drains, electrical risks, etc. can often be the cause of serious accidents.

Specific training on the meaning of signs and other visual information for workers appears not to be widely available in the majority of the Member States. In most cases workers receive general training and information on safety and health matters, with only a small component devoted to signs. The specific case of migrant workers deserves to be studied, in order to establish the extent to which they understand signs.

Certain problems also emerge with regard to interpreting 'Emergency exit' and 'Telephone for rescue and first aid' signs, as opposed to 'Fire equipment' and 'Fire telephone' signs. The only difference between these two groups of signs is the colour of the background.

## **7. GENERAL ASSESSMENT**

### **7.1. The main positive effects of the two Directives**

#### **Directive 92/57/EEC**

In their national reports the Member States indicate that implementing Directive 92/57/EEC raised awareness of safety and health matters on a large scale and prompted them to update national legislation. The Member States regard the adoption of this new legislation as indispensable, a positive development, useful, relevant, justified and satisfactory.

Directive 92/57/EEC has been highly beneficial in terms of improving working conditions on construction sites. In particular, it has boosted the culture of prevention in this sector, which is a 'black spot' for accidents at work and occupational diseases. Many Member States say the quality of on-site facilities has improved considerably (hygiene, training premises, canteens, sanitary facilities and offices) and that the Directive has improved dialogue and communication between the various players on-site at different stages.

The Directive's major innovation, which all sides see as a step forward, is that it makes all players, and mainly the client, responsible. Introducing coordination at the preparation and execution stages is also seen as highly beneficial, as is the obligation to draw up a safety and health plan and a safety and health file.

According to some Member States, enterprises are increasingly acknowledging the relevance of safety and health protection at work. Safety and health measures are no longer considered solely as costs, but also as economic benefits, because they may reduce absenteeism and ultimately increase productivity.

## **Directive 92/58/EEC**

The new legislation defined signs in practical and exhaustive terms, enabling the signs used at workplaces to be harmonised across all the Member States. The fact that the Directive has included and regulated signs other than visual ones — such as luminous, acoustic, and verbal signs and hand signals — has also met with approval.

The national reports show that the Directive provided an opportunity to renew and add to existing national legislation. It helped to make national legislation consistent and to introduce a coherent set of EU safety and health provisions.

### **7.2. Main problems of implementation**

#### **Directive 92/57/EEC**

The main problems reported by the Member States stem from the requirement to draft a safety and health plan and to designate coordinators as early as the project preparation stage.

In most national legislation, the client is responsible for prevention policy. Clients face difficulties in discharging their increased responsibilities. Designation of coordinators is still unsatisfactorily or is delayed at the preparation stage, as this too is seen as an administrative burden.

If the safety and health plan has not been drawn up or the coordinator has not been designated before the project execution stage, the obligation to incorporate prevention principles in project preparation has not been met. Moreover, the various national provisions on the safety and health plan are too vague and general to enable those responsible to know what they should include in the plan. Labour inspectorates detected another serious problem, namely that some enterprises rely on standard safety plan models which do not allow inspection of the specific working conditions of a specific site. Member States report that enterprises fail to grasp the role that the safety and health file plays in the prevention system.

Another problem mentioned is the low rate of participation by construction workers in the prevention of occupational risks through their representatives.

A shortfall in training for workers, subcontractors, self-employed workers and SMEs was found. Moreover, SMEs suffer from an excess of red tape and a lack of flexibility in national legislation.

Lastly, in many Member States the coordinator's competencies are not defined by the legislation. This creates situations where coordination cannot be effective because those who take on the role do not possess the necessary knowledge.

#### **Directive 92/58/EEC**

The Member States' reports and the experts' evaluation indicate that the main problem is a lack of training for workers. In most cases, workers receive general health and safety training, with only a small section devoted to signs. In more general terms, the lack of interest shown by enterprises and managers in implementing the Directive was also identified as a problem.

## **8. SUGGESTIONS FOR IMPROVEMENT**

### **Directive 92/57/EEC**

Some Member States say it is difficult to apply the Directive because its terms are too general. Some have asked the Commission to prepare non-binding information addressing possible questions and doubts, to help with implementation.

In general, the national reports show that the Member States' chief concern is shortcomings in developing safety coordination at the preparation stage. Some would therefore like the Commission to cover coordination at the preparation stage in non-binding instruments.

Others would like their national legislation to clarify the interaction between the project coordinator, the designers and the client, and between the project coordinator, the project supervisors, self-employed workers and the client.

### **Directive 92/58/EEC**

A number of suggestions were made to improve either the legislation or the way it is applied.

One of the suggestions to improve the legislation was to include compulsory basic training for workers on safety signs, although the training provided would need to be proportionate to the risks involved. Another was to review the rules on hand signals, to improve implementation. Efforts should be made to harmonise the Directive with international standards.

## **9. ASSESSMENT OF THE EFFECTIVENESS OF THE LEGISLATION**

### **Directive 92/57/EEC**

It is very difficult to demonstrate objectively the link between the implementation of the Directive and the improvement of the situation in terms of reducing accidents at work and occupational diseases in the construction sector.

The growth in the construction sector since the Directive's entry into force; the introduction of new technologies; the complexity of introducing a prevention system on-site and the multiplicity of players; seasonal variations; and the way the Directive contains some new provisions and others that are grafted onto existing national regulations all complicate an assessment of its effectiveness.

The construction sector continues to hold the poorest record for accidents at work compared with other sectors of economic activity. While implementing the Directive has produced a steady fall in the incidence rates of accidents in construction over the years, the reduction is still not as big as expected.

#### **(a) Effects on accidents at work and occupational diseases**

The most recent available European statistics on accidents at work on EU-15 construction sites are for the year 2005. Since 1996, a gradual improvement in the incidence rate<sup>13</sup> has

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<sup>13</sup> The incidence rate defined by ESAW methodology is the number of accidents at work per 100 000 workers in employment.

been observed in the case of both fatal accidents (1996: 13.3; 2005: 8.8) and accidents involving more than three days' absence from work (1996: 8 023; 2005: 6 069). However, it should be noted that the rate of fatal accidents in construction is almost 2.5 times the average rate for all activities, including construction, and the rate of accidents involving an absence of more than three days from work is twice as high.

(b) Impact on productivity, employment and competitiveness

Most Member States do not provide any information on the impact that the new legislation is having on productivity, employment and competitiveness. As a rule, the new measures are seen as beneficial in some Member States in terms of productivity and competitiveness, particularly in the long term. According to these Member States, implementing the Directive encourages modernisation and streamlining of production processes, which logically lead to improved productivity by ensuring that work organisation is planned and reviewed.

### **Directive 92/58/EEC**

(a) Effects on accidents at work and occupational diseases

No specific data are available on this subject, as the statistics generally do not take account of accidents due to signs. The absence of signs, in particular, is not generally considered to be a material factor in an accident. Consequently, the absence of signs is not included on the list of material agents linked with accident statistics. It is for this reason that the lack or absence of safety and health signs does not feature in studies carried out to pinpoint the causes of accidents at work.

(b) Impact on productivity, employment and competitiveness

The Member States have found it difficult to measure the impact of the Directive on productivity, employment and competitiveness. One Member State said that, as a management instrument, the Directive contributed to productivity; another Member State stated that it had beneficial effects on the number of absences from work due to illness and on working conditions in general.

## **10. CONCLUSIONS**

### **Directive 92/57/EEC**

While the incidence rate and the number of accidents at work were down both for fatal accidents and for accidents involving an absence of more than three days from work (which in itself testifies to the positive impact of the Directive in terms of safety and health of workers in the EU), the numbers are still unacceptable: construction is still the sector where workers are exposed to the greatest risks.

The assessment appears to show clearly, as do the above figures, that an improvement in the health and safety of workers on construction sites can only be achieved if Directive 92/57/EEC is implemented more effectively in practice. Now does not appear to be the right time to embark on a process of amending the Directive without first taking alternative action at national and/or European level to enable the Directive to take full effect, and to ensure compliance with it. In developing national health and safety strategies, the Member States could take action to apply Directive 92/57/EEC more effectively, mainly by streamlining and

simplifying existing national legal frameworks while abiding by the principles of consistent and effective legislation. The exercise to reduce administrative burdens in the European Union<sup>14</sup>, in which the Commission is currently engaged, is crucial in this respect. It includes an assessment of Directive 92/57/EEC and will enable unnecessary administrative burdens caused by both national and EU legislation to be identified.

The Member States all agree, and assessment in the field confirms this, that non-binding instruments are needed at European and/or national level to make it easier to apply Directive 92/57/EEC in practice. Specifically, the majority of the Member States highlight problems in understanding and drawing up the health and safety plan and in identifying the persons responsible for doing so. The role of the safety and health file also needs to be explained.

In general, the Member States report problems stemming from the absence of clear information on the definition, the role, the tasks and the qualifications of coordinators according to the type of project.

Increased efforts must be made, through training and information, to raise clients' awareness of their responsibilities and to convince them that coordination is not an additional cost but an effective means of reducing costs throughout the project. The architects and engineers involved in design must also be given training on prevention of occupational risks, preferably as part of their university studies. Basic training requirements for coordinators should be developed. Lastly, small enterprises and workers, especially migrant and self-employed workers, need to be informed and properly trained in the legislation and their responsibilities.

A crucial aspect is enforcement of the Directive in an equivalent manner across the EU. In addition to focusing on the execution phase of construction, enforcement must pay more attention to ensuring that clients and designers comply with their obligations at the design stage. Sites should be inspected more frequently, and safety and health plans and the safety and health file should also be checked for both form and substance. Effective, proportionate and dissuasive penalties must be imposed on both clients and project supervisors where they fail to meet their obligations. In this context, SLIC plays a fundamental role and should address the particular situation in the construction sector as a priority in its future work.

To sum up, the following action needs to be developed either at national or at EU level:

- draft non-binding instruments (guidelines);
- integrate specific safety and health issues into vocational school and tertiary education programmes at national level for professionals playing a key role in the implementation of the directive;
- introduce national competence requirements for coordinators;
- systematic incorporation of prevention measures linked to the subject matter of the contract in the technical specifications for invitations to tender and in the contract performance clauses and quality contract management by the contracting authorities;

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<sup>14</sup> COM(2007) 23 of 24.1.2007, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Action programme to reduce administrative burdens in the European Union (SEC(2007) 84) (SEC(2007) 85).

- improve education and training for workers and communicate with them through training programmes (such as ‘Safe Pass’);
- hold specific national awareness-raising campaigns targeting self-employed workers;
- combine preparation the prior notice with other relevant national administrative procedures (such as applying for the construction permit);
- inspect sites more frequently;
- introduce effective, proportionate and dissuasive penalties.

Construction remains a particularly dangerous sector requiring extra effort by all players if implementation of Directive 92/57/EEC is to improve significantly. The Commission will contribute to this aim, *inter alia* by drawing up a practical, non-binding guide to clarify certain key concepts and to help all players to meet their obligations.

### **Directive 92/58/EEC**

All the Member States believe that Directive 92/58/EEC has had a very positive impact in terms of protecting the safety and health of workers and of third parties. It has enabled risk situations to be clearly identified, independently of language knowledge, and has contributed decisively to implementing a major principle of Community law: the free movement of workers.

The Directive will be affected by the introduction of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) — which amends the criteria, pictograms and symbols for toxicity, flammability and other chemical risks — and will therefore have to be updated.