



Recent directives in the social field and their possible impact on standardization

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1. Introduction

Harmonization of laws, methods, rules, working procedures in Europe has always been one of the major objectives of European Community legislation with the aim to guarantee fair competition in all EU Member States whilst ensuring the bringing on the market of intrinsically safe products and, on the other hand, guarantying good, healthy and safe living and working conditions.

However, in practice, the legal situation may appear a bit complex despite the fact that all the imposed rules are based on scientific knowledge, practical needs and good common sense.

In the social field and in particular for health and safety at work this is truly the case. A very simple and a somewhat caricatured example hereunder can quickly illustrate the need to consider a problem under different perspectives.

Many companies in the EU are active in the field of transport of goods or persons by road. It is obvious that in order to carry out their job they need trucks or busses that are in good working conditions and, say, intrinsically safe. To ensure this, all vehicles have to be constructed according to a number of safety criteria and submitted to a series of technical controls. These criteria and controls are based on international, European or local well recognized standards.

Whilst this definitely contributes to a safe and economically sound functioning of the transport companies it is nevertheless not sufficient: you can have the safest vehicles of the world, if the drivers are tired, under stress, not well trained or even drunk you may expect some serious incidents. Therefore, legislation on machines and products is not sufficient: additional rules about the conditions of use must be considered as foreseen in the EU Treaty.

2. The role of specific health and safety legislation

The EU Treaty also foresees a robust legal framework in the field of social policy which aims, *inter alia*, at improving working conditions. In this context, the Council may, according to Article 137, adopt by means of directives (binding European law), "minimum requirements" related to a series of domains, including occupational health and safety. These directives - whilst taking due account of the existence of directives for intrinsically safe products and equipment - impose obligations on the employers concerning the working procedures and the use of products, machines and equipments by workers under healthy and safe conditions.

The rationale of the occupational health and safety directives is based on principles which are different but complementary to those of the "New Approach":

- responsibility of the employer,
- mandatory risk assessment at the workplace,
- prevention by elimination of risk or by reduction of them,
- protection first thanks to collective measures and, when still necessary, by means of personal protective measures,
- information, training and consultation of workers and,
- appropriate health surveillance.

In order to ensure coherence and completeness of EU legislations, the EU legislators (Council and European Parliament) have sometimes foreseen a double treatment of the same subjects, for example:

a) The case of *personal protective equipment*:

Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace is complemented a few days later by Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment, the latter in order to ensure the establishment of the internal market and a harmonization of the different national provisions.

b) The case of *explosive atmospheres*:

On 23 March 1994 the Council and the European Parliament adopt Directive 94/9/EC on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres and 5 years later they also adopt, on 16 December 1999, Directive 1999/92/EC on the minimum requirements for improving the safety and health protection of workers at risk from explosive atmospheres. The first directive divides the equipment and protective equipment systems which it covers into equipment groups and categories. The second one complements the safety issues by establishing a classification of workplaces where explosive atmospheres may occur in terms of zones and by determining which equipment and protective systems groups and categories should be used in each zone.

3. The impact of standards on social legislation ... and vice versa

In the examples above, the directives on the approximation of laws in the Member States are based on the articles of the EU treaty aiming at improving the free circulation of goods whilst ensuring quality and safety. They are part of the so called "New Approach" legislative corpus, the philosophy of which is explained in the presentations of my colleagues during this conference. In the "New Approach" framework it is normal to establish "essential requirements" by law (a directive) but to leave it to the recognized European Standard Organisations to set appropriate rules relating to most "technicalities" and compliance.

In the social legislation related to occupational safety, the original approach is different as each specific directive must elaborate on the general principles laid down in the so-called framework directive 1989/391/EEC of 12 June 1989 repeated in point 2 above. Occupational exposures limit values, for instance, are usually considered as a key element for protection and therefore cast in the text of the Directive and are consequently binding. In some cases, a simplified mechanism is foreseen to allow adjustments of a strictly technical nature in line with technical progress. However, the room for manoeuvre is rather limited and fundamental changes in exposure limit values require a formal modification of the directive itself.

However, there is no fixed practice and the text of each specific directive related to occupational health and safety may address a risk in different ways: by imposing rules and procedures in the

text itself or in an annex, or by making reference to existing European standards or – when no appropriate standard exists – by requesting a European Standard Organisation to prepare such a standard.

A good example of the variety of approaches to refer to standards in the occupational health and safety legislation can be found in the recent four directives dealing with protection of workers exposed to the risks due to the physical agents: vibration (directive 2002/44/EC of 25 June 2002), noise (directive 2003/10/EC of 6 February 2003), electromagnetic fields (directive 2004/40/EC of 29 April 2004) and optical radiation (directive 2006/25/EC of 5 April 2006): references to existing or future standards is not common practice and varies in each of these "sister directives".

Looking at it in a chronological order, one can see that there is no direct reference in the main text of the "vibration directive" to any standard although occupational limit values set in article 3 are clearly taken over from international standards and recommendations. Nevertheless, for risk assessment and measurements which are dealt with in an annex reference is made to appropriate standards and a suitable mechanism is foreseen for further adaptation. In this respect, standards are considered as implementation tools and not as reference for setting any exposure limits.

In the "noise directive" of 2003, there is a direct reference in the main text to define the nominal working day under exposure. No other explicit reference to standards exists although one must take into account that sound/noise measurements shall satisfy to some quality and reliability requirements and therefore be performed according to a standard procedure.

For the "electromagnetic fields directive" of 2004 the situation is again different. The matter is quite complex and all the critical points such as exposure limit values are addressed in the main text and elaborated upon in the annex. For these aspects there are currently no flexible mechanisms enabling adjustments without amending the directive. But the co legislators have realized that some indications should be given on how to make the assessment/measurement of the levels of exposure and requested CENELEC to establish a measurement/evaluation protocol to become a new European Standard. This is quite a break-through of the importance of European standards in the drafting of EU social legislation to enable good and effective protection of workers. It must be said that in this framework, there was even an inverse impact on the way of drafting standards. The standard organisations are well organised and are used to have a "safe product" and customer approach. In the particular case of this EMF directive, the mandate given by the Commission asked the writers preparing the standard to look at the topic from a broader, "workplace" perspective.

Finally, in the "optical radiation directive", the situation is again similar to the "vibration directive": many standards exist worldwide and the limits set in the annexes are derived from them. By taking them over in the directive itself the co legislators have shown their willingness to cast the standards into law, making them binding for all employers. On the one hand it reinforces the protection of workers against artificial optical radiation but, on the other hand, it removes any flexibility but also brings to light the complexity of this technical matter, an aspect which sometimes can be underestimated when limiting EU legislation to "essential requirements". For evaluation and measurement, the text is referring to existing standards from international organisations but enables adjustments to technical progress and subsequent modifications of these standards.

4. Conclusions

To call on the use of standards in a systematic and comprehensive way as it is done in internal market legislation (machines, products, etc.), is not a automatism in the EU social legislation although the latter is meant as a practical contribution towards creating the social dimension of the internal market.

However, as can be seen from the examples above, the reference to international or EU standards has recently been enhanced because it enabled to address technical problems linked to the occupational risks in a simple and consistent way. One major difference between the 2 approaches remains however that what is considered by the co legislators as a key "minimum requirement" is fixed in the text of the occupational health and safety directive. For instance, in general, exposure limit values are binding minimum requirements and are addressed in the directive itself and not through a reference to a standard.

The interaction between "internal market" and "social" legislation will certainly not decrease in the coming years and standards will remain useful tools to enable effective protection of workers and realisation of the social dimension in the internal market. It may however be that the drafting of the standards addressing occupational aspects may have to be reconsidered and broadened to take full account of the "workplace" or worker's dimension.