



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.4.2002  
COM(2002) 166 final

2002/0079 (CNS)

Proposal for a

**COUNCIL RECOMMENDATION**

**concerning the application of legislation governing health and safety at work to self-employed workers**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### I. INTRODUCTION

The Commission's interest in this initiative arises from the fact that workers whose work is not subject to any employment relationship with an employer or, more generally, who are not bound by any link or contract of employment to a third party are not, as a general rule, covered by the Community directives dealing with health and safety at work.

Nevertheless, self-employed workers are generally subject to the same health and safety risks as are employees and it turns out that there is a need for a Community initiative in this regard.

One of the measures foreseen in Action 8 of the Community programme concerning safety, hygiene and health at work<sup>1</sup> is to "examine the need for a proposal for a Council recommendation on the safety and health at work of self-employed workers". The Commission considered that given the ever-increasing number of self-employed workers who are not covered by the Community legislation based on Article 137 of the EC Treaty (ex Article 118a), there was a need to examine in depth the situation in the European Union and the means at the EU's disposal in this field.

Thus, already in 1996 the Commission began to discuss the issue and to examine the health and safety at work situation of self-employed workers in the European Union. The results of this analysis show that the sectors in which self-employed workers are concentrated are often high-risk ones (transport, agriculture, construction, fishing). Coverage by Community law is extremely limited and the national legislations vary greatly.

In this context, the Advisory Committee on Safety, Hygiene and Health Protection at Work had in 1997 created an Ad Hoc Group on self-employed workers whose remit was "to prepare an opinion of the Advisory Committee on the range of possible actions that may be available to the Community to deal with the need that may be established and the problems that may arise from the extension of Community health and safety measures to self-employed workers.

In the context of this group's work and with a view to getting a snapshot of the actual situation of self-employed workers in all the Member States, the Commission requested the Bilbao Agency to collect information from the Member States so as to determine whether the secondary legislation contained in the health and safety directives had been extended to self-employed workers and, if so, in what manner. Secondly, and with a view to a better appreciation of the situation, the Commission requested the Bilbao Agency to communicate to it a further set of information concerning the situation of self-employed workers, both in practical and legal terms, with a breakdown by Member State.

In a general context, it should be underlined that the European Social Agenda<sup>2</sup> adopted by the Nice European Council<sup>3</sup> asks the Commission to draw up, in 2002, a

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<sup>1</sup> COM(95) 282 final, OJ C 262, 7.10.1995, p. 18.

<sup>2</sup> COM(2000) 379 final, 28.6.2000.

Community strategy for health and safety at work with a view to attaining the objective of anticipating and managing a changing work environment by developing a new balance between flexibility and security, and that the Economic and Social Committee in its Opinion on health and safety at the workplace<sup>4</sup> proposes, as regards the conditions of self-employed workers, that information and awareness campaigns, benchmarking and research be developed systematically

## **II. PROTECTION OF THE HEALTH AND SAFETY OF SELF-EMPLOYED WORKERS AT NATIONAL LEVEL**

The following conclusions can be drawn from the information collected by the Bilbao Agency concerning the protection of the health and safety of self-employed workers in the Member States<sup>5</sup>:

- Certain Member States have extended the scope of their health and safety at work legislation to self-employed workers. This applies to Portugal and Ireland, where health and safety at work legislation covers all workers, self-employed or otherwise, and, to a lesser extent, to Denmark, the United Kingdom and Sweden.
- The health and safety at work legislation of the other Member States does not apply to self-employed workers. However, in certain domains (such as occupational health) or in certain circumstances (for example, when self-employed workers work on a site or in the case of subcontractors) self-employed workers are covered and must comply with the relevant legislation.

## **III. PROTECTION OF THE HEALTH AND SAFETY OF SELF-EMPLOYED WORKERS AT COMMUNITY LEVEL**

Article 3 of framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>6</sup> defines a worker as any person employed by an employer, a definition which applies to all the individual directives under the framework Directive.

However, two directives based on Article 137 (ex Article 118a) deserve particular mention:

- Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites<sup>7</sup>, which applies to self-employed workers where they are personally engaged in work activity and who may, through their activities on site, jeopardise the safety and health of workers who are also on the site (hence, the goal is not to protect self-employed workers but to subject them to certain rules so as to limit or restrict the risks to which they might expose the other workers);

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<sup>3</sup> Nice European Council of 7–9.12.2000, Presidency conclusions, Annex 1.

<sup>4</sup> OJ C 51, 23.2.2000, p. 33.

<sup>5</sup> See attached summary describing the situation regarding health and safety protection of self-employed workers in the Member States.

<sup>6</sup> OJ L 183, 29.06.1989, p. 1.

<sup>7</sup> OJ L 245, 26.08.1992, p. 6.

and

- Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board vessels<sup>8</sup>, which is not an individual Directive under Directive 89/391/EEC and which includes a very broad definition of workers, including self-employed workers; however, here again, this is not an instrument which exclusively concerns self-employed workers, and the aforementioned rationale of Directive 92/57/EEC, pursuant to which the protection of self-employed workers is merely incidental to the protection of employees, applies mutatis mutandis to Directive 92/29/EEC.

Moreover, it should also be mentioned that one of the recitals of Directive 2001/45/EC<sup>9</sup> concerning the use of work equipment provided for temporary work at a height refers to self-employed persons, pointing out that their use of work equipment may jeopardise the health and safety of employees.

#### **IV. THE NEED FOR COMMUNITY ACTION**

Although the bulk of the Community legislation governing the protection of the health and safety of workers at work does not apply to self-employed workers, they are very often subject to the same health and safety risks as employees.

Besides, it is precisely in the high risk sectors agriculture, fishing, construction, transport and services that self-employed workers are concentrated. The latest available statistical data show that while the rate of accidents at work among the self-employed is lower than average, the rate of fatal accidents is far above average<sup>10</sup>.

In May 1999 the Advisory Committee delivered a favourable opinion on the draft Council Recommendation proposed by the Commission, recognising the need for a Community initiative concerning protection of the health and safety of self-employed workers.

As the Advisory Committee points out in its opinion, the growth of self-employment in many European countries is part of a wider change in the structure of employment, with companies reducing in size by outsourcing many tasks to very small firms and self-employed workers. This creates new problems of cooperation between small firms and maintaining a strong safety culture in very small firms.

Following the entry into force of the Amsterdam Treaty, and in accordance with the procedure provided for in Article 138(2) and (3) of the EC Treaty, the social partners at European level were consulted on the need for an initiative in this area, initially in March 2000 and again in July 2001; they were almost unanimously in favour of a non-binding Community instrument which would notably cover the dimensions of information/awareness-raising, training, special medical surveillance, and prevention.

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<sup>8</sup> OJ L 113, 30.04.1992, p. 19.

<sup>9</sup> OJ L 195, 19.7.2001, p. 46.

<sup>10</sup> Eurostat – “Statistics in Focus” Population and social conditions: No 16/2001 “Accidents at work in the EU 1998-1999” and No 17/2001: “Work-related health problems in the EU 1998-1999”.

Given that, under Article 137 of the EC Treaty a directive is the only legal instrument whereby action may be taken in the field concerned, it is proposed that this draft recommendation be based on Article 308 of the EC Treaty.

Community action in this area is possible via recourse to Article 308 of the EC Treaty, which provides for the necessary measures to be adopted to attain, in the course of the operation of the common market, one of the Community's objectives. It is clear that in the case in question protection of the health and safety of self-employed workers contributes to realising one of the objectives of the Community, viz. to ensure a high level of protection in this area.

The fact that the large majority of Member States do not regulate the protection of health and safety of self-employed workers has resulted in a great variety of protection levels within the European Union.

In the light of the subsidiarity principle, the gaps in Community law and national legislation in this area show that Community level action is necessary with a view to ensuring a minimum level of protection for self-employed workers against occupational hazards. The Commission would first request the Member States to take the necessary measures on a voluntary basis, in line with this proposal for a Council Recommendation and, if necessary, following evaluation of an initial application period, via a binding instrument.

To the extent that certain Member States have already taken measures to protect self-employed workers, the proposed initiative can in no way be considered excessive and hence respects the principle of proportionality. Member States which have not yet taken measures in this field could therefore benefit from the very positive results of the implementation of provisions in this area.

## Annex

### Application of national law on health and safety at work

#### 1. APPLICATION EXTENDED TO COVER SELF-EMPLOYED WORKERS

**PORTUGAL:** Self-employed workers are covered by regulations which apply without distinction to employees and self-employed workers.

**IRELAND:** Legislation on health and safety at work applies to the self-employed.

**UNITED KINGDOM:** In the basic provisions of the *Health and Safety Act 1974* and of the *Workplace (Health, Safety and Welfare) Regulations 1992*, the concept of “work” is defined as applying to an employee or a self-employed worker. The *Health and Safety Act 1974* also lays down certain obligations for self-employed workers, as do the *Management of Health and Safety Regulations*, which impose on them the obligation to carry out a risk assessment.

Similarly, the *Work Equipment Regulations 1992* apply explicitly to the self-employed.

As for the *Health and Safety (Working on Display Screen Equipment) Regulations*, they apply certain requirements of Directive 90/270/EEC to self-employed workers, although the protection they afford is less comprehensive than that afforded to employees.

On the other hand, the *Regulations on Manual Handling of Loads and Personal Protective Equipment* do not apply to the self-employed.

**DENMARK:** Legislation on health and safety at work (§ 2 *arbejdsmiljøloven*) applies to all work carried out for an employer.

Such a criterion, which does not introduce the concept of “worker”, therefore does not exclude self-employed workers from the scope of the law.

Nevertheless, many of the rules under the health and safety at work legislation are only relevant within the context of a stable relationship between an employer and a worker, for example with regard to information, instruction and training.

Consequently, the rules likely to be applied to self-employed workers are by nature fewer in number than those applicable to employees. They are general principles of health and safety at work legislation, and the rules governing the use of work equipment and the organisation and execution of work.

**SWEDEN:** The legislation on the work environment applies in part to the employer himself. This is also the case with purely family undertakings with regard, for example, to the use of work equipment or dangerous substances.

Consequently, Swedish legislation on health and safety at work applies in part to self-employed workers.

2. **APPLICATION IN PRINCIPLE RESTRICTED TO WORKERS WITHIN THE MEANING OF ARTICLE 118A**

**FINLAND:** Finnish law on the protection of workers applies to work carried out by employees on the basis of a contract and in exchange for remuneration, for and under the supervision of an employer. It does not apply to the self-employed.

However, the provisions relating to health at work apply equally to the self-employed.

**GERMANY/AUSTRIA:** Legislation on health and safety at work applies only to workers. The self-employed are not covered.

**BELGIUM:** As a general rule, the self-employed are not covered except when working on a site or where there is subcontracting.

**LUXEMBOURG:** The provisions do not apply to the self-employed except where they carry out an activity on a site.

However, self-employed workers are subject to the social insurance code and, in particular, are covered by the *Association d'assurance contre les accidents* (industrial section). As a result, they are obliged to comply strictly with that company's accident prevention requirements.

**NETHERLANDS:** The *arboret* legislation does not apply to the self-employed.

Under certain circumstances, however, for example with regard to sites, a self-employed worker operating within an undertaking in which workers are employed must comply with the relevant provisions of the legislation for the purposes of protecting those workers.

**GREECE:** The regulations governing health and safety at work do not apply to self-employed workers.

The obvious exceptions derive directly from Community law (sites, coordination).

**ITALY:** The health and safety at work regulations do not apply to the self-employed.

Under certain circumstances, however, in particular where providing a service in undertakings employing workers, they may be called upon to observe the health and safety at work regulations, but only for the purposes of protecting those workers.

**SPAIN:** Self-employed workers are outside the scope of the regulations.

However, the rules relating to cooperation and coordination apply to them whenever they are present in a workplace where workers are carrying out their activity.

Similarly, site regulations contain rules applicable to the self-employed.

**FRANCE:** As a general rule, the provisions do not apply to self-employed workers or to the employers themselves (except where they are directly carrying out an activity on a site).

N.B.: A study has been launched with a view to extending application to self-employed workers in the nuclear sector.



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**COUNCIL RECOMMENDATION**

**concerning the application of legislation governing health and safety at work to self-employed workers**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal for a Recommendation from the Commission,

Having regard to the opinion of the European Parliament<sup>11</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>12</sup>,

Whereas

- (1) The Communication from the Commission on a Community programme concerning safety, hygiene and health at work (1996–2000)<sup>13</sup> provided for examining the need for a proposal for a Council recommendation concerning the health and safety of self-employed workers, given the ever-increasing number of such workers.
- (2) The European Parliament in its Resolution<sup>14</sup> on the General framework for action by the Commission of the European Communities in the field of safety, hygiene and health protection at work (1994–2000) proposes that it include measures to extend the framework Directive to self-employed workers; whereas the European Parliament in its Resolution<sup>15</sup> on the mid-term report on the implementation of this programme again draws attention to the category of self-employed workers, who are largely outside the scope of the legislation, and stresses that the growth in subcontracting has led to an increase in the number of accidents at work.
- (3) The social partners attach particular importance to the protection of the health and safety of self-employed workers and almost all are in favour of a Community action in the form of a Council recommendation focusing on high risk sectors and notably on information and awareness-raising measures on risk prevention, appropriate training and medical surveillance.

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<sup>11</sup> OJ C, , p. .

<sup>12</sup> OJ C, , p. .

<sup>13</sup> COM(1995) 282 final, OJ C 262, 7.10.1995.

<sup>14</sup> OJ C 205, 25.7.1994, p. 478.

<sup>15</sup> Resolution of the EP of 25.2.1999 (A4-0050/1999).

- (4) As a general rule, workers who exercise their occupational activity in a manner which does not involve an employment relationship with an employer or, more generally, does not make them subordinate to a third person are not covered by the Community directives on health and safety at work, in particular framework Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>16</sup>; whereas, in addition, these workers are not covered in certain Member States by the legislation applicable in the field of health and safety at work.
- (5) Self-employed workers are subject to exactly the same health and safety risks as employed workers.
- (6) There also certain "high-risk" sectors in the Community in which the number of self-employed workers is very high (agriculture, fishing, construction, transport).
- (7) The recent Recommendation by the ILO accompanying the Convention concerning health and safety in agriculture<sup>17</sup> stipulates that Member States must progressively extend to self-employed farmers the protection applicable to workers, taking account of the views of representative organisations of self-employed farmers if necessary.
- (8) Work accidents and occupational diseases to which self-employed workers are particularly exposed result in high costs in both social and human terms.
- (9) For these reasons, it is appropriate to take account of the category of self-employed workers.
- (10) Given that certain Member States already include self-employed workers within the scope of their legislation on health and safety at work, and although distortions of competition arise mainly within individual Member States, the adoption of equivalent measures in the other Member States would help to reduce distortions of competition by limiting the extent to which different health and safety regulations apply in the various Member States.
- (11) It is also necessary to improve access of self-employed workers to training and information with a view both to improving their own health and safety and that of the other workers who share the same workplaces.
- (12) The health and safety objectives laid down in this Recommendation do not prejudice the right of each Member State to establish specific procedures for the application of its legislation to self-employed workers.
- (13) This Recommendation does not affect existing or future national provisions providing for a higher degree of protection.
- (14) In the current situation, the Member States are in the best position to take appropriate measures, whereby the Community should also contribute towards achieving the objectives of this Recommendation.

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<sup>16</sup> OJ L 183, 29.6.89, p. 1.

<sup>17</sup> ILO, Convention 184/2001 of 21.6.2001.

- (15) The proposal was drawn up following consultation with the social partners, in accordance with Article 138(2) and (3) of the EC Treaty, and with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

HEREBY RECOMMENDS

THAT THE MEMBER STATES:

1. recognise, in the context of their policy on preventing occupational hazards and accidents, the right of self-employed workers to health and safety protection on an equal footing with employed workers and the duties to which they are subject in this area;
2. organise the recognition of this right and these duties within their domestic legal order, in particular by making provision for the inclusion of self-employed workers in the scope of their legislation on health and safety at work and/or the adoption of specific measures relating to self-employed workers;
3. adapt, if necessary, this legislation to the specific needs of self-employed workers;
4. take the necessary measures so that self-employed workers can obtain from the services and/or bodies appointed for this purpose useful information and advice on the prevention of health and safety risks in the context of their occupational activity; these measures must be adapted to the needs of self-employed workers and allow them to control the risks to which they are liable to be exposed;
5. take the measures necessary so that self-employed workers can have access to sufficient training to acquire appropriate safety and health skills;
6. ensure easy access to this information and training without involving excessive expense to self-employed workers;
7. take the necessary measures, in line with their national legislation and/or practice, to ensure appropriate surveillance of the health of self-employed workers, depending on the health and safety hazards in question;
8. take account, in preparing relevant legislation, of experience in other Member States;
9. ensure that these rules on the health and safety protection of self-employed workers are effectively enforced, notably by providing for appropriate control and surveillance;
10. examine, at the end of a four-year period starting with the adoption of this Recommendation, the effectiveness of the measures taken with a view to implementing its provisions, and inform the Commission of its findings.

Done at Brussels,

*For the Council  
The President*