

JUNE 2015
DG EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

EVALUATION OF THE PRACTICAL IMPLEMENTATION OF THE EU OCCUPATIONAL SAFETY AND HEALTH (OSH) DIRECTIVES IN EU MEMBER STATES

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PROJECT NO.	A031983
DOCUMENT NO.	7
VERSION	1.0
DATE OF ISSUE	15 June 2015
PREPARED	OSH team, LTKV
CHECKED	PGM, PMSO
APPROVED	PGM

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1 Introduction and background

The present executive summary comprises the main conclusions and recommendations derived from the project 'Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States' commissioned by the European Commission and conducted by a consortium consisting of COWI A/S, IOM and Milieu. The objective of the evaluation is to evaluate the practical implementation of occupational safety and health directives in EU Member States with a view to assessing their relevance, effectiveness and coherence, and identifying possible improvements to the regulatory framework. The evaluation covers a total of 24 OSH Directives (cf. Table 1) and their implementation and effects within 27 Member States¹ in the period 2007-2012.

Under the provisions of the 24 OSH Directives, every five years, the Member States shall submit a single report to the Commission on the practical implementation of the directives concerned. The first of these National Implementation Reports (NIRs) cover the evaluation period 2007-2012 and were submitted to the Commission by the Member States by late 2013. This obligation on the Member States to report on the practical implementation provides the opportunity to take stock of and evaluate the various aspects of the practical implementation of the directives. The evaluation is therefore based on the National Implementation Reports, on an extensive mapping and analysis of transposition and implementation of OSH legislation in each Member State, official statistics at national and EU level, scientific literature, existing studies and interviews with national and EU stakeholders.

The evaluation is reported by means of a main report that provides a comprehensive overview of crosscutting findings, conclusions and recommendations from the evaluation. The main report includes 24 directive-specific evaluation reports (enclosed in Annex A in the main report) and 27 Country Summary Reports (CSRs) on the transposition and implementation of all directives in the Member States (enclosed in Annex B in the main report). Furthermore, the main report is complemented by a synthesis report providing a summarised version of the key findings, conclusions and recommendations as well as the present executive summary.

The objective of the 24 OSH directives, referred to as the OSH acquis, is to establish minimum requirements aimed at securing the same minimum level of protection from work-related health and safety risks for the workers of all EU Member States. A key to achieving this objective is the establishment of six Common Processes and Mechanisms (CPMs) by means of the Framework Directive, which all employers must internalise. These CPMs include the requirements of employers to conduct risk assessments; preventive and protective services; information of workers; training of workers; consultation of workers; and health surveillance. The CPMs are repeated to a varying extent within the 23 individual directives, which add key requirements pertaining to the specific hazard, workplace, or group of workers within the Directives' scope.

In the executive summary, we present the overall crosscutting conclusions drawn on the basis of the mapping exercise reported in the Country Summary Reports and the directive-specific evaluation reports. Most of the directive reports thus contain specific recommendations that are not

¹ Croatia was not a part of the EU when the evaluation was initiated and is thus excluded from the Task Specification.

duplicated here, but which should be examined and considered alongside the evidence presented in support of those recommendations.

The conclusions below, as well as the subsequent recommendations, are presented in four main clusters, which reflect their content and constitute the major points of interest in light of possible improvements to the regulatory framework. The four main themes are:

- 1 Structure and coherence of the OSH acquis,
- 2 Addressing on-going and emerging risks,
- 3 Compliance, enforcement and SMEs,
- 4 Data and monitoring of effects.

Lastly, we present the main recommendations that derive from these overall conclusions in a summarised version in Table 2.

Table 1 24 occupational safety and health Directives

Type of Directive	Directive
General Directives	Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (Framework Directive)
	Directive 89/654/EEC concerning minimum safety and health requirements for the workplace (Workplace Directive)
	Directive 2009/104/EC on the minimum safety and health requirements for the use of work equipment by workers at work (Work Equipment Directive)
	Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (Use of PPE Directive)
	Directive 92/58/EEC on the minimum requirements for the provision of safety and/or health signs at work (Signs Directive)
Type-of-worker Directives	Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (Temporary workers Directive)
	Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (Pregnant workers Directive)
	Directive 94/33/EC on the protection of young people at work (Young people Directive)
Sector-specific Directives	Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites (Construction Directive)
	Directive 92/104/EEC on the minimum health and safety requirements for improving the safety and health protection of workers in surface and underground mineral extracting industries (Mining Directive)
	Directive 92/91/EEC concerning minimum requirements for improving the safety and health protection of workers in the mineral extracting industries through drilling (Drilling Directive)
	Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board vessels (Medical treatment on vessels Directive)
	Directive 93/103/EC concerning the minimum safety and health requirements for work on board

Type of Directive	Directive
	fishing vessels (Fishing vessel Directive)
Hazard-specific Directives	Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (Vibration Directive)
	Directive 2003/10/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (Noise Directive)
	Directive 2004/40/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (Electromagnetic Directive)
	Directive 2006/25/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (Radiation Directive)
	Directive 1999/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (ATEX Directive)
	Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (CMD Directive)
	Directive 98/24/EC on the protection of workers from the risks related to chemical agents at work (Chemical Agents Directive)
	Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work (Asbestos Directive)
	Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work (Biological Agents Directive)
	Directive 90/269/EEC on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (Manual handling Directive)
	Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment (DSE Directive)

2 Structure and coherence of the OSH acquis

The OSH acquis, comprising the Framework Directive and the 23 individual directives under evaluation, represents a comprehensive package of legislation aimed at securing the same minimum level of protection from work related health and safety risks for the workers of all EU Member States.

The Framework Directive was adopted in 1989, with most of the individual directives being adopted in the subsequent five years. Some directives existed in previous versions before the Framework Directive, while others were only added to the acquis at a later stage. The legislation has thus been in place for a considerable amount of time – and this leads to an expectation that it should be possible to observe a discernible impact.

The evaluation shows very clearly that the EU OSH acquis is the reference frame for national OSH regulatory regimes. While the Member States have chosen various models for their legal implementation of the provisions of the directives, there is no doubt that the directives' requirements form the core of the national systems in one way or the other. The significance of the directives in setting the scene for OSH regulation in the EU is therefore very high, and the evaluation shows that it is relevant to maintain individual directives to address specific risks and specific sectors.

The directives currently represent a mix of on one hand a goal-oriented legislative approach, which establishes a requirement that Member States themselves identify the most suitable means to arrive at a certain end, and on the other hand a prescriptive approach, which specifies the means to be applied. The goal-oriented approach is very strongly expressed in the Framework Directive and mirrored in individual directives as well, and the prescriptive approach is for instance reflected in the very detailed and specific requirements in the annexes of some directives. On this basis, some Member States have placed most emphasis on the goal-oriented approach in their national implementation, whereas others have preferred a stronger reliance on the prescriptive approach. This national preference seems, at least partially, to depend on the existing regulatory traditions of the Member States. The evaluation indicates that the EU OSH legislation, mainly through the Framework Directive, has contributed to a development towards application of the goal-oriented approach and a stronger focus on the risk management cycle in the Member States.

On the overall level, the evaluation shows that the goal-orientated approach embedded in the Framework Directive, as well as in the CPMs, is relevant, that it works effectively and provides a clear structure for implementing OSH management in the Member States. Furthermore, the goal-oriented approach is in line with so-called better regulation principles, as defined by the European Commission², which emphasises that regulation, as far as possible, should be general in nature and cover the objectives, periods of validity and essential requirements, while technicalities and details should be omitted and left to the Member States to decide. One point of criticism of the goal-setting approach is that the absence of prescriptive intermediate goals makes compliance harder to verify and, in the absence of that verification procedure, also harder to enforce (especially in OSH cultures with a history of the prescriptive approach).

In comparison, the prescriptive approach brings with it a requirement to regularly revisit the legislation to bring it up to date. The evaluation finds that directives of a prescriptive nature generally suffer from a lack of follow-up in this respect. In areas where prescription is necessary, it can be advantageous to regulate by linking up with existing, widely recognised standardisation mechanisms, such as the International Organization for Standardization (ISO), to avoid incoherence and to secure an efficient updating process. This is particularly relevant in case of the OSH Signs Directive (92/58/EEC) and the Drilling Directive (92/91/EEC). Such instruments do not seem to have been sufficiently exploited in the current set-up of the acquis.

Notably, the analysis of the 24 OSH directives has not resulted in the identification of major legal coherence issues. There are no contradictory provisions and very few overlaps in between the OSH directives. The legal articulation between OSH directives through in-built mechanisms (e.g. specific scope, 'without prejudice' clause, exemptions, *lex specialis* principle) has in most cases contributed to avoiding overlaps and contradictions between provisions. Furthermore, among the few overlaps identified, a large majority do not result in double regulation in practice (e.g. double reporting requirements) and therefore do not lead to additional cost when applied by employers.

However, while this mix of the goal-orientated approach and the prescriptive approach embedded in the directives does not generally give rise to legal incoherence, it is conceptually inconsistent. It poses a challenge to the definition and understanding of the overall objectives of directives as well as complicates the transposition into national legislation. Some Member States already had OSH legislation in place, prior to adoption of the Framework Directive, and as a result, the goal-process

² European Commission (2015), Better Regulation Guidelines (Commission staff working document), http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf

oriented approach was already embedded in the legislative framework of some Member States, whereas others had to make considerable changes to accommodate it.

Furthermore, when analysing the interlinkages of the specific CPMs across directives, and thus their suitability to work in tandem and collectively increase the safety and health of workers, the evaluation found that the collected OSH legislation is unnecessarily complex, in part due to a seemingly unstructured and unsystematic inclusion (or lack thereof) of CPMs into the individual directives. Consequently, when OSH directives have been transposed into national law, these problems are often conveyed into the national legal frameworks, preventing a fully coherent and cohesive approach. This, in turn, has caused some confusion at enterprise level and particularly amongst SMEs, leading to misinterpretations of the provisions of legislation or directives.

The evaluation has also identified a number of requirements within individual directives that could apply to all risks, workers and workplaces, and which could therefore be transferred to the Framework Directive. These are provisions with a scope and rationale corresponding to that of the Framework Directive and a level of prescription that would not restrict the Member States and employers' flexibility in implementing these general principles. Such a consequential review of the Framework Directive would be justified by the fact that it has not been significantly amended since its adoption in June 1989, whereas individual directives have been amended throughout the years. Some have even recently been adopted (e.g. Directive 2013/35/EU on electromagnetic fields). Indeed, a majority of the identified provisions that could be streamlined in the Framework Directive are found within recently adopted or amended directives.

One prominent example of such broad provisions, which could be incorporated into the Framework Directive to ensure consistency and appropriate coverage, is the requirement to address the specific needs of vulnerable groups of workers. The evaluation shows that vulnerable groups are not addressed in a consistent manner in the current acquis. Some groups (young workers, pregnant workers, temporary workers) are addressed by an individual directive, whereas others are not (e.g. older workers, migrant workers, newly employed workers). New groups of vulnerable workers may be identified in the future, and the current legal structure is not suitable to ensure their incorporation in a flexible manner.

Furthermore, other possibly vulnerable groups with even less OSH protection include the self-employed and home workers who are excluded from the provisions of the OSH acquis, either entirely or partly. The latter group presents particular challenges because developments in display screen equipment (DSE) and related technologies mean that DSE users might for instance perform their work at home, or at other remote locations, which are not covered in the scope of the OSH acquis. The same applies for those whose workplace per definition is within the home setting, i.e. domestic workers. In such cases, protection could almost be regarded as a 'Member State lottery' in that the extent to which workers are offered protection, if at all, depends on which Member State he or she is employed in as some Member States have already exercised their right to make more detailed provisions and extend OSH protection to such groups.

Lastly, there are cross-references to vulnerable groups of workers between worker-specific directives and risk-specific directives. While these references are not incoherent from a legal perspective, as discussed above, they do add to the complexity of the legal framework. In addition, the current vulnerable groups directives contain provisions on workers' rights as well as OSH related provisions. While there are clear links between the two, it could reasonably be argued that provisions on workers' rights belong to a separate acquis.

3 Addressing on-going and emerging risks

The second cluster of prominent conclusions and recommendations pertains to their suitability to address both current and emerging risks. An important step in drawing conclusions on this topic during the evaluation was to assess whether the implementation of the OSH acquis has translated into less exposure to risk factors at EU workplaces and, as a result, into fewer accidents at work and fewer work-related diseases.

The data on work-related accidents and diseases in general shows that the incidence of accidents has decreased during the evaluation period, whereas the exposure to risks related to various occupational diseases has remained constant or increased, except for a few specific cases. It is likely that the decrease in incidence of accidents at work to some extent can be ascribed to the implementation of the directives. Subjective impressions, from surveys of the workforce, seem to suggest that, in general, a reduced proportion of workers consider their health and safety at risk from their work and feel that work has affected their health.

Quantitative material is less readily obtained. That which is available is patchy, incomplete, and not readily related to the OSH directive acquis. However, it is a key concern that exposure to risks related to various occupational diseases have typically either remained stable or increased during the implementation period.

In this regard, the OSH acquis is challenged by the fact that the design and specific content of the directives are a result of a comprehensive tripartite policy dialogue, which means they have been subject to considerable discussion and debate when they were written. The directives are thus based on available knowledge at the time of their conception and the possible political compromises, but not always backed by clear data and scientific research. Stakeholders are generally reluctant to reopen the debate about directives for fear of losing out in the process of revising it. This evaluation suggests that the (at times cumbersome) process of tripartite dialogue, on the one hand, contributes to the relevance and effectiveness of the directives because they represent the viable compromise between three parties and their combined knowledge. At the same time, there is a level of conservatism and inertia in the system, because it is sometimes very difficult to reach an agreement and because the parties are reluctant to reopen agreements already reached. Consequently, the relevance and effectiveness of the OSH acquis for dealing with specific risk factors are not adequately maintained. This evaluation points to two issues of particular concern, namely work factors creating a risk of musculoskeletal disorders (MSD) and psychosocial risks.

Stress and MSDs are the two most prominent work-related diseases, and exposure to related risk factors have both increased substantially during the evaluation period. On the subject of stress, this is perhaps understandable, given the fact that there are currently no specific OSH provisions that address psychosocial risks. Contrarily, two specific directives currently address two of the major hazards contributing MSDs, i.e. the Display Screen Equipment Directive (90/270/EEC), and the Manual Handling Directive (90/269/EEC).

Evidence from a number of sources suggest that there is a need to better address those work factors creating a risk of musculoskeletal disorders which are not addressed by the two current directives. However, there is a lack of consensus on what form any action should take. The evaluation shows that the complexities of managing the risks of non-manual handling MSDs are unlikely to be compatible with a prescriptive directive. Although the scientific evidence points towards redesigning the directive along the more goal-oriented lines, there is a lot of support for

(and against) such an approach. Ultimately, the collated available evidence does not permit a conclusive outcome at this stage.

On the subject of psychosocial risks, given their considerable negative impact on health, it is clear (and appears to be generally if not universally accepted) that some form of action is required to address the growing issue of ill-health arising from exposure to psychosocial risk factors in the workplace. What is not clear is the nature of such action. Many of the factors giving rise to such problems are well known. However, given their complexities and interactions they clearly do not readily lend themselves to the type of prescriptive directives favoured by some Member States (possibly incorporating 'exposure limits'). Equally, some stakeholders are strongly opposed to what they see as 'just' guidance. Clearly, some action in this area is desirable.

Apart from no action at all (there seems to be agreement that this is not really an option), three possible approaches can be outlined (although there are undoubtedly more). These are a non-legislative approach based on the use of (agreed) guidance, goal-setting legislation, and prescriptive legislation. Although there are currently two tripartite agreements in place addressing aspects of psychosocial risks (covering 'stress' and 'violence and harassment'), there is a widespread message from MSs that these are not sufficient to address psychosocial risks.

It is also argued by some that Article 5(1) of the Framework Directive ("The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work.") provides a sufficient legal basis. Again, the implicit message from the Member States would seem to suggest otherwise. At the validation seminar, the option of amending the Framework Directive to explicitly mention psychosocial risks (to make their inclusion as risks explicit), and addressing the issue by information and guidance was not universally well received, although some participants did endorse a fully non-legislative approach. Others, however, expressed a preference for a more detailed legislative solution.

The extensive research literature on psychosocial risks, including the interaction between occupational and non-occupational factors, makes this a complex field in which to enact legislation. However, comments and responses collected during the course of this study, again supplemented by comments from OSH experts, suggest that there is less motivation for ameliorative action in the absence of legislation, implying that guidance alone is less likely to be effective. This is supported by survey results that show legislative requirements as the primary driver for OSH action for many employers.

This evaluation has also identified a number of directives, which have failed to keep abreast of developments in the workplace resulting in the relevance of those directives to have decreased. One example is that of the Display Screen Equipment (DSE) Directive where advances in new technology and knowledge of relevant workplace hazards and risks appear to warrant considerable change.

Another issue related to the management of risks was identified during the analysis of the legal coherence of the Carcinogens and Mutagens Directive (2004/3007/EC), the Asbestos Directive (2009/148/EC) and the Chemical Agents Directive (98/24/EC). The evaluation identified a number of different individual areas of legal inconsistency or a lack of coherence between the three Directives causing a certain level of confusion regarding the provisions particularly under the Carcinogens and Mutagens Directive and the Chemical Agents Directive pointing to a need for action to ensure coherent coverage of risks related to various chemical agents. It is widely recognised that the Asbestos Directive reflects a very different scenario and series of highly

specific control measures (and there appears to be little support from any source for its merger with the Chemical Agents Directive).

However, one solution encountered during the evaluation with regard to the remaining two was that of merging them into a single directive. There have been numerous comments and suggestions made, from a variety of different sources, both for and against such a suggestion. The evaluation shows that, other than the argument for greater legal clarity through rationalisation, there is no evidence-base on which to argue for or against such a move. Thus, other than acknowledging the issue, no clear conclusions or recommendations can be drawn from this work.

Finally, on the subject of risks addressed by the OSH acquis, the evaluation has found that it is relevant to maintain the directives addressing physical agents, as there are differences in the risk involved, the approaches to risk management and the setting of different limit values, which justify the existence of distinct directives. However, some provisions in certain physical agent directives could apply to all workers exposed to such agents. More consistency in the way CPMs are drafted across the various physical agent directives would facilitate their application at the workplace.

4 Compliance, enforcement and SMEs

The evaluation provides evidence to suggest that SMEs are less compliant with the requirements of the OSH directives than large establishments. Although SMEs display lower incidence rates of accidents at work and also show a decreasing trend in the number of accidents at work similar to large establishments, the evaluation indicates that an increased compliance in SMEs is likely to entail additional benefits in terms of avoiding work-related accidents and diseases. The evaluation thus clearly suggests that exemptions for SMEs and microestablishments would be inexpedient, as this would lead to a lowering of the levels of protection for some workers.

Rather, the evaluation shows that continuing the further development and dissemination of already existing effective tools is pivotal. Particularly the Online Interactive Risk Assessment (OiRA) tool specifically targeting SMEs is highlighted. This points to the important role of EU-OSHA in ensuring that the experience already gathered is effectively used, e.g. that Member States can learn from each other and avoid unnecessary cost in developing custom-made tools and approaches.

The key challenge to increasing compliance in SMEs is to identify how to reach and encourage them to make the necessary changes. The data collected for the evaluation indicates that SMEs are often not consciously noncompliant, that they typically do not react well to written guidance (often finding it too complicated) and that they rely on external OSH services to a greater extent than large establishments. Furthermore, compliance costs (measured per worker) tend to be higher for SMEs, and they are less likely to perceive OSH as a financial investment. SMEs are best targeted through a more personalised approach, combining enforcement and guidance. Clearly, it would be burdensome for inspectorates to target SMEs using conventional approaches to inspection, so the challenge is to find new and innovative ways of reaching the SMEs in an efficient and effective manner in order to encourage the development of risk prevention strategies and overall OSH compliance.

In this regard, the evaluation indicates that a shift away from the traditional focus on inspections of individual establishments to a broader catalytic approach exploiting extended supply chains and targeting of upstream actors could provide part of this solution. Another option could be to tap into existing business networks and facilitate mutual learning processes among participants. The

evaluation highlights the benefits that could be gained from drawing on experience from some MSs in certain industries. For example, there is evidence from the UK of the benefits of the 'cascade approach' to OSH, which has been applied on large-scale construction projects during which SMEs learn from their involvement.

Likewise, the evaluation highlights approaches adopted in some MSs to 'simplify' OSH and thereby make the essential requirements more accessible to SMEs. One example is the potential of the 'control banding' approach to managing chemical hazards such as 'Stoffenmanager' developed in the Netherlands (cf. the Chemical Agents Directive Report).

Generally, the evaluation shows that there is a large degree of variation in the number and frequency of inspections across Member States. In effect, the directives are not enforced to the same extent in all Member States, which in turn leads to a concern about whether there in fact is a level playing field for EU undertakings and equal OSH conditions for workers across Member States. Having emphasised this issue, it has to be noted that as the directives only set minimum requirements, they do not as such aim to achieve a completely level playing field. Likewise, the requirement to enforce the legislation transposing the directives is not very clearly articulated in the current provisions in the directives. Nevertheless, it is clear that legal requirements and inspection are both key determinants in explaining why establishments develop OSH policies and take OSH action. The evaluation thereby points to a need for a strong effort in the area of enforcement, and inspections in particular, to ensure the implementation of the directives and to aim for a greater harmonisation in the way the legislation is enforced.

Through analysis of compliance with the CPMs specifically, the evaluation shows that there is a high level of compliance with the requirement to perform a risk assessment, whereas compliance is lower (but still reportedly fairly high) in relation to the other CPMs. Strong evidence suggests that employee representation has noticeable influence on the proportion of establishments performing risk assessments and an even more pronounced impact on other key requirements. However, compliance data in general is rarely statistic and might be misleading. Some published studies suggest that the quality of compliance is often poor, meaning that even amongst the organisations who report high levels of compliance, the extent of effective compliance is likely to be less.

The evaluation also calls attention to evidence, from some MSs at least, that a sole focus on risk assessment may divert attention from risk management, particularly in SMEs. This illustrates the impact of non-recognition of incompliance, as SMEs tend to believe that, having followed legislative requirements and conducted a risk assessment, they are in compliance. Contrarily, risk assessments in SMEs are often of insufficient quality to ensure adequate risk management and, even in large organisations, the risk management measures adopted may not be the most appropriate. Evidence from OSH practitioners, supported by material examined during this study (such as NIRs), suggests that the quickest, easiest, cheapest solution might be that which is chosen for implementation, rather than the most effective measure. As a specific example, a number of NIRs report that, in response to identified manual handling risks, organisations frequently resort to manual handling training, whether or not it is the most appropriate measure.

In addition, in several cases, the evaluations of individual directives have resulted in conclusions regarding inadequate or insufficient risk assessment procedures, which do not adequately address directive-specific hazards, risks, challenges and/or circumstances. There is thus a need for a dual focus on further enhancing the quality of risk assessments while at the same time ensuring that the measures identified in the risk assessment are in fact implemented and the risks sufficiently managed.

One factor that tends to cause risk assessments to have a smaller impact on the risk management policy of a given establishment is whether that risk assessment was carried out in-house or by external service providers. The evaluation indicates that externally conducted risk assessments may have a lower effect on OSH management than internal ones. Furthermore, data reveals considerable differences across MSs in the frequency of the two approaches. Clearly, different kinds of advice and guidance are required in relation to these two approaches, and with evidence pointing to significant differences in risk assessment quality, this difference constitutes room for improvement and increased effectiveness of the CPM. The evaluation suggests that it may be beneficial to promote the use of internally conducted risk assessments or establish minimum requirements on management participation when using external services, which might ensure co-ownership and competence development in management. In extension, the evaluation repeats the need for an answer to the fundamental question previously raised in the European Risk Observatory of "how the use of external services to carry out risk assessments fits within the Framework Directive's principles of prevention and protection through a coherent overall policy"³.

5 Data and monitoring

The last cluster of conclusions concerns data and monitoring, which have given rise to considerable challenges during this evaluation. These conclusions thus address the root of the problem that hinders current and possibly future decisions on legislative development from being based on statistical evidence. The evaluation shows very clearly that there is very limited data at EU level to assist in assessing the effects of the directives and the extent to which they each achieve their objectives, particularly on the subject of occupational diseases. In other words, there is a need for better, more consistent data recording systems at national and EU level with a better reflection of causal factors to be able to follow up on whether the legislation works as intended. A necessary step in this process is to further clarify what meeting the objectives actually entails for each directive, as monitoring systems cannot be sufficiently targeted to the purpose without this clarification.

Particularly, cost-benefit analyses provide important information for policy makers, but better national data on both costs and benefits is essential. Moreover, to conduct cost-benefit analyses at the EU level, more in-depth examination of existing country-specific literature and databases, analyses of structural differences between MS and a standardisation of national methodologies are all needed. To ensure a sufficient level of accuracy in the analysis, this exercise will require considerable resources and efforts. However, the goal setting requirements in many directives, including the Framework Directive means that assessing the actual costs of compliance is very difficult. Therefore, alternative cost-benefit analyses, based on case studies from the enterprise perspective, might be a more realistic option. Currently, most of the available literature either focuses on costs or benefits. We caution against initiating cost-reducing measures without assessing the benefits, because a more costly activity could also bring about larger benefits making it more profitable than a less costly measure (as shown in the literature on profitability).

Most of the directives are encompassed by the general requirement to report to the Commission about their implementation every five years⁴. This evaluation report should be seen in conjunction

³ EU-OSHA (2013), European Risk Observatory, Analysis of the determinants of workplace occupational safety and health practice in a selection of EU Member States

⁴ Cf. Framework Directive (89/391/EEC), Article 17a

with this procedure as it builds on the National Implementation Report submitted by the Member States by December 2013. Having a report every five years from the Member States on the implementation of all these directives hence also constitutes a unique opportunity for collecting data and filling gaps where existing data sources (such as ESENER, ESAW and EWCS) do not give sufficient insight. Our experience from working with data in the NIRs is that they do provide some valuable information, but unfortunately, the quality varies between directives and between Member States. This is partly because respondents in the Member States have taken different interests in answering the questions posed in the questionnaire devised by the Commission⁵. However, part of the reason is the fact that the questions are often phrased in an open and ambiguous manner and can be (and have been) understood in different ways. For this reason, responses from the Member States are often not comparable and reflect different interpretations of the question posed, which considerably reduces the value of the NIRs as a data source.

In other words, in order to make the directives 'fit for purpose', it is necessary to clearly define and effectively execute the monitoring plan for the directives. This includes considering the three key questions also posed in the better regulation guidelines: 1) Which evidence needs to be collected?; 2) When and how should evidence be collected?; 3) Who will collect the evidence and from whom?

6 Recommendations

Table 2 Recommendations for possible improvements to the regulatory OSH framework.

Cluster 1: Structure and coherence of the OSH acquis	
1.0	Maintain structure of acquis with a Framework Directive and individual directives.
1.1	Develop the acquis more in the direction of the goal-oriented regulatory approach.
1.1a	Directives with a highly prescriptive content could be reviewed and annexes shortened or removed and relevant elements of the annexes be transferred to updated guidance documents.
1.1b	Directives with a potential for alignment with standardisation mechanisms could be updated in this respect (in particular relevant to consider for the Signs Directive and the Drilling Directive).
1.1c	When amending directives, an analysis of the intervention logic of the directives could be performed, and goals against which the performance of the directive should be measured could be clarified (building on intervention logics of this evaluation where relevant).
1.2	Streamline the application of the CPMs.
1.2a	References in individual directives to the CPM provisions in the Framework Directive, which contain no additional requirements, could be removed.
1.2b	The Framework Directive could be reviewed to include requirements, which although set under individual directives only, could apply to all risks, workers and workplaces.
1.3	Reconsider how to address vulnerable groups.
1.3a	The requirements for employers to address the specific needs of vulnerable workers and general prohibitions could be more clearly reflected into the Framework Directive, coupled with additional guidance on how to implement this in practice targeted at various vulnerable groups.
1.3b	Existing directives on vulnerable groups could be repealed, and relevant provisions transferred to other directives: <ul style="list-style-type: none"> ➤ Provisions relating to risk-specific prohibitions or other risk-specific provisions could be transferred to the relevant risk-specific directives. ➤ Provisions on workers' rights could be transferred to directives pertaining to workers' rights.

⁵ Cf. Commission Decision C(2011) 9200 final of 20.12.2011

Cluster 2: Addressing on-going and emerging risks

2.1 Address risks related to MSDs.

- 2.1a Consideration could be given to commissioning an ergonomics assessment of the feasibility of generating prescriptive material relating to MSDs not related to manual handling or DSE work.
- 2.1b At least as an interim measure, consideration should also be given to the option of detailed guidance (for which potential examples are already available nationally) supporting enabling legislation, possibly in the form of an amendment to the Framework Directive.

2.2 Address psychosocial risks.

- 2.2a As the prescriptive approach appears to be that favoured in some MSs, it is suggested that consideration be given to commissioning a scientific assessment of the feasibility of generating prescriptive material (suitable for legislation) relating to psychosocial risks, to indicate whether or not such an approach could be viable.

2.3 Give attention to updating of relevant Directives.

2.4 Streamline provisions dealing with chemical agents across directives.

2.5 Streamline provisions dealing with physical agents to ensure coherent coverage.

Cluster 3: Compliance, enforcement and SMEs

3.1 Increase compliance of SMEs.

- 3.1a Continue the further development and dissemination of already existing effective tools, in particular the OiRA tool. Ensure that the experience already gathered is used in the most effective way, e.g. that Member States can learn from each other and avoid unnecessary cost in developing custom-made tools and approaches.
- 3.1b Find ways to target the SMEs with a personal approach without over-exerting the resources of the inspectorates.
- 3.1c Investigate the promotion of economic incentives, especially in SMEs, such as favourable insurance conditions if certain OSH criteria are met.
- 3.1d Consider introducing measures to reduce costs for SMEs.

3.2 Aim for a greater harmonisation in the way the legislation is enforced

- 3.2a Consider whether a clearer reference to the obligation to enforce the requirements should be included in the Framework Directive.
- 3.2b Strengthen existing coordinating mechanisms for enforcement and inspection, potentially coupled with a stronger emphasis on competence building and guidance to inspectorates.

3.3 Strengthen focus on risk management

- 3.3a Guidance on implementation of the CPMs embedded in the Framework Directive could be updated and disseminated focusing not only on risk assessment but on the entire plan-do-act cycle.
- 3.3b Consider which provisions of support match the different challenges associated with risk assessments conducted in-house compared to risk assessments performed by external service providers.
- 3.3c Consider promoting the use of internally conducted risk assessments or establishing minimum requirements on management participation when using external services, which might ensure co-ownership and competence development in managements.
- 3.3d Consider whether the requirements regarding the availability of preventive and protective services should be further enhanced in the Framework Directive.
- 3.3e Consider revisiting the provisions of health surveillance in the Framework Directive in order to streamline the approaches in national provisions across Member States.

Cluster 4: Data and monitoring

4.1 Improve monitoring systems to obtain better information on effects of the Directives

- 4.1a Consideration should be given to developing better, more consistent data recording systems at national and EU level which better reflect causal factors.