



The development of EU law in the field of occupational health and safety: a new way of thinking

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1. Introduction

Work is a vital part of our lives.¹ It provides the means of acquiring income, prestige, a sense of self-worth, and offers a way of participating in and being included as a member the community.² Work health and safety in many cases can be undermined by risks and hazards introduced by production processes. In this regard, occupational health and safety (OHS) plays a key role in effectively securing this vital part of life, given that the protection of workers from sickness, disease, and injury is a fundamental human right.³ In the European Union (EU), the Union law is of paramount importance to OHS. The EU is the result of the European integration process that was initiated and developed in Western Europe,⁴ and was extended to Central and Eastern Europe only after the key features of the EU had been established.⁵ That is to say, the European integration's achievements are based on European law.⁶ A prominent feature of EU OHS law is the adoption of the goal-oriented approach in combatting occupational hazards and ensuring compliance. Traditionally, non-compliance with health and safety regulations is seen to be resolved by administrative and organizational variables such as severity of infractions, number of compliance orders and/or penalties issued to remedy those

¹ D. MCDAID – C. CURRAN – M. KNAPP: Promoting Mental Well-Being In The Workplace: A European Policy Perspective. *International Review of Psychiatry*, 17(5), October 2005. 365–373.

² Rokho KIM – Jorma RANTANEN – Suvi LEHTINEN – Wiking HUSBERG: Chapter 5: Occupational Health and Safety. In: Bernd RECHEL (ed.): *Facets of Public Health in Europe*. Maidenhead, McGraw-Hill Education, 2014. 787.

³ KIM–RANTANEN–LEHTINEN–HUSBERG (2014) op. cit. 71.

⁴ Neill NUGENT: *The Government and Politics of the European Union*. Duke University Press, 2006. 5.

⁵ NUGENT (2006) op. cit. 5.

⁶ Carolien STOLTE – Tamara BURUMA – Rosa RUNHARDT: *The Future of the European Union: Different Aspects of the EU as Discussed During the SIB Leiden Conference 2007*. Sidestone Press, 2008. 19.

infractions, safety record of the worksite being inspected.⁷ However, this traditional viewpoint is increasingly questioned by, inter alia, a growing body of research which suggests that workplace safety climate are also important determinants of workplace health, particularly the shared perceptions of employees about organizational policies, procedures, and practices that promote workplace safety and safety outcomes.⁸ From this perspective, legal scholars argue that goal-oriented approach should be adopted, which means the OHS legislation should prescribe general obligations in their legal texts and leave the autonomy to formulate detailed rules regarding OHS to workplace parties.⁹

Goal-oriented approach seeks to promote self-regulation on the part of businesses, in consultation with employees, by setting goal-oriented responsibilities and duties rather than emphasizing prescriptive standards. This approach is adopted in British law. The most prominent example is the Health and Safety at Work Act 1974, following the recommendations of the Robens Committee of Inquiry on Safety and Health at Work reported in 1972, and as such is referred to as “characterized health and safety legislation” in UK.¹⁰ Goal-oriented approach, originated in UK, was later adopted by the EU through the 1989 EU Directive 89/391. Goal-oriented approach achieved an overwhelming popularity across EU and its member states. One of the reasons behind this might be its effectiveness in combating the workplace accidents. One example is that the UK consistently has one of the lowest rates of fatal injury across the EU. In 2011 the standardised rate was 0.74 per 100 000 workers, which compares favourably with other large economies such as France (2.74 per 100 000 workers), Germany (0.94 per 100 000 workers), Italy (1.5 per 100 000 workers) and Spain (2.16 per 100 000 workers).¹¹ Another example is the standardised rates of fatal injury across the EU-15 and GB/UK show a downward trend over the period 1998-2011. The EU-15 comprises Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK, which were already members when EU adopted goal-oriented approach, i.e., when the Directive 89/391 was introduced.¹² The following Figure 1.1 best illustrates the above descriptions concerning statistics.

⁷ Igor BURSTYN – Lorraine JONASI – T. Cameron WILD: Obtaining compliance with occupational health and safety regulations: a multi-level study using self-determination theory. *International Journal of Environmental Health Research*, Vol. 20., No. 4., August 2010. 271–287.

⁸ M. A. GRIFFIN – A. NEAL: Perceptions of safety at work: A framework for linking safety, climate to safety performance, knowledge, and motivation. *Journal of Occupational Health Psychology*, 5(3), (2000) 347–358.; D. ZOHAR: A group-level model of safety climate: Testing the effect of group climate on microaccidents in manufacturing jobs. *Journal of Applied Psychology*, 85(4), (2000) 587–596.; D. A. HOFMANN – F. P. MORGESON – S. J. GERRAS: Climate as a moderator of the relationship between leader-member exchange and content specific citizenship: Safety climate as an exemplar. *Journal of Applied Psychology*, 88(1), (2003) 170–178.

⁹ W. LILIENBLUM – W. DEKANT – H. FOTH – T. GEBEL – J. G. HENGSTLER – R. KAHL – P. J. KRAMER – H. SCHWEINFURTH – K. M. WOLLIN: Alternative methods to safety studies in experimental animals: role in the risk assessment of chemicals under the new European Chemicals Legislation (REACH). *Archive For Toxicology*, 2008(05); BURSTYN–JONASI–WILD (2010) op. cit.

¹⁰ Ian VICKERS – Philip JAMES – David SMALLBONE – Robert BALDOCK: Understanding small Firm Responses to Regulation. *Policy Studies*, 26:2, (2005) 149–169.

¹¹ See European Statistics on Accidents At Work 2011. Available at: the website of Eurostat, the statistical office of European Union situated in Luxembourg: http://ec.europa.eu/eurostat/cache/metadata/en/hsw_acc_work_esms.htm

¹² See *ibid.*

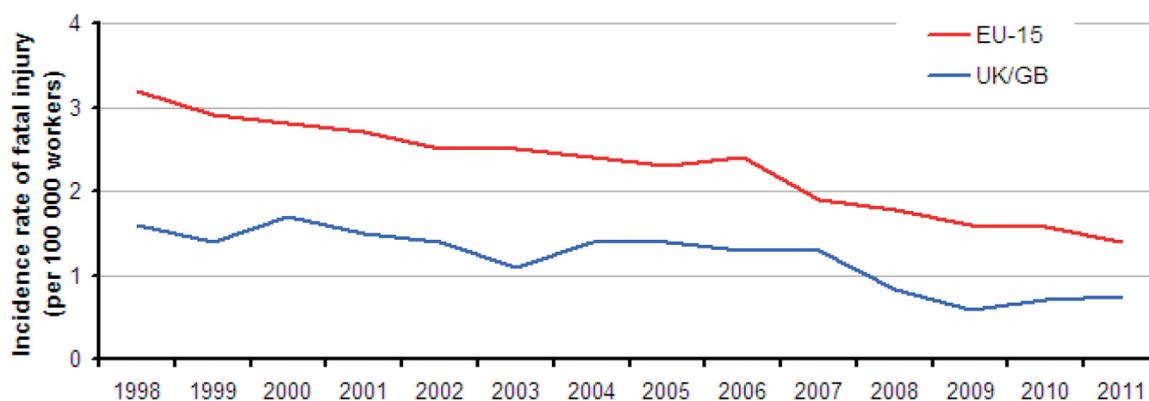


Figure 1.1 Standardised incidence rates (per 100 000 workers) of fatal injuries at work in UK and the EU, 1998–2011¹³

2. The evolution of the EU and the development of OHS law

The EU is not just an important geographical area but also a crucial actor in the international sphere.¹⁴ The evolution of EU is as complex as a process of institution-building, law-making, policy integration and market creation.¹⁵ In order to gain a comprehensive view of EU OHS law, it is necessary to investigate the evolution of European OHS policy from the creation of the EU.

2.1 European Coal and Steel Community: The very beginning of the EU and regulating OHS

The EU's regulating activities in OHS field traces back to the year 1951 when six countries (France, Germany, Italy, Belgium, the Netherlands and Luxembourg, as shown below in picture 2) signed in Paris the treaty establishing the European Coal and Steel Community (Treaty of Paris) to establish the European Coal and Steel Community (ECSC).¹⁶ This treaty marks the beginning of European integration,¹⁷ and moreover is considered to vitally link technical and economic consideration with improving safety and health at work.¹⁸ It stipulated the Community should promote the improvement of the living and working conditions of the labour force in each of the industries under its jurisdiction so as to make possible the equalization of such conditions in an upward direction.¹⁹

¹³ European Comparisons Summary of UK Performance. Health and Safety Executive. This document is available at the website of UK's OHS enforcement agency, Health and Safety Executive: www.hse.gov.uk/statistics/

¹⁴ Christopher HILL – Michael SMITH: *International Relations and the European Union*. Oxford University Press, 2011. 18.

¹⁵ Brigid LAFFAN: The European Union: A Distinctive Model Of Internationalization. *Journal of European Public Policy*, 5:2, (1998) 235–253.

¹⁶ Desmond DINAN: *Ever Closer Union: An Introduction to European Integration*. 3rd Edition. Lynne Rienner Publishers, 2005. 2.; Karolina S. FOLLIS: *Building Fortress Europe: The Polish-Ukrain Frontier*. University of Pennsylvania Press, 2012. 14.

¹⁷ *Over de dynamiek van de politiek: een kwarteeuw politieke machtsverschuivingen*. Academia Press, 2007. 156.

¹⁸ Francesco VIOLANTE – Asa KILBOM – T. J. ARMSTRONG: *Occupational Ergonomics: Work Related Musculoskeletal Disorders of the Upper Limb and Back*. CRC Press, 2000. 210.

¹⁹ See Article 3(e).

2.2 *The European Economic Community: extension of the power over OHS*

The ECSC had a narrow economic focus.²⁰ The six initial member countries of the ECSC again came together in 1957 to establish the European Economic Community (EEC), namely, the Treaty on the Functioning of the European Union establishing the European Economic Community, known as the Treaty of Rome²¹.

Although arguably there is considerable ambiguity about the meaning of a European social policy in the Treaty of Rome itself,²² there has been a great expansion of the legal competences of member states in the field of social policy.²³ Most significantly, Article 136 of the Treaty stipulates the improvement of working conditions and the prevention of workplace accidents as amongst its primary objectives.²⁴ With specific regard to OHS, four of the Treaty's articles regulate health and safety.

2.3 *Growing body of European OHS regulations: increasing demand for harmonization*

Based on the achievements made in 1950s, there was a shift towards social considerations, and among other things, in the expansion in the field of OHS. However, despite the conclusion of the European Social Charter (ESC) in 1961, this progress was not always smooth. The 1960s was seen as a period of “stagnation” in the activities of the European Community (EC),²⁵ reflected in the relatively low priority given to social policy issues in general.²⁶ The European economies were growing more interconnected and interdependent driven by increased trade over the 1970s.²⁷

The ESC contributed to ‘social harmonisation’ in the area of OHS.²⁸ The harmonization of OHS arose from two factors. Firstly, the harmonization principle was a powerful basis for progressively ratifying work-related standards. In this regard, it was seen as a necessity to surrender aspects of national sovereignty to apply the harmonization principles relating to OHS standards. The OHS harmonization may also be seen as re-regulation taking place at the Community level.²⁹ Secondly,

²⁰ FOLLIS (2012) op. cit. 14.

²¹ Strasimir CUCIC: European Union health policy and its implications for national convergence. *International Journal for Quality in Health Care*, Volume 12, Number 3., (2000). 217–225.; Shirley WILLIAMS: Sovereignty And Accountability In The European Community. *The Political Quarterly*, Volume 61, Issue 3, July 1990, 299–317.

²² Giandomenico MAJONE: The European Community Between Social Policy and Social Regulation. *Journal of Common Market Studies*, Volume 3 1, No. 2, June 1993.

²³ Brian BERCUSSON: Maastricht: A Fundamental Change In European Labor Law. *Industrial Relations Journal*, S3.00.

²⁴ Giuliana PARODI – Dario SCIULLI: Social Exclusion: Short and Long Term Causes and Consequences. Physica-Verlag Heidelberg, 2012.

²⁵ Throughout this paper, “European Community” or “EC” refers to the European institutions that preceded, and were ultimately incorporated into, the European Union (EU) through the adoption of Maastricht Treaty 1993.

²⁶ Michael GOLD: *Employment Policy in the European Union: Origins, Themes and Prospects*. Palgrave Macmillan, 2009. 126.

²⁷ Neil FLIGSTEIN – Iona MARA-DRITA: How to Make a Market: Reflections on the Attempt to Create a Single Market in the European Union. *American Journal of Sociology*, Vol. 102, No. 1., (Jul., 1996) 1–33.

²⁸ André SAPIR. The Interaction Between Labor Standards and International Trade Policy. *The World Economy*, Volume 18, Issue 6, November 1995. 791–803.

²⁹ Reiner LEIDL: *Health Care and Its Financing in the Single European Market*. IOS Press, 1998. 22.

the first enlargement of the European Community brought forward accession of three additional countries, with a varying degree of trade barriers. Based on the basic idea of a common market without barriers for internal trade, the demand for harmonization of the OHS regulations in this context was also increasingly emerging.

2.4. The 1973 European Community enlargement and impacts on OHS policies

In addition integrating the member state's internal relations, enlargement has always been part of the European Community's 'historic mission'.³⁰ There have been in total seven enlargements of the EU as of 2014. The EU experienced its first round of enlargement in 1973 by admitting United Kingdom, Ireland and Denmark³¹.

The first enlargement increase the EU in terms of population, area, and GDP among other things,³² but also vastly increased the complexity of the Community's legal systems, because on the one hand UK and to a large extent Ireland were "common law" countries, and on the other hand, Denmark was not a civil law country but part of the Scandinavian legal family.³³ This created a necessity to harmonize national legal system generally, as well as in the field of OHS.

In this context, the key role is harmonize was played by the Community's executive organ, the European Commission.³⁴ The Commission is accorded the responsibility for proposing directives for achieving the goals of harmonization.³⁵ In the field of OHS, the Commission proposed three directives. Yet, only one directive was ultimately approved. That is VCM (Vinyl chloride monomer) Directive 78/610/EEC. Generally speaking, during that period the bulk of Community's OHS regulations remained largely non-harmonized. The reasons why the harmonization of OHS standards was hindered can be explained from two aspects.

From institutional arrangement perspective, the unanimity rule established by the Rome treaty effectively allowed a single member to veto proposed legislation by the Commission and thus hinder the process of harmonization in fields including OHS. From a macro-policy perspective, the EEC in this period concentrated its regulatory activities primarily on the harmonization of the European

³⁰ Christopher PRESTON: *Enlargement & Integration in the European Union*. Taylor & Francis, 1997. 3.

³¹ Gert Tinggaard SVENDSEN. *The Political Economy of the European Union: Institutions, Policy and Economic Growth*. Edward Elgar Publishing, 2003. 86.; Jurgen ELVERT – Wolfram KAISER: *European Union Enlargement: A Comparative History*. Routledge, 2004. 104.

³² According to International Monetary Fund's statistics, the population increased by 30.7%; Area 28.0%; and GDP by 24.5%. see: INTERNATIONAL MONETARY FUND, RESEARCH DEPARTMENT: *World Economic Outlook, October 2000: Focus on Transition Economies (EPub)*. International Monetary Fund, 2000. 149.

³³ John Erik FOSSUM – Agustín José MENÉNDEZ: *The Constitution's Gift: A Constitutional Theory for a Democratic European Union*. Rowman & Littlefield Publishers, 2011. 105.

³⁴ Keyser and Leonova, in their research, investigated the different ways that Commission has played a major role in OHS areas: by supporting European directives, by launching comprehensive research programs and by creating methodological tools and diffusing knowledge. See: V. de KEYSER – A. LEONOVA: *Error Prevention and Well-Being at Work in Western Europe and Russia: Psychological Traditions and New Trends*. Springer Science & Business Media, 2001. 88–90.

³⁵ Phil HUGHES – Ed FERRETT: *Introduction to Health and Safety at Work*. Elsevier, 2009. 9.

common market. That is, the power of the Community was perhaps real, but it was limited to a few relatively small domains: decision focused on agriculture and external business consultation.³⁶ From the negotiation practice perspective, the negotiations at the European level concerning integration of European industry and agreements about technical standards were not fully successful. As earlier discussed, the technical OHS standards were difficult to harmonize, as member states traditionally adopted diverse technical standards. As a result of the above factors, there was little progress of harmonization in OHS standards during this period.

3. Harmonization of norms relating to OHS

The 1980s witnessed two rounds of EU enlargements, respectively admitting Greece, and Spain and Portugal, which brought further complexity to the European legal regime. Compared to the first enlargement, the then newcomers had comparatively lower labour standards: salaries were low, unions were weak, jobs were often marked by excessive working hours, and, as such there was insufficient protection of OHS. This led to new emerging challenge: increasing number of workers who cross borders within the Community, particularly from newly admitted members to existing member states.

A further challenge to the process of harmonization was the European Court of Justice's (ECJ) in the *Cassis de Dijon Case*³⁷, where the Court held that it was unnecessary for Community countries to move toward a single standard for products. The Court held that all goods and services lawfully produced in one member state should be accepted by all member states.³⁸ Regarding OHS, the decision did allow states to prevent products or services in their countries if they felt that OHS standards were at stake.³⁹

From the mid-1980s, it had become more and more obvious that regulation differed greatly between the then twelve member states. Eichener compiled the significant difference in his research:⁴⁰ Spain, Greece, Portugal and partly Italy had only piecemeal and weak provisions for OHS, combined with poor implementation capacities, while Ireland had just reformed its regulatory system and achieved remarkable progress. France, UK, Belgium, Luxembourg and Germany had, in comparison, traditional, mechanistic regulatory systems, focused primarily on physical accidents, but were content with them. In the UK there were tendencies towards more deregulatory. Denmark (in 1975) and the Netherlands (after 1980) had introduced innovative approaches, including taking into account ergonomics, mental health and work satisfaction in working environments. The differences in regulation had clear effects on the actual level of health and safety of workers, and contributed to the gap among member states

³⁶ Carl DEVOS – Hendrik VOS (ed.): *Over de dynamiek van de politiek: Een kwarteeuw politieke machtsverschuivingen*. Academia Press, 2007. 156.

³⁷ The case judgement is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61978CJ0120>

³⁸ FLIGSTEIN–MARA-DRITA (1996) op. cit. 1–33.

³⁹ Ibid.

⁴⁰ Volker EICHENER: Effective European Problem- Solving: Lessons From The Regulation Of Occupational Safety And Environmental Protection. *Journal of European Public Policy*, 4:4 December 1997, 591–608.

in terms of OHS situations. For example, in 1991, the rate of fatal accidents in Spain was ten times higher than in the Netherlands⁴¹; the individual perception of dangerous work varied from 15 per cent in the Netherlands to 63 per cent in Spain⁴².

In addition, after 1985 the European Community recognized the danger of competition among the member states which could lead to a weakening of OHS protection,⁴³ and therefore started a comprehensive regulatory programme with the essential aim of preserving or improving the level of work health and safety in the member states. This comprehensive regulatory programme is in essence a harmonization initiative, which Von Sydow calls the “new harmonization”⁴⁴– it sought to set collective standards for health and safety, and common technical standards for all nations in the European Community. However, after the thirty years from the launch of the fundamental freedoms of movement, the number of work-related accidents and illnesses remained high.⁴⁵ In this regard, the Single European Act (SEA) of 1987, which represented a break with the preceding period in which the European integration process had been on the back burner,⁴⁶ was introduced to bring significant changes in harmonization. In parallel, the Community experienced two rounds of enlargement, permitting Greece to join in 1981⁴⁷, and admitting Portugal and Spain in 1986⁴⁸.

4. Approach shift in new era: from technical standards to goal-oriented approach

Since the late 1980s, the Community’s OHS legislations have been further harmonized. As such, the main justifications for OHS related directives enacted in following period were to harmonize and improve national laws or remove obstacles in order to ensure the functioning of the common market. In parallel, this era experienced the German Reunification, the fourth enlargement 1995, with the admission of Austria, Finland, and Sweden,⁴⁹ and the fifth enlargement which encompassed ten new states: two Mediterranean states, Cyprus and Malta, and eight Central and Eastern European States, Czech, Slovenia, Malta, Poland, Slovakia, Latvia, Estonia, Lithuania, Hungary, Cyprus⁵⁰; and the sixth

⁴¹ Policies And Regulations To Combat Precarious Employment. International Labour Organization 2011.

⁴² Ibid.

⁴³ EICHENER (1997) op. cit. 591–608.

⁴⁴ H. S. von SYDOW: The Basic Strategies of the Commission’s White Paper. In: R. BIEBER (ed.): *One European Market?* Baden-Baden, Nomos Verlagsgesellschaft, 1992. Retrieved from: FLIGSTEIN–MARA–DRITA (1996) op. cit. 1–33.

⁴⁵ Berta VALDES DE LA VEGA: Chapter 1 Occupational Health and Safety: An EU Law Perspective. Retrieved from: Edoard ALES (ed.): *Health and Safety at Work: European and Comparative Perspective*. Wolters Kluwer Law & Business, 2014. 1.

⁴⁶ H. A. BENINK: *Financial Integration in Europe*. Springer Science & Business Media, 1993. 9.

⁴⁷ Gert Tinggaard SVENDSEN: *The Political Economy of the European Union: Institutions, Policy and Economic Growth*. Edward Elgar Publishing, 2003. 86.; Anders Etgen REITZ: *Labor and Employment Law in the New EU Member and Candidate States*. American Bar Association, 2007. 7.

⁴⁸ REITZ (2007) op. cit. 7.; SVENDSEN (2003) op. cit. 86.

⁴⁹ Mostinckx JEF – Deven FRED (ed.): *Welzijn en zorg in Vlaanderen*. Kluwer, 2007. 39.; Christopher PRESTON: *Enlargement & Integration in the European Union*. Taylor & Francis, 1997. 87.; REITZ (2007) op. cit. 7.

⁵⁰ REITZ (2007) op. cit. 7.; Great Britain: Parliament: House of Commons: Trade and Industry Committee. Europe Moves East: The Impact of the New Eu Member States on Uk Business, Hc 592, Eleventh Report of Session 2006-07- Report Together With Formal Minutes, Oral and Writt. The Stationery Office, 2007. 5.

enlargement which included Bulgaria and Romania. Through the final three rounds of enlargements, 43 million additional workers joined the EU labour force.⁵¹ Generally, the new member states were confronted initially with a deteriorating working environment, which can be seen in Figures 4.1 and 4.2. It could be observed the impact of work on health in new member states was more severe than existing members. Additionally, after the major enlargements, the exposure to physical risks by type of risk increased due to deteriorating working environments in new member states. Secondly, support for OHS regulation concerning the working environment appeared to be limited among business and political elites in the new Member States.⁵² To combat these difficulties, the EU actively promoted the preventive culture by providing internal and external political support and industrial relations resources. These measures have made, in effect, the goal-oriented approach a realistic option with regard to work environment enhancement. Meanwhile, in realizing the new member states were not able to overcome existing difficulties overnight, an intermediate period was accorded for the new member states, during which alignment took place with European norms of “best practice”, through risk assessment, employee involvement and workplace consultation, alongside the strengthening of more traditional regulatory instruments and compliance incentives.⁵³ Further, many existing members have been active in promoting OHS in Central and Eastern Europe states. This is best exemplified by Sweden, which, in recent years, has been active in bilateral cooperation with many industrializing countries, and has played a role in the recovery of OHS infrastructure in Eastern Europe.⁵⁴

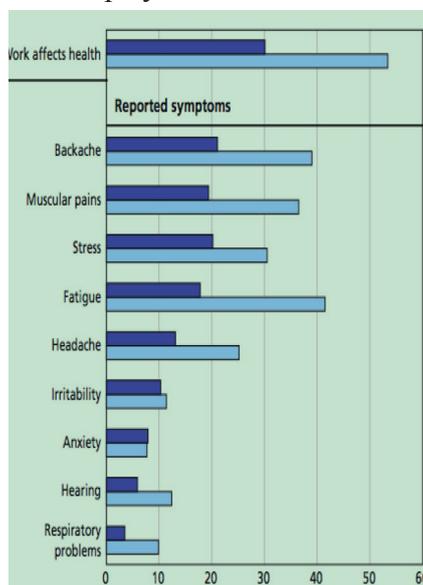


Figure 4.1 Impact of work on health (%)⁵⁵

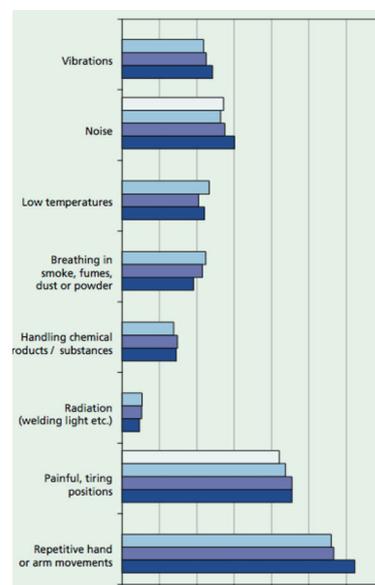


Figure 4.2 Exposure to physical risks by type of risk (%)⁵⁶

⁵¹ Charles WOOLFSON: Working Environment and ‘Soft Law’ in the Post-Communist New Member States. *JCMS*, Vol. 44., Num. 1., (2006) 195–215.

⁵² Ibid.

⁵³ Joseph LADOU: International Occupational Health. *International Journal of Hygiene and Environmental Health*, vol. 206., 2003. 303–313.

⁵⁴ Ibid.

⁵⁵ Fourth European survey on working conditions 2000. Available at: http://www.upf.edu/cisal/_pdf/doc8.pdf

⁵⁶ Ibid.

From the legal point of view, the impact of EU enlargement is also significant. In the fourth enlargement, although all of the admitted countries were small but wealthy,⁵⁷ and had already comparatively higher OHS standards in place even before accession,⁵⁸ the countries nonetheless needed to adjust their regulations to ensure compliance with EU standards.

In the latest three enlargements, almost all the admitted countries were relatively poor. Although these states adopted EU directives on OHS during their accession period,⁵⁹ they lagged behind the existing members, in terms of for example, reducing work-related mortality. Rechel and McKee argue the reasons for this lag include weak enforcement, a lack of capacity, and insufficient involvement of social partners.⁶⁰ In order to adopt the full *acquis communautaire*, these countries were required to adopt much more legislation and reform than the states in the earlier waves of enlargement.⁶¹

4.1. Formation of directive system regulating OHS: starting from directive 89/391/EEC

As discussed above, since 1980s the Community has been and become increasingly involved in the OHS field. As already established, Article 118A of the SEA transferred regulatory competencies regarding the working environment to the EEC. This gave rise to the common and comprehensive Health and Safety Framework Directive 89/391/EEC,⁶² which was enacted to protect employees.⁶³ The legislative objective of Directive 89/391/EEC, adopted in 1989, is described as:

To encourage and enhance the protection of workers through measures concerning the prevention of work-related risks, the protection of safety and health, the elimination of risk and accident factors and also the informing, consultation, balanced participation and training of workers.⁶⁴

⁵⁷ Christopher L. HUGHES: *New Research on Politics and Economics of Europe*. Nova Publishers, 2007. 140.

⁵⁸ We shall take a look at the “newcomers” one by one. Austria had before 1994, already adopted a comprehensive OHS regulatory system, built on Workers protection law 1994 (*Arbeitnehmerinnenschutzgesetz 1994*) as the legal basis. The centerpiece was enacted in replacing older legislation introduced changes into national legislation, reaching conformity with EU regulations. (see: Alistair G. F. GIBB – Diane E. GYI – Trevor THOMPSON: *The ECI Guide to Managing Health in Construction*. Thomas Telford Publishing, 1999. 114–115.); the Swedish system for compensating workers with occupational injuries is regulated by Workers’ Protection Act in 1974 [see: Kaj FRICK – David WALTERS: Worker representation on health and safety in small enterprises: Lessons from a Swedish approach. *International Labor Review*, Vol. 137., No. 3. (1998)]. In addition to high standards in place, Sweden had a strong law and enforcement mechanisms in the OHS field and at the same time Sweden had a strong national union movement facilitated the passage and active implementation of effective OHS measures (see: Dennis R. BRISCOE – Randall S. SCHULER: *International Human Resource Management: Policy and Practice for the Global Enterprise*. Psychology Press, 2004. 377.); Finland, just like Sweden, also had law enforcement mechanism and a strong national union movement (see: BRISCOE–RANDALL (2004) op. cit. 377.). More importantly, Finland had also a comprehensive legislative system built primarily on the Labor Protection Act of 1958, which on the one hand is a framework containing general provisions on health and safety, and on the other hand enables the government to make more detailed regulations to deal with particular sectors of industry or hazards. [See: GIBB–GYI–THOMPSON (1999) op. cit. 128.].

⁵⁹ Bernd RECHEL – Martin MCKEE: *Facets of Public Health in Europe*. McGraw-Hill Education, 2014. 78.

⁶⁰ Ibid.

⁶¹ Amy VERDUN – Osvaldo CROCI: *The European Union in the Wake of Eastern Enlargement: Institutional and Policy-Making Challenges*. Manchester University Press, 2005. 13–14.

⁶² Bob HEPPLE – Bruno VENEZIANI: *The Transformation of Labor Law in Europe: A Comparative Study of 15 Countries 1945-2004*. Bloomsbury Publishing, 2009. 252.; Allan F. TATHAM: *Enlargement of the European Union*. Kluwer Law International, 2009. 369.; Diana GAGLIARDI – Alessandro MARINACCIO – Antonio VALENTI – Sergio IAVICOLI: Occupational Safety and Health in Europe: Lessons from the Past, Challenges and Opportunities for the Future. *Industrial Health* 2010/50. 7–11.

⁶³ W. Van LOOCK: *Veiligheid en gezondheid in niet-ioniserende elektromagnetische velden en straling*. Academia Press, 2007. 412.

⁶⁴ Dolores MARTÍNEZ AIRES – Carmen RUBIO GÁMEZ – Alistair GIBB. Prevention through design: The Effect of European Directives on Construction Workplace Accidents. *Safety Science*, 48 (2010) 248–258.

In general, the Directive 89/391/EEC lays down employers' general obligations to ensure workers' health and safety in every aspect related to work, 'addressing all types of risk'.⁶⁵ From an innovation perspective, the Directive goes beyond the regulatory philosophy and practice even relatively OHS-conscious member states such as Germany.⁶⁶

Directive 89/391/EEC was a Framework Directive that established general principles, including risk assessment, avoidance, substitution, and prevention⁶⁷, and linked the preference for prevention against occupational injuries (Articles 1, 5-7 and 14) with a hitherto seldom emphasised involvement of workers and their representatives (Articles 10-12) and an interaction with external health and safety experts and associated agencies with regard to information education and co-operation.⁶⁸ The Directive served as a basis for later individual directives⁶⁹ dealing with specific issues such as those on workplaces, personal protective equipment, work equipment, manual handling of loads and display screen equipment.⁷⁰ As of 2012, as many as 65 related directives have been issued.⁷¹

4.2. Establishing the EU: Maastricht Treaty 1993

The change in approach towards OHS signalled by the adoption of the Framework Directive was notable, particular in Southern Europe.⁷² The goal-oriented approach, which was already adopted by Western European member states, was transposed into the Southern European member states. In 1996, the Second European Survey on Working Conditions indicated that 57% of workers in the EU thought that their work affects their health in a negative way.⁷³ This was a marked improvement from the First Survey conducted in 1991, which revealed that around 80% of workers believed their work affected their health in a negative way.⁷⁴

⁶⁵ Kristin FELDHOFF: Grundzüge des Europäischen Arbeits- und Umweltrechts. (Mimeo; Bochum, Ruhr Universität, 1993). Retrieved from: Giandomenico MAJONE: The EC Between Social Policy And Social Regulation. *Journal of Common Market Studies*, Volume 31, No. 2, 1993.

⁶⁶ MAJONE (1993) op. cit.

⁶⁷ RECHEL-McKEE (2014) op. cit. 76.

⁶⁸ Bob HEPPLE – Bruno VENEZIANI (ed.): *The Transformation of Labor Law in Europe: A Comparative Study of 15 Countries 1945-2004*. Oxford, Hart Publishing, 2009. 252.

⁶⁹ The Framework Directive was followed by a flood of particular Directives applying the general the general principles to particular groups of persons, agents, branches and risk. See: HEPPLE-VENEZIANI (2009) op. cit. 252.

⁷⁰ TATHAM (2009) op. cit. 369.; RECHEL-McKEE (2014) op. cit. 76.; The Framework Directive was followed by a flood of particular Directives applying the general the general principles to particular groups of persons, agents, branches and risk. See: HEPPLE-VENEZIANI (2009) op. cit. 252.

⁷¹ GAGLIARDI-MARINACCIO-VALENTI-IVICOLI (2010) op. cit. 7-11.

⁷² Pascal PAOLI: Second European Survey on Working Conditions. European Foundation for the Improvement of Living and Working Conditions, 1996. available at: <http://www.eurofound.europa.eu/publications/report/2000/working-conditions/second-european-survey-on-working-conditions-in-the-european-union>

⁷³ Ibid.

⁷⁴ Pascal PAOLI: First European Survey On The Work Environment 1991-1992 European Foundation for the Improvement of Living and Working Conditions. Available at: http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef9211en.pdf

Concurrently, the sudden end of the Cold War emboldened member states to develop a common foreign and security policy, which together with the Economic and Monetary Union (EMU), became the centrepiece of intergovernmental negotiations in 1991 that resulted in the Maastricht Treaty,⁷⁵ which is described as “the most important Community treaty amendment since the Single European Act”⁷⁶, because it lays down in a detailed manner what to be developed in the coming period for furthering cooperation.⁷⁷ The Protocol of Social Policy was subsequently abrogated by the Treaty of Amsterdam, which will be discussed below.

The Maastricht Treaty marks the beginning of the subsidiarity principle, which is fundamental to understanding the division of competences between member states and EU institutions.⁷⁸ According to Poulet, it is a hermeneutic key principle that determines the boundaries of different regulatory techniques and bodies including the self-regulatory ones.⁷⁹ In other words, everything that can be dealt with locally or by self-regulation must be dealt with locally or by self-regulation.⁸⁰ In terms of its impact on OHS regulation, the subsidiarity principle shifts regulatory responsibility away from the EU level to private actors, namely, employers and workers associations. The EU laws and member state’s national laws stipulate general obligations, while the private actors are statutorily empowered and responsible for devising concrete regulatory OHS standards. Under the subsidiarity principle, In other words, control shifts from the EU to the industrial level, although the failure to self-regulate may trigger the return to the regulatory standards.⁸¹

4.3. The Amsterdam Treaty 1999: further integrating the EU

In 1997, the European Community Treaty (Amsterdam version) revised existing EU treaties to ensure better policies and furthering integration of the EU.⁸² In the OHS field, the Amsterdam Treaty sought to simplify the decision-making procedures that applied to OHS policy, and removed conflicts between European laws and member states’ national laws. Similar to the SEA, directives may be adopted by qualified majority vote in the Council of Ministers, using a co-decision procedure⁸³ with the European

⁷⁵ Desmond DIANAN: *Europe Recast: A History of European Union*. Second Edition. Lynne Rienner Publishing, 2004. 7–8.

⁷⁶ Joseph WEILER: *The Constitution of Europe: ‘Do the New Clothes Have an Emperor?’ and Other Essays on European Integration*. Cambridge University Press, 1999. 11–14.; John W. YOUNG – John KENT: *International Relations Since 1945*. OUP Oxford, 2013. 475–476.

⁷⁷ J. G. J. RINKES – H. C. G. SPOORMANS – E. F. STAMHUIS – J. M. H. F. TEUNISSEN: *Inleiding tot de studie an het Nederlandse recht*. Kluwer, 2009. 415.

⁷⁸ Yves POULLET: *How to regulate the internet: new paradigms for internet governance*. Retrieved from: Ian WALDEN – Julia HÖRNLE: *E-commerce Law and Practice in Europe*. Elsevier, 2001. Chapter 2/13.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Jacint JORDANA – David LEVI-FAUR: *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. Edward Elgar Publishing, 2004. 221.

⁸² Carl DEVOS – Manu MUS – Patrick HUMBLET (ed.): *De toekomst van het sociaal overleg*. Academia Press, 2011. 78.

⁸³ This is set out in Article 251 EC.

Parliament.⁸⁴ The Amsterdam Treaty places an emphasis on science-based decision-making,⁸⁵ which has greatly influenced OHS regulations. The Treaty effectively weakened a single member state's ability to block adoption of OHS directives at the European level. In addition, Amsterdam Treaty paid considerable attention to social policy, listing "health and safety of workers" as one of the four major areas of focus.⁸⁶ OHS matters its "approximation of laws" procedure for the internal market (Article 95, formerly Article 100a) include: employment; labour law and working conditions; basic and advanced vocational training; social security; prevention of occupational accidents and diseases; occupational hygiene; and the right of association and collective bargaining between employers and workers.⁸⁷

However, the Treaty did not substantially expand the area of health and safety policy. Before this document, OHS issues had already been granted qualified majority voting (QMV) status. For this reason, the Amsterdam Treaty has been criticized for "merely confirm[ing] their importance by including them in the list of key social policy areas to which the member states should pay attention".⁸⁸

4.4. *The final two Treaties*

To build adequate institutional infrastructure for an enlarged Union, the Treaty of Nice was signed on 26 February 2001.⁸⁹ Reiterating existing policy, the Treaty mandates the implementation of measures towards the improvement of OHS status in all EU countries.⁹⁰

The Lisbon Treaty was signed in December 2007, and entered into force on 1 December 2009.⁹¹ In relation to OHS, it thus reinforces the importance of OHS policy in the European legislation⁹² by guaranteeing that, inter alia, OHS rights are legal rights that must be guaranteed by national and European institutions. Therefore, the Lisbon Treaty significantly strengthened the relevance of EU law in OHS matters. According to commentators such Prosser, OHS regulations are likely to assume greater importance after the Lisbon Treaty.⁹³

⁸⁴ David O'KEEFFE – Patrick M. TWOMEY: *Legal Issues of the Amsterdam Treaty*. Hart Publishing, 1999. 145–146.

⁸⁵ Joakim ZANDER: *The Application of the Precautionary Principle in Practice: Comparative Dimensions*. Cambridge University Press, 2010. 90–91.

⁸⁶ The other three include working conditions, rights to information and consultation and equality between men and women. See: John RIDLEY: *Health and Safety in Brief*. Routledge, 2013. 16.

⁸⁷ <http://www.eurotreaties.com/amsterdamtreaty.pdf>

⁸⁸ Robert R. GEYER: *Exploring European Social Policy*. John Wiley & Sons, 2013. <https://books.google.nl/books?id=LiU8FgaJR7k-C&pg=PA1852&dq=amsterdam+treaty,+health+and+safety&hl=nl&sa=X&ei=XO3pVL3fC4fMOp6LgagK&ved=0CDMQ6A-EwAg#v=onepage&q=amsterdam%20treaty%2C%20health%20and%20safety&f=false>

⁸⁹ Theodore KONSTADINIDES: *Division of Powers in European Union Law: The Delimitation of Internal Competence Between the EU and the Member States*. Kluwer Law International, 2009. 44.

⁹⁰ Athena LINOS – Wilhelm KIRCH: *Promoting Health for Working Women*. Springer Science & Business Media, 2007. 31–32.

⁹¹ Jean-Claude PIRIS: *The Lisbon Treaty: A Legal and Political Analysis*. Cambridge University Press, 2010. 6.

⁹² Algis JUNEVICIUS: The European Unions Health and Safety Policy: Analysis Of Risk Assessment And Management. *European Integration Studies*, 2011/05.

⁹³ Tony PROSSER. *The Regulatory Enterprise: Government, Regulation, and Legitimacy*. Oxford University Press, 2010. 102–103.

5. Analysis of the EU's development in regulating OHS

The above analysis shows that OHS has been one of the key focus areas of law-making activity since the creation of the common market. The limited and technical scope of OHS-related regulations of the Rome Treaty period were reinforced through a series of the EU/EC's legal developments, including the Treaty of Paris which was vital to link technical and economic consideration with the improvement of safety and health at work. There has been a continual expansion of the Community's regulatory competence in the field of OHS. In parallel, driven by developments in Sweden and UK, ECOHS standards shifted from detailed and technical to goal-oriented. Framework Directive 89/391 established general principles, including risk assessment, avoidance, substitution, and prevention, and has served as a basis for further directives dealing with specific issues such as personal protective equipment, work equipment, manual handling of loads and display screen equipment. Three prominent characteristics that can be observed regarding development of the EU OHS law are discussed below.

5.1. *The enlarging OHS competencies of the EU*

In the early Rome Treaty stage of the evolution of a Community policy on work health and safety, the emphasis was on 'mapping' the area and identifying the problem.⁹⁴ Initially lacking a legal basis in the social sphere, the EEC's early directives sought to harmonize national laws in order to ensure the functioning of the common market. As stated in earlier parts, the amendment of the EC Treaty by the SEA in 1986 brought with it an important change for the first time. Because of this change, the Community was conferred 'internal legislative competence in the area of social policy'.⁹⁵ As such, the competencies of the EU in OHS field were substantively expanded. As described by de la Vega, although the precept was included in the chapter on 'social provisions', it was not a wide power for implementing measures on workers' rights, for which the legal basis continued to be Article 100 of the EC Treaty, but rather a specific power on the protection of the health and safety of employees.⁹⁶ In other words, the possibility of harmonizing provisions on OHS by way of a qualified majority under Article 118A EC Treaty repealed the general rule contained at Article 100A.2 EC Treaty which required normative acts relating to the rights and interests of dependent workers to be adopted unanimously by member states.⁹⁷

⁹⁴ Catherine BARNARD: *EU Employment Law*. Fourth Edition. Oxford European Union Law Library, 2012. 503.

⁹⁵ Berta VALDÉS DE LA VEGA: Chapter 1: Occupational Health and Safety: An EU Law Perspective. In: Edoardo ALES (ed.): *Health and Safety at Work: European and Comparative Perspective*. Kluwer Law International, 2013. 6.

⁹⁶ Ibid.

⁹⁷ Ibid.

5.2. *Shift from prescriptive approach to goal-oriented approach*

The EU's initial approach towards regulating OHS was prescriptive in nature, relying on highly technical and specific regulations. The 1989 Framework Directive shifted the regulatory emphasis away from prescriptive technical requirements towards more process-oriented measures.⁹⁸ In other words, the goal-oriented approach became the dominant approach in European law. The goal-oriented approach seeks to promote self-regulation on the part of businesses, in consultation with employees rather than emphasizing prescriptive standards. In adopting the goal-oriented approach, European social policy chose less regulatory intervention, as examined by the 1993 Green Paper and especially the 1994 White Paper on Social Policy.⁹⁹ The legislators of the Framework Directive aimed to improve industrial performance through a policy that delegates government authority to industrial associations and individual firms. This has meant the establishment of procedural rules that an employer is required to follow to achieve the ultimate goal of a healthy and safe working environment.¹⁰⁰ The procedural technique requires and promotes self-regulation. While the law specifies the processes that have to be followed and institutional framework through which negotiations between employers and employees should be conducted, it refrains from setting detailed substantive standards.¹⁰¹ This Framework Directive includes general principles related to the prevention of professional risks, the protection of health and safety, the elimination of risk factors, information, consultation, and balanced participation by workers and their representatives, as well as general guidelines for applying these principles.

Procedural regulation has advantages in terms of both flexibility and compliance. Collective self-regulation permits the parties to agree on standards that are practicable and efficient, and can be modified easily in light of experience.¹⁰² Advocates such as Collins, Bacow and Rees argue that procedural regulations can harness information available to the workforce about regulatory issues including for example health and safety problems and their expertise in how these might be solved in an efficient manner.¹⁰³ In light of this, the directive leaves it up to employers and employees to reach an agreement on relevant technical details that best suit each situation at hand.¹⁰⁴ From the viewpoint of effectiveness, self-regulation is arguably likely to achieve high levels of compliance partly because measures have been agreed to by all parties, and partly because the parties to the agreement, in particular trade union officials are likely to monitor compliance closely.¹⁰⁵ In this context, Article 10

⁹⁸ Peter WESTERHOLM – Tore NILSTUN – John ØVRETVEIT: *Practical Ethics in Occupational Health*. Radcliffe Publishing, 2004. 7–2.

⁹⁹ Commission, European Social Policy: Options for the Union, Green Paper, COM (93) 551 final.

¹⁰⁰ Commission, European Social Policy – The Way Forward for the Union: A White Paper, COM (94) 333 final.

¹⁰¹ Hugh COLLINS: *Employment Law*. Oxford University Press, 2010. 30–31.

¹⁰² COLLINS (2010) op. cit. 30.

¹⁰³ COLLINS (2010) op. cit. 30.; L. S. BACOW: *Bargaining for Job Safety and Health*. Cambridge, Mass., MIT Press, 1980.; J. REES: *Reforming the Workplace: A Study of Self-Regulation in Occupational Safety*. Philadelphia, University of Philadelphia Press, 1988.

¹⁰⁴ Edoardo ALES: Chapter 12: Occupational Health and Safety: A Comparative Perspective. In: ALES (ed., 2013) op. cit. 413.

¹⁰⁵ COLLINS (2010) op. cit. 30–31.

and 11 of the Framework Directive establishes general principles for information exchange, dialogue, “balanced participation”, and training for workers and their representatives, which are crucial to the functioning of the procedural model.

5.3. Shift towards social dialogue approach

One most important aspect of EU regulation is that of the European social dialogue: discussions, consultations, negotiations and joint actions involving organizations representing the two sides of industry (employers and workers). The social dialogue is a relatively new legal phenomenon. As discussed above, in the late 1970s the EEC became increasingly active in the field of OHS. Under the ideology that inclusion of all parties in prevention efforts can reduce barriers to change, the legal reform regulating OHS increasingly enabled employers and employees at individual workplaces to negotiate directly with one another, recognising the need to co-operate and develop more flexible working conditions. In that period, the SEA, in its Article 118 B, introduced the concept of “social dialogue”, making the promotion of dialogue between management and labour one of the official tasks of the Commission, and creating a specific treaty basis for the process. Additionally, as mentioned above, the dialogue mechanism was incorporated into the 1989 Framework Directive.

The rationale behind the shift towards social dialogue can be partly explained by the recognition of the European Court of Justice that the dialogue mechanism offered an alternative form of citizen involvement and democratic legitimation beyond the mechanisms of parliamentary democracy¹⁰⁶. Concurrently, scientific findings at the time led to the conclusion that dialogue mechanisms can effectively promote participation by stakeholders in the OHS field. At the policy level, participation is highly relevant for the effectiveness of the law.¹⁰⁷ Therefore synergy can be created between good risk-management approaches for workplace risks on the one hand and social dialogue with external stakeholders on the other hand.

6. Implications of the evolution of OHS approaches

Overall, work appears to be a positive and satisfying experience for the majority of European workers. In 2000, over 80% of workers report that they are ‘satisfied’ or ‘very satisfied’ with working conditions in their main paid job.¹⁰⁸ In addition, a declining proportion of European workers consider their health and safety at risk because of their work.¹⁰⁹ This data suggests the EU’s shift in approach

¹⁰⁶ See the UEAPME case, available at: <http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d2dc30dd312946e-da90540e4a130f40d870f81c3.e34KaxiLc3qMb40Rch0SaxuRaxb0?text=&docid=43955&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=322288>

¹⁰⁷ Stavroula LEKA – Tom COX (ed.): *The European Framework For Psychosocial Risk Management*. I-WHO Publications, 2008. 4–6.

¹⁰⁸ Fourth European survey on working conditions 2000. Available at: http://www.upf.edu/cisal/_pdf/doc8.pdf

¹⁰⁹ Ibid.

has positively impacted on work health and safety. This section aims to discuss the implications of the evolution in EU OHS developments.

6.1. *The 'EU Turn'*

The evolution of the EU/EC has defined the progress OHS protection. Over the decades spanning from the beginning of ECSC, through the establishing EEC, through the several round of enlargements, to the final establishment of the EU, it can be observed that the technique of legislative intervention evolved from safeguards based on detailed and highly-technical normative acts, to a different kind of regulation which is more based on general protection duties and principles. This turn is represented by the preventative and participative approach introduced by the Framework Directive at the end of the 1980s.¹¹⁰ The approach of the EU is of value to jurisdictions in the world seeking to strengthen OHS protection in a manner that is flexible and responsive to market and industrial changes. For instance, the United States, which previously almost exclusively legislated in a detailed and technical manner, has begun to incorporate, to some extent, the goal-oriented approach to evaluate the degree of health and safety within workplaces.¹¹¹

6.2. *Centralization vs decentralization*

Generally, the ongoing trend in the EU's law making activity is towards deregulation. The field of OHS, however, is an exception to this deregulatory trend. In 1986, a leading employer spokesman warned that harmonization should be achieved "with an eye to the competitiveness of European firms in markets outside the Community"¹¹², for the reason that the ideology of a free deregulated market is not inconsistent with humanitarian concern for industrial safety.¹¹³ It can be noted that OHS regulatory measures adopted by the EU are in the form of EC directives. According to Turner and Storey, this is not coincidental as directives allow member states scope and flexibility to lay down national rules within EU-wide parameters.¹¹⁴ In contrast, legislation in the form of EC Regulations specifies EU-wide rules that have to be complied with by all member states.¹¹⁵ In this respect, the use of directives allows for divergence between member states, thereby giving states more autonomy. In

¹¹⁰ ALES (2013) op. cit. 449.

¹¹¹ Given worker's associations and unions have limited powers/protections in the US, how can effective participation of workers guaranteed in applying a goal-oriented approach? This raises the question of whether the power imbalance between workers and employers need to be addressed to effectively apply the EU approach in the US. Cf. Ali FARAZMAND: *Handbook of Comparative and Development Public Administration*. CRC Press, 2001. 351–352.

¹¹² Speech by Z. Tyszkiewicz of U.N.I.C.E. at Management Centre Europe, November 28, 1986. Cited in: Bob HEPPLER: The Crisis in EEC Labor Law. *Industrial Law Journal*, 1987/16.

¹¹³ HEPPLER (1987) op. cit.

¹¹⁴ Chris TURNER – Tony STOREY: *Unlocking EU Law*. Routledge, 2014. 440.

¹¹⁵ Ibid.

this sense, it is arguable that balance between centralization and decentralization could be achieved by granting flexibility to member states to implement EU OHS policy goals in a national setting.

6.3. Collective agreements: room for improvement in EU legislation

There is scope for improvement in the regulation of OHS at the EU level. Although European health and safety regulation over the last thirty years has been driven primarily at the EU level, individual member states can significantly influence the approach taken by the EU. For instance, the paradigm shift from a prescriptive to a goal-oriented was based on the 1972 Robens Report of the UK and on Nordic OSH legislation.¹¹⁶ However, the model applied by the above countries, especially the Nordic countries, is based on collaboration, where collective agreements play a central role.¹¹⁷ However, there is at present no such thing as a common 'European social model' at this point, for the reason that EU social regulation has gone through a rather patchy and piecemeal upgrading, since the implementation of the Framework Directive in 1989. In this sense, the EU laws should strengthen collective agreement mechanisms to facilitate the implementation of the goal-oriented approach.

7. Conclusion

Work health and safety is considered as one of the most highly developed and successful aspects of EU policy on employment and social affairs.¹¹⁸ OHS has been one of the key legislative focuses of the Community since the beginning of the creation of a common market. After decades of development, the EU's policy in OHS has experienced a number of stages – from the primitive establishment of a limited body of OHS technical standards, to enhancing the harmonization of member states' national laws to create a common market's, and later the introduction of new ways of thinking and workplace hazards prevention approaches. As the EU evolved, the EU's OHS competencies have increased and shifted in focus from a prescriptive approach to goal-oriented and social dialogue approaches. The development of EU OHS also implies that OHS should be per se a centralized matter, and concurrently, elements of decentralization could be utilized for the purpose of according member states with room to adapt to national industrial characteristics and situations.

¹¹⁶ Jan Erik KARLSEN – Preben Hempel LINDØE: The Nordic OSH model at a turning point? *Policy and Practice in Health and Safety*, 2006/04.

¹¹⁷ Ibid.

¹¹⁸ Originally in the Commission's website: <http://ec.europa.eu/social/main.jsp?catId=148&langId=en%3E> (last accessed 24 August 2015); It is also cited by: BARNARD (2012) op. cit. 532.