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Reducing the numbers of occupational victims requires an alternative prevention policy

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Policy implications

Current legislative and policy frameworks in the occupational health and safety field are in need of improvement. The data from European surveys and statistics show that the numbers of occupational accidents and work-related diseases remain unacceptably high. A forward step can be taken through the introduction of a new and alternative prevention policy, one based on openness and a certain form of activism on the part of workers and

victims. Such a new prevention policy should make greater use of worker compensation systems as an essential tool. Aspects such as the public intervention of experts in companies reluctant to take preventive measures after an occupational accident or disease has occurred, the placing of victims in a position where they can influence their own health and safety report and the preventive measures to be taken, or the requirement for each company to publish occupational accident and disease facts and figures, should be supported by the worker compensation systems. European trade unions should use their influence to develop a joint policy to enforce the implementation of this kind of new preventive role for worker compensation systems in the interest of improving the working environment and conditions at European workplaces.

Introduction

Europe still has a high incidence of occupational accidents and disease. Each year millions of workers fall victim to their work (Eurostat 2010). The current European policy of prevention is unsuited to solving this problem, partly because it actually omits to cover companies that show themselves *unwilling* to prevent forms of occupational disease and workplace accident. In this Policy Brief I will argue that Europe needs, in addition to the current approach, an alternative prevention policy able to tackle the high incidence of occupational disease and accidents. The alternative policy proposed here would provide for more possibilities of intervention in such situations; it is based on two new principles: openness within companies about work risks (rather than secrecy about accidents and diseases) and more control over working conditions on the part of workers, victims and external stakeholders. Such changes have to be primarily shaped by changes in European (and national) law but, in addition, worker compensation systems – occupational accident insurance or funds for occupational diseases providing financial compensation for the damage suffered by workers – should also

contribute to this new policy. At the present time these systems have a limited impact on prevention.

By way of introduction to the subject, I will use the example of Mrs Y – taken from my research on prevention and compensation of occupational accidents and occupational diseases¹ – to demonstrate what causes the lack of prevention and what positive effects might be achieved by an alternative prevention policy.

A fictional example: the case of Mrs Y

Mrs Y (born 1947) had been employed as a production assistant since 1985 by a company producing medical supplies. In 1995 the company had a thousand employees but by 2010 the figure had dropped to four hundred, the outflow having ensued after

¹ The research project 'Workers' compensation under construction' studies the preventive effect of various workers' compensation systems (through socio-legal analysis, questionnaire survey and case studies) and the situation of occupational disease and accident victims (through interviewing, case studies and analysis of these victims' individual medical and work history).

the company was taken over by a foreign multinational in the late nineties. This acquisition led to production rationalization and transfer of production capacity (and poor working conditions) to the Czech Republic. Mrs Y's work was in the area of quality control. It was heavy and repetitive work requiring over thirty movements per minute: she moved boxes from a pallet to a conveyor belt, picked a product from a box, squeezed the product, observed the product, put the product back in the box, pushed a full box and placed rejected products in a bin. As a result of this repetitive work she developed, from 1994, ever worsening Repetitive Strain Injury (RSI) complaints (beginning with elbow pain and later including wear on neck and back, as well as shoulder problems) which meant that she was frequently but temporarily incapacitated for work. In 2002 she was declared permanently disabled and received compensation of financial damages from the employer's insurer.

How did this occupational disease occur and how could it have been prevented?

In this situation, the employer was – because of the specific form of labour organization in place (assembly line production with repetitive work) – the cause of the RSI suffered by the employee. Although complying with certain legal requirements (e.g. a risk assessment), the employer took no initiative in the direction of necessary improvements.

In this case the five occupational physicians with whom Mrs Y had contact over the years also failed, for none of them made any direct connection between the symptoms reported by their patient and her working conditions, tending instead to attribute her complaints to her personality. None of these physicians diagnosed an occupational disease (that happened only after Mrs Y had applied for compensation). In addition, they urged Mrs Y to resume her (repetitive!) work as soon as possible (rather than taking time to recover and improve her health through a non-repetitive form of work). The physicians also failed to advise management and workers to change the working conditions, an omission attributable not only to lack of expertise on their part but above all to their dependent position in relation to the company which had contracted their professional services.

There was no consensus among stakeholders (management, employees, health and safety experts) about whether this was a case of occupational disease and, if such were indeed the case, concerning its date of onset. Management denied – in contrast to the employees – the existence of RSI as an occupational disease. As a result, there was insufficient basis for (joint) preventive action.

In addition, labour relations within this organization were far from harmonious: signals from employees about poor working conditions were not taken seriously. Though there was a works council, its impact was limited. Due partly to action by the trade union, an investigation of working conditions took place (showing that 40% of employees complained of RSI), but the works council (and the trade union) were in no position to ensure the requisite

improvements in working conditions given that the management rejected every proposal in this direction. Moreover, as from the mid-1990s the works council and the trade union were spending most of their time on the various forms of reorganization affecting the company.

The labour inspectorate did not once appear on the scene; over a period of fifteen years no inspection ever took place, despite the steady 'production' of RSI.

The result of all this was that no one took any steps to alter these sickening conditions of work. Within such a company there is invariably an unwillingness and inability to change the situation. Nor can external stakeholders exert any influence on the situation because information about Occupational Health and Safety (OHS) risks remains confined within the four walls of the company.

Failing prevention

The pattern of failing and inadequate prevention that is visible in this case (management unwilling to change, works council and trade unions in a position of impotence, occupational physicians acting inappropriately, labour inspectorate absent) occurs in numerous situations where workers contract an occupational disease or sustain an occupational accident. Such situations clearly indicate that in the EU the existing occupational accident and disease prevention policy is frequently inappropriate.

The EU prevention policy is founded on two principles, the first of these being **protection** of the worker by the employer: the employer, in other words, is legally obliged to protect the employee against unhealthy and unsafe conditions. This principle is more than a century old and has led to a plethora of legal requirements concerning workplace design and duty of the employer.

The second founding principle is that of prevention through **self-regulation**. This principle, introduced 30 years ago, states that the employer, in cooperation with the employees and the works council and assisted by health and safety experts, has the requisite competence to shape safe and healthy working conditions. The stakeholders are expected actively to identify risks and to seek appropriate solutions.

This EU prevention policy is effective in situations where responsive and sensible employers give priority to the *quality* of work. And it is adequate in situations where harmonious relations prevail between employer and employees, in organizations that have a works council – possessed of the requisite knowledge and power – and in work situations where the expertise of Occupational Health and Safety (OHS) professionals, such as occupational physicians, is appreciated. In work situations where one or more of these prerequisites is not met, the EU prevention policy is inadequate.

Thus, the policy according to which the employee is protected by the employer in combination with self-regulation and remote supervision by the labour inspectorate does not, in all work situations, contribute to the reduction of occupational accidents and incidence of disease. This policy leads to the undesirable

situation whereby the 'victim' (the employee) has to be 'protected' by the 'offender' (the employer). Such a prevention policy hinders, moreover, systematic intervention by external stakeholders (if the internal stakeholders fail to take measures). This state of affairs induces an atmosphere of tolerance of the fact that employees become victims of accidents or poor working conditions, without any measures being taken to improve the said working conditions. Some exploratory research into prevention measures to combat occupational injury or disease within 336 companies in the Netherlands and Belgium shows that in 22% of these workplaces no measures were taken in order to prevent recurrence (Eshuis 2013: 221-246). Not only does this represent a threat for employees' health and earning power; it is also extremely costly for society.

An alternative prevention policy

Changes to prevention policy are required to ensure that appropriate measures will be taken to prevent occupational accident and disease. I suggest two policy changes that should be introduced in companies or workplaces that are unwilling or unable to prevent occupational accidents and disease; the policy changes in question would have to be primarily shaped by changes in European (and national) law.

A first policy change would be to make room for *openness* and *transparency* rather than the currently prevalent atmosphere of secrecy in companies surrounding various forms of occupational risk, accident and disease. Such a change would require companies to publish their risk assessment and their prevention measures (i.e. on the internet), to issue public reports on accidents and cases of occupational disease, and to report the prevention measures subsequently adopted, so that everyone would become familiar with the risks associated with work and able to monitor what preventive action is taken.

A second policy change would be to provide certain stakeholders with more *control* over working conditions in the organization. I would suggest the need for greater influence by individual employees and trade unions – in addition to monitoring by the works council. Why not give workers a legal right to investigate specific working conditions (for example, at the request of at least 10% of the employees), and also more control over prevention measures? In addition, the independence of external OHS experts with respect to the employer must be guaranteed. It would be wise, furthermore, to expand the labour inspectorate both qualitatively and quantitatively so that its representatives could step in unasked (as well as in response to every request) in order to enforce better working conditions.

In Mrs Y's case such an alternative prevention policy would have meant that management could not deny the existence of RSI: in an open and transparent situation the risk assessment and the trade union investigation would have been made public. At the same time, the labour inspectorate would have been informed about the severe health problems in the company and would have been forced to pay an inspection visit to assess working conditions and practices. The alternative prevention policy would also have

given (independent) OHS experts the opportunity to analyse the working conditions and offer advice on how to improve them to all (!) stakeholders.

As stated above, the policy changes have primarily to be shaped by changes in European (and national) law, in addition to which workers' compensation systems could and should contribute to the new prevention policy.

Workers' compensation and alternative prevention policy

Up until now workers' compensation systems have had no more than a limited impact on prevention. All insurers make some efforts at prevention by means of, for example, extra inspections, introduction of additional health and safety standards, provision of financial incentives to stimulate prevention, or global prevention campaigns. Even so, on the basis of my research in companies in The Netherlands and Belgium, I have reached the conclusion that workers' compensation systems currently contribute little or no intervention in organizations that make no effort to prevent workplace accidents or occupational disease. That is regrettable – indeed it is a disgrace – for at least two reasons: compensation is expensive (and prevention can make compensation cheaper); and compensation can make an essential contribution to prevention in such companies.

Workers' compensation systems can contribute to enhancing transparency and increasing the control of multiple stakeholders over prevention, especially after an occupational accident or diagnosis of occupational disease, thereby helping to foster intervention in companies that continually produce work victims. This preventive function can be configured via:

1. Enforcement of prevention

On the basis of several case studies I have reached the conclusion that workers' compensation systems can contribute to effective preventive changes by encouraging (or, if necessary, forcing) organizations to take preventive measures *after* the occurrence of a workplace accident or case of occupational disease. In fact, the 'insurer' (the organization responsible for the provision of worker's compensation, such as an insurance company or a fund for occupational disease) should be one of the external stakeholders stimulating or forcing the organization to take action. The insurer should have legal and financial instruments to enforce implementation of preventive measures.

2. Use of the expertise of internal and external stakeholders

Usually the insurer compiles a report on the occurrence of the accident and/or occupational disease. The report in question is secret, with only a few stakeholders (insurer, employer) being involved and in-the-know. From the prevention perspective a public inquiry is preferable. Such a public investigation, with involvement of the internal and external stakeholders, provides much useful

information about the preventive measures in the specific labour situation in question. From the prevention perspective it is also necessary that all relevant internal and external stakeholders be informed about the final results and therefore able to monitor whether the requisite prevention measures are implemented. Such procedures create a good basis for prevention, and the insurer should ensure the quality and openness of this process.

3. The role of victims

The employee victim of accident or disease should also participate in this public investigation of its circumstance and causes. Such participation has at least two advantages: interviews with victims frequently show that they have a lot of *specific knowledge* about the causes of the accident or occupational disease that has befallen them. What is more, they often have good ideas about effective prevention measures. One advantage of involving the employees affected is that such participation breaks down their social isolation. Employees no longer able to participate in the labour process experience a particular sense of having been abandoned by the former management and also by former colleagues.

Challenges for the European trade union movement

The number of occupational accidents and cases of occupational disease in Europe remains very high, leading to a great deal of personal and financial harm to the employees affected, as well as to high costs for victims, businesses and society. The answer to such a distressing and wasteful state of affairs must be effective prevention in all workplaces where there exists a risk of occupational disease or accident. Because the current European prevention policy does not adequately impinge upon organizations that are themselves reluctant to improve unhealthy working conditions, I advocate an alternative prevention policy based on openness and opportunities for control by various stakeholders. This could and should be achieved by adapting the European (and national) legislation, in addition to which workers' compensation can play a useful preventive role. Workers' compensation systems could undoubtedly exert a much greater impact on prevention if they were to adopt this newly proposed prevention policy of openness and control. Such a new prevention policy on the part of workers' compensation bodies could incorporate different ingredients such as public interventions of experts in companies that are reluctant to take preventive measures after an occupational accident or case of disease, or placing victims in a position where they can

exert an influence on their own health and safety report and on the preventive measures to be taken.

Trade unionists sit on the boards of workers' compensation institutions and can exert an influence on their policy. The European trade union movement should develop a joint policy to enforce prevention through workers' compensation systems, for example by embarking on experiments and evaluating good practices of intervention in companies that have shown themselves unwilling to improve working conditions.

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² For summary in English: <http://www.uva.nl/over-de-uva/organisatie/medewerkers/content/e/s/w.a.eshuis/w.a.eshuis.html>

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