EuSocialCit

European Social Citizenship

Health and safety at work: achievements, shortcomings, and policy options

Authors:

Nuria Ramos Martín, Jesús R. Mercader Uguina, Ana Belén Muñoz Ruiz, Amanda Moreno Solana, Guillermo García González, Lourdes Sánchez Galindo, Francisco Vallejo, Gabriela Grizzo, Alberto Arufe Varela, Caroline de la Porte, Zhen Im, Brigitte Pircher, Dorota Szelewa

EuSocialCit working paper

July 2023

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870978

This working paper is published as part of the EuSocialCit project, which has received funding from the European Commission's Horizon 2020 Research and Innovation programme under grant agreement no 870978.

To be cited as: Ramos Martin, Mercader Uguina, and Muñoz Ruiz, et al. (2023), Health and safety at work: achievements, shortcomings, and policy options. *EuSocialCit Working Paper*, March 2023. Doi: 10.5281/zenodo.8118960.

Authors: Nuria Ramos is Assistant Professor at UVA. Jesús R. Mercader Uguina is Professor at UC3M. Ana Belén Muñoz Ruiz is Professor at UC3M. Amanda Moreno Solana is Professor at UNED. Guillermo García González is Professor at UC3M. Lourdes Sánchez Galindo is Associate Professor at UC3M. Francisco Vallejo is Researcher at UC3M. Gabriela Grizzo is Associate Profesor at UC3M. Alberto Arufe Varela is Professor at University of La Coruña. Caroline de la Porte is Professor at CBS. Zhen Im Zhen Im is a Postdoc at CBS. Brigitte Pircher is a Postdoc at CBS and Associate Professor at LNU. Dorota Szelewa is a Postdoc at CBS and Assistant Professor at UCD.

Summary

This deliverable is explaining, in the context of the research theoretical framework on power resources informing the EUSOCIALCIT project, how the EU acquis on occupational safety and health (OSH) at work is impacting in the EU member states. This working paper presents a comparative study based on the seven focused case studies prepared for this paper (see country case studies in Annex 1). In two comparative sections we examine how the main EU acquis on occupational health and safety at work (the EU Framework Directive on Occupational Health and Safety[1] and two connected Directives, namely, the Working Time Directive[2] and the Pregnant Workers Directive) [3] have impacted in terms of available power resources on seven EU member states, namely, Denmark, France, the Netherlands, Spain, Germany, Poland, and Ireland. These Directives have been chosen because they are at the core of the protecting legal framework provided by EU law. In the selection of case studies, attention has been paid to include a sufficiently broad scope of countries covering different industrial relations systems and legal traditions: civil law countries (the Netherlands, Germany), mixed civil law and specific labour law jurisdictions (Spain, France), common law countries (Ireland), countries with transitional legal regimes (Poland), and countries with a strong involvement of social partners/collective bargaining in labour related matters (Denmark).

This paper explains the way the selected OSH Directives foster effective social rights for workers in the countries under study through legislation and collective agreements. These comparative analyses explore the main research questions of this paper, namely: What are the health and safety conditions and main problems workers face in the two sectors (construction and PHS/domestic work)? And to what extent workers in these sectors can effectively exercise their social rights concerning OSH? This allows for the assessment of another main research question: How successfully member states have transposed and applied the current EU health and safety rules, (highlighting best and worst practices)?

The comparative sections include information on the situation and specific problematic of each sector (specific implementation problems, existence or lack of health and safety measures/risks assessment, instrumental resources etc., high incidence of certain safety and health risk, specific risks for each sector, and emerging new risks, e.g. psychosocial issues).

This paper combines legal analysis with document analysis, semi-structured interviews, and descriptive statistics from national sources.

This delivery offers a picture of the implementation, compliance, and enforcement measures of EU occupational health and safety standards, one of the areas where most EU legislation exist. The delivery also addresses the extent to which member states, employers, and workers' representatives are developing effective tools to achieve healthy and accident-free workplaces. In other words, in addition to the normative and enforcement resources we also extensively examine the deployment of instrumental resources aimed at securing a full exercise of the right to workplace health and safety.

[1] Directive 89/391/EEC - OSH "Framework Directive" of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p.1.
[2] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, Official Journal L 299, 18/11/2003 P. 0009 – 0019.
[3] Council Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p. 1–7.

According to our findings, in most cases, national legislation reflects the structure of the EU OSH legislation, with a framework law complemented with sectoral legislation transposing each individual Directive. One of the Directives examined in this study, the Pregnant Workers Directive, constitutes an exception to that trend. Due to its specific content (strongly linked with traditional labour protection rights such a restriction of dismissal in these cases) it has been transposed through specific legislation or through amendments of the Labour Code.

According to our research, in general terms, the national transposing legislation of the OSH is in conformity with the studied EU OSH Directives. Our research also shows that, in many of the country cases, compliance with the OSH Directives minimum requirements as higher in large establishments than in SMEs.

However, there are some cases where the national legislation goes beyond the requirements of the EU framework directive. For example, eleven EU Member States have included domestic workers in the definition of 'worker' when transposing the Framework Directive,[4] setting a broader personal scope of application than the Directive.

From our qualitative analysis we have extracted several policy recommendations for strengthening of health and safety at work rights for both sectors:

First, a suggestion for improvement mentioned by several union representatives in the construction sector (Denmark, EU level experts) would be to implement an obligation on the employers' side that they should prove that they know all the working environment regulations (with a certification or assessment) before they can hire people.

Raising awareness and need to increase information knowledge among employers and also not by the works councils' members is mentioned as an important policy recommendation by many of the experts interviewed.

In the Netherlands, for instance, there is also room for improvement on the functioning of the OSH services, specifically on the collection of the anonymous information on work-related sickness of employees which should also be sent to the works councils.

Secondly, an interesting proposal for improving the instrumental resources for workers' involvement in the field of OSH will be using new technologies, such as use of sensors. In dangerous occupations with high risk of exposure to potentially harmful substances each worker could get a devise to monitoring his own exposure to specific risk factors and it would be very useful to have that information stored in personal health files. That will help to prevent that the level of the exposure to these factors which could lead to an occupational disease.

Thirdly, one problem noticed by several of the interviewees (France, Denmark, the Netherlands, EU level experts) is the issue of psycho-social risks. In the last years, more attention has been paid to psycho-social risks, but appropriate advances on OSH policies on that regard have not yet been achieved. Therefore, this is a pending issue.

In the PHS sector, according to the majority of interviewees (France, the Netherlands, Spain, Germany, and EU level), there is need of further intervention at the EU level on improving OSH prevention for PHS workers regarding both traditional and new emerging psycho-social risks.

[4] Ibid. p. 24.

Legal experts interviewed (France, Ireland and EU level) advise that new EU legislation focussing more on psychosocial risks at work should be adopted. A directive is needed to define the concept of psychosocial risk at work, and the roles of different OSH bodies to deal with it, building on the framework directive.

Fourth, some of the experts (Ireland, Denmark, the Netherlands) considered that, for strengthening of health and safety at work rights, more institutional resources are needed and there is a need to carry out more inspections, more specific enforcement measures; and more investment in resources promoting effective safety management in all sectors.

Fifth, in the PHS sector, according to the unions representatives interviewed (Denmark, Spain, EU level experts) and previous studies[5] it is very important to make the work more visible. When it is more visible, it will be easier to identify if any mistakes are made in applying OSH rules. It would also make people appreciate this type of work more because a main problem that employees in the sector are reporting is the lack of recognition of their work and the lack of respect for their valuable work.

As several reports had already pointed out, in the PHS sector, *instrumental resources* such as training and awareness raising for workers and employers are key tools.[6] Employees must be instructed in legal aspects, as well as in those related to OSH risk management. It is also essential, due to the particular non-entrepreneurial characterization of domestic work, to train the employer in good practices, rights and duties, and in risk prevention matters.[7]

A concern mentioned by the interviewees in several countries (the Netherlands, Denmark, Poland, EU level) is the increasing percentage of self-employed workers in both sectors, (including a high number of bogus self-employed according to the unions) and the high percentage of flexible workers, including informal workers and (often illegal) third country nationals. These workers are often not properly covered by the OSH regulation and collective agreements and that is problematic for their health and safety protection and that of their co-workers. Moreover, it was noticed that the construction sector is highly cost driven and very fragmented: subcontracting is widespread, which leads to more flexible jobs, lesser protection and more (fatal) accidents, often involving migrant workers. Therefore, intervention at EU level addressing this problematic of excessive bogus self-employment and long chains of subcontracting could be a solution for an enhanced health and safety at work in these two sectors.

[5] Caner, L., Aleksandria, N., Riga, V. and Geertsema, Z. (supervisor: Ramos Martín, N.), 'Comparative Study on Health and Safety at Work in the Personal and Household Services Sector', Report published by UvA Fair Work and Equality Law Clinic, (2022), p. 1-83.

[6] For a complete list of preventive measures, see INSST, *Buenas prácticas preventivas en el servicio doméstico, dirigidas a la persona titular del hogar y del servicio doméstico*, *op. cit.;* and OSALAN, *Guía básica de prevención de riesgos laborales para personas trabajadoras del hogar, op. cit*.

[7] This idea is reflected in the INSST's own guide on the prevention of occupational risks in domestic work which, from its title, emphasizes its orientation towards both parties in the employment relationship. See INSST, *Buenas prácticas preventivas en el servicio doméstico, dirigidas a la persona titular del hogar y del servicio doméstico*, *op. cit.*

Health and safety at work: achievements, shortcomings, and policy options.

Project name	The Future of European Social Citizenship
Project acronym	EuSocialCit
Grant Agreement ID	870978
Deliverable number	D4.4
Lead partner	Copenhagen Business School
Work package	This report is produced as part of WP 4 which is entitled Fair Working Conditions. This WP analyses the social rights included in the 'fair labour markets' cluster of the EPSR. It examines social rights in relation to: 1) The increase in the female labour market participation during the last decades and the need for adequate and effective work-life policies. 2) The increase in highly flexible forms of non-standard employment, which requires more effective policies to ensure labour rights for the most flexible non-standard workers. 3) The deficient implementation of health and safety regulations in certain sectors and the related need to broaden coverage and strengthen compliance.
Web address	For more information about the EuSocialCit project, please visit www.eusocialcit.eu. EuSocialCit's output can also be found in its community on Zenodo: https://zenodo.org/communities/eusocialcit.

TABLE OF CONTENTS

1. INTRODUCTION 9

2. NORMATIVE RESOURCES AT EUROPEAN LEVEL: EU LEGAL FRAMEWORK ON OCCUPATIONAL HEALTH AND SAFETY 12

2.1 NORMATIVE RESOURCES AT EUROPEAN LEVEL: EU LEGAL FRAMEWORK ON OCCUPATIONAL HEALTH AND SAFETY .. 12

2.1.1 EU REGULATORY BASIS FOR THE PROTECTION OF OSH – EU PRIMARY LAW 14

2.1.2 THE EU MAIN SECONDARY LEGISLATION IN OSH - THE FRAMEWORK DIRECTIVE 16

2.1. 3 THE PREGNANT WORKERS DIRECTIVE 24

2.1.4 THE WORKING TIME DIRECTIVE 27

2.1.5 EVALUATION OF THE IMPLEMENTATION OF EU NORMATIVE RESOURCES AND NEW DEVELOPMENTS ON OSH AT EU LEVEL 30

3. OSH IN THE PHS SECTOR – COMPARATIVE PERSPECTIVES..... 31

3.1 GENERAL PROBLEMS AFFECTING THE PHS SECTOR 31

3.2 IMPACT OF THE EU NORMATIVE RESOURCES: EFFECTS OF THE FRAMEWORK DIRECTIVE AND THE OSH PROTECTION OF WORKERS IN THE PHS SECTOR. 34

3.3 MAIN OSH RISKS IN THE PHS SECTOR 36

3.4 INSTRUMENTAL RESOURCES: TRAINING ON OCCUPATIONAL RISKS PREVENTION FOR PHS SECTOR WORKERS 39

3.5 MISFUNCTIONING OF ENFORCEMENT RESOURCES: THE DIFFICULTIES OF CONTROLLING THE APPLICATION OF OSH REGULATIONS IN THE PHS SECTOR. 40

3.6 DEVELOPING NEW INSTRUMENTAL RESOURCES: GOOD PRACTICES IN THE PHS SETTING 41

3.7 GENDER DIMENSION IN THE PHS SECTOR 41

3.8 IMPACT OF THE COVID-19 PANDEMIC IN THE PHS SECTOR 42

4. OSH IN THE CONSTRUCTION SECTOR – COMPARATIVE PERSPECTIVES..... 44

4.1 GENERAL PROBLEMS AFFECTING OCCUPATIONAL RISK PREVENTION IN THE CONSTRUCTION SECTOR 44

4.1.1 MOST FREQUENT OCCUPATIONAL HEALTH AND SAFETY PROBLEMS/RISKS IN THE CONSTRUCTION SECTOR 45

4.2 TRANSPOSITION OF EU NORMATIVE RESOURCES: EFFECTS OF THE FRAMEWORK DIRECTIVE 89/391/EEC AT NATIONAL LEVEL 46
4.3 HYBRID RESOURCES: OCCUPATIONAL RISKS PREVENTION TRAINING 49
4.4 INSTRUMENTAL RESOURCES: INSTRUMENTS OF SOCIAL PARTICIPATION AND SOCIAL DIALOGUE IN THE CONSTRUCTION SECTOR 51
4.5 ENFORCEMENT RESOURCES: THE ROLE OF THE LABOUR INSPECTORATES ON THE PROTECTION AGAINST OCCUPATIONAL RISKS IN THE CONSTRUCTION SECTOR. 52
4.6 IMPACT OF THE PANDEMIC ON THE CONSTRUCTION SECTOR 53

5. POLICY RECOMMENDATIONS 55

REFERENCES INTERVIEWS 59

APPENDIX 1: INTERVIEW GUIDE OSH (GENERIC) 61

ANNEX: CASE STUDIES IN OSH 63

1. INTRODUCTION 64
2 DENMARK 65
3 IRELAND 79
4 THE NETHERLANDS 89
5 GERMANY 100
6 FRANCE 112
7. SPAIN 122
8 POLAND 137

REFERENCES 153

1. Introduction

This deliverable is explaining, in the context of the research theoretical framework on power resources informing the EUSOCIALCIT project, how the EU acquis on occupational safety and health (OSH) at work is impacting in the EU member states. It also assesses to what extend EU OSH legislation has contributed to ensure the protection of workers regarding the right to a healthy, safe and well-adapted work environment (according to principle 10 of the European Pillar of Social Rights - EPSR). This paper is linking the specific research questions on OSH for this task to the theoretical framework on power resources at the core of the EUSOCIALCIT project research.[8] The aim is to show the outputs of the EU and national legislation and the policy trends in several EU Member States and provide an analytical comparison of those outputs in terms of strength/achievements, weaknesses/shortcomings, challenges, and opportunities for progress. The legal and empirical analysis based on qualitative research is completed with a section on policy recommendations.

This paper presents a comparative study based on the seven focused case studies prepared for this paper (for the actual country case studies see Annex 1).[9] In two comparative sections we examine how the main EU acquis on occupational health and safety at work (the EU Framework Directive on Occupational Health and Safety[10] and two connected Directives, namely, the Working Time Directive and the Pregnant Workers Directive) have impacted in terms of available power resources on seven EU member states, namely, Denmark, France, the Netherlands, Spain, Germany, Poland, and Ireland. This Directives have been chosen because they are at the core of the protecting legal framework provided by EU law. The Framework Directive is the cornerstone of the EU OSH legal system and the other two Directives are extremely relevant in terms of clarifying the extensive scope of OSH from a European perspective (Working Time Directive)[11] and in terms of the specific attention to OSH gender specific issues (Pregnant Workers Directive)[12]. In the selection of case studies, attention has been paid to include a sufficiently broad scope of countries covering different industrial relations systems and legal traditions: civil law countries (the Netherlands, Germany), mixed civil law and specific labour law jurisdictions (Spain, France), common law countries (Ireland), countries with transitional legal regimes (Poland), and countries with a strong involvement of social partners/collective bargaining in labour related matters (Denmark)

This chapter explains the way the OSH Directives foster effective social rights for workers in the countries under study through legislation and collective agreements. These comparative analyses

[8] Ferrera M, Corti F and Keune M (2023) [Forthcoming] Social citizenship as a marble cake: the changing pattern of right production and the role of the EU. *Journal of European social policy, forthcoming*.

[9] Regarding our data and, due to the extensive scope of the comparative study, the case studies draw heavily on elite and expert interviews. We have tried to validate this data and information as much as possible, but there could be minor mistakes due to the scope and complexity of the research carried out and limited expert knowledge among the team of scholars in the area of occupational health and safety.

[10] Directive 89/391/EEC - OSH "Framework Directive" of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p.1.

[11] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, Official Journal L 299, 18/11/2003 P. 0009 – 0019.

[12] Council Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p. 1–7.

explore the main research questions of this paper, namely: What are the health and safety conditions and main problems workers face in the two sectors (construction and PHS/domestic work)? And to what extent workers in these sectors can effectively exercise their social rights concerning OSH? This allows for the assessment of another main research question: How successfully member states have transposed and applied the current EU health and safety rules, (highlighting best and worst practices)?

The comparative sections include information on the situation and specific problematic of each sector (specific implementation problems, existence or lack of health and safety measures/risks assessment, instrumental resources etc., high incidence of certain safety and health risk, specific risks for each sector, and emerging new risks, e.g. psychosocial issues).

Comparing the situation regarding occupational health and safety in construction and personal and household services/domestic work is interesting because the first sector is highly regulated and there is high involvement of the social partners in safety and health at work. Besides, construction is a male dominated sector while PHS is a female dominated sector and highly de-regulated/informal in many countries. Attention has been paid to the gender dimension of the two different sectors when feasible.

When relevant, the specific problem of the situation of workers in the two sectors regarding health and safety at work during the COVID-19 pandemic is addressed in the comparative analysis.

The applied Power Resources theory developed by Ferrera, Keune et al. (forthcoming 2023) in the context of the EUSOCIALCIT project dissects social rights as bundles of power resources which enable individuals to assert and actually acquire material benefits in order to cope with a wide range of social risks and needs.[13] Three sets of individual power resources are identified namely, normative, instrumental, and enforcement resources. Normative resources refer to legal obligations and legal entitlements outlined in national legislation, EU Treaties and secondary EU law and case law. However, while legal resources are crucial to ensure respect for social rights, they may be rendered ineffective if citizens cannot exercise those rights in practice and hold the administration, companies, and/or other individuals accountable for non-compliance. To achieve the aim of full compliance, instrumental and enforcement resources are essential too. Enforcement resources are established in general terms in many of the EU social Directives and refer to judicial remedies which allow right holders to coerce their rights through litigation and hold authorities, organisations, or other individuals accountable but also to administrative procedures which could be deployed by Member States to comply with their obligations. Finally, instrumental resources are hybrid instruments such as channels and procedures that allow right holders to enforce their claims and are often made available by civil society organisations and unions. Moreover, information campaigns on new rights and internal company measures or procedures facilitating the exercise of rights are included in this last category.

This paper combines legal analysis with document analysis, semi-structured interviews, and descriptive statistics from national sources.

This delivery offers a picture of the implementation, compliance, and enforcement measures of EU occupational health and safety standards, one of the areas where most EU legislation exist. The analysis focuses on the sectors of construction and personal and household services (PHS), two sectors that experience important health and safety problems. Also, there is an important gender dimension

[13] Ferrera M, Corti F and Keune M (2023) [Forthcoming] Social citizenship as a marble cake: the changing pattern of right production and the role of the EU. *Journal of European social policy, forthcoming*.

under consideration in this study, as in construction workers are mainly male and in the personal and household sector mainly female. This paper covers seven countries that have been dealing with the transposition of EU health and safety rules in the construction and PHS sectors and from which important lessons can be learned. In line with the EPSR's stated aims, the main research task is to analyse the extent to which the requirements concerning health and safety laid down in the current acquis are met in the two sectors.

The delivery also addresses the extent to which member states, employers, and workers' representatives are developing effective tools to achieve healthy and accident-free workplaces. In other words, in addition to the normative and enforcement resources we also extensively examine the deployment of instrumental resources aimed at securing a full exercise of the right to workplace health and safety.

Before addressing in the following sections the specific power resources available at EU and national level and aiming to provide EU citizens with effective rights regarding occupational health and safety at the workplace, it should be noted that despite the notable efforts at European level to promote a high level of protection regarding OSH and a free accidents workplace, the incidence of accident at work in the two sectors under study is still high. As noted by the data published by EUROSTAT[14], the incidence of accidents at work is higher for men. The main reason for that higher incidence is that the economic activities where men are working are more dangerous. Within the EU, construction, transportation and storage, manufacturing, and agriculture, forestry and fishing sectors together accounted for around two thirds (63.1 %) of all fatal accidents at work and more than two fifths (44.1 %) of all non-fatal accidents at work in 2020. In 2020, more than one fifth (21.5 %) of all fatal accidents at work in the EU took place within the construction sector. In that sector also non-fatal accidents were relatively high (12.7 %).[15] At EU level, due to the highly informal character of a part of the PHS sector and the prevalence of undeclared work, there are no clear statistical figures on the incidence of accidents at work. However, some national reports show that due to the high exposure to physical hardship in the sector, the rate of work accidents is significantly higher in these services compared to other occupations.[16]

[14] European statistics on accidents at work (ESAW) administrative data collection exercise: Accidents at work statistics - Statistics Explained (europa.eu)
[15] Ibid.
[16] Gayet C., (2016), Quand le domicile privé est aussi un lieu de travail, Hygiène et Sécurité du travail, n°246, Juin 2016 and Manoudi, A., Weber, T., Scott, D. and Hawley Woodall, J., ICF, 'An analysis of Personal and Household Services to support work life balance for working parents and carers', (2018), Publications Office of the European Union, p. 1-67.

2. Normative resources at European level: EU legal framework on occupational health and safety

2.1 Normative resources at European level: EU legal framework on occupational health and safety

This working paper starts by mapping the regulatory situation of occupational safety and health at work (OSH) at EU level. This concerns first the relevant EU legislation, in particular the Council Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (from now onwards Framework Directive), as well as the Directives originating from this Framework Directive (in particular, the Directives applicable to the construction sector); the Directive 92/85/EEC on pregnant workers; and Directive 2003/88/EC on the regulation of working time. These Directives have been chosen for the analysis of its implementation at Member State level as they are main legislative instruments in the field of OSH. In particular, the Framework Directive is a key legislative instrument on the regulation of OSH in Europe.

OSH was one of the first areas where EU social legislation was adopted. National legislations on OSH stem from EU directives and regulations. Member States need to implement that EU regulatory framework into their own legal system but in the process of implementation a broad variety in transposition and practical applicability/enforcement of the EU provisions can be observed. According to some experts interviewed, extensive differences in the level of protection can be noticed between Western EU countries (which a higher level of protection of workers) and Eastern EU countries (where the OSH standards are not always as strict as those of Western EU countries with further experiences in the application of EU minimum OSH standards).

There have been numerous EU Directives approved since the 1980s with the aim of protecting safety and health at work. For this reason, it has been rightly said that the protection of occupational health is a prominent part of the EU acquis, compared to other issues of social policy which are less regulated at the supranational level.

In addition, the regulation of this matter has evolved in the intensity of the protection offered by EU law from the first pieces of legislation to the present moment. Monitoring techniques have evolved from traditional instruments characterized by their high and detailed technical content towards regulations filled with legal principles and more general rules. There has been a transition from a predominantly public intervention to another that also involves private subjects due to its proximity to OSH real problems. Legal instruments from the point of view of their content have evolved by expanding their sphere of protection in terms of the risks and dangers to which they refer. Also, the technical complexity of the matter has required the participation of scientific and technical experts in the processes of normative production. In turn, some social dialogue formulas have been tested, perhaps not entirely successfully, with the purpose that the social partners can approve pacts and agreements on OSH issues. A formalist and detailed regulatory approach has been combined in some

areas with modern soft law experiences. And finally, scientific uncertainty regarding some substances and production processes has led to the incorporation of novel legal principles such as the precautionary principle.

First generation Directives

Before addressing the main EU legal instrument dealing with OSH legislation, the Framework Directive, this section includes a brief description of the evolution of the legislative approaches to OSH within the EU integration process and how this topic has been dealt with in the various stages of that process.

The first Directives on OSH were adopted in the early 1980s. The legal basis used for their approval was the then article 100 of the EC Treaty which required unanimity at the Council for the adoption of the Directives.The legislation approved during this period was an unsystematic set of Directives characterized by a strong sectoral approach and dispersion. These were Directives focused on the field of industrial hygiene aimed at preventing occupational diseases, with some exceptions such as those relating to safety signs and risks of serious accidents.[17] The immediate consequence is that this regulation refers to risks derived from the use of very specific substances used by certain type of companies.[18] Therefore, protective measures were not established against many other dangers present in almost all companies.[19] The fragmented nature of this legislation continued with the approval of Directive 80/1107, known as the Hygiene Framework Directive, which provides for the adoption of specific OSH measures on the use of specific substances.[20] This legislation responded to a traditional technical approach to OSH[21] and offered protection to workers only against risks related to exposure to chemical, physical and biological agents during work.[22]

The first generation Directives were more focused on the means than on the results, establishing a range of technology means to solve a specific problem more than setting security objectives to be achieved. In addition, the enhanced protection of OSH standards was weakened by the formulation of some provisions, such as article 3 of the Hygiene Framework Directive, which provides States with a list of elements that allow them to adjust the standard obligations or referring to economic factors when setting the standards on reasonably possible safety and health at work.

In this first period the policy on safety and health at work was conceived as an almost exclusive duty of the public authorities. This was the result of a lack of a comprehensive approach to OSH prevention on that period. Later on, the EU legislative approach in this field has evolved by incorporating the participation of private subjects (employers and workers).

---

[17] Gonzalez de Lena Alvarez, F., *La materia laboral de seguridad e higiene en las Directivas comunitarias. Balance y perspectivas a comienzos de 1989,* Relaciones Laborales, I, 1989, p. 1298.

[18] Gonzalez Ortega, S., *La Directiva marco en materia de seguridad,* IX Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales, Málaga, 1992, p. 239.

[19] See: Gonzalez-Posada Martinez, E., *El significado de la normativa comunitaria en materia de seguridad, higiene y salud en el trabajo. La Directiva 89/391/CEE,* Actualidad Laboral, 1991, III, p. 394.

[20] Camas Roda, F., *La normativa internacional y comunitaria de seguridad y salud en el trabajo,* Valencia, Tirant lo Blanch, 2003, p. 228.

[21] See: Rodriguez Piñero, M., *El desarrollo reglamentario de la Ley de Prevención de Riesgos Laborales,* Relaciones Laborales, 1997, II, p. 55; Gonzalez de Lena Alvarez, F., *La materia laboral de seguridad e higiene en las Directivas comunitarias. Balance y perspectivas a comienzos de 1989,* Relaciones Laborales, I, 1989, p. 1298 and Gonzalez-Posada Martinez, E., *El significado de la normativa comunitaria en materia de seguridad, higiene y salud en el trabajo. La Directiva 89/391/CEE,* Actualidad Laboral, I, 1991, III, p. 395.

[22] Gonzalez Ortega, S., *La Directiva marco en materia de seguridad,* IX Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales, Málaga, 1992, p. 239.

Second generation Directives

From the entry into force of the Single European Act in 1986, [23] new OSH legislation was passed at EU level. This legislation had a new approach with respect to the Directives approved previously. [24] OSH experts talked about "a new dynamic of production of safety and hygiene standards" [25] and a new approach at EU level on OSH. [26] During that period, there were substantial changes in the way and intensity of the protection regarding OSH. New Directives were adopted, with wider application scope and a broader material scope. Various directives were approved with new provisions not only regulating industrial hygiene issues but also addressing more general issues such as safety at work related risks. [27] As explained above, due to the importance of the Framework Directive as the main regulatory instrument of OSH at EU level, the case studies and this comparative study are focused on the implementation of that Directive at national level.

2.1.1 EU regulatory basis for the protection of OSH – EU primary law

The legal basis for occupational health and safety is currently Article 153.1 a) of Treaty of the Functioning of the EU - TFEU *(ex Article 137 TEC).* This article constitutes the appropriate legal basis for the adoption by the EU of measures whose main purpose is the improvement of the working environment to protect workers' health and safety.

This Article (in its previous versions included in several EU Treaties) has been interpreted by the case law, of the EU Court of Justice, in particular, by the Judgment of November 12, 1996, Case C-84/94, [28] which deals with the request for annulment filed by the UK against Directive 93/104/EC of the Council, of 23 November 1993, on the organization of working time. In line with this Judgment, the main lines of the EU action regarding protection of the health and safety of workers are drawn up. The Court provides in this judgment an interpretation of the concepts of safety and health at work, the EU's regulatory approach in this matter, as well as the scope of general or specific measures to be adopted by the EU legislator.

---

[23] See: Villa Gil, L.E., *La Carta de los Derechos Fundamentales de la Unión Europea,* Revista del Ministerio de Trabajo y Asuntos Sociales, 2001, núm. 32, pp. 21 y 22. and GONZALEZ ORTEGA, S., *La Carta Comunitaria de Derechos Sociales Fundamentales de los Trabajadores,* en AA.VV. (Dir. F.M. Mariño Menéndez y C. Fernández Liesa), Política Social internacional y europea, Madrid, Ministerio de Trabajo y Asuntos Sociales, 1996, p.324.

[24] See: Gonzalez Ortega, S., *La Directiva marco en materia de seguridad,* IX Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales, Málaga, 1992, p. 240 and MORENO VIDA, M.N., *La seguridad y salud en el trabajo: el deber de prevención de riesgos profesionales. Un análisis desde la perspectiva de la Directiva 89/391/CEE,* en AA.VV. (Coord. J.L. Monereo Pérez), La reforma del mercado de trabajo y de la seguridad y salud laboral, Universidad de Granada, 1996, pp. 551 y 552.

[25] Gonzalez de Lena Alvarez, F., *La materia laboral de seguridad e higiene en las Directivas comunitarias. Balance y perspectivas a comienzos de 1989,* Relaciones Laborales, I, 1989, p. 1296.

[26] See: Gonzalez Ortega, S., *La Directiva marco en materia de seguridad,* IX Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales, Málaga, 1992, p. 241.

[27] Gonzalez de Lena Alvarez, F., La materia laboral de seguridad e higiene en las Directivas comunitarias. Balance y perspectivas a comienzos de 1989, Relaciones Laborales, I, 1989, p. 1300 and Gonzalez Ortega, S., La Directiva marco en materia de seguridad, IX Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales, Málaga, 1992, p. 241.

[28] See for a comment on this ruling: Camas Roda, F., *La normativa internacional y comunitaria de seguridad y salud en el trabajo,* Valencia, Tirant lo Blanch, 2003, pp. 174 a 186.

The CJEU ruled, in the aforementioned Judgment, for a wide interpretation of the terms "safety" and "health". According to the Court, the concepts of "working environment" and "safety" and "health" should not be interpreted restrictively and nothing in the Treaty basis indicates that they do not refer to all factors, physical or otherwise, that may affect the health and safety of the worker in his or her working environment, and, in particular, to certain aspects of the organization of working time.[29] On the contrary, the Court points out that the part of the phrase "in particular, the work environment" allows for a broad interpretation of the competence conferred on the then article 118 A of the ECT (current Article 153.1 a) TFEU) in matters of protection of the safety and health of workers. In addition, it is added that such an interpretation of the terms "safety" and "health" can be supported by the preamble of the Constitution of the World Health Organization, which defines health as a state of complete physical, mental, and social well-being, and not only as a state consisting of the absence of any disease or illness.

Regarding the issue of regulatory intensity, the Court stated that "by conferring the Council the power to adopt minimum provisions, article 118 A ECT does not prejudge the intensity of the action that that institution may consider necessary for the fulfillment of the mission that the provision controversial issue expressly assigns it, which consists of acting in favor of the improvement within the progress of the conditions related to the safety and health of workers". The expression "minimum provisions" appearing in Article 118 A ECT means only that it authorizes Member States to adopt stricter standards than those that are the object of the European Community intervention. This provision does not limit that intervention to the lowest common denominator or even to the lowest level of protection established by the different Member States, but rather means that States are free to grant more protection than the minimum EU standards.

Similarly, other allegations of the Government of the United Kingdom in this case were rejected. The UK Government was arguing that article 118 A ECT did not authorize the Council to adopt Directives that, like the Working Time Directive, were addressing the issue of health and safety in a general, in an abstract and non-scientific manner. On this issue, the Court concluded that, according to settled case law, a mere practice of the Council cannot establish exceptions to the rules of the Treaty concerning the correct legal basis for a legislative initiative. In addition, measures of general scope were adopted pursuant to article 118 A ECT of the Treaty, in particular, by the Framework Council Directive 89/654/EEC of 1989, on the minimum health and safety provisions in workplaces.

Finally, by establishing that the Directives adopted in the field of health and safety at work will avoid establishing obstacles of an administrative, financial, and legal nature that hinder the creation and development of small and medium-sized companies, the Court noted that the second paragraph of section 2 of article 118 A ECT indicates that these companies may be subject to particular economic measures. However, that does not mean that that provision precludes this type of companies for being subject to binding measures.[30]

[29] Some authors expressed their disagreement with the views of the Court of Justice in this ruling arguing that both at EU and national level health and safety and working time have been traditionally regulated separately: ALONSO OLEA, M., *¿Es de seguridad y salud del medio de trabajo la regulación de la jornada?,* Revista Española de Derecho del Trabajo, 1999, núm. 93, pp. 5 a 17.

[30] See also Judgment of the Court of Justice of 30 November 1993, Kirsammer-Hack, (C-189/91).

2.1.2 The EU main secondary legislation in OSH - the Framework Directive

The second generation Directives are headed by the Framework Directive 89/391.[31] The attempts to coordinate and unify the preceding regulations are achieved through the approval of that Directive, which is configured as the backbone of the system.[32] The Framework Directive places more emphasis on the institutional or legal structure aspects of health and safety than on the incorporation of new preventive measures. Indeed, the Directive defines rights and obligations for the parties to the employment relationship, referring technical issues to the specific Directives.[33] In addition, it is characterized by its globalizing purpose, especially with regard to its scope of application, since, in principle, it applies to all sectors of activity and to all risks.[34] The Framework Directive reinforces protection standards by affirming in the Preamble that the improvement of the safety, hygiene, and health of workers represents an objective that cannot be subordinated to considerations of a purely economic nature.[35] Therefore, the idea of flexibilization of OSH obligations due to economic constrains disappeared to a great extend from the EU's legislative approach to this issue.

The Framework Directive and the sectoral Directives are accompanied by a series of provisions of a more general nature that try to favor a global approach to OSH. They are transversal instrumental resources and covered matters as diverse as display screens, workplaces or protective equipment. Moreover, one of the most important advancements of the second generation Directives is the trend towards co-responsibility and blurring of the limits between public and private monitoring of compliance. This is intended to reduce state intervention and, at the same time, increase the participation of employers and workers in the OSH related processes. For this purpose, the notions of employer and worker in the OSH regulatory context are defined for the first time[36] and general duties of care and participatory structures are set to develop health and safety policies.[37] Legal scholars have highlighted the fact that, although the recipients of the Directive are the Member States, the text

---

[31] Framework Directive 89/654/EEC and followed by several specific Directives, *inter alia*: Directive 89/655/EEC; Directive 89/656/EEC; Directive 90/269/EEC; Directive 90/270/EEC; Directive 2004/37/EC; Directive 2000/54/EC; Directive 92/57/EEC; Directiva 92/58/EEC; Directive 92/85/EEC; Directive 92/91/EEC; Directive 92/104/EEC; Directive 93/103/EC); Directive 98/24/CE; Directive 1999/92/EC; Directive 2002/44/EC; Directive 2003/10/EC; Directive 2004/40/EC;

[32] The Framework Directive fulfills the globalizing and reordering objectives, sets the general principles on OSH and applies to all sectors of activity, see Rodriguez-Piñero, M., *El desarrollo reglamentario de la Ley de Prevención de Riesgos Laborales,* Relaciones Laborales, 1997, II, p. 55 and Lozano Lares, F., *El marco jurídico comunitario de la seguridad y salud laboral,* in (Coord. J. Cruz Villalón y T. Pérez del Río), Una aproximación al derecho social comunitario, Madrid, Tecnos, 2000, p. 85.

[33] Fernandez Marcos, L., *Directiva marco comunitaria de seguridad y salud de los trabajadores en el trabajo,* Mapfre Seguridad, cit., p. 28.

[34] Cuevas Gallegos, J. y Ramos Serrano, E., *Directivas comunitarias sobre seguridad y salud laborales no traspuestas al derecho español, vencido su plazo, y recargo por falta de medidas de seguridad,* in (Coord. J.L. Monereo Pérez), La reforma del mercado de trabajo y de la seguridad y salud laboral, Universidad de Granada, 1996, p. 619.

[35] Gonzalez Ortega, S., *La Directiva marco en materia de seguridad,* IX Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales, Málaga, 1992, pp. 249 and 250.

[36] Gonzalez de Lena Alvarez, F., *La materia laboral de seguridad e higiene en las Directivas comunitarias. Balance y perspectivas a comienzos de 1989,* Relaciones Laborales, I, 1989, p. 1304.

[37] Rodriguez Piñero, M., *Trabajo y Medio Ambiente,* RL, 1995, II, pp. 105 and 106 o *Medio ambiente y relaciones de trabajo,* Temas Laborales, núm. 50, 1999, pp. 7 a 18 and Rodriguez Piñero y Bravo-Ferrer, M.,, *Medio ambiente y prevención de riesgos laborales,* in. (eds.. F. Salinas Molina), Responsabilidad medioambiental: aspectos civiles y riesgos laborales, Madrid, Consejo General del Poder Judicial, 2005, p. 14.

actually addresses employers and workers directly.[38] In short, "a new less regulatory and more participatory orientation" is introduced by the Framework Directive and the specific Directives derived from it.[39]

Scope of the Framework Directive

The approval of the Framework Directive represents a substantive progress in the OSH regulatory acquis at EU level. A main advancement is that this Directive constitutes a regulatory framework of general application to workers in the EU and the risks to which they are exposed at work. However, the delimitation of the scope of application of this Directive has given rise to some problems: regarding the exclusion of some groups of workers from the scope due to the kind of activity carried out and also on the notion of risk referred to in that document.

Concept of worker, excluded activities and concept of risk

Article 3 of the Framework Directive provides a definition of 'worker", as any person employed by an employer, including trainees and apprentices, excluding workers in the domestic work/household services sector. On the one hand, it is an advancement that a broad concept is introduced with respect to the previous regulatory framework where it was not frequent to include a definition of worker for the purpose of application of the OSH legislation. In principle, according to the definition of worker in the Directive, all dependent workers of an employer are protected regarding OSH measures. On the other hand, the fact that workers in the domestic work sector are completely excluded from the scope of the Directive is leaving an extensive number of potentially vulnerable workers in a highly informal sector as PHS without any kind of protection by EU legislation.

However, the European Union has recommended to the Member States the inclusion of self-employed workers under the scope of their OSH regulation, or that they, at least, establish some health and safety protection measures for this group. This is included in the Council Recommendation 2003/134/EC on improving the protection of health and safety at work for self-employed workers. Until now, only a few Member States, i.e., Portugal and Ireland,[40] have included self-employed workers in the scope of legal provisions on health and safety at work. In these two countries, self-employed workers receive "under some circumstances" the same treatment as employees.[41] They are also partially covered by OSH legislation in Denmark, and Sweden. In the other Member States, the

[38] Perez de los Cobos Orihuel, F., *La Directiva marco sobre medidas de seguridad y salud de los trabajadores en el trabajo y la adaptación del ordenamiento español (I),* Relaciones Laborales, I, 1991, p. 1223.

[39] Rodriguez Piñero y Bravo-Ferrer, M., *Medio ambiente y prevención de riesgos laborales,* in (eds. F. Salinas Molina), Responsabilidad medioambiental: aspectos civiles y riesgos laborales, Madrid, Consejo General del Poder Judicial, 2005, p. 14.

[40] In Ireland, section 7 of the he Safety, Health and Welfare at Work Act of 2005 states that: "The relevant statutory provisions apply, where appropriate, to a self-employed person as they apply to an employer and as if that self-employed person was an employer and his or her own employee and references in the relevant statutory provisions to an employer shall be read as references to a self-employed person."

[41] The Irish law (the Safety, Health and Welfare at Work Act, 2005) follows the UK rationale on legislating Health and Safety at Work Act. The way self-employed are covered by OSH legislation is limited. Self-employed are treated as employees as long as they share the same workplace. So, for same sectors, such as construction, it can be helpful to enhance their protection but for other sectors (such as transport or domestic work) where self-employed and employees are doig lone work, it won't help to improve the protection. Moreover, self-employed are not involved into the consultation like employees are.

legal provisions on health and safety at work do not apply to self-employed workers, with the exception of those sectors where there is a need for coordination with employees (for example, in some cases of construction work, for which there is also a specific EU Directive). To date, the inclusion of the self-employed in the legislation on safety and health protection has been limited to those cases in which there is interaction in the same working site between employees and self-employed or when self-employed workers are performing joint tasks with employees on the same workplace. This is a principle that has already been integrated into the Directives on works and work equipment and mobile construction sites.[42]

In its first paragraph, Article 2 of the Framework Directive broadly formulates the sectors of activity to which the regulation applies, stating that it will apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.). However, in its second paragraph, it states that the Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with it. In that case, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive. The scope and content of the exception or exclusion mentioned in the second paragraph have given rise to certain doubts since, depending on the interpretation given, the resulting consequences are quite different. In the worst of cases, the entire public service and civil protection group may be excluded. EU case law has established certain guidelines and criteria regarding the scope of the exception.

EU case law has suggested that the Directive is intended to promote improvements in worker health and safety, as stated in Article 2(1), declaring that its scope of application should be considered on a broad scale. Therefore, the exceptions to the Directive's scope of application, included in Article 2(2), should be interpreted in a limited manner[43] and, under no circumstances, should they be considered broadly, as this would jeopardize the objective of the European lawmakers, according to Article 118 A of the Treaty establishing the European Economic Community (EEC Treaty), adopting regulations on workers' protection.[44]

The exclusion of certain activities from the mentioned services should be conditioned in large part by the activity's principles of indispensability and exceptionality, and by the impossible application of the prevention regulation. In all cases, it is a relative and transitory exclusion that does not imply an absolute exclusion from the scope of application, but rather, a reduction in the protection's intensity. Furthermore, this reduction is limited to the time deemed strictly necessary.

The referred provision does not justify the determination by a Member State, that all activities performed in the referred sectors should be covered by this exception. To the contrary, both the express wording and the systematics of Article 2(2), subparagraph 1, of Directive 89/391 suggest that

[42] Directive 2009/104/EC of 16 September 2009, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile constructions sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

[43] This was declared in the judgments of the Court of 3 October 2000, Case C-303/98; Case C-52/04; Order of the Court (Sixth Chamber) of 3 July 2001, Case C-241/99; Order of the Court (Grand Chamber) of 5 October 2004, Joined cases C-397/01 to C-403/01; Order of the Court (Second Chamber) of 14 July 2005, Case C-241/99; and Order of the Court (Second Chamber) of 12 January 2006, Case C-132/04, among others.

[44] Conclusions of Advocate General Antonio Saggio presented on 16 December 1999, Case C-303/98.

it refers only to certain specific activities of the referred services, the continuity of which is indispensable to ensure the protection of the integrity of the individuals and goods, and which, given this requirement of continuity, may prevent the application of all EU worker health and safety protection regulations. In fact, the criteria used by lawmakers to determine the scope of application of Directive 89/391 is not based on worker inclusion in distinct activity sectors, but rather, is determined exclusively by the specific nature of certain special tasks performed by workers in these sectors. That specificity justifies an exception to certain obligations of the Directive.[45]

In other words, these exclusions may only be established for those public service activities that, given their nature or objectives, are performed in situations that would make the exclusion of worker health and safety risk impossible, since the application of the Directive's regulations could potentially jeopardize the normal work activity. This includes activities carried out by members of the armed forces, police, civil protection and, basically, those activities which, given their nature, have a large risk component, given the unforeseen human or natural factors involved.[46]

An exception to the interpretation of Article 2(2), subparagraph 1, of Directive 89/391 may only be made in the case of exceptional events, in which the appropriate development of the measures intended to guarantee the protection of the population in situations of serious group risk, require that personnel acting in the face of these events, grant absolute priority to the purpose pursued by these means, in order to achieve them. A similar situation arises in the case of natural or technological disasters, terrorist attacks, serious accidents or other similar events of seriousness and magnitude that demands the adoption of indispensable measures to protect life, health and collective safety and in which proper compliance would be jeopardized if all of the regulations of Directive 89/391 were observed. In these situations, the need to avoid jeopardising the compelling demands of maintaining the safety and integrity of the group will temporarily prevail over the objective of the cited Directive, which is to ensure worker health and safety. However, even in an exceptional situation of this type, Article 2(2), subparagraph 2, of Directive 89/391 demands that the competent authorities must ensure that the health and safety of the workers are guaranteed "as far as possible".[47]

In accordance with this fully consolidated line of case law, it has been declared that the activity of primary care physicians, although part of the public service sector, should be included within the scope of application of the Framework Directive, assuming that these individuals are acting in normal conditions[48]. This same interpretive solution has been extended to the activities carried out by public fire-fighting services[49]; lifeguards accompanying an ambulance or emergency health care vehicle, in a lifesaving service for the injured or ill-organized by an association such as the Red Cross[50]; medical and nursing personnel offering services for a health service of primary care teams and other extra-hospital urgent care services[51]; and non-civil Public Administration personnel.[52]

Lastly, the Framework Directive adopted a broad and dynamic concept of the risk at work. This has been indicated in the Judgment of the Court of Justice of 15 November 2001.[53] The Court ruled that

[45] Order of the Court of Justice (Second Chamber) of 14 July 2005, Case C-52/04.
[46] Conclusions of Advocate General Antonio Saggio presented on 16 December 1999, Case C-303/98.
[47] Order of the Court of Justice (Second Chamber) of 14 July 2005, Case C-52/04.
[48] Judgment of 3 October 2000, Case C-303/98.
[49] Order of the Court of 14 July 2005, Case C-52/04.
[50] Judgment of the Court (Grand Chamber) of 5 October 2004, Joined cases C-397/01 to C-403/01.
[51] Order of the Court (Sixth Chamber) of 3 July 2001, Case C-241/99.
[52] Judgment of the Court of 12 January 2006, Case C-132/04.
[53] Case C-49/00.

according to the Framework Directive (fifteenth recital) “the provisions of this Directive apply […] to all risks [...]". From article 6, paragraph 3, letter a), it follows that employers are obliged to assess all risks to safety and security of workers' health, also indicating that the occupational risks that must be evaluated by employers are constantly evolving depending on the progressive development of working conditions and the scientific research on occupational hazards. In the aforementioned Judgment the Court stated that Italy had breached its obligations under Article 6, paragraph 3, of Directive 89/391/EEC, by failing to establish that the employer must assess all existing risks to health and safety in the workplace. According to the Court, the internal standard of transposition was limited to requiring the employer to evaluate three specific classes of risk and that national legislation was therefore not in compliance with EU law. EU case law has clearly indicated that both from the purpose of the Framework Directive, which consists of promoting the improvement of the safety and health of workers at work, and from the literal wording of its article 2, section 1, it can be deduced that its scope of application must be understood broadly.[54]

Definition of the notion of *employer*.

For the first time, the Framework Directive includes a definition of *employer*, providing a substantial difference with respect to prior regulations. Article 3 specifically defines an employer as “any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment”. The generic reference of the regulation, as well as the relevance of the obligations of the employer, have given rise to certain doubts as to whether or not company size may be a factor permitting an exemption or reduction in employer obligations, especially given the mandate of the EEC Treaty, which declares that directives will “avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings”.

The aim of the protection that inspires this regulation and which case law, as discussed previously, has interpreted in the broadest possible sense, allows us to once again adopt the solution by which the Directive offers protection to all workers, regardless of the size of the company in which they work. In other words, the goal of improving physical working conditions cannot be considered subordinate to purely economic conditions, such as a potential disproportionate administrative burden for small companies. However, this should not exclude Member States from considering company size when introducing distinct regulations for distinct company groups with respect to compliance with specific obligations. However, in no case should the obligations of the Directive be disregarded based on company category. According to this interpretation, we believe that a certain balance has been achieved between the two objectives of the Treaty: improved worker health and safety and the promotion of the creation and development of small and medium-sized companies.

This interpretation has been confirmed by the limited case law considering this area, and specifically, by the Judgment of the Court (Fifth Chamber) of 7 February 2002,[55] analysing whether or not Germany failed to fulfil its obligations under Articles 5 and 189 of the EEC Treaty, as well as Articles 9(1)(a) and 10(3)(a) of Directive 89/391/EEC, by exempting employers of ten or fewer workers from the duty to keep documents containing the results of a risk assessment. The Commission alleged that Article 6 of

[54] See judgments from the CJEU: C-303/98; C-52/04; joint cases C-397/01 and C-403/01; and C-132/04.
[55] Case C-5/00.

the German law, which exempts employers with ten or fewer workers from the obligation of providing documents containing the results of the risk assessment related to employee work, breached Article 9(1)(a) of the Framework Directive, which guarantees access by certain individuals to said assessment. The Court declared that the provision related to specific companies according to their number of workers, and which granted powers to the competent Federal Ministry to exempt company physicians and specialized safety personnel from issuing working condition reports, clearly contradicts Article 9(1)(a) and Article 10(3)(a) of the Directive since, in this case, companies employing ten or fewer workers may be relieved from the obligation of providing risk assessment documentation.

The difficulty of determining minimums standards on OSH.

According to the Treaties and some of the Directives, EU legislation on OSH risks prevention consist of minimum standards that can be improved by national laws that are developed by the individual countries. Member states are obliged to comply with the minimum protection thresholds established by EU law, according to the principle of supremacy of EU regulations. This means that Member States may amend EU statutory provisions assuming that they comply with the minimums established. Here, the problem lies in the fact that, at times, it is difficult to clearly determine the minimum threshold for protection, since unspecific legal concepts are often used, as well as a combination of imprecise rules and principles. This problem may be evidenced by some practical examples.

One example refers to the principle of shared participation by workers, which has recently been identified by and included in EU case law. The case was proposed in the Judgment of the Court (Fifth Chamber) of 22 May 2003.[56] The Commission affirmed that the Netherlands had not correctly adapted its internal law to Article 7(3) of the Framework Directive since Article 17(1). The national law did not establish a hierarchy between the distinct options listed in points a) to d). Therefore, the employer has great freedom of choice between the internal and external organization of protection activities and occupational risk prevention. The Directive, however, does not permit this choice, but rather, it prioritizes both solutions according to objective criteria: the presence or absence in the company and/or the establishment of personnel having the necessary competencies to perform these activities.

The Court affirms that the Directive not only aims to increase worker protection from occupational accidents and the prevention of occupational risks, but it also attempts to establish specific measures to organize the protection and prevention. Therefore, it specifies certain measures that EU lawmakers consider appropriate to achieve this purpose. The Court goes on to say that the eleventh and twelfth recitals of the Directive reveal that it includes dialogue and balanced participation between employers and workers to protect the latter from occupational accidents and professional illnesses. The Court also states that the option expressed in Article 7, by which the Directive gives greater preference, when permitted by the company's internal competencies, to worker participation in protection activities and occupational risk prevention, than to external competencies, is an organizational measure that agrees with the cited objective of worker participation in their own safety. Ultimately, Article 7(1) and (3) of the Directive clearly establish a priority order for the organization of the protection activities and occupational risk prevention within the company. Employers should only resort to external competencies in cases in which internal competencies are insufficient. Given these considerations, allowing the employer to choose between organizing the cited activities within the

[56] Case C-441/01.

company or relying on external competencies does not ensure the effectiveness of the Directive, but rather, constitutes a breach of the obligation to guarantee its full application.

One of the most significant characteristics of the prevention regulation is its frequent use of unspecified legal concepts (such as necessary measures, appropriate training, etc.) which, from an EU perspective, is justified as this is a technique that is very useful for establishing the intended protection thresholds and which also allows the countries to choose the measures employed to achieve these objectives. Notwithstanding these positive aspects, at times, this regulatory technique may give rise to doubts when the national legal systems supplement the content of these concepts. This has led to the literal transposition of EU regulations by some countries.

One example of the difficulties encountered is seen in the Judgment of the Court of 24 October 2002[57], which declared that Italy breached EU law by failing to ensure regular eye and eyesight tests for all workers who use display screen equipment for the purposes of Article 2(c) of Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment.

Article 9 of Directive 90/270 refers to the protection of workers' eyes and eyesight, declaring, in paragraphs 1 to 4, that workers are entitled to an appropriate eye and eyesight test carried out by a person with the necessary capabilities before commencing display screen work, at regular intervals thereafter, and if they experience visual difficulties which may be due to display screen work. Workers shall be entitled to an ophthalmological examination if the results of the test referred to in paragraph 1 show that this is necessary. Moreover, if the results of the test referred to in paragraph 1 or of the examination referred to in paragraph 2 show that it is necessary and if normal corrective appliances cannot be used, workers must be provided with special corrective appliances appropriate for the work concerned. The measures taken pursuant to this Article may in no circumstances involve workers in additional financial cost.

More recently, the Judgment of the Court of Justice of the European Union of 22 December 2022[58] interpreted the obligation of providing special corrective appliances (in more colloquial terms, special prescription glasses or similar) to workers using display screens, concluding that:

-The term "special corrective appliances" includes prescription glasses and other types of appliances capable of correcting or preventing visual difficulties;

-Visual difficulties do not necessarily have to be caused by work with screen equipment in order for the employee to benefit from a special corrective appliance;

-The corrective appliance should not be used exclusively in the work site or in the performing of professional tasks.

One of the most important contributions of this judgment is the fact that, for the first time, prescription glasses are considered *special corrective appliances* and, therefore, would be included in the prevention obligation of companies since employers should provide them or cover the costs. This is assuming that medical examinations have demonstrated their need.

The determination of the *safety standard* as established by the EU directives has been especially problematic. Issues have arisen as to whether the standard is consistent with EU guidelines. The

[57] Case C-455/00.
[58] Case C-392/2021.

European Commission filed an appeal against the United Kingdom, considering that this country failed to fulfil its obligations under Article 5(1) and (4) of Directive 89/391, by qualifying the duty on employers to ensure the safety and health of workers in every aspect related to the work by limiting that duty to "what is reasonably practicable".

In the Judgment of the Court (Third Chamber) of 14 June 2007[59], the Court concluded that the Commission had not established to the requisite legal standard that, in qualifying the duty on employers to ensure the safety and health of workers in every aspect related to the work by limiting that duty to what is reasonably practicable, the United Kingdom had failed to fulfil its obligations under EU regulation.

Two observations should be made regarding the concise decision of the EU Court's judgment. First, in our opinion, from the perspective of EU social policy on occupational risk prevention, the solution adopted by the Court appears to suggest a regressive and contradictory line with respect to prior regulatory developments. It does not consider the efforts made by EU lawmakers to eliminate or, at least control most of the labour risks, which may affect worker safety and health, since during the phase of application of the regulations, the cost-benefit criteria are introduced to the detriment of worker promotion.

Finally, the Judgment of the Court (Seventh Chamber) of 19 May 2011[60] concluded that Directive 2003/10/EC, of 6 February 2003, on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) as amended by Directive 2007/30/EC of the European Parliament and of the Council of 20 June 2007, should be interpreted such that an employer of a company in which the workers' daily exposure to noise exceeding 85 dB(A), measured without taking account of the effect of individual hearing protectors, does not comply with the obligations resulting from this Directive by merely providing workers with ear protectors to reduce the daily exposure to noise levels below 80 dB(A), but rather, is obliged to implement a programme of technical or organizational measures to reduce noise exposure to levels below 85 dB(A), measured without taking account of the effect of individual hearing protectors.

The EU Court adds that Directive 2003/10 should be interpreted in the sense that employers are not required to provide extra payment to workers exposed to noise levels exceeding 85 dB(A), measured without taking account of the effect of individual hearing protectors, on the grounds that no programme of technical or organizational measures has been implemented to reduce the level of daily exposure to noise. However, national laws should establish appropriate mechanisms to ensure that workers exposed to noise levels exceeding 85 dB(A), measured without taking account of the effect of individual hearing protectors, may demand employer compliance with the preventive obligations established in Article 5(2) of this Directive.

[59] Case C-127/05.
[60] Joined cases C-256/10 and C-261/10.

2.1. 3 The Pregnant Workers Directive

The Directive 92/85/EEC pregnant workers Directive was adopted on 19 October 1992. This Directive introduced measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

The Directive sets guidelines regarding the assessment of the chemical, physical and biological agents and industrial processes considered dangerous for the health and safety of pregnant women or women who have just given birth and are breast feeding (Article 3). The Directive also includes provisions for physical movements and postures, mental and physical fatigue and other types of physical and mental stress.

Employers or the health and safety services will use these guidelines as a basis for a risk evaluation for all activities that pregnant or breast-feeding workers may undergo and must decide what measures should be taken to avoid these risks (Article 4.1*).*[61] Workers should be notified of the results and of measures to be taken regarding OSH measures (Article 4.2) which can include an adjustment of working conditions, transfer to another job or granting of leave (article 5).

According to the Directive pregnant and breastfeeding workers should not be obliged to perform duties for which the assessment has revealed a risk of exposure to agents, which would jeopardize their safety or health *(*Article 6*).* Those agents and working conditions are defined in Annex II of the Directive. Also, there is an obligation addressed to the Member States to ensure that pregnant workers are not obliged to work in night shifts when medically indicated, subject to submission of a medical certificate, (Article 7).

A main point of this Directive is that it creates a right to paid maternity leave for the duration of at least 14 weeks of which at least 2 weeks must occur before birth (Article 8). Moreover, the Directive establishes a prohibition of dismissal of women (Article 10 Directive 92/85/EEC). Women should not be dismissed from work because of their pregnancy and maternity for the period from the beginning of their pregnancy to the end of the period of leave from work, “save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent”. The case law of the CJEU had already established previously that any detrimental treatment of women (including dismissal) related to pregnancy (a type of biological condition only women can have) was considered direct discrimination on grounds of sex and it could never be objectively justified.[62]

In several cases the CJEU has dealt with the risks assessment of pregnant/breastfeeding workers. This case law is interesting considering that the rulings touch upon how the risk assessment should be done. Particularly relevant are the cases C-531/15 (Otero Ramos) and C-41/14 (González Castro Castro).

[61] See also: Communication from the Commission on the guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous for the safety or health of pregnant workers and workers who have recently given birth or are breastfeeding, COM/2000/0466 final

[62] See, *inter alia*, Judgment of the Court of 8 November 1990, Dekker v Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) - Case C-177/88. European Court reports 1990 Page I-03941.

The case C-41/14 concerns several questions about the interpretation of Directive 92/85. Ms Gonzáles Castro works as a security guard for a security company (Prosegur). She gave birth to a child who was then breastfed. She has performed her duties in a shopping centre on the basis of a variable rotating pattern of eight-hour shifts. She performed several shifts alone during the night. She initiated the procedure for obtaining an allowance in respect of risk during breastfeeding, laid down in art. 26 of Law 31/1995, with the insurance company Umivale, a non-profit private mutual insurance company providing cover for risks relating to accidents at work and occupational diseases. Ms Gonzáles Castro requested Umivale, in accordance with national legislation, to issue her with a medical certificate indicating the existence of a risk to breastfeeding posed by her work. In the context of that procedure, Prosegur sent a declaration to Umivale in which it stated that it had not tried to adapt the working conditions of Ms Gonzáles Castro's work or to move her to another job since it considered that the duties she performed and her working conditions did not affect breastfeeding. Therefore, Ms Gonzáles Castro's application has been rejected. She lodged a complaint which was also rejected. Therefore, she brought an action against that rejection before the Juzgado de lo Social No 3 de Lugo (Social Court No 3, Lugo, Spain). Her action been dismissed, she brought an appeal against that decision before the referring court.

The referring court asked whether article 7 of Directive 92/85 must be interpreted as applying to a situation where the worker concerned does shift work in the context of which only part of her duties are performed at night.

Secondly, the referring court asked whether art. 19 (1) of Directive 2006/54 must be interpreted as applying to a situation, such as that at issue in the main proceedings, in which a worker, who has been refused a medical certificate indicating the existence of a risk to breastfeeding posed by her work and, consequently, an allowance in respect of risk during breastfeeding, challenges, before a court or other competent authority of the Member State concerned, the risk assessment of her work and, if so, what are the conditions for application of that provision in such a situation.

The CJEU ruled in this case that Article 7 of Directive 92/85 must be interpreted as applying to a situation where the worker concerned does shift work in the context of which only part of her duties are performed at night. Since the wording of the provision does not contain any details as regards the exact scope of the concept of 'night work', the Court mentioned that Directive 92/85 sets minimum requirements, especially as regards improvements in the working environment to protect the safety and health of workers. The Court mentioned the definition of 'night work' in Directive 2003/88 (Working Time Directive): a worker who does shift work in the context of which only part of her duties are performed at night must be regarded as performing work during 'night time' and must therefore be classified as a 'night worker' within the meaning of Directive 2003/88. The provisions laid down by Directive 92/85 relating to night work aim to strengthen the protection of pregnant workers, workers who have recently given birth or are breastfeeding and should not be interpreted less favourably than the general provisions of Directive 2003/88 which are applicable to other categories of workers. Consequently, it must be held that a worker at issue in the main proceedings carries out 'night work' within the meaning of art. 7 of Directive 92/85 and that she is covered by that provision. That interpretation is supported by the purpose of art. 7 of Directive 92/85 (i.e. protecting breastfeeding workers against work that poses a risk to their health or safety).

As regards the second question, the Court stated that "art. 19 (1) of Directive 2006/54 must be interpreted as applying to a situation in which a worker, who has been refused a medical certificate

indicating the existence of a risk to breastfeeding posed by her work and, consequently, an allowance in respect of risk during breastfeeding, challenges, before a court or other competent authority of the Member State concerned, the risk assessment of her work, provided that that worker provides factual evidence to suggest that that evaluation did not include a specific assessment taking into account her individual situation and thus permitting the presumption that there is direct discrimination on the grounds of sex, within the meaning of Directive 2006/54, which it is for the referring court to ascertain." It is then for the respondent to prove that that risk assessment did actually include such a specific assessment and that, accordingly, the principle of non-discrimination was not infringed.

In the Castro judgment the Court referred to an earlier judgment in which the Court held that "failure to assess the risk posed by the work of a breastfeeding worker in accordance with the requirements of art. 4 (1) of Directive 92/85 must be regarded as less favourable treatment of a woman related to pregnancy […] and thus constitutes direct discrimination on grounds of sex" (judgment of 19 October 2017, Otero Ramos, C-531/15, EU:C:2017:789). The risk assessment of the work of pregnant workers and workers who have recently given birth or are breastfeeding, provided for under art. 7 of Directive 92/85 cannot be subject to less stringent requirements than those that apply under art. 4 (1) of that Directive, because both provisions pursue the same aim.

In the Report from the Commission on the implementation of council directive 92/85/EC, published in 1999, the Commission noticed that, in some EU countries, women were entitled to 100% of their previous wage throughout their maternity leave. In other Member States varying amounts of social security benefits were paid during maternity leave. All the Member States subject entitlement to remuneration during maternity leave to conditions linked to length of service, residence or insurance. The effect of these conditions on the ability of women to enjoy paid maternity leave and their compatibility with provisions on non-discrimination needs further study, according to the report. This implementation report of the Directive revealed "other difficulties which may limit the protection afforded to female workers who come within its scope, and the Commission recognised the need to make progress in these areas."[63]

Regarding the obligation in Article 4 of the Directive requiring employers to complete an assessment of the risk of exposure to pregnant workers, workers who are breastfeeding or workers who have recently given birth, from the non-exhaustive list of agents, processes and working conditions mentioned in Annex I to the Directive, the Commission concluded in the implementation report that

most Member States had existing requirements in this area under their own health and safety rules and have amended their legislation according to the requirements of the Directive. However, Irish legislation was reported to consider the list in Annex I as exhaustive, which according to the Commission might contravene the provisions of the Directive.[64]

In the implementation report, the Commission noticed as an implementation challenge that Article 5 of the Directive requires employers to adjust working conditions or working hours in order to avoid any identified risk. If this is not possible, the worker concerned must be moved to another job, or - if this proves impossible - granted leave.

[63] See Report from the Commission on the implementation of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding, COM/99/0100 final

[64] Ibid.

Regarding the issue of night work the Commission clarifies in the implementation report that Directive 92/85/EEC does not to depart from the fundamental principle of equal treatment, which allows women to work on equal terms as men. However, pregnant workers, those who have recently given birth or those who are breastfeeding are a category of workers in need of special treatment. So, If nightwork does pose a risk to health and safety, the woman can be moved to daywork and where that is not possible or cannot be reasonably required, the woman should be granted leave or an extension of maternity leave. Moving a woman from night shifts could also be a necessary element in avoiding identified risks under Articles 5 and 6 of the Directive.[65]

Looking in particular to the Member States selected for the EUSOCIALCIT case studies a pregnant or breastfeeding worker must present a medical certificate to her employer proving that working nights would be bad for her health. That is the case in Spain, the Netherlands and France. In Denmark no certificate is necessary, but the woman must not work nights if this causes any risk to her or to the pregnancy. In Germany, the general rule is that pregnant or breastfeeding women may not work at night. There are exceptions for women working in certain categories such as hotel and restaurant workers, those in the entertainment business and dairy workers, who may work during the first 4 months of pregnancy or while they are breastfeeding. This system of a general ban with exceptions related to certain occupations rather than the risk to the woman's health and safety which might be posed by a particular job was considered by the Commission as not in accordance with Article 7 of the Directive.[66]

2.1.4 The Working Time Directive

The main EU piece of legislation regulating working time at EU level is Directive 2003/88/EC.[67] A main aim of that Directive is the protection of workers' health and safety. The Directive requires Member States to guarantee minimum standards on the organisation of working time for all workers throughout the EU. This includes standards on maximum weekly working hours, minimum daily and weekly rest periods and breaks, annual leave, aspect of night work and shift work. The Directive aims to regulate working time but also to protect workers from possible negative effects on their health due to long working hours and/or irregular working patterns. The Directive establishes obligations for EU Member States to ensure that all workers are entitled to the following rights[68]:

- a minimum daily rest period of 11 consecutive hours in every 24;
- a rest break in any working day longer than 6 hours;
- an uninterrupted 24-hour rest period every 7 days, in addition to the daily 11 hours;
- at least 4 weeks paid annual leave;
- a maximum average working week of 48 hours, including overtime, over 7 days.
- Normal night work should be no more than 8 hours on average in any 24-hour period.

[65] Ibid.
[66] Ibid.
[67] Working Time Directive (2003/88/EC)
[68] See summary of the obligations set by the Working time Directive: Directive 2003/88/EC of the European Parliament and of the C... - EUR-Lex (europa.eu)

- Night workers are entitled to free health checks at regular intervals

This Directive (amended in 2003) was the result of a complex negotiation within the EU legislative process[69] and it is a compromise Directive which includes multiple flexibility possibilities for its implementation at national level, including also a broad list of exceptions. The Member States are allowed to use reference periods to calculate weekly rest periods and maximum weekly working time and to exclude certain categories of workers from its personal scope: ie. managing executives, other senior decision makers, family workers, seafarers, and religious officials. Other type of workers are also excluded from that scope due to the fact that there are specific Directives regarding working time applicable to them. That is the case of workers in the road transport, civil aviation, cross-border railway or inland waterway transport sectors. At EU level there are specific sectoral regulations also regarding working time for these groups of workers. They are even more concise than the overarching horizontal directive.[70]

Moreover, derogations to certain provisions of the Directive may also apply in the following cases: security and surveillance activities requiring a permanent presence to protect people or property; continuity of service or production in areas such as hospitals, docks, airports, the media and agriculture; a foreseeable surge of activity (notably agriculture, tourism, postal services, railways, accidents); and derogations agreed in collective agreements between employers and employees. [71]

In 2010, the European Commission published a report on the implementation of the Working Time Directive.[72] In this report the Commission stated that, in general, the reference periods set by the Directive "have been satisfactorily applied in Member States; and in some Member States, significant amendments have been made recently to improve compliance". However, some Member States did not appear to comply fully with the Directive. Germany allowed a six-month reference period for all activities. Germany, Poland, and Spain allowed a 12-month reference period without a collective agreement.

The abovementioned report concluded that the Directive's core requirements for minimum daily and weekly rest periods and a rest break during the working day "have, in general, been satisfactorily transposed."

According to the Commission, the main difficulties regarding implementation lie rather with the use of derogations, which allow a minimum rest period to be postponed or shortened, but only on condition that the worker receives an extra rest period of equivalent length at another time to compensate for the missed rest periods ('equivalent compensatory rest'). "The rules do not allow minimum rests periods to be missed altogether, except in exceptional cases where it is objectively

[69] See some document relevant to this process: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: Reviewing the Working Time Directive (first-phase consultation of the social partners at European Union level under Article 154 of the TFEU) (COM(2010) 106 final, 24.3.2010)
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Reviewing the Working Time Directive (Second-phase consultation of the social partners at European Union level under Article 154 TFEU) (COM(2010) 801 final, 21.12.2010)

[70] Due to extension restrictions these specific Directives have not been examined within the context of this working paper.

[71] See summary of the obligations set by the Working time Directive: Directive 2003/88/EC of the European Parliament and of the C... - EUR-Lex (europa.eu)

[72] See: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementation by Member States of Directive 2003/88/EC ('The Working Time Directive') (COM(2010) 802 final, 21.12.2010)

impossible to provide equivalent compensatory rest, and where the workers have received appropriate alternative protection. Moreover, according to the Jaeger judgment[73], compensatory rest should be provided promptly, in the period immediately following that in which the rest was missed."

According to the Commission, in several Member States, derogations have been used in a way which goes beyond what these rules permit.

It is also clear from the commission implementation evaluation that there is a significant number of Member States where on-call time at the workplace is still not fully treated as working time in accordance with the CJEU's decisions on this issue. There is no legal requirement or practice of treating 'active' on-call time as working time in Ireland. 'Inactive' on-call time at the workplace is, as a general rule, not fully counted as working time by the applicable national law or collective agreements in Denmark, Ireland and Poland and under specific sectoral rules also not in the case of Spain (Guardia Civil). Compliance regarding on-call time remains unclear in Spain for parts of the public service (police, firefighters). In France, it is common for sectoral collective agreements to provide for 'équivalence' (meaning that inactive periods of on-call time at the workplace will be only partially counted). The French authorities have called on the social partners to review their agreements on this point.

In the countries under study in EUSOCIALCIT the main problem noticed was the delay in providing compensatory rest, contrary to the Jaeger judgment. In Denmark, France, and Ireland there seems to be no general legally binding norm about the timing of compensatory rest. Also, in Denmark (under some collective agreements), Poland (for some sectors), and Spain, compensatory rest must be provided within a specified period, but that period can involve a much longer delay than under the Jaeger judgment.

Due to the complexity of the rules established in the Working Time Directive the Commission published in 2017 (in the framework of the EPSR process) and interpretative communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time. This Communication addressed to the Member States is an interesting example of hybrid normative and instrumental resource which try to clarify EU rules regarding working time and occupational health and safety and facilitate the compliance with the rights set in the Working Time Directive at member state level.[74] As this Communication facilitates the practical implementation of the Working Time Directive it could be considered an instrumental resource. In the same sense, also relevant instrumental resources are the information and research provided by EU agencies in this area, in particular by the European Agency on Safety and health at work EU-OSHA[75] and by EUROFOUND, which has collected for years information on various aspects of working time and their implications for working conditions and quality of life of men and women in the EU. The studies regularly published by EUROFOUND on working time provide relevant information on how it is organised and how this affects employment, productivity, well-being, and the balance between work and private life. Also, data on collectively agreed working time and the role of the social partners and the gender perspectives on working time is published periodically by this EU's Agency.[76]

[73] Judgment of the Court of 9 September 2003, Landeshauptstadt Kiel v Norbert Jaeger, Case C-151/02, *European Court Reports 2003 I-08389*, ECLI:EU:C:2003:437.
[74] Working Time Directive: Interpretative Communication on Directive 2003/88/EC.
[75] See: Directive 2003/88/EC - working time | Safety and health at work EU-OSHA (europa.eu).
[76] See: Working time | Eurofound (europa.eu)

2.1.5 Evaluation of the implementation of EU normative resources and new Developments on OSH at EU level

As stated in the Report on the Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States[77] most of the EU Member States have transposed the main principles and requirements regarding OSH, principally from the Framework Directive, in one single act, usually the framework law on OSH, alternatively the Labour Code and/or a Public Health Act. This is also the case for the seven country states included in this research.

Also, from the information in that report and our own findings, it comes forward that, in most cases, national legislation reflects the structure of the EU OSH legislation, with a framework law complemented with sectoral legislation transposing each individual Directive. One of the Directives examined in this study, the Pregnant Workers Directive, constitutes an exception to that trend. Due to its specific content (strongly linked with traditional labour protection rights such a restriction of dismissal in these cases) it has been transposed through specific legislation or through amendments of the Labour Code.

However, there are some cases where the national legislation goes beyond the requirements of the EU framework directive. For example, eleven EU Member States have included domestic workers in the definition of 'worker' when transposing the Framework Directive,[78] setting a broader personal scope of application than the Directive. This is especially relevant in the context of this study as the PHS sector is one of the sectors affected. The exclusion of domestic workers from the general provisions of the Framework Directive is criticized by several experts interviewed (including EU level interview 2 - OSH expert).

OSH directives lay down minimum requirements, which means that the national legislation can establish more stringent provisions. According to the abovementioned evaluation report, "instances of observed discrepancies between the EU legal requirements and the national transposing legislation are rather rare."[79] Our qualitative research present in the seven country studies included in Annex 1 confirms these findings.

Our research also confirms another conclusion of the abovementioned evaluation report that is that: "both EU and national stakeholders assess compliance with Directive requirements as higher in large establishments compared to SMEs and micro-establishments."[80]

[77] Report on the Evaluation of the Practical Implementation of the EU Occupational Safety and Health (OSH) Directives in EU Member States published by the DG EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION, November (2015), p. 1-112. This report covers many more directives than the three OSH Directive examined in this working paper.
[78] Ibid. p. 24.
[79] Idid. P. 24.
[80] Ibid. p. 24.

3. OSH in the PHS sector – comparative perspectives[81]

3.1 General Problems affecting the PHS sector

Personal and household services make up a major part of the employment sector by the share of undeclared work in this sector varies from country to country. According to the European Union, there are currently 9.5 million domestic workers, representing approximately 4% of the total employment in the EU.[82] Of these, 6.3 million are declared workers, while an estimated 3.1 million are undeclared.[83] The actual figures, however, are likely to be even higher, since it is difficult to calculate the actual number of undeclared workers. PHS is a sector of the labour market that is expected to experience significant increases over the coming years, given the ever-increasing number of elderly individuals in Europe, and the resulting increased demand for household support and care.

The International Labour Organization's (ILO) Convention no. 189 defined domestic work as the work performed in or for a household or households, within an employment relationship and on an occupational basis. Although domestic workers typically cook, clean, care for children, the elderly and the disabled. Activities such gardening, driving and home surveillance are also included in PHS services PHS work varies depending on the distinct country customs. Therefore, the defining characteristic of domestic work is the workplace in which it is performed, that is, the family home. Although traditionally, it has been characterized as having low regulation, considerable (although still insufficient) advances have taken place in European and international law, improving labour regulations and policies related to these personal and household services (PHS).

Various characteristics of the PHS workforce should be considered in order to understand the current safety and health situation of this sector. This helps, not only to provide a more complete picture of this market segment, but also to understand the challenges faced when attempting to regulate this employment and improve safety and health conditions of the sector:

This broad sector contains various sub-sectors, based on the works to be carried out, or the means of service provision. As for the tasks performed, some domestic workers care for dependent individuals, others offer cleaning services or other services performed at home. In terms of how the services are provided, live-in domestic workers reside at their work site; other workers do not live at their place of work; some are contracted directly by the households; others are employed by service providers, that is, public or private companies, or through the more modern digital service platforms.

[81] This comparative section is based on the research findings in the seven country case studies conducted for this delivery. See Annex 1 to this working paper for further detailed information on each national case study.

[82] European Commission, 'Personal and Household Services' (European Commission), https://ec.europa.eu/social/main.jsp?catId=1427&langId=en accessed on 21 January 2022.

[83] C189 European Alliance, 'Step Up Efforts towards Decent Work for Domestic Workers in the EU: 10th Anniversary of ILO Domestic Workers Convention, 2011 (No.189) (2021) 8.

It is important to highlight that some countries make much more use of private household services and cleaning (e.g. use of services vouchers) than others which have a large public sector that organises elderly care (publicly) – e.g. Denmark and countries that do not have a tradition of getting help with home cleaning (the Netherlands). In those cases the dimension of the sector is more reduced.

As for the type of legal relationship derived from this service provision, in many of the analyzed countries, domestic workers provide their services as freelancers or self-employed workers, thus preventing the application of certain regulations intended to protect these works, especially, safety and health regulations. This is the case in the Netherlands and Denmark[84] (although they also rely on other means of hiring that offer more protection), where the domestic cleaning sector is dominated by small and micro-companies with less than 10 employees, especially self-employed workers without employees. In other countries, household services are commonly offered through labour contracts, as common workers, especially when hired by public or private companies. In France, for example, much of this contracting takes place through the public services which offer many of the country's cleaning and care services. But, as noteworthy as it may be, this is not the only means of service provision. Two other forms of service provision also exist: employment of an individual by an individual (private employer), making up 56% of all of the declared hours of this sector, either directly or through an agent; and the contracting of services from a service provider (44% of all declared hours) which, in most cases, involves worker employment. In this latter case, the employer is an organization.

On other occasions, special intermediate regulations are established, offering partial solutions. This is the case in Spain, where a special labour relationship has been established to formalise this work, without the possibility of these workers being considered freelancers. A priori, it appears to be a plausible solution, since it recognizes a set of labour rights for this group, although offering distinct protection coverage as compared to common workers. This led the EU's Court of Justice, to hold in its recent judgment of 24 February 2022, that any differentiated treatment regarding social security which, even when apparently neutral, mainly affects women (exclusion of unemployment benefits for domestic workers), is contrary to Directive 79/7/EEC of the Council of 19 December 1978, on the progressive implementation of the principle of equal treatment for men and women in matters of social security, given that it constitutes indirect discrimination on grounds of sex.

In Germany, where much of the work in this sector is provided through the so-called *mini jobbers*, an attempt was made to reduce the barriers to households acting as formal employers, by lowering administrative fees and offering financial incentives. Special note should be made of the voluntary paid care work being performed by family members or neighbours in this country through a type of long-term care insurance, as a more economic means of caring for the elderly.

We must also highlight the fact that most of the analyzed countries use digital platform systems to provide cleaning and household care services. Cleaning and caregiving personnel are registered in cleaning platforms, perpetuating the main legal form of labour incorporation in Europe: freelance workers without employees, with the resulting lack of protection given their exclusion from the application of labour regulations in general, and from regulations on safety and health, specifically. This occurs generally in all the countries analyzed. For example, in Germany, this means of hiring and providing cleaning and care services has extended in a very generalized manner. These platforms negotiate contracts between private households and (for the large part) freelance domestic workers.

[84] In Denmark for companies providing cleaning services that is often not considered domestic but industrial cleaning which also would not dominantly consist of self-employed.

The largest platforms are "*helpling*" and "*betreut*," the German branch of 'Care.com' which offers cleaning and care service intermediation. At times, it is difficult to distinguish between the different professional service companies employing domestic workers, since these companies have begun to use on-line interfaces similar to that of "*helpling*" to promote correspondence between client demands and personnel offers. In Denmark, the number of domestic workers offering their freelance cleaning services via online digital platforms has also increased significantly.

PHS work is characterized in many countries as informal and unrecognized,[85] due in part to the gaps existing in labour and social security laws, which continue to fail to include these workers within their scope of application. And it may also be due to gaps in the application of these laws or the difficulties derived from their application when they are included in their subjective scopes. In Spain, of all of the domestic workers, only 69.34% (402,535) of those working in this sector are registered in the country's Social Security system. This means that 30.65% (177,965) work in the "informal economy", with all that this denotes in terms of vulnerability and a lack of labour rights.[86] In Denmark, private home cleaning is quite widespread, with figures suggesting that approximately 11% of all Danish homes rely on private cleaning services, some of which may be characterized as undeclared work or informal private work. Between 4% and 10% of the Danish population has paid for cleaning and window cleaning services, which may be characterized as undeclared work, and is typically performed by female family members or friends (informal or undeclared work), as opposed to private companies.[87] In 2006, France decided to resolve the situation of informal employment in this sector, implementing its service voucher system which has helped workers in this sector leave the undeclared labour market. This cheque permits the payment of services, simplifying administrative formalities.[88]

The PHS sector tends to be female, and the women engaging in this work, for the most part, are immigrants. Globally speaking and according to data from the International Labour Organization's report, "Making decent work a reality for domestic workers",[89] of the 75.6 million domestic workers across the planet, 76.2% are women. In Europe, the available data is not very recent; however, it gives us an idea of the current reality of this sector. In Denmark, for example, according to the general statistics of 2015, the cleaning sector had an over-representation of women, at 60%, 52% of whom were immigrants and 50% of whom were unqualified or lacking educational credentials. In France, the Statistics Institute of the Labour Ministry collected data in 2015, suggesting that 87.3% of the sector's workers are women, with a mean age of 46 years. Of these domestic workers, 14.5% were immigrants, as compared to 5% of the total foreign workers making up of the country's employees. They have lower recognized educational qualifications, with only 7.5% having post-graduate degrees, as compared to 38% of France's total number of workers. In Spain, according to data from the General Treasury of Social Security (TGSS) in 2021, 95% of the country's domestic workers were women. The

[85] Globally speaking, approximately 81% of those working in the domestic services are not formally employed, ILO (2021), Making decent work a reality for domestic workers, online, https://www.ilo.org/global/publications/books/WCMS_802551/lang--en/index.htm

[86] Instituto de la Mujer (2020), Boletín Igualdad en la empresa, no. 59.

[87] Bendtsen, KH, Hansen LL, Jensen, B., Larsen, C., Skov, PE (2018):Aktiviteter uden for det formelle arbejdsmarked: sort arbejde, gør det selv-arbejde ogdeleøkonomi. Rockwoolfonden, Odense: Odense Universitets Forlag.

[88] For further information on the service vouchers system in France see the case study in the Annex to this working paper.

[89] OIT (2021), Making decent work a reality for domestic workers. Available at: https://www.ilo.org/global/publications/books/WCMS_802551/lang--en/index.htm

number of female immigrants is even higher in the informal economy, where those without a legal status and lacking work permits are forced to work.[90]

3.2 Impact of the EU normative resources: Effects of the Framework Directive and the OSH protection of workers in the PHS sector.

One of the biggest problems faced by domestic service workers regarding safety and health protection is the fact that Article 3 of the Framework Directive 89/391/EEC of 12 June 1989, in defining the concept of worker, excludes domestic servants. When defining the term *worker*, the Directive expressly states that these individuals are not included in this definition. Therefore, the Community legislation, contradicting its aim to be universal, excludes this group of workers from its personal scope. Because of this fact, some European legislators have chosen to literally align themselves with the Directive and exclude domestic workers from their prevention regulations. This has been the case in Germany, France, the Netherlands, and until very recently[91], Spain. This exclusion brings with it numerous problems. First, there is the vulnerability of this group, maintained by the current European law. Second, there is the scope of the exclusion, considering the variety of models through which domestic cleaning and care services may be provided. This is the case with workers offering these services via companies, where the problems arising from private household employers in terms of compliance with the prevention obligation are overcome thanks to the existence of a company that contracts the domestic service providers. Therefore, it is useful to consider the solution offered by the European Parliament resolution of 28 April 2016 on women domestic workers and carers in the EU, referred to below, which expressly establishes that: *"(…) current Directive on Safety and Health at Work (Directive 89/391/EEC) covers formally employed domestic workers and carers, with the exception of workers directly employed by private households"*. Even when the impact of this resolution is quite limited due to the fact that it is not binding legislation.

Other regulatory instruments, however, have allowed legislators from distinct countries to protect the safety and health of domestic workers. And the exclusion of these workers only means that the specific provisions of the Directive and its implementing legislation are not applied, but it does not imply that there is not an overall duty to prevent health risks for domestic workers. On the one hand, we find Convention 189 of the ILO (2011) on domestic workers, with its Article 13, establishing the following: that every domestic worker has the right to a safe and healthy working environment; that each member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers. The impact at national level of this ILO Convention is limited as the obligation to comply with it applies only in the case that a country has ratified it. In the analyzed

[90] The referred data have been obtained from the statistical bases of the General Treasury of Social Security (TGSS). The data for 2022 closes as of the month of September. Available at: https://w6.seg-social.es/PXWeb/pxweb/es/Afiliados%20en%20alta%20laboral/ (consultation date: 18 October 2022). According to data on affiliation with the TGSS, as of September 2022, 44.07% of the household employees are immigrants).

[91] Elimination of the exclusion made by the LPRL via Article 1 of Royal Decree Law 16/2022, of 6 September, for the improvement of work and Social Security conditions for domestic workers.

countries, only Germany, Ireland and Spain have ratified this Convention. Second, it should be recalled that all of the countries have ratified the European Social Charter which, even in its original version from 1961 (the version currently ratified by all of the countries analyzed in this work), considered that all workers have the right to health and safety, without distinctions or exclusions. And this, in addition to the foundations of Articles 151 and 153 of the Treaty of the Functioning of the European Union.

Third, we have observed some attempts of current European legislators to protect this group. Regarding this issue, as mentioned above the European Parliament resolution of 28 April 2016 on women domestic workers and carers in the EU[92] and the European Strategy for care givers and care receivers (presented by the European Commission in September 2022),[93] urging Member States and their social partners to take measures to establish a suitable health and safety protection system as well as an inspection system that is coherent with Convention no. 189 of the ILO, and with appropriate sanctions in the case of infringements of the occupational health and safety regulations; it urges the Commission and Member States to ensure and apply an appropriate level of occupational health and safety, for example, that related to the protection of maternity and measures to prevent occupational accidents and the risk of professional injuries and illnesses; it emphasizes respect for individuals already working in this sector, the need to improve regulations via practical training and recycling plans; it suggests that this training should include the management of risks associated with movements and postures inherent in the work being performed, and biological and chemical risks, as well as the use of assistance technology.

When considering the legislation of the countries analyzed in the case studies (see annex) a variety of situations are found. Danish law on health and safety also covers private home cleaners, but only those working for a cleaning company or public authority. Danish law on health and safety does not cover self-employed cleaners unless they are independent contractors working for digital cleaning platforms. These cleaners should provide their own health and safety insurance plans, although many of these workers are unable to attain said plans, according to the interviewed Danish experts. Some Danish cleaning platforms have begun to offer private accident insurance to workers on their platforms. However, workers who are not employed through digital platforms or by a company are often not covered by the law on health and safety in the case in which occupational accidents occur.

In the Netherlands, many domestic workers are not appropriately covered in terms of occupational health and safety, as is the case with the regulation of household services, "*RDAH*" and the Law on Working Conditions, "*Arbowet*". Considerable ambiguity exists regarding the health and safety protection of these domestic workers. Many of these workers are self-employed in the Netherlands and, therefore, are not protected by the occupational health and safety regulations. In Germany, the Law on Protection against Occupational Risk of 7 August 1996, does not include domestic workers in private homes in its scope.

In Ireland, the 2005 Act has included the domestic worker sector, but application is more formal than real, due to the major difficulties encountered in when attempting to correctly control compliance with the law, in addition to a very low level of labour union organization. In Spain, the sector has also been included in the regulations on occupational risk, although actual application is pending regulatory development in order to ensure health and safety protection to domestic workers like that offered to any other worker. This would not only ensure equal conditions as demanded by the anti-

[92] https://www.europarl.europa.eu/doceo/document/TA-8-2016-0203_ES.html
[93] https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=10382

discrimination regulations of the European Union and Convention 189 of the ILO, it would also ensure the Spanish constitutional right to health, which is universal to all. In France, the Worker's Code covers PHS workers in distinct ways, depending on whether or not they are directly employed by the head of the household (private domestic employees) or by service providers (companies). PHS workers who are directly employed by individuals do not receive most of the protective provisions offered by the Labour Code, since they are only covered by it in specific provisions. The so-called "Employees of a private domestic employer" appear in a specific part of the Code and are not granted any special protection, but rather, they are excluded from certain protective clauses. Specifically, Article 7221-2 establishes that only the Code's provisions related to sexual harassment, psychological harassment, the Labour Day holiday, paid vacation, the special licence for family reasons and medical supervision "are applicable" to these workers. As for health and safety, it may be interpreted to be applicable to all workers of the sector. A decision of the Cassation Court of 8 April 2021 established that private employers have the obligation of ensuring the health and safety of domestic workers.[94] But furthermore, France relies on the major role played by the Federation of Private Employers (FEPEM), created in 1948, an association consisting of all household service companies including those that employ one or more individuals in private homes, and that helped create this country's first and still existing convention of domestic workers.

3.3 Main OSH risks in the PHS sector

The generalized exclusion of domestic workers from the area of OSH prevention, especially those who are directly self-employed and who do not rely on intermediary companies, along with the relative invisibility of this activity, which has traditionally been carried out within a private and informal setting, may be the main justifications for why the occupational risks of this group have often been overlooked by European or national lawmakers. However, as a partial consequence of the global pandemic, the necessary role carried out by these workers who are dedicated to the cleaning of our homes and the care of our families, has led to the need to identify the risks that they face, and to analyse the same, considering the special characteristics of these workers.

Three main types of risks affecting the PHS sector have been identified in all of the analysed countries. On the one hand, there are the mechanical risks, specifically, the risk of falls (at the same level and from heights), and ergonomic ones, mainly those related to muscular-skeletal issues. On the other hand, there are chemical risks resulting from the use of certain products. And finally, there are psycho-social risks including stress, workload and harassment, in all of their manifestations. In certain countries, such as Spain, biological risks have also been detected, as a result of contact with dependent individuals when assisting them in their basic, everyday activities.

Mechanical risks have significant repercussions on the health of the domestic workers. In this category, falls from the same level or from heights is quite notable, as well as cuts from objects or tools. Falls at the same level tend to result from cleaning and ordering tasks, wet or dirty floors (greasy products), slippery floor materials and the use of inappropriate footwear without slip-proof soles. Falls

[94] *La Cour de cassation estime que le droit à la protection de la santé et de la sécurité s'applique aussi aux employés à domicile*: https://www.lemonde.fr/economie/article/2021/04/13/la-cour-de-cassation-estime-que-le-droit-a-la-protection-de-la-sante-et-de-la-securite-s-applique-aussi-aux-employes-a-domicile_6076649_3234.html

from heights often take place when climbing up or down stairs, using hand ladders to clean shelves, windows and/or lamps, using these ladders in inappropriate places and/or slippery floors, or the use of inappropriate footwear.[95] Both falls at the same and at different levels are two of the main risks of domestic employees, as reflected in the studies carried out in distinct European countries,[96] and in the Delphi study.[97] The impact of these falls on worker health varies, from simple contusions to serious fractures, sometimes leading to time off from work.

In the category of physical risks, ergonomic risks are the most relevant. Risks from overexertion, muscular-skeletal injuries and physical fatigue are associated with the handling of loads, repetitive movements and postures made by the domestic workers while performing their work. The handling of loads is common in this profession given the typical movement of objects such as furniture, bags, tanks, etc., or due to the transfer and lifting of elderly individuals and/or children, requiring considerable exertion. And, furthermore, repeated upper arm movements, as is the case when cleaning windows, closets, ironing and folding clothes, vacuuming or mopping, etc., are related to muscular-skeletal injuries, as confirmed by distinct studies and works.[98] It should be noted that in many cases, domestic workers perform other care tasks of dependent individuals, without having any training as to handling loads, resulting in significant risks to their health.

As for chemical risks, exposure to chemical substances and contact with caustic or corrosive products is quite common in this sector, having major consequences on worker health. These cleaning products are frequently used by these workers during their cleaning tasks. Many of these agents are corrosive at high concentrations and irritants at low concentrations, causing alterations to the mucous membranes and the skin. Other products are mixtures of distinct chemical agents including sensitizing agents and others have perfumes or fragrances that are considered to be significant allergens.[99] The main respiratory effects associated with exposure to these agents include respiratory disorders such as asthma. A pioneer study conducted in Spain on domestic cleaners found an association between contact with cleaning products and asthma, chronic bronchitis and other respiratory symptoms.[100] Chemical agents may also have detrimental dermatological effects, destroying the skin's natural protective barrier, as also occurs with continuous contact with water. The most common problems arising are irritative contact dermatitis of the hands and fingers, with symptoms such as heat,

[95] EU-OSHA – European Agency for Safety and Health at Work, "Slips, trips, falls and cleaners", in E-Facts, no. 37 (2008). Consulted on 22 January 2023 at http://osha.europa.eu/en/publications/efacts/efact37

[96] Among others, vid., Cabeças, J.M., Graça, L., Mendes, B. & Goçalves, S, M., Condições de trabalho de empregados de limpeza em instalações de serviços, ISHST - Instituto para a Segurança, Higiene e Saúde no Trabalho, 2005 and HEALTH & SAFETY EXECUTIVE, "Health and safety in the cleaning industry", available at: https://www.hse.gov.uk/cleaning/topics/index.htm (consulted on 22 January 2023)

[97] García G, G., & García González, M. A. (2014), Seguridad y salud laboral y empleados del hogar perspectiva jurídico-preventiva, in Espuny i Tomás, Mª. J; García González, G.; and Bonet Esteva, M. (Coords), Relaciones laborales y empleados del hogar: reflexiones jurídicas, Dykinson.

[98] Among others, INSHT, Nota Técnica de Prevención 311. Microtraumatismos repetitivos: estudio prevención, consulted on 21 November 2022, available at: http://www.insht.es/InshtWeb/Contenidos/Documentacion/FichasTecnicas/NTP/Ficheros/301a400/ntp_311.pdf; Kumar R. & Kumar S., "Musculoskeletal risk factors in cleaning occupation - A literature review", in International Journal of Industrial Ergonomics, no. 38 (2008), pp.158-170, and SØgaard K., Laursen B., Jensen BR., SjØgaard G., "Dynamic loads on the upper extremities during two different floor cleaning methods", in Clinical Biomechanics, no. 16 (2001), pp. 866-879.

[99] Gogging, R. (2007), "Hazards of cleaning – strategies for reducing exposure to ergonomics risk factors", in Professional Safety, no. 52-3.

[100] Medina, M., Kogevinas, M., Sunyer, J. & Anto, J.M. (2003), "Asthma symptoms in women employed in domestic cleaning: a community based study", in Thorax, no. 58, pp. 950-954. Consulted on 16 January 2023 at https://thorax.bmj.com/content/58/11/950.short

reddening, swelling, blistering and sweating, and allergic contact dermatitis.[101] Distinct studies have suggested that contact with water, solvents, detergents, degreasing agents and dust are the main causes of dermatitis, clearly a major risk to the domestic workers.[102]

In addition to mechanical risks, the distinct country reports all agree on the relevance of psycho-social risks with regard to domestic workers. The following are the main factors that have been reported: stress generated from the monotonous work, excessive work rhythms, long work periods and isolation. These reports coincide with the conclusions made in the distinct studies performed, highlighting the feeling of unfair treatment of the domestic workers, abuse by the family with whom they work, unsatisfied care needs and emotional absence and the health of the individual being cared for, all of which have major emotional consequences on these workers, such as depression, etc.[103] Once again, it should be noted that much of the domestic work in these European countries is carried out by female immigrants working under precarious conditions and with unregulated legal statuses. They are also often subject to abuse and discrimination by the family and society in general, leading to increased likelihoods of suffering from stress.[104] In addition, there are limited social support resources to combat stress. So, clearly, these employees face great exposure to psycho-social risk. All of these risk factors are emphasized when the domestic workers are responsible for the care of elderly individuals.[105]

Another psycho-social risk that may become a main focus of attention for European and national lawmakers and legal operators of both scenarios is workplace harassment and violence. Most of the national case studies highlighted the serious problem suffered by workers of this domestic work sector. In addition, the interviewees for the national case studies have referred to all types of harassment, including sexual, gender-based discrimination or psychological bullying. In Denmark, research has revealed that immigrant domestic workers are more likely to suffer from harassment and violence in the workplace. According to the studies consulted, up to 42% of the domestic workers cleaning and caring for dependent adults have suffered from harassment or violence at the workplace.[106] In the report from France, it was noted that, while French regulations on sexual harassment are adequate, PHS workers tend to be unaware of their rights or fail to exercise them either because they are not *formal* workers or because they are working illegally. And we should not forget that this work tends to be unprotected by other labour regulations, increasing its vulnerability, not only due to the characteristics of its workers, but also due to its lack of social and legal protection. All of this means that workers do not use the legal resources that are available to them. In Spain, the

[101] INSHT, Nota Técnica de Prevención 822. Agentes biológicos. Enfermedades de la piel. Available at http://www.insht.es/InshtWeb/Contenidos/Documentacion/FichasTecnicas/NTP/Ficheros/821a921/822%20web.pdf (recovered on 16 January 2023).

[102] Specifically, a study performed in Chile concluded that cleaning is the second occupation, behind construction, that is the most frequently associated with contact dermatitis: Hernandez, E., Giese, L. & Araya, I. (2011), "Análisis de las dermatitis de contacto ocupacionales en Chile", in Piel, no. 26-9, pp. 436-445.

[103] Kim, I.H., Noh, S. & Muntaner, C. (2013), "Emotional demands and the risks of depression among homecare workers in the USA", in the International Archives of Occupational and Environmental Health, no. 86-2, pp. 635-644.

[104] Álvarez, L. (2012), "Situación laboral de las mujeres inmigrantes en España", in Cuadernos de Relaciones Laborales, no. 30- 1, pp. 91-113; Sallé, M. A., Molpecers L. & Óngil, M. (2009), Análisis de la situación laboral de las mujeres inmigrantes: modalidades de inserción, sectores de ocupación e iniciativas empresariales, Madrid, Instituto de la Mujer.

[105] García Ortega, G., & García González, M. A. (2014), Seguridad y salud laboral y empleados del hogar perspectiva jurídico-preventiva, in Espuny i Tomás, M. J; García González, G.; and Bonet Esteva, M. (Coords), *Relaciones laborales y empleados del hogar: reflexiones jurídicas*, Dykinson.

[106] Andersen, L. H. and T. B.-S. Christensen (2020): Prevalence and consequences of Violence on the job hit females in healthcare provision hard. Study paper 147. Copenhagen: Rockwool Foundation.

interviewed individuals revealed a major concern for this issue, and the lack of protection faced by them, since despite having protective regulation from risks and harassment, many of the women working in domestic services, especially immigrants, interns, caretakers of dependent individuals, etc. are forced to accept sexual blackmail or work harassment situations, or to quit their job, with the resulting consequences that this may have on their families and lives. At no time do they consider filing charges, given the lack of evidence, normally not even mentioning this situation since ultimately, they and not the employer would be blamed. ILO Violence and Harassment Convention, 2019 (No. 190) is of special relevance here. The EU and its Member States should consider including generalized protection against this risk in their laws. This Convention has yet to be ratified in most of the analyzed countries, with only Spain and Ireland having done so, entering into force in 2023 and 2024, respectively. The other analyzed countries (Germany, Poland, Denmark, the Netherlands and France) have not ratified this Convention. The EU has acceded to the Convention in June 2023.

3.4 Instrumental Resources: training on occupational risks prevention for PHS sector workers

Once again, training in the area of occupational risk prevention, is proposed differently depending on who is the employer. If the employer is the head of the family household, also called the private employer, the training should be considered as a bi-directional need, that is, on the one hand, the employer should be trained in this area so that later, the domestic workers may access the correct information and training on the risks inherent in their work position. When the employer is a company, the training obligation falls within the scope of the applicable prevention regulations.

In some countries, this issue has not even been risen, as is the case with Ireland, where it has been merely established that a general obligation exists for employers to offer training and information to employees, with no specific legal requirements for domestic employee training. In the Netherlands, several awareness campaigns have been organized by the central government, consistent with information on the RDAH (regulation of domestic services). However, in other countries such as France, various initiatives have been developed in an attempt to improve the training of domestic workers. On the one hand, the INRS decided, since its onset, that its informative documents for the PHS sector should be quite illustrative, instead of being text-based (or overly complicated; to be understood by all). This has also been the case in Denmark where the information on OHS prepared by Unions also has an illustrative approach. On the other hand, workers of this sector who are employed by public or private companies, are offered two training courses. One is for the PHS workers on how they can respond to an emergency in the workplaces, that is, if something happens in the household (private site) where they are working. This course has two objectives: to cover the risks faced by workers of the sector and also to cover how they should respond if the customer is injured. In the second course, they are trained on how to avoid muscular and bone injuries due to physical work (many PHS companies prefer to send their workers to this course instead of the first one since it is more complete and focuses more on the risks). In all cases, the problem is that many workers (all the self-employed women workers of this sector) are excluded from this training. This also occurs in Denmark, where domestic women workers employed by companies offering these services, receive appropriate training and education on health and safety before beginning to work. They know which

cleaning products are the most hazardous and which are the mildest. In addition, many of these companies have begun to use neutral products to prevent allergies and other health problems. In Spain, some documents have been created by organizations and institutions acting to promote occupational risk prevention in this country, describing the risks of the sector,[107] and training is considered to be yet another instrumental obligation of the employer (regardless of its legal form). The problem is, the head of the household employer normally has no training in prevention to be offered to the domestic worker, making it difficult to correctly apply this obligation.

3.5 Misfunctioning of enforcement resources: the difficulties of controlling the application of OSH regulations in the PHS sector.

There is a clear need to oversee and control the proper compliance with the occupational risk prevention regulations in the PHS sector. This is clearly one of the greatest handicaps faced by this group of workers. All of the reports from the distinct countries analysed coincide that control of the application of these regulations is difficult or impossible for inspection authorities. Therefore, we could talk about a misfunctioning or malfunctioning of enforcement or monitoring resources in this sector.

In this section we illustrate certain relevant examples on the application of OSH rules with findings from our cases studies. In Ireland, technically, all workers of all sectors are protected by health and safety legislation. However, within the PHS sector, there are major difficulties in controlling the proper compliance with said law, given the constitutional right to maintain the privacy of one's home. This right does not legally permit the HSA (the inspection authority) to make inspection visits to the work site -the employer's home- without the express authorization of the same (only possible in the case in which there are serious infractions related to the worker that the HAS is aware of and has proof of, in which case, a court order may be requested to enter the home without said authorization). In France, monitoring and inspections are difficult regarding the health and safety of the PHS workers, who are employed by private individuals, since the law on individual privacy prevents the public institutions from entering a private location unless the owner permits said entry. Therefore, work inspectors may enter companies whenever they wish, but they cannot go into private homes where the PHS employees are working. In Spain, a similar situation occurs. Domestic worker rights conflict with the rights of privacy and the inviolability of the home. In this country, an action plan was created in 2022 to regularize salaries and contributions to the Social Security account of domestic employees. This campaign implies a massive sending of letters addressed to employers, who are offered technical assistance and information so that they may proceed with the regularization of the salaries that are under the Minimum Interprofessional Wage and the corresponding regularization of the Social Security contributions. But there is still a long way to go before the health and safety conditions of

[107] INSST (2021), *Buenas prácticas preventivas en el servicio doméstico, dirigidas a la persona titular del hogar y del servicio doméstico*, INSST. Available at: https://www.insst.es/documentacion/catalogo-de-publicaciones/buenas-practicas-preventivas-en-el-servicio-domestico (consulted on 2 October 2022); and Osalan (2019), *Guía básica de prevención de riesgos laborales para personas trabajadoras del hogar*, Bilbao, available at: https://www.osalan.euskadi.eus/libro/guia-basica-de-prevencion-de-riesgos-laborales-para-personas-trabajadoras-del-hogar-2019/s94-contpub/es/ (consulted on 21 January 2023).

these domestic workers are properly overseen. Article 13(1) of Law 23/2015, of 21 July, Ordering the Inspection System of Work and Social Security, in logical agreement with Article 18(2) EC, only permits entry of the inspector into the home of the inspected subject upon prior consent of the owner or with judicial authorization. Although this hinders the application of the Spanish Occupational Risk Prevention Act (LPRL) to this specific worker group, it does not prevent the application of the preventive measures established in the referred regulation, nor is it the basis of their vulnerability, especially when other worker groups in similar circumstances with regard to their place of service provision, like most distance workers and teleworkers, are fully included within the LPRL's scope.[108]

3.6 Developing new instrumental resources: Good practices in the PHS setting

One of the biggest problems faced by the sector is the fact that in many cases, the workers are not professionals, that is, they are not trained and skilled, not only in risk prevention, but also in the work that they are required to perform for their job. In the area of domestic cleaning, there are no requirements in terms of training. As for the care of dependents, there are somewhat greater demands, especially in the case of caring for the elderly or disabled, who require individuals with certain knowledge of social-health care. The professionalization of this sector would not only dignify its workers, it would also permit these workers to be situated within the realms of regulated labour and social security protection. In France, there is a new culture that is on the rise. Workers in the PHS sector should carry out their work based on their specialization, as opposed to working in all elements of care and attention. Therefore, a new paradigm has entered the training of care work in schools, changing the view of how this care should be offered in the home, in a safer and healthier manner.

In Ireland, a code of good practices for domestic workers, the "Code of Practice for Protecting Persons Employed in Other People's Homes" exists, which, although focusing on general labour rights, also refers to occupational health and safety rights. Danish labour unions, employer associations and cleaning companies have created brochures and guidelines on the management of the sector's main risks. In 2012, Germany, one of the first countries to ratify ILO Convention 189, created a direct national line for women who are affected by domestic and other types of violence; and a policy of governmental support has been generated, along with the creation of non-profit organization networks and advisory centres specializing in the treatment for individuals and women suffering from violence during the immigration process. Spain has made some major legislative advances over recent years, standardizing general labour, social security and occupational risk prevention rights for domestic workers and the self-employed. This has offered increased protection and recognition of rights, at least for the country's regulated workers.

3.7 Gender dimension in the PHS sector

[108] García González, G, (2022), *El nuevo marco regulador de los empleados de hogar Una aproximación crítica desde la dogmática jurídica*, Dykinson.

The EU Strategic Framework on Health and Safety at Work 2021-2027 establishes the objectives of "Recognising diversity, including gender differences and inequalities, and fighting discrimination in the workforce is vital in ensuring the safety and health of both women and men workers, including when assessing risk at work. For example, the pandemic highlighted the risks of ill-adapted tools and equipment (e.g. women in the healthcare sector having to wear personal protective equipment designed for men) and the need to provide accurate, timely and easily understandable information to ensure that all workers, including those most disadvantaged, can fully understand the workplace rules and exercise their rights. Actions will be encouraged to avoid gender bias when assessing and prioritising risks for action by ensuring: (i) gender representation in consultations of workers; (ii) training adapted to employees' personal situation; and (iii) the recognition of risks in occupations that have long been overlooked or considered as 'light work' (eg. carers or cleaners)".

Regarding domestic work servicing the family home, gender dimension plays a key role in the prevention of occupational risks. First, this is the case with regarding certain illnesses as *occupational sickness* or *professional diseases* suffered mainly by women. Second, regarding occupational violence and sexual or gender-based harassment, as psycho-social risks to which domestic women workers are often exposed. In general, and in any professional sector, this is a risk that increases exponentially in the case of being a woman, an immigrant and young. Therefore, in domestic work, this probability increases, since these risk variables tend to coexist in this work.

However, in the distinct country reports, the only mention made of the gender dimension refers to the regulation of maternity protection, that is, the regulation of risk protection during pregnancy and the lactation period. Unfortunately, these topics only offer a general approach, without making any distinctions or specifications regarding the PHS sector. Therefore, although all women workers from all sectors should have the same coverage and rights, the PHS sector, which, given its special characteristics, requires access to information on risks affecting pregnancy and lactation. And in this sector, this access is clearly inadequate.

3.8 Impact of the COVID-19 pandemic in the PHS sector

Domestic work is quite invisible, with a major lack of recognition existing with regard to the value of this sector. The pandemic highlighted the importance of the care and cleaning work performed by this sector, which was considered essential during the difficult pandemic times. However, even being considered an essential service did not result in the accompanying protective measures for this collective.

In this section we illustrate the key findings from the selected case studies. In the Netherlands, both regular women workers as well as informal ones were greatly affected by the Covid19 situation. The lack of legal protection granted by Dutch law (RDAH) to domestic women workers and the exclusion from social security benefits left many of these workers jobless and without resources during this pandemic. In Ireland, a protocol was published, applicable to all works and sectors, referred to as the "safe work protocol" which evolved throughout the pandemic. In France, Covid19 was not considered a professional illness, except for workers in high-risk groups or those from the healthcare sector. During lock-downs, many women workers from the PHS sector stopped working and there was not specific protocol during the initial lock-downs. Inspections considered the need to halt domestic work

since these workers could not work in this sector in safe conditions, given the lack of face masks. However, the courts considering this issue did not reach the same opinion and they considered that this work was necessary and had to be performed. Despite the fact that this work carried on almost at all times, the sector did not receive special attention by the policies being carried out in the country. In Spain, cleaning and caregiving activities were considered *special*, and therefore, they were permitted, and these workers were allowed to travel with no greater limitations than the precautions required to avoid infection. Despite the fact that domestic workers were allowed to continue with their work, many of them were dismissed and spent long periods of time jobless and without any type of income. Furthermore, and despite the essential nature of this work, they were not given preferential access to protective equipment such as face masks or gloves, and they were not considered a priority group for access to the first vaccines. However, an Extraordinary Subsidy was created for domestic workers who had been registered domestic workers prior to the entry into effect of the alarm state and who had ceased to offer their services to one or more households, either partially or completely. This subsidy, however, failed to provide the group with the necessary and desired effects.

4. OSH in the construction sector – comparative perspectives[109]

4.1 General Problems affecting occupational risk prevention in the construction sector

In all of the analyzed countries, the construction sector is found to be highly regulated, having social partners that are closely involved in issues related to health and safety in this sector. However, certain common problems exist in the distinct countries examined, with different scopes and responses.

One factor is the large number of flexible (temporary), informal, and immigrant (often illegal) workers in the sector. This young, temporary, and untrained workers' segment requires special protection, given that temporary workers tend to be more exposed to the risk of occupational accidents and/or occupational diseases since they are often hired for jobs with greater pressures or more risks; or because the type of worker integration in the company (shifts, precariousness of work, and relegation to secondary tasks) often results in an increased difficulty in accessing means to fight the occupational insecurity (information, training or representation channels) that often affects immigrant workers.

A second problem relates to the externalization of activities (contracts and subcontracts) as a form of company organization. This has become increasingly more generalized, in such a way that currently, most work sites include workers from different companies, as well as self-employed workers and temporary work agency employees. This complicates the organization of the work activity and may lead to a lack of prevention management coordination at all levels, with external workers having increased probabilities of suffering accidents. Prevention regulation for small and medium-sized companies continues to be a pending issue in this sector.

Moreover, there are certain commonalities to high-risk situations in all countries. These include falls from heights, cuts, and objects falling from above. These are the three most common high-risk situations. Accidents related to stumbling also take place frequently, that is, when workers trip over objects at the construction site.

Many employers seem to believe that compliance with occupational prevention regulations is possible merely through documentation, even when employee health and safety are not actually guaranteed. This may lead to an almost "false prevention" whereby companies consider themselves to be safe, merely because they have their "papers in order". The red tape of the prevention system may jeopardize its efficient implementation, and record-keeping clearly does not guarantee effectiveness. For example, there is formal compliance with regulations or "prevention on paper" in some cases, such as the coordination of business activities in which the exchange of documentation between companies is considered more important to avoid potential legal situations than the actual controlling

[109] This comparative section is based on the research findings in the seven country case studies conducted for this delivery. See Annex 1 to this working paper for further detailed information on each national case study.

of the high-risk situations resulting from the involvement of multiple companies in the sector, which is a consequence of subcontracting.

From the interviews conducted it can be deduced that there is agreement among the experts that occupational risk prevention training in this sector is extremely important. In recent years, significant advances have been made that are directly reflected by the increased number of trained workers and the increased societal awareness. However, progress continues to be necessary in this area. In addition to quantity, improved quality of the training is necessary. Poor quality in company training activities often fails to ensure sufficient and adequate technical and practical training that is adapted to the specific needs of the position/tasks performed by the worker.

4.1.1 Most frequent occupational health and safety problems/risks in the construction sector

According to the most recent data, in Denmark, the main problems and risks associated with occupational health and safety in the construction sector include frequent muscular-skeletal illnesses; working at heights; sexual and gender-based harassment (in a sector that is clearly dominated by men), and the harassment of young workers.

In Spain, the risks mainly revolve around aspects such as: earthworks; excavation, ditches; risk of falls from heights; storage of fuel; and dressing rooms. There is also the need to consider emerging risks. New issues have appeared, such as nanoparticles, which are a challenge when performing risk assessments and applying control and preventive measures given the lack of existing knowledge. There is still a lack of information and knowledge on the properties of these nanoparticles and nanostructures. It has been suggested that, given some of these properties (for example, the highly reactive surface area of nanomaterials; their ability to cross membranes), they may be linked to potentially high toxicity.

Risks related to working at heights are a common problem. In some countries, such as Ireland, over the last ten years (2012 –2021) 44 deaths took place in the construction sector due to falls from heights. During the same ten-year period (2012 – 2021), a total of 1969 non-fatal injuries resulting from falls were reported in the construction sector. Of these 1969 incidences, 808 were falls from heights. In 2021, 10 people lost their lives working in this sector in Ireland. Of these deaths, seven were specifically related to work at heights. In October 2022, the HSA launched a national inspection campaign for two weeks in the construction sector, focusing on the dangers of working at heights. This two-week campaign was directed at both small and large construction sites across the country. The HAS inspectors provided information and awareness to employers regarding the resources available and presented free short online courses on its electronic learning portal: hsalearning.ie and BeSMART.ie; the online tool for safety management and risk assessment, which can be used to develop a safety statement, risk assessment, or health and safety plan in the construction phase for this sector.

In France, the most recent data suggests that the most frequent risks and problems of the construction sector are the handling of objects; leading to frequent accidents (often not very serious: broken arms or legs, but very rarely death) and frequent muscular-skeletal illnesses. The main risk tends to result

from work at heights (20% of all of the accidents in this sector). Approximately 30-40% of the deaths in construction works result from falls from heights.

Of the risks arising from the current forms of work organization, psycho-social risks are especially relevant. They appear to be related to certain professional contexts, such as sectors having high stress levels, poor organization, unclear management practices, employment precarity, etc. Sexual harassment and work intimidation, gender-based harassment, and sexist behaviour also occur frequently in the construction sector. Stress and working under pressure are growing concerns of worker representatives in this sector. This is because construction works usually need to be completed within a specific period, meaning that tasks must be completed relatively quickly. There is little time for reflection. Experts from the sector who were interviewed reported that in the past, there was more time and opportunity for reflection about how to perform certain construction work.

In the Netherlands, appropriate measures seem to have been taken in response to risks for construction women workers, thanks in large part to the consultancy and training role of a specific research institute called *VOLANDIS*. This institute provides relevant protocols and information on these types of risks, such as the prohibition of heavy load carrying by pregnant workers.[110]

4.2 Transposition of EU normative resources: Effects of the Framework Directive 89/391/EEC at national level

As mentioned before, the OSH Framework Directive 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work, developing internal regulations for occupational health and safety is the main regulation in this area. With the goal of guaranteeing "a better level of protection of the safety and health of workers", the regulatory intervention promoted through the 1989 directive is based on two major premises: on the one hand, the idea that, despite the actions undertaken, "there are still too many occupational accidents and professional illnesses", therefore, "preventive measures must be introduced or improved without delay in order to safeguard the safety and health of workers and ensure a higher degree of protection"; and on the other hand, the notion that Community requirements cannot justify "any reduction in levels of protection already achieved in individual Member States".

There is a generalized consensus in various countries as to the significance of Directive 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work, in terms of consolidating occupational risk prevention through the development of internal workplace health and safety standards.

The regulation passed in Germany to transpose Directive 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work, is the Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work (*Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit*), also known as the Occupational Safety and Health Act (or by its

[110] See Annex 1 to this working paper for further detailed information on each national case study.

German initials ArbSchG), of 7 August 1996. In Ireland, since 2005, OSH regulations have been mainly governed by the Safety, Health and Welfare at Work Act. In the Netherlands, there is the Working Conditions Act of 1999 and in Spain, there is the Law 31/1995, of 8 November, on occupational risk prevention.

Upon closer examination, we find that the use of the Directive as a means of regulation by European institutions has resulted in its almost exclusive transposition to national legislation, with each country including the European regulation in its internal law, establishing country-specific differences based on the individual legal systems.

The inevitable impact of EU legislation on the regulatory activity of the Member States may be one of the main reasons why, for many years, the EU has been making methodological changes by using regulations, instead of directives, as a source of supranational control. Regulations offer the great advantage of direct application, as compared to the Directive's slower intervention. They also offer considerably increased uniformity. A good example of this is Regulation (EU) 2016/425 of the European Parliament and of the Council, of 9 March, on personal protective equipment and repealing Council Directive 89/686/EEC. This regulation assumes that certain requirements and procedures must be "identical in all the Member States", leaving no room for "divergent transposition".

According to the conducted interviews, the overall assessment of the role of Directive 89/391/EEC, of 12 June 1989, in all the examined countries has been quite positive in terms of improvement of OSH standards. The transposition of EU legislation on occupational health and safety has given workers in the construction sector increased safety and protection, significantly reducing accidents and deaths on the work site. Thus, normative resources at EU level have impacted positively in the national legal orders of the examined Member States.

However, construction is clearly a high-risk sector, with there being a high margin for improvement in OSH protection still. In both the Netherlands and Denmark, many references have been made to the relevance of the new EU Directive proposal related to asbestos.[111] This continues to be one of the main challenges in terms of occupational health. Approximately 80% of all occupational cancers recognized in the EU are related to asbestos; a carcinogen that has no safe levels of exposure. The use of asbestos in the construction sector, until its complete prohibition in 2002, is relevant from a prevention perspective, given the large amount used when manufacturing *asbestos-containing materials (ACMs)*, and the various ways that they were used. The Resolution of the European Parliament in 2021 with recommendations to the Commission on protecting workers from asbestos, requested the updating of Directive 2009/148/EC, highlighting its concern over the lack of a threshold level of safe exposure and insisting on the safe removal and disposal of ACMs in response to the proposal for encapsulation and sealing. The Resolution even proposed the prohibition of these techniques for those ACMs that can be technically removed.

Special laws

[111] On 28 September 2022, the European Commission adopts a communication and puts forward a legislative proposal on the protection of workers from the risks related to asbestos exposure at work, amending the Asbestos at Work Directive 2009/148/EC. It aims to update the existing binding occupational exposure limit value for asbestos, considering the latest scientific development and technical progress.

The interviewees from the Netherlands and Denmark discussed the existence of gaps in the protection of health and safety rights for construction workers, due to a variety of factors, including non-compliance by sub-contractors. The main contracting company (typically a large secondary company) tends to comply with health and safety regulations, but as we move down the subcontracting chain, regulatory compliance and supervision also tend to decline. According to studies published by Statistics Netherlands (CBS), periodically, the number of occupational accidents involving workers hired by temporary work agencies is much higher (25% higher probability of having an accident) than that of workers hired directly by the user company.

In Spain, the approval of a law intended to limit chains of contracts in the construction sector has been very useful in overcoming these problems: Law 32/2006, of 18 October, regulating subcontracting in the Construction Sector and Royal Decree 1109/2007, of 24 August, which implements this law. This law is intended to regulate and reduce subcontracting in this sector.

Collective bargaining as a sort of normative resource at national level

Risk prevention is an area of interest shared by both companies and workers. It is continuously improving thanks to the participation of worker representatives who have established the goal of developing a true culture of prevention in companies.

In France, issues related to occupational health and safety are often included in bargaining rounds. However, according to the interviews conducted, improvements continue to be necessary. Since the labour law reform of 22 September 2017, a clear trend is evident in the decentralization of collective bargaining. Thus, in the decentralization of the first level of response to agreements on occupational health and safety. At higher levels, we find examples related to collective bargaining in this area. A national collective agreement on occupational health and safety was signed in 2019 and was applicable to all companies and sectors. Furthermore, national collective agreements exist on work-related stress, labour risks, and workplace harassment and violence, which were signed in December 2020. Therefore, the topic of health and safety tends to appear in the national collective agreements, as opposed to the sectoral ones.

In Spain, the role of collective bargaining has been relevant in the construction sector, specifically with the General Agreement for the Construction Industry, which, in its preamble, establishes that “the undersigning parties consider that one of the basic determinant instruments to decisively overcome accidents in the sector and to improve health and safety conditions is that all workers providing services on the works should have the necessary and appropriate training in the area of occupational risk prevention for their work position, being informed of the relevant risks and means of preventing them”. The concern over appropriate compliance with the regulations of this sector has had implications for business and labour union representatives since the initial 1992 version of the prevention regulation.

In the Netherlands, collective bargaining in the construction sector often includes numerous provisions regulating workplace health and safety, and social partners also participate in the follow-up of the actual compliance with these agreed provisions. Trade unions also oversee the application of agreements reached via collective bargaining.

In the case of Denmark, occupational health and safety has not been one of the main topics of negotiation by the main Federations in the construction sector but that picture is changing in the last year and more attention is being paid to this area in social partners negotiations, including the topic of the green transition.

4.3 Hybrid resources: occupational risks prevention training

Training on occupational risk prevention can be considered a power resource derived from the OSH legislation but it is also, in practice, a major instrumental resource to achieve the goals set by the EU Directives in the field, in particular by the Framework Directive. OSH prevention training has shown major advances over recent years, which is directly reflected by the increased number of trained workers and increased societal awareness. In all the analyzed countries, experiences may be found that relate to improvements in training in this area.

In France, Law no. 2021-1018 of 2 August 2021, to strengthen occupational health prevention, has resulted in the creation of a preventive passport to ensure increased health and safety risk prevention in the workplace. This passport attempts to avoid these risks for workers by promoting their training and optimizing risk management by employers. It details the relevant training certification; diplomas and certificates obtained in the area of occupational health and safety, permitting accreditation of these competencies. This document is issued to those who have taken these specific training courses and have passed the mandatory tests administered by certification organisms. It demonstrates workers' skills and knowledge when operating in a dangerous work site. Employers may access an interface showing the data transferred, as well as the passports of workers and employment applicants who have agreed to send their OSH history. This allows for the improvement of traceability with regard to training and recognition and also simplifies their management.

In Ireland, in addition to the general obligations established by Law 2005, which obliges employers to provide information, instruction, and training to employees, the construction sector also has regulations on the different types of necessary worker training on occupational health and safety. The so-called "Safe Pass" is a mandatory, one-day awareness programme on health and safety, and all on-site construction workers are required to attend.

In Ireland, an introductory course on occupational health and safety must be completed before working on construction activities. This is called “Safe Pass” training. Subsequently, participants receive a Safe Pass card as proof of having completed the training. This certification is intended to promote safety training when working on and near construction sites and is recognized throughout Ireland. The Safe Pass card allows workers to provide services across the country without the need to repeat the programme and carry a separate card when travelling to different counties.

Safe Pass Construction training is a mandatory process that trains construction workers on the main principles of safety in construction work. The purpose of the course is to prevent serious accidents in construction work, to the greatest extent possible. Thus, it is also called “Safety Training in Construction”. The Safe Pass, a one-day safety awareness programme, is operated by SOLAS and offers proof that the workers in residential and general construction sectors have received adequate training on risk management, in accordance with the Code of Practice for Construction Works.

In Spain, special relevance is given to the role of the Construction Labour Foundation (FLC) created by the General Collective Agreement of the Construction Sector. This agreement has introduced specific training on occupational risk prevention to different construction sector professionals, so that they may acquire appropriate knowledge on risks and preventive measures when intervening in construction work and refers to the specific functions and activities of their work position. Given the current state and evolution of the sector (e.g. new construction processes, technological advances in machinery and auxiliary measures, active ageing, etc.), training in the area of occupational prevention will surely continue to evolve and introduce new methodologies and alternatives to improve the didactic effectiveness of this training. The FLC has trained over 2,000,000 workers and has made over 200,000 visits to construction works, promoting occupational health and safety. It has promoted quality employment with the issue of over 700,000 Construction Professional Cards; a document which, in addition to accrediting the training received in the area of occupational risk prevention, also contains information on all types of training that have been received, along with the worker's professional category and experience in the sector.

In the Netherlands, there is a project to create a safety card (*Bouw-ID pas*) to permit worker access to the construction sector (ensuring that on-site workers have the appropriate qualifications and training for the use of equipment and the applicable OSH regulations and measures). This project is still in the pilot phase, although the idea for the creation of the card system began 7 years ago.

In Denmark, *Byggeriets Arbejdsmiljøbus* is a mobile consulting service that is intended to transmit good labour practices to builders, planners, and contractors in construction works and construction companies and their employees. The clients are the construction companies that are covered by the agreement either as members of Dansk Byggeri, Kooperationen, Dansk Håndværk, or Danske Isoleringsfirmaers Brancheforening, or through an accession agreement, as well as the employees of these companies. Furthermore, the Construction Work Environment Bus provides information services for members of the Construction Federation, FRI, and Danske Ark. Byggeriets Arbejdsmiljøbus is a mobile consultancy service that visits construction sites, businesses, and production areas across the country. The Construction Work Environment Bus may contact the businesses, or the businesses themselves or their employees may request the Byggeriets Arbejdsmiljøbus. In addition, the Construction Work Environment Bus may contact the companies upon request of the organizations or the Industry Work Environment Council for Construction & Construction. Furthermore, the Construction Work Environment Bus offers advice and orientation on the use of authorized work environment advisors, and also offers work environment courses and the possibility of receiving support for special development projects. The Construction Work Environment Bus also provides information services for builders, construction advisors, project architects and engineers, on construction management, work environment coordination, the design of the construction site, common safety measures, and the creation of a culture of safety at the construction site.

Immigrant worker integration is a major challenge in this sector. An excellent example of how it is being handled can be seen in Denmark. Given the large number of immigrants working in the sector, language barriers are common, often hindering compliance with health and safety rules. Trade unions are well aware of this issue and have begun to promote the improvement of linguistic skills. At some construction sites, there are requirements that Danish or English must be spoken to work there. For example, in Femern, the company constructing a new tunnel to Germany has a language requirement of speaking Danish or English, or both. As for instrumental resources, the main construction federation

has prepared a series of podcasts on occupational health and safety with eight episodes (some in Danish, others in English, others in Romanian, and others in Polish). This is an innovative means of reaching a broad audience, helping to ensure that immigrant workers are informed. This is also because it has been noted that immigrant workers often appear to be reluctant to talk with trade union representatives, given a fear for their jobs, making this discreet form more appropriate for them.

4.4 Instrumental resources: Instruments of social participation and social dialogue in the construction sector

In many of the examined countries the main instruments for the applicability of the OSH standards in practice rely primarily in the hands of employers and employees' representatives. In the Netherlands, the occupational health and safety risk prevention system in the construction sector is organized through close cooperation between employers and trade unions. For example, together they developed the so-called Health and Safety Catalogues. In these OSH catalogues, employers and employees describe, on their own initiative, how they comply with occupational health and safety regulations. The Ministry of Social Affairs and Employment revises this health and safety catalogues upon the collective request of the employer and employee representatives assuming that there is compliance with certain formal requirements.

France has been especially noteworthy in this respect, with its *Organisme professionnel de prévention du bâtiment et des travaux publics* (OPPBTP), created in 1947 by the initiative of the social partners in the areas of construction and public works, given the importance of the issues of health and safety in the construction industry. It is the first joint sectorial organization devoted to the prevention of risks in the workplace. The OPPBTP is made up of occupational risk prevention experts in the field that regularly support construction professionals and stakeholders.

The missions of the OPPBTP are clearly defined and refer specifically to the promotion of prevention, expertise, the study of field situations, and feedback to the professional and public authorities, through reporting, advising, and training. Its implementation has evolved over the years, in response to the priorities determined by the Board of the National Committee and the operational capabilities of the organization. Its action focuses on three main areas: mobilizing companies and their employees to develop active daily management of health and safety in the workplace; reduction of serious and deadly accidents and assumption of challenges and improvements in the work conditions.

In Spain, the Construction Labour Foundation is especially relevant. It is a non-profit, joint state entity formed by the main sector partners: the National Construction Confederation, the Environmental Workers Commissions (*Comisiones Obreras del Hábitat*), and the Federation of Industry, Construction and Agriculture of the General Union of Workers. Created by the additional provision of the I General Convention of the Construction Sector, and in accordance with its bylaws, it aims to provide services to professionalize and dignify the different trades and employments within the construction sector. For this, it is entrusted with the study, planning, and development of professional training services, health and safety improvement in the workplace, and employment. This conventional regulation has been reinforced by Article 12 LPRL (Spanish Occupational Risk Prevention Act) and Article 9(2) of Law 32/2006, provisions that allow trade unions and business federations in the public sector to regulate

a certification system for occupational risk prevention in this sector, which is particularly essential for Spain's economy.

Focusing directly on prevention improvement, this joint entity offers companies and workers of the sector advice services and technical support, such as the Joint Organism for Prevention in Construction (OPPC). The OPPC is an organism created within the heart of the Foundation in 2001 to support small businesses and work centres in the sector, advising and informing them as to the risks that are inherent to the construction sector, as well as the measures to be implemented to reduce them through site visits.

The Industrial Observatory of Construction was created within the FLC to create and regularly update information on the priority indicators to determine sector evolution.

There should also be mention of the participating organism, the Construction Labour Foundation of the Principality of Asturias (FLCA), which is defined in its bylaws as a non-profit, joint organization with diverse social and labour purposes. It was created in 1988 as a result of the specific clause included in the collective agreement for the construction and public works of the Principality of Asturias. The FLCA is mainly directed at workers within the scope of personal coverage of the sectorial collective agreement and their families, although its action may be extended to those who find themselves unemployed from the construction sector and other collectives if the programmes that it directs have any benefit to the construction sector.

The Territorial Delegate of Prevention in Asturias was created as a result of the collective agreement. Territorial Delegates of Prevention are empowered to carry out visits to worksites, communicate freely with personnel, access information and documentation, encourage employers to adopt preventive measures and, if necessary, recommend the immediate suspension of works to the site manager in the case of serious or imminently dangerous risks.

4.5 Enforcement resources: the role of the labour inspectorates on the protection against occupational risks in the construction sector.

Work in the construction sector is intrinsically of a dangerous nature and that makes construction a high-risk industry. The diversity of construction work, along with the different occupations, technologies, tools, and materials used all complicate health and safety management, demanding ongoing oversight activity and control by the Labour Inspectorate.

The main agent in the application of health and safety regulations in France is the Labour Inspectorate (which reports to the Ministry of Labour). Labour inspectors may visit company facilities and sanction them in the case of discovering problems in the company in order to prevent risks. In the construction sector, especially, they can halt activities on the work site if there is a high level of risk to worker health and safety. For example, this may occur in the case of a risk of falling from heights or if it is found that workers are handling cancer-causing substances without protection or in the case of unprotected contact with asbestos (companies must declare any handling of asbestos). One issue mentioned in the interviews is that every year, fewer and fewer inspections are carried out at work sites. Labour inspectors go to the companies in the case of serious accidents on-site or, at times, when workers request an inspection due to problems with compliance with OSH regulations. Inspections are carried out if members of the company's OSH committees call them, but they tend to only come when there

are problems. The inspection process is quite timely given that it must pass through a court. However, inspectors may take measures such as immediately detaining work performance on-site in the case of serious violations of the OSH prevention regulations.

In the Netherlands, the Labour Authority (SZW) is officially responsible for controlling the application of regulations related to occupational health and safety. In recent years, the number of inspectors in the Netherlands has increased. This, however, has not led to a clear improvement in health and safety in the construction sector. Inspections can be carried out at construction sites with or without prior notification. The trade union representative who was interviewed considers that there is a margin for improvement in the manner in which inspections are performed. In their opinion, inspections are more effective when they are not previously announced. This, however, very rarely occurs in the Netherlands. Therefore, since the possibility of an inspection is quite low, some companies may prefer not to assume all of the costs related to the provision of all of the appropriate health and safety measures and risk receiving a financial penalty if an inspection does take place.

In Spain, Law 23/2015, of 21 July, authorizing the Labour and Social Security Inspectorate System, attributes the Labour and Social Security Inspectorate (ITSS) with the supervision of regulatory compliance in this area. The function of the inspector is performed by state employees of the Higher Inspectorate of Labour and Social Security and by state employees of the Labour Sub-Inspectorate. This body has a specialized department on occupational health and safety. The Labour Sub-Inspectors belonging to this entity have competences in the area of occupational risk prevention and dedicate much of their activity to the oversight of compliance with the construction sector regulations. In some provinces, specialized prevention management teams exist in this sector. Despite this, there has been generalized criticism of the reduced number of inspectors and sub-inspectors. Health and safety conditions in the construction sector are the subject of ongoing oversight by the ITSS. According to its report of actions from 2020, this oversight has resulted in a total of 97,391 inspection actions and a collective total of 40,108 requests and violations.

In Ireland, the inspections carried out by the HSA have been criticized (in the interviews held) regarding two main aspects. First, there is a limited number of overall inspections performed over recent years, although there have been frequent inspections in the so-called “high-risk” sectors (such as construction). Second, this inspection work has also been criticized as being overly “soft”. It is claimed that the HSA is more interested in providing orientation and assistance to employers than in implementing intense actions against the illegal actions perpetrated by these employers.

In Poland, tasks related to the control of regulatory compliance in the area of risk prevention are also performed by the National Labour Inspectorate (Państwowej Inspekcji Pracy, PIP); a state organism and the country’s main labour inspection agency. It includes a centralized inspection service (General Labour Inspectorate) and delegations in each of the country’s districts.

4.6 Impact of the pandemic on the construction sector

During the COVID-19 pandemic, social partners from the sector in the Netherlands reacted very quickly to create a Corona Protocol so that on-site work could continue. It was the first sector to prepare such a protocol in the Netherlands and was created collectively with the technical sector (some of the topics covered included: how many workers per vehicle/machinery, safety distance, the establishment of a Corona policy and a director of Corona measures per site, and the creation of an

assistance service for questions available for employers and employees). The social partners managed to react quickly to avoid the complete shutdown of this sector. This was possible thanks to the existence of a specific OSH institute in this sector, *VOLANDIS*, specializing in technical consultancy on health and safety in construction.

During the COVID-19 lockdown period, there was no real decline in employment in the Danish construction sector due to the initiatives taken by the government to support this sector. Moreover, many individuals used this period as an opportunity to reform their homes, and while many workers from other sectors were confined, construction workers continued to work on-site. Therefore, an increased risk was clear for these workers, given that they worked as usual throughout the pandemic. However, these construction works are often performed outdoors, reducing the risk of infection. No special campaigns were directed to these construction workers, nor were special measures taken to prevent the spread of COVID-19 at the construction sites.

In France, COVID-19 is not considered an occupational disease, except for workers from high-risk groups or those employed in the healthcare sector. In the case of workers who died from COVID-19, it is necessary to demonstrate that the infection took place in the workplace, and thereby caused the occupational disease (except for healthcare workers). During the lockdown periods, construction workers continued working, but had to respect specific procedures to prevent the spread of COVID-19.

In Spain, the FLC created the "Report on the Construction sector" in response to COVID-19 and its impact on the sector. This report indicated that in 2020, the construction sector contributed 1,121,698 million euros to the country's GDP, a decrease of almost 10 points as compared to 2019 (9.9%). In total values, construction made up 5.7% of the GDP as compared to 5.8% from the year before the pandemic. As for employment, according to the Labour Force Survey, significant declines also took place here in 2020, by approximately 2.6%, with a total of 1,244,077 individuals working in the sector. Women and temporary contract workers were the most seriously affected. According to data from 2021, construction would have reached values equivalent to those prior to the pandemic. Companies in the sector provided 1,143,408 work contracts in 2021, implying a growth of 4.8% in hiring, as compared to 2020.

5. Policy Recommendations

At EU level a relevant development for improving OSH is the new Health & Safety at Work – EU Strategic Framework (2021-2027). This initiative aims to maintain and improve the health and safety standards for EU workers and identify key objectives and set out a strategic framework to encourage EU countries and stakeholders to work together on common priorities regarding health and safety at the workplace.

Considering that the European pillar of social rights aims to lead to upwards social convergence across the EU, it is relevant to examine not only how EU OSH directives are implemented, but also, how they are likely to impact the actual compliance with OSH rights in different EU countries (see national case studies in Annex 1).

From our qualitative analysis we have extracted several policy recommendations for strengthening of health and safety at work rights for both sectors.

First, a suggestion for improvement mentioned by several union representatives in the construction sector (Denmark, EU level experts) would be to implement an obligation on the employers' side that they should know all the working environment regulations before they can hire people. Not only to be aware of the OSH legislation but effectively proof with a certification that they have sufficient knowledge before actually hiring employees (especially in the case of dangerous occupations such as construction).

The experts interviewed for the case studies pointed out several policy options for improvement of compliance on OSH rules at the national level and recommendations which could improve the enforcement and instrumental resources.

At the level of normative resources, experts in the Netherlands, Denmark, France, Spain, Ireland see little room for improvement because OSH at work is dealt with properly in the national legislation transposing EU law in this field. However, one of the main problems is that the exact obligations established in the OSH legislation are not always known by the employers and also not by the works councils (particularly in the Netherlands). There is a lot of information available for works councils but they are not very knowledgeable on this subject (e.g. the information regarding risk factors on the exposure to dangerous substances at work that should be gathered by the employer and known by the works council). The employers gather information on this matter but it is not always being shared with the works councils.

In the Netherlands, for instance, there is also room for improvement on the functioning of the OSH services, specifically on the collection of the anonymous information on work-related sickness of employees which should also be sent to the works councils. There is under-reporting of occupational diseases and work-related sickness and a more in-depth analysis of the risks' exposure, the factors contributing to the risks, and the causes of high levels of absenteeism and workers' leaves due to work-related reasons should be done more often by the Occupational Health Services. That information should be transferred to the works councils on a regular basis. In the Netherlands, in

practice the health and safety services often focus on how to deal with absenteeism and how to get people back to work but not enough on OSH prevention measures and that is problematic.

Secondly, an interesting proposal for improving the instrumental resources for workers' involvement in the field of OSH will be using new technologies, such as use of sensors. In dangerous occupations with high risk of exposure to potentially harmful substances each worker could get a devise to monitoring his own exposure to specific risk factors and it would be very useful to have that information stored in personal health files. That will help to prevent that the level of the exposure to these factors which could lead to an occupational disease. Sensors have an alarm system that reacts in case of serious risk exposure and then, the worker can stop performing the dangerous work. This technology is still under development and a pilot project is currently in the initial stages of implementation in join cooperation between the labour inspection and TNO (national OSH focal point in the Netherlands.)[112] Another interesting similar example is a cell-phone app developed by the main trade union federation in the Netherlands, FNV, monitoring the levels of noise at work which sends an awareness signal to the employee in case of high risk of exposure. This is especially useful for avoiding that risk in the construction sector.

Thirdly, one problem noticed by several of the interviewees (France, Denmark, the Netherlands, EU level experts) is the issue of psycho-social risks. In the last years, more attention has been paid to psycho-social risks, but appropriate advances on OSH policies on that regard have not yet been achieved. Therefore, this is a pending issue. There is growing stress at work, workers do not have enough time to conduct their work, there are growing time-consuming reporting obligations, etc. The need to a rapid adaptation to continuous changes in the nature of work is also problematic (especially in the construction sector). This should be changed. Workers should have enough time to adapt to changes in their work. The pressure to adapt quickly also leads to higher psycho-social risks.

In the PHS sector, according to the majority of interviewees (France, the Netherlands, Spain, Germany, and EU level), there is need of further intervention at the EU level on improving OSH prevention for PHS workers regarding both traditional and new emerging psycho-social risks.

Legal experts interviewed (France, Ireland, and EU level) advise that more targeted sectoral or occupational risk directives (daughters of the framework directive) are needed at EU level. Also new EU legislation focussing more on psychosocial risks at work should be adopted. A directive is needed to define the concept of psychosocial risk at work, and the roles of different OSH bodies to deal with it, building on the framework directive. So far, the European Commission is avoiding defining the concept of psychosocial risk in new legislative proposals. Experts in OSH share the view that that concept should be clearly defined rather than just stating that it should be forbidden in teleworking and the proposed platform work directive. Moreover, in the case of Ireland, it was explicitly mentioned during the interviews that new legislation is deemed necessary to address the new hazards arising from the new ways of working, in particular legislation on OSH specifically focused on remote work or home-based work.

[112] See project Citizen science (burgerwetenschap) - WUR<https://eur04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.wur.nl%2Fnl%2FDossiers%2Fdossier%2FCitizen-science-burgerwetenschap.htm&data=05%7C01%7Cn.e.ramosmartin%40uva.nl%7Cd17a8460ba14448d98f708daa6c825fe%7Ca0f1cacd618c4403b94576fb3d6874e5%7C0%7C0%7C638005677057721606%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=LwZEGvfJbGd2%2FLYjtAIRnTVkkYCeuELNyxreBCrTrr8%3D&reserved=0>,

Fourth, some of the experts (Ireland, Denmark, the Netherlands) considered that, for strengthening of health and safety at work rights, more institutional resources are needed and there is a need to carry out more inspections, more specific enforcement measures; and more investment in resources promoting effective safety management in all sectors. In specific, in Ireland, it was highlighted the need to appoint full-time safety representatives: to have a general operative appointed to exclusively carry out health and safety patrols, health and safety representation on behalf of workers, and health and safety engagement with employers.

Fifth, in the PHS sector, according to the unions representatives interviewed (Denmark, Spain, EU level experts) and previous studies[113] it is very important to make the work more visible. When it is more visible, it will be easier to identify if any mistakes are made in applying OSH rules. It would also make people appreciate this type of work more because a main problem that employees in the sector are reporting is the lack of recognition of their work and the lack of respect for their valuable work.

As several reports had already pointed out, in the PHS sector, *instrumental resources* such as training and awareness raising for workers and employers are key tools.[114] Employees must be instructed in legal aspects, as well as in those related to OSH risk management. It is also essential, due to the particular non-entrepreneurial characterization of domestic work, to train the employer in good practices, rights and duties, and in risk prevention matters.[115]

In addition, recent studies have pointed out that, if policy-makers aim to close the current OSH protection gap and improve the health and safety at work and the working conditions of workers in the PHS sector, more instrumental resources are needed.[116] Apart from the need to provide appropriate equipment, and use safe cleaning products, other initiatives can limit physical burdens and mental stress of the PHS sector workers. One best practice which clearly enhance the health and safety at the PHS sector is the organization of training. Other best practices pointed out by the OHSA are: "Provide for a realistic schedule and communication between the client and the PHS worker: it is crucial to establish good communication (e.g. in terms of the type of activities) and an realistic schedule to limit travel and provide for sufficient rest times between each client; Offer greater variation in the work: in the type of activities to be carried out (e.g. combining cleaning and ironing in ironing stations), but also in other functions, such as coach, mentor, etc."[117]

A concern mentioned by the interviewees in several countries (the Netherlands, Denmark, Poland, EU level) is the increasing percentage of self-employed workers in both sectors, (including a high number of bogus self-employed according to the unions) and the high percentage of flexible workers, including informal workers and (often illegal) third country nationals. These workers are often not properly

[113] Caner, L., Aleksandria, N., Riga, V. and Geertsema, Z. (supervisor: Ramos Martín, N.), 'Comparative Study on Health and Safety at Work in the Personal and Household Services Sector', Report published by UvA Fair Work and Equality Law Clinic, (2022), p. 1-83.

[114] For a complete list of preventive measures, see INSST, *Buenas prácticas preventivas en el servicio doméstico, dirigidas a la persona titular del hogar y del servicio doméstico*, *op. cit.;* and OSALAN, *Guía básica de prevención de riesgos laborales para personas trabajadoras del hogar, op. cit*.

[115] This idea is reflected in the INSST's own guide on the prevention of occupational risks in domestic work which, from its title, emphasizes its orientation towards both parties in the employment relationship. See INSST, *Buenas prácticas preventivas en el servicio doméstico, dirigidas a la persona titular del hogar y del servicio doméstico*, *op. cit.*

[116] Caner, L., Aleksandria, N., Riga, V. and Geertsema, Z. (supervisor: Ramos Martín, N.), 'Comparative Study on Health and Safety at Work in the Personal and Household Services Sector, Report published by UvA Fair Work and Equality Law Clinic', (2022), p. 1-83.

[117] Daphne Valsamis, European Agency for Safety and Health at Work, Discussion Paper: Well Being at Work in the Service Voucher Sector in Belgium., (2022), p. 1-10.

covered by the OSH regulation and collective agreements and that is problematic for their health and safety protection and that of their co-workers. Moreover, it was noticed that the construction sector is highly cost driven and very fragmented: subcontracting is widespread, which leads to more flexible jobs, lesser protection and more (fatal) accidents, often involving migrant workers.

Some interviewees (ie. in Denmark) mentioned that the posting workers enforcement Directive 2014/67/EU has improved the situation regarding posted workers in the construction sector but all the problems are not completely solved from the point of view of sufficient health and safety protection at work.[118] Therefore, intervention at EU level addressing this problematic of excessive bogus self-employment and long chains of subcontracting could be a solution for an enhanced health and safety at work in these two sectors. This policy recommendation for tackling abusive subcontracting is in line with the call of the ETUC in recent reports for the EU to act upon this problem and secure workers' rights in supply chains by adopting a general legal framework on subcontracting.[119] That type of EU legislation will help to strengthening liability and transparency, and to ensure equal treatment, decent work and effective enforcement of EU legislation and national OSH provisions throughout the chain. If approved by the Parliament and the Council, the proposal for a Directive on corporate sustainability due diligence adopted by the European Commission on 23 February 2022,[120] with the aim to foster sustainable and responsible corporate behaviour and to enhance the protection of human rights (including labour rights) and corporate governance would be a huge step in fostering a healthier working environment for all EU workers. This Directive will increase legal certainty and set a level playing field for companies operating in the examined sectors.

[118] Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System.
[119] Cremers, J. and Houwerzij, M., 'Subcontracting and Social Liability', ETUC/Tilburg University, (Published with the financial support of the European Commission), Brussels 2021.
[120] Proposal for a Directive of the European Parliament and the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final. On 1 June 2023, the European Parliament has agreed on its position on the Directive on corporate sustainability due diligence.

References interviews

Interview 1 Denmark, trade union representative/PHS, date: 16.11.2022

Interview 2 Denmark, trade union representative/construction, date: 17.11.2022

Interview 3 Denmark, trade union representative/construction, date: 24.11.2022

Interview 1 France. Representative of trade union and who is also a representative of prevention experts / construction, 3 November 2022.

Interview 2 France. Representative of organization for risk prevention / PHS. 20 October 2022.

Interview 3 France. Representative of research institute / PHS. 14 November 2022.

Interview 1 the Netherlands, trade union representative/construction, date: September 30, 2022.

Interview 2 the Netherlands, OSH expert – Labour inspection, date: October 5, 2022.

Interview 3 the Netherlands, Health and Safety focal point representative, date: November 22, 2022.

Interview 4 the Netherlands, Health and Safety focal point representative, date: November 22, 2022.

Interview 1 Ireland, trade union representative, date: October 10, 2022.

Interview 2 Ireland, Health and Safety Authority (HSA) representative, date: October 18, 2022.

Interview 3 Ireland, Health and Safety Authority (HSA) representative, date: October 24, 2022.

Interview 4 Ireland, Irish Congress of Trade Unions (ICTU) representative, date: November 7, 2022.

Interview 1 Germany, Representative of Federal Institute for Occupational Safety and Health, date: 2 December 2022.

Interview 2 Germany, Representative of Trade Union (IG Bauen-Agrar-Umwelt (IG BAU)), date: 5 December 2022.

Interview 1 Spain, Representative of "Servicio Doméstico Activo" (SEDOAC) and of the Centro de Empoderamiento de Trabajadoras del hogar y Cuidados de Usera, date: 4 October 2022.

Interview 2 Spain, Representative of the "Asociación Intercultural de Profesionales del Hogar", date: 10 October 2022.

Interview 3 Spain. Representative of the "Asociación de Empleadas de Hogar de Zaragoza", date: 2 December 2022.

Interview 4 Spain, Representative of the Fundación Laboral de la Construcción del Principado de Asturias, date: 14 November 2022.

Interview 5 Spain, Representative of the Labour Inspectorate, date: 21 November 2022.

Interview 6 Spain, Representative of the Labour Inspectorate, date: 22 November 2022.

Interview 7 Spain, Representative of the Trade union (CCOO), date: 30 November 2022.

Interview 1 Poland, trade union representative from the construction sector, 27 February 2023.

Interview 1 EU level, Representative of European Trade union Confederation – construction sector, date: 12 October 2022.

Interview 2 EU level, Expert Health and Safety ETUI – PHS sector, date: 28 November 2022.

Appendix 1: Interview Guide OSH (Generic)

Main research question: How is health and safety at work in a) the construction sector and b) the Personal and Household Services Sector (PHS) regulated in the cases of, the Netherlands, Spain, Denmark… etc.?

Questions:

1. At European level, there are several Directives in the field of health and safety at work. Would you be able to describe the implementation/application process of those EU minimum standards in your country for sector (a) construction b) PHS?
2 Do you think that the transposition of the EU legislation on Health and safety at work in your country and in sector a) or b) has led to greater safety and protection of workers in your country?
3. How is the system of prevention of risks concerning safety and health at work organized in your country?
4. How is the topic of safety and health at work included in collective bargaining (examples of collective agreements/company agreements dealing with health and safety at work rules/ role of workers' representatives in developing and applying safety and health at work standards)?
5. Are there any monitoring systems in place to ascertain safe working conditions and respect of occupational safety and health rules (i.e. Are there effective inspections taking place?)
6. Is there a gap in the protection of the health and safety rights of workers in some sectors in the Netherlands/SP/Denmark…?
6.1 For the PHS sector, given that domestic work is excluded from the scope of the Framework Health and safety Directive, which methods/measures (if any) are used to regulate health and safety at national level in this sector?
7. Are there any forms of employee training on health and safety made available for workers in sector a) or b)? (Either to address language barriers, or to mitigate risks such as handling certain machinery, chemicals, etc.)
8. What sanctions are available in case of a breach of health and safety rules in your country in sector a) or b)?
9. Looking at the daily working environment in sector a) or sector b), what are the main problems/risks that most often occur regarding health and safety?
10. How is liability in case of an accident at work/occupational disease regulated in your country for sector a) and b)?
11. Are there sufficient mechanisms of transparency for the workers in sector a) or b)? Are they well-informed of their rights concerning health and safety?
12. Can we identify and describe "best practices"/"innovative initiatives" (instrumental resources) in the countries under study aimed to improve the protection of workers in sector a) or b) concerning health and safety at work?
13. What has been the situation of workers in sector a) and sector b) regarding health and safety at work during the COVID-19 pandemic?
14. Are there any specific provisions in regulation, collective agreements, workplace policies addressing the gender perspective of health and safety (ie. specific risks for female pregnant women, risks assessment considering specific female health problems, or women who are breastfeeding, or prevention of sexual harassment or harassment based of sex at work)?

15. From your expertise/experience in this field, could you suggest us options for strengthening of health and safety at work rights?

EuSocialCit

European Social Citizenship

Annex: Case Studies in OSH

Authors

Nuria Ramos Martín, UvA

Jesús R. Mercader Uguina, UC3M

Ana Belén Muñoz Ruiz, UC3M

Amanda Moreno Solana

Guillermo García González

Lourdes Sánchez Galindo, UC3M

Alberto Arufe Varela

Caroline de la Porte, CBS

Zhen Im, CBS

Brigitte Pircher, CBS/LNU

Dorota Szelewa, CBS/UCD

Heidi Elung Henningsen, CBS

1. Introduction

In this section, we have conducted seven focused structured case study analyses to examine how the EU acquis on occupational health and safety at work have impacted in terms of available power resources on seven EU member states, namely, Denmark, Ireland, France, the Netherlands, Germany, Spain, and Poland. This chapter explains through several country case studies (applying the power resources project methodological framework)[121] the way these Directives foster effective social rights for workers in the countries under study through legislation and collective agreements. The case studies explore the health and safety conditions and problems that workers face in the two sectors (construction and PHS/domestic work) and evaluate the extent to which workers can effectively access their social rights. This allows for the assessment of how effectively member states have transposed and applied current EU health and safety rules, highlighting best (and worst) practices.

The country reports include information on the situation and specific problematic of each sector (specific implementation problems, existence/functioning or lack of health and safety measures/risks assessment, instrumental resources etc., high incidence of certain safety and health risk, specific risks for each sector, and emerging importance of psychosocial risks).

In this project we are focusing our research in two sectors: construction and personal and household services/domestic work. Comparing the situation regarding occupational health and safety in these two sectors is interesting because the construction sector is highly regulated and there is high involvement of the social partners in safety and health at work. Besides, construction is a male dominated sector while PHS is a female dominated sector and highly de-regulated/informal in many countries. Attention has been paid to the gender dimension of the two different sectors when feasible.

When relevant, the specific problem of the situation of workers in the two sectors regarding health and safety at work during the COVID-19 pandemic is addressed in the country case studies.

Regarding our data, this area is governed by many complex rules, at multiple levels of governance. Due to the extensive scope of the comparative study, the case studies draw heavily on elite and expert interviews. We have tried to validate this data and information as much as possible, but there could be minor mistakes due to the scope and complexity of the research carried out and limited expert knowledge among the team of scholars in the area of occupational health and safety.

[121] Include reference theoretical framework in paper EUSOCIALCIT from Maarten Keune & Mauricio Ferrera.

2 Denmark

2.1 OSH in Denmark Normative Resources - General information[122]

In Denmark, the Working Environment Authority is responsible for ensuring compliance with occupational health and safety legislation which applies in respect of all occupations in Denmark. However, there are certain sectors for which regulation and enforcement thereof have been devolved to other authorities.[123]

The Working Environment Authority assigned tasks are to ensure a safe, and healthy working environment through effective supervision, appropriate regulation, and information. If the Authority finds that occupational health and safety legislation is not being respected, it may impose various sanctions. The Authority also drafts orders and instructions, in cooperation with the social partners. Its headquarters are in Copenhagen, as well as two of its six centres.

Most issues of occupational safety and health are addressed in legislation in Denmark. The duty to control the compliance with that legislation lies mainly on the Working Environment Authority, "Arbejdstilsynet" (a sort of Labour Inspection). Yet, the labour inspectorate does not have many resources[124].

Normative resources- OSH Legislation

The experts interviewed considered that OSH regulation in Denmark is fully compliant with the EU legal framework in this area. In fact, Denmark is a frontrunner in some fields, for instance in the protection against asbestos (limits of exposure). Nevertheless, even when the existing rules are appropriate, in practice they are not always followed. That is not related to the level of the legislative intervention (EU or national), it is due to a variety of different factors, including strong competition and tight working schedules.

According to some of the union representatives the compliance with OSH rules in large companies is higher, since larger companies have more resources, which allows them to develop a plan for a safe and healthy working environment and implementing it in all processes. However, they are also confronted with other factors such as deadlines, a lack of interest, more focus on profits, etc. Also, in large companies, unions see cases of lack of proper control of the implementation of OSH measures resulting in serious breaches and even fatalities, which often affect EU migrants temporary workers. There are of course also companies that are not respecting the OSH rules deliberately. This could for instance happen with foreign companies that are not aware of the Danish regulation and compete in procurement procedures by offering lower prices/offers. This is even the case in large infrastructure projects in Denmark.

[122] For the information on the OSH system in Denmark we have used as a starting point the information provided by the European Agency for Safety and Health at Work on their website. This Agency is a network organisation, with a "focal point" in each Member State: National Focal Points | Safety and health at work EU-OSHA (europa.eu)
[123] The Danish Energy Agency is responsible for supervision of off-shore installations, the Danish Maritime Authority is responsible for supervision of shipping, and the Danish Civil Aviation Administration is responsible for supervision in the aviation sector.
[124] Interview Denmark 1.

The Labour Inspectorate (Working Environment Authority) used to divide companies into three groups. A group that wants to comply with OSH rules and are able to do it. The group that wants to comply with but are not able to do it (which could be assisted in that process) and the last group of companies which does not want to respect OSH rules and they cannot do it[125].

According to the general OSH legislation in Denmark there is a requirement that there should be a health and safety representative in a company when there are more than 10 people employed. There is uncertainty if the general requirement is sufficient. For instance, if a company have a 1000 people employed, there is no requirement of having two health and safety representatives. For some sectors, like in the construction sector, this requirement is stricter. There should be a health and safety representative when you have 5 people employed in a minimum of 14 days on a constructing site. Then, there is another requirement: when a company have more than 35 people employed, it should have a workplace committee. The members of the committee are in charge of the strategical OSH issues.

Normative resources - OSH in collective agreements

Safety and health at work issues are sometimes included in collective bargaining. However, this is not one of the main topics included in collective agreements in Denmark. The reason is that there is extensive detailed working environment legislation in Denmark. This point is discussed with more detailed in the section on the construction sector, drawing extensively on the interview with the representative from the construction sector.

2.2 Enforcement Resources

The main player regarding enforcement of OSH rules in Denmark is the Working Environment Authority. In case of non-compliance of a company with the OSH regulations, the Working Environment Authority (Labour Inspectorate) would be addressing most of these issues. In cases of very serious breaches of OSH legislation and risks for the employees' health and safety the police will deal with the case. But normally, it would be the Authority coming out and addressing the problem if the legislation is not implemented at the workplace. The labour inspectorate in Denmark (connected with the Working Environment Authority) has approximately 700 employees. 400 of them work in the six inspection centres.

The inspectorate organised the inspection of companies with the following procedure[126]:

- Screening: which is a quick review of the working environment at the company with a view to assessing whether it should be subjected to adapted inspection.
- Adapted inspection, in which the Danish Working Environment Authority targets its resources on the companies which have the most hazardous working environment conditions. The inspection is solution-oriented and takes into consideration the enterprises' own efforts to improve the working environment and standards of working conditions in the enterprise. As an element of the adapted inspection, the Working Environment Authority divides the companies into several levels for the purpose of using their limited

[125] Interview Denmark 1.

[126] See Inspection of enterprises - Arbejdstilsynet (at.dk)

resources on the companies which have the greatest needs.

- Detailed inspection takes the form of inspection of problems or problematic areas, including examination of work-related accident and diseases.
- Supplier inspection takes the form of inspection of safety and health for the users of one or more of the suppliers' products.
- Project and counselling inspection, includes inspection of the rights and duties of the project and counselling parties in compliance with the Working Environment Authority.
- Special inspection includes inspection of lifts, boilers, containers, pipeline systems, natural gas plants, risk enterprises and genetics laboratories.

Whether or not they have been selected for inspection during the screening, all enterprises could be eligible for visits by the Working Environment Authority if complaints are made or in case of reporting of an occupational accident. Consequently, the Working Environment Authority is always in a position to inspect a company, even if the company was not selected for adapted inspection.

The Working Environment Authority also carries out rescreening. This means screening of companies which have already been screened but which have not been selected for adapted inspection. The obligation to establish an occupational health service unit will cease after the screening. If the company is under an obligation to be a member of or to establish an occupational health service unit, this obligation will cease after the screening. Companies in sectors which were previously under an obligation to be affiliated with an occupational health service unit are screened. However, companies with a health and safety certificate are exempt from screening because they are able to provide a document showing that they prioritise health and safety at the workplace.

There are issues about the available enforcement resources of the Working Environment Authority to deal with OSH across the sectors, especially problems with self-employed in the construction sector and with migrant workers. The Authority has limited capacity to actually control compliance with OSH rules in some sectors. The lack of sufficient enforcement resources has been an issue for several years due to the limited funding of the Authority. Their funding has only been set for a relatively short amount of years and that has created also problems in terms of stable qualified personnel at the Authority. The inspection work which they perform requires a lot of experience. There are only a limited amount of people in Denmark who have the right set of experience and competencies to address these issues. However, in recent years, many highly qualified employees left the Labour Inspectorate due to the low salaries at that institution[127].

Regarding the functioning of the compliance monitoring system in Denmark, another union representative pointed out that there are often tensions between the unions and the employers when it comes to the Labour Inspectorate. Unions argue that the Labour Inspectorate should have more funding and that they should be able to set higher fines in case of non-compliance with OSH rules. In any case there is a consensus on this issue between "Fagbevægelsens Hovedorganisation, FH" (The Central Organization of the Labour Movement) and "Dansk Arbejdsgiverforening, DA" (Danish Employers' Association). They have agreed on a long-term joint agreement which could facilitate the planning on the monitoring work of the inspection. In practice, however, there are not

[127] Interview Denmark 1.

sufficient resources.

When comparing to the neighbour countries, (Norway and Sweden), Denmark is at a lower level regarding monitoring resources, fines, working environment training and education and compliance with OSH rules. There has been a Danish and Swedish research project called 'Svedan", where the two countries were compared. They have included seven initiatives where Denmark could learn from Sweden in how to deal with OSH and the working environment. One example of this is the experience of the building of the Øresund bridge between the two countries. There was a big difference in the number of work-related injuries between Danish and Swedish employees. On the same working site, the Danish employees had a higher number of accidents. After that, the unions from Denmark started learning discussions with the Swedish labour associations[128].

In case of an accident at work or occupational disease, the liability is dealt with as follows: the formal process would be that the accident is reported on the day or shortly thereafter it is occurred. The accident is registered at the official website. It is registered what happened and at what time and what damages the workers suffered (if any). Unions representatives help their members to fill out the reporting form properly and make sure that they do it even when it is not a serious accident.

According to the legislation in Denmark, the employer is liable for any breach of OSH rules, because he/she is responsible for ensuring a safe working environment and for the work to be conducted in accordance with the regulations on health and safety at work. So, when an accident occurs at work, in principle the employer is liable for it. However, the employees are also obligated to comply with the OSH rules. They are also obligated to point out if there is a breach of the health and safety regulations at a construction site. But it can be difficult for the employees to report on risks of reprisals. Especially for the foreign workers reporting and complaining on OSH issues is difficult. According to an union representative interviewed, if they complain, they are often replaced with other people who are willing to do the job.

The employees' awareness of their rights regarding OSH varies from profession to profession. There are some workers that are much more aware of their rights and also insist very much on relying on them. Then, there are other professions where perhaps the knowledge level is lower, but there are definitely many employees who do not know their rights with regards to accidents at work. The unions consider that Danish employees are better informed about of their rights regarding OSH, but they are not always pointing out when there is a danger or a risk at work. However, with the foreign workers, it is more complicated to communicate and inform them about their rights. They are often not aware that they have certain rights. Unions' representatives consider that that is also due to a lack of education and proper training on OSH issues.

There are different types of sanctions which companies operating in Denmark could face for non-compliance with OSH rules. For instance, there are administrative fines when the company is on breach of well-known OSH rules. According to an union representative interviewed, some of the foreseen fines are too small to have a deterrent effect on the employers to take the risk of not complying with all prescribed OSH rules. However, there are differences in the fines, and they depend on the character of the breach, the risk, and different aggravating circumstances. Factors such as the age of the employee involved (young worker), if there is a risk of death, if the same

[128] Interview Denmark 1.

breach has happened multiple times, and the size of the company will be taken into account for imposing a fine. However, there is a maximum amount for the fine which favours the interest of the large side companies. According to the unions' representatives in those cases the fines should increase. At least to an equivalent to the higher amounts for fines in the neighbour countries which are much higher (e.g., Sweden). In that way company managers would have a stronger incentive to comply with all OSH rules because, otherwise, they will be held accountable for a large amount of money in case of a breach of the regulation.

2.3. Instrumental Resources

In Denmark the Working Environment Authority coordinates the cooperation with the European Agency for Safety and Health and Work and operates under the Danish Ministry of Employment. It is therefore the Focal point contact of the European Agency in Denmark.[129]

2.4 Specific information for construction and PHS sector

A) Construction Sector

The main problems/risks that most often occur regarding health and safety at work in the construction sector, according to the interviewees for the case study on Denmark are:

- frequent muscular skeletal diseases.
- a main risk that often occurs is falling from height; Also common are cutting injuries, and falling objects, objects that fall from above.
- Sexual harassment and harassment based on sex (male dominated sector) and harassment of young apprentices.

In Denmark one of the main players in the construction sector is the Federation of Construction Sector Trade Unions. They represent the main unions in construction and also some smaller unions, such as the unions of the painters, the electricians and the plumbers. They represent seven unions in total and around 90,000 construction sector workers. The Federation agenda goes across the entire construction sector and try to represent where their members cannot. If a certain bargaining issue is targeting only electricians, for instance, then the electricity union will deal with it. But if it there is a topic regarding occupational safety and health across the entire construction sector, then the Federation will deal with it. Occupational safety and health is one of the major bargaining topic for the Federation, including the green transition. The Federation is also involved in European advocacy work. Most of their member organizations are too small or do not have the right capabilities to address European issues. They also have an office in Brussels and deal with EU relevant dossiers and cross-national issues, such as lobbying for stricter legislation on asbestos exposure (see below)[130].

[129] See: https://at.dk/
[130] Interview Denmark 1.

Normative resources in the construction sector

According to the interviewees, the EU OSH directives are implemented properly in the Danish legislation. The perception is that OSH legislation fully complies with the minimum requirements in the European legislation, and often Danish legislation goes far beyond that. For instance, at the moment, unions are working on improving the protection against asbestos, and the Commission has launched a revision of the asbestos at work Directive.[131] One of their main proposals is to limit the exposure to asbestos limit. The new more reduced limit of exposure proposed by the Commission is still much higher than the exposure limit to asbestos fibres already applied in Denmark. However, that does not mean that there is no important impact of the EU legislative framework on OSH. Here opinions of the interviewees differ. Some think that the national legislation on OSH would have been adopted anyway and with higher standards than the EU[132]. Others highlight that there is a clear positive impact of EU legislation. For example, the commission has launched a new strategic framework on Occupational Safety and Health for the years 2021 to 2027. One of the areas where we unions are satisfied is to see action from the Commission on enhancing the prevention of toxins affecting your reproductive system. The new proposals will deal with the exposure to carcinogen. New EU legislation which directly regulate on the toxins or chemicals substances that employees come into touch with daily at work will have an important impact on the protection of workers in the construction sector in Denmark.

The view of the unions' federation representatives is that compliance with occupational health and safety rules varies greatly from construction site to construction site. Some of the union members and some of the construction workers certainly are very aware and some of the employers also. They take occupational safety and health very seriously. In some construction sites they have an entire occupational safety and health organization, there are construction workers elected representatives to deal with OSH matters, and they are involved in the prevention of risk process. In those cases, the employees live up to his or her responsibilities in order to give instructions on how to do the different tasks and how to use protective personal protective equipment. But you also see companies at the other end of the spectrum which go into the completely opposite direction and construction sites where there is no proper compliance with OSH rules at all. The interesting issue in those last cases is that often that lack of compliance often goes hand in hand with a lot of the other problems in those construction sites. So, if there are safety and health issues there, then often there are also issues of underpayment or non-payment of wages, issues with the lack of taxation or tax avoidance. In those cases, there are usually problems with very long chains of subcontractors. All those problems are connected. The unions representatives noticed that when it comes to many of the posted workers in Denmark and working on construction sites, the problems are getting worse in recent years. A recent study of the Federation is showing than in construction sites with mixed workers, the hardest, and the most dangerous tasks are often being given to migrant workers who are sometimes not aware of the proper OSH measures they should take to perform the work.

The conclusion is that awareness of workers of rights and OSH measures and procedures varies a lot from construction site to construction site, but definitely where the least awareness is among

[131] Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (Codified version), *OJ L 330, 16.12.2009, p. 28–36.*
[132] Interview Denmark 1.

EU migrant workers who do not have good language skills. There are a lot of Polish migrant workers and Romanians working in the construction sector in Denmark. In the case of third country nationals (Ukrainians, Albanians, Moldovans, for instance) the lack of awareness and training is even worse. Obviously, the critique for this lack of awareness lies mainly with the employers as it is the employers' responsibility to properly inform and train their workers on OSH measures.

The new reinforced posted workers Directive is an advancement on this issue and the attempt to prevent dualized labour markets with EU migrant workers working in worse working conditions than the domestic workers. Unions welcome the attempts to improve the situation by the new directive. It has been updated in order to try and solve some of the problems with these suboptimal conditions affecting EU migrant workers. The general perception is that the Directives has solved some issues. However, the problem is sometimes the chain of contracts: "if we imagine this as sort of a staircase, I think the higher get up, the staircase the more issues it has solved. I think a lot of the problems with our Polish colleagues have been solved by this. But the further you get down, the less problems are solved. And this is due to the fact that the working conditions are quite rapidly deteriorating in the Danish construction sector, especially for migrant workers."[133]

A crucial task of the unions regarding assisting in compliance with OSH rules is to collaborate closely with the Working Environment Authority and calling them when unions representatives notice issues on OSH at a construction site that is not done properly or if union representatives see a potentially dangerous situation. There is one union in the construction sector (Painters) which have signed a collective agreement with the employers, including a clause that unions representatives can actually address issues of occupational safety and health ("Det fagretlige system"). They do that regularly. That means that unions representatives do not have to go through (the perhaps more cumbersome) process of involving the Authority and they can actually go directly to the court and denounce any issues regarding breaches of OSH rules.

Another problem is that, due to the reduced funds of the Working Environment Authority, often quite qualified professional are leaving their jobs at that institution. That means that sometimes you get inspectors from the Authority who are not specialised in the construction sector. The inspectors perform their tasks the best they can but, newly appointed staff do not have the necessary expertise.

In Denmark in the construction sector there are high numbers of migrant workers. A union representative interviewed mentioned that it is around 15 percent of foreigners working in this sector. In a construction site you can find workers from very different backgrounds. They may not necessarily be protected to the same extent regarding OSH. The enforcement of posted workers Directive[134] is trying to address some of the problems for the EU migrant workers. However, unions still notice practices which could be qualified as "social dumping", i.e. paying lower wages than the national average in the sector, and through which companies in the sector are trying to bypass the legislation. Some employers are going around the enforcement of posted workers directive in many very creative ways. For example, unions are seeing increasingly so-called money collectors, where a staff member of the company will go with the migrant construction worker to the ATM the day

[133] Quote from Interview 1 Denmark.

[134] Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System.

when they get their salary. The employees are asked to withdraw their whole salary and then, hand back a percentage of it to the employer, but with no paper trail. So everything on paper looks fine. "You can say, well the posted worker got the same payment for the same work at the same site, according to the posted workers directive"[135] but there is a malpractice occurring in this case with vulnerable migrant workers who are not in the position to complain[136].

Also, the unions in the sector are aware that many accidents are not being reported. At the moment, they are implementing a research project jointly with Aalborg University focusing on the working environment among the foreigners working in Denmark. Unions know from the findings of the project that they are less likely to report accidents. Some employers are telling them to hide it and cover it up by saying that it has happened outside working hours.

Normative resources and collective bargaining in the construction sector

The main unions in the sector are currently negotiating the new collective agreement for 2023. They are trying to include more provisions dealing with the working environment in the collective agreement. That would facilitate the possibilities for reacting on the unions side. Then, they do not have to go through the process of the Labour Inspectorate or the court system. If they have the OSH provisions implemented in the collective agreement, then, they are able to act faster. That is why unions want to implement OSH rules in the collective agreement. However, there are also many difficulties with that. For instance, it demands that the employees have a broader knowledge about the working environment regulations for them to act on it. Therefore, there is a quite a lot of disagreement of how this issue should be included in the new collective agreements.

In a recent survey organised by that main union in the sector, they have asked their members about the most important topic for them regarding collective bargaining and the highest percentage responded that the working environment is the most important issue. Therefore, unions are aiming to implement more regulation on the working environment in the collective agreement. Unions are in charge of the inspection of the regulations which are included in the collective agreement. In other words, if an OSH measure is included in the agreement, then, it is not inspected by the Labour Inspectorate but by the unions. An additional problem is that sometimes it is not clear if some topics covered by the collective are related to working environment or to other working conditions. For instance, salary due to work-related illness: Is that only a question of salary or is it also a question of the working environment?

Working time is also regulated in the sectoral collective agreement. However, there might be a disparity between the provisions of some collective agreements and the EU Working Time Directive. According to an union representative interviewed there might be some problems with the maximum working hours of workers at the *Femern Belt* and the maximum weekly working time allowed by the EU Working Time Directive. There are many exceptions in the current collective agreement regarding maximum working time periods, due to the fact that employers are always demanding more flexibility concerning working time.

An interesting progress introduced via collective bargaining in the sector is that the social partners

[135] Quote from Interview 1 Denmark.
[136] Interview 1 Denmark

have agreed on a new system improving on the minimum requirements of the OSH legislation which is inspired by the case in Sweden. It includes appointed so-called regional safety representatives. They are able to fill in the gap of lack of a health and safety representative in companies with less than 10 employees. In that way, small companies can have a health and safety representative covered through this system.

Instrumental resources in the construction sector

Regarding the access of workers to proper training on OSH, the training depends on which tasks is the employee performing and what part of the construction sector is he/she working in and what materials the employee is using for his work. In some type of work you would have to get specific courses or certificates in order to operate a crane or do welding or work with asbestos. In other cases, there are not OSH specific training requirements. In any case, unions recommend training on OSH measures for all workers in the sector. Unions are using their sources to educate employees on OSH, especially the occupational safety and health representatives that are elected at the construction site. Unions are very active in training and educating them, so they know how to address possible OSH issues. How to find problems with OSH and how to solve them.

There are also available OSH courses from the public side, public funded courses. The issue is often how to get the workers to take them and how to also explain to their employers why it is a good idea that they follow this kind of training. When it comes to the safety and health at the workplace, the employer has an objective liability and responsibility to ensure that the work is performed on a safely and healthy workplace. So, it is also on the best interest of the employers that the employees are well-trained.

Unions consider that on both sides of the table (employer and employees) there should be proper knowledge on the various risks of working at a construction sites. It is a very dangerous working environment. The number of risks is extensive: working from the heights, lifting heavy material, and working with dangerous machines. You need training to prevent workers getting injured. People who are new to the sector, for instance young people, who are not aware of the risks, are highly exposed. The unions are clearly in favour of them following an introduction course in health and safety at the workplace before they can start working.

One remarkable improvement is that, in the past 40 years, the education level of the employer on OSH issues in the construction sector has increased. For instance, with the scaffold builders' unions they have set a two-year education program. There has also been an increased focus on the obligations of the entrepreneurs. Before they were not that aware of their obligations. It is difficult to establish if the improvements are due to regulations but, one clear example is the EU legislation enhancing the obligations of the entrepreneur. According to the experts, this has increased their awareness.

Another issue where unions have seen an improvement is the drop in the number of occupational diseases. The trend is falling when it comes to those numbers, and unions good practices have contributed to this achievement. Social partners have developed an interesting instrumental resource, the so-called "*Byggeriets Arbejdsmiljøbus*" (Working Environment on Construction Sites Bus). It is a voluntarily collaboration, which is not based on legislation. It is a collective agreement

between 3F and Dansk Industri. It is a sort of a consultative service, and they are driving to inform employees and employers about OSH in Denmark. Many employers are satisfied with this initiative because they can guide them on special cases. Furthermore, they can help employers prevent occupational injuries and diseases.

Another best practice regarding the system of prevention of risk the unions in the construction sector is also implemented via workplace assessments, risk assessments, and chemical risk assessments. This system of preventions is updated when there are new technical developments. For instance, they have just implemented a new risk assessment for working on roofs.

Unions in the sector are also distributing a magazine, where the employers and employees can read about new OSH regulation and different new relevant information for their work. They are printing around 40,000 copies and it is translated to other languages as well, such as English, Polish, and German. These examples reflect the efforts which are made by unions and employers to ensure that EU migrant workers are aware of their rights and that they are familiar with legislation and practices ex-ante, as well as procedures ex-post, if an accident were to occur.

Due to the large number of migrants working in the sector sometimes language skills are also a barrier for proper compliance with OSH rules. The unions are aware of this problem and are promoting the improvement of language skills in some construction sites. There are requirements that you either speak Danish or English in order to work there. For instance, at *Femern*, the company constructing a new tunnel connection to Germany, there is a language requirement that you need to speak either Danish or English or both. In terms of instrumental resources, the main construction federation has prepared a series of podcast on occupational safety and health with eight episodes (some of them in Danish, some in English, some in Romanian and some in Polish). This is an innovative way to reach a broader audience and that the information on OSH reach the migrant workers. Moreover, the unions have noticed that the migrant workers do want to be seen talking to union representatives because they are afraid of the repercussions for their jobs. So, this is a more discreet way to reach them.

A main union in the construction sector have interpreters employed to try to reach the migrant workers in the sector. If they are standing on a construction site and need assistance on that regard they call an interpreter to help them. They recognise that it is a challenge for unions to integrate the foreign workers. Migrants have a low level of integration and they socialize usually with people from the same country. They are often not included in the working environment on the construction sites and that can make them vulnerable for labour exploitation.

Other instrumental resources used by the unions in the sector to try to reach employees is to hang posters and hand out flyers at the workplace and also posters in the supermarkets where unions know the workers will come for purchases because they are located in the housing areas near the construction sites. In the sector there are mechanisms of transparency for the workers facilitating that they can know their rights concerning OSH. Some workers know their rights but, from the unions' perspective, there is potential to increase the general knowledge level[137].

As mentioned above, the use of OSH informative podcasts is an innovative initiative. Other best practices or innovative initiatives to improve the protection of workers with regards to occupational

[137] Interview Denmark 1.

health and safety, specifically for migrant workers, is employing people with the same national background or cultural background, that helps in creating trust and also reaching out to larger networks and communities (i.e., the large Polish community working in this sector in Denmark).

Health and safety at work during the COVID-19 pandemic in the construction sector

During the lockdown time due to the COVID-19 pandemic, in Denmark there was not really a decrease in employment for construction sector workers. They had a lot of work to do. This is both due to initiatives put forward by the government trying to support the construction sector, but also because a lot of people took it as an opportunity to renovate their houses. Therefore, lack of employment was not an issue. Whereas many people in other sectors were confined, the workers in this sector were still working at the construction sites. On the one hand, construction sector workers have definitely been exposed to a greater risk because they kept working during the entire pandemic. On the other hand, much construction work is performed outside, which lowers the risk of infection.

One union representative said that there were no special information campaigns targeted only to construction workers or measures to try and prevent contagion of COVID-19 at the construction sites. However, one representative of another main union in the sector mentioned that union representatives reacted quickly to ensure that the workers had good working conditions during the pandemic. They implemented the general COVID-19 regulations for hygiene, sanitizing, maximum number of people allowed in a portacabin, etc. Furthermore, they reached quite quickly an agreement with the employers regarding OSH measures and the information was distributed among the workers. The new hygienic regulations during the pandemic were implemented quite fast.

B) PHS Sector

Normative resources in the PHS sector

According to previous qualitative studies on the situations of workers in the PHS sector, OSH is a key challenge in Denmark for this sector. Specially the sub-sector of cleaners working in private households are not well covered by OSH protection.[138] This problem is exacerbated by the fact that, according to the available data from the unions, a very high percentage of workers in this sector are female with a migrant background (around 65%) which place them in a very vulnerable position. Moreover, a very serious problem in this sector is also language barriers because workers have problems to understand the information regarding OSH measures.

Employers and unions have tried to show illustrations on those OSH measures instead of written text, and that is helping to some extent but there is still a problem there and those barriers are leading to mistakes and accidents at work. Also, according to an union representative interviewed, there is an increase in the risk of labour exploitation and harassment (including sexual harassment)

[138] Mailand M. and Larsen T. P., (2020), PHS-QUALITY - Job Quality and Industrial Relations in the Personal and Household Services Sector: Country Report Denmark, p. 23-24, Available at PHS-Quality project website: PHS Quality Country Reports - AIAS-HSI - University of Amsterdam (uva.nl)

and a failure in the follow up of incidents. For foreign workers is more difficult to express what have happened at the workplace. Also, the invisibility and isolation of these workers who are providing cleaning services at private homes increases this kind of risks, according to the interview[139].

In principle the Danish Health and Safety Act applies to workers in the PHS sector in Denmark. However, it is difficult to ensure that private households comply with OSH rules on prevention because the services are provided in private homes often without presence of other persons. Also, the inspection of the working conditions of the PHS workers is quite complicated due to that circumstance.

As pointed out by existing studies, cleaning jobs are associated with higher health related risks than other sectors when measured as 'absent due to work accident', 'poor self-reported health', 'health at risk because of work' and 'work affects health negatively.' The main OSH problems at this sector are the physically demanding work and monotonous work tasks that increase the work-related risks.[140] This is confirmed by the interviews conducted, where stress (working under pressure, high work pace, eczema, and musculoskeletal injuries are pointed out as the most problematic OSH risks in this sector.

Research also shows that domestic workers of a migrant background (in particular, cleaners in private households) are more likely to report on poor health and safety and increased risks of experiencing harassment and violence at work.[141] According to existing studies in Denmark up to 42% of domestic workers providing cleaning and personal care for dependent adults in their private home have experienced harassment or violence at work. These figures are considerable higher than other occupational groups.[142]

Other OSH risk which is often reported is that the client requests the domestic worker to use a specific detergent or cleaning toxic products. Even when such products are considered a health hazard and thus forbidden according to the Danish Health and Safety Act, it is difficult, for the reasons explained above, to enforce the compliance of the homeowner with OSH rules in this case.

The situation is even more problematic for home cleaners working as self-employed. The growing numbers of domestic workers providing cleaning services as self-employed via digital platforms operating in the sector or those in the informal part of the sector do not fall under the scope of Danish Health and Safety Act. Therefore, they are completely unprotected from the point of view of OSH. They are only protected if they have a private insurance covering them in case of a work-related accident. This type of private insurance schemes are increasingly becoming mandatory among some digital platforms operating in the PHS sector.[143] That can be considered an interesting instrumental resource to improve the level of protection of workers in the sector.

[139] Interview Denmark 2.
[140] Bådsgaard, K. and H. Jørgensen (2016): *Københavns Kommunes indsats mod social dumping- målopfyldelsesevaluering*. Aalborg: Aalborg Universitet, Carma.
[141] Arnholtz, J. og Hansen, N.W. (2019): *Polonia i København: Et studie af polske arbejdsmigranters løn-, arbejds- og levevilkår i Storkøbenhavn*. LO- dokumentation, København: LO.
[142] Andersen, L. H. and T. B.-S. Christensen (2020): Prevalence and consequences of Violence on the job hit females in healthcare provision hard. Study paper 147. Copenhagen: Rockwool Foundation.
[143] Ilsøe, A. and T. P. Larsen (2020): Digital platforms at work – champagne or cocktails of risks. In A. Strømmen-Bakthtiar and F. Vinogradov (eds): *The impact of the sharing economy on business and society*. London, Routledge: 1-20.

Instrumental resources in the PHS sector

Danish unions, employers' associations, and cleaning companies have developed a series of pamphlets and guidelines on how to handle the main OSH specific risks, but, according to recent qualitative studies, it is often more difficult to inspect and monitor compliance in private households, especially if the employer is the private household than a cleaning company.[144]

In the more formal part of the cleaning sector, according to an union representative interviewed the employers are making sure that their employees are getting the right education/training on OSH before they start working. They know which cleaning products are the most damaging and they know which are gentler. A lot of companies have started to use neutral soaps, preventing allergies and other health problems and providing the required protective equipment stated in the directives. However, if employees do not follow the instructions, the only possibility the companies have is to sanction the employees with written warnings.

Enforcement resources in the PHS sector

According to the union representative interviewed, the work of the Labour Inspectorate in the sector (formal part of PHS cleaning services) has been satisfactory in the last years. Due to fact that they have received more financial resources, they have included specific sectors, including the cleaning sector. They have collaborated with 3F and other trade unions, and they have visited more workplaces to inspect the working environment. The labour inspectorate has helped a lot on ensuring that cleaners are using the right equipment, for instance, the right wagons, cleaning products, and the right mops.

2.5 Gender Dimension – general perspectives for both sectors

In Denmark, there are specific provisions in regulation and collective agreements addressing the gender perspective of health and safety (ie. specific risks for female pregnant women, risks assessment considering specific female health problems, or women who are breastfeeding, or prevention of sexual harassment or harassment based of sex at work).

Construction is a very male dominated sector. There are several historical reasons behind this issue but a main reason is that many of the tasks performed are quite physical. But more and more women are actually joining work at the sector. At the painters' union is almost 50/50 with regards to men and women. Thus, in some sub-sectors of construction there is a clear increase in the female workforce. Being a male dominated sector also brings some issues regarding discrimination against women, but also towards young apprentices. The last actually goes both towards men and women. Unions are aware of many cases of harassment against the young apprentices. However, according to the statistics, there is low reporting of these cases. Discrimination and harassment cases ends up in court sometimes, but often they are addressed through an arbitrational system. In the last years, the unions are also working more on prevention of sexual harassment at work. The ministry has demanded the social partners to pay more attention to this topic. Some of the member

[144] Mailand M. and Larsen T. P., (2020), PHS-QUALITY… op. cit., p.24,

organizations of the main construction federation address this issue of harassment at work with campaigns to raise awareness. For example, "*Dansk Metal*" published an issue of their magazine dealing with prevention of sexual harassment at work on May 2021.

There are few regulations addressing the OSH specific gender problems. There is regulation protecting pregnant workers and exposure to chemicals. At the moment, the unions are in the process of formulating 10 or 12 new rules about pregnancy and work. On the one hand, the employers are quite reluctant to implementing new rules. On the other hand, the employers have asked the unions to create additional material on women at work, because they want to attract more women to work in the construction sector.

3 Ireland

3.1 OSH in Ireland: Normative Resources - General information[145]

In Ireland, the rules on OSH are regulated mainly by the Safety, Health and Welfare at Work Act 2005 (the "2005 Act").[146]

Other legal instruments regulating occupational health and safety at work are:

- Chemicals Acts 2008 and 2010[147]
- Chemical Weapons Act 1997[148]
- Organisation of Working Time Act 1997[149]
- Safety Health and Welfare (Offshore Installations) Act 1987[150]
- Safety in Industry Act 1980[151]
- Dangerous Substances Act 1972[152]
- European Communities Act 1972[153]
- Factories Act 1955[154]

There are also other instruments supporting the transposition of the EU Directives on occupational health and safety at work, for example, the revised Code of Practice (Chemical Agents & Carcinogens) from 2021 or the Biological Agents Code of Practice from 2020.[155]

In Ireland the Health and Safety Authority (the "HSA") is the main organisation dealing with occupational health and safety at work. The Authority was established under the Safety, Health and Welfare at Work Act 1989 (the "1989 Act"), which has since been replaced by the Safety, Health and Welfare at Work Act 2005.

Additional functions have been conferred on the Authority since then under the Chemicals Act 2008 and 2010, and other legislation. In 2014, the Irish National Accreditation Board (INAB) was included under the Authority's functions.

These are the tasks included under the mandate of the HSA:

---

[145] For the information on the OSH system in Ireland we have used as a starting point the information provided by the European Agency for Safety and Health at Work on their website. This Agency is a network organisation, with a "focal point" in each Member State: National Focal Points | Safety and health at work EU-OSHA (europa.eu) See further information on the OSH legislation in the Netherlands at the ARBOPORTAAL: Arbowetgeving (Arbowet) | Arboportaal See for the English version of the legislation: Legislation - TNO Arbo in Europa

[146] Safety, Health and Welfare at Work Act 2005

[147] Chemicals Acts 2008 and 2010

[148] Chemical Weapons Act 1997

[149] Organisation of Working Time Act 1997

[150] Safety Health and Welfare (Offshore Installations) Act 1987

[151] Safety in Industry Act 1980

[152] Dangerous Substances Act 1972

[153] European Communities Act 1972

[154] Factories Act 1955

[155] See Codes of Practice - Health and Safety Authority (hsa.ie)

- To regulate the safety, health and welfare of people at work and those affected by work activities.
- To promote improvement in the safety, health and welfare of people at work and those affected by work activities.
- To regulate and promote the safe manufacture, use, placing on the market, trade, supply, storage and transport of chemicals.
- To act as a surveillance authority in relation to relevant single European market legislation.
- To act as the national accreditation body for Ireland.

The Framework Directive on Occupational Safety and Health at work Directive 89/391/EEC (the "Framework Directive") was implemented by means of the 1989 Act, which was introduced the same year as the European Framework Directive, and which broadly followed it.

As an interviewee pointed out, before 1989, in Ireland there was only legislation dealing with health and safety regarding very restricted workplaces (e.g., in factories). This changed with the 1989 Act, which really contained all of the main elements of the Framework Directive transposed into Irish law. The 1989 Act was updated in 2005; the prevailing legislation currently in Ireland is the 2005 Act, which follows the Framework Directive very closely. As the interviewees explained, this is the primary piece of legislation, which applies to every employee and employer and covers every single sector. It is also supplemented by regulations under that Act that pertain to particular sectors or to particular categories of workers, which are called the General Application Regulations and are updated periodically.

Concerning how the system of prevention of risks regarding health and safety at work is organised, according to the information provided on the interviews, in Ireland the whole basis of the legislation is a risk analysis model. It is based on the identification of risks in the workplace, assessment of the same and application of the hierarchy of controls model. This very simple model is applied in all sectors and for all risks; not only for physical hazards, but also technically for psychosocial risks, for example, as noted on the interviews.

In the interviews it was stressed out that the legal responsibility for assessing and identifying those risks lies with the employer; it is down to the responsibility of the employer to ensure the safety in the workplace and to comply with the restrictions within the legislation. There is also a requirement to consult with workers regarding this task.

As mentioned by the interviewees, the HSA is required to produce an organisational strategy in terms of Health and Safety at Work every three years. To this end, the Authority consults all their key stakeholders right across the sectors regarding the issues that might be arising in the various sectors. In addition to these consultations, the Authority also analyses data and statistics on accidents and hazards. Based on all this information, the Authority picks up key areas or key hazards within different sectors for the purposes of setting up its strategy. As an example given by an interviewee, concerning the construction sector, working at height constitutes a significant issue on which the HSA has a constant focus within its strategy.

As declared on the interviews, this three-year strategy is reflected in the Health and Safety Authority's Strategy Statement -which is subject to the approval of the government and made available on the

HSA's website-, where key aspects considered are, among others, to regulate (through legislation, inspection, surveillance, and enforcement), to promote and to influence through partnerships and collaborations.

The interviewees also explained that, each year, the HSA sets out a programme to deliver the said three-year strategy; this is called the annual Programme of Work, also subject to the approval of the government and available on the HSA's website. In this Programme, the Authority identifies the specific actions and measures to be implemented within the various sectors with regard to the strategy priorities. A key part of this Programme is to specify the number of inspections to be held as part of the Authority's enforcement task.

Regarding any collective bargaining on health and safety, the interviewees indicated there is not any on this subject. In this sense, they pointed out that the 2005 Act is the primary piece of legislation that applies right across all sectors and it contains the minimum standards that are required for employers to adhere to. In this regard, although Irish legislation provides a legal obligation on employers to consult with safety representatives (who are employees elected or selected to consult with, and make representations to, the employer on safety, health and welfare matters), however, in light of the information provided on the interviews, this consultation is not carried out within the framework of collective bargaining.

Notwithstanding the above, an interviewee noted that the HSA is a tripartite organism and work on a tripartite arrangement where there are representatives from the employers, from the employee section and the Ministry. This implies that every action or decision of the Authority in terms of regulations, guidance, information, etc., will be jointly agreed among these three parties.

3. 2 Enforcement Resources

As mentioned above, the main player regarding enforcement of OSH rules is the HSA. Their work is aimed at bringing about a permanent change of culture regarding occupational health and safety at the workplace.[156]

The Health and Safety Authority follows two main strands. Firstly, to organise activities which can enhance safety and health performance and, secondly, to be the institution in charge of enforcing safety and health legislation where there are problems with compliance.

According to the information provided on the interviews, the monitoring of safe working conditions and respect of occupational safety and health rules by the HSA is carried out through its Programme of Work, which specifies the number of inspections the Authority plans to undertake each year.

The inspection work carried out by the HSA is currently criticised (according to the interviews conducted) in two ways. First of all, because of the low number of inspection visits that have been done in the overall calculation in the recent years, even when there has been a significant decrease in the number of total OSH inspections carried out by the HSA inspectors per year. In this regard, the HSA maintains that it tries to focus its inspection resources and enforcement powers where there may be significant issues that need to be addressed, but it also aims to have a programme of inspections

[156] See further information on the HSA website: http://www.hsa.ie/

in nearly every activity sector. Nevertheless, although there are frequent inspections held in such known as “high risk” sectors (construction, agriculture or the medical and healthcare one), some interviewees stressed out that it has been argued that there are other sectors in which very few –or even none- inspections have been undertaken in the last years.

Secondly, according to some of the interviewees, this inspection work has also been criticised for being too soft. Interviews argued that there is a higher interest of the HSA in providing guidance and assisting the employers rather than in implementing forceful action against the illegal practices performed by them.

In addition to these two issues related to inspection visits, another shortcoming has been pointed out by the interviewees regarding the courts’ prosecution of health and safety infringements. According to some interviews, breaches of OSH regulations are not usually judged with enough seriousness. Employers are often given just a warning rather than having a high economic fine imposed or a criminal punishment. Despite this, some positive changes have been observed in this regard in recent years, due to, perhaps, a higher awareness of the relevance of health and safety at work.

Although the 2005 Act covers all workers and all activity sectors, some of the interviewees mentioned that the few inspections in some sectors leads to a lack of knowledge of whether the health and safety rights of the workers are actually being correctly protected. In addition, one of them pointed out that there has been a huge reduction in the number of safety representatives that are actually in place in many sectors. In this regard, although there is not any legal requirement to have a safety representative in the workplace (except for the construction sector), there is a right of the employees to appoint one. Nevertheless, this same interviewee noted that the general lack of knowledge about this role and the low interest in assuming it has recently made it challenging to find workers appointed for this position. Given this situation, this interviewee stressed out that both the Irish Congress for Trade Unions (ICTU) and the HSA are collaborating in launching a campaign for the promotion of an increase in the number of safety representatives. Therefore, despite the low number of inspections in some activity sectors, the appointment of effective safety representatives can contribute to greater awareness and protection of safety in workplaces.

Regarding training on health and safety, the 2005 Act sets out the general obligation of the employer to provide information, instruction, and training to the employee. In specific, the worker will need to receive the information, instruction and training that may be necessary to carry out his activity. In addition, according to the information gathered from the interviewees, for each sector there may be specific regulations that stipulate different types of training that are required for employees depending on the activity. The risk assessment is a key factor in this regard; whether there is, for example, a risk on manual handling, then it automatically follows that the employee must receive manual handling training, and, likewise, for any other activity that might be done.

With regard to the sanctions that may be imposed in case of a breach of health and safety rules, the interviewees explained that there are different levels of severity depending on the specific infringement. Thus, within the framework of an inspection visit, inspectors may just issue verbal guidance; they may also give a written requirement to deal with a particular problem within a specific deadline, depending on the nature of the problem identified; or they can even stop an activity or machine, for example, if they think its continuation may constitute a risk for the safety of any person.

As mentioned on the interviews, inspectors may also prosecute the duty holder of a work accident or occupational disease within the court system. This could lead to the responsible being sanctioned by a court with the application of the fine or penalty that may correspond according to the legislation (although, as explained before, it has been sometimes criticised the smoothness of courts when judging infringements on health and safety issues). In this regard, it was said on the interviews that it is within the judges' discretion to make the penal assessment in respect of monetary sanctions to be applied against the company. In the most serious cases the person held accountable could be eventually condemned to a suspended sentence or even a prison sentence. Suspended sentences put the guilty fellow on warning that in case of a new infringement within a specific deadline, he could be effectively put into prison. Nevertheless, some of the interviewees remarked that, so far, there has not been in Ireland any sentence that effectively condemned to prison in the context of an infringement of the health and safety legislation.

3.3 Instrumental Resources

The Health and Safety Authority (HSA) is the Focal point on occupational health and safety in Ireland.

In addition to enforcement, as declared by the interviewees the HSA also tries to promote health and safety and influence the stakeholders through the delivery of guidance and advice, the organisation of seminars, publications, education, etc.

One of the interviewees who is a HSA representative stressed that there are many resources available on the HSA's website for the purposes of transparency on health and safety issues. He highlighted that the Authority offers a wide variety of information on this matter, along with sectorial guidance, e-tools, and e-learning.

Notwithstanding the above, it was also pointed out that there could still be a low level of knowledge and awareness on health and safety at the workplace, at least by the workers, given the general lack of engagement of them with this website. In addition to this, the low level of safety representatives has been pointed out as a reason why workers are not being properly informed about what their rights on health and safety issues are.

3.4 Specific information for construction and PHS sector

A) Construction Sector

The construction sector has historically been one of the sectors with the highest incidence of fatalities and injuries. Due to this fact, as explained by the interviewees, right after the implementation of the 1989 Act, construction employers, unions and the State initiated a project to try to reduce the number of fatalities in the sector. Within this project, there was a specific focus on training safety representatives, particularly on the construction sites, and on changing the culture amongst workers in the sector through education and training (regarding the wearing of PPE, hard hats and boots). This safety training was carried out using mobile training trucks that went on site, and workers were legally obliged to attend at least one day's training on health and safety issues.

In the view of the interviewees, this training project constituted a hugely successful joint venture between employers, unions, and workers, and it quite significantly changed the culture and the general consciousness of OSH, and it led to a decrease in the number of accidents.

In view of the above, the interviewees consider that the transposition of the EU legislation on Health and Safety at Work did truly lead to greater safety and protection of workers in the construction sector, given its hugely important contribution in reducing accidents and fatalities at work, although it is still considered a high-risk sector.

Within the construction sector, according to the information provided on the interviews workers usually report incidents, defaults and concerns around health and safety directly to their supervisor, who must act on them. Whether there is not any action by the supervisor, the worker can make the report to the safety representative on the site. After receiving such report, the employer would proceed with the risk assessment for the purposes of determining how and when to address the problem.

There is a legal obligation to have a safety representative appointed in any construction site with more than 20 workers.

Regarding training on health and safety, in addition to the general obligation set out in the 2005 Act that requires the employer to provide information, instruction and training to the employee, the interviewees explained that, within the construction sector, the regulations that apply stipulate different types of training that are required for employees. The first one is called “Safe Pass”, which is a mandatory one-day health and safety awareness programme, required for every construction worker that goes on to site.

According to the information gathered, along with the Safe Pass training there are other categories of training that are also statutory within the construction sector. In this regard, construction regulations stipulate different degrees of training.

As explained on the interviews, the “SOLAS” organism, which manages both the Safe Pass programme and many other training programmes, also provides -whether necessary- tutoring and translation services on these trainings to immigrant workers that could be affected by a language barrier in this respect.

In construction, being a high-risk sector, there are lots of activities that entail a risk. From a statistic perspective, the most significant one is working from heights (ladders, scaffolding, etc.). As noted by the interviewees, in the last years, out of all the fatalities in construction, a major part has been falls from heights. Other activities that entail risks are movement of equipment around the site, loads being lifted from one party to another, manual handling, etc.

Notwithstanding the aforementioned, the main problem on safety within the construction sector, according to the interviewees, is that companies are not providing safe systems of work. Although they are required under the 2005 Act to issue a safety statement, they are often not implementing it in practice.

According to the information gathered from the interviewees, in case of a work accident or occupational disease, the liability rests with whoever the duty holder may be in terms of occupational safety and health legislation. There are various categories of duty holders called out on the 2005 Act.

In the construction sector, liability could be claimed against the employer, the employee or the self-employed person (being their own employer). Also anyone providing products or substances into the place of work, or anyone who had designed or put an equipment on the site; even the client or person who is actually commissioning the project. All these persons have specific obligations because of which they could be eventually held liable for a work accident or an occupational disease, as the interviewees pointed out.

According to the information provided on the interviews, when an accident takes place, there is an investigation process for the purposes of determining its cause, which is carried out by the HSA investigators (although the Irish police service –known as "*Garda Síochána*"**-** may also carry out investigations where there have been fatalities, issuing a report and agreeing with the HSA about whether carrying out prosecution or not). The investigation will determine the root cause of the accident and any contributing factors, in addition to whether there may have been negligence of the duty holders or not, and duty holders may be prosecuted before the judicial courts for liability resulting from a work accident or occupational disease.

For the purposes of pursuing compensation for personal injuries, one of the interviewees explained that victims of the accident or disease may opt between bringing proceedings before the judicial courts system or submitting a claim before the Personal Injury Assessment Board (PIAB), which is the Government body that makes personal injury awards. The latter constitutes a different parallel system which allows a faster and less expensive process for compensation claims for personal injuries in comparison with the long and expensive legal ones before the courts. For this reason, as this interviewee noted, compensation claims in case of a work accident or occupational disease have recently started to be moved from the judicial court system to this parallel system (although there is still the right to opt between these two systems).

The PIAB applies the book known as "Book of Quantum", which sets up the specific award the victim will receive depending on the injury suffered.

Despite the shortcomings and weaknesses in health and safety in the construction sector, there are still many remarkable practices and initiatives for the improvement of the workers' protection. One of them, which was launched in 2005, is the Safe System of Work Plan (SSWP), whose objective is –as explained on the interviews- to help management and workers to identify hazards associated with construction work and to eliminate or reduce risks before work starts. It consists in a methodical checklist of health and safety that specifically uses pictograms, which implies an important step forward for the understanding of health and safety subjects by migrant workers who do not have English as their principal language.

Another significant initiative would be the implementation of the tool known as BeSMART, which is a free online tool that enables employers to generate their own workplace risk assessments and safety statement –which are key requirements under the 2005 Act-, while being guided through the entire risk assessment process. According to one of the interviewees, this tool has got international recognition right across the European Union and beyond.

There is also a positive practice for the workers' protection in the construction sector which is a system known as "Toolbox Talks", which basically consists in safety meetings that promote a two-way flow of communication between the employer and the employees regarding all the health and safety issues.

According to the HSA, over the past ten years (2012 – 2021) there were 44 fatalities in the construction sector arising from a fall from height. In the same ten-year period (2012 – 2021) there were 1,969 construction non-fatal injuries reported arising from falls. 808 of these were falls from height. In 2021, 10 people lost their lives working in the construction sector in Ireland. Of these fatalities, seven were specifically linked to working at height.

On October 2022, the HSA launched a two-week nationwide inspection campaign in the construction sector focusing on the dangers of working at height. This two-week campaign has targeted both small and large construction sites across Ireland. During this campaign, HSA Inspectors have been providing information and making employers aware of resources available such as the free short on-line courses available on the HSA e-learning portal hsalearning.ie and BeSMART.ie, the online safety management and risk assessment tool which can be used to develop a safety statement, risk assessment or construction stage safety and health plan for this sector.

To ensure a safe working environment employers and self-employed should:

1. carry out risk assessments for work at height activities and make sure all work is properly planned, organised and carried out by a competent person;

2. plan for work at height activities by risk assessing and using the risk assessment method statement template and guidance available at HSA.ie. Work at height must be properly planned, organised and carried out by a competent person;

3. follow the general principles of prevention for managing risks from work at height taking steps to avoid, prevent or reduce risks;

4. choose the right work equipment and select collective measures to prevent falls (such as guard rails and working platforms) before other measures which may only reduce the distance and consequences of a fall (such as nets or airbags) or may only provide fall-arrest through personal protection equipment.

Referring to the aim of this campaign, the Assistant Chief Executive of the HSA said that is highlighting to employers and the self-employed that working at height has added risks and therefore, there is a need for extra precaution and advance planning. “We urge employers and the self-employed to carry out a risk assessment which includes a careful examination of what harm could be caused from working at height with a view to taking the necessary steps to manage the risks. This may mean avoiding the activity altogether, or, where this is not reasonably practicable, carrying it out in a safe manner using the appropriate work equipment.”

Other interesting instrumental resources of the HSA for employers and self-employed in the construction sector include: the HSA’s free online safety management and risk assessment tool[157] and the Guidance on safe working at heights available on the HSA website.[158] Also, interesting instrumental resources provided by the HSA are the free short on-line safety courses are also available on their website.[159]

[157] See www.BeSMART.ie
[158] See https://www.hsa.ie/eng/Topics/Work_at_Height/
[159] https://hsalearning.ie/

Advertising campaigns are also instrumental resources used by the HSA. An interesting example is the HSA advertising campaign 'Your fall only begins when you hit the ground' on the dangers of working at height in the construction industry launched in 2022. This media campaign was developed for both online and radio broadcast.

Finally, one of the interviewees remarked that another positive initiative within the construction sector –which is currently underway- would be that the HSA has succeeded to identify the promotion of safety representatives as a strategic priority within its current 3-year strategic framework (until 2024).

Concerning the spread of the COVID-19, during the pandemic there were very low levels of infection within the construction sector, according to the information provided on the interviews. The interviewees noted that many sites within this sector were closed down; only certain construction projects that were deemed to be essential in the national interest received permission to continue (e.g., a major new children's hospital). In those sites were activity continued, there were COVID representatives elected. They were trained around the responsibilities on COVID before they took on the role.

B) PHS Sector

The PHS sector is also covered by the 2005 Act, in the same way as any other worker in conventional employment. Nevertheless, this is certainly a more complex area. As per the information provided on the interviews, there have been some campaigns and movements (e.g., by the Irish Congress for Trade Unions, ICTU) demanding a better protection of domestic workers' rights, which has resulted in a Code of Practice and the confirmation of many employment rights. Despite this, there is still a major lack of transparency in this sector; especially, because it is not very much unionised (this sector has indeed a very low level of union organisation).

Technically, all employees from all activity sectors are protected by the health and safety legislation, but –as stressed by the interviewees- within the PHS sector there are serious difficulties to monitor the correct compliance with such legislation, given the constitutional right that everyone has to keep the privacy of their home in a domestic primary dwelling. This constitutional right would not make legally possible for the HSA to carry out an inspection visit in the workplace –the employer's home- without the express authorisation of the same (only whether there would be a serious infringement related to the worker of which the HSA would have knowledge and provide evidence of, in which case it could request a court for an order to enter into the house without the employer's permission, as one of the interviewees explained. Although this is something that, according to this interviewee, has not ever occurred). Therefore, as per the information collected from the interviews, there have not been reports regarding issues raised by domestic workers specifically related to health and safety – just indirect issues, such as the ones connected with the Working Time Directive.

Regarding training on health and safety, apart from the general obligation set out in the 2005 Act that requires the employer to provide information, instruction, and training to the employee, the interviewees mentioned that there are not any other relevant statutory training requirements for domestic employees.

Within the PHS sector, although the employees are generally exposed to a much safer environment compared to other sectors (such as the construction one), they are more affected by psychosocial risks, in addition to manual handling risks, as pointed out in the interviews. A specific problem are the long hours of work that have been traditionally carried out within this sector. There is a link to health and safety in terms of stress and tiredness, which may contribute to an accident.

As a remarkable initiative within this activity sector is the code of practice for domestic workers (the "Code of Practice for Protecting Persons Employed in Other People's Homes"). Although this Code is mainly focused on general employment rights, it also refers to OSH rights.

3.5 OSH and COVID-19 situation

When the COVID-19 pandemic started, the HSA (along with other public organisms) published a protocol named "Work Safely Protocol", which was a framework on health and safety during the pandemic. It contained different rules based on public health advice to stop the spread of COVID-19, such as two-meter social distancing, hand hygiene, etc. This first Protocol (which was intended for those people considered essential workers during the pandemic) evolved throughout the pandemic; e.g., once the restrictions were starting to be lifted and people could come back into the workplace, it was transitioned into a "Return to Work Safely" Protocol.

In addition, the HSA built in, as part of its OSHA inspections, some checks in relation to compliance with its Work Safely Protocol.

As noted in the interviews, this HSA's Protocol did not include any specific-sector guidance; just broad rules that could apply to all sectors. For this reason, within some sectors (such as the construction sector) a specific guidance was brought out, which was run in parallel with the HSA's Work Safely Protocol.

Within the PHS sector, there is not much data available on the situation of workers during the pandemic.

3.6 Gender dimension of OSH

Concerning the gender perspective of health and safety at work, there are indeed regulations in Ireland on some specific risks only affecting women, such as hazards on pregnant women or on women who are breastfeeding. These subjects, however, are addressed from a general approach, not specifically for any sector. All female workers across all industries have the same coverage and entitlements concerning the referred hazards, regardless the activity sector. In any case, the construction sector in specific has not traditionally had a high number of female workers, although recently an opposite trend is starting to be observed in this regard, according to one of the interviewees.

4 The Netherlands

4.1 OSH in the Netherlands: Normative Resources - General information[160]

In the Netherlands, OSH is regulated in the Working Conditions Act (*Arbowet*),[161] the Working Conditions Decree (*Arbobesluit*),[162] and the Working Conditions Regulations (*Arboregeling*).[163]

According to the abovementioned OSH legislation in the Netherlands companies are obliged to invest in occupational health and safety and risks prevention. The Working Conditions Act (*Arbowet*) establishes procedures aimed at obtaining results through prevention.

The most important aspects of the OSH legislation in the Netherlands are the following:

• Employers are obliged to guarantee that workers can perform their work in an environment healthy and safe. The employer must provide the worker with sufficient instructions as well as the necessary training on, among other aspects, OSH risks within the organization and how to deal with these risks.

• Each employer must prepare an action plan that reflects the policy of the company in occupational health and safety, including the psychosocial risks.

• Employers are required to carry out a risk assessment (in Dutch: RI&E) that contemplates the occupational risks for the health and safety to which workers are exposed. They must also draw up a detailed action plan with actions to deal with these risks, along with a timetable. The risk assessment does not have to be updated annually, but it must be modified if, for example, working methods change or if new risks appear.

• The risk assessment must be reviewed and certified by an expert in occupational health and safety or by a health and safety service (*arbodienst*), except for companies with less than 26 workers. This certification can be provided using internal resources of the company regarding OSH or can be commissioned to an external organisation.[164]

• Employers with fewer than 26 workers may use a sectoral instrument for risk assessment. Currently, there are more than 170 of these instruments for the evaluation of risks recognized by the social partners in each branch of economic activity.[165]

---

[160] For the information on the OSH system in the Netherlands we have used as a starting point the information provided by the European Agency for Safety and Health at Work on their website. This Agency is a network organisation, with a "focal point" in each Member State: National Focal Points | Safety and health at work EU-OSHA (europa.eu) See further information on the OSH legislation in the Netherlands at the ARBOPORTAAL: Arbowetgeving (Arbowet) | Arboportaal See for the English version of the legislation: Legislation - TNO Arbo in Europa

[161] *Arbeidsomstandighedenwet*, applicable from 20-05-2022, Stb. 2022, 76 and Stb. 2021, 549

[162] *Arbeidsomstandighedenbesluit*, Stb. 2022, 501

[163] *Arbeidsomstandighedenregeling*, applicable from 01-01-2023, Stcrt. 2022, 34933.

[164] See overview of OSH certified services in the *SBCA (Stichting Beheer Certificatie Arbodiensten)* website: SBCA

[165] *Digitale RI&E-instrumenten: brancheorganisaties aan de slag!, Handleiding voor brancheorganisaties, Steunpunt RI& instrumenten* of the Labour Foundation, See: www.rie.nl

• The works council (*ondernemingsraad*) or, in small companies, the representative body of the workers must agree with the occupational health and safety policy proposed by the company. If there is no works council or other representative body of the workers, the employer should consult with the relevant workers. The Works Council Act (WOR) and several safety and health legislation provisions attribute clear powers to the works council in the field of OSH. In some areas, these legal powers go further than the minimum requirements set by the Framework Directive 89/391/EEC and the Directive 2002/14/EC on consultation and information on that regard. In particular, "works councils have a right to veto proposals by the employer to instigate safety and health measures in the company." [166]

• Each company must appoint at least one of its workers as "prevention worker", who is in charge of health safety in the workplace. In the case of companies with less than 26 workers, it is the employer who can carry out this task. Also, an emergency assistance (*BHV)* is mandatory in each company. In an emergency, there must be designated persons in charge who are sufficiently trained to respond to these situations and assist other workers and visitors of the company. Employers must ensure that these persons are trained adequately and, although they can perform these tasks themselves, there must always be at least one other worker who can be in charge of these tasks when the employer is absent.

• Each employer must have a contract with an occupational doctor or with a health and safety service (*arbodienst*) to carry out some specific tasks, such as periodic health controls (*PAGO*) and support for workers who cannot work due to illness.

• In the Netherlands, many sectors have established what has been called "Health and Safety Catalogues", with tailor-made solutions for the sectors. These catalogues and solutions are approved by the Labour Inspection as main guidelines for working conditions within that sector.

• In the Netherlands the employer is primary responsible for the occupational health and safety policy. On the basis of art. 12 WCA employers and employees' representative should cooperate on OSH and try to reach agreements on working conditions according to Article 27 of the Works Councils Act.

The general impression of all interviewees is that the General Framework Directive, the working time Directive, and the pregnant workers Directive have been properly transposed into the national legislation in the Netherlands. The risks assessment system is also well regulated and is an advanced system in European comparative terms, specifically for the cases of SMEs (25 or less employees) which can easily use the pre-arranged available OSH packages (specific branch risk inventory and assessment) developed in many cases by the branches organizations. Despite the availability of those OSH packages, it is sometimes difficult, (especially for small and medium-sized companies), to find appropriate solutions to health and safety problems at work. It was also mentioned by the OSH expert interviewed that many of those packages are not high quality.

4.2 Enforcement Resources

[166] See Popma, J. and van Lammeren, B., 'Worker participation in the management of occupational safety and health — qualitative evidence from ESENER-2 Country report – the Netherlands', European Risk Observatory, European Agency for Safety and Health at Work, (2017), p. 68.

The Inspectorate SZW is responsible for enforcing the legislation on OSH in the Netherlands. The inspector can enter the premises at all times. However, most of the inspections are being announced beforehand. During the inspection the labour inspector also wants to speak with members of the Works Council[167] and inspect the company buildings or working site. The member of the labour inspection interviewed explained that the labour inspector asks normally for the risk inventory and assessment before performing an inspection. During the visit, the labour inspector reviews relevant information such as the risk assessment, the plan of action, and also the contract with the Occupational Health Service. Nevertheless, the inspectors go sometimes unannounced in case that they suspect that there is something wrong or there is a serious complaint about a company.

The OSH expert interviewed mentioned that the training of works council members regarding OSH could be improved and that sometimes works council members report to the inspectors that, when an inspection is announced, the company try to prepare, clean everything properly before the inspector comes to give a good impression and that that is not always the reality of the actual working conditions at the workplace.

In Article 9 of the Working conditions Act[168] is stated that when you have a serious work accident in your company that has to be reported to the labour inspection but there is no such a provision concerning occupational diseases. This is a complicated matter that, according to the OSH expert interviewed, needs more attention. Occupational diseases cases must be reported only to the National Center for occupational diseases, and they have only an anonymized overview of the number of cases of occupational diseases per sector but not per company. The problem is that company doctors have to report occupational diseases but often they do not do that. So, regarding this issue, there is a serious problem of under reporting.[169] This is especially problematic when it concerns use of carcinogenic substances at work and there is a case of occupational cancer. This should be reported to the competent authority.[170]

In terms of resources, the capacity of the labour inspection in the Netherlands is among the countries with a lower number of labour inspectors per company. Some years ago, the Netherlands was in breach of the obligations according to ILO Convention 81 regarding this issue.[171] However, as an effect of the ILO recommendations on this issue, in the last years the number of inspectors has risen sharply. Nevertheless, the Netherlands is at the lower end of the number of inspectors per 10,000 workers in the EU.[172]

According to TNO experts the labour inspectors have developed a good balance in their monitoring strategy between announced and unannounced inspections with the still limited resources which they currently have. They also consider that still more resources are needed for the labour inspection because they play a crucial role in the enforcement of OSH rules. Thus, it would be a good idea to

[167] See Wajong & Vlug.
[168] *Wet op de ondernemingsraden*, applicable from 18-02-2023, Stb. 2022, 76.
[169] See 'Beroepsziekten fors onderschat', (2014), Beroepsziekten fors onderschat (arbo-online.nl) fragment van artikel van Jolanda Willems, Evelyn Tjoe Nij, Remko Houba en Rik Menting in https://www.vakmedianetshop.nl/arbo/details.asp?pr=8541
[170] There are an estimated annual number of 500 fatal cases of cancer among workers, and NCvB only registers around 10 per year See: https://www.beroepsziekten.nl/ncvb
[171] See C081 - Labour Inspection Convention, 1947 (No. 81) and Popma, J. Capaciteit Arbeidsinspectie in EU-landen, in https://www.arbo-online.nl/14742/capaciteit-arbeidsinspectie-in-eu-landen
[172] De Arbeidsinspectie: time for change? See: https://www.arbo-online.nl/14687/de-arbeidsinspectie-time-for-change

accompany every awareness raising campaign on the existing OSH measures and obligations with a round of labour inspections on that topic.

Concerning the impact of the sanctions imposed by the Labour inspectors, the unions representative interviewed considers that they are not high enough to have a deterrent effect from the enforcement perspective. An OSH expert interviewed considers that, if you look at it from the perspective of OSH general prevention perspective, the sanctions are not very effective. It has also been corroborated by some findings within the labour inspection that the effect of sanctioning is, from the general prevention perspective, not very strong, mainly because companies know that the chance of being confronted with an inspection is low.[173] Nevertheless, the level of sanctions can be quite high in some cases, specifically in the case of serious violations of OSH rules, in case of recidivism, or in the case of an accident at work with a fatality. Also, in the case of exposure to dangerous substances in the workplace, the level of sanctions has been raised in 2017.

On the topic of the system of liability in case of accidents at work and occupational diseases in the Netherlands, an OSH expert interviewed described it as "a double agony" because the number of successful liability claims is very low. That is why a new compensation system has been developed in 2023. For many years, according to the expert, the obligations of the ILO convention on compensation for occupational diseases were not properly complied with in the applicable regulation in the Netherlands.[174]

About the system of compensation in case of tort law, in cases of work accident the number of judicial cases is quite low. The chances of winning a case depends very much on whether the circumstances that has led to the damage are quite obvious. For the case of occupational diseases it is very difficult to establish a strong case between the working conditions and the damage suffered by the employee, for example when the worker suffers from cancer which might be related to the use of dangerous substances at work. It is very difficult to establish that the employee has cancer because of the employer being in breach of the OSH legal stipulations concerning occupational carcinogenic and mutagenic substances. The problem is that it is very difficult to establish the causal link between the working conditions under which the employee has worked and the damage to his/her health. In other countries there is a close list of occupational diseases but that is not the case in the Netherlands.

On the issue of transparent access of workers in the two examined sectors to relevant information on OSH measures, this is clearly regulated in article 12 of the Working Conditions Act.[175] It is stated there that workers have the right to training and access to OSH information, specifically for work councils members.[176] On that regard, the interviewees from the unions mentioned that one of the main problems in the construction sector is that the main contractor companies are often providing sufficient information to the workers' representatives but there are many subcontractors in the procurement chain. The experts interviewed considered that quite often the subcontractors are not providing the due OSH information to their workers about the risks to which they are exposed. This problem, connected to the issue of procurement law, is really worrying from the point of view of

[173] See Inspecties: niet het aantal, maar het effect (2016) and Dit gaat de Arbeidsinspectie doen in 2022 (2022).
[174] C042 - Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42).
[175] *Arbeidsomstandighedenwet,* op. cit.
[176] See article 31 of the Works Councils Act

proper compliance with OSH rules. The labour inspection is trying to promote that the main contracting companies are informing all sub-contractors along the chain.

Also, the training of work councils' members on how to interpret the information on OSH that they received should be improved. According to an OSH expert interviewed, the members of the work councils are often not sufficiently knowledgeable with the detailed specific provisions of the *Arbobesluit* (the OSH Decree) and that is problematic.

In several sectors employers' associations and the trade unions develop together an agreed document called Health and Safety Catalogue. In a health and safety catalogue employers and employees describe on their own initiative how they will comply with health and safety at work rules.[177] A health and safety catalogue must be reviewed by the Minister of Social Affairs and Employment at the joint request of representatives of employers and employees.[178]

According to the OSH expert interviewed, there are sometimes problems with the quality of the OSH catalogues per sector. Many of them are not updated and they are not detailed enough on the risk assessment and recommended prevention measures (many of them do not include a proper assessment of all the risks at work, ie. risk of exposure to high levels of heat.) At the labour inspection there is a project on how to review them and make sure that they really include the last state of knowledge on OSH risks and accurate prevention measures.

A relevant feature of OSH in the Netherlands is for agreements on the subject between employers and employees to be laid down in a OSH catalogue for the sector as whole. The catalogue is a key document concerning enforcement. It is a collection of measures and solutions which companies in a particular sector can choose from in order to comply with the standard OSH rules. That is a policy approach supported by the responsible Ministry (the Ministry of Social Affairs and Employment) to allow companies greater flexibility on ensuring good working conditions for each sector.

In both sectors examined (construction and PHS) there are problems with the high number of self-employed workers who do not fall within the scope of the OSH Directives. According to some experts, their exclusion is at odds with the notion in EU law that all workers have the same rights to protection regarding health and safety at work. At the labour inspection they are currently addressing this issue. This is always a problem for a labour inspector to consider if the worker is an employee or if he is a genuine self-employed. Due to that uncertainty on the mis-classification issue, there is also a problem in enforcement of OSH rules.

Nevertheless, there are also stipulations in the *Arbobesluit* (OSH Decree) that self-employed fall under the scope of the Decree, in case of serious risks at work, such as exposure to chemicals, but not for everything regarding OSH. Specifically, this is interesting for both construction workers and household workers who are self-employed.

[177] See: Arbocatalogi | Arbobeleid | Arboportaal

[178] See: Policy rule of the State Secretary for Social Affairs and Employment of 7 June 2019, no. 2019-0000004752, for the renewed adoption of a Health and Safety Catalog Policy Rule (Working Conditions Catalogs Policy Rule 2019), Following: Article 4:81(1) of the General Administrative Law Act; *Beleidsregel arbocatalogi* 2019 - wetten.nl - Regeling - Beleidsregel arbocatalogi 2019 - BWBR0042288 (overheid.nl)

4.3 Instrumental Resources

A main instrumental resource is the Focal Point managed by TNO. This organization has several experts with provide knowledge, information, and examples of best practices in OSH. Also, representatives of employers' organisations and trades unions work together there to make information on safety and health at work coming from Europe accessible and comprehensible for companies and employees. TNO is a research organization established by law and part of the Dutch administration. They have a staff of around 3000 researchers and the main aim is to reduce the gap between academic research in the field of OSH and the needs of companies' information on that regard. A broad part of the research is addressed to OSH in the defense sector and it is financed by State funds. They are organized in units and deal with societal relevant issues connected with OSH. The experts interviewed are active in the unit on healthy leaving and work. They are also busy with the energy transition. Besides research, they also organize awareness raising campaigns about security and health at work and develop digital tools to be used by both employers and employees in issues related to OSH. They also cooperate in international research projects, including cooperation and exchange of expertise knowledge, and organization of campaigns at EU level with other national focal points in closed cooperation with the European Occupational Health and Safety at Work Agency.

The legal expertise department of TNO provides also assistance to the Ministry of Social Affairs in OSH dossiers. They assist with the certification of OSH services and legal advice in this area.

One interesting provision in the *Arbobesluit* (Decree) is that the available OSH information for workers should be in a language that they understand. This is relevant for both sectors examined due to the high incidence of migrant workers in both of them and the existing language barriers. That has been pointed out also by the interviewees as one of the problems with the enforcement of OSH rules. In some cases, workers that perform dangerous work should speak Dutch (rather than the employer should instruct all workers in their own language). The legal stipulation is only that the employer should instruct 'effectively' (art. 8 Working Conditions Act: "The employer ensures that employees are effectively informed about the work to be performed and the associated risks, as well as about the measures aimed at prevent or mitigate risks".)

One of the OSH experts interviewed was quite critical about many of the risk assessment tools that have been developed over the last 20 years in the Netherlands.[179] Most of them follow the structure of the *Arbobesluit* (OSH Decree), addressing all risks that are relevant to the specific sector but they do not help companies to actually analyse their processes from a risk management perspective. Many of the tools are merely a tick box of the type: "Does this risk pose a problem?", but do not assess why these risks have come about (low quality designed processes in many cases). The risk assessment is too often external to management decisions and is only conducted after the decisions have already been made. Also, the 'OSH handy tools' are used by the employer or a staff member to fill out by him/herself, instead of involving the workers whom are actually performing the work and experiencing the risks. To address this problem, the labour inspection has developed a tool for

[179] See further information: https://www.rie.nl/instrumenten<https://eur04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.rie.nl%2Finstrumenten&data=05%7C01%7Cn.e.ramosmartin%40uva.nl%7Cd17a8460ba14448d98f708daa6c825fe%7Ca0f1cacd618c4403b94576fb3d6874e5%7C0%7C0%7C638005677057565374%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=ClyJjvyGNqNcxINY6uI2S4mcLCR5YMayg6Xry9Lh6dg%3D&reserved=0>

'participatory risk assessment' in 2008 with very simple recommendations for the employer: "Go to the shop floor level; Talk to workers about the OSH risks which they are experiencing by posing them three main questions: What is causing OSH problems?, Why? and How can this problem be reduced?"

4.4 Specific information for construction and PHS sector

A) Construction Sector

In the construction sector there are more work accidents than in other sectors. The main reason is that it is dangerous work. The construction sector is highly regulated and social partners in the Netherlands are closely involved in issues related to OSH in this sector. However, the trade unions representatives are concerned about the fact that, in the construction sector in the Netherlands, as in many other EU countries, there is a high percentage of flexible workers, including informal workers and (often illegal) third country nationals. According to the unions, their percentage is increasing in the Netherlands for four reasons:

1. the sector is highly regulated, but flexible. Temp agency jobs often are not covered by the same collective sectoral arrangements as workers who are hired directly by a construction company.
2. the sector is confronted with a huge percentage of bogus-self-employed personnel;
- these can be Dutch ('independent'/self-employed) workers who are also not covered by the same sectoral regulations.

- or they can be EU migrant workers or third country nationals who work in The Netherlands as 'bogus self-employed' on posting assignments.
3. the sector is highly cost driven and very fragmented: subcontracting is 'the standard' in the construction sector, which leads to more flexible jobs, lesser protection and more (fatal) accidents, often involving migrant workers.
4. there are serious problems enforcing law and sectoral arrangements.

According to the information gathered from interviewees, the application in the Netherlands of the EU Directives in the field of health and safety at work has been done properly and, in fact, the standards set at national level are quite often above the EU minimum standards for the construction sector. Nevertheless, there is some room for improvement. For example, the new proposal for an EU Directive against the exposure to asbestos, if the proposal is approved, it might have some positive impact in the national legislation in the Netherlands and more protective standards would have to apply.

In general terms, according to the experts, the impact of EU legislation has not been quite strong for this sector. Only the case of one OSH Directive was problematic. According to the TNO legal expert interviewed, a Directive which was politically sensible and more difficult to implement was the Directive on temporary and mobile constructions sites. [180]

[180] Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 245, 26.8.1992, p. 6–22.

As already mentioned, the system of prevention of risks concerning safety and health at work is organized through a closed cooperation of the employers' associations and the trade unions. In the construction sector the social partners have agreed on a Health and Safety Catalogue.[181]

Also, the topic of safety and health at work is often included in the collective agreements of the construction sector. There are many provisions regulating health and safety at work and the social partners also follow up the process of compliance in practice with the provisions of the agreements. So, the trade unions also monitor the implementation of the agreements reached by collective bargaining.

The labour inspection SZW is officially responsible for controlling the implementation of the rules regarding health and safety at work in this sector. In the last years, the number of inspectors in the Netherlands have increased but that has not led to a clear improvement of health and safety in the construction sector. They can perform inspections at constructions sites both unannounced and announced. The trade union representative interviewed thinks that there is some room for improvement in the way the inspections are conducted in the construction sector. According to his experience, inspections are more effective when they are not announced in advance, but that occurs very seldom in the Netherlands. So as the chance of an inspection is quite low, some companies could prefer to not to assume all costs of providing all proper health and safety measures and they prefer to risk a pecuniary sanction/fine if they get an inspection.

The trade union representative of this sector considers that there are no relevant gaps in the regulatory framework of OSH in the Netherlands but there is a gap in the protection of the health and safety rights of workers in some sub-sectors due to several factors. One main factor in the construction sector is the low enforcement of the existing rules. That is also due to the fact of the high problem of low compliance of subcontractors. The main contractor company (normally a big side company) is normally complying with OSH rules but the lowest you go on the subcontracting chain, the lowest is the compliance and monitoring of OSH rules.[182] According to the trade union representative of the sector interviewed, from research/data published by the Statistics Bureau in the Netherlands (CBS) periodically the number of work accidents of people working through temporary work agencies is higher than for workers directly hired by the user company.[183]

Another issue is the problems related to the higher number of migrant workers performing work at this sector and some miscommunication on the instructions for the performance of the work due to language differences. This lack of proper communication is a risk factor which plays a role in the high number of work-related accidents in this sector.[184] Therefore, the obligation to provide the basis information on a simple language that can be understood by the workers performing the work activities is regulated in article 1.5 of the OSH Decree and there are some available campaigns to

[181] See OSH catalogue for the construction sector:
<https://eur04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.arbocatalogus-bouweninfra.nl%2F&data=05%7C01%7Cn.e.ramosmartin%40uva.nl%7Cd17a8460ba14448d98f708daa6c825fe%7Ca0f1cacd618c4403b94576fb3d6874e5%7C0%7C0%7C638005677057721606%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=JIaDjnqfj6ZCUsjzkXDDpiguwXjF0wJfUW7kk06ysnE%3D&reserved=0>

[182] In the Netherlands there is no limit in the number of subcontracting levels and that is considered problematic in terms of monitoring the compliance of OSH rules.

[183] Interview 1 the Netherlands, trade union representative/construction. See: *Arbeidsongevallen in Nederland (*cbs.nl)

[184] Look for report from Province South Holland on the problems occurred during the construction of a tunnel in the region pointing out that one of the main problems/safety risks was the lack of proper communication among workers.

promote the availability of information for temporary foreign workers performing work in the Netherlands.[185]

Instrumental resources in the construction sector:

During the covid-19 pandemic the social partners in the sector reacted quite quickly and they managed to draw a joint Corona Protocol to be able to continue with the performance of work in the sites. It was the first one prepared in the Netherlands and it was prepared jointly with the technical sectors. Some of the issues covered were: how many workers per vehicle/machinery, safety distance, establishment of corona policy and appointment of a corona measures manager per site, and opening of a help desk for questions available for employers and employees. The social partners managed with this quick reaction to avoid the whole closure of the sector. It could be arranged so quickly because in the construction sector there is a specific OSH institute called VOLANDIS, specialized in providing technical health and safety advice for this sector.

Other best practices which were highlighted by the interviewed trade unionist is the PRORAIL action plan to avoid accidents at work and improve security on railways working sites (security passport for people working at railways maintenance). Also, the negotiation between trade unions and employers in the sector of social clauses in procurement law/agreements and on corporate social responsibility. One interesting example of the former is the Join action by the trade union FNV and the biggest townhalls in the Netherlands on this issue. The negotiations are still in preliminary phase but there are good expectations to reach agreements in the short term.

Other instrumental resource in development is the applicability of a security card for access of workers to constructions side (control that the workers working on sites have the due qualifications and training regarding use of equipment and OSH applicable rules and measures). This project is still in the pilot phase even when the development of that card system started already 7 years ago.

B) PHS – personal and household services sector[186]

In the Netherlands, a great part of domestic workers are not properly covered by the OSH legislation. This special employment contract is regulated by the services at home Regulation (*Regeling dienstverlening aan huis*, RDAH)[187] and, in principle, by the Law on Working Condition (*Arbowet*).[188] There is a lot of uncertainty in the position of household workers regarding health and safety protection. Many of the household workers are working as a self-employed in the Netherlands and

[185] Advies over arbeidsomstandigheden in begrijpelijke taal | Fundament (fundamentvoor.nl)
Taaleis bij tijdelijke klus door buitenlandse werknemers | Werk & Veiligheid - Kennisplatform over preventie, RI&E en sociale veiligheid (werkenveiligheid.nl)

[186] This section is partially based on a study conducted by students for the UvA Amsterdam Law Clinic in joint cooperation with EFSI and supervised by N. E. Ramos Martin. See: Caner, L., Aleksandria, N., Riga, V. and Geertsema, Z. (supervisor: Ramos Martín, N.), 'Comparative Study on Health and Safety at Work in the Personal and Household Services Sector', Report published by UvA Fair Work and Equality Law Clinic, (2022), p. 1-83.

[187] *Regeling dienstverlening aan huis* adopted on 30-09-2015.

[188] *Arbeidsomstandighedenwet* 1-07-2021 op. cit.

are therefore not covered by OSH rules. Moreover, there is no OSH catalogue for the domestic work sector (cleaners at home).

The TNO expert interviewed and the expert from the labour inspection both mentioned that is a very broad sector, with different subsectors. In some part of the sector (specially on the provision of care services at home) you have the so-called *alpha helpers* which are employees in principle but with some specific type of contract (client/patient relationship) and there are also self-employed whom do not fall under the scope of most of the OSH rules.

The policy adviser on the project on OSH for the care sector (more formal sub-sector of PHS) within the labour inspection mentioned that this is clearly a topic dealt with in the collective agreements and also in the so-called OSH catalogues. There is a specific OSH-catalogue for care of sick or dependent persons at home (*thuiszorg*).[189] OSH is also a topic covered by the collective agreement dealing with care of dependent persons at home.

The Dutch government has not adopted a proper legislative approach to ensure health and safety of domestic workers (mainly providing cleaning services at home). However, some awareness campaigns initiated by the central government have been organised, consisting of information on the *RDAH*. The website of the central government provides useful data regarding the obligations employers have, such as providing insurance and contracts to domestic workers.

Both undocumented and documented domestic workers were highly impacted by the COVID-19 in the Netherlands. The little legal protection given by the Dutch legislation (the RDAH) to domestic workers and being exempted from receiving social security benefits, meant that, many of them were left empty handed during the pandemic. The health crisis, however elucidated the situation of domestic workers in the country, creating potential for improvements for the current situation of the PHS sector.

In the Netherlands, according to the result of the qualitative study, there are no clear initiatives or best practices to improve the OSH of the workers in the most informal part of the sector, the domestic workers providing cleaning services at home.

4.5 Gender Dimension

On the construction sector, the specific risks of female workers seem to be properly dealt with due to the advisory-training role of the specific research institute in the sector called VOLANDIS. They provide proper protocols and information on this kind of risks, such as the prohibition of pregnant workers to carry heavy loads.

In the PHS sector, also due to the informal character of work in a broad part of that sector (specifically for cleaners at home), the access to information on those risks is not well covered. Therefore, this

[189] See OSH catalogues for care at home sector here: <https://eur04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.arbocatalogusvvt.nl%2F&data=05%7C01%7Cn.e.ramosmartin%40uva.nl%7Cd17a8460ba14448d98f708daa6c825fe%7Ca0f1cacd618c4403b94576fb3d6874e5%7C0%7C0%7C638005677057721606%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=ucyim%2BCXyn7BeTRqMASlCdtRfY%2FZI0%2FWhNZNJQdCmu0%3D&reserved=0>.

matter is properly regulated for the care at home sub-sector but not for domestic workers (cleaners at home).

5 Germany

5.1 OSH in Germany: Normative Resources - General information

In Germany, the regulations on occupational safety and health are to be found in various acts and ordinances, and in the accident prevention regulations published by the occupational accident insurance funds. Employers are responsible for providing safety and health in the workplace, under national occupational safety and health provisions – notably the Occupational Safety and Health Act (Arbeitsschutzgesetz) and ordinances (secondary legislation) based on it – and accident prevention regulations published by the accident insurance funds.

Moreover, Occupational safety and health rules and regulations can apply to specific sectors of trade and industry, for specific types of manufacturing plants, and for workplace organisation and design, among other issues.

The law enacted in Germany to transpose Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers at work is the Act on the Implementation of Measures of Occupational Safety and Health to Encourage Improvements in the Safety and Health Protection of Workers at Work [*Gesetz über die Durchführung von Maßnahmen des Arbeitsschutzes zür Verbesserung der Sicherheit und des Gesundheitsschutzes der Beschäftigten bei der Arbeit*], also known in an abbreviated form as the Occupational Safety and Health Act (or by its German initials ArbSchG) of 7 August 1996.

Concerning the German OSH legislation, it is worth noting that the European Court of Justice in the judgment of 7 February 2002 (Case C-5/00) in the case "*Commission of the European Communities v Federal Republic of Germany*" found that "the Federal Republic of Germany failed to fulfil its obligations under Article 9, paragraph 1, letter a) and Article 10, paragraph 3, letter a) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers at work. The Court ruled that Germany failed to ensure that the obligation to perform an assessment of the risks to safety and health at work, as laid out by Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers at work, applies to employers of 10 or fewer workers in all circumstances.

From a structural point of view, the German Labour Protection Act consists of six Parts, entitled "General Provisions [*Allgemeine Vorschriften*]" (First Part, Sections 1 and 2), "Obligations on employers [*Pflichten des Arbeitgebers*]" (Second Part, Sections 3 to 14), "Obligations on and rights of the workers [*Pflichten und Rechte der Beschäftigten*]" (Third Part, Sections 15 to 17), "Authorisations to issue statutory instruments [*Verordnungsermächtigungen*]" (Fourth Part, Sections 18 to 20), "Joint German Occupational Safety and Health Strategy [*Gemeinsame deutsche Arbeitsschutzstrategie*]" (Fifth Part, Sections 20a and 20b) and "Concluding provisions [*Schlußvorschriften*]" (Sixth Part, Sections 21 to 26). Looking into its scope, this German law "applies to all sectors of activity" (Section 1 (labelled "Objective and scope"), paragraph 1), with the exception of "domestic workers employed in private households" (*ibid*., paragraph 2) and "workers on seagoing vessels and in establishments

which are subject to the Federal Mining Act" (*ibid*.), as well as "civil servants of the *Länder*, municipalities and other corporations, institutions and foundations under public law [for which in principle] the *Land* legislation applies" (Section 20 (labelled "Regulations applicable to the public service"), paragraph 1). In turn, it must be borne in mind that "in regard to specific activities in the federal public service, in particular in the Federal Armed Forces, the police, the civil protection and disaster management services, the customs or the intelligence services... [the competent federal ministries] may determine... that the provisions set down in this Act shall not apply in full or in part insofar as there is a compelling public interest, particularly in regard to the maintenance or restoration of public security" (*ibid*., paragraph 2).

On this basis, the Occupational Safety and Health Act obliges the employer to "take the necessary measures of occupational safety and health, taking account of the circumstances, to influence the safety and health of workers at work", and also obliges them to "examine the effectiveness of those measures and, where necessary, adapt them to changing circumstances", to "improve the safety and health protection of the workers" (Section 3 (labelled "Basic obligations on employers"), paragraph 1). The German law regulates in greater detail matters relating to "assessment of the conditions of work" (Section 5), "assignment of tasks" (Section 7), "cooperation between several employers" (Section 8), "special risks" (Section 9) or "first aid and other emergency measures" (Section 10). As regards workers, the German law obliges them "to ensure their safety and health at work to the best of their ability and pursuant to their employer's training and instructions" (Section 15 (labelled "Obligations on the workers"), paragraph 1), and to "immediately report to their employer… any significant immediate danger to safety and health and any defect in the protective system which they have identified" (Section 16 (labelled "Special obligations to provide support"), paragraph 1), bearing in mind that they are also entitled to "make suggestions to their employer in regard to all aspects of safety and health protection at work" (Section 17 (labelled "Rights of the workers"), paragraph 1).

The German Occupational Safety and Health Act is silent on the subject of worker consultation and participation in the prevention of occupational risks because this subject is regulated in Germany by the Works Constitution Act of 1972, according to which "the works council has"—among other "general duties"—the duty "to promote safety and health at work and the protection of the environment in the establishment" (Section 80, paragraph 1, no. 9), and in addition "it must support the competent occupational safety and health authorities to eliminate safety and health hazards by offering suggestions, advice and information" (Section 89, paragraph 1).

In Germany, the organization of prevention is regulated by the Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists [*Gesetz über Betriebsärzte, Sicherheitsingenieure und andere Fachkräfte für Arbeitssicherheit*] of 12 December 1973, as amended by the same Law enacting the Occupational Safety and Health Act in 1996, in order to align its content with the Framework Directive; and on the other hand—as regards "outsiders" because the German Social Accident Insurance Institutions (generically referred to as "*Berufsgenossenschaften*") have powers and functions of great importance in the field of prevention of occupational risks.

5.2 Enforcement Resources

The Occupational Safety and Health Act regulates the issue of administrative liability, while at the same time regulating criminal liability. In this regard, it provides that "whoever intentionally or negligently… contravenes a statutory instrument…shall be deemed to have committed a regulatory offence", and "a fine of no more than five thousand euros" or, where appropriate, "a fine of no more than thirty thousand euros may be imposed as a penalty on the regulatory offence" (Section 25, labelled "Administrative fines provisions"), taking into account that they may be punished with "a term of imprisonment of no more than one year, or with a criminal fine shall be imposed as a penalty on anyone who... persistently repeats an act described [as an administrative offence]... or... "endangers the life or health of a worker on account of an intentional act" (Section 26, labelled "Criminal provisions").

In Germany, there is a system of professional associations (Berufsgenossenschaften), and the employer is obliged to be member of one. This means that, in principle, the employer does not have anything to do with the liability. In case of an accident, the insurance associations pay for the hospital expenses and the accident costs. But if the employer has behaved grossly negligent, the professional associations forward the costs to the employer. The professional associations also pay the hospital costs and the reintegration on the labour market as the goal is to rehabilitate the employee so she/he can work again. The accident is reported to the professional associations if someone is longer sick than 3 days due to a work accident. Moreover, in case of occupational sicknesses like skin cancer, etc. the employee can make an application to the professional associations to receive a pension. In any case, the employers need to take the appropriate OSH measurements seriously and pay the contributions to the professional associations. In 2022 there was a case with the carpenters. The trade union representative interviewed mentioned that in that sub-sector they had a high number of work-related accidents. Therefore, the contributions of the employers to the professional associations was increased for all since the contributions are solidarity payments which means that even if only a few neglect the measures, the amount is heightened for all.

Naturally, all this must be combined with the issue of regulatory compliance, which in Germany is not in the hands of a body that corresponds exactly to the "comprehensive" Labour and Social Security Inspection model, since in Germany both the sixteen labour inspections dependent on the respective *Länder* come into play (within the meaning of Section 21 (labelled "Competent authorities, interaction with statutory accident insurance providers"), paragraph 1, "The supervision of occupational safety and health in accordance with this Act is a governmental task"), such as the above-mentioned German Social Accident Insurance Institutions (within the meaning of paragraph 2 of the above-mentioned Section), "The competent Land authorities and the accident insurance providers shall cooperate closely on the basis of a Joint Advisory and Supervisory Strategy" (Section 21 again, paragraph 3).

The joint supervisory action of the state occupational safety administration and the statutory accident insurance institutions is coordinated in the GDA - Joint German Occupational Safety Strategy, with company visits being the main issue.[190] An interesting hybrid resource between enforcement and instrumental is the transparency on the availability and publicity of the information on the implementation status of OSH in the specific companies on the website of the GDA.[191]

[190] See: https://www.gda-portal.de/DE/GDA/3-GDA-Periode/AG-Betriebsbesichtigungen/AG-Betriebsbesichtigungen_node.html
[191] See: https://www.gda-portal.de/DE/Downloads/pdf/Abschlussbericht-Dachevaluation-2019.pdf?__blob=publicationFile&v=1

Further developments in the supervisory activities by the responsible federal states were regulated in the Occupational Health and Safety Control Act (Arbeitsschutzkontrollgesetz). By introducing a minimum inspection quota in the Occupational Health and Safety Act, a significant increase in company inspections is to be achieved step by step. (§ 21 new paragraph 1a in the Occupational Health and Safety Act - Arbeitsschutzgesetz).

5.3 Instrumental Resources

Every employer is obliged to organise the safety and health on an operational basis in Germany. An interesting instrumental resource is the information and guidelines available at the website of the Federal Institute of Occupational Safety and Health on how to do this, what structures are needed for this, and what instruments can be of assistance.[192]

Operational management of occupational safety and health is responsible for identifying needs, making decisions and eventually taking measures. This includes elements of the organisational structure, such as the Committee for Occupational Safety (ASA). This body has to be established by all companies including more than 20 employees according to § 11 Occupational Safety Act (ASiG). The committee must control that the employer complies with the OSH rules. Also, the employees have a right of co-determination if new technologies are introduced. The committee investigates where it is possible to improve the health and safety conditions and how to avoid accidents However, this also includes elements of process organisation, such as risk assessment according to §§ 5 and 6 of the Safety and Health at Work Act (ArbSchG). Other main pillars of occupational safety and health organisation include occupational safety specialists (Fachkraft für Arbeitssicherheit, Sifa), employees to be appointed in all companies among their employees or to be employed by contract as a third-party service, as well as occupational physicians. These specialists advise and support the company management in the field of occupational prevention and the humane design of working conditions. In addition to this advisory function, they usually also carry out their own tasks in the implementation of occupational safety measures.

Regarding transparency and information of the employees, according to the trade union representative interviewed in companies where everything works according to the rules, they organize staff assemblies where the whole company staff is gathered. Either the occupational safety officer, the employer or the works council, explains about the health and safety conditions at the workplace and inform the employees about accident statistics, what can be improved and what they should you be aware of in terms of OSH. The companies are usually also obliged to make sure that every two years the employees go to the professional association, where a doctor will examine them. Here the doctor also stresses on which issues the employee should look at.

A relevant instrumental resource in the German context is the self-assessment tool "GDA-ORGA-Check". In addition to medical and safety management, there is a number of other statutory requirements for occupational safety and health organisations. This project has been concretised by the Joint German Occupational Safety and Health Strategy (GDA), a national strategy managed by the

[192] BAuA - Organisation of Occupational Health and Safety - Federal Institute for Occupational Safety and Health The description of the Organisation of Occupational Safety and Health provided on this section is based on the information available at the website of that Institute.

Federal Ministry of Labour and Socials Affairs, the Federal states and the accident insurance funds, with the participation of the employers association and the trade unions. These strategic partners have issued the self-assessment tool "GDA-ORGA-Check" in 2013. The GDA-ORGA-Check translates the GDA Guideline "Organisation of Occupational Safety and Health" into a version manageable for companies. It is based on the 15 test elements of the GDA guideline, which can be used by the supervisory authorities of Federal states and accident insurance bodies in their advice and monitoring. The GDA-ORGA-Check, for example, asks questions on the structural consideration of occupational safety and health in company planning and procurement processes or on the possible involvement of third-party companies in the work processes. Included in the GDA-ORGA-Check are also requirements from the Ordinance on Occupational Health Care (ArbmedVV).

Moreover, companies that want to comply with their obligation to a functioning occupational safety and health organisation in a special way can do so by the voluntary introduction of an occupational safety management system (AMS). Due to the variety of AMSs on the market, the national guideline for occupational safety and health management systems (NLF) provides assistance on how to choose a suitable AMS. This guideline is a framework document for the development and assessment of AMS. On the basis of the NLF, accident insurance institutions and state health and safety authorities offer companies a voluntary conformity test. Such a conformity test determines the extent to which an AMS complies with general system requirements and confirms the results of this examination in writing. These guidelines and the conformity tests are useful instrumental resources to facilitate the compliance of companies with the statutory OSH obligations.

5.4 Specific information for the construction sector

The main OSH problems/risks that most often occur regarding health and safety at work comes from falling from heights. There is also a high risk connected with use of machines and when you are lifting heavy objects (loads) and with use of ladders and scaffolding. These are the main dangerous tasks triggering accidents at work. The main causes of fatalities at the construction sites are falls from the heights, use of machines, and accidents in connection with collapses.

When you look at the accidents at work from an insurance point of view (Unfallversicherung), the question is, what are the most expensive accidents? The answer is that they are connected with falling from heights, because the injuries involve complicated broken bones and need long-term recovery and rehabilitation (Interview 1 Germany; Interview 2, Germany)

Normative resources

In Germany the national legislation has been adapted to the requirements of the several Directives in the field of health and safety at work. The “Arbeitsschutzgesetz” (The Occupational Safety Law) works as the framework law, including regulations on dangerous substances and regulation with regards to the workplace. In the construction sector there is one special legislation – the Baustellenrichtlinie (Construction Site Directive). This includes regulation on the construction sites. The European legislation contains two subareas. The first one is about the inclusion of the entrepreneurs (constructors) and others who are involved in the construction. These are implemented in the

Baustellenverordnung (construction site regulation) and the other one is about the construction workers and the coordination of work at the construction sites, which are implemented in the Baustättenverordnung (contruction site ordinance). In Germany, the two subareas are included in the construction site regulation and the minimum requirements at the workplace with regards to working conditions are included in the workplace regulation (Interview 1 Germany; Interview 2, Germany).

The workplace regulation was also there prior to the European legislation, and there have been special regulation when it comes to the construction sites in Germany before this was extensively regulated at EU level. However, the legislation is, of course, adjusted regularly to new demands or technical developments. Ultimately, there is not just one regulation, where everything is included. Rather it is divided into two different regulations (Interview 1 Germany; Interview 2, Germany)

An expert from the Federal OSH institute mentioned that there are of course conflicting interests when it comes to the legislation process. More specifically, how much regulation is it necessary and what type? The Baustellenverordnung have had difficulties, because its implementation collided in mid-end 1990s with a phase of massive deregulation. The OSH regulation in Germany provides only guidelines on the basic standards in the Directive. While Germany sometimes over-implements and implements provisions that go beyond the Directives in this area. That was not the case here. The end result was a legislation that was difficult to interpret and thus, difficult to apply. This was due to the fact that the legislative procedure was difficult which impacted on the application in practice of the OSH rules.

According to the interviewed representative of Federal Institute for Occupational Safety and Health, the European OSH directives are important, as the EU legislation in this field motivated policy makers to implement more regulation which would not have been achieved only at the national level. The fact that it was a requirement made it impossible for Germany to stay behind. However, for a while, there has not been improvement in the legislation in Germany and it has remained on a middle ground when it comes to occupational health and safety (Interview 1 Germany; Interview 2, Germany).

The trade union representative interviewed is also positive about the effect of the EU OSH Directives. Directives establish general obligations that the Member States should comply with but they leave sufficient flexibility for interpreting the regulations in practice. Without the EU regulatory framework many EU countries would probably not have done as much to ensure health and safety at the workplace. Also, if the member states want to, they can also improve the provisions and provide enhanced OSH protection when they transpose it into national legislation. In the opinion of the expert the Framework Directive has got the positive impact that in the entire EU there are OSH minimum standards to which everyone need to comply with. At the moment, there are discussion on improving the Directive on asbestos fibers. According to the trade union representative interviewed: “it is good that the member states are pushed in this area and that they are pressured to improve their regulation.”

An important advancement of the “Baustellenverordnung” is the strong focus on the responsibility of the employer when it comes to occupational health and safety. However, prior to the framework Directive Germany had not included regulations on the responsibility of the entrepreneur when it comes to planning the work on the construction sites. Therefore, in the interviewee’s (Representative of Federal Institute for Occupational Safety and Health) opinion: “it has affected the occupational health and safety for the workers. It has secured a stronger focus on the role of the

entrepreneur/planer of the work at the construction sites, which has been a blind spot in the German regulation. Overall, however, the marginal or boundary conditions have not improved for occupational health and safety from my point of view but the amounts of accidents went significantly down. We think that it had an effect on reducing these accidents."

Regarding collective bargaining as normative resource, according to the interviewee's view, the focus of the collective bargaining still lies at wages and working hours as most important topics. In addition, education plays an important role. Health and safety at work plays a role in the collective bargaining, but it is not very significant. One example mentioned in the interview with the representative of Federal Institute for Occupational Safety and Health was that there was an issue with how the commuting to work shall apply in practice, but that was settled in the Courts and not in the collective bargaining. It is difficult in this *fora* to reach agreements since there are so many different regulations and thus one could only discuss where one could go beyond these regulations. An example of that was an issue with dust in the working sites. In particular, the question on how to avoid dust specifically in the construction areas. Trade unions wanted to make the employers more responsible for avoiding dust.

The trade union representative interviewed explained that there is new regulation (Gefahrenstoffverordnung) implemented which ensures that there should be a stop of the development of dust in construction sites. "Sweeping has been replaced by vacuuming with special filters. In that way, the employee is not in contact with dust. The dust contains quartz which is a big risk for the health of the employees. If the employer is not handling dust properly at the workplace, the construction site can be forced to shut down."

However, the trade union representative interviewed mentioned several OSH issues covered by collective bargaining in the construction sector. For example, when it comes to the topic of climate change and increasing heat golfs. Since 2015, skin cancer is classified as a professional sickness as outdoor construction workers are heavily impacted by it. In the past, at the construction site they used to work shirtless if it was too warm. In the case of the roofers, social partners have included a clause in the collective agreement securing that workers will get day off, in case of extremely high temperatures during the summer. We have a social found in Germany, which makes sure that the roofers can take day off work in this case and get paid. Also there has been an evolution in the collective agreement provisions dealing with OSH prevention. Previously, there was a clause in the collective agreement mentioning that employees will get an extra payment with risky works. For example, employees were given a 5-euro additional payment if they, for instance, wore a mask while carrying out dangerous work. Nowadays, the strategy of the unions is that they do not want the subsidy anymore. Instead, we want the work to be safer. "When it comes to occupational health and safety, we have the principle that the proper technical measures must me ensured (…) We push for OSH rules enforcement."

Enforcement resources in the construction sector

Concerning the monitoring systems in place to ascertain safe working conditions and respect of occupational safety and health rules in the sector, the federal states (Bundesländer) are responsible for the inspection of occupational safety, more precisely the Occupational Heath and Safety

Administration (Arbeitsschutzbehörden). There is an Occupational Health and Safety Control Act (Arbeitsschutzkontrollgesetz) in which the minimum number of inspections is specified and 5% of the companies are supposed to be inspected each year in the construction sector. However, the intensity of the inspection is different depending on the federal state. Therefore, it is not standardized. Some federal states also have specific units for construction (Baustelleneinheiten), and they are only focusing on this sector (Interview 1 Germany; Interview 2, Germany).

Besides, there is a system of accident insurance regulations (Unfallversicherungsträgern). In other words, the statutory accident insurance also has its own enforcement rights, and supplementary legislative powers. They also make site inspections on their own. According to the interviewed representative of Federal Institute for Occupational Safety and Health, this is actually a quite powerful system. They have very detailed accident evaluations, and in the case of a serious accidents they help provide the necessary information. In that way, they are an important support and important for the control of OSH compliance.

According to the representative of the Federal Institute for Occupational Safety and Health interviewed, there are no major gaps in the law. However, when it comes to enforcement and control there is clear potential for improvement. An enormous challenge with construction site inspections relates to the clarification of the actual working conditions on site. In Germany, with the current system, often the main contractor does not carry out all the work. Therefore, there is a long chain of sub-contractors.

Additionally, another challenge mentioned is that there are many workers with different languages at the same working site. Therefore, at first glance it can be difficult for the inspector to identify, whether people are self-employed, or bogus self-employed, or they are employees. It is not possible with the current resources to identify who has the main responsibility, when the inspector is meeting a lot of different people at the sites. Also, it is very time-consuming. According to trade unions representatives this is one of the main problems with proper enforcement of OSH rules.In terms of occupational health and safety law, it can be difficult to clarify who is responsible for performing certain tasks. The diversity of languages and high incidence of migrant workers conducting work in this sector makes the applicability in practice of OSH more difficult. There are also cases in the grey area, where it is difficult to determine the residential status of the employee or whether they have an employment permit or not. This makes it difficult to access their legal status. Therefore, while the legal provisions may be clear, major difficulties can emerge in practice.

Another concern mentioned by the trade union representative interviewed is that in case of non-compliance with OSH rules (i.e. lack of proper a risk assessment) companies are sanctioned with a fine, if they are inspected. But the problem in Germany is that per 20.000 employees there is only one inspector. Therefore, it is difficult to control the compliance with OSH rules. More enforcement resources are therefore necessary.Another area where the compliance with OSH rules is lower is the case of small companies operating in the sector, according to the expert of the Federal OSH institute. This view is shared by the trade union representative interviewed: “Unfortunately, in the construction sector it is difficult to live up to certain Directives in practice. 80 percent of the companies in the construction sector have under 10 employees.” In SMEs the risk assessments are often taken less seriously. They sometimes consider the risks assessment process too complex. They still have to document the activities that they are conducting and the OSH risks, but a simpler and more practical format of the risk assessment would be useful for them. The impression of the expert of the Federal

Institute for Occupational Safety and Health interviewed is that the focus should lie less on the process and more on the prevention measures. “The question is how we can get the companies to live up to the measures”/(OSH standards).

Regarding the identification of gaps in the protection of the health and safety rights of workers, the trade union representative interviewed considered that it is crucial that the employer sets a good example regarding OSH compliance. Then, there is also a demand that a company must have an occupational doctor and he is responsible for giving the employer advice with regards to health protection at work. However, this does not work properly (Interview 1 Germany; Interview 2, Germany).

Regarding liability in the case of accidents at work and occupational injuries, as stated above, the employer has the primary liability. Nonetheless, the employer is compulsorily assured by the building cooperative/associations (Baugenossenschaft). That is a system where all the employers are a part of these cooperatives which pay then the primary liability compensation to the harmed person. The question for the insurance company, however, is of course, whether somebody is responsible for the incident. Another question is whether there has been a breach of duty of care by the employer, for instance, by superiors or third parties. In this case, the corporations also investigate whether there is possible liability of the planer or the coordinator at the construction site. However, in most Court cases the employer is liable for damages and also regarding criminal procedures, the employer is also in many cases liable (Interview 1 Germany; Interview 2, Germany).

Concerning the sanctions imposed in cases of a breach of the health and safety regulations, there are regulations on different levels. In Germany, there is a national occupational health and safety law, where fines are regulated. Then, there is the side of the insurance associations (building cooperatives) of the companies. Many of them have also a bonus-malus-system, where companies are classified in terms of how many accidents have occurred in a certain period. The stricter sanction is that the work at the construction site can be ordered to stopped and can only be continued if some grievances are addressed (Interview 1 Germany; Interview 2, Germany).

A suggestion for strengthening of health and safety at work rights, mentioned during the interviews, would be to make it easier to access the actual conditions at the construction site. This would make more apparent who is responsible at the construction sites. At the same time, it would speed up the process of identifying who is liable in case of an accident. Sometimes trade unions deal with cases where the labour inspectorate has to call the police, and often when they get there, the person responsible have had the chance to leave the site. In practice there are problems that are difficult to address. This is especially a problem with large construction sites where many sub-contractors are involved. The interviewed expert of the Federal Institute for Occupational Safety and Health is in favour of implementing a system similar to a practice available in the UK, where the workers are wearing a card identifying their role at the construction site. Such a system will solve the problem that the inspectorate cannot get a fast overview over the relationships/legal status of the all the workers conducting work at the construction site (Interview 1 Germany; Interview 2, Germany).

Instrumental resources in the construction sector

In Germany the organization of the system of prevention of risks concerning safety and health at work

is similar to the European risk assessment system. The employer is responsible for the working conditions and for assessing the risks (Gefährdungsbeurteilung) and the employer must make sure that there are no risks. This was first formalized with "Arbeitsschutzgesetz" (Occupational Health and Safety Act) in 1996. The process itself is established, but how it is applied in practice differs according to the size of the company. That is for instance visible in the documents from the BAuA (Federal Institute for Occupational Safety and Health). The interviewed representative of the Federal Institute for Occupational Safety and Health noticed that, in general terms, the OSH regulations are better enforced by the larger companies compared to the small companies in the sector.

In Germany there are a lot of instrumental resources available concerning various forms of employee's training on health and safety. There is the formal education regarding risks assessment. The education on risk assessment has to be adapted to the specific construction site and then, the employees are instructed on the basis of this. Furthermore, there are a lot of information and easily accessible material available at the construction sites, which is provided and handed out by the BG Bau.. The summarized information materials entail working procedures of how to handle machines and substances. Moreover, there is also display of OSH basic information, which is visualized with pictures and the informative texts are translated to many different and relevant languages (Interview 1 Germany; Interview 2, Germany).

Concerning the level of information on OSH rights of the employees in the construction sector, according to the interview with the representative of the Federal Institute for Occupational Safety and Health, there are differences between domestic highly skilled workers and other workers in the sector. On the one hand, occupational health and safety also plays a role for the education of the office staff. In this area, most employees know about occupational health and safety and know how to react if there are OSH issues or if there is a misunderstanding with the insurance association of the company.

In terms of instrumental resources, there are also different campaigns aimed at the employees, which shall prevent dangerous situations. This is also meant to make the employees aware of their rights, that they enforce those rights, and to ensure that dangerous situations do not occur (Interview 1 Germany; Interview 2, Germany).

On the other hand, there are areas, where foreign employees are very dependent on the relationship to their employer. In these cases, the expert representative of the Federal Institute for Occupational Safety and Health interviewed considered that the employees are less knowledgeable about their rights and it is difficult for them to express their concerns. They are often exploited and face many different problems. Then, for them, occupational health and safety does not play a major role. However, this is not only an occupational health and safety problem, according to the interviewee. "There are also other methods to avoid the legislation, for example through cash-in-hand jobs. In these areas, we see the most exploitation."

The trade union representative interviewed mentioned that they are also visiting the construction sites. Trade union representatives cannot inspect them, but they can talk with the employees about matters related to occupational health and safety and give them advice. For example, if we see someone who is conducting dangerous work without wearing a mask, they can inform them that they are exposing their lungs. They are also trying to increase awareness raising for employees on OSH matters by organizing different information campaigns. On the internet, it is possible to find different

clips with regards to health and safety. BG Bau provides movies on all different issues when it comes to safety at work.

Trade unions also provided educational activities on OSH for the workers in the sector. They arrange educational days on the technical schools, where they teach workers about health and safety at work.

Concerning educational trainings and the existing language barriers due to the migrant background of many workers in the sector, trade unions in the sector have various initiatives according to the specific area. For instance, when it comes to cleaning of buildings, they focus their training on chemicals. They also take into account the variety of nationalities of the construction sector workers by organising training activities in different languages.

The trade union representative interviewed mentioned that there is plenty of OSH available, with various pamphlets and posters, but it is difficult to really make the employees aware about it and to make them implement it in their actual work. For instance, there is a lot of material available with regards to health and safety, but it is not distributed properly to the construction sites. Additionally, there is a lot of information available about technical regulations with regards to asbestos, asphalt, etc., where there are thorough descriptions of how to carry out the work but this is poorly distributed to the employees. Therefore, from the interviewee's opinion more information campaigns are necessary.

It is through the BG BAU that the legal accident assurance is covered for most of the parts in the construction work. Moreover, the BG BAU also provides a large number of supplementary industry-specific regulations and rules and practical aids. An interesting instrumental resource are the practice aids/tips in other languages which are also available there.[193]

Another important instrumental resource mentioned during the interviews is that the insurance association has a bonus system, where they support employers if they are not able to buy the right machines. They subsidy around half of the price, which is a good incentive for the companies to buy the machines that are best from the point of view of the health and safety of the workers.

5.5 Gender Dimension

At the moment specific provisions in workplace policies addressing the gender perspective of health and safety is not a main topic in the sector. There are of course specific gender regulations such as the differences when it comes to how much weight a female worker can lift. Also, there are different changing rooms or rest rooms for male and female workers. Then, there are also regulations with regards to maternity and breastfeeding. However, there are not that many women working in the construction sector. The share of female workers is still low.

According to the trade union representative interviewed workplace policies addressing the gender perspective of health and safety are well regulated in Germany. For instance, in the cleaning work, it is regulated which kind of work you are allowed to do if you are pregnant in connection with the risk assessment (Interview 1 Germany; Interview 2, Germany).

[193] See: https://www.bgbau.de/ (especially in the media center)

5.6 Covid-19 OSH related measures

The construction workers kept working during the COVID-19 pandemic. There were no major shutdowns. In addition, it was an advantage for the sector that people normally work in small groups. Trade unions pointed out that the specific hygiene standards should be implemented and sharpened due to the pandemic. In the practice the unions recommendations were often neglected. Therefore, unions pushed this aspect forwards. It would not have been possible to implement a requirement of distancing, as the employees are working together in groups of 3 to 10 people. Often, they are not able to perform their job without the help of their co-workers. It would have been also more dangerous to perform some tasks alone.

The statistics also show that there were not too many cases of Covid in the construction sector. The most contagion was primarily a problem among the cleaning staff. The small number of Covid cases showed that it was not necessary to shut the construction sector down during the pandemic.

The trade union representative interviewed mentioned that OSH measures during the COVID-19 pandemic were well arranged in Germany because the government agencies had an interest in improving the working conditions. They went to the construction sites and improved the sanitary facilities. For example, with regards to hygiene during the summer, it was possible for the employees to shower, and a cleaning company took care of the daily cleaning of the toilets. All those additional OSH measures made easier to keep working at the construction sites in comparison to working at other sectors. During the covid pandemic, the companies started to take OSH more seriously, especially the sanitation/hygiene part. Therefore, the pandemic put employers under pressure to improve it.

6 France

6.1 OSH in France: Normative Resources - General information[194]

The French system for the prevention of occupational risks comprises:

- the Ministry of Labour, which draws up and implements French occupational health and safety policy and manages cooperation with the social partners in the Conseil d'Orientation sur les Conditions de Travail (COCT) [Steering Committee on Working Conditions].
- the social security bodies, which contribute towards occupational risk prevention in the area of industrial accidents and occupational diseases. Exclusively financed by employers' contributions, the system is managed by the social partners. It is supported by the Caisse Nationale d'Assurance Maladie des Travailleurs Salariés (CNAMTS) [National Health Insurance Fund for Salaried Workers] and Caisses Régionales d'Assurance Maladie [Regional health insurance funds]. They deal with risk assessments and pay the social insurances due to occupational risk.
- Since 1945, the social insurance [Caisse Régionale d'Assurance Maladie] has a department dealing with to prevention of risks at work. At the same time this insurance institution, also the INRS was established, (in 1946). INRS was created specifically for preventing risks at work. At regional level there are social insurances institutions [Caisse Nationale d'Assurance Maladie) which work in each region and contact companies in the region and ask them to improve the prevention of risks. They can recommend changes, and order to sanction if the companies fail to improve or implement changes.
- There are also other enforcement resources, in particular the Labour inspection which is part of the Ministry of Labour.
- There are also other scientific, operational and medical bodies responsible for preventing, anticipating, spreading awareness of, and managing occupational risks. The main body is the Agence Nationale de Sécurité Sanitaire de l'Alimentation, de l'Environnement et du Travail [French Agency for Food, Environmental and Occupational Health & Safety],[195] which helps to improve knowledge of occupational risk prevention. Another relevant body is the Agence Nationale pour l'Amélioration des Conditions de Travail [National Agency for the Improvement of Working Conditions][196], which offers advice to companies and takes action in the operational area of occupational risk prevention.

[194] For the information on the OSH system in France we have used as a starting point the information provided by the European Agency for Safety and Health at Work on their website. This Agency is a network organisation, with a "focal point" in each Member State: National Focal Points | Safety and health at work EU-OSHA (europa.eu) See further information on the OSH legislation in France at the ARBOPORTAAL:

[195] Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail [French Agency for Food, Environmental and Occupational Health & Safety],

[196] Agence nationale pour l'amélioration des conditions de travail [National Agency for the Improvement of Working Conditions]

- Occupational medical services are provided by occupational health officers whose exclusively preventive role lies in ensuring that there is no deterioration in the health of workers due to their work.
- Apart from the CNAMs – Then there are sectoral enterprises (like OPPBTP) dealing with health and safety at work. OPPBTP deals with health and safety in construction. This institution has helped reducing the number of fatalities at work in the construction sector. At the beginning of the 1940s, there were 3500 deaths in construction. Nowadays there are yearly around 150 fatalities.
- At Company level, in large side companies, there is a service dealing with occupational health and safety (dedicated departments – e.g. Renault has 70 personnel members working in such department according to the interviewee who represents a trade union and is a risk prevention expert). According to the same interviewee, in small companies, there has to be at least 1 person dealing with health and safety at work who needs to report to the management on OSH measures based on the legislation in the field.
- According to the interviewee of an organisation charged with preventing risks, the French legislation obliges every company to assess the risks at the workplace (risk assessment plans in written form). Moreover, the law recommends that companies discuss with their workers and jointly draw the OSH risk prevention plans, but there is no legal obligation on that point. It is only a recommendation. There is no sanction if the employer set the risk assessment plan alone.

In general terms, the implementation of the main Directives in the field of health and safety at work has been done properly in France, according to the interviewees.[197] There have been some problems with the implementation of some particular OSH Directives, such as the Framework Directive on OSH risk assessment. France was the last country to transpose it into French regulation on 5th November 2001.

According to the interviewee from a trade union and who is also an expert on prevention of risks, a case where the EU legislation has led to an improvement of OSH standards is the second Directive on chemical risks adopted in 1999 and transposed into French Law in 2003. France had already set high standard regarding chemicals risk assessment, but the prevention/protection standards set by the Directive were higher. However, the safety legislation in France is better than EU minimum standards regarding exposure to mutagens and carcinogen substances.

According to the interviewee from a research institute, the transposition of the framework directive has changed the obligations of employers in France to ensure health and safety at work. Before transposition, it was a "special" limited obligation (only specified in the occupational risks set of rules by the labour code). Transposition opened it up to general occupational risk (Article 5 of Directive). Therefore, the OSH framework Directive has improved safety and protection of workers in all economic sectors. However, another issue is the implementation of OSH rules in practice. There are problems with the efficiency of existing OSH rules. According to our qualitative research, there is a gap between what the law prescribes and the reality at the workplace.

[197] See overview of OSH transposing legislation in France at: EUR-Lex - 31989L0391 - EN - EUR-Lex (europa.eu)

Nevertheless, also due to the impact of EU OSH legislation, there was an evolution in specifying responsibilities that employers have in OSH. According to the interviewee from the trade union who is also an expert on preventing risks, there was no risk assessment obligation in the past (only in petrol and chemical sectors). Nowadays all sectors and companies have to conduct an OSH risk assessment. Companies with less than 50 employees have to publish it online and update it yearly and in case that there are new technologies or new work practices which could impact on OSH risks.

In general terms, the impact of the EU legislation on Health and safety at work in France is positively assessed by the interviewees. All the companies in France have to follow the minimum protection standards set by EU legislation and when there are issues regarding health and safety at work, they are obliged to find solutions to decrease the occupational risks. According to interviewees, there has to be a documentised plan to reduce the risk. To ensure transparency and access to OSH information, the plan also has to be uploaded on the companies' websites and that information can be checked by the labour inspectors (to see if the companies are actually complying with the plan.) That obligation has been recently introduced in France by national legislation adopted in 2021 (the actual date for entering into force of that obligation was January 2023).

The French legislation is quite strict regarding accidents at work. According to the interviewee from the trade union who is also an expert on preventing risks, if there is an accident during working time or at the working site, it will be considered as a work accident (no matter how serious the accident is, even if the consequences is only a 1 day of sick leave of the worker). In other countries, it takes 4 days of sick leave or more to be considered a work accident. This rule is due to an agreement between employers and employees already in 1898.

According to the interviewee from the trade union who is also an expert on preventing risks, if employees have an accident and could prove that the employer knew that there was a problem in the place and did not improve the situation to prevent this problem, the employer will be liable for a compensation payment. Then, the employer will have to pay twice the compensation (this can be asked by the worker or the family in case of the employee decease. In the latter case, the compensation goes through social insurance.)

Normative resources- updated OSH Legislation

According to an interviewee who is a representative of a research institute, recently in France, there has been a legislative reform to improve the OSH prevention by the law to strengthen occupational health prevention promulgated on August 2, 2021.[198] Training is an obligation on the part of employers on health and safety. This reform is updating the OSH law, including an obligation to use a prevention passport for each employee which can indicate which training they have had on health and safety. This is a way for workers to get a better chance in job applications (if they have a complete passport), and employers are obliged to provide it.

Normative resources - OSH in collective agreements

[198] Loi pour renforcer la prévention en santé au travail promulguée le 2 août 2021.

Safety and health at work issues are often included in collective bargaining. However, the provisions of collective agreements could be improved according to the information from the interviews. Since the reform of labour law on 22 September 2017, there is a clear trend to decentralisation of collective bargaining in France. So the first level of response to agreements regarding OSH is at the level of the company. The reform of the system of collective bargaining has given greater role to collective bargaining also in the area of OSH. According to the interviewee from the research institute, however, working conditions/OSH are not at the top of list of topics on collective bargaining priorities. Instead, the social partners give priority to negotiating on other topics such as wages, employment, and working hours. Therefore, there are not many collective agreements at the branch/sector level in the private sector addressing OSH extensively. According to the same interviewee, there are relevant examples of collective bargaining on OSH at the higher levels. There is a national collective agreement on health and safety at work signed in 2019 applicable for all companies and sectors. Also, there are national collective agreements on work-related stress, on occupational risks, and harassment and violence at work signed on December 2020. Therefore, the topic on health and safety tends to feature in national rather than branch collective agreements.

In social insurance, there is national technical committees, for the construction sector see information below in the section over that sector.

According to the interviewee from the trade union who is also an expert on preventing risks, at the company level, there is a group CSE (economic and social committee) in every company which has more than 20 employees. In companies with more than 50 employees, there has to be a health and safety committee and workers can ask for new safety measures or improvement of existing safety measures. This committee meets 4 times a year.

6.2 Enforcement Resources

The main player regarding enforcement of OSH rules in France is the labour inspection (depending administratively of the Ministry of Labour). The labour inspectors can visit companies' premises and they can sanction them if they discover problems in the company's regarding prevention of OSH risks. Specifically in the construction sector, they can stop the activities at the workplace if there is a very high-risk level for the health and safety of the workers.

A problem that was pointed out during the interviews is that every year there are fewer and fewer job-site inspections. They Labour inspection come to the companies in cases of serious accidents at work or sometimes when workers contact them requesting an inspection if there are problems with the compliance of OSH rules. According to the interviewee from the trade union who is also an expert on preventing risks, they conduct inspections if members of the OSH committees of the company call them, but usually they come only if there are problems. The inspection process takes quite long because it has to go through a tribunal. Nevertheless, labour inspectors can take measures such as stopping immediately the work performance in the site in cases of serious breaches of OSH prevention rules, for example if there is a risk of falling from height, or if they notice that workers are dealing with carcinogen substances without the proper protection, or dealing with asbestos without protection (firms have to declare when they are dealing with asbestos).

According to the interviewee from the trade union who is also an expert on preventing risks and from the interviewee who represents an organisation for risk prevention, there is also monitoring of compliance by the inspectors of the social security system, but they have less power than the labour inspectors. Due to the fact that occupational accidents at work are quite costly in term of public resources, the social security system has an interest in proper implementation of good occupational practices at the regional level. Members from the social insurance (ie. Caisse Nationale de l'Assurance Maladie des Travailleurs Salariés [CNAMTS]) are more frequently present on the job sites than the labour inspectorate. That is a more effective enforcement policy as they can ask anything they want to improve the health and safety at work protection. If the company management does not want to do so, the cost of contribution to social insurance can be increased (up to 25% more contribution, up to 50% more contribution second time there is a breach of OSH rules, and the cost can go up to 200% more contribution in cases of recidivous non-compliance) for each worker employed in a company. The decision on the evaluations of the social insurance institution can be made within 2 months, and the rise of contribution can be up to duration of 6 months before being reversed (if improvements are made). If there are dangerous situations for the workers health and safety, a procedure can be initiated to request that the employer pays a fine/pecuniary penalty.

According to the interviews, there are still gaps in the protection of the health and safety rights of workers in some sectors in France. That is especially problematic for SMEs. Small companies have less resources and are less concerned by health and safety at work. Large companies care more because it is too costly if there are accidents at work. An occupational disease which is completely caused by a company can cost up to 1 million euros per worker (asbestos 600000 to 700000 euros). And if the worker passes away, the relatives will be paid out by the social insurance by the department dealing with occupational diseases (again completely paid by employers). Therefore, it is in the employers' interests to deal well with occupational risks.

In case of non-compliance with OSH rules sanctions are imposed. There are civil cases (labour courts can judge health and safety rule breaches with fines). According to the interviewee from the research institute, there are also penal cases (e.g., a case where the employer is negligent about workplace bullying or does not respect health and safety law). According to the same interviewee, for example, in the France Telecom case (2006-2009) where 35 workers committed suicide due to working under pressure. In the period, the management of France Telecom was reducing 22000 jobs due to economic cuts in this public company. The Courts said it is an institutional workplace bullying – from top level that stressed all other workers. This was a penal case and prison sentences were imposed for some employers as well as pecuniary fines.

The system of liability in case of an accident at work/occupational disease is very well regulated in the French case. According to the interviewee from the research institute, there is a presumption of responsibility when accidents at work or occupational diseases occur during workhours at the workplace under the supervision of employers. Also, occupational suicide is the responsibility of employers. Because of the presumption of responsibility and liability of employers, employers have to contribute to the occupational risk branch of the social security system. According to the same interviewee, there is a fixed compensation if employees can prove that it is the employers' fault in case of a serious accident. Also, employers have to pay higher contributions to the social security system for occupational risk branch if they breach prevention of risks at work.

6.3 Instrumental Resources

The Focal point on occupational health and safety in France is the Ministry of Labour and Employment.[199] The Ministry has organized an information campaign on the new updated legislation aimed to improved OSH prevention including a seminar on that topic addressed to stakeholders in 2021.[200]

Regarding monitoring of OSH compliance, there is a risk assessment that needs to be made when a company works for another company in the working sites according to the interviewee from the trade union who is also an expert on preventing risks. Both companies must agree and file together a risk assessment plan, and they need to check the compliance with the plan jointly. There is an inspection between the representatives of both companies to ensure both companies are following the agreed OSH prevention rules.

An expert interviewed considered that there are no sufficient mechanisms of transparency for the workers in both sectors examined. They are often not well-informed or aware of their rights concerning health and safety. Employers are also not always aware of their responsibility. In these two sectors, even if the employers implement policies to protect against risks, employees may not follow the proper procedures and sometimes consider that protection is too much of a hassle for the performance of their tasks.

According to the interviewee from the trade union who is also an expert on preventing risk, an interesting "best practice" (instrumental resources) in the construction sector – there is an observatory which organizes communication about health and safety. A professional body for occupational risk prevention[201] but there is no similar institution for the PHS sector.

Another institution which provides instrumental resources is the INRS which is financed with public funds and driven by the social partners. They prepare and publish a lot of studies, research, and guidelines for both sectors, including the PHS sector.

6.4 Specific information for construction and PHS sector

A) Construction Sector

According to the interviewee from the trade union who is also an expert on preventing risks, the main problems/risks that most often occur regarding health and safety at work in the construction sector, according to the last data, are:

- the handling of objects; that leads to many accidents (often not very serious – a leg or arm broken, but very rarely death) and frequent muscular skeletal diseases.
- the main risk that often occurs is falling from height (20% of all accidents in the sector). Around 30-40% of the death in the construction accident is due to falling from height;
- Sexual harassment and workplace bullying, gender harassment and sexist behaviour occurs also in the construction sector.

[199] See: Santé au travail - Ministère du Travail, du Plein emploi et de l'Insertion (travail-emploi.gouv.fr)
[200] See information: Replay| Séminaire loi pour renforcer la prévention en santé au travail (travail-emploi.gouv.fr)
[201] https://www.preventionbtp.fr/

- Stress and working under pressure is a growing concern for workers' representatives on the sector. In the construction sector because the work has to be done within a specified time frame, work tasks have to be performed quite quickly. There is not time for reflection. In the past, according to experts in the sector interviewed, there was more time and opportunity to reflect on how to perform certain building tasks.

According to the interviewee from the trade union who is also an expert on preventing risks, in social insurance, in the construction sector there is a national technical committee. This committee has sufficient economic resources to take preventive actions. Thus, the employers can ask from this committee to buy better and safer equipment (i.e., scaffolding) and training for workers. But there is a condition – this committee attaches conditions that in order for employers to get scaffolding, companies have to provide training, so that workers have the appropriate training to use the equipment.

According to the interviewee from the trade union who is also an expert on preventing risks, regarding monitoring systems in the construction sector there is direct and active monitoring on exposure to dangerous substances such as nuclear substances, or asbestos. When you enter a working site where there is asbestos the time of exposure is recorded, and a worker can conduct work there only for a maximum of 2 hours. Then, there should be a rest period of at least 30 minutes. Then, they can go back to work. In case of nuclear substances, the rules are similar (check in and check out monitoring system).

According to the interviewee from the trade union who is also an expert on preventing risks, in the sector there are employee's trainings on health and safety made available for workers. For the construction sector, OPPBTP is organising the trainings. Besides, the social insurance institution also deals with health and safety training. INRS has a department dealing with health and safety in all companies (not just construction). They organise several different trainings on OSH for all companies.

Furthermore, commercial companies also provide health and safety at work training services. Training the management and employees in OSH is required by the legislation. For example, the exposure to asbestos is very regulated. Without a specific training, a worker cannot work with asbestos (around 90% of workers in this case are trained). There is also training for driving machines with on-job site training, and an authorization from the employer that workers can drive the machine after the training.

According to the interviewee from the trade union who is also an expert on preventing risks, regarding the mechanisms of transparency for the workers in this sector, according to the interviews in the construction sector, workers are not enough well-informed of their rights concerning OSH. However, there is an increasing number of workers who care about their rights and look for information about it. The situation is better than 30 years ago, but improvement on access to information on OSH is still needed. In some sub-sectors, workers know better about OSH (for example when they are exposed to asbestos, and chemicals, dangerous substances). These workers are in general well trained and know their rights.

According to the interviewee from the trade union who is also an expert on preventing risks, in the construction sector some "best practices"/"innovative initiatives" (instrumental resources) are identified. For instance, OPPBTP assembles all the best practices in all companies, including data management, better practices, and materials. For example, when drilling in asbestos, lot of fibre

comes in the air. A company did research on how to reduce the fibre in the air, using the gel that was used for ultrasound with some changes in the composition to the gel. Now the drilling has no fibre as it is captured by that gel. Other companies have learned from that innovative new protection system. Also progress in use of scaffolding are recorded through this system. All of this information is shared with companies in the sector, and there is a newsletter each month which OPPBTP shares with all the companies in the construction sector. INRS also has monthly publications with news for all sectors. There are at least 4 or 5 publications on health and safety at work in the country which includes the ones from INRS and OPPBTP.

Regarding health and safety at work during the COVID-19 pandemic in the construction sector

According to the interviewee from the trade union who is also an expert on preventing risks, during the lockdown time due to the COVID-19 pandemic, at OPPBTP, the OSH committee wrote a roadmap to deal with spreading and preventing of Covid at the jobsites when work will be restarted. Recommendation rules were written on use of masks, cleaning the worksites, coming with vehicles to work (how many people could be in a vehicle), what to do with places where there was eating or showering. This roadmap was updated 7 times in one year. It was also agreed between employers and employees. There was a publication from the government, which relied on this roadmap and it was spread to all other committees.

B) PHS Sector

The EU Framework Directive 1999/391 excludes PHS from the directive (Article 3). That means that for PHS, all regulation in France for PHS is not deriving from any EU provisions. Therefore, all the protection for PHS comes from the French national regulations, simply because there is nothing at the European level regarding OSH in this sector.

According to the interviewee from the organisation charged with risk prevention, the main problems/risks regarding health and safety in the PHS sector are: falls, muscular and skeletal injuries for nurses/cares and housekeepers due to physical nature of work. Also, psychological risks occur often (emotional work – hide your emotions; act happy all the time; controlling emotions regarding difficulties with clients). Harassment occurs as well including sexual harassment.

According to the interviewee from the organisation charged with risk prevention and the interviewee from a research institute, a main problem for OSH at the PHS sector is that it is a peculiar sector where employers are individuals, and they are not aware of occupational health and safety law. However, OSH legislation applies for the case of PHS workers in France. There is a decision from the Cour de Cassation of 8 April 2021 stating that this kind of employers are under obligation to provide health and safety to the PHS workers. [202]

According to the interviewee from the organisation charged with risk prevention, monitoring and inspections are difficult for the case of OSH at work of PHS workers who are employed by individuals because the legislation on individual privacy prevents public institutions to enter a private place unless

[202] See: https://www.lemonde.fr/economie/article/2021/04/13/la-cour-de-cassation-estime-que-le-droit-a-la-protection-de-la-sante-et-de-la-securite-s-applique-aussi-aux-employes-a-domicile_6076649_3234.html)

they are allowed by the owner. So, labour inspectors can enter companies whenever they want, but not the private households where PHS workers are employed.

According to the interviewee from the organisation charged with risk prevention, another problem for PHS workers is the patchy regulation which applies to them. Only a few articles in the Code du Travail concerns this sector, because PHS workers work in a private space. Therefore, the risk prevention legislation is more difficult to apply for the PHS sector.

According to the interviewee from the organisation charged with risk prevention, the main trade unions often pay less attention to PHS sector than to other more traditional sectors such as construction due to the low trade union affiliation rates of PHS workers (workers in the PHS sector are mainly women, low skilled and often from a migrant background.)

Regarding the regulation in France of health and safety in the PHS sector, an interviewee highlighted that only a few articles in the Code du Travail apply to them and the actual compliance with these provisions is likely to be low due, among other factors, to the difficulties to conduct inspections at a private household in practice. Nevertheless, the same interviewee INRS plays an important role on promoting compliance through discussion and planning of OSH risk management. The “Caisse Régionale d'Assurance Maladie” speaks with workers at their workplaces and is committed to improving the safety conditions and prevent risks at work on the sector.

According to the interviewee from the organisation charged with risk prevention, concerning forms of employee training on health and safety made available for workers in PHS. Either to address language barriers, or to mitigate risks such as handling certain dangerous products, the INRS decided from the start that their informative documents for the PHS sector will be in very illustrative rather than full of text that would be too complicated to understand for everybody. INRS wanted simple and short documents that are easy to understand at work. They discuss the content of those document beforehand with the employees.

According to the interviewee from the organisation charged with risk prevention, two training courses are offered for PHS sector (not including the care at home). One is for PHS workers dealing with how they can respond to workplace emergency, i.e., if something happens in a household (private place) where they are working (this was requested by PHS workers in this sector and deals with risks for the PHS workers but also covers how to respond if the client is injured). The second training is about preventing them from developing muscle and bone injuries due to physical work (many PHS companies prefer sending their workers to this course rather than the first one because it is more complete, and because it focuses more on risks).

According to the interviewee from the organisation charged with risk prevention, there are not many sanctions imposed in case of a breach of health and safety rules in this sector. The Labour inspectorate cannot easily perform inspections in this PHS sector. During the COVID-19 pandemic, there was a case that the inspection considered the need stop the work because the workers could do not the job in PHS sector because of lack of protection masks. However, the position of the labour inspection in this case was not sustained by the tribunal which dealt with it.

According to the interviewee from the organisation charged with risk prevention, liability in case of an accident at work/occupational disease for this sector depends on whether the PHS workers is employed directly by client, or through a firm. There are very few court cases on liability for accidents

at work and occupational diseases. Part of the reason is because the PHS workers involved in the case won't send the due information to the tribunal about the lack of expertise on OSH. The system allows PHS workers to complain about liability but that does not happen very often.

The INRS actively tries that the OSH obligation of informing the workers is complied with. The interviewees have the impression that workers probably know more than in the previous decades. During the interviews it was also mentioned that the Caisse Régionale d'Assurance Maladie also meets workers in the sector and try to promote progress on OSH issues.

During the qualitative research "best practices"/"innovative initiatives" in the PHS sector were mentioned. For example, according to the interviewee from the organisation charged with risk prevention, INRS has been supporting a project called "*la demarche ALM – accompanie de la mobilite"* since two to four years ago. This is a "cultural revolution" in the sense that often care at home can be quite physically demanding for the worker. Often workers in that sub-sector get injuries for doing their care work and help the client. There are many skeletal-muscular injuries in the PHS care sub-sector in France. Before, when workers of home care or occupational therapy were trained in training school, they were instructed that they must get everything done for the client. The new paradigm is to stop this view – instead workers evaluate the client on what they can do / what they cannot do. Workers help their clients on specific aspects that their clients can or cannot do (in the therapy sector), and also use tools (aids lifts) which they did not had in the past.

According to the interviewee from the organisation charged with risk prevention, the new wave of working culture of working in PHS is for workers to perform different elements of care (that they are specialized in) rather than devote a single person to all elements of care. Therefore, a new paradigm has entered teaching schools on care to change the view of how to provide care at home in a more safe and healthy way.

According to an expert interviewed from the organisation charged with risk prevention, "the situation of workers in the PHS sector regarding health and safety at work was a disaster during the COVID-19 pandemic. Specially at the beginning of the pandemic, workers were performing their work without the proper OSH protection equipment (no masks, etc.) but they continued to conduct their work to help the client. The sector did not receive enough attention as the worker performing the PHS task is invisible quite often for policy makers."

According to the interviewees, there are a few specific provisions in regulation, collective agreements, and workplace policies addressing the gender perspective of health and safety (ie. specific risks for female pregnant women, risks assessment considering specific female health problems, or women who are breastfeeding, or prevention of sexual harassment or harassment based of sex at work) in France. Gender specific OSH protection measures are regulated in the labour law and collective agreements. The worker can request a change to another job during pregnancy if there is a risk for her or the baby at her normal workplace. There should also be a room for breastfeeding in the workplace.

According to the interviewee from the organisation charged with risk prevention, protection against the OSH risk of sexual harassment is well regulated in France and the companies are obliged to put posters and public information on the rights for workers in this area. However, de facto, PHS workers do often not know about their rights or are unable to afford to get access to these rights, to exercise

them. In theory, the protection against sexual harassment is high in France in theory, but, in practice, PHS workers do not use the available legal recourses much.

The interviewee from the organisation charged with risk prevention suggested focusing on the initial training (modify the social norms around PHS sector work) as an option for strengthening of health and safety at work rights. This is a more general problem of the PHS sector that is not strictly just about OSH. For example, the general opinion according to the same interviewee is that they should be paid better. In short, a broader global solution including education for other citizens on the value of the PHS sector work will help to change social norms regarding PHS.

6.5 Gender Dimension

As explained above and surfaced through the interviews, there are specific provisions in regulation and collective agreements addressing the gender perspective of health and safety (ie. specific risks for female pregnant women, risks assessment considering specific female health problems, or women who are breastfeeding, or prevention of sexual harassment or harassment based of sex at work) in France.

According to the interviewee from the research institute, the legislation clearly prohibits discrimination on grounds of sex and sexual harassment and harassment on grounds of sex at work. The chapter of the labour code on sexual harassment is quite extensive and has an innovative approach – including the prohibition of sexist behaviour at work. A text/poster explaining this prohibition and the company policy against harassment needs to be visible at the work premises in every company.

According to the interviewee who belongs to a trade union and is an expert in risk prevention, the legislation also established some work restrictions for pregnant women and women who are breastfeeding. They cannot work with lead for example, (it is completely forbidden).

6.6 COVID-19 situation regarding health and safety

According to the interviewee who represents a trade union and is a risk prevention expert, Covid-19 was not considered an occupational disease in France, except for workers who are in risk groups or workers working in healthcare sectors. For workers who died from Covid-19, there was a need to prove that infection at work caused the occupational disease (except for the healthcare sector).

According to the interviewees, the situation of workers in the two sectors regarding health and safety at work during the COVID-19 pandemic was different. During the lockdowns, the construction sector workers continued to work but had to respect the specific Covid-19 prevention procedures. For PHS sector, many domestic workers stopped working and there was no specific protocol in the first lockdowns according to the interviewee from the research institute.

7. Spain

7.1. Normative Resources - General information

The Spanish Constitution (CE) guarantees a generic right to health protection (Article 43.1 CE) while establishing a specific commitment for public authorities to "ensure workplace safety and hygiene" (Article 40.2 CE). This last commitment seems to pursue more than one aim: on the one hand, to highlight the need for a preventive policy concerning damage, not only to health but also to physical integrity during production; and on the other hand, to highlight the limitations that such a policy of protection entails for the entrepreneurial powers of the organization of production that derive from the principle of freedom of enterprise (Article 38 CE). However, the Spanish Constitutional Court has found a connection between Article 15 of the CE and the right to safety and health at work in its judgments (SSTC) 62/2007 and 160/2007. However, not every case of risk or damage to health implies a violation of Article 15 CE. A combination of certain factors is required: a) severity: the risk or damage to which the worker is exposed must be of a certain intensity; it must be a serious danger. From this, it follows that slight or minor dangers are excluded; b) immediacy or future nature of the risk; and c) the certainty of the risk: whoever seeks judicial protection against a danger should be able to adequately prove its existence, providing evidence of the direct relationship between the contested measures and the harmful consequences that may need to be avoided.

Taking into account the mandate contained in the CE, Law 31/1995, of 8 November, on the Prevention of Occupational Risks (LPRL) establishes the general framework to which the regulations on occupational health will have to comply. It responds to the need for a unitary regulation for the protection of workers' health, while implementing the adaptation to Spanish law of Community directives (Directive 89/391/EEC) and international standards in this area (ILO Convention No. 155).

A subject as complex as occupational health requires extensive regulatory development, which is mainly carried out via regulatory standards. These regulatory rules aim, on the one hand, to ensure protection against occupational risks (minimum requirements that working conditions must meet, limitations or prohibitions on exposure to agents that involve risks, etc.); and on the other hand, to develop certain aspects of preventive activity (risk assessment procedures, plans for preventive measures, etc.) and specific subjects that will need to be regulated (prevention services, qualification of occupational diseases, etc.). Finally, the role of collective agreements is to improve, for the benefit of the worker, what is established by the nationwide regulatory framework, which functions as a minimum mandatory rule of law. The role of the collective agreement is therefore not so essential, unlike regulatory rules.

The right of workers to effective health and safety protection at work (Article 14.1 LPRL) is correlated with the employer's duty to "the protection of workers against occupational risks", which implies the employer's duty to guarantee the health and safety of the workers in their service "in all aspects related to work by adopting all measures necessary for the protection of the health and safety of workers" (Article 14.2 LPRL). The nature of the duty of safety is as follows: a) It is a generic duty, which covers all aspects related to work that may affect the health of workers, and which acquires concreteness through the specific obligations laid down in the LPRL and development regulations. b) It is a permanent duty, that is, the employer must interpret the content of this duty in relation to the technical and regulatory context that exists, and adapt the prevention measures to any modifications that may be experienced by the circumstances that affect the performance of the work. c) It is an obligation of the means to carry out the preventive activity: the employer must have acted with all the required diligence, and in this sense it will be they who must provide proof of their actions. d) It is

a very personal duty of the employer that is not transferable to the worker or to third parties, although compliance with it can be implemented in coordination with other entities. e) It has as its objective 'effective' protection, which implies the adoption of the highest possible level of protection against all risks generated in the workplace, including psychosocial risks. The generic duty of protection is manifested in a number of specific obligations (Articles 16 et seq. LPRL), which specify the generic duty, and instrumental obligations, as they are subordinated to the achievement of the highest level of protection for workers.

7.2 Enforcement Resources

The LPRL imposes on all employers, as a first obligation, the obligation to implement a model of preventive organization based on the different possibilities that the regulation itself establishes as an imperative (Article 30 LPRL). The obligation to establish a preventive organization can be considered as instrumental, with it being at the service of the material obligation which requires the employer to adopt "all necessary measures to protect the health and safety of workers" (Article 14.2 LPRL). Based on the afore-mentioned provisions, the Spanish legal system designs four ways of organizing prevention: the employer's adoption of the preventive activity, the appointment of one or more employees of the company to carry out preventive functions, the establishment of their own prevention service or a joint prevention service in the company, and the use of one or more other third-party prevention services.

The LPRL encourages preventive policies to be implemented in the company through dialogue between representatives of employers and workers, with the legislator understanding that the participation of both is a guarantee of the effectiveness of the measures to be adopted. Pursuant to Article 33 LPRL, workers have the right to participate in preventive matters within the company and shall contribute to the integration of occupational risk prevention in their productive organization. The participation of workers in preventive matters includes, in addition to participation *stricto sensu*, the right to information and consultation. With regard to participation in the strictest sense, it should be borne in mind that the right to participate in preventive matters concerning occupational risks is an individual right, although it is exercised collectively (Article 34.1 LPRL). Therefore, the exercise of the right of participation of workers must be expressed through the general representative bodies (staff delegates, trade union delegates and work councils) and the specialized representative bodies, namely the occupational risk prevention delegates and the health and safety committees.

Article 14 LPRL establishes the employer as the maximum guarantor of the health and safety of workers, and therefore establishes them as a cardinal element in the imputation of liabilities in terms of occupational risk prevention. In the fulfilment of their obligations in terms of risk prevention, the employer may use the help of auxiliaries, and resort to third-party prevention services that "shall complete the employer’s actions, and will not discharge him from his responsibilities in this area, without prejudice to the actions which he may take, where appropriate, against any other person". In accordance with Article 42 LPRL, any breach by the employer of their obligations regarding the prevention of occupational risks "gives rise to administrative liabilities, and so, where appropriate, to criminal and civil liabilities for damages which can be derived from such non-fulfilment".

For the monitoring and control of compliance with preventive rules, Spain relies on an important administrative body, the Labour and Social Security Inspectorate (ITSS), which is governed by Law 23/2015, of 21 July, on the regulation of the Labour and Social Security Inspectorate. Among its fundamental functions in the field of OSH are: to monitor compliance with the regulations on the prevention of occupational risks and the legal-technical standards that affect working conditions, even if they are not considered as labour regulations; to advise and inform companies and workers on the most effective way to comply with the provisions whose supervision they are entrusted with; to prepare the reports requested by the Social Courts in claims brought before them with regards to procedures concerning occupational accidents and occupational diseases; to inform the labour authority of fatal, very serious or serious accidents, and of others for which such a report is required; to verify and contribute to the fulfilment of obligations assumed by prevention services; to agree to the immediate interruption of works when, in the opinion of the inspector, there is a serious and imminent risk to the safety or health of the workers; draw up infringement notices and propose the imposition of fines for infringement of the regulations on safety and hygiene at work, for which Royal Legislative Decree 5/2000, of 4 August, approving the consolidated text of the Law on Infringements and Sanctions in the Social Order (LISOS) is applicable; and, propose the surcharge of benefits derived from accidents at work and occupational disease[203].

7.3 Instrumental Resources

The Spanish National Institute of Occupational Safety and Health (INSST) is the specialized technical and scientific body of the General State Administration, attached to the Ministry of Labour and Social Economy (Article 8 LPRL). It provides specialist technical support for certification, testing and accreditation and acts as a national reference centre in relation to the institutions of the European Union and, in particular, in relation to the European Agency for Safety and Health at Work and its Network. Its functions include: technical advice in the preparation of legal regulations; promotion of training, information, research, study and dissemination of occupational risk prevention; technical support and collaboration with the ITSS; coordination of Public Administrations; collaboration with international organizations; carrying out Audits of the Prevention Systems of the General State Administration (Article 10 of Royal Decree 67/2010); establishing evaluation methodologies; support in the development of technical standards for equipment or products, methodologies and criteria; preparation of training and information material; certification of the safety conditions of PPE or machines; and research on processes, products or preventive techniques[204].

The Spanish National Commission on Occupational Safety and Health is a collegial advisory body of the Public Administrations for the development of prevention policies and also serves as an institutional participation body in the field of occupational health and safety. The functions of the Commission are: to know the actions of the Public Administrations in the field of prevention of occupational risks, technical advice and surveillance and control provided for in the LPRL; to inform and formulate proposals on such actions, specifically in relation to criteria and action programmes, projects and provisions of a general nature, coordination of the actions carried out by the competent

[203] https://www.mites.gob.es/itss/web/en/index.html
[204] https://www.insst.es/

Public Administrations in labour matters, and coordination between the competent Public Administrations in labour, health and industry matters[205].

The Foundation for the Prevention of Occupational Risks is a non-profit occupational institution created by the LPRL. It is attached to the National Commission on Occupational Safety and Health and aims to promote the improvement of health and safety conditions in the workplace, especially in small businesses. It is a specific instrument to support occupational preventive actions in Spain, through information, training, technical assistance and promotion of compliance with the new risk prevention regulations[206].

7.4 Specific information for construction and PHS sector

a) Construction Sector

Accidents in the construction sector – Specific problems of the sector

The construction sector in Spain is one of the main drivers of productive and economic activity in general. The regulation of occupational risk prevention presents a high degree of legal complexity due, fundamentally, to the different legal relationships and institutions that are involved in construction activity. Construction sites are work centres whose temporality, variability of working conditions and interference, and combination of activities, among others, lead to a much higher level of danger than in other sectors of activity. Among those interviewed there is a general consensus on the high number of accidents that continue to occur in this sector and on the need to continue developing measures that reinforce the training of workers who carry out their activity in the construction industry.

Regulatory framework – Normative resources

European regulation of occupational safety and health is very much present within our regulation. Beyond the method (that is, the combination of the general rule and specific rules and the technique of "adaptation to progress"), it is clear that the imprint of Directive 89/391/EEC (as well as traces of more specific directives) can be found at each step within Law 31/1995, of 8 November, on the Prevention of Occupational Risks (LPRL) or the corresponding sectoral or more localized application rules.

In the construction sector, Law 32/2006, of 18 October, regulating subcontracting in the Construction Sector (LSCS) and Royal Decree 1109/2007, of 24 August, which developed said Law[207] have been of great importance. The Law aims to regulate and reduce the practice of subcontracting in the sector, based on several considerations that the legislator already makes in the Preamble: on the one hand, subcontracting is understood as a healthy practice that allows small companies to participate in construction and contribute their specialization to it, thus widening the labour market within the

[205] https://www.insst.es/cnsst
[206] https://www.insst.es/cnsst/fundacion-prl
[207] For an extensive study of this regulation, see MERCADER UGUINA, J. R. (Dir.), *Contratas y subcontratas en el sector de las construcción, Análisis de la Ley 32/2006, de 18 de octubre, reguladora de la Subcontratación en el Sector de la Construcción y el nuevo Reglamento de desarrollo, Real Decreto 1109/2007, de 24 de agosto,* Lex Nova, 2008.

sector; on the other hand, however, the extension of the subcontracting chain beyond what the legislator considers reasonable, determines a loss of efficiency and limits business margins until they almost disappear, which translates into a decrease in the conditions of safety at work.

- It is precisely this consequence that the Law seeks to avoid by taking various measures to resolve this. The first measure is to limit the number of possible subcontracts to three. The developer of the work can contract with as many contractors as they deem appropriate to carry out that work. In turn, the contractor can subcontract the work entrusted by the developer, thus initiating a chain of subcontracting that stops at the third subcontractor, who can no longer subcontract the work that has been entrusted to it. The limitations are even higher in the event that one of the links in the chain includes a subcontracted self-employed worker or a company that mainly contributes labour, since they cannot subcontract, even if the quota of three subcontracts that the Law will allow has not been filled. Only in exceptional cases (unforeseeable circumstances, specialization requirements, technical complications or force majeure) can the number of subcontracts be extended by an additional level, allowing for a fourth subcontracting, provided that they are not self-employed workers or companies that mainly provide labour, to which the possibility of subcontracting is not recognized except in the specific case of force majeure.

- The measures adopted by the Law do not stop at limiting the chain of subcontracting, but introduce two types of additional measures. First, subcontractors are required to prove that they are in a position to assume the tasks entrusted to them, for which purpose they must be registered in the Register of Accredited Companies (REA) as regulated by the Law. Another of these conditions or requirements is that contractors or subcontractors operating in the construction sector shall have a minimum number of workers permanently hired.

- The Law regulating subcontracting in the construction sector supplements the measures described with a series of rules on the duty of vigilance incumbent on the companies themselves to ensure compliance with the Law and establishes the right of workers to be informed about the contracts and subcontracts undertaken by the companies who they work for, as well as the right to participate in forums and procedures that ensure compliance with the Law. At the same time, it stresses the need to provide workers with the training necessary for the performance of the tasks entrusted to them, in order to avoid accidents.

The following are of great importance in completing the regulatory framework for the sector:

- Law 38/1999, of 5 November, on Building Regulation.

- Royal Decree 1627/1997, of 24 October, on the implementation of minimum safety and health requirements at construction sites, is the result of the transposition of Council Directive 92/57/EEC, of 24 June, into Spanish law.

- The Technical Guide for the Assessment and Risk Prevention Relating to Construction Works of the Spanish National Institute of Occupational Safety and Health. The first edition of this guide was published in 2004. Subsequently, it was completely revised and its second edition was published in 2012. It is a very useful practical tool for companies and workers.

It is important to highlight the role of collective bargaining within the sector and its projection in the field of occupational risk prevention. The General Collective Agreement of the Construction Sector has been introducing specific training in occupational risk prevention that the different professionals in the construction sector must have, in order to acquire adequate knowledge concerning the risks and preventive measures that are involved with regards to construction sites, with an emphasis on the specificity associated with the particular functions and activities of their job. Taking into account the latest developments in the sector (e.g. new construction processes, technological advances in machinery and auxiliary means, active ageing of the workforce, etc.), training in occupational risk prevention will continue to evolve, and methodologies and alternatives that improve the teaching efficiency of this training will be introduced. There is a general consensus among all interviewees on the need to strengthen training systems and they emphasize that it is not enough to train in general risks concerning the job, but that the work specialty that the worker will be carrying out needs to be taken into account. Fraud in this area should also be severely punished.

Enforcement resources – Intervention of the Labour and Social Security Inspectorate

Royal Legislative Decree 5/2000, of 4 August, approving the consolidated text of the Law on Infringements and Sanctions in the Social Order, expressly categorizes cases of non-compliance with the obligations of the various parties who may be responsible for the construction work. Law 23/2015, of 21 July, on the regulation of the Labour and Social Security Inspectorate, attributes to the Labour and Social Security Inspectorate (ITSS) the supervision of compliance with the regulations in this matter. The inspection function is performed by the Senior Labour and Social Security Inspectors and by the Deputy Labour Inspectors. This body is specialized in Occupational Health and Safety. The Deputy Labour Inspectors belonging to this body have competence in the field of prevention of occupational risks and, in particular, devote a significant part of their activity to the monitoring of compliance with regulations in the construction sector. In some provinces there are specialized teams in the management of risk prevention in this sector. Despite this, there is widespread criticism of the small number of Inspectors and Deputy Inspectors. With regard to the control of material or technical conditions from the point of view of health and safety, priority is given to aspects such as: earthworks; excavation, ditches; risks of falls from a height; storage of fuels and changing rooms. Health and safety conditions in the construction sector are constantly monitored by the ITSS. According to its 2020 Report of Actions, this surveillance has resulted in a total of 97,391 inspection actions, and 40,108 requirements and infractions [208].

Instrumental resources - Role of social partners: The Construction Labour Foundations

Concern for proper compliance with regulations in the sector involves business and union representatives in compliance with the risk prevention regulations. Of particular importance is the Construction Labour Foundation (FLC) which is a state-wide, non-profit, joint entity made up of the main stakeholders in the sector: the Spanish National Confederation of Construction, *Comisiones Obreras del Hábitat*, and the Federation of Industry, Construction and Agro of the Spanish trade union *Unión General de Trabajadores*. Created by the additional provision of the First General Convention

[208] Memoria_2020_.pdf (mites.gob.es)

of the Construction Sector, and in accordance with its Statutes, its purpose is to provide services aimed at professionalizing and dignifying the different trades and jobs in the construction sector[209]. To this end, it is entrusted with the study, programming and development of services for the promotion of vocational training, the improvement of health and safety at work, and employment[210]. This conventional regulation has been reinforced through the legal protection granted by Article 12 LPRL and Article 9.2 of Law 32/2006. These provisions enable trade unions and employers' organizations at the state sectoral level to regulate a system of accreditation for the prevention of occupational risks in this key sector of the Spanish economy.

The FLC therefore serves an end in the public interest, in the terms and conditions set out in its Statutes, contributing towards a very significant reduction in accidents in the construction sector in Spain. As an example of the above, since its creation the FLC has trained more than 2,000,000 workers, has carried out more than 200,000 visits on site, promoting occupational safety and health, and has promoted quality employment with the issuance of more than 700,000 Construction Professional Cards, a document that, in addition to accrediting the training received by the holder in occupational risk prevention, also contains training of all kinds that they have taken, their professional category and their experience in the sector[211].

Focusing directly on improving prevention, the joint entity makes advisory services and technical support available to companies and workers in the sector, such as the Joint Agency for Prevention of Risk in Construction (OPPC). The OPPC is a body which was created within the Foundation in 2001, and is responsible for supporting small businesses and workplaces in the sector, advising them and informing them of the risks involved in construction, as well as the measures that need to be implemented to eliminate or reduce them, through site visits.

The Industrial Construction Observatory has been set up within it with the aim of creating and regularly updating information on priority indicators in order to keep abreast of developments within the sector[212].

Equally worthy of note as a participatory body is the Construction Labour Foundation of the Principality of Asturias (FLCA)[213]. The FLCA is defined in its statutes as a joint and non-profit organization entrusted with various purposes of a social and labour nature. It was created in 1988 thanks to a specific clause included in the collective labour agreement for construction and public works in the Principality of Asturias. The FLCA primarily targets workers who come under the scope of

[209] Labour foundations are an instrument for promoting social dialogue, which is of particular importance in the field of European employment policies, as expressly acknowledged by the Communication from the Commission: "*The European social dialogue, a force for innovation and change*", European Commission, Brussels, 2002.
[210] An extensive analysis of its function may be found in MERCADER UGUINA, J. R. (ed.), *Fundaciones laborales: herramienta para canalizar la responsabilidad social empresarial*, Tirant lo Blanch, Valencia, 2009.

[211] Data incorporated in the Resolution of 7 July 2022, of the General Technical Secretariat, which publishes the Agreement between the General Treasury of Social Security and the Construction Labour Foundation, on the exchange of information.

[212] The Foundation also offers the entire sector a free service of assistance and advice from experts in occupational health and safety in construction, called the "Prevention Line", consisting of the website www.lineaprevencion.com and a free phone. In addition, there is the TV Prevention Line website, an online channel specializing in occupational risk prevention in the sector, aimed at prevention technicians, third-party prevention services, companies, workers and students, with the aim of contributing to reducing occupational accidents in construction.
[213] PEREZ DEL PRADO, D., *Fundaciones laborales y diálogo social: el caso de la Fundación Laboral de la Construcción del Principado de Asturias*, Trabajo y Derecho, 2017, no. 26, pp. 116–130.

personal coverage in the sectoral collective agreement, and their families, although it expands its scope to include the unemployed of the construction sector and other groups if the programmes aimed at them produce any kind of benefit for the construction sector. The foundation's activities are financed by employers' contributions (amounting to 4.5% of the gross wage cost). This obligation derives from the agreement and involves all companies falling within its scope. This is the main source of funds, although the FLCA also receives public subsidies and other income from financial and commercial activities.

Good practices and prospects for the future

The figure of the Territorial Delegate of Occupational Risk Prevention in Asturias was created as a result of an Interprofessional Agreement[214]. The powers granted to territorial occupational risk prevention delegates involve visits to workplaces, communicating freely with staff, accessing information and documentation, seeking preventive measures from the employer and, if necessary, recommending to the person in charge of the workplace the immediate cessation of work in the event of serious and imminent risks to life.

Interviewees have spoken about the need to address emerging risks. The emergence of new materials, such as nano-particles, poses a challenge in carrying out risk assessments and implementing risk prevention and control measures given the knowledge gaps that still exist[215]. The properties of these novel nano-particles and nano-structures are still largely unknown. However, it is surmised that with some of these properties (for example: the highly reactive surfaces of nano-materials; their ability to pass through membranes) a potentially high degree of toxicity could be found.

Likewise, they advocate the implementation of an Electronic Book of Subcontracting that would facilitate the work of companies willing to comply with the rules, since its completion would be carried out in the office by a worker with administrative training, accustomed to this type of procedure. In addition, it would require that the information incorporated therein be complete and consistent, and it would facilitate remote monitoring of the formal aspects of the subcontracting chain by the competent authorities, and hinder the involvement of subcontractors who are not in an appropriate legal situation. Finally, the Electronic Book of Subcontracting would allow cross-referencing of data with information available in other sources, such as the opening of workplaces or that in the company's registration book[216].

There is a consensus among interviewees that the increasing number of women participating in the construction sector should be addressed given that it is traditionally a masculine sector. This remains a barrier to recruitment and professional progress. When one thinks of positions on the site (traditionally seen as "masculine") the number of women performing these tasks is very small.

[214] Resolution of 20 July 2021, of the Ministry of Industry, Employment and Economic Promotion, which orders the registration of the Interprofessional Agreement for the creation and regulation of regional prevention representatives in the Principality of Asturias, in the registry for collective agreements and gender equality plans attached to the General Directorate of Employment and Training. This formula has been extended to the Autonomous Community of La Rioja through social dialogue as well, as stated in the Master Plan for the Occupational Health and Safety Strategy 2021–2023 of this Autonomous Community.

[215] https://nuevastecnologiasymateriales.com/aplicaciones-de-la-nanotecnologia-a-la-industria-de-la-construccion/

[216] The implementation of this Electronic Book is advocated in the "*Informe de situación del sector de la construcción del Principado de Asturias (2015)*", prepared by the Construction Labour Foundation of the Principality of Asturias.

Conveying to society how construction has been transformed into a more professional and inclusive sector, with great employment opportunities in which to develop a professional career, while banishing prejudices and perceptions far from the reality of the construction industry is a priority.

It cannot be ignored that since 2008, the number of young people employed in the sector, that is under 30 years of age, has decreased from 25.2% to 9.1% in 2021, falling by more than 16 percentage points. Meanwhile, the employed population aged 55 and over has increased from 9.4% in 2008 to 19.1%, a jump of more than 9 points. This is a worrying situation that reveals an inadequate generational changeover[217].

Health and safety at work during the COVID-19 pandemic in the construction sector

Regarding the impact of COVID-19 on the sector, the "Report on the Construction Sector", prepared by the FLC, indicates that the contribution to GDP by this activity was 1,121,698 million euros during 2020, which represents a fall of almost 10 points compared to 2019 (9.9%). In total terms, construction contributed 5.7% of GDP compared to 5.8% the year before the pandemic. According to the Labour Force Survey, employment also fell in 2020, by 2.6%: a total of 1,244,077 people worked for the sector, with women and temporary workers being significantly affected. According to 2021 data, construction would have reached the figures prior to the pandemic. Companies in the sector undertook 1,143,408 employment contracts during 2021, which means that the volume of hiring grew by 4.8% compared to 2020[218].

b) PHS Sector

The regulation of the legal regime applicable to the employment relationship of personal and household services, which has been configured as a special employment relationship, is established in Royal Decree 1620/2011, of 14 November. In the field of occupational health and safety, this regulation, albeit somewhat ambiguously, and Article 3 LPRL in a very clear and forceful way, have been excluding workers who serve under this special regime from the general regime of OSH provided for all workers. The references to health and safety contained in this regulation are condensed in Article 7. In its first paragraph, the provision incorporates into the special employment relationship the list of rights and obligations of the employee contained in Article 4 and Article 5 of the Workers Statute (ET). It is, in this way, expressly for household employees, pursuant to Article 4.2 d) ET, the right to physical integrity and to an adequate safety and hygiene policy, rights that, however, were de facto attributed by virtue of our constitutional rules (Articles 15, 40.2 and 43 CE). In addition, the introduction of the list of duties in Article 5 ET determines that a person employed in a household is obliged to observe the safety and hygiene measures adopted, a duty that was also inherent in the internal logic of the employment contract. The duty of safety contained in Royal Decree 1620/2011 was presented as a general principle that should govern the special employment relationship of personal and household services but is difficult to put into practice, in the absence of rules applicable

[217] Informe sobre el Sector de la Construcción 2021 - Observatorio Industrial de la Construcción (observatoriodelaconstruccion.com)
[218] Informe sobre el Sector de la Construcción 2021 - Observatorio Industrial de la Construcción (observatoriodelaconstruccion.com)

in the development of its content due to the exclusion existing in the LPRL. To this should be added the absence of a list of infractions and sanctions, as well as the absence of measures to control compliance with risk prevention obligations, which made it little more than a mere declaration of intentions of a programmatic nature and without material content in practice.

However, the recent Article 1 Royal Decree Law 16/2022 incorporates persons employed in households into the scope of the LPRL. The inclusion of this group in the scope of application of the LPRL is made through deletion of Article 3.4 LPRL (which was the provision that expressly excluded the application of the LPRL to persons working under a special employment relationship in personal and household services) and the addition of the new Eighteenth Additional Provision.

The application of the risk prevention regulations to domestic employees is not incompatible with the fact that the system implemented by the LPRL must undergo adaptations taking into account the singularities of this type of employment relationship. It seems that this has been the foresight of the legislator, since the Eighteenth Additional Provision refers to an upcoming regulation that, "taking into account the specific characteristics of domestic work", specifies the terms and guarantees of the exercise of the "right to effective protection". It seems that this regulatory development will integrate many of the gaps that originate from the inclusion of domestic workers in the scope of the LPRL. However, until the above-mentioned regulation is developed, the right to effective protection of domestic workers and the corresponding employer's duty of safety are fully in force.

This general duty of OSH for the employer is realized through the fulfilment of a set of instrumental obligations that give it content, and which in the field of domestic service pose important difficulties. This has been made clear by the people interviewed, representatives of associations created to help people employed in households[219]. All of them have welcomed the legislative amendment but believe that the positive effects that could result from it are not viable in the social and labour context of these workers, nor will they solve the significant problems that this sector has in Spain[220].

a) Risk prevention obligations of greater significance in the field of domestic work

- Organization of risk prevention: of the modalities allowed by the Spanish regulation, it seems that it is only feasible to go to an external prevention service, which, on the other hand, is common in our country where almost 90% of companies opt to arrange risk prevention with an external entity[221]. Although the assumption by the employer (home-owner/person responsible for the family) of at least some of the risk prevention activities may be an

[219] Intercultural Association of Home and Care Professionals; Active Domestic Service (SEDOAC); and Association of Home and Care Workers of Zaragoza.

[220] The majority of people working in this sector are women, with low qualifications, foreigners, unregistered, and with significant economic and family difficulties, which makes it an eminently informal type of work.

[221] The productive reality of our country, marked by small and medium-sized enterprises with a small volume of workers, has meant that third-party prevention of risk services have been established as the most often used organizational modality by productive organizations, as can be seen from the different studies carried out on the subject. At the state level, the latest data shows that 89.4% of companies use a third-party prevention service as a prevention of risk management model. *See* INSST, *La gestión preventiva en las empresas en España. Análisis del módulo de prevención de riesgos laborales de la «Encuesta anual laboral 2019»*, Madrid, INSST, 2021, p. 12. This data reflects that the tendency to organize occupational risk prevention through third-party prevention services not only has not decreased, but has increased compared to previous studies in which showed 78% use. *See* INSHT, *Encuesta Nacional de Gestión de Riesgos Laborales en las Empresas. ESENER-2 España*, Madrid, INSHT, 2015. For its part, the employer assuming the prevention is only chosen as a preventive modality by 8.1% of companies, and the appointment of workers by 14.4%. INSST, *La gestión preventiva en las empresas en España. Análisis del módulo de prevención de riesgos laborales de la «Encuesta anual laboral 2019»*, *op. cit.*, p. 13.

appropriate solution, they must go to a third-party prevention or risk service to comply with all the risk prevention obligations[222].

- Prevention plan, risk assessment and risk prevention activity planning: in relation to these obligations, there are not too many impediments. Simplified management may be done in a single document. The only problem that could arise is that of access to the workplace by an occupational risk prevention expert, which, in this case, is a family household, due to the problem of the inviolability of the home. However, when the employer is the sole owner of the house, there should be no conflicts of any kind, since here they act as the owner of the business, and also for the assessment of psychosocial risks (a serious problem in this sector, as we will now see) there is no need for access to the home; it is in fact advisable to do the assessment outside the workplace.

- Information and Training: in relation to information, the limitations in providing it to household employees are fewer. In this regard, Article 18 LPRL establishes that workers shall receive all necessary information in relation to the following matters: risks to health and safety at work, both those that affect the company as a whole and each type of job or function[223]; protection and prevention measures and activities applicable to the above risks; and the emergency measures adopted by the company referred to in Article 20 LPRL. The absence of workers' representation does not prevent the employer from fulfilling their obligation to inform domestic employees. There should be no doubts in relation to the obligation of training in the domestic sphere, and this should meet the characteristics derived from Article 19 LPRL, that is, be theoretical, practical, sufficient, specific, adequate or personalized with regard to the type of risk and work and the personal and professional characteristics of the worker; be continuous and periodic; and be free for the worker.

- Participation and Consultation: the very nature and characteristics of domestic work, essentially carried out individually, make it impossible to apply the provisions on risk prevention participation, which are endowed with an inherent collective dimension. In this way, and notwithstanding the right of the domestic employee to participate in risk prevention matters, its effective exercise will in practice be very limited. The same argument applies to the obligation to consult (Articles 18.2, 33, 38 and 39 LPRL, and Articles 16.2, 21.1 and 30.5 of Royal Decree 39/1997, which approves the Prevention Services Regulation (RSP)). However, and in the absence of representatives, it seems logical to deduce that the employer should consult directly and individually with the household employees, allowing their participation in risk prevention matters.

- Health Surveillance: the performance of medical examinations should not pose any specific impediment with regards to the individual dimension of this obligation. In principle, taking into account the activity of the domestic worker, occupational health examinations should be voluntary. This does not preclude that they may also be mandatory when the

[222] The problem is that it will accentuate the idea that the prevention of occupational risks constitutes another derived cost of the employment relationship; this circumstance, on the one hand, eliminates any possibility of integrating prevention into the organization, and, on the other, could constitute an element that will further encourage informality in domestic work.

[223] This information must also cover any possible professional recklessness or distractions that the worker may commit. STSJ Andalucía, Seville, 27 February 2007 (No. 3301/2006).

circumstances provided for in Article 22 LPRL occur. Greater complexity is found in the transfer of collective health surveillance to the area of domestic work (biological controls, epidemiological surveillance, environmental hygiene, awareness-raising campaigns, etc.). Thus, assuming that it is usual for the employer to have only one household employee, the collective dimension of health surveillance loses its meaning in terms of a business obligation. This deficit could be made up by the design and development of public health promotion policies aimed at domestic workers (Articles 5.1, 7.1, 10 and 11 and Fifth Additional Provision LPRL).

b) Occupational risk in the field of domestic work

The traditional exclusion of domestic workers from the field of risk prevention and the relative invisibility of this activity, which has developed in the private sphere and usually in an informal way, can be understood as fundamental reasons why the occupational risks of this group have not been the object of special interest in the scientific sphere[224]. However, the limited work in this field provides a first approach to the safety, hygienic, ergonomic and psychosocial risks to which domestic workers are exposed.

Safety risks are the type of risks most frequently evaluated in household employees, with a greater amount of research being found in this area. In this regard, the following have been identified as the most common risks in this category with regards to the activities of household employees[225]: falls from the same level and from different levels, cuts, collisions and burns. In the area of hygiene, the most reported risks are those related to continuous and long-term exposure to chemical agents present in household cleaning products (mainly ammonia and bleach) and possible contact with biological contaminants (especially due to contact with fluids from sick people in the home). The inherent physical nature of most of the tasks performed by domestic workers involves exposure to ergonomic risk factors such as repetitive and rapid movements, mainly of the upper body (cleaning, scrubbing, ironing, making beds); the adoption of forced postures (cleaning of windows, ceilings or doors); and manual handling of loads (cleaning and care of children and, especially, of dependent elderly people). But if anything stood out from all the people interviewed, it was psychosocial risks, placing special emphasis on situations of violence and harassment, both psychological and emotional, as well as sexual harassment.

Health and safety at work during the COVID-19 pandemic in the PHS Sector

The pandemic caused by COVID-19 had a strong impact on the care sector and on domestic workers. In the situation generated by COVID-19 and the declaration of the State of Emergency, domestic

[224] ANDERSON, B., "Just Another Job? The Commodification of Domestic Labor", in EHRENREICH, B, and RUSSELL HOCHSCHILD, A. (eds.), *Global woman: Nannies, Maids, and Sex Workers in the New Economy*, New York, Henry Holt and Company, 2004, pp. 104–114; and PLÁ JULIÁN, I. (dir.), *Informalidad del empleo y precariedad laboral de las empleadas de hogar*, Madrid, Instituto de la Mujer, 2005. Available at: https://www.inmujeres.gob.es/publicacioneselectronicas/documentacion/Documentos/DE0097.pdf (accessed 10 October 2022).

[225] OSALAN, *Guía básica de prevención de riesgos laborales para personas trabajadoras del hogar*, Bilbao, OSALAN, 2019; and INSST, *Buenas prácticas preventivas en el servicio doméstico, dirigidas a la persona titular del hogar y del servicio doméstico*, Madrid, INSST, 2021. Available at: https://www.insst.es/documentacion/catalogo-de-publicaciones/buenas-practicas-preventivas-en-el-servicio-domestico (accessed 2 October 2022).

service was considered in Spain to be an essential job, given the importance of caring for dependent elderly people, children, the sick, and carrying out domestic tasks. Therefore, their activity was allowed, and they could move without any limitations other than the precautions they had to take to avoid contagion. Despite the fact that the workers engaged in personal and household service were allowed to carry out their work, many were dismissed, and others were without work and without any remuneration for a long time. The interviews with the representatives of the associations show the absolute lack of protection to which domestic workers were subjected. On the one hand, they did not have preferential access to protective equipment such as masks or gloves, and on the other hand, and despite the essential nature of their work, they were not classified as a priority group for access to the first vaccines that appeared, while, finally, no special public policies were developed through which protection measures were developed. Only the Extraordinary Allowance for Domestic Workers was approved whose beneficiaries could be persons hired as domestic workers before the entry into force of the State of Emergency who had ceased to provide services in one or more homes, totally or partially, and those who were subject to dismissal during the health crisis. The economic benefit amounted to 70% of the household employee's regulatory base (RB), and if the worker reduced their working hours, they received the proportional share of this reduction in working hours. The reality of this subsidy is that few domestic workers were able to access it, in the first place, and with respect to workers who met the requirements, the application was telematic and very complicated to manage, which highlighted the significant digital divide in this sector. Secondly, many workers could not apply because they did not meet the requirement of being registered in the system, which generated a significant situation of vulnerability among workers in this sector. Finally, taking into account the calculation of the economic benefit (70% RB) and the low wages of these workers, the amounts they received were, in the words of the interviewees, "derisory".

Gender Dimension

One of the fundamental differences between the sectors analysed is that the construction sector is strongly masculinized, and the domestic work sector is strongly feminized. As such, with respect to the first, the gender dimension is almost exclusively projected in the application of Article 26 LPRL and Royal Decree 295/2009, of 6 March, which develops it with regard to risk benefits during pregnancy and lactation.

On the other hand, with regard to personal and household service, the gender dimension in the prevention of occupational risks acquires a fundamental role. Firstly, in relation to the determination of certain diseases such as occupational diseases or, specifically, occupational diseases that women suffer and will fundamentally suffer. This has already been recognized by our Supreme Court in its SSTS of 11 February 2020 (regarding maids) and 20 September 2022 (No. 3378/2022) (regarding cleaners). In the first case, the Supreme Court recognizes that "the non-explicit integration of the profession of maids in the list provided by the regulation, does not exclude, in any way, that carpal tunnel syndrome associated with tasks that make up the professional workload (in this case of a maid) may lead to the qualification of occupational disease". In the second case, the Supreme Court recognizes that the temporary incapacity of a cleaner, caused by the breakage of the rotator cuff of the left shoulder, resulted from occupational disease, although the afore-mentioned profession does not appear in the list of activities that may cause occupational disease, as established in Royal Decree 1299/2006, of 10 November. In the judgement rendered by the court, a gender perspective was

applied to the qualification of the professional nature of the disease. In application of the provisions of Organic Law 3/2007, of 22 March, for the effective equality of women and men, the Chamber considers that the profession of cleaner, as is well known, is a feminized profession and is not included in Royal Decree 1299/2006 as a profession capable of causing a certain occupational disease, despite the strong physical demands that it entails, especially repetitive movements.

Secondly, in relation to violence in the workplace and sexual or gender-based harassment as psychosocial risks to which domestic workers are frequently exposed. In general, and in any professional sector, this is a risk that increases exponentially in the case of women, migrants and young people. Therefore, in domestic work, this probability increases exponentially, as all these risk variables converge in domestic workers. On the one hand, there is the high feminization of this sector, with more than 95% of employees being women[226]. On the other hand, migratory flows to Spain are essentially made up of women, who go on to hold, among other positions, primarily those that are oriented towards cleaning and caring for the elderly and children[227].

[226] The data referred to has been obtained from the statistical bases of the Spanish General Treasury of Social Security (TGSS). The year 2022 collects data until the month of September. Available at: https://w6.seg-social.es/PXWeb/pxweb/es/Afiliados%20en%20alta%20laboral/ (accessed 18 October 2022).

[227] According to TGSS affiliation data, as of September 2022, 44.07% of household employees are foreigners. In different qualitative studies, female workers reported having suffered or known female employees who had suffered sexual harassment and abuse by employers, while those in the migrant sector who carry out their tasks in informal work had experienced this situation more frequently. ILO, *Iniciativa Spotlight en Argentina. Estudio cualitativo sobre la violencia y el acoso en el sector del trabajo doméstico*, Buenos Aires, ILO Country Office for Argentina, 2022.

8 Poland

8.1 OSH in Poland: Normative Resources - General information

In Poland, the basic legal act which provides for the right to safe and healthy working conditions is the Constitution of the Republic of Poland. The means of implementing this right is defined by law, namely the Labour Code. The basic Code regulation in the field of OSH can be found in Section X of the Code, on OSH, in Section VII on the protection of women at work, and in Section IX on the protection of young people at work. The organisational system of labour protection can be divided into a nationwide and cross-workplace system (see below).

The Act of 26 June 1974 Labour Code[228], from a structural point of view, is divided into fifteen large "Divisions", including a part on "Health and Safety at Work", comprising Articles 207 to 237 and thirteen Chapter. These are respectively dedicated to the "Basic duties of an employer" (Chapter I), to the "Rights and duties of an employee" (Chapter II), "Buildings and working premises" (Chapter III), "Machines and other technical devices" (Chapter IV), "Factors and processes of work that create particular threats to health and life" (Chapter V), "Preventative health protection" (Chapter VI), "Accidents at work and occupational diseases" (Chapter VII), "Training" (Chapter VIII), "Measures of individual protection and working clothing and shoes" (Chapter IX), "The service for health and safety at work" (Chapter X), "Consultations on health and safety at work and the health and safety at work commission" (Chapter XI), "Obligations of bodies executing supervision over enterprises or other state or local government organisational units" (Chapter XII) and "Provisions on health and safety at work concerning the performance of work in various branches of work" (its Chapter XIII).

All this regulatory framework is subject to periodic evaluation by the European Committee of Social Rights, within the framework of the European Social Charter. Poland has so far only ratified the original version of 1961 (date of entry into force in Poland on 25 July 1997), but not the revised version of 1996. The four-yearly monitoring of compliance monitoring with the European Social Chapter is of special significance here. Through the procedure for examining reports by the afore-mentioned European Committee of Social Rights, which results in the "Conclusions" drawn up by the European Committee regarding the compliance of States with Article 3 of the original European Social Charter (labelled "The right to safe and healthy working conditions"). In the latest "Conclusions" of the European Committee of Social Rights concerning this thematic group, the Polish regulatory framework is questioned for lack of documentation.[229] In the report it is also stated that "the Committee needs further information in order to examine the situation" regarding OSH legislation in Poland, taking into

[228] There is an unofficial English version of this Act available at the official website of the Polytechnic University of Lublin available—at http://www.en.pollub.pl/, and also through the following links: http://www.en.pollub.pl/files/17/attachment/98_Polish-Labour-Code,1997.pdf https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf).

[229] See Report from March 2022 available at the official website of the Council of Europe: https://www.coe.int, with direct access, as far as Poland is concerned, at https://rm.coe.int/conclusions-xxii-2-2021-poland-en/1680a5da2f),

account that "The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Poland under the 1961 Charter".[230]

In Poland, the generally applicable regulations also include regulations classified as labour legislation, such as laws establishing supervision and control over working conditions, as well as regulations relating to other areas of law, however, regulating matters of health and safety. Such regulations include construction law, mining and geological law or nuclear law.

The group of generally applicable regulations also includes certain technical standards. Technical standards are issued on the basis of the Act of 11 September 2002 on standardisation (Journal of Laws No. 169, item 1386, as amended). The rule set out in Article 5(3) of this Act is that technical standards are voluntary. However, the obligation to apply a technical standard may result from the reference to a specific standard in a generally applicable provision. In such cases, the legal standard, by prescribing the application of the technical standard, triggers the universality of the obligation to apply it. However, it should be noted that, following the example of the Member States of the European Union, there is a tendency to limit the standards invoked for universal application.

The remaining provisions, which are, on the basis of Article 9 of the Labour Code, provisions of labour law, can be divided into regulations established by means of an agreement concluded between the social partners or, in strictly defined cases, internal regulations established by the employer himself.

The first group includes the health and safety provisions found in post-company and company **collective bargaining agreements**. The provisions of Section XI of the Labour Code, which regulates matters concerning collective agreements, do not exclude health and safety matters, which opens the way for these matters to be regulated in collective agreements. However, the parties to the agreement cannot introduce into the collective agreement provisions that are less favourable than those contained in the generally applicable provisions. This raises the question of whether provisions limiting an employee's OSH obligations can be introduced into the collective agreement. At first glance, it would seem that limiting obligations is more beneficial for the employee. However, it's important to stress that an employee's obligations are established to ensure his or her health and safety, and therefore any limitation of the obligations imposed on him or her would de facto work to his or her disadvantage, resulting in a reduction of his or her protection. However, collective bargaining agreements cannot impose additional obligations on employees, as these can only be established through generally applicable legislation. Thus, in the field of health and safety at work, collective agreements may either set out additional employee rights or detail rights under generally applicable legislation.

The most common occupational health and safety provisions found in agreements include:

- additional health privileges
- additional leave for employees working in harmful or arduous conditions, as well as reduction of daily working hours for employees working in such conditions
- financial compensation for employees working in hazardous, arduous or dangerous conditions.

[230] Ibid page 2.

The intra-company act that regulates health and safety matters is the work regulations. The object scope of the regulations, as defined in Article 1041 of the Labour Code, includes regulations on equipping employees with working clothes and footwear and means of individual protection and personal hygiene, lists of prohibited work for juvenile and female employees, types of work and lists of workplaces allowed for juvenile employees for the purpose of professional preparation, a list of light work allowed for juvenile employees employed for purposes other than professional preparation, obligations concerning occupational health and safety, including the manner of informing employees about occupational risks associated with the work they perform.

Work regulations shall be established by the employer in consultation with the company trade union organisation if it employs at least 20 employees**.** However, in case the employer cannot agree on the content of the regulations with the trade union organisation or if such an organisation does not operate at the employer's premises, the regulations shall be established by the employer himself. The bylaws do not have to be established if, to the extent provided for in the bylaws, the provisions of the collective agreement apply. The employer is obliged to acquaint each employee with the content of the rules and regulations.

Health and safety rules are extra-legal rules along the lines of general clauses. According to the applicable regulations, both the employer, the person in charge of the employees and the employee himself are obliged to observe them, and their violation or non-application may result in sanctions provided for in the Labour Code. In theory, health and safety rules are considered to be rules of conduct derived from life experience and scientific and technical rationale.

The organisational system of labour protection in Poland indicates the bodies and organisations involved in shaping and implementing tasks in the field of occupational safety and health. The organisational system of labour protection can be divided into two systems: nationwide and company-wide. Further divisions can be made - into subsystems, but it seems that this would result in a lack of transparency. The former includes the parliament, the government, ministries and other state offices, state supervisory and control bodies, which have differentiated tasks.

In Poland the Ministry of Labour and the Ministry of Health, set the guidelines of the State in the formation of policy in the field of occupational health and safety and, on the basis of the laws, issue regulations in the field of occupational health and safety. On the other hand, the supervisory and control bodies, which mainly include**:** State Labour Inspectorate, State Sanitary Inspectorate, Office of Technical Inspection, as well as courts and public prosecutor's office (also other supervisory and control authorities within the scope of their activity in each case if it concerns ensuring safety and health protection) have been appointed to supervise and control - on behalf of the state - the fulfilment by employers of the obligations imposed on them by law. In order to exercise their powers and compel employers to comply with their obligations, these authorities have the possibility of imposing a fine or issuing an order or decision, including ordering, in certain cases, that the workplace or a part of it cease a certain type of activity.

8.2 OSH in Poland: Enforcement resources

A main piece of legislation in the OSH field in Poland is the Act of 13 April 2007 on the National Labour Inspectorate. Also relevant are the National Labour Inspectorate’s annual reports (submitted to the

International Labour Organization).[231] The Report on the National Labour Inspectorate's activity in 2020 – Abbreviated version for the International Labour Organization" begins by indicating that the "National Labour Inspectorate (NLI) is an authority established to supervise and inspect the observance of labour law, in particular occupational safety and health rules and regulations, as well as regulations on legality of employment and other paid work".[232] Further on, it is specified that its functions include—among many others, which are identified in some detail—that of "taking actions aimed at preventing and reducing hazards in the working environment, in particular, examining circumstances and causes of accidents at work, inspecting the application of measures preventing such accidents,... analysing causes of occupational diseases and inspecting the application of measures preventing such diseases,... initiating research work in the sphere of compliance with labour law, particularly health and safety regulations,... initiating undertakings related to labour protection issues in private farming,... providing advice on labour law and work safety,... taking preventative and promotional actions aimed at ensuring compliance with labour law".[233] In relation to these functions, it also indicates that "In the reporting year [i.e. 2020], labour inspectors conducted 56.4 thousand inspections in 48 thousand entities, where 3.1 million persons worked"[234], with the result that "in connection with violations of labour law identified during inspections, inspectors issued 160.8 thousand decisions on occupational safety and health" (*ibid*.), while "labour inspectors examined the circumstances and causes of 1 175 work-related accidents... [which] resulted in injuries to 1 951 persons, including 217 fatally injured and 627 seriously injured".[235] The same "Report" includes at the end up to six attachments, of which the third of them identifies up to sixty-seven "Legal acts determining the NLI's competences in 2020". Particularly significant in that list of acts are the Act of 13 April 2007 on the National Labour Inspectorate, (dealing with the organic and procedural issues) and the Act of 26 June 1974 Labour Code (on a more substantive level).

The Act of 13 April 2007 on the National Labour Inspectorate[236] has eight chapters. On the basis that "The inspection activities of National Labour Inspectorate cover… all employers" (Article 13, paragraph 1), the Chapters under discussion refer respectively to the "Organisation of National Labour Inspectorate" (Chapter 1), "Tasks of National Labour Inspectorate" (Chapter 2), "Scope of activity of National Labour Inspectorate's officers" (Chapter 3), "Inspection proceedings" (Chapter 4), "Employees of National Labour Inspectorate" (Chapter 5), the "Order and disciplinary liability" (Chapter 6) and the "Temporary and final provisions" (Chapter 8). In this normative provisions, the central role of occupational health and safety shines through, stating, for example, that "The scope of National Labour Inspectorate's activity comprises (...) supervision and inspection of labour law observance by enterprises, in particular occupational safety and health rules and regulations" (Article 10, paragraph 1, no. 1), or that "District Labour Inspector draws up an annual report on the District Labour Inspectorate's activity which includes assessment of the scope of compliance with the labour law, particularly the state of occupational safety and health" (Article 20, paragraph 1).

[231] The information provided on the case study in Poland is partly based on the information available at the Polish Labour Inspectorate website: https://www.pip.gov.pl/
[232] See page 1 of this report at at the Polish Labour Inspectorate website: https://www.pip.gov.pl/
[233] Ibid page 2.
[234] Ibid page 7.
[235] Ibid page 9.
[236] See English version on the official website of the National Labour Inspectorate at file:///C:/Users/usuario/Downloads/Act%20on%20NLI%2006.2019%20final.pdf

The primary entity whose duty at the workplace is to ensure safe and hygienic working conditions is the employer (art.15 of the Labour Code), who carries out his duties with the help of specialised occupational health and safety services and the doctor in charge of employee health care. In addition, the employees themselves are also involved in the shaping of safe working conditions in the workplace through consultations and, as a consultative and advisory body, the occupational health and safety committee.

The employer is obliged to protect the health of employees by ensuring safe and hygienic working conditions, making appropriate use of the achievements of science and technology. The employer is responsible for the state of health and safety in the workplace. The responsibility of the employer is not affected by the obligations of the employees in the field of health and safety at work and by entrusting the tasks of the health and safety service to specialists from outside the company.

In particular, employers are obliged to:

- organise work in such a way as to ensure safe and hygienic working conditions, taking into account:
- requirements concerning types of work requiring special psychophysical fitness (as defined in the Regulation of the Minister of Labour and Social Policy of 28 May 1996 on types of work requiring special psychophysical fitness, Dz. U. 1996 No. 62, item 287), such as:
    - work involving the operation of hydraulic lifts and platforms
    - work with pressurised equipment subject to full technical supervision
    - work with flammable materials, toxic agents
- requirements concerning work at height (any work performed above 1 m from the ground is work at height)
- health and safety requirements for manual handling work, i.e. Journal of Laws 2018 item 1139

Violations of workers' rights under health and safety legislation or rules may give rise to criminal or misdemeanour liability.

Representative bodies such as trade unions and the social labour inspector, on the other hand, perform primarily supervisory and control functions with regard to the employer's compliance with the obligation to ensure safe and healthy working conditions. Remarkedly in Poland, not only the state supervisory bodies for working conditions have the right to impose a fine for non-compliance with OSH regulations and rules, but the social labour inspector has also been equipped with quasi-enforcement powers. This power is the right to issue, in writing, recommendations for the rectification of the deficiencies found. The employer may appeal against the issued recommendation to the competent labour inspector of the State Labour Inspectorate. The provisions of the Act on the Social Labour Inspectorate provide for the possibility to fine an employer who has not caused the removal of the shortcomings indicated in the recommendation of the social labour inspector.

8.3 OSH in Poland - Instrumental resources:

Training on occupational health and safety is a primary instrumental resource for the effective application of this social right. The Labour Code imposes an obligation on the employer to protect the health and life of employees by providing safe and hygienic working conditions and by conducting systematic training of employees in occupational health and safety.

The issue of health & safety training is regulated in detail in the Regulation of the Minister of Economy and Labour of 27 July 2004 on training in the field of OSH. This regulation specifies:

1) detailed rules of training in the field of OSH;

2) scope of training;

3) requirements concerning the content and implementation of the training programme

of training;

4) the manner of documenting training;

5) cases in which employers or employees may be exempted from certain types of training.

An employee's basic obligation is to be familiar with health and safety at work regulations and rules, to participate in training and instruction in this field and to undergo the required verifying examinations, as well as to perform work in a manner compliant with health and safety at work regulations and rules and to comply with the orders and instructions of superiors issued in this respect (Article 211(1) and (2) of the Code of Labour Procedure). The consequences of failing to provide an employee with sufficient health and safety knowledge are the responsibility of the employer.

An important role in the OSH organisational system at the state level is played by **the Labour Protection Council.** The Council is composed of representatives of the government, employers and employees, MPs and senators, as well as prominent specialists in the field of occupational safety and health. It can be considered an administrative instrumental resource since this body, empowered by the Act on the State Labour Inspectorate, is to supervise its activities. Scientific and research institutes, established to carry out scientific and research work in the field of occupational safety and health protection, are also important in this system.

An interesting instrumental resource used in the case of the labour inspectorate in Poland is the cooperation with other inspectorates from other EU Member States. The Polish inspectorate participated at the 'International conference on current and future challenges for labour inspections" on November 2022, and maintained cooperation with "foreign partners". An interesting example of this type of resource is the case of exchange of information on posted workers with the Spanish labour inspection. On that regard, the Polish National Labour Inspectorate maintains correspondence with the liaison office of the Spanish State Labour and Social Security Inspectorate due to the agreement on cooperation and mutual exchange of information applicable to the posting of workers in the framework of the provision of services, concluded in 2010.

8.4 OSH in Poland – Construction sector

An expert on this sector interviewed, mentioned that several working conditions and OSH issues are the result of the nature of work in the sector – often physically demanding and such conditions might create the environment which is conducive to accidents.

As well as in other EU countries, in Poland construction sites are characterized by a high number of fatal and serious accidents every year. The following types of accidents at work in the construction industry can be distinguished: tripping, falling at the same level (approx. 15%) or caused by an object falling from above, improper use of tools (13%), fall from a height (11%), dragging down (3%). According to employers, approximately 70% of the causes of accidents on construction sites resulted from the careless behavior of the employees. Those related to negligence in the general organization of work on the construction site or the organization of workstations accounted for approx. 17%. On the other hand, technical reasons (the remaining 13%) resulted mainly from construction defects and improper operation of machines and technical devices (data obtained from statistical accident cards in Poland).[237]

Table 1: Employed persons in q2 2020 and workplace exposure by most serious factor that can adversely affect physical health, by sex and selected sections[238] (in thousands):

Construction industry	Total	Males	Females
Total employed in the sector	1 263	1 180	83
Total experiencing listed risks	995	957	38
Of which:			
Tiring or painful position	253	243	10
Repetitive hand or arm movements	116	112	4
Handling of heavy loads	311	309	2
Noise	43	42	1
Chemicals, dust, fumes, smokes or gases	30	29	1
Activities involving strong visual concentration	55	37	18
Slips, trips and falls	54	53	1
Use of machines and hand tools (excluding vehicles)	73	73	0

[237] https://www.muratorplus.pl/biznes/raporty-i-prognozy/bezpieczenstwo-i-higiena-pracy-na-budowie-aa-SWLa-JCxJ-qfay.html#Bezpieczenstwo-na-budowie-i-statystyka-przyczyn-wypadkow

[238] https://stat.gov.pl/obszary-tematyczne/rynek-pracy/warunki-pracy-wypadki-przy-pracy/wypadki-przy-pracy-i-problemy-zdrowotne-zwiazane-z-praca,2,3.html

Use of vehicles (in the course of work, excluding on the way to and from work)	35	33	2
Another significant risk factor	10	10	0

Table 2: Employed persons in q2 2020 and workplace exposure by factors that can adversely affect mental well-being, by sex and selected sections. [239]

Construction industry	Total	Males	Females
Total employed in the sector	1 263	1 180	83
Total experiencing listed risks	511	479	33
Of which:			
Severe time pressure or overload of work	293	270	24
poor communication or cooperation within the organisation	20	20	0
Having to deal with difficult customers, patients, pupils etc.	176	167	10
Job insecurity	180	171	9
Lack of autonomy, or lack of influence over the work pace or work processes	43	41	2

Table 3: Employed persons during the 12 months before the survey and persons injured in accidents at work by selected sections (2020) [240]

Construction **Total**	**Of which persons injured in accidents at work**		
1 337	**Total**	**in one accident**	**in other than road traffic accident**
	26	21	24

[239] https://stat.gov.pl/obszary-tematyczne/rynek-pracy/warunki-pracy-wypadki-przy-pracy/wypadki-przy-pracy-i-problemy-zdrowotne-zwiazane-z-praca,2,3.html

[240] https://stat.gov.pl/obszary-tematyczne/rynek-pracy/warunki-pracy-wypadki-przy-pracy/wypadki-przy-pracy-i-problemy-zdrowotne-zwiazane-z-praca,2,3.html

According to our qualitative research, the sector of construction in Poland is internally divided, with one of the main division being size and ownership of construction companies.

In terms of working conditions and OSH, the best situation can be observed among big international construction companies. These companies provide regular training regarding OSH and employ OSH officers who are responsible for following the OSH rules on the site. Also, such employers provide equipment to reduce physical demand of the work. The situation is considerably worse in smaller companies with Polish ownership – in such companies there is less emphasis on OSH as well as suitable equipment. As a result, the smaller companies of the sector note the biggest number of fatal work accidents but also work injuries (as the work is more physically demanding).

When it comes to accidents prevention, in large companies the assessment of risks (and their mitigation) is done on regular basis, including (daily) morning briefings where job-specific risks can be discussed.

When it comes to gaps in compliance regarding working conditions and OSH the trade union interviewee mentioned the problems with low compliance of small companies. Also, the issue of self-employed workers who do not participate in training (mandatory for all workers) was mentioned. Finally, especially in case of smaller companies, the illegal employment still remains the case. Yet, the interviewee stated that a spill over effect could be observed in that smaller firms mimic bigger companies in their approach to OSH.

Instrumental resources in the construction sector

According to the trade union representative interviewed, especially large international companies pay lot of attention to the accidents at work prevention due to the practice that when running in several tenders, construction companies need to report no accidents, especially no fatal work accidents. The inclusion of such criterion to tendering procedures has been presented as another incentive to invest in prevention. It is not mandatory (i.e., required by the law) but more and more widespread. This is therefore, considered a good practice by the interviewee which indicated that it is becoming more and more common to include a requirement to present an accident-free record when participating in tenders. Also, when submitting offers in tenders, the companies need to include a OSH draft budget so that afterwards they cannot save on this item when performing the contract.

The daily briefings on OSH were presented as a good practice. Finally, many companies participate in the competition organised by the National Labour Inspectorate that promotes more extensive than usual measures to avoiding work accidents – Safe Construction site.

THe trade union interviewee indicated that signing collective agreements in the construction sector is difficult. The main reason for this is the extensive subcontracting prevailing in that sector and resulting in a high turnover at the sites. Unlike in the 1990s or earlier when a single company had several functions and was present at the site throughout the process, currently companies which win tenders are lean and subcontract specialists. The main contractor's staff consists of mostly engineers and project management whereas construction is done by external companies. This creates a difficult situation for the unions as there is no critical mass of their members. The main contractors are not

unionised as it is mostly white collars, whereas subcontractors are poorly unionised due to the staff turnover and the fact trade unions are rarely present in the smaller firms. The expert was not able to recall any collective agreement at company level. Further (and this is an issue present across almost all sectors of the Polish economy), the branch/sectoral agreement are non-existent. Two reasons for this were recalled. First, there is a lack of unified branch representation on the side of employers. Secondly, there is no will to engage in negotiations on branch level collective agreements by both the government and employers organisations.

Enforcement resources in the construction sector

When it comes to the mechanisms or instruments that aim to monitor working conditions and OSH in the construction sector, these are mostly provided by employers, such as OSH officers present at the sites.

When it comes to so-called occupational labour inspectors (*społeczny inspector pracy*), who are representatives of workers, in principle they are nominated by trade unions and therefore they presence is limited as the unions activity is minimal. The unions, where present, inform workers regarding their right to submit an anonymous complaint regarding accidents or breaches to OSH to the Labour Inspectorate which will investigate the case. Also, unions can represent employees in such cases (including court cases).

OSH in the construction sector during the COVID-19 pandemic

The impact of Covid-19 in the construction sector in Poland was minimal and short-term. Construction sites continued to operate, workers were entering construction sites after their body temperature was measured and were required to wear face masks in congregated settings.

Addendum: Position of the main trade union in the construction sector on OSH issues

This section presents the view on OSH issues by the largest union organizations active in the sector: the "Budowlani" Trade Union based on their statements and other publications. The "Budowlani" Trade Union[241] involves more than 10 000 workers from Poland employed in construction and building industry, as well as housing cooperative, foresters, environment protection workers, woodworkers, furniture industry workers and others. With a history of over 125 years of activities, this union brings together over 260 basic organizations in 14 Districts.[242] The complex organizational structure includes central and local authorities and supporting bodies.

The "Budowlani" website contains various sections with regards to the legal issues. The union publishes official statements signed by the union's chair and reflecting its positions on issues

[241] Budowlani – the name refers to Polish word "budowlany" which means constructional.
[242] http://zzbudowlani.pl/about-us/

addressed as important. As far as health and safety issues are concerned, the trade union's position is included in the latest official statements, confirmed in informal conversations.[243]

In this section a summary of the position of the "Budowlani" Trade Union on new challenges in OSH of construction workers, construction products industry, wood industry, furniture industry, forestry, environmental protection and related sectors of the economy is included.[244]

Taking into account the **union's action program** adopted in 2020[245], the EU strategic framework for 2021-2027 in the area of occupational health and safety and the related action program of the National Labor Inspectorate, and de *lege ferenda* legislative proposals regarding the proposed changes in labour law, prepared by the National Labor Inspectorate, it is emphasized that "it is necessary to adapt the law in force in Poland to changes in sectors of the economy in the field of ecological, technological and demographic transformation and related changes in occupational health and safety"[246].

It is stated that "changes related to the introduction of new materials and products with an unexplored impact on the health of employees and users require comprehensive research identifying new threats and defining acceptable exposure standards and necessary protective measures".[247] This applies, in particular to the construction industry, the construction products industry, the wood industry, etc.

As already mentioned, the number of civil contracts has been a growing in the construction sector. As the strategic union's document states: "*The union strongly opposes the practice of extending working hours beyond the norms adopted in the labour law, motivated by economic factors and usually justified by the shortage of employees on the labour market."*

In terms of the effectivity of the existing enforcement resources the union believes that it is necessary to significantly increase the funds for the activities of the National Labor Inspectorate, giving the possibility of effective influence in the field of control and prevention, especially in the sector of small and medium-sized enterprises.

Several of the position of the main union in the construction sector are common to the view of the federations in other EU countries. One of the issues is the growing concern regarding psychosocial factors The Polish union considers that the introduction of new technologies (including digital) and new management systems requires the identification of psychosocial factors affecting the level of stress and mental health of employees.

In line with the view of several unions at EU level, the Polish union also supports the "opening" of the European and national list of occupational diseases and supplementing it with new disease entities.

In their strategic documents the problem of high level of subcontracting which is a common concern for unions at national and EU level is also highlighted: "*In the construction industry, it is necessary to eliminate elements of the structure of management and work organization, which indisputably have a*

[243] As we didn't get permission to quote the conversations, we're quoting in this paper the strategic statements and arguments coming from these positions.
[244] http://zzbudowlani.pl/stanowisko-budowlanych-z-okazji-dnia-bezpieczenstwa-i-ochrony-zdrowia-w-pracy/, (September 2022).

[245] http://zzbudowlani.pl/wp-content/uploads/2014/04/K.-PROGRAM-ZWIĄZKU-NA-KADENCJĘ-2020-2025.pdf
[246] http://zzbudowlani.pl/stanowisko-budowlanych-z-okazji-dnia-bezpieczenstwa-i-ochrony-zdrowia-w-pracy/
[247] http://zzbudowlani.pl/stanowisko-budowlanych-z-okazji-dnia-bezpieczenstwa-i-ochrony-zdrowia-w-pracy/

negative impact on the level of occupational safety, i.e., an unlimited and unjustified number of levels of subcontracting, forms of employment inadequate to the working conditions, grey zone of employment and supply chains from sources that do not ensure the appropriate quality of products. Employment in the construction industry should be based on an employment contract. All other forms of employment should be marginal and justified by specific needs related to the implementation of the investment. Responsibility for health and safety should be borne by all participants of the investment process in the construction industry, including investors."

Regarding the training programs in the field of OSH (instrumental resources) this federation has a strong position supporting the need of changes: "*It is necessary to adapt education and training programs for employees in the field of occupational health and safety to the challenges and requirements related to the low-emission, circular economy and digitization of the labor market. It is necessary to adapt forms of health protection at work and education programs in the field of occupational health and safety to the changing demographic situation. The increasing number of employees aged 55+ and the limited influx of younger employees taking up employment in our sectors require changes in the health care system. At the same time, special emphasis should be placed on new forms of systemic training for the youngest employees who do not have professional experience and are therefore particularly exposed to the risks associated with the work process."*[248]

In terms of the need to expand the available instrumental resources the issue of a growing number of foreign workers in Polish construction sites is also addressed by the unions (this is a recurrent problematic issue pointed out in many of the interviews with several union members in the countries under study). They noted the need to conduct a broad, systemic training and education campaign in the field of health and safety among migrant workers, also in the national languages of the primary groups of these workers.

The "Budowlani" trade union has also issued a *Position on the employment of construction workers based on civil law contracts.*[249] As mentioned before, the issue of working conditions of workers conducting their work at constructions sites under civil law contracts in considered quite problematic and detrimental to a satisfactory OSH. A document published in 2019 by the "Budowlani" trade union elaborates on the issue of working conditions:

The information of the Chief Labour Inspector presented at the Labor Protection Council in August 2019 regarding employment under civil law contracts shows that employers to a large extent, employ employees and contractors to perform the same type of work, provided under the same conditions. According to the National Labor Inspectorate's data, irregularities in concluding civil law contracts in conditions appropriate for an employment relationship in 2018 were found in 11.4% of contractors and subcontractors of construction and assembly works. This means that no employment contracts were concluded in accordance with the definition of an employment relationship set out in Art. 22 & 1 of the Labor Code.

The National Labor Inspectorate indicates that entrusting work on the basis of civil law contracts in conditions in which an employment contract should be concluded is one of the most important, unresolved problems on the domestic labor market. By employing under civil law contracts,

[248] http://zzbudowlani.pl/stanowisko-budowlanych-z-okazji-dnia-bezpieczenstwa-i-ochrony-zdrowia-w-pracy/
[249] http://zzbudowlani.pl/stanowisko-budowlanych-w-sprawie-zatrudniania-pracownikow-budownictwa-na-podstawie-umow-cywilnoprawnych/

entrepreneurs avoid the obligations arising from labor law and the payment of benefits from the social security system.

The "Budowlani Trade Union" has for many years been pointing to the need to eliminate the employment of workers under civil law contracts, working in the performance of construction and assembly works.

However, in accordance with the Regulation of the Minister of Infrastructure of February 6, 2003 on occupational health and safety during construction works, work on construction works must be carried out under the supervision of a supervisor, which clearly proves the existence of an employment relationship when performing construction and assembly works. Given the continued abuse of contracts civil law in the construction industry, the "Budowlani" Trade Union demands:

1. *Consideration of introducing such instruments into Polish legislation that would allow for effective enforcement by control and supervision authorities of compliance with the ban on substituting employment contracts with civil law contracts, including tightening sanctions for employers who violate the applicable regulations.*
2. *Introducing the obligation for the employer to notify everyone employee subject to social insurance before allowing him to work.*
3. *Intensification by NLI of control and supervision activities in the above scope and systemic cooperation of the Labor Inspectorate with other authorities and institutions, including Tax Control Offices and Social Insurance Institution.*
4. *Extending promotional and preventive activities for people working under civil law contracts and employers, and informing them about the differences between contracts concluded on the basis of the Labor Code and civil law contracts according to of the Civil Code.*
5. *Publicizing in an organized form, also through the media, facts of violations by employers of the principles set out in Art. 22 § 1 of the Labour Code as manifestations of unfair competition.*

It should be taken into account that accidents at work of employees employed under civil law contracts in the absence of profitability of social security / sickness and accident contributions will generate increasingly higher social costs related to accidents at work.

The Budowlani Trade Union also draws attention to the systematically increasing number of foreign workers on Polish construction sites, employed on the basis of civil law contracts. This practice, with the weakness and often the absence of the system of training foreign workers in the field of occupational health and safety, contributes to lowering the level of safety on construction sites and leads to creating tensions in the labour market.

The "Budowlani" Trade Union believes that the actions taken so far to counteract illegal employment in the construction industry based on civil law contracts are not very effective. Therefore, this union is denouncing that the extended practice of using this type of contracts instead of the due employment law contracts is threatening work safety in this sector in Poland and they advocate for its elimination.

8.5 OSH in Poland – Personal and Household Services

The information and materials regarding PHS sector in Poland is extremely scarce. There is no available official statistics about the size of the sectors and no statistics that would be focussed on health and safety.

Normative resources and PHS sector

Poland - so far - has not ratified the domestic workers Convention No. 189. At the same time, there are no regulations in the Polish legal system addressed directly to domestic workers, taking into account the specificity of this type of work.[250] In the current legal status, the provisions of the labour and social insurance law addressed to employees in general are fully applicable to domestic work provided on the basis of an employment relationship. Under the Polish legal order, the domestic work sector has not been automatically excluded from the regulations of the labour law and social security system. There is also no regulation that would allow the exclusion of certain protective regulations in relation to domestic workers, according to which a domestic worker may be excluded from the regulation determining the minimum remuneration for work if he is treated as a member of the employer's family.

Domestic workers in an employment relationship are guaranteed access to those rights that constitute international labour law standards. With regard to the provision of domestic work, the statutory minimum age for admission to work, including rules on the employment of children and adolescents, is relevant. Domestic workers enjoy, on a general basis, the right to information on the conditions of employment. The realisation of this right is ensured by the written form of the employment contract and the statutorily defined content of the employment contract, including the parties to the contract, the type and place of work, the remuneration for work, with an indication of its components, the working time and the date of commencement of work (Article 29 § 1 and 2 of the Labour Code). In this regard, the Act also grants the employee the right to information on other terms and conditions of employment, with regard to the daily and weekly working time norms applicable to him, the frequency of payment of remuneration for work, the amount of annual leave to which he is entitled, and with regard to the manner of termination of the employment relationship, the length of the notice period of the employment contract applicable to him (Article 29 § 3 of the Labour Code).

Among the rights to which all employees, including domestic workers, are entitled is the right to a minimum wage. In relation to this group of employees, the realisation of this right takes on particular importance, protecting domestic workers as persons with already generally low incomes from receiving even lower remuneration and deepening the phenomenon of poverty among this group of employees.

Occupational risk assessment of the cleaning service employees

The implementation of preventive measures should start with a proper occupational risk assessment, taking into account the exposure of workers to harmful biological agents.[251] Important information

[250] https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/246789/ludera-ruszel_zatrudnianie_pracownikow_domowych_w_polsce_2018.pdf?sequence=1&isAllowed=y This subsection section is based on the translation of the most important information from this article.
[251] https://healthandsafetyblogobhp.com/2020/09/21/temat-zagrozenia-podczas-wykonywania-prac-porzadkowych/

related to the development of an occupational risk assessment is contained in § 5. 1. of the Ordinance on Biological Hazards to Health in the Working Environment.[252] The information contained shows that: before selecting a preventive measure, the employer shall assess the occupational risks to which the employee is or may be exposed, taking into account in particular:

1) the classification and list of harmful biological agents;

2) the type, degree and duration of exposure to the harmful biological agent;

3) information on:

(a) the potential allergenic or toxic effect of the harmful biological agent,

(b) a disease likely to occur as a result of the work done,

(c) an identified disease which is directly related to the work performed;

4) guidance from the authorities of the competent sanitary inspection, the State Labour Inspectorate and occupational health units.

Additional obligations of the employer in limiting the exposure of workers to biological agents at the workplace:

- organising the work process in such a way as to avoid or minimise the release of harmful biological agents in the workplace,
- providing workers with individual or collective protective equipment organising conditions for the safe collection,
- storage and disposal of waste by workers,
- using safe and labelled containers,
- drawing up procedures for the safe handling of harmful biological agents.

Enforcement resources in the PHS sector

According to Polish law, domestic workers enjoy, in principle, the right to safe and hygienic working conditions. The conditions of domestic work are subject to control exercised by the State Labour Inspectorate, according to the principles set out in the Act of 13 April 2007 on the State Labour Inspectorate. However, the Act does not regulate the issue of inspections carried out in the employer's home, taking into account the need to protect the constitutional right to privacy and the right to inviolability of the household. This is an unsolved recurrent problem in Poland as in many other EU member states.

In terms of available instrumental resources for exercising their rights in practice, domestic workers can formally be both members of a trade union and join already existing trade union organisations. However, due to existing factual and legal obstacles, the effective implementation of the right of association and the right to collective bargaining is significantly hampered in practice for this group of workers. The legal obstacle is the minimum number of persons required to form a trade union, as set

[252] Ordinance of the Minister of Health of 22 April 2005 on biological agents harmful to health in the working environment and the protection of the health of workers occupationally exposed to these agents.

out in Article 12(1) of the Trade Union Act, which in practice is unattainable for domestic workers. Anyway, the existing low awareness of their rights in this group of workers, resulting from a lack of self-perception as a 'worker', as well as a strong fear of losing their jobs, can effectively block the desire to take any initiatives towards the collective protection of one's rights.

Working conditions in the PHS sector

Employers, wishing to avoid labour law regulations, prefer employment on the basis of civil law contracts and, in extreme cases, employ domestic workers illegally, without concluding any contract with them. Civil law employment does not entail access to such a wide range of rights as those enjoyed by a person employed under an employment relationship. In relation to the conditions of domestic work, the lack of regulation on working time, including the right to annual leave, is crucial. The formation of working time and holiday entitlements is left to the free will of the parties, in practice – decided by the employer.

At the same time, there are no rules for the payment of remuneration in kind, which means that remuneration can be fulfilled entirely in this form. The employee also does not enjoy the right to information about the terms and conditions of employment on the same basis as an employee in an employment relationship, the protection of the permanence of the employment relationship, as well as the right to remuneration for incapacity to work due to illness and is only to a limited extent subject to compulsory social insurance. The enforcement of claims from the employment relationship takes place before a civil court according to the general rules of civil procedure, not before an employment court under the procedure of separate proceedings in employment cases.

References

Interview Data

Interview 1 Denmark, trade union representative/PHS, date: 16.11.2022

Interview 2 Denmark, trade union representative/construction, date: 17.11.2022

Interview 3 Denmark, trade union representative/construction, date: 24.11.2022

Interview 1 France. Representative of trade union and who is also a representative of prevention experts / construction, 3 November 2022.

Interview 2 France. Representative of organization for risk prevention / PHS. 20 October 2022.

Interview 3 France. Representative of research institute / PHS. 14 November 2022.

Interview 1 the Netherlands, trade union representative/construction, date: September 30, 2022.

Interview 2 the Netherlands, OSH expert – Labour inspection, date: October 5, 2022.

Interview 3 the Netherlands, Health and Safety focal point representative, date: November 22, 2022.

Interview 4 the Netherlands, Health and Safety focal point representative, date: November 22, 2022.

Interview 1 Ireland, trade union representative, date: October 10, 2022.

Interview 2 Ireland, Health and Safety Authority (HSA) representative, date: October 18, 2022.

Interview 3 Ireland, Health and Safety Authority (HSA) representative, date: October 24, 2022.

Interview 4 Ireland, Irish Congress of Trade Unions (ICTU) representative, date: November 7, 2022.

Interview 1 Germany, Representative of Federal Institute for Occupational Safety and Health, date: 2 December 2022.

Interview 2 Germany, Representative of Trade Union (IG Bauen-Agrar-Umwelt (IG BAU)), date: 5 December 2022.

Interview 1 Spain, Representative of "Servicio Doméstico Activo" (SEDOAC) and of the Centro de Empoderamiento de Trabajadoras del hogar y Cuidados de Usera, date: 4 October 2022.

Interview 2 Spain, Representative of the "Asociación Intercultural de Profesionales del Hogar", date: 10 October 2022.

Interview 3 Spain. Representative of the "Asociación de Empleadas de Hogar de Zaragoza", date: 2 December 2022.

Interview 4 Spain, Representative of the Fundación Laboral de la Construcción del Principado de Asturias, date: 14 November 2022.

Interview 5 Spain, Representative of the Labour Inspectorate, date: 21 November 2022.

Interview 6 Spain, Representative of the Labour Inspectorate, date: 22 November 2022.

Interview 7 Spain, Representative of the Trade union (CCOO), date: 30 November 2022.

Interview 1 Poland, trade union representative from the construction sector, 27 February 2023.