



# **EUROPEAN COMMISSION**

**DG Employment, Social Affairs and Inclusion**

**DG EMPL.B3 Health and Safety**

*These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union*

# **General introduction to Occupational Safety and Health (OSH) legislative framework**

## General legal basis for legislative action in the OSH area:

*Article 153 (former Article 118a) of the Treaty on the functioning of the European Union (TFEU) stipulates:*

*1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:*

*[...](a) **improvement in particular of the working environment to protect workers' health and safety;***

*2. To this end, the European Parliament and the Council:*

*[...] (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall 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 European Parliament and the Council shall act in accordance with the ordinary legislative procedure after **consulting the Economic and Social Committee and the Committee of the Regions.***

# “Framework Directive”

*On that basis on 12 June 1989 the Council (at that time pursuant to Article 118(a) EC Treaty, it was the Council which was empowered to adopt relevant Directives) adopted the **Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers** [OJ L 183, 29.6.1989, p.1].*

## Scope of application

*This Directive, in accordance with Article 2, applies to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.) The armed forces or the police or certain specific activities in the civil protection services are excluded due to certain peculiar characteristics which would inevitable conflict with it, e.g. fire officers on duty called to extinguish a fire. In this case, the health and safety of workers must be ensured as far as possible.*

*(see also Case C-303/98, Simap)*

# Objective

*The aim of the Directive is to introduce measures to encourage improvements in the safety and health of workers at work.*

*It is of fundamental importance as it is the basic legal act which lays down general principles concerning the prevention and protection of workers against occupational accidents and diseases.*

*It contains principles concerning the prevention of risks, the protection of safety and health, the assessment of risks, the elimination of risks and accident factors, the information, consultation and balanced participation and training of workers and their representatives.*

# Definitions

*The Directive defines in its Article 3 the terms "worker", "employer", "workers' representative with specific responsibility for the safety and health of workers" and "prevention".*

# Contents

*The Framework Directive contains basic obligations for employers and workers. Nevertheless, the workers' obligations shall not affect the principle of the responsibility of the employer (see Article 5). Alike, where an employer enlists competent external services or persons, this shall not discharge him from his responsibilities in this area.*

*It is the employer's obligation to ensure the safety and health of workers and he/she may not impose financial costs to the workers to achieve this aim.*



## Employers' obligations

*The employer shall:*

***have a duty to ensure the safety and health of workers in every aspect related to the work, including prevention of occupational risks and provision of information and training, as well as necessary organization and means. To comply with the aforementioned, he/she shall inter alia:***

*evaluate all the risks to the safety and health of workers, in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places;*

*implement measures which assure an improvement in the level of protection afforded to workers and are integrated into all the activities of the undertaking and/or establishment at all hierarchical levels;*

*take into consideration the worker's capabilities as regards health and safety when he entrusts tasks to workers;*

*consult workers on introduction of new technologies;*

*designate worker(s) to carry out activities related to the protection and prevention of occupational risks;*

*take the necessary measures for first aid, fire-fighting, evacuation of workers and action required in the event of serious and imminent danger;*

*keep a list of occupational accidents and draw up, for the responsible authorities reports on occupational accidents suffered by his workers;*

*inform and consult workers and allow them to take part in discussions on all questions relating to safety and health at work;*

*ensure that each worker receives adequate safety and health training.*

## General principles of prevention

*The employer shall implement the above measures on the basis of the following general principles of prevention listed in Article 6(2):*

*avoiding risks;*

*evaluating the risks;*

*combating the risks at source;*

*adapting the work to the individual;*

*adapting to technical progress;*

*replacing the dangerous by the non- or the less dangerous;*

*developing a coherent overall prevention policy;*

*prioritizing collective protective measures (over individual protective measures);*

*giving appropriate instructions to the workers.*

## Article 7 Protective and preventive services

*The employer shall:*

*designate workers or;*

*enlist external services or persons to carry out activities related to the protection and prevention of occupational risks;*

*In all cases the persons concerned must have the necessary capabilities, aptitudes and means;*

*Member States may define the categories of which employer may himself take responsibility for the protective and preventative measures.*

*Article 7(8) requires Member States to define the necessary capabilities and aptitudes.*

*In Case C-49/00, Commission v Italy, the State entrusted to the employer to determine the capabilities and aptitudes.*

*The Court did not consider that this satisfied the requirements of Article 7(5) and (8) of the Directive:*

*"Member States must adopt laws or regulations which comply with the requirements of the Directive and which are brought to the attention of the undertakings concerned by appropriate means, so as to enable them to be aware of their obligations in the matter and the competent national authorities to check that those measures are complied with."*

## **Risk assessment and risk management, lists and reports of accidents**

*The employer further shall:*

*be in possession of an assessment of all risks to safety and health at work, including those facing groups of workers exposed to particular risks; this refers to both physical and psychosocial risks;*

*decide on the resulting preventive and protective measures to be taken and, if necessary, the protective equipment to be used;*

*keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days;*

*draw up, for the responsible authorities and in accordance with national laws and/or practices, reports on occupational accidents suffered by his workers.*

*In Case C-5/00, Commission v Germany, German law exempted employers with **10 or fewer employees** from the duty to keep documents showing the results of the assessment of risks to workers.*

*The Court found that this provision was contrary to Articles 9(1)(a) and 10(3)(a) of the Directive, insofar as undertakings employing 10 or fewer workers may thereby be absolved of the obligation to keep a risk assessment in a documentary form.*



# Health surveillance

*Health surveillance should be provided to workers appropriate to the health and safety risks they incur at work in accordance with national law and/or practices.*

# Particularly sensitive risk groups

*Particularly sensitive risk groups must be protected against the dangers which specifically affect them.*

## Worker information, consultation and training

*The employer shall take appropriate measures so that workers or their representatives (including from any outside undertaking engaged) receive all the necessary information;*

*Appropriate measures shall be taken to enable workers with specific OSH responsibility carry out their tasks;*

*Workers or their representatives shall be consulted on all questions relating to safety and health at work;*

*Workers shall receive adequate safety and health training and those engaged from an outside undertaking appropriate instructions.*

## Workers' obligations

*The worker shall:*

*make correct use of machinery, apparatus, tools, dangerous substances, transport equipment, other means of production and personal protective equipment;*

*immediately inform the employer of any work situation presenting a serious and immediate danger and of any shortcomings in the protection arrangements;*

*cooperate with the employer in fulfilling any requirements imposed for the protection of health and safety and in enabling him to ensure that the working environment and working conditions are safe and pose no risks.*

# Individual Directives

*The Framework Directive, in its **Article 16 (1)** provides for a possibility to adopt individual Directives, inter alia, in the following areas: work places, work equipment, personal protective equipment, work with visual display units, handling of heavy loads involving risk of back injury, fisheries, etc.*

*On this basis a series of individual Directives were adopted. The Framework Directive with its general principles continues to apply in full to all the areas covered by the individual directives, but where individual directives contain more stringent and/or specific provisions, these special provisions of individual directives prevail.*

- Carcinogens
- Biological Agents
- Chemical Agents
- Physical Agents:
  - Noise
  - Vibrations
  - EMF
  - Optical Radiation

- Manual Handling of Loads

- Asbestos



Framework Directive  
89/391/EEC

- Workplaces
- Work Equipment, Scaffolding
- Personal Protective Equipment
- Display Screen Equipment
- Safety Signs

- Pregnant Women  
- Young People

- Construction Sites
- Mineral-extracting Industries
- Drilling in Mineral-extracting Industries
- Fishing Vessels
- Explosive Atmospheres
- Sharp injuries

to encourage improvements in health and safety at work