



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

CONCERNING
THE EUROPEAN SCHEDULE OF
OCCUPATIONAL DISEASES

INTRODUCTION

On 22 May 1990, the Commission of the European Communities adopted a recommendation concerning the adoption of a European schedule of occupational diseases, which updated a recommendation of 23 July 1962 on the same subject. The Member States were requested, inter alia, to inform the Commission of the measures taken or envisaged in response to the recommendation.

On the basis of this information, the Commission is to examine the extent to which the recommendation has been implemented in the Member States, in order to determine whether there is a need for binding legislation.

SCOPE

As regards pathological conditions affecting workers, a distinction can be made between diseases attributable to the occupation, ailments which are aggravated by the work or are more prevalent because of the working conditions (work-related diseases), and conditions which are in no way linked to the work.

Occupational diseases comprise all pathological conditions induced by prolonged work, e.g. through excessive effort or exposure to harmful agents inherent in work materials, work equipment or the working environment. They are essentially defined by etiological characteristics, i.e. the slow-acting cause (as opposed to accidents, where the cause is instantaneous), and not by nosological characteristics, which are, for the most part, non-specific.

There are diseases which, by and large, affect only workers, and there are conditions which have a low incidence among the general public. Such diseases can be clearly linked to an occupation or to specific occupational exposure. However, there are also diseases whose incidence is high within a given population, such as chronic bronchitis in areas with heavy atmospheric pollution, in respect of which it is difficult to establish whether the cause and effect are linked to the occupational activity.

It is possible to identify a specific cause of certain diseases, whereas others are due to a number of harmful factors. Moreover, there are ailments which are caused by etiological factors inherent in the circumstances in which work is carried out, such as bad posture, repetitive physical effort or mental stress, and which could therefore justifiably be recognised as occupational diseases.

It is clear that the effects and consequences of occupational diseases in the European Communities are very important, not only in economic terms but also in terms of the associated human suffering.

From the economic point of view, several countries have carried out analyses of the costs occasioned by occupational diseases, revealing that the sums involved are very high and that they impinge on the persons concerned, on businesses and social protection systems and, consequently, on society as a whole.

COMMUNITY MEASURES

The Commission has adopted three recommendations to the Member States concerning occupational diseases, the first of which appeared in 1962.

1. On 23 July 1962, the Commission adopted a recommendation to the Member States concerning the adoption of a European schedule of occupational diseases.¹

With regard to occupational diseases, as stated in the explanatory memorandum to the recommendation, the Member States were to adopt in their legislation the "list" system whereby a limited list of diseases recognised as being occupational in origin is drawn up.

The lists of diseases laid down in the legislation of the Member States differed for various reasons: nomenclature, conditions for applying assistance, etc.

It was considered in the recommendation that this diversity may give rise to significant differences in the guarantees afforded to workers not only in respect of the prevention of occupational diseases but also as regards the granting of compensation.

¹ J.O.C.E ref. 2188/62 of 31.08.1962

The recommendation concluded that it would thus seem advisable for the Member States to adopt a uniform European schedule of diseases or causative agents.

Detailed analysis of the national lists has shown that it is possible to bring together within a single schedule, on the basis of classification according to their nature, diseases or agents appearing in one or more national lists.

Accordingly, the Commission recommended, *inter alia*, that the Member States:

- a) introduce into their laws, regulations and administrative provisions on occupational diseases the European schedule [annexed to the recommendation] as a list of occupational diseases for which compensation is payable under their legislation, supplementing for that purpose their national schedule or their tables of occupational diseases for which compensation is payable;
- b) in addition, introduce into their laws, regulations and administrative provisions a right to compensation under the legislation on occupational diseases, where adequate proof is provided by the worker concerned that, by reason of his work, he has contracted an illness which does not appear in the national schedule.

2. On 27 July 1966, the Commission adopted a recommendation (66/464/EEC) addressed to the Member States, concerning medical checks on workers exposed to particular risks.²

The fourth part of the explanatory memorandum points to the advisability of taking the European schedule of occupational diseases as the basis for a European schedule of specific risks entailing the obligation to conduct periodic medical surveillance of workers; it was also felt that medical checks should be extended to potential risks referred to in the annexed schedule, mainly with a view to collecting useful information.

² J.O.C.E ref. 2753/66 of 17.08.1966

3. In 1990, the Commission decided to update the European schedule of occupational diseases, for the following reasons:

- In the intervening period since the adoption of the 1962 and 1966 recommendations, each Member State's schedule of the different occupational diseases carrying entitlement to compensation had been subject to change.

This was due to a number of factors, such as technical developments, the appearance of new substances, different activities and more varied stresses at the workplace.

- The number of diseases deemed to be occupational in nature, i.e. for which there is every reason to believe that they are closely linked to certain activities, but which have yet to be recognised by the Member States as carrying entitlement to compensation, is in a continual state of flux.

The Commission's considered opinion was that a recommendation be used as the legal instrument for the update.

Having regard to the fact that the schedule concerns diseases liable for compensation - being a matter for the Member States - the Commission chose as the appropriate instrument a recommendation (90/326/EEC) of 22 May 1990 concerning the adoption of a European schedule of occupational diseases³. It recommends that the Member States introduce, as soon as possible, into their national laws, regulations or administrative provisions concerning scientifically recognised occupational diseases liable for compensation and subject to preventive measures, the European schedule in Annex I.

The recommendation also includes, in Annex II, an additional list of diseases suspected of being occupational in origin which would be subject to notification and which may be considered at a later stage for inclusion in Annex I to the European schedule.

³ J.O.C.E n° L 160 of 26.06.1990, p. 39

In this connection, it is recommended that the Member States take steps to introduce into their national laws, regulations or administrative provisions the right of workers to compensation in respect of occupational diseases if the worker is suffering from an ailment which is not listed in Annex I but which can be proved to be occupational in origin and nature, particularly if the ailment is listed in Annex II.

The Member States are therefore urged to ensure as far as possible that all cases of occupational disease are reported, to develop and improve the various preventive measures for occupational diseases, to circulate notices on the occupational diseases in their national list, to provide adequate training for the personnel responsible for implementing the national provisions resulting from the recommendation, to introduce a system for the collection of information or data concerning the epidemiology of diseases of an occupational nature, and to promote research in the field of ailments linked to an occupational activity.

The recommendation does not apply to diseases which are not recognised as being occupational in origin. It is for the Member States themselves to determine the criteria for recognising each occupational disease in accordance with their current national laws or practices.

It is necessary to point out that, even though a recommendation does not in principle have any binding effect, in Case C-322/88 Salvatore Grimaldi v Fonds des Maladies Professionnelles de Belgique⁴, the Court of Justice of the European Communities has ruled :

"In the light of the fifth paragraph of Article 189 of the EEC Treaty, the Commission recommendation of 23 July 1962 concerning the adoption of a European schedule of occupational diseases and Commission recommendation 66/462 of 20 July 1966 on the conditions for granting compensation to persons suffering from occupational diseases cannot in themselves confer rights on individuals upon which the latter may rely before national courts. However, national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular where they are capable of casting light on the interpretation of other provisions of national or Community law."

⁴ Ruled on 13.12.1989, Rec. 1989, p. 4407

FOLLOW-UP TO THE 1990 RECOMMENDATION

Since the adoption of its recommendation of 22 March 1990, the Commission has monitored the extent to which it has been implemented in the Member States; in the course of various meetings with Member State representatives to discuss and evaluate the various aspects of the recommendation, it has been established that the occupational diseases listed in Annex I are already, for the most part, covered by the Member States' provisions granting entitlement to compensation through the cause of the disease, even though the underlying circumstances may be found to differ greatly.

Moreover, there are diseases in respect of which the epidemiological data collected on an ongoing basis indicate significant links with exposure to certain agents and substances present in specific working environments.

Bearing in mind that additional research will be needed to demonstrate these causal links, it may be possible to consider, in a few years' time, the inclusion in Annex I of certain diseases suspected of being occupational in origin which are currently contained in Annex II to the recommendation, following in-depth analysis of available data in cooperation with the Member States.

Moreover, with a view to making it easier for the Member States to establish the criteria for recognising each of the occupational diseases described in Annex I, the Commission published, in 1994, "Explanatory notes for the diagnosis of occupational diseases".

These notes are derived from the "Medical information notices on diseases included in the European schedule of occupational diseases" published by the European Commission in 1963 following the adoption of the 1962 initial recommendation.

The explanatory notes for the diagnosis of occupational diseases provide information on the causal links between diseases and exposure at the workplace; they describe the toxic effects of certain agents and include an analysis of exposure criteria which may determine, inter alia, the acute or chronic nature of the ailment.

These documents constitute a source of information for interested parties (physicians, industrial hygienists, social partners, national administrations, etc.), since it is clear that methods of identifying, recognising and providing compensation for occupational diseases in the different Member States are still far from uniform.

The Commission started to look into ways of resolving this problem in 1991, with a view to establishing a suitable methodology for the comparable collection of statistical data.

A report on the subject was drawn up by a group of experts in 1994, in the wake of a survey of existing systems in the Member States relating to occupational diseases included in Annexes I and II to the recommendation. This report also contained a proposal for the compilation of harmonised Community statistics geared to the adoption of measures to prevent occupational diseases, taking account of the views of the Member States, with the latter having been actively involved in drawing up the proposal.

Following this work, in January 1995, the Commission launched a pilot project aimed at achieving comparability of data on occupational diseases recognised in the Member States.

The first phase of this pilot project entails the collection of data on all instances in which the 31 most representative items in Annex I to the European schedule of occupational diseases were recognised during 1995.

Having regard to the different systems of recognition in the Member States, provision has also been made for a project to evaluate the results, in order to verify whether the said results are truly comparable from the epidemiological and statistical points of view; this project will be started in the second half of 1996.

Furthermore, the Commission had, in previous years, given thought to the availability of sufficient epidemiological data which could be used in certain cases to identify the cause/effect relationship in respect of harmful agents responsible for causing occupational diseases.

The Commission was also aware of the difficulties encountered in obtaining reliable data and of the restricted availability of such data.

Subsequently, in September 1995, the Commission entered into a contract with a university institute to develop a project aimed at analysing the bases for future "codes of practice" and recommendations to harmonise the collection of data on occupational diseases, and also to put forward recommendations concerning the type and quantity of data to be collected for epidemiological research into occupational diseases.

The results of this project will be known at the end of 1997 and are expected to prove extremely useful for establishing a more reliable methodology geared to determining the links between cause and effect in respect of certain agents and diseases, which are not yet properly understood.

CURRENT SITUATION IN THE MEMBER STATES

The situation in the Member States concerning the implementation of the recommendation, as described in Annex III to the recommendation, has not changed substantially in general terms.

It has to be borne in mind, though, that in 1990 some Member States (e.g. Belgium and Italy) were in the process of amending their provisions in this field, and that on 1 January 1995 the European Community was enlarged to take in three new Member States (Austria, Finland and Sweden); the latter countries are still in the transitional phase of bringing their legislation into line with the Community texts.

A further point to consider is that there has probably not yet been enough time, since the adoption of the 1990 recommendation, either for far-reaching legislative changes to be implemented in the Member States in an area which affects national systems of protection and social security, or for highly innovative data deriving from technical and scientific progress to be obtained.

Moreover, the possible inclusion in Annex I of certain diseases listed in Annex II, which are suspected of being occupational in origin, will have to be discussed in detail with the Member States, having regard to new data which could establish a definitive link between cause and effect.

CONCLUSIONS

In the light of the foregoing, the Commission considers that:

- the Member States have made a great effort to comply with the provisions set out in Annex I to the recommendation;
- the incorporation in Annex I of certain diseases currently included in Annex II calls for subsequent in-depth analysis, which could be carried out in conjunction with revision of the Annexes to the recommendation in the light of new knowledge deriving from technical and scientific progress, having regard also to the changing situation in the Member States;
- the "Explanatory notes for the diagnosis of occupational diseases" may prove useful in helping the Member States to apply the recommendation uniformly;
- in statistical terms, the results of the pilot project on the 31 occupational diseases from Annex I could pave the way for establishing a methodology to obtain comparable, more reliable data in this field throughout the European Communities;
- it is necessary for the Member States to set about creating a system for the collection of epidemiological information on diseases of an occupational nature; the results of the project launched by the Commission may assist them in this;

- the mixed system of compensation could be introduced on a wider scale in the Member States, allowing, in certain cases, for compensation in respect of diseases which are occupational in origin but are not included in the national schedule, where the worker concerned provides evidence that the ailment is occupational in origin; this could be a very positive development, making it possible in the medium or long term to move away from the current approach involving a specific list of occupational diseases for which compensation is available.

Consequently, it may be concluded that:

- the Commission does not consider it necessary, at the present time, to propose binding legislation to replace the 1990 recommendation, since such a step would appear to be premature. It may nevertheless give consideration to the matter in conjunction with any future update of the European schedule of occupational diseases before the year 2000, in the light of data deriving from scientific and technical progress, and having regard also to the results of the various above-mentioned activities and projects aimed at improving, among other things, the collection and comparability of data concerning occupational diseases and their epidemiological analysis.

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