1) Why a Directive on the protection of workers exposed to optical radiation?

Since the Council 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, employers have been obliged to assess risks at the workplace and take adequate measures to reduce those risks.

More precisely:
- employers have been responsible for all potential occupational risk assessments;
- employers have had to inform and train workers on how to avoid or minimize risks;
- employers have had to keep written evidence that assessments and action plans have been drafted.

The specific Directives stemming from the framework Directive follow the same format:
- assessment;
- information and training for workers;
- if necessary, the provision of protective equipment;
- written documentation.

Question: Does the framework Directive already oblige employers to assess and prevent risks from sun radiation?

Answer: Neither the 1989 framework Directive nor the specific Directives mention the sun risk as a risk at work. Nevertheless, some argue that the framework Directive potentially covers all risks and that the risks from long-term exposure to sun radiation cannot be ignored by anyone.

The draft Directive on optical radiation currently under discussion includes for the first time sun radiation among the risks at work. Yet, despite the importance of this issue, the time for debate is short. A clear mention of the sun risk appeared only on 18 April 2005 in the Council common position. The European Parliament is invited to examine the text under the second reading procedure since it already voted in the first 1994 reading on a more general draft (including four risks: noise, vibration, electromagnetic fields and optical radiation).

2) What does the draft Directive say?

The draft Directive contains two main articles that mention employers’ obligations towards their workers when exposed to sun radiation (“natural sources of optical radiation”):
Article 4
2. In carrying out the obligations laid down in Articles 6(3) and 9(1) of Directive 89/391/EEC, the employer, in the case of workers exposed to natural sources of optical radiation, shall assess the risks to health and safety so that the measures needed to minimise these risks can be identified and put into effect.

Article 5
3. Where the risk assessment carried out in accordance with Article 4(2) indicates a risk for workers exposed to natural sources of optical radiation, the employer shall devise and implement an action plan comprising technical and/or organisational measures in order to reduce the health and safety risks to a minimum.

Importantly, the draft Directive does not specify exposure limits for natural sources (i.e. the sun), while such values are given for optical radiation from artificial sources (e.g. laser). The Directive neither explains what exact actions are to be taken by employers. One clue is available in an amendment proposed by the European Parliament’s ‘Rapporteur’, Mr Ory:

*This risk assessment may include a reference to climatological or meteorological information on the area where the work takes place as regards the level of radiation from natural sources, in particular ultraviolet radiation. This information shall be provided by the competent services of the Member States.*

3) Why are small and medium sized enterprises (SMEs) in the construction sector opposed to the inclusion of sun radiation risks in the Directive?

Construction sector SMEs are opposed to the proposal for two main reasons which are discussed below.

a) **A disproportionate burden on small firms**

The draft Directive’s supporters, including the European Commission, explain that it will be sufficient for employers to ask their workers to wear a T-shirt and hat.

But if the Directive’s provisions are applied correctly, employers will need to:
- assess the sun risk at work (how often? ...daily, monthly, annually?) and keep written evidence that an assessment has been done;
- inform their workers and keep written evidence of having done so;
- if necessary, provide necessary protective equipment (hats, T-shirts, sun glasses?).

b) **An unfair legal liability on employers**

The mention of the sun risk in the draft Directive makes us fearful of the significant possibility of legal action against employers in cases where unexplained illnesses related to sun exposure appear while it will not be possible to determine the exclusive origin or time of exposure.
Many illnesses, such as cancer, are caused by multiple reasons (one of which may be exposure to sun radiation) and often depend on genetic factors. Not everyone has the same reaction to sun exposure, such as smokers or those on prescription medication, who may be at more risk. Everyone outside the workplace is subject to sun exposure, and some instances, such as excessive childhood sun exposure may have lifelong consequences. This principle is by no means specific to optical radiation, but exists for many other conditions caused by multiple factors, such as allergies or musculo-skeletal disorders.

If exposure to the sun is considered an occupational risk, employers could be taken to court by employees affected by complex conditions that are not easily explained by a single factor.

**Question:** Is there a precedent in case law where an employer would have been challenged on grounds of illness caused by exposure to sun radiation?

**Answer:** As far as we are aware, such case law does not exist. There are cases where physicians have been taken to court by their patients for having prescribed photosensitive medicines without having made them aware of their consequent reactions to sun exposure.

**Question:** Will the Directive, on the contrary, help employers avoid legal conflict?

**Answer:** This is the Rapporteur’s view. He gives the example of a worker who could currently bring to court his/her employer for not having prevented him/her from a sun radiation risk. If the employer is unable to show evidence that a risk assessment and an action plan has been done, the court could decide in favour of the worker, arguing that employers have not been allowed to ignore such risks and the associated obligations since the 1989 framework Directive. With a new Directive on optical radiation, the Rapporteur argues, employers will see it prudent to take minimum protective measures and will thus be secured by the law.

We do not consider this argument convincing. It is only if the Directive is adopted that such an explicit legal basis is created and case law in the area will begin to increase. Crucially, the Rapporteur’s example ignores the difficulties the Directive would pose for small businesses: the editing of weather condition sheets daily; reminding workers to wear hats and T-shirts, and so on. Millions of small businesses across Europe would have to apply these provisions. Can we furthermore imagine that written evidence (risk assessments and action plans) will be stored for decades in cases of illnesses that take long periods to develop?

c) **Other possible consequences**

Another consequence for enterprises would be related to the employees’ right of withdrawal. Since the draft Directive would consider the exposure to radiation from natural sources as an occupational risk, workers could consider themselves in danger in case of exposure to the sun. In this event, it seems difficult to avoid subjective evaluations about the concept of danger and the use of the right of withdrawal. This difficulty could lead to an improper use of the right of withdrawal.

A European Directive which considers that the exposure to the sun constitutes an occupational risk which has to be taken into account by the employer is extreme and unjustified.

**4) If the issue is not taken into consideration now, will it be considered later?**

This is the opinion of the draft Directive’s supporters, arguing that the risk will be taken into consideration later with stricter rules and obligations.

Nevertheless, we consider that the sun risk cannot be limited to the workplace. It cannot be solved in the employer/employee context. This is a public health issue, linked to individual behaviour during the entire life of an individual. The issue requires a more global approach.
We believe that a general information campaign would be more suitable, led by the government and supported by employers’ association. A campaign mandate could also be given to the European Agency for Health and Safety at Work.

***End***

Editor’s note

The « EUROPEAN BUILDERS CONFEDERATION – E.B.C. » created in 1990, is a European Professional Organisation which gathers national associations of Craft and SMEs in the construction industry. Through its national organisations E.B.C. counts 500.000 affiliated small and medium sized construction enterprises and craftsmen. Therefore, the E.B.C. is recognized as the Construction SMEs and crafts organisations correspondent with the European Institutions. In the same way, the E.B.C. works in close collaboration with UEAPME (European Association of Craft and SMEs) and with NORMAPME. (the European Office of Crafts, Trades and SMEs for Standardisation), of which it is a member.

The construction sector is of vital importance to the European Economy. With 2.3 million enterprises, an annual turnover of almost € 1000 billion, a total direct workforce of almost 14 million, the construction sector contributes about 10% to the GDP.

The European construction sector is composed at about 99% of Small and Medium-sized Enterprises (SMEs), who produce 78% of the construction industries output. The small enterprises (less than 50 employees) ensure 60% of the production and employ 70% of the sectors working population. Enterprises average size is about 4 employees.