

Brussels, 18 July 2002

**OPINION**

of the

Economic and Social Committee

on the

**Proposal for a Council Recommendation concerning the application of legislation  
governing health and safety at work to self-employed workers**

(COM(2002) 166 final - 2002/0079 (CNS))

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On 28 May 2002 the Council decided to consult the Economic and Social Committee, under Article 262 of the EC Treaty, on the:

*Proposal for a Council Recommendation concerning the application of legislation governing health and safety at work to self-employed workers*  
(COM(2002) 166 final – 2002/0079 (CNS)).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 20 June 2002. The rapporteur was **Mrs Schweng**.

At its 392<sup>nd</sup> plenary session (meeting of 18 July 2002), the Economic and Social Committee adopted the following opinion by 77 votes to 32, with 15 abstentions:

## 1. Introduction

1.1 The Community programme for 1996-2002 concerning safety, hygiene and health at work already made provision for examining "the need for a proposal for a Council Recommendation on the safety and health at work of self-employed workers". As early as 1996 the Commission submitted to the Advisory Committee on Safety, Hygiene and Health Protection at Work, for its opinion, an initial draft of the Recommendation under review. The Advisory Committee issued two opinions on this subject. In its first opinion, issued in 1997, the Advisory Committee called upon the European Commission to draw up a report on the measures taken by the Member States to ensure the safety and protect the health of self-employed workers. The aim was to help pinpoint more clearly possible lines of action.

1.2 After the Bilbao Agency had drawn up the abovementioned report for the European Commission, the Advisory Committee issued a second opinion in 1999, in which it addressed the content of the Commission's draft recommendation. The Advisory Committee proposed that individual provisions be more clearly formulated and that clearer distinctions be drawn between them. The Commission largely acted upon the recommendations made by the Advisory Committee.

1.3 As part of the social dialogue, the European social partners were also consulted on the form and content of a possible Community initiative.

## 2. Contents of the Recommendation

2.1 The Proposal for a Recommendation provides for the following measures: the Member States should recognise the rights and duties of self-employed workers to ensure their safety and protect their health, in the same way as employed workers. It is proposed, in particular, that self-employed workers be brought within the scope of health and safety provisions and, where necessary, that these provisions be adapted to take account of the particular situation of self-employed workers.

2.2 It is further proposed that self-employed workers be given access to particular services and bodies where they can obtain information and advice on health protection and the

prevention of occupational safety hazards. Self-employed workers should also be given access to health and safety training measures without having to incur excessive expense.

2.3 The Member States are recommended to ensure appropriate surveillance of the health of self-employed workers in the light of the risks to which they are exposed. When preparing legislative measures, Member States should take account of experience in other Member States. Member States should also ensure appropriate inspection and monitoring of compliance with the legal provisions. Four years after the adoption of the Recommendation, the Member States should inform the Commission of the measures which they have taken to implement it.

### 3. General comments

3.1 So far only two Member States, Portugal and Ireland, have brought self-employed workers within the scope of their legislation on health and safety at work. In both these states, self-employed workers are placed on an equal footing with employed workers. This is also the case to a certain extent in Denmark, the UK and Sweden.

3.2 The legislation on health and safety at work of the other Member States does not apply to self-employed workers, except in areas where there is a need to coordinate their work with that of employed workers (e.g. on construction sites in respect of which a specific EU Directive has been introduced)<sup>1</sup>.

3.3 The Commission has decided to base its Proposal for a Recommendation on Article 308 of the EC Treaty. The reason given for selecting this article is that Article 137 of the EC Treaty, for its part, only provides for the use of a Directive as a legal instrument. The ESC wishes to back up this argument by pointing out that Article 137 of the EC Treaty provides only for measures for the "improvement in particular of the working environment to protect workers' health and safety"; this would exclude measures to assist self-employed workers.

3.4 The Commission takes the view that self-employed workers have the same right to protect their health as do employed workers. Whilst welcoming this standpoint, the ESC wishes to draw attention to one fundamental difference between self-employed workers and employed workers: employed workers are locked into the work processes of enterprises and are not free to shape their own working environment.

3.5 The Commission does not intend this Recommendation to cover spurious self-employed persons, i.e. persons who, whilst being regarded as self-employed, have, however, frequently entered into a relationship with a third party which could be described as an employment relationship between an employer and a dependent employee. In its 1999 opinion the Advisory Committee called upon the Commission to make a declaration to the effect that "spurious" self-employed persons were already covered by the framework Directive. The Commission has made this

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<sup>1</sup> Council Directive 92/57/EEC of 24.6.1992 on the implementation of minimum safety and health requirements at temporary and mobile construction sites.

point clear on several occasions, albeit only orally. The ESC recommends that the Commission issue this declaration in writing in the very near future. The Commission should also take pains to improve the definition of "spurious" self-employed persons so that abuses can be combated more effectively.

3.6 According to the fourth recital to the proposal for a Recommendation, a self-employed worker is a worker who exercises his/her occupational activity in a manner which does not involve an employment relationship with an employer or, more generally, does not make them subordinate to a third person (as is the case, for example, with members of the liberal professions, sole traders and farmers). Self-employed workers are free to make their own decisions as to the commissions or jobs which they accept, the way in which they carry them out and the precautionary measures which they take or the risks which they are prepared to accept. Self-employed workers therefore have much more room for manoeuvre when taking decisions than do employees.

3.7 In order to enable self-employed workers to assess by themselves whether particular activities involve a risk, it is essential that these workers be given access to the relevant information. The self-employed should be encouraged to make risk assessments for themselves.

#### 4. **Specific comments**

4.1 The Committee can support that the Commission has presented a non-binding instrument. It also supports the Commission's approach of not only granting rights to the self-employed but also imposing certain duties on them as regards their own health and safety. In the first place, the self-employed should, if necessary, be protected against themselves: in the second place self-employed must be discouraged from trying to gain a competitive advantage over those who do respect existing health and safety policies. The Committee notes that for the time being self-employed are only included in health and safety legislation in cases where they may place employed workers at risk. This principle has already been taken on board in the Directive on Construction sites and in the Directive on scaffolding.

4.2 The ESC also draws attention to the fact that Framework Directive 89/391, which has been transposed into national law by the Member States, sets out rights and duties for employees and employers. Who is to carry out a workplace risk assessment in the case of a self-employed worker? Who is to be responsible for providing information and instruction? This clear division of rights and duties embodied in the Framework Directive would not be feasible if its scope were extended to include self-employed workers.

4.3 It would be desirable for the Proposal for a Recommendation to make provision not just for legislative measures but also for measures to help increase the level of awareness of self-employed workers concerning their own health and safety. One example of such measures could be the introduction of national health and safety information campaigns aimed at self-employed workers, on a sector-by-sector basis. Consideration could also be given to including the health and safety of self-employed workers in the employment policy guidelines and developing appropriate indicators (such as the accident rate for self-employed workers).

4.4 The ESC welcomes and supports the recommendations on access for self-employed workers to services or bodies with a view to ensuring that these workers have the relevant information at their disposal. The ESC also welcomes the recommendation on access to training and the recommendation that access to information and training should not be so expensive as to possibly prevent self-employed workers from availing themselves of it\*. The Committee would go even further, insisting that information and training should entail as little expense as possible for the self-employed.

4.5 As regards the recommendation concerning the "appropriate surveillance of the health of self-employed workers", it is important, in the ESC's view, that this should not lead to additional administrative burdens being placed on self-employed workers. The self-employed should be actively encouraged to undergo health monitoring.

4.6 With reference to the recommendation concerning "appropriate control and surveillance" in respect of the enforcement of the rules governing self-employed workers, the ESC points out that, here too, legislative measures should not be regarded as the only instrument which may govern the working conditions of self-employed workers. This desire could be taken into account by adding the proviso "where applicable" to legislative measures in this field.

4.7 The Committee welcomes the Commission's tenth recommendation whereby the Member States must report on the effectiveness of measures taken as a result of this recommendation. When drawing up their progress reports, the Member States should, in the ESC's view, also address the provisions of their respective national worker protection legislation in respect of which the inclusion of self-employed workers creates particular problems. These reports should also give details

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**Translator's note:** The above wording is based on the German version of the Commission document. The English version (point 6, page 11) refers to ensuring "easy access to this information and training without involving excessive expense to employed workers".

of any distortions of competition. The Commission should consolidate these national reports into a general report which should be discussed by the Advisory Committee on Safety, Hygiene and Health Protection at Work.

Brussels, 18 July 2002.

The President  
of the  
Economic and Social Committee

The Secretary-General  
of the  
Economic and Social Committee

**Göke Frerichs**

**Patrick Venturini**

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**N.B.** Appendix overleaf.

## APPENDIX

to the opinion of the Economic and Social Committee

1. At least one quarter of the votes cast were in favour of retaining the following passage from the section opinion, which was rejected following an amendment adopted by the plenary assembly:

### Point 4.1

*"The ESC welcomes the fact that the Commission has presented a non-binding instrument. It does, however, regret that the Commission has failed to take adequate account of the difference between self-employed workers and employed workers by recommending to the Member States not only that they grant rights to self-employed workers but also that they impose duties upon them as regards their own health and safety. The ESC takes the view that self-employed workers should only be included in health and safety legislation in cases where such workers may place employed workers at risk<sup>2</sup> This principle has already been taken on board in the Directive on construction sites<sup>3</sup> and in the Directive on scaffolding<sup>4</sup>".*

### Result of the vote to delete the text:

For: 62  
Against: 47  
Abstentions: 9

### 2. Rejected amendment

The following amendment, which received at least a quarter of the votes cast, was rejected during the discussion.

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<sup>2</sup> According to Framework Directive 89/391, it is up to the employer of the workers concerned to establish whether there is any risk involved for them.

<sup>3</sup> See footnote 1.

<sup>4</sup> Directive 2001/45/EC of the European Parliament and of the Council of 27.6.2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work.

**Point 4.5**

Add the following to the point:

*"The Committee calls on the Commission to consider methods which could be developed for effective monitoring, taking account of the content of point 4.1 above."*

**Reason**

See Amendment 1 to point 4.1.

**Result of vote:**

For:	55
Against:	56
Abstentions:	7

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