

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
**A5-0326/2002**

4 October 2002

**\***

## **REPORT**

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 – C5-0235/2002 – 2002/0079(CNS))

Committee on Employment and Social Affairs

Rapporteur: Manuel Pérez Álvarez

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	Page
PROCEDURAL PAGE .....	4
DRAFT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	14

## PROCEDURAL PAGE

By letter of 29 May 2002 the Council consulted Parliament, pursuant to Article 308 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 – 2002/0079(CNS)).

At the sitting of 29 May 2002 the President of Parliament announced that he had referred this proposal to the Committee on Employment and Social Affairs as the committee responsible, and to the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy for their opinions (C5-0235/2002).

The Committee on Employment and Social Affairs had appointed Manuel Pérez Álvarez rapporteur at its meeting of 23 April 2002.

It considered the Commission proposal and the draft report at its meetings of 10 September 2002 and 30 September-1 October 2002.

At the latter meeting it adopted the draft legislative resolution by 36 votes to 1.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig and Marie-Thérèse Hermange, vice-chairmen; Manuel Pérez Álvarez, rapporteur; Jan Andersson, Elspeth Attwooll, Regina Bastos, Chantal Cauquil (for Sylviane H. Ainardi), Alejandro Cercas, Luigi Cocilovo, Harald Ettl, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti (for Enrico Boselli), Anne-Karin Glase, Roger Helmer, Stephen Hughes, Anna Karamanou, Dieter-Lebrecht Koch (for Philip Bushill-Matthews), Arlette Laguiller, Jean Lambert, Giorgio Lisi (for James L.C. Provan pursuant to Rule 153(2)), Raffaele Lombardo, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Ria G.H.C. Oomen-Ruijten (for Enrico Ferri), Paolo Pastorelli (for Mario Clemente Mastella pursuant to Rule 153(2)), Bartho Pronk, Amalia Sartori (for Winfried Menrad pursuant to Rule 153(2)), Herman Schmid, Gabriele Stauner (for Rodi Kratsa-Tsagaropoulou), Helle Thorning-Schmidt, Ieke van den Burg, Anne E.M. Van Lancker and Barbara Weiler.

The Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy decided on 22 and 23 May respectively not to deliver an opinion.

The report was tabled on 4 October 2002.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution 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 – C5-0235/2002 – 2002/0079(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2002) 166<sup>1</sup>),
  - having been consulted by the Council pursuant to Article 308 of the EC Treaty (C5-0235/2002),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs (A5-0326/2002),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
  5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
  6. Instructs its President to forward its position to the Council and Commission and, for information, to the Parliaments of the Member States.

Text proposed by the Commission

Amendments by Parliament

Amendment 1  
Recital -1 (new)

***(-1) Article 31 of the Charter of Fundamental Rights provides that ‘every worker has the right to working conditions which respect his or her health, safety and dignity’; that right, as a***

---

<sup>1</sup> Not yet published in OJ.

***statement of the fundamental right to protection of the person and of human dignity, applies to all workers, irrespective of their legal status.***

*Justification*

*The right of workers to protection of their health and safety, irrespective of their legal status, is recognised by the Union's Charter of Fundamental Rights, and is based on the fundamental right of human beings to protection of their dignity and integrity.*

Amendment 2

Recital 3

(3) The social partners attach particular importance to the protection of the health and safety of self-employed workers and almost all are in favour of a Community action in the form of a Council recommendation focusing on high risk sectors and notably on information and awareness-raising measures on risk prevention, appropriate training and medical surveillance.

(3) The social partners attach particular importance to the protection of the health and safety of self-employed workers ***as well as those working alongside self-employed workers*** and almost all are in favour of a Community action in the form of a Council recommendation focusing on high risk sectors and notably on information and awareness-raising measures on risk prevention, appropriate training and medical surveillance.

*Justification*

*This reinforces the interdependence of employed and self-employed in terms of health and safety issues in the same workplace.*

Or. en

Amendment 3

Recital 5 a (new)

***(5a) Through their activities, self-employed workers may jeopardise the safety and health of other workers or other persons.***

### *Justification*

*The activities of self-employed workers, whether they are working alone, together with firms using employed workers or in the context of a subcontracting relationship, may entail risks, other than to their personal health and safety, for the workers and other persons affected by the activity.*

### Amendment 4 Recital 9 a (new)

***(9a) Directive 92/57/EEC of 24 June 1992 on temporary or mobile construction sites provides for the extension to self-employed workers and to employers, where they are personally engaged in work activity, of certain relevant provisions of Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work and of Council Directive 89/656/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use by workers of personal protective equipment at the workplace.***

***A similar extension of the minimum health and safety requirements should apply in all cases in which provisions applicable to employed workers may apply directly to self-employed workers working within the sphere of activity or organisation of an undertaking which employs employed workers and also legally provides employment to self-employed workers without a binding employment contract.***

### *Justification*

*A substantial proportion of the working conditions of self-employed workers who work with firms using employed workers, or in the context of a subcontracting relationship, is determined by the contractual relationships with such firms. In this respect, a range of national experiments, together with some principles set out in the Directive on temporary or mobile construction sites, provide positive examples of an innovative approach. A legal solution may easily be found by extending the provisions applicable to employed workers to self-employed workers who work in a firm (compliance with limit values for exposure, provision of work equipment corresponding to the requirements of the Directives regarding the use of such equipment, information, etc.). Only certain provisions, concerning the field of collective work relationships (appointment of workers' safety representatives, etc.) would not apply.*

*The inclusion of the term 'legally' is intended to exclude bogus self-employed workers and similar.*

### Amendment 5 Recital 9 b (new)

***(9b) This recommendation applies to all self-employed workers, irrespective of whether they work alone or with employees in a firm belonging to the self-employed worker or to another person.***

### *Justification*

*Seeks to clarify that all self-employed workers, whether they work alone or with others, are entitled to protection.*

Or. da

### Amendment 6 Recital 12

(12) The health and safety objectives laid down in this Recommendation do not prejudice the right of each Member State to establish specific procedures for the application of its legislation to self-employed workers.

(12) The health and safety objectives laid down in this Recommendation do not prejudice the right of each Member State to establish specific procedures for the application of its legislation to self-employed workers ***with the aim of bringing health and safety measures concerning***



***employed and self-employed workers in line with each other, and securing better health and safety conditions for all.***

*Justification*

*The aim is to apply the same rules to employed and self-employed workers.*

Amendment 7  
Recital 14 a (new)

***(14a) If the measures taken by the Member States do not prove effective after four years from the adoption of this recommendation, the Commission should submit binding measures to ensure that the self-employed are fully covered by existing and future health and safety legislation.***

*Justification*

*A recommendation is not binding on the Member States, and it is therefore reasonable to propose legally binding instruments (e.g. a directive) if the intended protection of self-employed persons is not achieved after four years.*

Amendment 8  
Recommendation 1

1. recognise, in the context of their policy on preventing occupational hazards and accidents, the right of self-employed workers to health and safety protection on an equal footing with employed workers and the duties to which they are subject in this area;

1. recognise, in the context of their policy on preventing occupational hazards and accidents, the right of self-employed workers to health and safety protection on an equal footing with employed workers and the duties to which they are subject in this area;

***also recognise the duties of employers and of contracting undertakings to apply to self-employed workers whom they legally employ the relevant health and safety provisions which apply to employed***

**workers;**

*Justification*

*An employer's obligations with regard to health and safety protection for workers, in particular with regard to the working conditions over which he exercises control, must be extended to cover self-employed workers who work in a firm. For instance, if a self-employed welder works in a steel factory, it is normal to extend to that worker the requirements with regard to protection against noise or dangerous exposure to chemical substances, as well as the provisions concerning work equipment and information, in order to protect his health and safety and likewise the safety and health of the other workers and persons concerned.*

*The expression 'legally employ' will exclude bogus self-employed workers and prevent fraud in general, so that only genuine self-employed workers employed by the main undertaking under a commercial arrangement are included.*

Amendment 16  
Recommendation 2

2. organise the recognition of this right and these duties within their domestic legal order, in particular by making provision for the inclusion of self-employed workers in the scope of their legislation on health and safety at work and/or the adoption of specific measures relating to self-employed workers;

2. organise the recognition **and implementation** of this right and these duties within their domestic legal order, in particular by making provision for the inclusion of self-employed workers in the scope of **all** their legislation on health and safety at work and/or the adoption of specific measures relating to self-employed workers **with the aim of bringing health and safety measures concerning employed and self-employed workers in line with each other;**

*Justification*

*Should be clear that it concerns not only the recognition but also the implementation of all health and safety legislation.*

Amendment 10  
Recommendation 3

3. adapt, if necessary, this legislation to the specific needs of self-employed workers;

3. adapt, if necessary, this legislation to the specific needs of self-employed workers, **by ensuring, in particular, that in subcontracting relationships health and safety matters are covered by effective**

*provisions; that the respective obligations of self-employed workers and of a contracting undertaking are laid down; and that the safety rules concerning the supply of work equipment or substances are observed, including the provision of information to self-employed workers about risks and advice on the use thereof;*

#### *Justification*

*In the event of there being a problem with the direct extension of health and safety provisions, general provisions should enable contractual relationships between firms and self-employed workers to be structured in such a way as to ensure that, in subcontracting relationships, health and safety matters are covered by effective provisions.*

#### Amendment 11 Recommendation 4

4. take the necessary measures so that self-employed workers can obtain from the services and/or bodies appointed for this purpose useful information and advice on the prevention of health and safety risks in the context of their occupational activity; these measures must be adapted to the needs of self-employed workers and allow them to control the risks to which they are liable to be exposed;

4. take the necessary measures so that self-employed workers can obtain from the services and/or bodies appointed for this purpose useful information and advice on the prevention of health and safety risks in the context of their occupational activity; these measures must be adapted to the needs of self-employed workers and allow them to control the risks to which they are liable to be exposed, ***and should include the implementation of national information campaigns on health and safety at work. focusing on the specific risks in the various sectors where there is a very large number of self-employed workers;***

#### *Justification*

*The Commission notes that there are what are deemed to be 'high-risk' sectors in the Community in which the number of self-employed workers is very high (agriculture, fishing, construction, transport). It is therefore vital to increase the awareness of all workers, and provide information, about the specific risks associated with their activities and about the prevention thereof, without leaving it up to workers to take the trouble to gather the relevant information.*

Amendment 19  
Recommendation 5

5. take the measures necessary so that self-employed workers **can** have access to sufficient training to acquire appropriate safety and health skills;

5. take the measures necessary so that self-employed workers have access to sufficient training to acquire appropriate safety and health skills;

*Justification*

*Self-explanatory.*

Amendment 13  
Recommendation 6 a (new)

***6a. include considerations regarding the health and safety of self-employed workers in their national employment plans, using the experiments conducted in other Member States or at Community level as a basis for developing appropriate, comparable indicators, such as the rate of accidents among self-employed workers, by sector and sex, age group and other social circumstances;***

*Justification*

*The implementation of an effective policy on prevention, based on framing mechanisms for monitoring the health of self-employed workers and for providing information and training in this field, must be accompanied by information systems to track changes in the situation.*

Amendment 14  
Recommendation 7

7. take the necessary measures, in line with their national legislation and/or practice, to ensure appropriate surveillance of the health of self-employed workers, depending on the health and safety hazards in question;

7. take the necessary measures, in line with their national legislation and/or practice, to ensure appropriate surveillance of the health of self-employed workers, depending on the health and safety hazards in question ***and, as a matter of priority, on specific hazards, taking into account the results of such surveillance in evaluating***

***risks and in planning preventive activities, either in terms of public health, health at work and social security policies, or in terms of sectoral and company-level measures, in particular where the use of self-employed workers is relatively regular and foreseeable;***

*Justification*

*Surveillance of the health and safety of self-employed workers must take account of specific risks such as exposure to carcinogenic substances, noise, etc. In addition, the health and safety problems of self-employed workers must be included in all prevention measures, not only where public health policies are concerned, but also within prevention programmes set up by sectoral organisations or by firms which frequently use self-employed workers.*

Amendment 22  
Recommendation 10 a (new)

***10a. If the measures taken by the Member States do not prove effective after four years from the adoption of this recommendation, the Commission will submit binding measures to ensure that self-employed are fully covered by existing and future health and safety legislation.***

*Justification*

*See justification to Amendment 7.*

## EXPLANATORY STATEMENT

The Commission proposal for a recommendation arises from the finding that workers who carry out their occupational activity outside an employment relationship with an employer or outside any link to or contract of employment with a third party are not, as a general rule, covered by the Community directives dealing with health and safety at work. The fact that the large majority of Member States do not regulate the protection of health and safety of self-employed workers has resulted in a great variety of protection levels within the European Union, making Community action necessary in order to ensure a minimum degree of protection for self-employed workers against occupational risks.

In addition, although the data available are incomplete, and rarely homogeneous, it clearly emerges that there are major problems of health and safety at work which affect self-employed workers. In a country such as the United Kingdom, which records fatal accidents at work for both employed and self-employed workers, the rate of fatal accidents is markedly higher for the latter. Investigations into working conditions by the Dublin Foundation have established that there is a relatively large number of self-employed workers in high-risk sectors such as agriculture, forestry, fishing, road transport and construction.

Moreover, self-employment concerns a substantial number of people, and there are many interactions between self-employed and employed workers. Consequently, an effective prevention policy also depends on creating a level of safety and health protection which is as homogeneous as possible, irrespective of the legal status of workers exposed to risks.

The Commission also considers that Community action should be taken through a non-binding instrument, such as a recommendation, which is more suitable for covering the aspects associated with information/raising awareness, training, specific medical surveillance of health and prevention relating to self-employed workers, and it is therefore proposing a recommendation pursuant to Article 308 of the Treaty, this being preferred to Article 137, which provides only for a directive as the legal instrument for taking action.

For its part, the Economic and Social Committee has endorsed this choice, considering that Article 137 would apply only to employed workers. In fact, this position is puzzling for several reasons. Article 137 has the objective of improving the working environment, in the light of health and safety requirements. Such an objective implies that differing legal statuses do not constitute a determining factor in guiding Community action. In its judgement of 12 November 1996 (United Kingdom v Council, C84/94, 61994J0084), the Court of Justice rightly stressed that the concept of 'working environment' should be covered by a broad interpretation of the powers conferred upon the Council, stating that 'the concept of 'working environment' is not immutable, but reflects the social and technical evolution of society'.

In addition, the vast range of subjects covered by Article 137 shows that it would be absurd to make the adoption of Community directives dependent on the specific legal status of employed workers. For instance, the provision regarding 'the integration of persons excluded from the labour market' manifestly cannot concern employed workers alone.

To take the view that self-employed workers are excluded from the scope of Community social policy, as defined in Title XI, would be to propose a considerable step backwards by comparison

with the Community *acquis*, and by comparison with all the social policies of the 15 Member States, all of which cover self-employed workers.

Furthermore, the reasons cited by the Commission in favour of a recommendation are unconvincing: the effectiveness of Community recommendations on health and safety is very limited, as is indicated by the large-scale failure to apply recommendations on occupational medicine or occupational diseases, or again by the fact that the recommendation of 17 May 1998 on ratification of the ILO Convention concerning Home Work has been taken up by only two of the 15 EU Member States.

In addition, as is indicated by the settled case-law of the Court of Justice, Article 308 'may be used as the legal basis for a measure only where on other Treaty provision confers on the Community institutions the necessary power to adopt it' (judgement of 12 November 1996, cited above).

All these reasons would be sufficient to raise doubts about the choice made by the Commission, but its proposal nonetheless constitutes a first step, albeit a partial one, towards a solution to the problem of protecting self-employed workers. As a first step in the direction of tackling the problem, and bearing in mind that the social partners are 'almost unanimously' in favour of a non-binding Community instrument for those aspects associated with information, raising awareness, training and medical surveillance, it seems advisable to accept the proposal put forward by the Commission for the time being.

The specific substance of the recommendation calls for a few comments. While the general thrust of the Commission document, together with the concern to protect the health and safety of self-employed workers by seeking the right balance between non-binding instruments and preventive measures, can certainly be endorsed, the recommendation's provisions are likely to be inadequate and too general.

In particular, these proposals are inadequate with regard to the problems posed by co-working and subcontracting. The Commission's approach may be adequate in the case of self-employed workers working in a relatively isolated situation. However, where self-employed workers working with firms using employed staff are concerned, or for those in the context of a subcontracting relationship, this approach ignores the fact that a substantial proportion of their working conditions is determined by the contractual relationships with those firms and by the various levels of economic and organisational dependence, the influence of which on health should be taken into account.

An effective approach should thus take account of the possibility of directly extending the Directive to self-employed workers working in a firm which has employed workers; of the need to have general provisions ensuring the inclusion, in subcontracting relationships, of effective provisions regarding the health and safety of workers in such relationships; and of the need for a prevention policy which addresses not only self-employed workers and their good will, but also the economic, occupational and social context within which they operate.

Accordingly, it appears important for all the policies aimed at protecting health and safety at work, whether for employed workers or for self-employed workers, to be flanked by information systems to provide 'snapshots' of the current situation and changes thereto (statistics on work accidents and occupational diseases among self-employed workers, working conditions,

occupational exposure, diseases and risks associated specifically with the status of self-employed workers, etc.).

To be useful, such ‘snapshots’ must cover the whole of Europe and consequently provide data and indicators which are comparable and homogeneous; these can be attained only by means of cooperative work at Community level, not solely at Member State level. Similarly, in a Europe where occupational mobility and cross-border work are steadily increasing, it would be difficult to tackle the issue of health and safety at work, or implement effective prevention and monitoring, solely through national instruments and measures.

Finally, the proposal leaves open a fundamental question which must one day be addressed, namely that of defining employed, self-employed and atypical workers in a constantly changing economic and social context, where the demarcations between the different legal situations seem to be blurring and where the traditional definition, based on the existence of a relationship of subordination, appears to have lost its meaning. In any case, irrespective of the answer to that question, it is undoubtedly essential to ensure the broadest possible protection of the health and safety of all workers – employed, self-employed or atypical – in the interests of the right to human dignity.