

A new instrument for combating occupational accidents in Belgium: annual selection of higher-risk companies

Higher risks: an initiative under the Belgian national strategy - 2008-2012 – for health, safety and welfare at work

Pursuant to the Royal Decree of 23 December 2008, Belgium has developed a new tool for preventing occupational accidents. This involves identifying companies where there is a particularly high risk of accidents compared with businesses carrying out similar activities, while requiring these so-called "higher-risk" companies to roll out an action plan in a bid to improve the situation. This project was launched in 2005 in the wake of the PhARAon plan for reducing the incidence of occupational accidents. Initiated by Kathleen Van Brempt, State Secretary for the Organisation of Work and Welfare at Work, the plan was enshrined by Joëlle Milquet, the Minister for Employment, as part of the Belgian process for transposing the 2007-2012 Community Strategy on Health and Safety at Work.

The aim was to follow on from what the project designers had in mind by devising a system for identifying employers who most disregarded the need to guarantee the safety of their employees and ensure they change the way they run their companies in this respect by harnessing the expert knowledge available from the prevention services of their occupational accident insurer providers. When the project was deployed it was discovered that the selection process was targeted less on the anticipated "cowboys" than companies who never had the slightest inkling they would be censured in this way, as they were convinced they were complying with the standards for preventing occupational accidents.

The higher risks selection process was facilitated by the success in computerising transfers of information in the social security sector and, more specifically, in the occupational accidents sector. Two key tools were deployed during the first higher risk selection process, in November 2009: the Occupational Accident Fund's creation of a data repository receiving input from insurance companies and the system whereby employers use electronic means to declare wages and working hours to the National Social Security Office. Driven by technological developments, the project turned out to be a success story thanks to the political willingness, consultations between representatives of employers and employees within the Management Committee of the Fund for occupational accidents, and cooperation between insurance companies, channelled through their prevention services.

Adjustments required in the wake of the first selection process.

The companies observation period covers three years (first period: 2006-2008) in order to ensure a business is not selected as a higher risk by accident or owing to bad luck. The criteria featured in the first version of the Royal Decree propose that higher-risk companies should be defined as those which are assigned an average risk rating for their field of activity, during the final year of the observation period and at least during one of the other two years. The risk rating for the company and sector reflects how often accidents occur and their seriousness in the light of the period of temporary incapacity. During the first selection process the one hundred companies that were most inconsistent with the risk rating for their sector were told

they had to pay a fixed fee to be used by their insurance providers' prevention services to make a review of the risk of accidents and offer prevention proposals.

Carried out in November 2009, the review of the first period highlighted the need to make a few adjustments to the criteria originally laid down in the legislation. It was discovered that it was "easier" for a company to be selected when it operated in a medium-risk sector. As the average risk rating for this kind of sector is particularly low it takes only a few less serious accidents to produce a wide gap between this average rating and the company's risk rating.

The legislative authority sought to avoid the paradoxical situation where companies regarded as higher risks are performing low-risk activities in many cases. The authority decided that during the second selection process the comparison with the average rating for the field of activity should also feature a second condition covering the 2007-2009 observation period: for a company to be selected it also simultaneously has to be assigned an average risk rating for all sectors 30 times during the first year of the observation period and at least one of the other two years. The introduction of this floor reference and the inclusion of more serious accidents affected the decision about which entities should be selected to be featured in the higher-risk company category. It was decided the second process should record solely occupational accidents leading to the death of the victim or a temporary incapacity lasting more than three days, whereas originally all accidents involving at least one day of incapacity were taken into account in addition to fatal accidents. In November 2009, 68% of the 100 higher-risk companies belonged to low accident risk sectors (wholesale or retail trade, engineering activities, teaching...). During the second selection process, in November 2010, companies in the low-risk sector accounted for only 19% of the companies selected, while the number of businesses was increased to 150 in the meantime. Conversely, the proportion of companies in the most risk-fraught sectors, such as construction or road transport, rose from 6% in 2009 to 32% in 2010.

The assessment during the first selection process highlighted another shortcoming of a system based solely on an average sectoral rating. The purpose of the project was not to target just companies with higher accident rates to be found inevitably in dangerous fields of activity but to cover all undertakings irrespective of their lines of business and if they are dangerous or otherwise. The National Social Security Office decides what sector a company belongs to as a result of assessing the company's activities. The fact is that some companies may justifiably be described as belonging to a certain sector but they are actually engaged in certain specific activities, with a non-standard profile compared with other entities in the sector. This special characteristic may lead them to a situation involving an incomparable situation.

In order to remedy this kind of situation, consideration was given to the idea of introducing legislation recognising the entitlement for a reasoned complaint to be presented to the Management Committee of the Fund for occupational accidents, in addition to the time-honoured appeals to the courts. A company that can justifiably point to the disappearance of the risk, when it phases out a field of activity that gave rise to the higher-risk status, for example, may rely on this as grounds for appealing to the Management Committee of the Fund for occupational accidents. In this kind of case the investigation mission assigned to the insurer provider's prevention service, a mission for which a fixed payment was collected, would no longer serve any useful purpose. However, the proposed complaint procedure could not be given a legal setting as the government could not take urgent steps to adopt a Royal Decree of this kind, as it was operating on a current business basis (i.e. not allowed to take any policy initiative individually or collectively).

The impact on preventing occupational accidents

It is presumably too early to assess what effect the new measure is having on occupational accidents in terms of higher-risk companies during the first two selection processes and in the case of all fields of activity. The small number of companies actually covered by the two processes makes it impossible to answer this question for the time being. The more far-reaching effects can be expected to make themselves felt only when the new instrument applies to all companies. This is why a warning letter was sent in early 2010 to companies meeting the higher risk criteria at the end of the first observation period, while not forming part of the first hundred risks. A similar campaign is set to be repeated every year with view to alerting companies likely to be selected and ensuring they act on their own initiative to take the prevention measures needed, without waiting for these to be imposed upon them as a result of the selection process.

For further details:

"Risque aggravé/Verzwaard risico" section on the website of the Fund for occupational accidents: http://www.faofat.fgov.be/site_fr/stats_etudes/stats_etudes.html