

Abstract

Analysis of costs and benefits of compulsory occupational health services for small and medium enterprises for employees of the works category I and II

Due to the amendment approved by the National Council of the Slovak Republic on 25 June 2014, **Act No. 355/2007 Coll. on Protection, Support and Development of the Public Health and on modification of and amendment to certain acts as amended and on modification of and amendment to certain acts** (hereinafter referred to as Act) sets the **duty for employers to provide occupational health services to all employees regardless of the work category from the health risk point of view** with the effective date of 1 August 2014.

The Ministry of Health of the SR (hereinafter referred to as Ministry) explained the change by the need of meeting the requirements of **the European Framework Directive No. 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work** (hereinafter referred to as Directive 89/391). The legal changes were, indeed, caused by the reasoned **European Commission's opinion of 20 February 2014** (hereinafter referred to as European Commission's opinion), **which was interpreted by the Ministry of Health of the SR in the sense that, upon European Commission's opinion, the existing Slovak regulations were not in harmony with Directive 89/391** in the part relating to the provision of occupational health services for employees. In the opinion as such, the European Commission calls for "provision of health and safety, protective, and preventive measures for all employees"¹. The role of the Better Regulation Center is **to perform evaluation and quantification of impacts** not only of proposed legal regulations that did not yet come into effect, but also of **the existing and effective ones with the accent on micro-, small, and medium enterprises** (SMEs). This process also includes the evaluation of **the so-called gold-plating effect**, i.e. overlap of the transposition of EU legal requirements in the Slovak law beyond the scope required by the Directive. Even though Ministry explained adoption of the new regulation by the duty of transposing Directive 89/391, it is obvious from the original wording of the respective Directive that **not all of new employers' duties originate in the EU regulations**.

In compliance with its mission, the Better Regulation Center therefore elaborated **an ex-post evaluation** in the form of **the Analysis of costs and benefits for SMEs**, within which it concluded that such type of gold-plating was concerned here, when the transposed legal regulation

1. did not provide the option of deviating/digressing from the requirements of EU regulations in a less strict or closer or less burdening and excessive form/version (i.e. for example not applying the provision of Article 7 (7) of Directive 89/391 that **enables member states to define categories of enterprises, in which the employer, provided he is competent and in the light of the nature of the activities and size of the enterprises, may himself take responsibility for the respective measures**, as well as not applying Article 9 (2) that, **in the light of the nature of the activities and size of the enterprises, enables member states to define obligations for different categories of enterprises**;
2. cases/subjects that are not enumerated (i.e., for example, a broad definition of the content of occupational health services, specification of the minimum time extent of occupational health services in the Annex No. 3b, etc., **at which the Slovak legal arrangement, using the chance**

¹ „The European Commission has requested Slovakia to ensure that all employers have the obligation to designate workers to carry out health and safety preventive and protective actions covering all staff. **The European Commission has received several complaints indicating that in Slovakia employers are not obliged to put in place these safeguards for workers whose jobs do not entail a considerable health risk.** The European Commission considers this to be contrary to the Directive on health and safety at work (89/391/EEC). The request takes the form of a 'reasoned opinion' under EU infringement procedures. Slovakia now has two months to notify the Commission of measures taken to comply with the Directive. Otherwise, the Commission may decide to refer this Member State to the EU's Court of Justice.“

of revising these duties at its own discretion, decided for the extensive and strict regulations, which still offer space for moderating and narrowing, while compliance with Directive 89/391 would be kept anyway);

3. if there are several alternatives of the EU regulation, we do not choose the least strict or burdening one (i.e., for example, we do not apply the provision of Art. 14 (1) of Directive 89/391 saying that **health surveillance may be provided as part of a national health system**);

The analysis of costs and benefits for SMEs includes a detailed analysis of provisions of the amendment versus the revision under Directive 89/391 setting duties of SMEs and **quantification of their impacts on SMEs**, and, at the same time, **offering alternative solutions for reducing such burden** – inspired also **by best practices resulting from the international comparison** of transposition of Directive 89/391 in some EU member states.