

Deregulation – An agenda for European Safety and Health Policy?

Workshop T2

Facilitator: Charles Woolfson
European Work Hazards Network
10th Conference
Jurmala, Latvia
29th September 2006

Main themes

1. Working life in new EU Member States

- Trade unionism
- Health and safety indicators

2. The neo-liberal agenda for OHS

- Global and domestic

3. EU Policy for OHS

- 'Soft law'
- 'Better regulation'
- De-regulation

4. Countervailing forces to deregulation?

Working Life in the New Member States

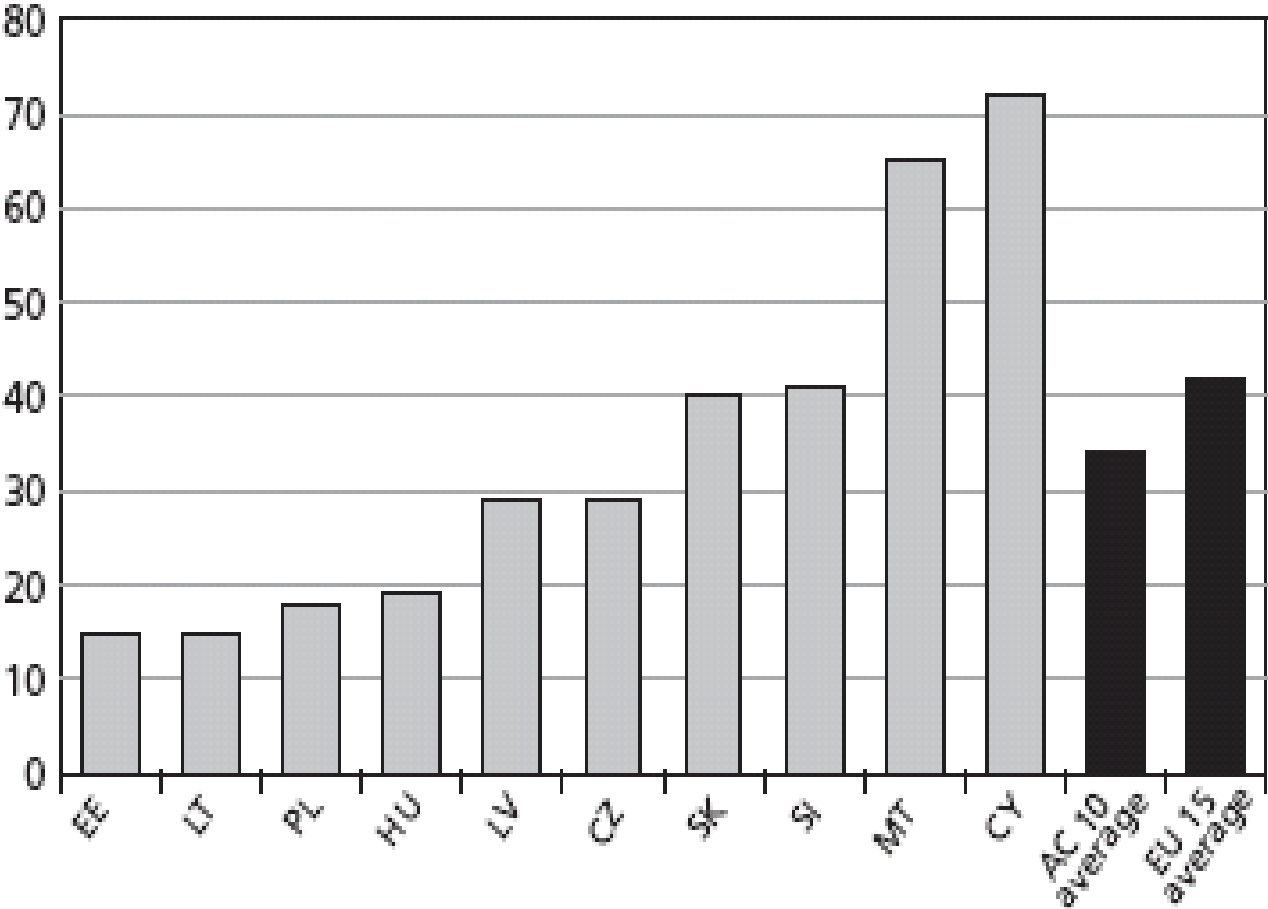
- Low levels of unionisation, insecure and exploited workforces
- Privatisation, bankruptcies, restructuring
- Emergence of small enterprises
- growth of unemployment
- increase in the category of 'self-employed'
- 'grey' and black economy without protection
- imbalance in power between employers and employees at the workplace
- Absence of 'social dialogue' mechanisms at the workplace, especially in private sector

Table 2.1. Unionisation and collective agreements coverage in the EU countries

	Union membership	Collective agreements coverage	Main level of bargaining
Austria	35.4	91-100	Sector
Slovenia	41.0	91-100	National/sector
France	9.7	91-100	Company
Belgium	55.8	91-100	National
Sweden	78	91-100	Sector
Finland	71.2	81-90	National
Netherlands	22.1	81-90	Sector
Spain	14.9	81-90	Sector/company
Denmark	73.8	81-90	Sector
Luxembourg	33.5	71-80	Sector/company
Ireland	35.9	51-60	National
Portugal	24.3	71-80	Sector
Germany	23.2	61-70	Sector
Greece	26.7	61-70	National/sector
Cyprus	70.0	61-70	Sector
Malta	62.8	51-60	Company
Italy	34.0	61-70	Sector
Slovakia	35.4	41-50	Sector/company
Poland	14.7	41-50	Company
UK	30.4	31-40	Company
Hungary	19.9	31-40	Company
Czech Rep.	25.1	21-30	Company
Estonia	16.6	21-30	Company
Latvia	20.0	11-20	Company
Lithuania	16.0	11-20	Company

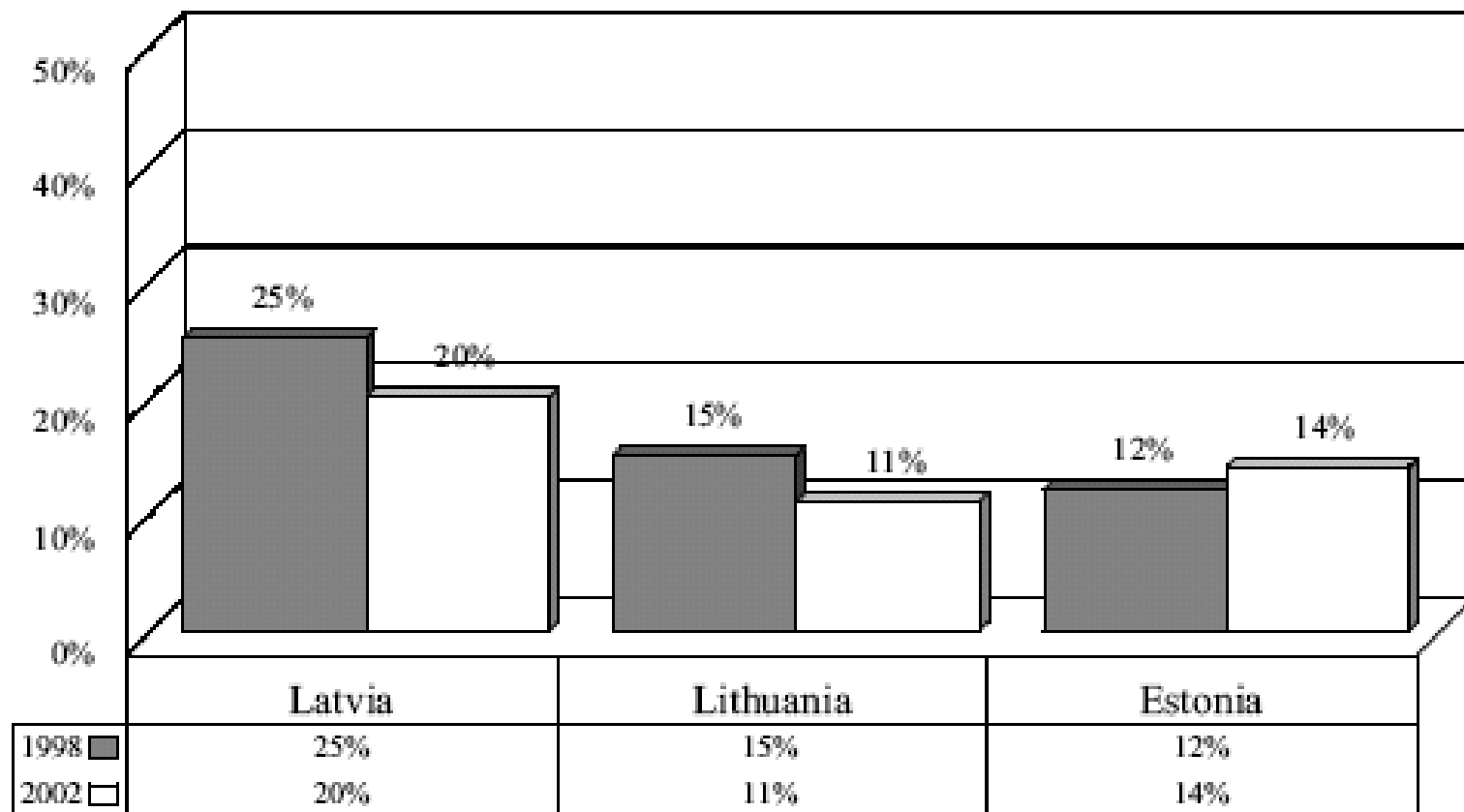
Source: *Industrial Relations in Europe 2004*, p. 19, 31, 39.

Figure 2 Trade union density in the acceding countries (%)



Source: EIRO 2002 and national reports. Unweighted data (not taking into account the respective size of the labour force).

THE LEVEL OF TRADE UNION MEMBERSHIP

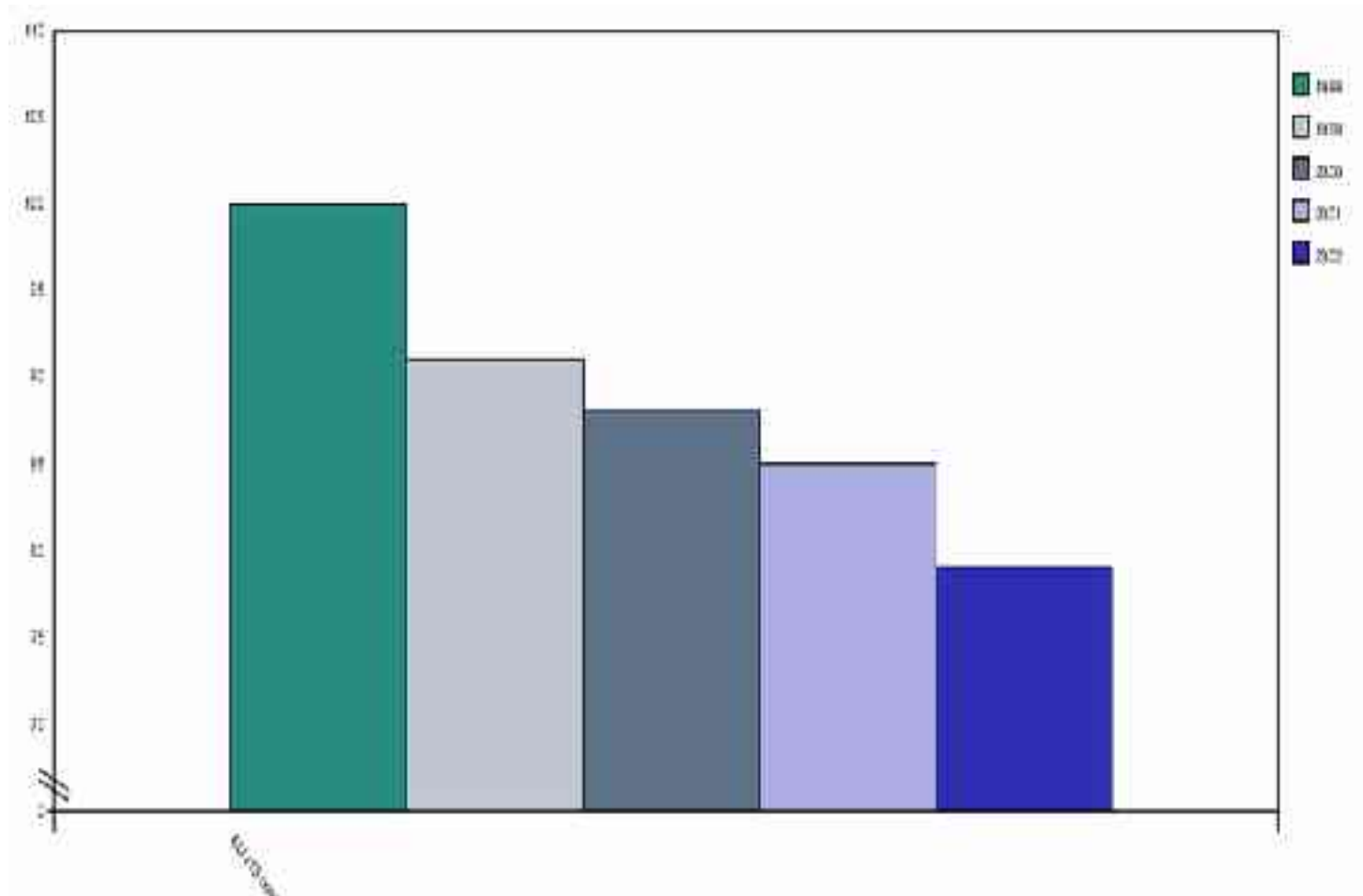


In 1996 the rate of unionisation in Estonia was 21 % (Rahikainen & Ylöstalo 1997, 75)

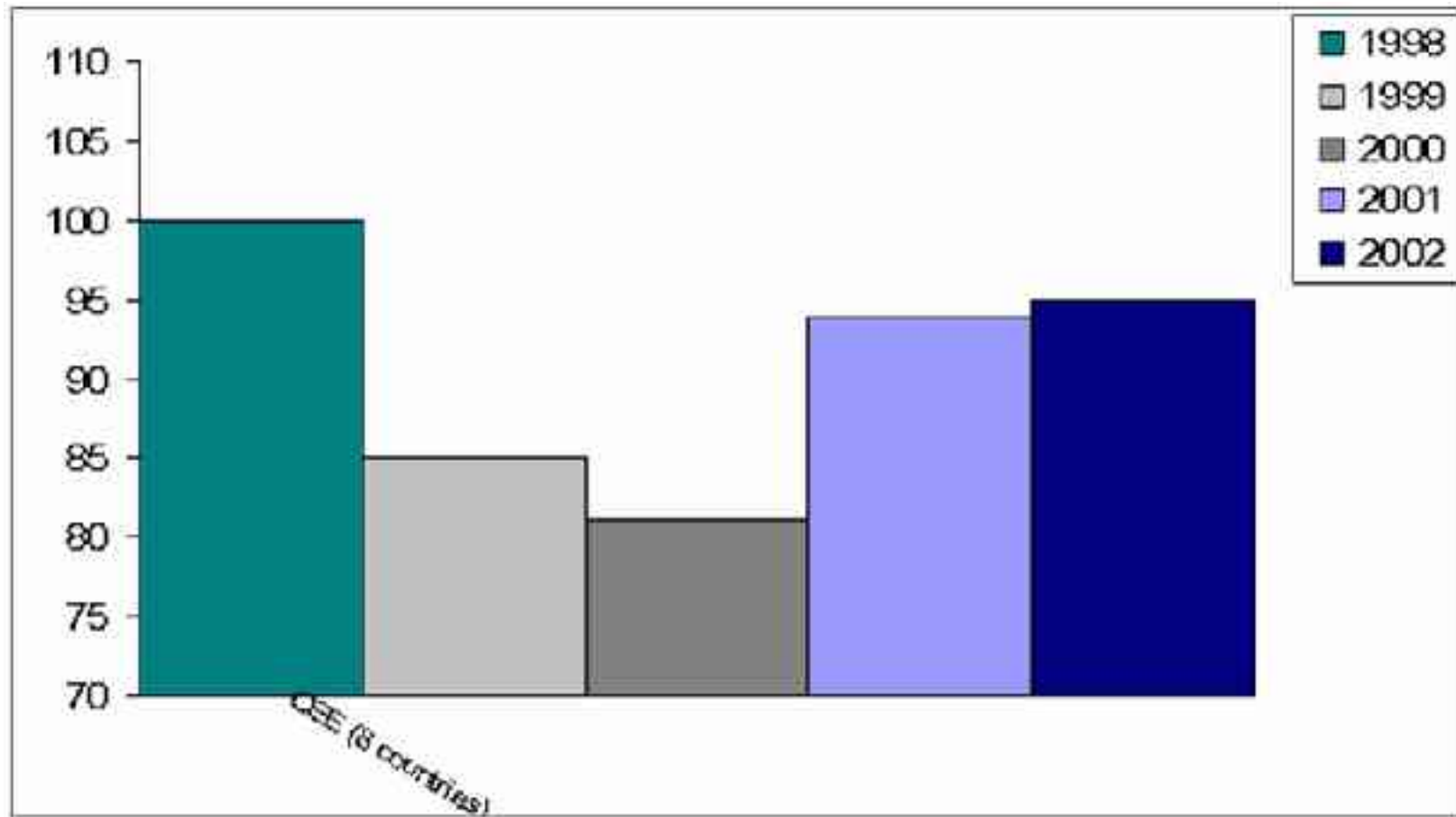
Size of undeclared work in selected CEE countries

Country	Year	Estimate (% GDP)
Bulgaria	2002/03	22-30
Czech Republic	1998	9-10
Estonia	2001	8-9
Hungary	1998	18
Latvia	2000	18
Lithuania	2003	15-19
Poland	2003	14
Romania	2001	21
Slovak Republic	2000	13-15
Slovenia	2003	17

Index of Fatal Accidents at Work (per 100,000 employees) Old Member States (New Cronos)



Index of Fatal Accidents at Work (per 100,000 employees) New Member CEE States (New Cronos)



Index of Fatal Accidents at Work (per 100,000 employees) CEE New Member and Candidate Countries

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Average EU(15)	115	109	106	100	100	85	82	80	75	80 ^p
Czech Republic	110	103	112	116	100	76	96	96	87	84
Estonia	Na	120	102	114	100	79	56	78	81	67
Hungary	106	117	101	97	100	107	95	71	109	80
Lithuania	Na	98	102	83	100	91	78	105	115	138
Latvia	Na	Na	Na	Na	100	115	90	140	123	66
Poland	Na	Na	Na	109	100	83	96	92	89	90
Slovenia	90	118	118	130	100	88	83	105	97	121
Slovakia	Na	96	109	81	100	89	71	71	65	75
Average CEE(8)	:	:	:	:	100	85	81	94	95	90
Bulgaria	122	116	120	116	100	96	100	104	85	83
Romania	:	:	:	105	100	93	103	97	95	111
CEE Candidate	:	:	:	110	100	94	101	100	90	97

*Source EuroStat (2006) New Cronos database.









The neo-liberal agenda for OHS

- World Bank
- Cato Institute
- Resistances to OHS regulation among domestic elites in new EU Member States

The 'globalisation' argument

- New forces of 'globalisation' require **less (de-)regulation** of labour markets - ESM - an outdated concept of the 1960s and the 1970s.
- Major **international financial institutions** (IMF, World Bank, European Bank for Reconstruction and Development) argue that European competitiveness depends on being able to compete in the **global market place**.

Doing Business in 2006: Eastern European and Baltic Nations Encourage Businesses with Aggressive Regulatory Reforms

World Bank Report WASHINGTON, D.C.,
September 12, 2005 –

Eastern European and Baltic nations are ‘aggressively courting entrepreneurs with far-reaching reforms that streamline business regulations and taxes’

Ranking of 'ease-of-doing business'

The top 30 economies in the world in terms of the report's ease-of-doing-business index are: New Zealand, Singapore, the United States, Canada, Norway, Australia, Hong Kong/China, Denmark, the United Kingdom, Japan, Ireland, Iceland, Finland, Sweden, **Lithuania (15)**, **Estonia (16)**, Switzerland, Belgium, Germany, Thailand, Malaysia, Puerto Rico, Mauritius, the Netherlands, Chile, **Latvia (26)**, Korea, South Africa, Israel, and Spain.

A 'remarkable achievement'

- For the three Baltic States to be in the top thirty ranking is a remarkable achievement since it is only a decade since reforms first began.

(World Bank report 2005).

Cato Institute

‘Washington-based free market **Cato Institute**:

- ‘*over*-regulation of conditions of employment will diminish the comparative advantage that CEE workers *enjoy* over their more highly paid western counterparts’
- health and safety regulations contribute ‘to worsening of the workers’ lot,’ by ‘creating an *artificial* increase in labour costs’.

'Too high' OHS standards

EU criticized because - it does not accept:

- 'the possibility of *different* levels of safety and health protection of labour within the Union'

- 'the *need to harmonize* health and safety standards ***irrespective of the different needs of the member states***'
(Cato Institute, 2003)

Implementation of OHS in New Member States

- Accession process complete
- Pressure to conform to the requirements of the European *acquis removed*.
- The trajectory of reform has been externally *imposed*
- regulatory frameworks and standards – often *lower* than existing regulation requirements.

De-regulation attack from within the EU: Neo-liberal offensive against the European 'Social Model'

- Individual member states such as UK, Italy and Germany hostile to ESM
- UNICE – the European Employers Federation afraid of 'too much regulation' as a 'burden on business'
- Social protection measures introduce **harmful 'rigidities'** into the labour market which undermine necessary **'flexibility'** and **'adaptability'** (eg minimum wages, too high unemployment benefit levels, European Directives)

The New EU Member States

- The **domestic policy environment** is shaped by neo-liberal ‘anti-regulation’ assumptions on the part of business and political elites
- Policy and implementation ‘veto points’ emerging in a domestic context, preventing the successful transfer of good practice and proper implementation of EU *social acquis*.

Report of the High Level Group on the future of social policy in an enlarged European Union (May 2004)

- Policy makers in the enlarged EU need to take account of ‘serious difficulties in policy development and implementation’ (p.15). HLG calls for ‘*new conceptual efforts*’.
- In the new market economies of the New Member Central and Eastern Europe states, where investment and profit priorities are uppermost, ‘**social partners are often far from a modern understanding of health and safety issues**’. (HLG Report, p.16)

Estonian Employers' Confederation

- “EU labour law is in some parts *overregulated* and ... minimum standards have been set too high
- ...*compulsory expenses* of the employer related to occupational health and safety are *disproportionately large* in small businesses compared to large business

Fulfilment of requirements established by the Occupational Health and Safety Act¹ (% of enterprises, where requirements are not met)

Activity or situation inspected and evaluated	%
Existing and active working environment council (enterprises with over 50 workers)	10.5
Training of member of the working environment council	15
Election of working environment representatives	34.5
Training of working environment representatives	46.7
Working environment risk assessment plan for reducing health risks	54.4
Organisation of internal control	38.4
Health care service agreement	60.7
Medical examination of workers	38.2
First aid training	29
Instruction of workers in the sphere of occupational health and safety	12.3
Provision with personal protection equipment	1.9
Investigation of occupational accidents and cases of occupational disease	57.7
Application of measures intended for the prevention of occupational accidents and diseases	3.8

1 - Since 2004, only the results of the first inspections of enterprises are included, not the results of follow-up inspections. Due to this the data is not comparable to the data presented in the last year's publication.

Source: Labour Inspectorate.

Source: Ministry of Social Affairs, (2005) Social Sector in Figures 2005, Tallinn: Social Policy Information and Analysis Department.

Latvia - New Law “On Labour Protection” (2002)

- New Law “On Labour Protection”, requiring significant changes in the organisation of labour protection at enterprise level.
- This strengthened the responsibility of company managers for the observation of health and safety legislation.
- Provided for the establishment of an organisational labour protection structure within companies.

‘Non-controversial’ response to law

- One of the few recent pieces of legislation which has not caused intense discussion and protests either at the time of adoption, or later on implementation.
- There has also been no controversy over the adoption of additional and supplementary legislative acts on health and safety and the modernisation of existing ones.

Reasons for lack of controversy

- ‘An 'ideal' health and safety system which *complies fully* with all the relevant legislation is expensive, and therefore *regarded as impossible to provide by almost all companies in Latvia*’.
- ‘Many employers thus *implement the law only incompletely*, in order not to damage the operation of the company. Their employees, in whose interests the health and safety system operates, agree to their rights being violated in order to maintain their jobs’.

‘Institutionalised tolerance of non-compliance’

- ‘Due to a lack of financial resources and insufficiently developed legislation’, the Inspectorate mainly concentrated ‘**on resolving disagreements and objections and providing consultancy**’.
- Inspectorate conceded that it was not ‘at present trying to achieve full observation of all health and safety standards, due to the *limited financial resources of many companies* and the generally *low interest of employees in their own protection*’ (European Foundation, 2004 Latvia – State Labour Inspectorate examined – EIROnline report).

Latvia Country Reports on Human Rights Practices - 2004
released by the Bureau of Democracy, Human Rights, and
Labor February 28 2005. US Department of State

‘Acceptable Conditions of Work’

- Workers have the legal right to remove themselves from hazardous work situations without endangering their continued employment; however, **authorities did not enforce this right**

<http://www.state.gov/g/drl/rls/hrrpt/2004/41691.htm>

- During labour inspection in one enterprise it was discovered that in the first aid kit there was medicine with expiry date of 1974. [1]

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[1] Strautiņš, P. „Kvalitāte, gādājot arī par drošību”. *Diena*, 2006, 23.janvāris, 1.lpp.

The pattern of labour inspection

- Widespread concealment of industrial accidents.
- Low level of investigation of even those accidents which are reported (approximately 36 per cent of the total)
- Proliferation of new businesses, mostly in the small and medium sized category.
- Institutionalised tolerance of non-compliance

Figure 1

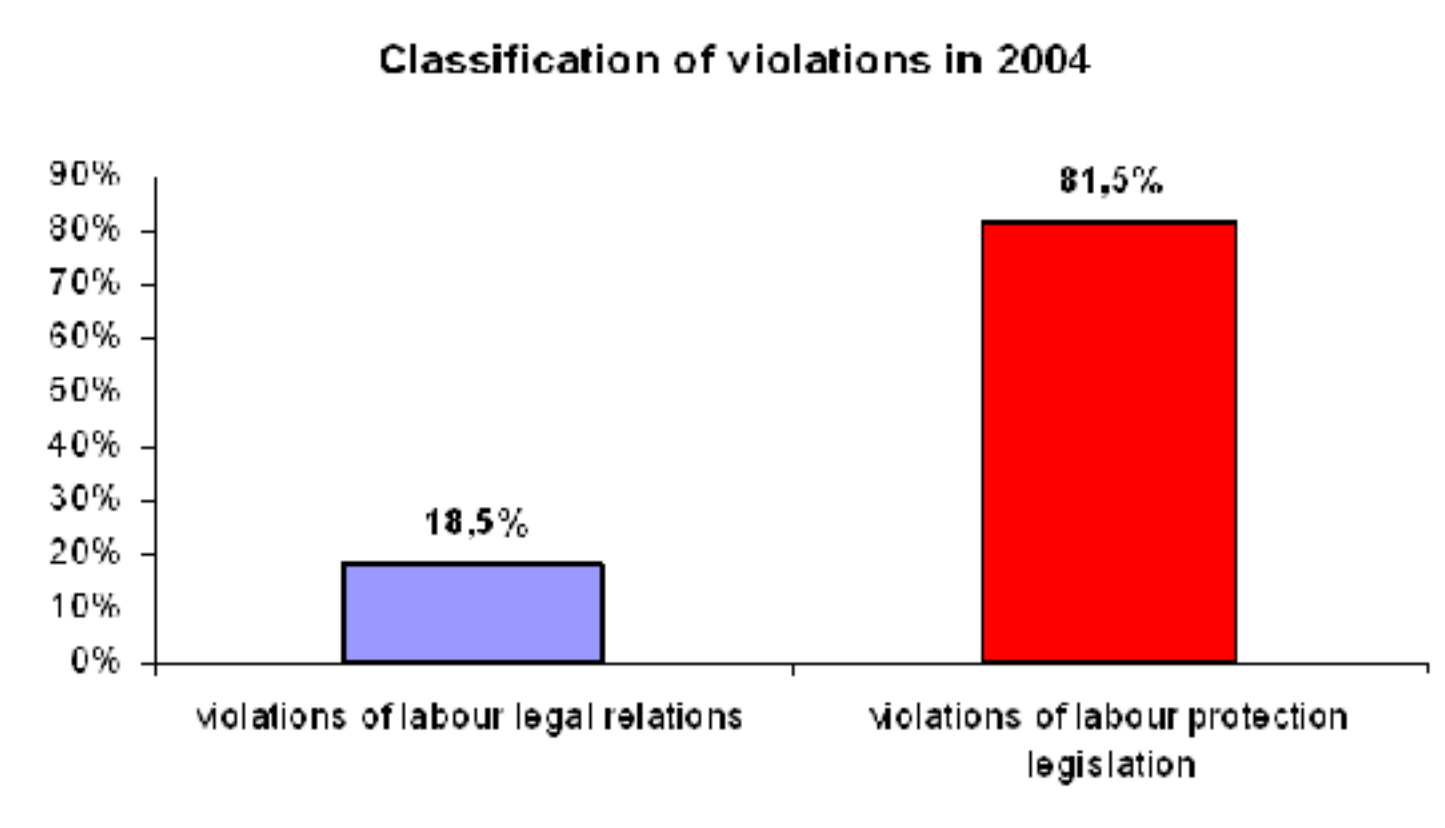


Figure 2

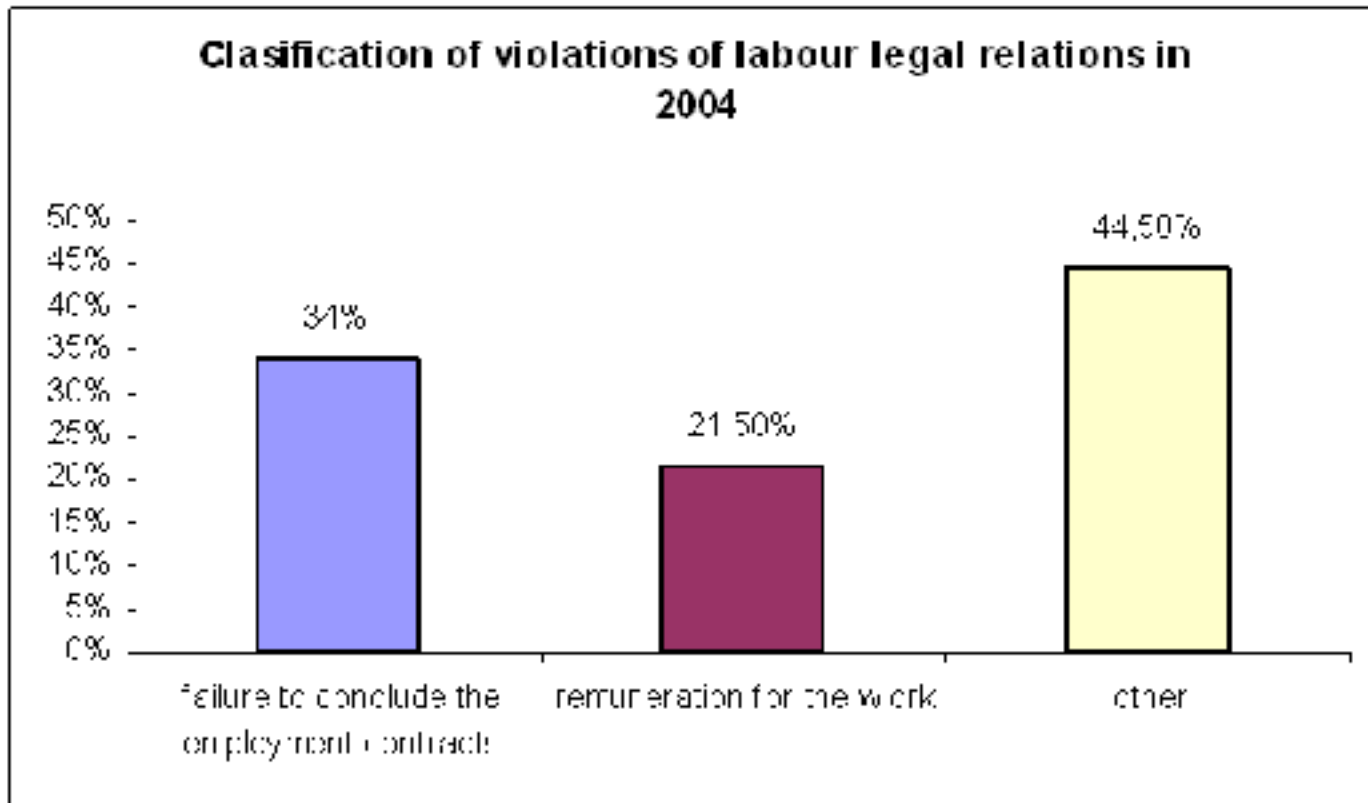


Figure 3

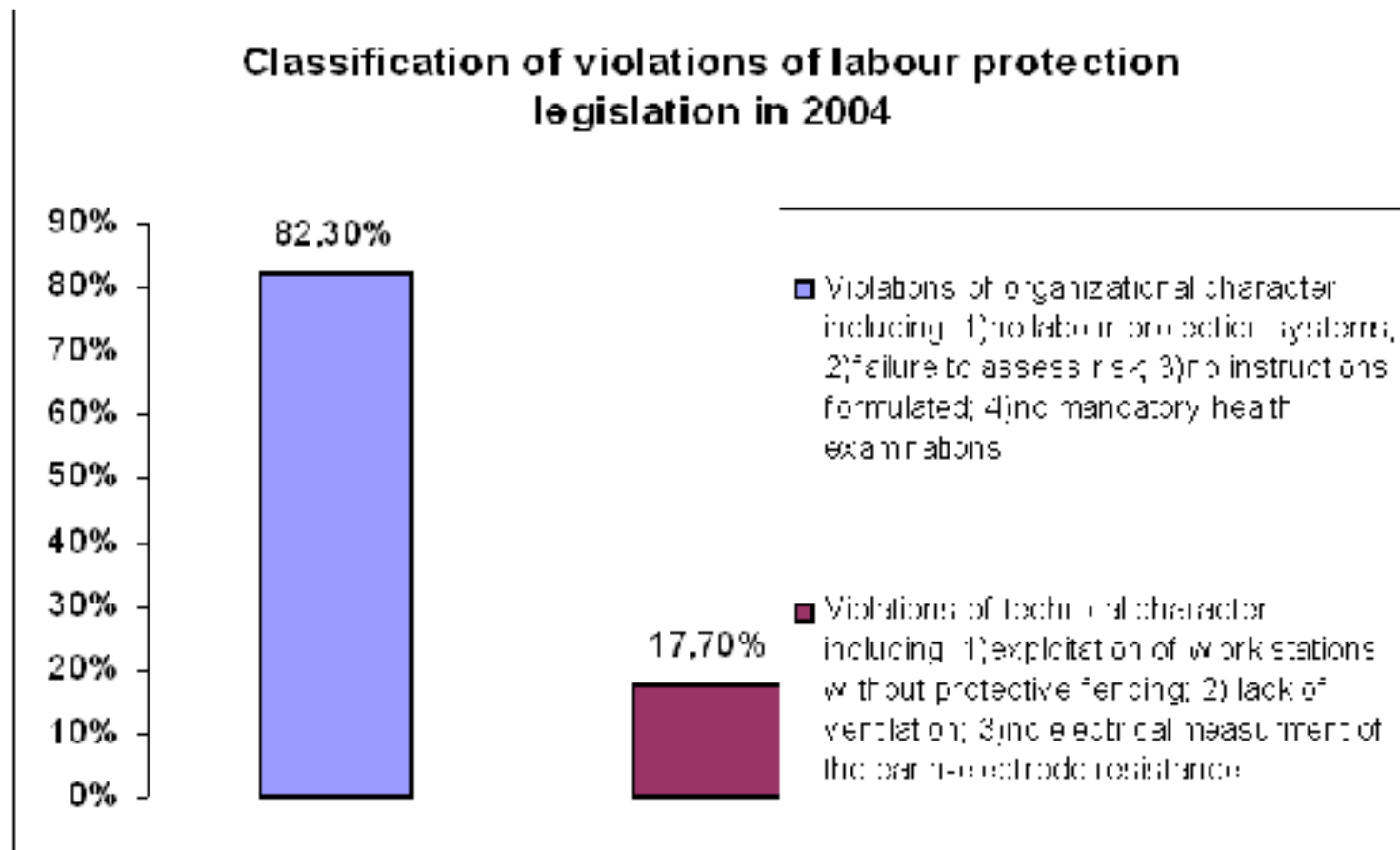
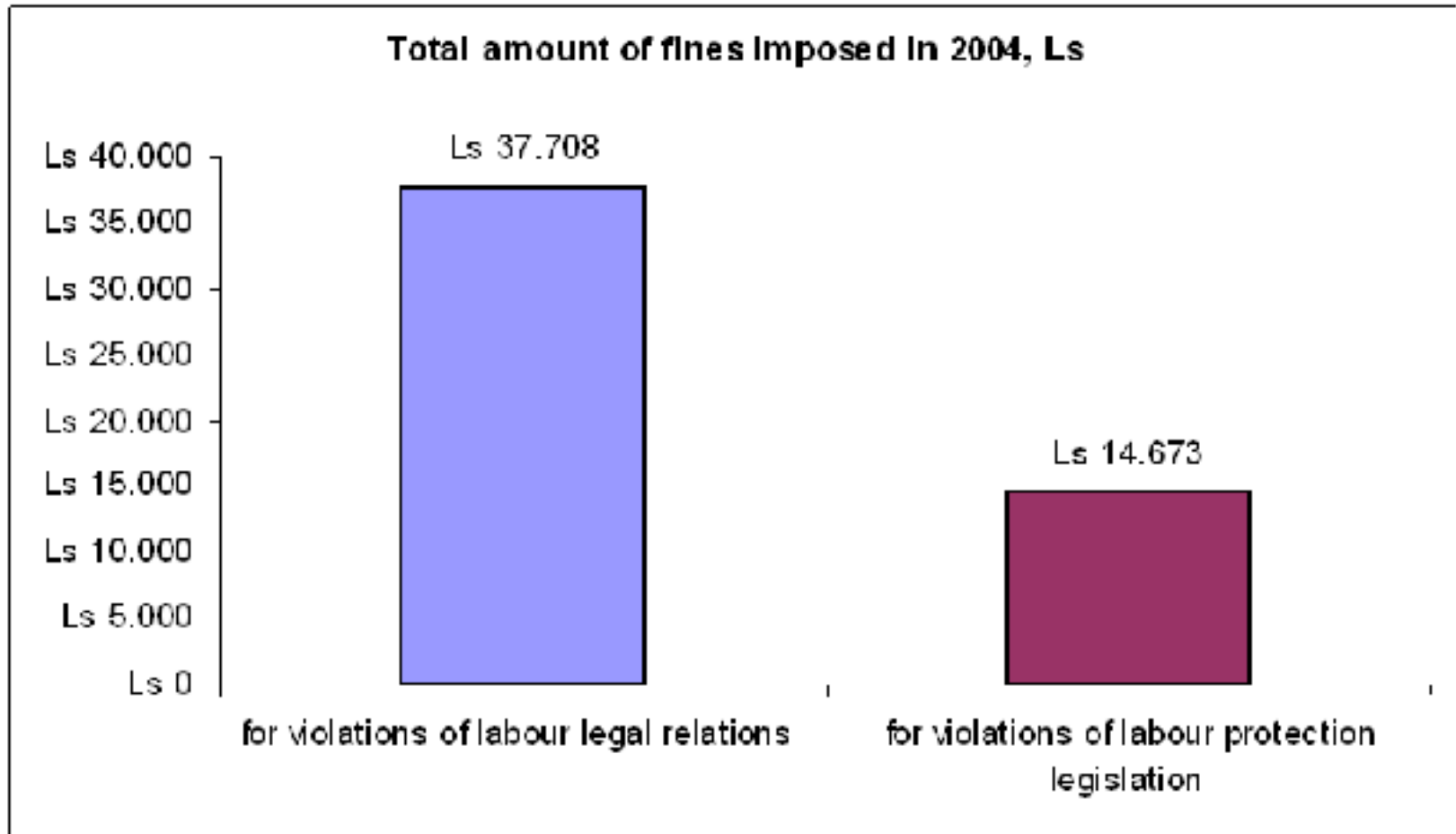


Figure 4



Level of penalties

- Illegal violations of both industrial relations and safety and health law resulted in a total gross amount of fines of 74,538 Euros (52,381 Lats).
- Fines for **industrial relations** regulation offences were **2X** - 53.600 Euros (37.700 Lats), level of gross fines for **labor protection** offences - 20.900 Euros (14.673 Lats)
- Yet **4 out of 5** offences were for labour protection offences
- **Maximum** possible individual fine is less than 1500 Euros

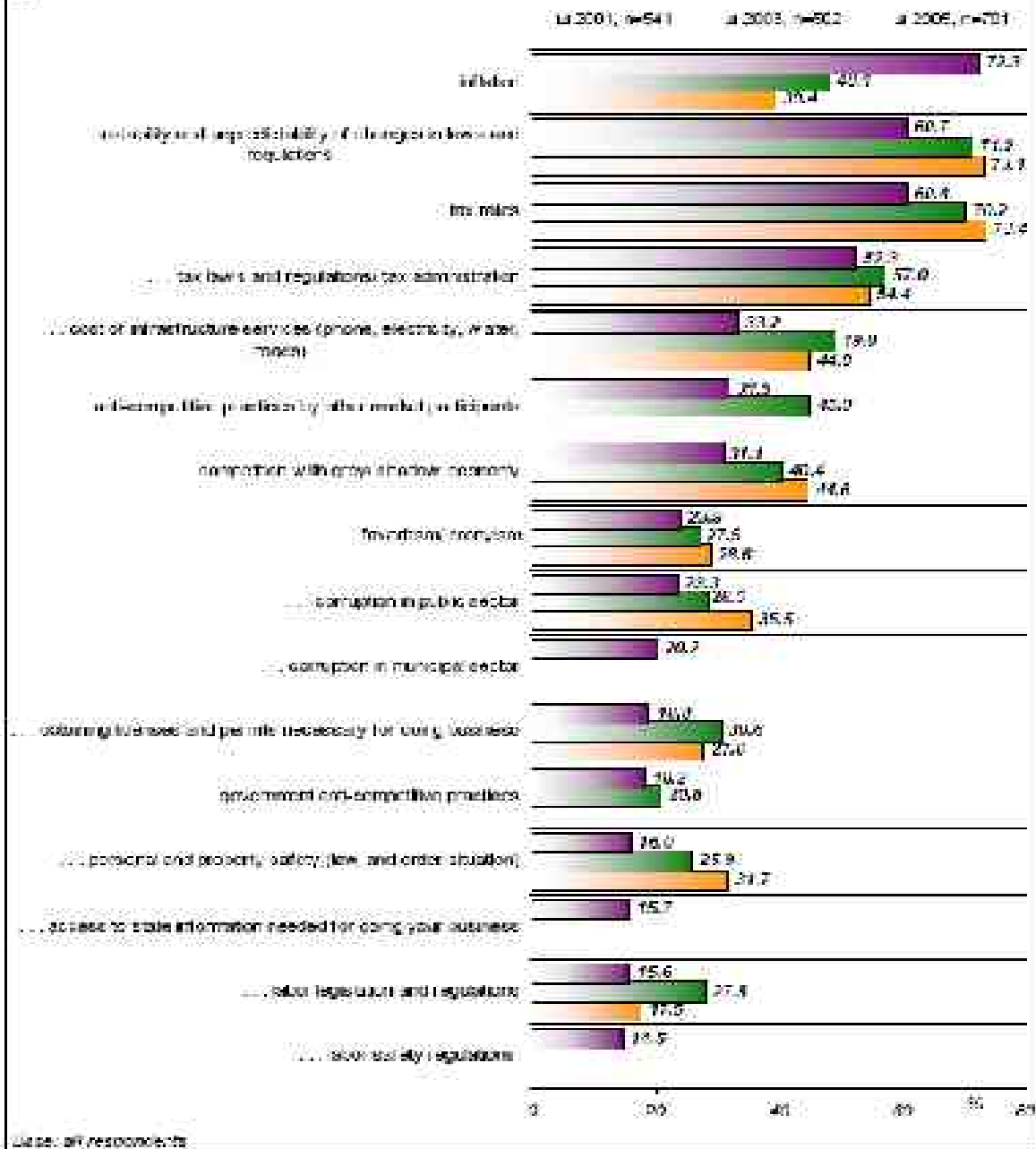
Annual Report of VDI (2004)

- Inspectorate annual report for 2004 notes the following problems with regards to workplace safety and health:
- occupational accidents have not been investigated
- personnel has not received the necessary training and instructions
- mandatory health examinations, working environment internal surveillance as well as the technical inspection of dangerous equipment have not been carried out.

Hostile context for labour inspection

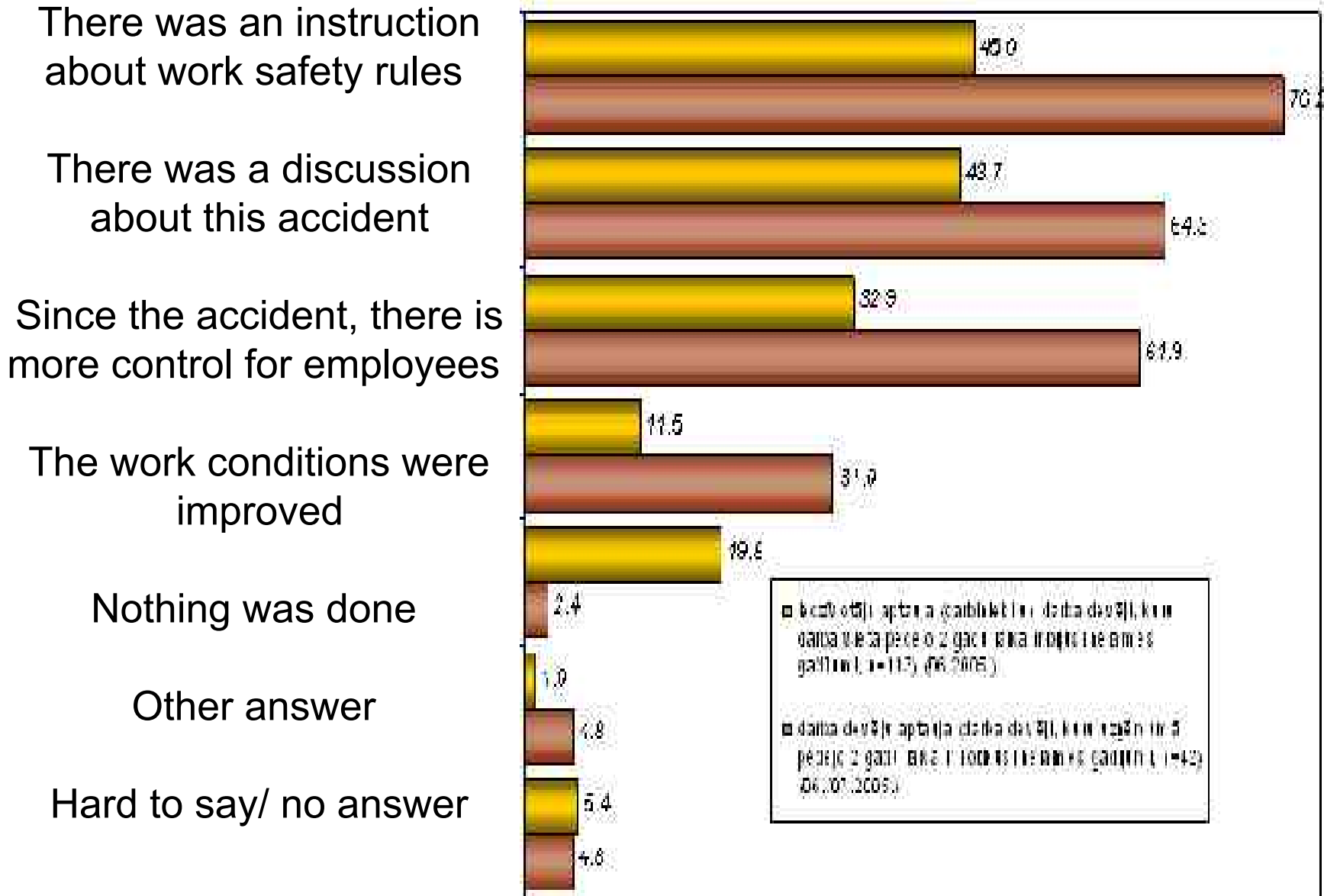
- Low political priority assigned to health and safety improvement
- Chronic under-funding of Inspectorate activities
- Lack of resources including transportation, communication and IT resources, low wages, unfilled posts and high staff turnover.
- Assumptions regarding the legitimacy of activities as enforcement agencies.

Respondents to whom the following regulatory area is an obstacle for the operation and growth of business



base: all respondents

Respondents who mentioned during last two years there was an accident



Lithuania – ILO concerns

Legal proceedings and penalties.

The Committee notes the Government's detailed report and the information it contains in response to its previous request. It notes that, according to the statistics provided for 2004, **of the 263 cases communicated to the Office of the Prosecutor, none have led to the initiation of criminal proceedings.**

The Committee recalls **the importance attached to the establishment and effective application of adequate penalties for violations of the legal provisions and for obstructing labour inspectors in the performance of their duties**, in accordance with Article 18 of the Convention. It requests the Government to indicate in its next report **the reasons why none of the cases transmitted to the office of the Prosecutor in 2004 led to criminal proceedings.**

Description:(CEACR Individual Direct Request)
Convention:C081
Country:(Lithuania)
Subject classification: Labour Inspection
Subject: **Labour Administration and Inspection**
Document No. (ilolex): 092006LTU081

European Union OHS Policy

- Soft Law
- Better Regulation
- De-regulation?

Regulatory ‘reform’ at European level – ‘soft law’ and ‘better regulation’

- Key policy goal of the Lisbon strategy has been ‘to **reduce the administrative burden of business**’ (European Council, 2000).
- EU Directives replaced ‘by **more efficient, flexible and proportionate instruments** (for example, framework directives, new approach directives or “softer” regulatory alternatives)’
- Encourage ‘**autonomous processes of adjustment**’ and ‘**confer rule making-powers to self-regulatory processes**’, eg sectoral agreements on safety and health.

‘Soft law’ in action:

The Open Method of Co-ordination (OMC)

Open Method of Co-ordination endorsed (Lisbon Council, 2000) as:-

- ‘an important **tool of EU governance** in achieving social and employment policy goals’ – **includes health and safety** at work
- Notions of ‘**benchmarking**’ and ‘**best practice**’ - securing a **flexible** and **decentralised** approach to policy creation and implementation

A new Era of Health and Work Regulations

Europe moves towards Soft Law”

Hans-Horst Konkolewsky plays a key role in promoting health and safety at work throughout the European Union. He is currently hard at work in Spain to implement the new EU health and safety at work strategy. “We are entering a new era in terms of health and safety at work regulations.”





New Hazards at Work, new Policy Instruments

“If people can agree about something then they are more likely to actually do it than when it is imposed on them”

The European Commission is specifically looking for instruments to supplement legislation to improve workplace health and safety. Getting both employers and employees involved is essential to bridge the gap between legislation and workplace practices, says Bernhard Jansen, Director of Adaptability, Social Dialogue, and Social Rights, at the Directorate-General for Employment and Social Affairs.

European Conference Towards effective Intervention
and Sector Dialogue in Occupational Safety and Health



An invitational conference during the Dutch presidency in 2004
19-21 september 2004 ORUBA Hotel Amsterdam



Three days about
**soft law
and voluntary
initiatives**

Towards Effective Intervention and Sector Dialogue in Occupational Safety and Health

A European conference celebrating the Dutch presidency in 2004
19-21 September in Amsterdam



A three-day conference on
soft law and voluntary initiatives

Proceedings

‘Better regulation’

European Commission-

Less red tape = more growth

ie., the deregulation agenda

all major items included in the

Commission's annual legislative and work programme subject to **impact assessment** and **simplification** since beginning of 2005.

- Member states to avoid “gold-plating” during the transposition of EU legislation.

UNICE – The European Employers

- Calls for a ‘legislative moratorium’ on OHS since 2000. UNICE ‘very much welcomes’ Commission’s (1998) statement initiating a process of **‘revision of existing directives** with a view to their **modernisation and rationalisation** where necessary’.
- Calls for ‘serious consideration to be given to the economic and social impact’ of OHS legislation so that it ‘forms part of an **economically realistic framework**, notably with regard to employment’.

(UNICE Occupational Safety and Health – A Priority for Employers, p.5, p.9).

Priorities for European Business 'Better Regulation'

REPLY

UNICE

THE VOICE OF BUSINESS IN EUROPE

REPLY

UNICEF, THE UN CHILD EMERGENCY FUND, IS A REGISTERED CHARITABLE ORGANIZATION

9 June 2006

**FIRST-PHASE CONSULTATION OF THE SOCIAL PARTNERS ON THE
SIMPLIFICATION OF THE PROVISIONS OF THE HEALTH AND SAFETY AT WORK
DIRECTIVES CONCERNING THE REPORTS ON THEIR PRACTICAL IMPLEMENTATION**

UNICE REPLY

While UNICE is consulted on a simplification of health and safety provisions which will essentially benefit Member States' authorities, it stresses that what is mostly needed is a genuine simplification of the complex regulatory environment for companies, alongside a true commitment to better regulation.



Ten minutes to improve the business environment in the EU

- The European Commission is committed to improving the regulatory environment within which our businesses operate and in so doing help them compete successfully in global markets.
- Major efforts have already been launched to improve the regulatory environment as part of the so-called Lisbon Strategy for growth and jobs. Consultation procedures have been strengthened, major new proposals for legislation are now subject to impact assessment, and existing legislation is being evaluated on its effectiveness.
- In mid-March, the Commission announced further steps in its Communication on “Better Regulation for Growth and Jobs”. This includes the launch of a major new simplification programme by October, 2005. In order to ensure that the programme responds to real concerns, the European Commission is keen to hear from businesses ... which rules need to be simplified because they stand in the way of sustainable growth, deter business investment or hinder job creation.
- Your views are important to us. They will be compiled and examined in the Commission’s “Red Tape Observatory” and will also be examined by the responsible Commission services.

Thank you in advance for your time. José Manuel Barroso, President of the European Commission

What is the main subject of this proposal? (select as many as you wish) [View gallery](#)

<input type="radio"/> Internal market	<input type="radio"/> External relations & marketing of goods	<input type="radio"/> Health & consumer protection
<input type="radio"/> Employment	<input type="radio"/> Taxation & customs	<input type="radio"/> Financial Services
<input type="radio"/> Transport	<input type="radio"/> Culture & communication	<input type="radio"/> Environment
<input type="radio"/> Justice & freedom	<input type="radio"/> Education of business	<input type="radio"/> Social security
<input type="radio"/> Energy	<input type="radio"/> Research & innovation	<input type="radio"/> Industry
<input type="radio"/> Agriculture	<input type="radio"/> Fisheries	<input type="radio"/> Other, please specify

Do you know if this proposal is the result of a procedure? [View survey](#)

Yes No

Please select the source of the rules/procedures:

European legislation National rules/procedures implementing EC legislation Other national/provincial rules/procedures

Place a tick by what other countries you wish to be consulted on this proposal? [View gallery](#)

<input type="checkbox"/> AT - Austria	<input type="checkbox"/> IT - Italy	<input type="checkbox"/> CY - Cyprus
<input checked="" type="checkbox"/> BE - Belgium	<input type="checkbox"/> DE - Germany	<input type="checkbox"/> DK - Denmark
<input type="checkbox"/> BG - Bulgaria	<input type="checkbox"/> EL - Greece	<input type="checkbox"/> ES - Spain
<input type="checkbox"/> FR - France	<input type="checkbox"/> FI - Finland	<input checked="" type="checkbox"/> HU - Hungary
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<input type="checkbox"/> LU - Luxembourg	<input type="checkbox"/> LI - Liechtenstein	<input checked="" type="checkbox"/> LV - Latvia
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<input type="checkbox"/> SE - Sweden	<input checked="" type="checkbox"/> SI - Slovenia	<input type="checkbox"/> SK - Slovakia
<input type="checkbox"/> UK - United Kingdom	<input type="checkbox"/> PT - Portugal	<input type="checkbox"/> HU - Hungary
<input type="checkbox"/> CZ - Czechia	<input type="checkbox"/> Other	

‘Soft law’ and ‘better regulation’ = de-regulation

- New Member States require compliance strategies tailored to realities of post-communism (tolerated culture of non-compliance)
- Current weakness of social dialogue between employers and employees
- ‘Soft law’ - CSR, ‘best practice’ models, self-(*de*) regulation, ‘better regulation’ inappropriate in CEE context
- New European Community OHS strategy (2007-2011) must take account of the realities of poor working environment and weak social dialogue in NMS.

Deregulation and Enforcement (UK Health and Safety Commission)

- We want to develop channels of support and advice that can be accessed **without fear of enforcement action** while allowing the regulators to continue to be tough on those who wilfully disregard the law.
- We will become more robust in defending the reputation of the health and safety system against its detractors, **those who are over-zealous in its application** and those who cannot recognise the appropriate balance between risks and benefits.
- <http://www.hse.gov.uk/aboutus/hsc/strategy.htm>

**‘Countervailing forces’: Organised
labour?**

Strategic disputes which have mobilised trade union capacities

- **Laval un Partneri**: A Latvian construction company using Latvian labour in Sweden
- **Viking Rosella** – Estonian labour displacing Finnish seafarers on ferries
- **Irish Ferries** – Latvian and Lithuanian labour attempting to displace Irish seafarers

‘Countervailing forces’: The European Union?

- Little or no EU competence at domestic state level in key industrial relations issues affecting labour’s mobilisation capacities eg right to strike – Laval and Rosella cases will be first adjudication by ECJ
- Europe is no longer committed to the preservation of a ‘social dimension’ but instead is pursuing an openly neo-liberal pro-business agenda.

Conclusions

- No 'normalisation' of labour markets in CEE
- If anything labour standards are deteriorating – a 'race to the bottom'
- Eastern enlargements (current and future) may produce the deregulation of labour standards that the political class in the older EU member states (eg in France) is finding hard to implement through active policy interventions.

Questions to be addressed

- How can different national **trade union movements** develop **common strategy** that will protect labour standards?
- How can a new ‘race to the bottom’ in OHS be prevented in which new Member States are used by neo-liberal forces to **deregulate labour standards throughout Europe?**
- How can we fight the shift to ‘soft law’, ‘better regulation’ and de-regulation?