

Implementation of Council Directive 98/24/EC in Italian legislation: some peculiarities and characteristics

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Abstract

In February 2002 Italy brought in force the European Council directive n. 98/24/EC by Legislative Decree 25/02, filling an important gap among the laws concerning protection of the health and safety of workers. In fact in our country in the last decades only a few regulations on chemical substances (lead, asbestos, carcinogens and others) have been issued but was still missing a specific one concerning the overall chemical risk.

As an immediate effect the Italian companies and governmental control agencies have had to face the new law among several problems and difficulties. For instance the “*rischio moderato*” (Italian translation of the “*slight risk*” defined in 98/24/EC art. 4) is a subject not completely clarified yet.

In absence of any practical guidelines or criteria officially recognised by Italian laws, at the moment employers are charged of the responsibility on fundamental prevention aspects such as the health surveillance and the assessment of workers’ exposure to chemical agents. Moreover, regarding this latter aspect, problems arise on the methods to be used, since a complete list of legally recognised ones has not been issued yet.

Our contribution examine closely these problems and some of the more interesting and appreciated proposals in order to provide an actual and nation-wide uniform workers’ protection level.

1) Introduction

The laws concerning chemical dangerous substances are subjected to frequent improvements. In recent decades this matter has been regulated by European directives, as for every other aspect of health and safety in workplaces. The directives, to be effective, have to be brought in force by each state member in its own legislative system. This is the case, for example, of D. Lgs. 25/02 on “chemical risk”, which implements in Italy the directive 98/24/EC and integrates the group of laws (somewhat deficient) on protection of the health and safety of workers. In fact in Italy there were specific laws concerning only hazardous chemical substances that had caused greatest problems (lead, asbestos, carcinogens and others) but rules on overall chemical risk assessment were still missing. If we take into account the huge quantity and variety of chemicals widely used in all the productive activities, this new Decree represent a “must” needed since long time.

Italian way to adopt this EC directive follows the idea that chemical risk assessment is a significant part of the global risk assessment process and therefore the D. Lgs. 25/02 has been issued as an integration of D. Lgs. 626/94, a more general Decree that has brought in force most of the European Council Directive on safety and health at work. This behavior is coherent with the Italian trend to join and integrate all laws regulating the matter; in fact is in preparation a “Consolidated Act” which should collect all the rules and obligations on this subject.

2) Peculiarities and characteristics of D.lgs 25/02 compared with 98/24/EC

The process of bringing in force European directives in a state member is always difficult since it has to take into account all the previous national legislation. The differences which arise comparing Italian and European text, both slight or significant, gives an idea on the peculiarities of Italian legislative system.

2.1) Minor differences

The distribution of sentences and articles is obviously different but without effecting the overall significance; moreover, in the Italian version, some indications (useful in a “stand alone” directive as 98/24/EC) have been omitted, since, as previously stated, D. Lgs. 25/02 integrates a more general legislation on the protection of the health and safety of workers (D. Lgs. 626/94) and therefore these indications would have sound pleonastic.

In some cases, probably to respect the coherence with Italian legislation in force, some terms have been systematically changed: for instance in D. Lgs. 25/02 “*supplier*” becomes “*producer or supplier*”, and “*preventive measures*” turns into “*preventive and protective measures*”.

2.2) Occupational Exposure Limits

Great importance has been given throughout the 98/24/EC, and consequently in D. Lgs 25/02, to the Occupational Exposure Limits (OELs) and their use for chemical risk evaluation and control; on the other hand, the number of OELs established at European Community level, both indicative or binding, is still extremely low compared to the many hazardous chemical agents industrially used.

In Italy, at the moment, there are only five binding OELs for chemicals (lead, wood dust, vinyl chloride, asbestos and benzene), and no indicative ones. In such a situation, trade associations, industrial hygienists and jurisprudence in general usually refer to OELs proposed by international authoritative associations; among them, great significance is getting in Italy the list of Threshold Limit Values (TLV[®]s) published periodically by American Conference of Governmental Industrial

Hygienists (ACGIH).

2.3) *Non binding practical guidelines*

An interesting difference is that in a number of articles (3, 4, 5, 6 and annex II section 1) the directive 98/24/EC says that more detailed instructions would have been given in accordance with article 12(2) (“*the Commission shall draw up practical guidelines of a non-binding nature*”). The intention of the EC Commission is therefore to give on specific matter some indications that should be taken in consideration by each state member in drawing up it’s own policy.

Italian D. Lgs. 25/02 does not mention these guidelines at all.

This should not lead to the idea that non-binding indications are not subscribed in Italy, but, on the contrary, sometimes these indications are implemented as laws and becomes therefore mandatory rules. This bureaucratic behavior makes the overall process probably longer and therefore, for period of time, it could happen that there are neither indication nor rules; on the other hand it assures, later on, a more uniform application at least at national level.

For example directive 98/24/EC doesn’t state any specific measurement methods for chemical agents and doesn’t stress the necessity to use recognized ones. D. Lgs. 25/02, on the contrary, points out that such measurements must be accomplished using standardized procedures and lists, in annex VIII-sexties, the ones to be used: therefore now some European Standards, widely known by all industrial hygienists, issued by the European Committee for Standardization (CEN), have become actual part of a law.

2.4) *Slight risk*

The core of chemical risk assessment according to 98/24/EC (and Italian D. Lgs. 25/02) is described in art 5(4) and regards the evaluation process which distinguishes the activities in slight risk ones and the others. Many important and onerous obligations are linked to the evaluation requested by art. 5(4).

In such a contest the word “*slight*“ can be easily misinterpreted without further clarification (which are not contained in the directive).

At this regard D. Lgs. 25/02 in its final provisions refers to a further legislative act to define mandatory parameters to be used in such evaluation. Up to that moment, the employer is responsible for this assessment (coherently with the whole responsibility of the risk assessment in general).

Considering all implications coming from this classifications and their consequences on the level of protection of workers from hazardous chemical agent, we agree with the necessity to issue as soon

as possible binding criteria (by the Italian government or, better, by the European Commission) to distinguish slight and not-slight risk situations.

Strictly correlate with this question is the professionalism of people involved in chemical risk assessment and control: personnel with specific chemical skills should always be used, more than ever in lack of clear indications on slight and not-slight risk and without authoritative or binding guidelines on all aspects of the law. At this regard, and subsequently to a condemn of Luxembourg Court of Justice (sentence dated Nov. 15 2001 on cause C-49/00), in these days will be published in Italy a decree containing quite specific requirements for people in charge for chemical risk assessment and control.

3) Tools for application of 98/24/EC in Italy

Application of 98/24/EC in Italy, considering the topics illustrated above, has caused some problems among Italian companies and governmental control agencies. Anyway, some instruments to simplify, and occasionally to direct, fulfilment of law's requirements have been promptly issued. Below are briefly illustrated the more popular ones.

3.1) Adoption of a "safety management system"

Article 5(2) of 98/24/EC, (and D. Lgs. 25/2002) indicates some criteria in order to eliminate, or reduce, the risk and protect the health and safety of workers. Most of the reported statements regard organization of the workplaces (safety procedures, the design of the system, etc.) much more than technical provision. Many Italian industrial hygienists have interpreted these indications as a clear invitation to adopt a "safety management system".

Unfortunately, there is no such thing as an international standard for safety as ISO 9000 for quality and ISO 14000 for environment. One of the most used standards in Europe is the English OHSAS 18001, and some companies have already certified their organization following the rules stated in the standard. In our country a national standard has been issued: the UNI-INAIL guidelines on safety and health at work (UNI, 2001), which is having some appreciations.

3.2) National guidelines

Apart from the "practical guidelines of non binding nature" stated in article 12 (2) of 98/24/EC, national guidelines regarding application of the Directive have been issued from some governmental authorities (Coordinamento Tecnico Regioni e Provincie Autonome, 2002) and from consultants of trade associations.

These guidelines have at the moment no legal recognition, and are intended mainly as a contribute to spread the know-how to produce a trustable and legally correct risk assessment and to control exposition to chemical agents in general. Information to find and understand useful data on hazardous chemical agents, criterions to fulfill a risk index matrix and to assess risk level are the main topics contained in the guidelines but many useful hints for the accomplishment with numerous Italian bureaucratic requirements are present too.

4) Conclusions

The discrepancy among the Italian laws and the EC directives give an idea of how different can be the legislative system of each state member. Health and Safety on the workplaces is one of those matters (as environment, waste management and other ones) which should be regulated, in our opinion, by a unique European binding directive applicable in all the state member. We think that this solution could lead to:

- a more uniform European policy in reduction and control of occupational disease and accident at work;
- a fair competitiveness among companies of different European states;
- a unique sets of occupational health and safety procedures for multinational companies operating in different European states.

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