European Employers' Institute

THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

CASE STUDY: EXTREME TEMPERATURE AND OCCUPATIONAL SAFETY & HEALTH

Executive summary

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Climate change, driven by global warming, is contributing to more frequent, intense and prolonged episodes of extreme temperatures and other adverse weather events, with significant consequences for human health, society and economic activity. In the workplace, extreme temperatures may impair workers' physical and cognitive capacities, increase occupational risks, reduce productivity and disrupt business operations. Although these risks may affect all workers and sectors, certain groups and occupations are particularly vulnerable, especially where work is performed outdoors. Serious risks may also arise indoors where workplaces are inadequately designed, insulated, ventilated, heated or cooled.

Extreme weather events must therefore be regarded as a **significant occupational risk** factor requiring an effective preventive response that cannot be confined to occupational safety and health policy alone. Climate adaptation calls for coordination between occupational risk prevention, public health, environmental and climate policy, urban planning, energy efficiency and emergency management. While employers retain primary responsibility for risks within their sphere of control, certain extreme weather events also require action by national, regional and local authorities.

The need to ensure effective worker protection is not in question. The **central legal issue** is whether that protection requires a new harmonising instrument at European Union level and, more specifically, **whether a dedicated EU directive on extreme temperatures would constitute a necessary and appropriate regulatory response.** The study examines this question within the constitutional framework governing Union competences, with particular reference to the principles of conferral, subsidiarity and proportionality laid down in Article 5 TEU.

An important starting point is the existing EU occupational safety and health acquis. Directive 89/391/EEC (the Framework Directive), together with the individual directives adopted under it, establishes a comprehensive preventive system based on risk assessment, employers' general obligation to ensure workers' safety and health, and the adaptation of preventive measures to changing circumstances. Although the Framework Directive does not specifically regulate extreme temperatures, its risk-based approach is broad enough to encompass them, while several individual directives contain more specific provisions on workplace temperatures. **Properly interpreted, implemented and enforced, the existing framework can** therefore **address both traditional and emerging occupational risks associated with extreme temperatures.**

This is particularly relevant to the necessity requirement under subsidiarity. The issue is not whether worker protection can be improved, but whether the objective pursued cannot be sufficiently achieved by the Member States within the existing European framework. Member States are already responding through different combinations of binding rules, technical guidance, social dialogue, organisational measures and warning systems adapted to their climatic, sectoral and regulatory circumstances.

European **added value** raises the related question of whether the objectives could be better achieved at Union level by reason of the scale or effects of the proposed action. Although extreme temperatures constitute a common European challenge, their effects are highly heterogeneous. **Climatic and geographical conditions vary considerably between and within Member States, as do sectors, occupations, workplaces and worker vulnerability. Climate adaptation is also inherently territorial,** since many effective measures must be designed and implemented close to the circumstances in which the risk arises. This diversity makes further legislative harmonisation less compelling: a common European problem does not necessarily require a uniform European regulatory solution.

The principle of proportionality raises further concerns. A broadly framed directive might add relatively little to the existing acquis, whereas a highly detailed instrument could impose uniform solutions on materially different situations and generate unjustified burdens, particularly for SMEs. Additional regulations would also have to be reconciled with other rights and legitimate interests, including the freedom to conduct a business, privacy and data protection, environmental and energy-efficiency requirements and the need to avoid conflicting regulatory obligations.

Against this background, the study suggests that **the most appropriate role for the European Union may lie in strengthening the effectiveness of the existing legal framework rather than necessarily adopting a dedicated directive.** This may involve, for example, guidance through EU-OSHA, improving implementation and enforcement, promoting research and good practices, facilitating financial support for workplace adaptation and improving cooperation between Member States. Other soft-law instruments could also promote coordination while preserving the flexibility required by different national, regional and sectoral circumstances.

The comparative analysis in the **Annex** supports this assessment. All Member States share a common legal foundation through the transposition of the EU occupational safety and health acquis, which imposes general obligations on employers to assess and prevent occupational risks, implicitly encompassing those arising from extreme weather conditions. Building upon this foundation, **some Member States are now expressly addressing these risks through binding provisions or adapted labour legislation while others rely to a greater extent on soft-law measures.** Internationally recognised **indices, such as the Wet Bulb Globe Temperature (WBGT) and Universal Thermal Climate Index (UTCI),** together with national meteorological warning systems, provide technical criteria for assessing thermal risk. **Preventive and protective measures** include training and acclimatisation, adjustments to workloads and working time, temporary suspension of unsafe work, workplace adaptation, personal protective equipment, health surveillance and emergency arrangements, complemented where appropriate by financial support, labour inspection, social dialogue and coordinated public action.

Taken as a whole, the analysis suggests that **effective protection against extreme temperatures depends on an appropriate combination of hard law and soft law, effective enforcement, technical expertise, social dialogue, public investment and context-sensitive preventive action.** The European Union has an important role in providing a common framework, coordination and support, while national, regional, local and sectoral actors remain particularly well placed to adapt preventive measures to concrete circumstances.

Effective worker protection and respect for the constitutional limits governing EU action should therefore not be regarded as competing objectives. The challenge is to identify the regulatory level and combination of instruments capable of providing effective protection while remaining consistent with the principles of conferral, subsidiarity and proportionality. In the context of climate adaptation, **the effectiveness and constitutional legitimacy of European action may ultimately depend less on additional legislation than on ensuring that the overall regulatory response** is coherent, effectively enforced, appropriately targeted and sufficiently flexible to **accommodate the diversity of conditions across the European Union.**

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About us

European Employers' Institute (EEI)

The European Employers' Institute is a not-for-profit association established in Brussels in 2024. The Institute aims to support its members to promote social dialogue and develop a business-friendly regulatory environment by collecting documentation, conducting research, and producing studies on strategically important issues in the world of work.

Its areas of work include labour market and social policy, industrial relations, occupational health and safety (OHS), skills development and workplace transformation. Its members are cross-industry and sectoral employers' organisations operating at both European and national levels.

The EEI's activities consist of collecting data and information, analysing topics relevant to employers, conducting studies, establishing networks of researchers and research organisations in the fields of industrial relations and labour law, running of EU-funded projects and supporting social dialogue on horizontal and sectoral levels.

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