



Irish Congress Trade Unions
Observations and Recommendations on the
Regulatory Impact Analysis
CORPORATE MANSLAUGHTER LEGISLATION

June 2012

Urgent need to put corporate liability for manslaughter on a statutory footing

The Irish Congress of Trade Unions believes that corporate killing laws are an essential feature of the legal landscape protecting health and safety of workers and the public increasing corporate accountability. Corporate manslaughter is a form of crime that poses a significant threat to workers and the welfare of the community. Given the pervasive presence of corporations in a wide range of activities in our society, and the extensive impact of their actions, the potential for economic and physical harm caused by a corporation is great. Congress therefore strongly supports the introduction of legislation on Corporate Manslaughter and we call for its early enactment to deter companies who blatantly disregard the safety of workers and the public. We believe that this legislation should be 'as well as' not 'instead of' existing health and safety laws. It should not be seen as an alternative to inspection and enforcement.

Congress supports the overall approach set out in the draft Bill provided by the Law Reform Commission which provides for the offence of 'corporate manslaughter and grossly negligent management causing death'. The former will attribute criminal liability on the corporate entity and the latter on a director or a senior manager who could face prison term for up to 12 years. It is worth recalling that many companies operating in Ireland are familiar with Corporate Manslaughter Laws as they are already in place in the UK, Australia and the US where they complement the existing health and safety laws, for example they apply to the wider public as well as workers.

Importance of Ethical Regulatory Impact Assessment

The difficulty of undertaking a Regulatory Impact Assessment that is ethical is that traditional risk/cost/benefit analysis is not an appropriate measure. The dangers of such an approach which were highlighted in the Ford Pinto¹ case where for seven years the Ford Motor Company sold cars in which it knew hundreds of people would needlessly burn to death.

Although Ford had access to a new design which would decrease the possibility of the Ford Pinto from exploding, the company chose not to implement the design. The Ford Motor Company contended that by strictly following a risk/benefit analysis, they were justified in not making the production change to the Pinto model. The estimated cost for the production change was approx. \$11 per vehicle. This \$11 per unit cost applied to 11 million cars and 1.5 million trucks results in an overall cost of \$137 million. The controversial

¹ These design problems were first brought to the public's attention in an August 1977 article in Mother Jones magazine: Mark Dowie, Pinto Madness, Mother Jones 18 (Sept./Oct. 1977).

numbers were those Ford used for the "benefit" half of the equation. It was estimated that making the change would result in a total of 180 less burn deaths, 180 less serious burn injuries, and 2,100 less burned vehicles. These estimates were multiplied by the unit cost figured by the National Highway Traffic Safety Administration. These figures were \$200,000 per death, \$67,000 per injury, and \$700 per vehicle equating to the total "societal benefit" is \$49.5 million. As the benefit of \$49.5 million was much less than the cost of \$137 million, Ford felt justified in its decision not to alter the product design. The danger of risk/benefit analysis in relation to health and safety is that it can indicate that no action should be taken to prevent death and injury. Congress is therefore calling for ethical Regulatory Impact Analysis that takes proper account of the impact and consequence for workers and their families.

Hold those at the top to account

Congress believes that well formulated legislation on Corporate Manslaughter would look separately at the liability of the corporate entity and the individuals within it. Research and trade union experience is that the vast majority of workplace deaths and serious injuries are preventable. We know from our practical on-the-ground experience that organisations still fail to meet their responsibility to identify hazards, assess risks and develop safe systems of work putting people at risk of death, debilitating illness or serious injury, Gaps in the legislation mean that it has not proved possible to mount a successful prosecution against the corporate officers even where the blame has been tracked clearly all the way back to boardroom.

The worrying increase in workplace death is calling into question whether fines, however large, have a significant deterrent effect especially at Board level. Congress has long called for Director Responsibility to be marked out in Company law, making it clear the Director's accountability for safety and health of their workforce, that of the wider public and in respect of environmental protection. Where a corporation has been convicted of corporate manslaughter, it must be possible to hold those at top responsible if they have been negligent in their overall management causing death. This would mean the CEO, individual Board Directors and other senior people would be held responsible rather than the present tendency to prosecute only proprietary directors, employees and managers way down the line of real responsibility.

It is essential that the legislation move from the abstract concept of an undertaking to the concrete reality of those who occupy senior positions in the business (i.e., the CEO and the senior management), this will give rise to a personal incentive which is not only financial but which stems from the desire to avoid the penalties, legal and otherwise, which may befall them personally in the case of certain types of 'accident'.

Congress recommends that in establishing responsibility of Directors, Chief Executive and other senior officers a range of factors to be taken into account, including the way the enterprise activities were managed and organised by senior managers, corporate decision making rules, communication systems, corporate culture and the failure to take reasonable efforts to eliminate risk and compliance with health and safety rules. It goes without saying that the law should apply in the public and private sectors.

Sanctions should in principle be the same for gross negligent manslaughter generally and should include, imprisonment, fines and the introduction of a type of 'community service order' for the corporation and the individual directors along with name and shame provisions.

Take account of the impact on vulnerable workers - recent increase in work-related deaths

The RIA should take account of the impact of the current economic situation where high levels of unemployment, insecure work and employer resistance to establish safety committees or recognise workers representatives are all feeding into an unsafe, unhealthy culture in which it is difficult for workers to speak up. So much so that the Health and Safety Committee of Congress has launched a 'speak up for health and safety' campaign to let workers know that they are not alone when they raise concerns.

There can be no doubt that existing legal provisions are insufficient - last year, 2011 saw a worrying increase in the number of workplace deaths with 55 people killed in workplaces. This is a significant increase on 2009 when 43 people were killed in workplaces, especially as there were more people at work in 2009. The Road Safety Authority has highlighted that number of work-related collisions causing death involving workers using a vehicle in the course of their work was 75. These deaths are only the tip of the iceberg; they underestimate the true number of workers who have had their lives cut short because of their work. There is still a tendency to view occupational diseases and illness as being things of the past, mainly related to industries such as mining and heavy engineering. The reality is very different. Despite huge advances in technology and changes in the labour market, the International Journal of Occupational and Environmental Health has claimed that "never in history has there been so much occupational disease as exists in the world today", they estimate that up to 9.6% of cancer deaths are attributable to work related cancers and in Ireland this means about 768 people, even taking lower estimates of 6% still equates to hundreds of people.

Recognise that promoting health and safety has a positive effect on the 'bottom line'

The RIA should take account of the numerous studies have highlighted that good health and safety has a positive effect on the bottom line of companies and countries. Investing in a safer workplace cuts the expense of accidents and equally important, effective safety standards in the workplace boost employee morale by conveying the message that the company cares enough about its people to protect their health and safety. Safety problems can be easily and inexpensively avoided. The crucial role that top management plays in effective safety programs can be manifest in a number of ways: appointment of a high-level safety officer rewards to supervisors on the basis of the safety records of their subordinates, and comparison of safety results against pre-set objectives. The role of safety representatives in establishing and maintaining safe working environments is integral to both the letter and spirit of the Safety Health and Welfare at Work Act 2005. Recent research in the UK confirmed this by showing that workers are twice as safe in unionised workplaces where safety representatives are active and have full consultation rights

Considering their own bottom lines, businesses can mistakenly see health and safety as costs, regulatory red tape and paperwork as they don't necessarily see the profit from the social benefits. So they ask for weaker protections using the logic that regulation is bad for everyone: jobs, the economy, the GDP. But not everyone gains from one company's healthy quarterly report. In fact, the opposite can be true.

There are costs that come with inadequate regulation, and it is the worker, their family and the public who ultimately pays the price in lost lives, while whole sectors or industry can be destroyed by one rogue operator giving rise to increased costs and reduced taxes for government. In this way, inadequate regulation amounts to a hidden subsidy for risky behaviour. On the other hand we all stand to gain if companies are properly kept in check.

Considering the national economy as a whole, the interdependence of all its members is such that the consequences of negligent action by a company can have an adverse effect on the general standard of living, and may include the following:

- damage to the reputation of the industry, sector or country as a whole
- a decrease in the gross national product as a result of the adverse direct and indirect effects of accidents on people, environment, facilities and materials;
- additional expenses incurred to cover the cost of compensating victims and pay increased insurance premiums, and the amount necessary to provide safety measures required to prevent similar occurrences.

Rather than being a cost to the economy or even to individual business, corporate manslaughter laws can drive savings in the long run as they prevent accidents.

Furthermore, no undertaking can afford to overlook the financial advantages that stem from maintaining good relations with workers and their representatives (Harvard Business Review 30th May 2012 'Government Regulation that Actually Works' reports on recent research carried out by demonstrating that safety regulation saves money as well as lives).

The costs to the worker and their families must be factored into the RIA

The worker, their family and the public is one side of the balance sheet is often absent from the balance sheet, even at national level.

Workers who are the victims of work-related accidents suffer from material consequences, which include expenses and loss of earnings, and from intangible consequences, including pain and suffering, both of which may be of short or long duration, anxiety for the rest of the family and detriment to their future, especially in the case of children.

In view of the difficulty of estimating overall costs to workers and their families, attempts have been made to arrive at a suitable value for this figure by expressing the indirect cost (uninsured or individual costs) as a multiple of the direct cost (insured or general costs)².

Finally, we recommend that the RIA include the research undertaken by Victor Hrymak BSc MSc MIOSH MCIEH MIFireE RSP on the cost of an accident.

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² Heinrich was the first to attempt to obtain a value for this figure and proposed that the indirect costs amounted to four times the direct costs-that is, that the total cost amounts to five times the direct cost. This estimation is valid for the group of undertakings studied by Heinrich, but is not valid for other groups and is even less valid when applied to individual factories. In a number of industries in various industrialized countries this value has been found to be of the order of 1 to 7 ($4 \pm 75\%$) but individual studies have shown that this figure can be considerably higher (up to 20 times) and may even vary over a period of time.