European Employers' Institute

THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

CASE STUDY: EXTREME TEMPERATURE AND OCCUPATIONAL SAFETY & HEALTH

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Table of contents

Summary	04
1. Introduction: Climate change consequences as a growing concern on the workplace	06
2. The principles of subsidiarity and proportionality in the field of EU social law in relation to the setting of business obligations	09
3. Would an EU directive on extreme temperatures comply with the principle of subsidiarity?	13
4. Would an EU directive on extreme temperatures comply with the principle of proportionality?	22
5. Main conclusions	26
Annex: Measures taken by Member States against climate-related risks	28

Summary

Climate change is increasingly affecting occupational safety and health across the European Union. More frequent, intense and prolonged episodes of extreme temperatures expose workers to significant risks and require effective preventive responses. **The central question addressed by this study is not whether such risks warrant enhanced protection, but whether a dedicated EU directive on extreme temperatures is necessary and appropriate**, particularly in the light of the principles of subsidiarity and proportionality laid down in Article 5 TEU.

The study first examines the existing EU occupational safety and health acquis and the extent to which it already provides a legal framework capable of addressing risks associated with extreme temperatures. 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 obligations to ensure workers' safety and health, and the adaptation of preventive measures to changing circumstances. The analysis suggests that - properly interpreted, implemented and enforced - this framework is sufficiently flexible to encompass both traditional occupational risks and emerging risks associated with extreme temperatures.

The study then considers whether further harmonisation would satisfy the requirements of subsidiarity and proportionality. Attention is paid to the considerable diversity of climatic conditions, geographical realities, economic sectors, occupations and national regulatory approaches across the Member States. The comparative analysis shows that Member States are already responding to extreme temperatures through different combinations of legislation, reference values, technical guidance, social dialogue, organisational measures and other preventive mechanisms. This diversity reflects not only different legal traditions, but also the inherently territorial and context-dependent nature of climate adaptation.

Against this background, the case for **a dedicated directive does not appear compelling.** From the perspective of subsidiarity, many preventive measures may be more effectively designed and implemented at national, regional, sectoral or even local level. From the perspective of proportionality, a broadly framed directive might add little to the existing acquis, whereas a highly detailed instrument could risk imposing uniform solutions upon materially different situations and generating unnecessary administrative and financial burdens. Any additional regulation would also need to be reconciled with other legitimate interests and legal requirements, including environmental protection, energy efficiency, privacy and data protection, the freedom to conduct a business and the position of small and medium-sized enterprises.

The analysis points to a broader distinction of constitutional significance. While traditional internal-market harmonisation frequently relies upon regulatory uniformity to remove barriers and prevent distortions of competition, climate adaptation may require precisely the opposite: regulatory differentiation capable of responding to varying environmental, economic and occupational conditions. A common European challenge does not necessarily require a uniform European regulatory solution. In this field, subsidiarity may therefore be understood not merely as a constraint upon Union action, but also as a principle capable of facilitating effective multilevel governance.

The study accordingly concludes that the most appropriate EU response would be to strengthen the effectiveness of the existing legal framework rather than necessarily to adopt a particular directive on extreme temperatures.

This could include better EU-OSHA guidance, improved enforcement, enhanced exchange of good practices, support for research and technological innovation, and financial assistance for workplace adaptation. Soft-law instruments may also play an important role in coordinating national responses while preserving the flexibility required by different climatic and socioeconomic circumstances.

Effective protection of workers against extreme temperatures and respect for the constitutional limits governing EU action should not be regarded as competing objectives. The challenge is to identify the regulatory level and instruments capable of providing the highest degree of practical protection while remaining consistent with the principles of subsidiarity and proportionality. In the context of climate adaptation, the effectiveness and constitutional legitimacy of Union action may ultimately depend less on adopting additional legislation than on ensuring that existing and future measures are coherent, targeted and responsive to the diversity of conditions across the European Union.

1. Introduction: Climate change consequences as a growing concern on the workplace

There is currently a clear scientific *consensus* that **climate change**, characterised by global warming, is a reality proven by objective data, which results in increasingly frequent **extreme weather events.** These events can manifest themselves, particularly in the winter months, as torrential rain, tornadoes, hurricanes or extreme cold spells, with the possibility of heavy snowfall and ice sheets; conversely, in the summer months, they can take the form of the much-feared heatwaves. These heatwaves, in turn, contribute to extreme droughts and the subsequent forest fires known as 'sixth generation' or 'mega-fires', which, due to their nature, are almost impossible to extinguish. Consequently, these droughts and fires create a vicious cycle that accelerates climate change, particularly in southern and central-eastern Europe.

Of all these meteorological phenomena, it seems clear that heatwaves are emerging as the new climate risk *par excellence*, due to progressive global warming. Heatwaves can be defined as a period during which local excess heat accumulates over a sequence of unusually hot days and nights; that is, the maximum and minimum temperatures are unusually high for a given location[1]. These heatwaves are becoming increasingly intense, both in terms of their longer duration, their frequency, and the high temperatures they reach, which are constantly breaking records[2].

All these extreme weather events - whether linked to cold or heat - have **clear negative consequences** for people's health, business productivity, society, the economy of a region or country, and the environment in general. This view is reflected both in the scientific literature and in reports from various international institutions - for example, WHO[3] and ILO[4] - and European bodies, such as OSHA[5] or European Parliament[6]. In the specific case of heatwaves, it is unanimously emphasised that these events have a detrimental impact on people's health and well-being, a condition known as heat stress[7].

This type of stress occurs when the body is exposed to excessive heat beyond the levels it can normally tolerate without compromising its physiological functions. Indeed, this extreme heat, accompanied by increased ultraviolet radiation, has a direct impact on people's physical and mental health, as it can cause a state of hyperthermia.

[1] According to World Meteorological Organization (WMO).
[2] Intergovernmental Panel on Climate Change (IPCC), UN, established in the late 1980s. World Meteorological organization (WMO) State of the Global Climate report 2025 confirms that 2015-2025 are the hottest 11-years on record, and that 2025 was the second or third hottest year on record, at about 1.43°C above the 1850-1900 average. The Copernicus Climate Change Service (C3S) confirmed that Europe is the fastest-warming continent on Earth, heating twice as fast as the global average. According to the European State of the Climate 2025 report, 2025 was Europe's third warmest year on record, and, in relation to 2026, Copernicus states that August was the world's joint hottest month on record, pushing global temperatures back above 1.5°C above pre-industrial levels. In Spain, as reported by the Spanish State Meteorological Agency (AEMET), the summer of 2026 was the hottest since official records began in 1961, exceeding the summer of 2025 by 0.3°C.
[3] World Health Organization (WHO) and WMO: Report Climate change and workplace heat stress. Technical report and guidance (2025) (this report is an update of the first technical report published on the topic by the WHO in 1969).
[4] ILO Report Working on a warmer planet: The effect of heat stress on productivity and decent work (2019), ILO Report Heat at work: Implications for safety and health (A global review of the science, policy and practice) (2024), and ILO report Ensuring safety and health at work in a changing climate Global report (2024).
[5] EU-OSHA Heat at work - guidance for workplaces, 1st June 2023; Foresight study - Climate change implications on OSH (2026).
[6] Study 'The effects of extreme weather conditions on workers' health and safety', requested by the EMPL committee (EP), 2025, pp. 26-27.
[7] According to ILO Report Heat at work, cit. (2024), excessive heat is the exposure, which, in combination with other factors —for example, humidity, radiant heat and physical exertion—, leads to the risk of heat stress (as the intermediary factor), which in turn causes heat-related illnesses, p. 6.

Similarly, weather events associated with the most extreme winters - for example, severe cold spells, hurricanes, torrential rain or 'cold drops' - can be just as dangerous for the public, causing material damage to buildings, towns and the environment, e.g. through flooding, rivers bursting their banks, and the destruction of transport links and buildings. Besides, those events can also cause personal harm - physical or psychological - , leaving people injured, ill or even dead in their wake.

In the workplace, workers who provide services under these extreme weather conditions may find their functional and labour capacities impaired, which can lead, amongst other things, to the following **main consequences.** Firstly, there is a **rise in occupational risks**, both physical (for example, sunburn, heatstroke, pneumonia or colds, the exacerbation of various pre-existing conditions or the onset of new ones, and workplace accidents) and psychosocial, e.g. work-related stress, anxiety, irritability or increased conflicts amongst colleagues. Secondly, this harmful weather situation can lead to a **reduction in economic benefits or productivity for the company**, due to lower work performance among staff. Indeed, during cold or heatwaves and other extreme weather events, the pace and quality of work may decline, and labour activity may be interrupted by repeated breaks or even suspended, at least in certain roles or sectors and during specific hours or days, such as during periods of peak maximum or minimum temperatures, or on days when hurricanes or torrential rain occur. Thirdly, there is **increased financial expenditure** for the company and the public health systems, as when a worker is affected by these extreme weather events, emergency care is triggered, either by the company itself or by the public health system; this may even involve the intervention of emergency medical services, including ambulances or helicopters, etc. Also, the augmented expenditure is justified by the necessary patient's personal treatment and recovery at home or in the hospital. Fourthly, it is also worth noting the **costs incurred by the public social security system**. Indeed, damage to workers' health may result in temporary sick leave, with a declaration of temporary incapacity, entitling them to certain financial benefits - allowances or compensation - paid by the social security authorities. However, it should also be borne in mind that, should illness or death result from a failure to comply with health and safety measures, the employer may be required to pay compensation or an additional surcharge on top of the financial benefit payable by social security. And, fifthly, there are also the **administrative costs** arising from the need to deal with these weather events and their consequences, for example, costs linked to compliance with formal procedures, the intervention of the labour inspectorate, or the employer's obligation to pay a fine for breaching occupational risk prevention measures.

The serious consequences of these extreme weather events can be seen across all sectors and amongst all people, although various studies highlight that **certain social groups are particularly vulnerable and at greater risk**[8]. This may be due to 1) their personal circumstances, for example, age (including young people and older people), gender, disability, general health, chronic illnesses, the extent to which they have previously acclimatised to the working environment (cold or hot) and nationality, as it can be a possible language barrier to communication. In the case of women, pregnancy, breastfeeding or menopause might also be a factor; 2) their socio-economic status, which, if low, is often associated with the need to accept harder jobs; and 3) the nature and conditions of the tasks to be carried out, particularly when these involve direct exposure to extreme weather events, as is the case, for example, with outdoor work in extreme heat, rain or cold, or indoor work where the temperature is unsuitable, e.g. a space without adequate ventilation. Furthermore, occupational risk increases when tasks - whether outdoors or indoors - require manual labour involving intense physical exertion[9], particular attention, a fast pace, work at a certain height or, indeed, carrying a heavy load, which may include personal protective equipment.

[8] Study 'The effects of extreme weather conditions on workers' health and safety', cit., pp. 56-62. According to the ILO, by 2030, Europe could lose about 0.1% of working hours, which represents an estimated loss of 406 million working hours per year, or a productivity loss of approximately €17 trillion per year (ILO Report Working on a warmer planet. The impact of heat stress on labour productivity and decent work, cited above, p. 14).
[9] EU-OSHA (2025) OSH Pulse 2025: Climate change at work.

Considering the above, **certain economic sectors are particularly exposed to these weather-related risks**, such as when work is carried out primarily **outside the workplace**, or when the activity depends on weather conditions. Examples include the agricultural sector, i.e. farming, livestock rearing and forestry; fishing; mining and quarrying; construction; manufacturing and engineering; the provision of security or emergency services, such as, fire service, police, civil protection or ambulances; transport and storage; tourism, for example, walking tour guides; some public services, as could be gardening, gas, electricity, water, cleaning and waste collection; home delivery; outdoor sports and other similar activities.

However, risks arising from extreme cold or heat can also occur **inside a workplace**, such as when a premises, office or the building in which they are located lacks adequate ventilation and protection against such conditions. This is the case, for example, when the building is not clad externally with thermal insulation material or, inside, there is no heating, air conditioning or adequate ventilation. These thermal risks can be exacerbated when the workplace is already characterised by high temperatures, for example, a greenhouse or a kitchen or, conversely, by low temperatures, e.g. freezer rooms, work involving the handling of ice, standing with one's feet in water, or working in conditions of high humidity or wind.

Considering the above, **extreme weather events are an occupational risk factor that must be specifically addressed** by the various international organisations linked to the world of work, as well as by national governments and businesses, through the effective coordination of environmental, public health and occupational risk prevention policies. This will contribute not only to improving health and safety in the workplace, but also to achieving the goal of decent work promoted by the UN's 2030 Agenda. However, the necessary regulation of this occupational risk and its prevention must be carried out whilst taking into account the existing general legal framework governing occupational health and safety, as well as the interests of both workers and companies, in order to strike a balance between the rights and obligations of the parties to the contract. This requires a sensible and legally sound analysis regarding the need for possible regulation in this area at European Union level.

More specifically, **is a minimum standards directive necessary to prevent occupational risks arising from extreme weather events** - in particular, the most frequent of these, extreme temperatures - to adequately protect workers? Or, conversely, is **national, regional or sectoral regulation**, tailored to the specific circumstances of each country, geographical area and economic sector, sufficient and more appropriate? It is also worth assessing the advantages and disadvantages of adopting binding legislation as opposed to non-binding measures, guidelines, recommendations or advice, in order to make progress towards the necessary protection of workers against the risks arising from these extreme weather events.

In this study, we analyse **the meaning and function of the principles of subsidiarity and proportionality in the social field** when the European Union imposes obligations on businesses (Chapter 2), and we apply these principles to a specific issue: **whether the European Union should adopt a dedicated directive on the protection of workers against extreme weather events, especially extreme temperatures.** We will seek to determine whether such a directive would comply with the principles of **subsidiarity** (Chapter 3) and **proportionality** (Chapter 4).

[8] Study 'The effects of extreme weather conditions on workers' health and safety', cit., pp. 56-62. According to the ILO, by 2030, Europe could lose about 0.1% of working hours, which represents an estimated loss of 406 million working hours per year, or a productivity loss of approximately €17 trillion per year (ILO Report Working on a warmer planet. The impact of heat stress on labour productivity and decent work, cited above, p. 14).
[9] EU-OSHA (2025) OSH Pulse 2025: Climate change at work.

2. The principles of subsidiarity and proportionality in the field of EU social law in relation to the setting of business obligations

Within European Union law, the delimitation and exercise of Union competences are governed by three principles that are characteristic of federal systems, namely the principles of conferral, subsidiarity and proportionality. Indeed, Article 5(1) of the Treaty on European Union (TEU) provides that: "The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality". Paragraph 2 of that provision elaborates upon the principle of conferral; paragraph 3 sets out the principle of subsidiarity; and paragraph 4 establishes the principle of proportionality.

The principles of conferral and subsidiarity ensure that decision-making takes place at the most appropriate level of governance, whereas the principle of proportionality requires that the content of any Union measure be suitable for attaining its intended objective and that it should not exceed what is necessary to achieve that objective. The principle of conferral determines whether the European Union possesses competence in a field; the principle of subsidiarity determines whether the Union should exercise that competence; and the principle of proportionality governs the manner and intensity with which that competence should be exercised. Put differently, the principle of conferral governs the delimitation of competences, whereas the principles of subsidiarity and proportionality regulate the exercise, rather than the existence, of Union competences[10]. Therefore, the principles of subsidiarity and proportionality apply only where competence has already been conferred upon the European Union.

Under the principle of conferral, laid down in Article 5(2) TEU, the European Union acts only within the limits of the competences that the Member States have conferred upon it through the Treaties. Those competences are defined in Articles 2-6 of the Treaty on the Functioning of the European Union (TFUE). Their distribution is established in Article 2 TFEU and further specified in Articles 3-6, which distinguish between three categories of competence: exclusive competences (Article 3 TFEU), shared competences between the Union and the Member States (Article 4 TFEU), and competences to support, coordinate or supplement the actions of the Member States (Article 6 TFEU). Competences not conferred upon the Union by the Treaties remain entirely within the jurisdiction of the Member States.

Within European Union law, the legal foundations of the principles of subsidiarity and proportionality are laid down in Article 5(3) and (4) TEU and in Protocol No. 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaties. Within the EU legal order, the principle of subsidiarity applies in areas which do not fall within the Union's exclusive competence [Article 5(3) TEU], namely those in which competences are shared between the Union and the Member States (Article 4 TFEU).

[10] Opinion of Advocate General Cápeta delivered on 4 June 2026 in case Assemblée nationale de la République française v Parliament and Council (C-553/24), point 78.

In such cases, "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level"[11]. The inclusion of the principle of subsidiarity in the EU Treaties also serves to ensure that powers are exercised as closely as possible to the citizen, in accordance with the principle of proximity enshrined in Article 10(3) TEU.

Under Article 5(3) TEU, three cumulative conditions must be satisfied before the Union institutions may act in accordance with the principle of subsidiarity. First, the area concerned must not fall within the Union's exclusive competence (i.e. non-exclusive competence). Secondly, the objectives of the proposed action cannot be sufficiently achieved by the Member States acting individually (i.e. necessity). Thirdly, by reason of its scale or effects, the proposed action can be better achieved at Union level (i.e. added value).

Whatever the historical or intellectual influences that inspired the incorporation of subsidiarity into the European Union legal order, the formulation of the principle in Article 5(3) TEU clearly reflects a preference for decision-making at the lowest appropriate level of governance and, more specifically, at the level of the Member States rather than at that of the Union. At the same time, however, subsidiarity does not merely favour decision-making at a lower level of government; it also provides a justification for action at Union level whenever such action is considered more appropriate. Thus, the principle of subsidiarity may operate as either a limit on, or a justification for, intervention at Union level[12].

The principle of subsidiarity applies to all the institutions of the European Union and assumes practical significance for legislative procedures. The Treaty of Lisbon substantially strengthened both the *ex ante* and *ex post* mechanisms for monitoring compliance with the principle of subsidiarity, entrusting this task to the national parliaments and the Court of Justice of the European Union. Specifically, the Treaty not only introduced an explicit reference to the sub-national dimension of subsidiarity but also reinforced the role of the European Committee of the Regions and enabled, at the discretion of the national parliaments, the participation of regional parliaments possessing legislative powers through the *ex ante* "early warning" mechanism.

Compliance with the principle of subsidiarity may also be reviewed *ex post*, following the adoption of a legislative act, through proceedings brought before the Court of Justice of the European Union, as expressly provided for in Protocol No. 2. Member States may bring an action for annulment before the Court against a legislative act on the ground of infringement of the principle of subsidiarity, acting on behalf of their national parliament or one of its chambers, in accordance with their respective constitutional arrangements. Likewise, the European Committee of the Regions is entitled to institute such proceedings in respect of legislative acts for the adoption of which consultation of the Committee is required under the TFEU.

Although Protocol No. 2 concerns both the principles of subsidiarity and proportionality, Article 8 thereof confines actions brought by national parliaments to alleged infringements of the principle of subsidiarity, thereby excluding matters falling within the scope of the principle of proportionality[13].

[11] The literature on the principle of subsidiarity is vast. See, among many others, Fabbrini, Federico, "The Principle of Subsidiarity", in Schütze, Robert, and Tridimas, Takis (eds.), Oxford Principles of European Union Law, Volume I: The European Union Legal Order, Oxford University Press, Oxford, 2018, pp. 221-242; Baranik, Kamil, Subsidiarity: Mechanisms for monitoring compliance, European Parliament, In-Depth Analysis, European Parliamentary Research Service (EPRS), July 2025, 40 pp.; Beaudouin, Christophe; Maciejewska, Jagoda Karolina, and Maciejewski, Mariusz, The principle of subsidiarity, European Parliament, Fact Sheets on the European Union, 12/2025, updated 2026, 7 pp., and Fründ, Frederike, Subsidiarität - Recht und Kontrolle. Eine Untersuchung zur gerichtlichen Kontrolldichte des Art. 5 Abs. 3 EUV, Duncker & Humblot, Schriften zum Europäischen Recht, Band 205, Berlin, 2020, 151 pp. Reference should also be made to European Commission, The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking, Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and The Committee of the Regions, Strasbourg, 23.10.2018, 12 pp., and European Parliament, Working document on the principles of subsidiarity and proportionality, Committee on Constitutional Affairs, Rapporteur: Jacek Saryusz-Wolski, 7.7.2021, DT\1231923EN.docx, PE692.901v01-00, 11 pp.
It is relevant to mention that, in August 2024, a national parliament initiated the first action before the Court of Justice alleging an infringement of the principle of subsidiarity pursuant to Protocol No. 2, challenging Regulation (EU) 2024/1351 on asylum and migration management (Case C-553/24), brought by the French Assemblée nationale). This landmark action, initiated by only 60 members out of a total of 577 pursuant to Article 88-6 of the French Constitution, demonstrates that subsidiarity review has now become accessible to parliamentary minorities in certain national parliaments, thereby potentially strengthening democratic oversight and enhancing compliance with the principle of subsidiarity at both national and Union level. At the time of writing, the Court of Justice has not yet delivered its judgment. Nevertheless, Advocate General Cápeta's Opinion already provides valuable guidance on several issues of constitutional significance. The case is likely to become a leading authority on the judicial enforcement of the principle of subsidiarity and on the constitutional role of national parliaments under Protocol No. 2.
[12] Opinion of Advocate General Cápeta, point 83.
[13] Opinion of Advocate General Cápeta, point 102.

Consequently, where national parliaments seek to challenge issues relating to compliance with the principle of proportionality, they must rely upon the fourth paragraph of Article 263 TFEU and cannot bring proceedings based on Article 8 of Protocol No. 2[14].

In its Judgments of 12 November 1996 and 13 May 1997, in Cases C-84/94 and C-233/94, the Court of Justice of the European Union held that compliance with the principle of subsidiarity constitutes one of the matters that must be addressed in the statement of reasons accompanying Union acts pursuant to Article 296 TFEU. That obligation is satisfied where compliance with the principle is apparent from the recitals to the measure in question. In its Judgment of 4 May 2016 in Case C-547/14, *Philip Morris*, the Court reaffirmed that it must determine "whether the EU legislature was entitled to consider, on the basis of a detailed statement, that the objective of the proposed action could be better achieved at EU level" (paragraph 218). With regard to formal requirements and, in particular, the duty to state reasons concerning compliance with the principle of subsidiarity, the Court further observed that fulfilment of that obligation "must be evaluated not only by reference to the wording of the contested act, but also by reference to its context and the circumstances of the individual case" (paragraph 225).

Although closely related to the principle of subsidiarity, the principle of proportionality operates within a distinct sphere[15]. The two principles apply successively, at two different stages of Union action. The former determines whether Union action should be undertaken at all, whereas the latter defines the permissible scope and intensity of that action. In other words, **subsidiarity** comes into play a**t the preliminary stage, when deciding whether action should be taken at Union level, whereas proportionality operates subsequently, once such action has been initiated, by assessing whether the measures adopted are appropriate for attaining the objectives pursued under European Union law.** Ultimately, the principle of subsidiarity determines whether the European Union should act, whereas the principle of proportionality governs the manner and intensity of that action. Put differently, subsidiarity concerns the appropriate level of decision-making, while proportionality concerns the content of the measure itself.

[14] Opinion of Advocate General Cápeta, point 105.
[15] Opinion of Advocate General Léger in United Kingdom v Council (C-84/94), points 125 to 127, and, in legal doctrine, Lenaerts, Koen y van Ypersele, Patrick: "Le principe de subsidiarité et son contexte: étude dc l'article 3 B du traité CE", Cahiers de droit européen, 1994, nos 1-2, p. 81, and Strozzi, Girolamo, "Le principe de subsidiante dans la perspective de l'intégration européenne: une énigme et beaucoup d'attentes", Revue trimestrielle de droit européen, 30 (3), jul.-sep. 1994, pp. 373 and 379.

Accordingly, the principle of proportionality complements that of subsidiarity. Even where action at Union level is justified, the measures adopted must not exceed what is necessary to attain the objectives pursued. In other words, the principle of proportionality embodies the prohibition of excessive regulation. It requires the application of a threefold test comprising suitability necessity, and proportionality *stricto sensu*[16]. Thus, under the principle of proportionality, measures adopted by the European Union must: 1) be suitable for achieving the objective pursued; 2) be necessary for attaining that objective; and 3) not impose an excessive burden on individuals in relation to the objective to be achieved (proportionality *stricto sensu*). As defined in Article 5(4) TEU, the principle of proportionality requires that, once action at Union level has been found to be justified because the Member States cannot sufficiently achieve the regulatory objective established by the Union acting individually, the specific measures adopted must be both appropriate and necessary to achieve that objective. Proportionality review therefore concerns the substance of a Union measure, rather than the appropriate level at which decisions should be taken[17]. As the Court of Justice has consistently held, the appropriateness and necessity of a measure must be assessed in the light of the specific regulatory objective pursued by the Union legislature[18].

The criteria governing the application of the principle of proportionality are set out in *Protocol No. 2* on the application of the principles of subsidiarity and proportionality, annexed to the Treaties. Where the principle of proportionality is alleged to have been infringed, applicants may, provided that the relevant procedural requirements are satisfied, challenge the validity of the measures concerned before the Court of Justice of the European Union. In such proceedings, the Court must distinguish between two categories of pleas.

First, from the perspective of the principle of conferral laid down in Article 5(2) TEU, it must examine allegations that the Union lacks competence in a particular field or that the contested measure exceeds the scope of the competence conferred upon the Union. Secondly, from the perspective of the principle of proportionality under Article 5(4) TEU, it must assess claims that the objectives pursued by a legislative act do not require regulation at Union level or that the measures adopted are inappropriate or impose unnecessary burdens on the Member States or on individuals.

Such pleas do not fall within the scope of the principle of subsidiarity. Consequently, where a national parliament wishes to challenge issues relating to proportionality, it must rely upon the fourth paragraph of Article 263 TFEU and cannot bring proceedings based on Article 8 of Protocol No. 2[19].

[16] See, among many others, Tschentscher, Axel, Grundprinzipien des Rechts. Einführung in die Rechtswissenschaft mit Beispielen aus dem schweizerischen Recht, Haput, Bern, Stuttgart und Wien, 2003, pp. 175-177.
[17] See, in particular, Opinion of Advocate General Léger in United Kingdom v Council (C-84/94), EU:C:1996:93), points 125-127, and Opinion of Advocate General Cápeta in Assemblée nationale de la République française v European Parliament (Case C-553/24), point 98 and fn. 52, distinguishing between the principles of subsidiarity and proportionality, which operate at different levels of Union action. For a comprehensive doctrinal analysis, see Emiliou, Nicholas, The Principle of Proportionality in European Law: A Comparative Study, European Monographs Series, Kluwer Law International, 2002, 320 pp., and Tridimas, Takis, "The Principle of Proportionality", in Schütze, Robert, and Tridimas, Takis (eds.), Oxford Principles of European Union Law, Volume I: The European Union Legal Order, Oxford University Press, Oxford, 2018, pp. 243-264.
[18] See para. 122 of Judgment of 10 December 2002 in British American Tobacco (Investments) and Imperial Tobacco (Case C-491/01, EU:C:2002:741), in which the Court held that "the principle of proportionality, which is one of the general principles of Community law, requires that measures implemented through Community provisions should be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it". See also judgment of 4 May 2016 in Poland v Parliament and Council (Case C-358/14, EU:C:2016:323), para. 78, and Opinion of Advocate General Cápeta, point 98 and fn. 53.
[19] Opinion of Advocate General Cápeta, point 105.

3. Would an EU directive on extreme temperatures comply with the principle of subsidiarity?

In practical terms, within areas of shared competence, such as occupational safety and health, the principle of subsidiarity requires two questions to be addressed. First, **can the objective pursued be sufficiently achieved by the Member States acting individually?** Secondly, **would action at European Union level produce better results by reason of its scale or effects?** Only where both conditions are fulfilled is intervention at Union level justified. Therefore, for a directive on extreme temperatures to comply with the principle of subsidiarity, three cumulative requirements must be satisfied. First, the area concerned must fall within a field of shared competence (3.1). Secondly, the proposed action must be necessary because the Member States are unable to achieve the objective satisfactorily acting on their own (3.2). Thirdly, action at Union level must provide genuine added value (3.3).

3.1. Shared competence

Under European Union law, occupational safety and health unquestionably falls within the sphere of shared competence[20]. Indeed, pursuant to Article 4(2)(b) TFEU, social policy is one of the principal areas in which competence is shared between the Union and the Member States. Among the objectives pursued by both the European Union and the Member States is "improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained" (Article 151 TFEU). To achieve the objectives set out in Article 151, the Union is empowered to support and complement the activities of the Member States in several fields, including "improvement in particular of the working environment to protect workers' health and safety" [Article 153(1)(a) TFEU].

The Charter of Fundamental Rights of the European Union reaffirms this right by providing, in Article 31, entitled "Fair and just working conditions", that "Every worker has the right to working conditions which respect his or her health, safety and dignity" (paragraph 1). This right is further reinforced by Principle 10 of the European Pillar of Social Rights, entitled "Healthy, safe and well-adapted work environment and data protection", which recognises workers' "right to a high level of protection of their health and safety at work" [point a)] and their "right to a working environment adapted to their professional needs" [point b)]. Moreover, safeguarding occupational safety and health constitutes an essential component of the broader vision underpinning the emerging European Health Union, whose objective is to strengthen the European Union's collective capacity to prevent and respond to cross-border health threats, including those aggravated by climate change and environmental pressures[21].

[20] Under International labour law, occupational safety and health is recognised as a fundamental principle and right at work. At its 110th Session, held in June 2022, the International Labour Conference decided to include "a safe and healthy working environment" among the ILO's fundamental principles and rights at work of the 1998 Declaration and to designate the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), as fundamental Conventions.
[21] Increasing preparedness for possible future health threats is one of the three key objectives of the EU strategic framework on health and safety at work 2021-2027. See, on this subject, European Commission, Health crisis preparedness (no date) and Study 'The effects of extreme weather conditions on workers' health and safety, op. cit., https://www.europarl.europa.eu/thinktank/en/document/CASP_STU(2025)759353 p. 68.

Therefore, Article 153 TFEU has provided the legal basis for the adoption of a substantial body of secondary legislation in the field of occupational safety and health. As provided by the Treaty, the European Parliament and the Council "may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States" [Article 153(2)(a) TFEU]. They may also adopt "by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States" [Article 153(2)(b) TFEU]. In doing so, however, "such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings" [Article 153(2)(b), *in fine*, TFEU].

The principle of subsidiarity is an instrumental principle. It is not concerned with determining whether the objectives of legislative action should be defined at the level of the European Union or at that of the Member States. Rather, once competence has been conferred upon the Union under the principle of conferral, subsidiarity governs whether action to attain those objectives should be taken at Union level. Since the protection of occupational safety and health falls within the sphere of shared competence, the European Union is entitled to define the concrete objectives of legislative action in that field. Once those objectives have been determined, however, the principle of subsidiarity comes into operation to establish whether they should be pursued through action at Union level[22].

Accordingly, **the European Union is fully entitled to make the political choice of ensuring protection against occupational risks arising from extreme temperatures and other adverse weather phenomena. The principle of subsidiarity can be assessed only by reference to the specific regulatory objective identified by the Union legislature;** it cannot be invoked to challenge the prior political decision as to whether a particular matter should be regulated. The question raised by subsidiarity is therefore not at which level it should be decided that a particular issue requires legislative intervention within an area of Union competence. Rather, the relevant question is whether intervention by the Union is necessary to accomplish the regulatory objective that the Union legislature has itself determined ought to be pursued[23].

Viewed from this perspective, the principle of subsidiarity requires that, even where the Union possesses legislative competence in a given field and the Union institutions have concluded that legislative action is necessary in order to attain a particular regulatory objective, this does not automatically entail the adoption of legislation at Union level. Legislative action should be undertaken by the European Union only where the Member States are unable to address the regulatory problem acting individually and where action at Union level is better suited to achieving the regulatory objective pursued[24].

[22] Opinion of Advocate General Cápeta, point 87.
[23] Opinion of Advocate General Cápeta, point 87.
[24] Opinion of Advocate General Cápeta, point 88.

3.2. Necessity

For the requirement of necessity to be satisfied, the Member States must be unable sufficiently to achieve the objectives of the proposed action, whether at central, regional or local level. In the present context, however, the case for satisfying the necessity requirement inherent in the principle of subsidiarity is far from compelling, **as the objective of protecting workers against occupational risks arising from extreme temperatures appears capable of being achieved more effectively at national and sectoral level.**

Three principal arguments support this conclusion. First, even in the absence of specific legislative provisions, protection against occupational risks arising from adverse weather conditions may be derived from the general principles of the law of contract. Secondly, the employer's duty of protection has already been given concrete expression in Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (the Framework Directive), in the individual directives adopted pursuant thereto, and in the guidance documents and practical recommendations on the management of risks associated with working in hot environments. Thirdly, at national level, most Member States already possess, in one form or another, regulatory frameworks capable of addressing the issue effectively. These three considerations converge upon the same conclusion: **workers are not left without legal protection in the absence of a new directive governing occupational risks arising from adverse meteorological conditions, including extreme temperatures.**

Indeed, **such protection may already be derived from the general principles of contract law.** Employers are under a duty to protect workers against occupational risks, while workers may, in appropriate circumstances, be entitled to refuse to perform work that poses a serious and imminent risk to their health or safety. The employer's duty to safeguard the health and safety of workers is of a dual nature, encompassing both private-law and public-law dimensions. From a contractual perspective, this duty is rooted in the **general principle of good faith.** Good faith not only imposes negative obligations requiring parties to refrain from conduct detrimental to the other party but also gives rise to positive obligations of cooperation and mutual regard for the other party's legitimate interests.

As such, it provides an appropriate legal basis for protecting the worker's non-pecuniary interests and gives rise to ancillary obligations of a positive character. Among these is the duty of protection, the scope and intensity of which increase in proportion to the duration of the contractual relationship and the degree of personal involvement required of the parties in its performance. Within the employment relationship, the principle of good faith underpins an employer's duty of protection that is more extensive than that arising in most other contractual relationships, owing to the continuing nature of the contract of employment and the inherently personal character of the worker's performance. The duty of protection is therefore a direct corollary of the general principle of good faith.

Likewise, the obligation to take due account of the legitimate interests of the other contracting party is recognised because of the principle of good faith in the *Principles of European Contract Law*. Article 1:201(1), entitled "Good Faith and Fair Dealing", provides that "each party must act in accordance with good faith and fair dealing". So, the provision imposes upon the contracting parties a duty of mutual consideration[25]. Depending upon the legal system concerned, the legal basis for this protection may derive from doctrines such as good faith, *the exceptio non adimpleti contractus, force majeure*, or the worker's right to refuse to comply with unlawful instructions.

The employer's duty to act in good faith has been given concrete expression in Directive 89/391/EEC of 12 June 1989, most notably through the **employer's general duty to ensure workers' safety and health** laid down in Article 5(1) and the general principles of prevention set out in Article 6. Even though the Framework Directive makes no specific reference to occupational risks arising from extreme temperatures, its provisions are fully applicable to these risks.

Moreover, **several individual directives adopted pursuant to the Framework Directive contain explicit provisions relating to temperature**. Attention should be made of Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), in particular Annex IV, Part A, point 7, and Part B, Section I, point 4, as well as Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), in Annex I, point 7, and Annex II, point 7. Although their wording differs slightly, both Directives provide that, during working hours, the temperature in workrooms must be appropriate for the human body, taking account of the working methods employed and the physical demands placed upon workers. They further require that the temperature in rest areas, rooms for staff on duty, sanitary facilities, canteens and first-aid rooms be appropriate to the particular purpose for which those facilities are intended.

Furthermore, **the provisions of the Framework Directive and the individual directives adopted pursuant thereto should be read in conjunction with soft-law instruments,** such as the 2023 Heat at Work: Guidance for Workplaces, issued by the European Agency for Safety and Health at Work (EU-OSHA), which provides practical guidance on the management of risks associated with working in hot environments and offers recommendations on the appropriate response where a worker begins to display symptoms of a heat-related illness.

Likewise, the EU Strategic Framework on Health and Safety at Work 2021-2027: Occupational Safety and Health in a Changing World of Work identifies three cross-cutting priorities for the current programming period: anticipating and managing change in the context of green, digital and demographic transitions; improving the prevention of work-related accidents and occupational diseases; and strengthening preparedness for future health crises and other cross-border health threats.

Hence, the existing EU occupational safety and health acquis is founded upon a risk-based regulatory framework that leaves Member States a considerable margin of discretion as regards its implementation and enforcement. The full potential of these provisions, together with that of the Framework Directive, the individual directives adopted under it, and the practical guidance accompanying them, has yet to be fully exploited.

[25] Lando, Ole, and Beale, Hugh (eds.), Principles of European Contract Law. Parts I and II Combined and Revised, Prepared by the Commission on European Contract Law, Chairman: Professor Ole Lando, Kluwer Law International, The Hague and other cities, 2000, p. 115.

Consequently, even where a Member State has not enacted legislation specifically addressing occupational risks arising from adverse meteorological conditions, workplace health and safety in relation to extreme temperatures necessarily falls within the scope of the Framework Directive. Under that Directive, which places primary responsibility for workers' health and safety upon the employer, employers are required to carry out workplace risk assessments and to adopt preventive measures designed to eliminate, or where elimination is not possible, minimise occupational risks. These obligations have been transposed into the domestic legal systems of all Member States. Moreover, Member States remain free to adopt more stringent, detailed or protective rules governing situations in which workers may be exposed to climate-related risks in the workplace.

It follows that the European Union already possesses a comprehensive legislative framework capable of addressing all occupational risks, including those arising from extreme temperatures and, in particular, excessive heat. **To a significant extent, therefore, the problem may lie in a lack of awareness of the risks involved and, more generally, not in the absence of legal rules or in any regulatory deficiency, but rather in shortcomings in enforcement and in the practical implementation of the existing legal framework.**

On the other hand, at national level, and complementing the European regulatory framework, most Member States already have legislative provisions capable of effectively addressing occupational risks arising from extreme weather events. Indeed, those Member States most exposed to such risks have already developed comprehensive regulatory frameworks governing the prevention of occupational risks associated with extreme temperatures. These frameworks address both the definition of extreme temperatures and the preventive measures to be adopted, including technical and organisational measures, the use of personal protective equipment, as well as arrangements for health surveillance, worker training and information, and worker participation.

Therefore, many Member States have already implemented the essential elements of a possible directive in this field. They also reflect the recommendations jointly advanced by trade unions, employers' organisations and Member States in the Opinion Climate Change - Heat at Work, adopted by the Advisory Committee on Safety and Health at Work (ACSH) on 10 December 2025 (Doc. 015-25).

This aspect is discussed in more detail below, in Annex entitled *Measures taken by Member States against climate-related risks.*

3.3. Added value

Having explained why, in the present case, the requirement of necessity under the principle of subsidiarity does not appear to be satisfied, we shall now examine why a particular directive on the prevention of occupational risks arising from extreme temperatures would satisfy the third and final requirement of that principle, namely that the objectives can, "by reason of the scale or effects of the proposed action, be better achieved at Union level" (added value)[26].

[26] In this regard, it should be noted that Article 5 of Protocol No 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaties, provides that: "Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved".

What reasons would justify the adoption of a specific European Union directive on the prevention of occupational risks arising from extreme temperatures? What qualitative and quantitative indicators would support the conclusion that the regulatory objective could be achieved more effectively at Union level? Should the decisive criterion be the number of occupational accidents attributable to extreme temperatures? Or should it be the alleged transnational dimension of the problem, since heatwaves may occasionally affect several Member States simultaneously? The answer is far from self-evident. The phenomenon does not inherently possess a transnational dimension. **Extreme temperatures do not affect all Member States in the same way or with the same intensity.** Indeed, significant climatic differences frequently exist not only between Member States, but also between different regions of the same State. Viewed through the lens of the principle of subsidiarity, it is therefore difficult to identify the genuine added value that would result from the adoption of a new directive on occupational heat stress.

As noted above, the Framework Directive already provides an adequate legal basis for addressing climate-related occupational safety and health risks, including heat stress, through the employer's general obligation to assess workplace risks. More broadly, the existing EU occupational safety and health acquis provides a comprehensive framework for managing risks arising from extreme weather events, primarily by means of general obligations - such as the employer's duty to ensure workers' safety and health and the obligation to carry out risk assessments - rather than through detailed rules governing heat, cold or other adverse meteorological conditions. That framework is complemented by twenty-four individual directives addressing concrete risks, categories of workers and working environments, including provisions requiring employers to ensure that thermal conditions in the workplace are appropriate to the nature of the work performed. Consequently, **the current legislative framework already contains several specific legal mechanisms capable of addressing occupational risks associated with extreme temperatures.**

Hence, there appears to be no compelling need for a separate directive governing a physical hazard that is objectively measurable and readily identifiable. If legislative action at Union level is considered desirable, it would be sufficient to clarify the existing provisions of the Framework Directive and of the individual directives adopted pursuant thereto, especially the Workplace Directive, which is currently under review, and the Temporary or Mobile Construction Sites Directive. Such legislative refinements could, where appropriate, be complemented by technical guidance, such as that issued by EU-OSHA, or by the adoption of a Council Recommendation.

First and foremost, it may be argued that coherence is required both between the measures adopted to mitigate the causes of climate change and those designed to address its consequences, and among the various public policies aimed at adapting to extreme temperatures. Indeed, for the European Union to legitimately claim the competence to adopt a directive in the field of occupational risk prevention arising from these phenomena, there must be consistency in the way it approaches both climate change mitigation and climate change adaptation. In other words, the Union's strategy for mitigating climate change should be coherent with its strategy for adapting to its effects[27].

Moreover, addressing the consequences of climate change - and adopting measures to adapt to extreme temperatures - is an inherently complex undertaking. It therefore requires coherence and synergy across a range of interrelated public policies founded upon a human rights-based approach. These include environmental, urban planning, architectural, public health, social inclusion and poverty reduction, as well as occupational safety and health policies. The complexity of climate adaptation extends beyond the identification of new occupational risks. It also requires legislators to reconcile a growing number of legitimate, and sometimes competing, regulatory objectives. Measures designed to protect workers against excessive temperatures cannot be considered in isolation from other legal obligations pursuing equally important public interests, such as environmental protection, energy efficiency, public health or the prevention of excessive noise exposure. Climate adaptation therefore does not merely increase the quantity of regulation; it also augments the complexity of regulatory coordination.

[27] Cfr. European Environment Agency, "Cooling buildings sustainably in Europe: exploring the links between climate change mitigation and adaptation, and their social impacts", Briefing, 10 November 2022, and Laabas-el-Gennouni, Marouane, and Arabadjieva, Kalina, "Climate change adaptation means rights for workers", 20th December 2024.

To give just one example, employers may face situations in which compliance with one set of legal obligations makes it more difficult to comply fully with another. How, for instance, can an employer ensure adequate natural ventilation of workplace premises to reduce indoor temperatures if compliance with maximum noise limits prevents windows from being opened, or if energy-efficiency requirements restrict the operation of cooling or ventilation systems? Similarly, measures intended to reduce occupational heat exposure may entail increased energy consumption, thereby creating tensions with environmental or climate mitigation objectives. These situations illustrate that the legal response to climate change cannot be conceived as a series of isolated regulatory interventions, each pursuing a single objective independently of the others.

Therefore, **any future regulatory framework should seek not merely to impose additional obligations, but to provide an appropriate balance between competing legal requirements.** Employers should not be placed in a position where compliance with one statutory obligation necessarily entails the risk of infringing another. This need for regulatory coordination provides a further reason why climate adaptation is particularly well suited to flexible and context-sensitive regulatory approaches capable of accommodating local circumstances and balancing multiple public interests, rather than to detailed harmonising legislation at Union level.

In any case, the starting point must be the duty of States to take effective action to address climate change in order to protect human rights and prevent harm to the global climate system, given that the right to a clean, healthy and sustainable environment constitutes a precondition for the effective enjoyment of other fundamental human rights, including the rights to life, health, food, water and housing. This was made unequivocally clear by the International Court of Justice (ICJ) in its Advisory Opinion of 23 July 2025 on the obligations of States in respect of climate change[28].

The response must therefore be comprehensive and forward-looking, shifting the emphasis from reaction to anticipation. Comprehensive strategies are required to protect individuals from the increasingly severe impacts of extreme temperatures. This, in turn, requires both adaptation and preparedness. In many parts of Europe, extreme heat can no longer be regarded as an occasional, seasonal or exceptional phenomenon; it has become a structural feature of the climate with which societies must learn to live, rather than merely survive. Consequently, preventive action and *ex ante* intervention are of paramount importance, as are technological innovation, the mobilisation of adequate financial resources, and appropriate education and training for citizens, particularly employers and workers.

Many occupational risks arising from extreme temperatures can be prevented or, at the very least, substantially mitigated through an appropriate combination of preventive measures, many of which are most effectively designed and implemented as close as possible to both the problem itself and the citizens affected by it. In this respect, **municipalities and regional authorities have a pivotal role to play**, alongside national governments and, albeit to a more limited extent, the European Union. Effective action also requires sincere cooperation between the European Union and the Member States, in accordance with Article 4(3) TEU, as well as close coordination within each Member State between central, regional and local authorities.

In this sense, extreme weather events differ from the ordinary management of temperature-related occupational risks in that they involve much closer interaction between employers, public authorities and the surrounding community. Whereas day-to-day heat-related risks can generally be managed within the workplace through technical or organisational measures, extreme weather events may require the intervention of municipalities, emergency and fire services, environmental and water-management authorities, the police and other public bodies. Employers may be required to make equipment or personnel available, comply with evacuation or other emergency measures, or cooperate with local residents and economic actors. Risk management in such circumstances is therefore inherently decentralised and frequently depends on decisions taken at local or subnational level.

[28] International Court of Justice, Advisory Opinion, Obligations of States in respect of Climate Change, 23 July 2025.

This distinction also has legal consequences. Where heat-related risks fall within the employer's sphere of control, they can be addressed through the standard risk-management framework established by the Framework Directive. By contrast, where the source or management of the risk lies beyond the employer's control, the preventive measures available to the employer are necessarily more limited and may depend upon decisions taken by public authorities or emergency services. The employer may therefore be required to comply with external measures, including evacuation orders or the requisitioning of equipment or personnel. In these circumstances, the nature and extent of the employer's obligations and liability cannot necessarily be equated with those arising in the ordinary management of occupational safety and health risks.

Ultimately, however, responsibility for protecting workers against occupational risks arising from extreme temperatures rests with the employer. Fulfilling that responsibility requires a fundamental shift in perspective, whereby occupational risk prevention and worker protection are no longer regarded merely as regulatory costs or financial burdens, but rather as long-term investments that enhance workers' health, safety and well-being while simultaneously contributing to the maintenance and improvement of productivity, even under these meteorological conditions.

Accordingly, **addressing the risks posed by extreme temperatures requires a coherent approach extending beyond occupational safety and health and encompassing urban planning, infrastructure, technological innovation and energy efficiency**. Human-centred and climate-resilient urban policies - including increased green spaces and shading, climate shelters and measures to reduce the urban heat-island effect - can significantly mitigate heat exposure, while technological solutions such as passive and energy-efficient cooling, smart ventilation and early-warning systems can further reduce occupational risks[29]. Improving the energy performance of buildings and workplaces, as promoted by Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast) (EPBD), is particularly important in this respect[30]. These measures illustrate that effective adaptation to extreme temperatures depends on the coordination of different public policies and on solutions tailored to local circumstances, thereby reinforcing the case for a coherent, proportionate and multilevel regulatory approach rather than relying exclusively on additional occupational safety and health legislation.

In most cases, failures to comply with the basic requirements governing the prevention of occupational risks associated with extreme temperatures are attributable less to deficiencies in the legal framework than to the economic costs that compliance entails for employers[31]. The financial burden associated with adapting workplaces to withstand extreme temperatures is likely to fall most heavily upon small and medium-sized enterprises. For that reason, both the European Union and the Member States should make a concerted effort to establish grant schemes and provide preferential loans or tax incentives aimed at improving the energy performance of buildings, and particularly of workplaces, thereby enabling them to mitigate the adverse effects of both extreme heat and extreme cold. Extreme heat constitutes an increasingly urgent public health threat, driven by climate change and further exacerbated by urbanisation and population ageing. Heat-Health Action Plans (HHAPs), and, more specifically, Occupational Heat Action Programmes (OHAPs), play a pivotal role in preventing and mitigating workplace heat stress. HHAPs represent one of the principal public health responses to extreme heat, enabling countries to anticipate and prepare for heatwaves, protect populations at heightened risk, strengthen the resilience of health systems, and reduce preventable heat-related illness and mortality. In June 2026, the World Health Organization (WHO) published the second edition of its guidance to support countries in developing, strengthening and implementing such plans at national, regional and local levels[32].

[29] Cfr. WIPO, Green Technology Book: Solutions for confronting climate disasters, Geneva, 2025, 290 pp. Key elements of a sustainable cooling strategy include tailoring to local contexts, promoting urban cooling solutions, prioritising investment in passive cooling techniques, using active cooling systems rationally and moderately, and developing low-energy cooling systems that are suited to future warmer climates. Cfr. European Environment Agency, "Cooling buildings sustainably in Europe: exploring the links between climate change mitigation and adaptation, and their social impacts", op. cit., and Khosla, Radhika, "The Role of Cooling Standards in Climate Adaptation to Extreme Heat", 25 pp.

[30] A wide range of bioclimatic design solutions, together with appropriate combinations of passive and active energy-efficient cooling technologies, make it entirely possible to ensure that work can be carried out safely indoors even when outdoor temperatures approach or exceed 40°C[2]. Any lingering doubts on this point need only be dispelled by considering the working conditions of employees at the Prado Museum - or indeed at any of Madrid's major museums - which remain genuine thermal refuges despite the intense summer heat affecting the city.

[31] Cfr. Fundación 1º de mayo, Informe diagnóstico sobre el riesgo por estrés térmico en el trabajo en España, CALORADAPT, Barcelona, February 2025, p. 30.

[32] World Health Organization, Heat-health action plans: guidance, second edition, European Centre for Environment, Climate Change and Health, WHO Regional Office for Europe, Copenhagen, 2026, 272 pp.

The experience of Spain provides a particularly instructive example. Rather than relying on uniform temperature thresholds applicable to the entire national territory, the Spanish State Meteorological Agency (*Agencia Estatal de Meteorología* - AEMET) issues warnings based on 182 territorial zones, in line with the WHO's recommendations for heat-health action plans. This demonstrates that preventive measures should, wherever possible, be designed and implemented as close as possible to the specific risks they are intended to address.

Public heat-health warning systems and prevention programmes are primarily designed to protect the general population, and particularly vulnerable groups, from the excess morbidity and mortality associated with episodes of extreme heat. However, the measures typically incorporated into such warning systems are largely directed towards outdoor workers, even though indoor workers may also be exposed to significant heat stress. Measures aimed at preventing and mitigating occupational heat stress therefore extend well beyond those usually included in general public heat-health warning systems and prevention plans.

For this reason, specifically designed OHAPs are required to optimise working capacity while reducing the excess risks of morbidity, mortality and occupational injury associated with workplace heat stress. Such programmes should seek to ensure that productivity can be maintained - whether through adjusted or normal levels of activity- without compromising workers' health or increasing the likelihood of occupational accidents. At the same time, OHAPs should reduce workplace heat stress while remaining practically feasible, economically viable and environmentally sustainable. They should therefore incorporate measures relating to workplace heat stress prevention policies, heat acclimatisation, environmental and medical monitoring, education and training, emergency response planning, and job-specific preventive controls[33].

It thus seems evident that work should not normally have to be suspended solely because of extreme heat or cold where workplaces have been appropriately designed and achieve a high level of energy performance through effective passive cooling strategies and the use of modern heating and cooling technologies, such as geothermal or aerothermal systems or, where appropriate, air-conditioning. The emphasis should therefore be placed on prevention and investment. This requires careful long-term planning, together with appropriate financial support for both citizens and businesses.

In this regard, the Japanese approach to earthquake preparedness offers an instructive example. It is founded upon sustained public investment, sophisticated early warning systems, stringent building regulations and a deeply embedded culture of prevention. More broadly, the Japanese model of adaptation to the natural environment highlights the importance of learning to live in harmony with nature rather than attempting to dominate or resist it[34]. The same philosophy is equally relevant to the challenges posed by extreme temperatures. Developing the capacity to live intelligently and sustainably with climatic conditions, rather than merely reacting to them, should become one of the guiding principles of contemporary climate adaptation policies[35].

In light of the foregoing, the principal difficulty in justifying a new directive on extreme heat lies in the heterogeneous nature of the phenomena it seeks to regulate. A directive is, by its very nature, an instrument of legislative harmonisation. **The establishment of minimum standards presupposes a sufficient degree of commonality among the situations to be regulated, a condition that is plainly absent in the present context. Significant differences exist not only between geographical areas, but also across economic sectors, occupations and categories of workers.**

[33] World Health Organization and World Meteorological Organization, Climate change and workplace heat stress. Technical report and guidance, 2025, 96 pp.
[34] Cfr. Robledo, Gonzalo, "Japón tiembla sin víctimas mientras Venezuela colapsa: la diferencia es la prevención y el dinero", El País, 26 de junio de 2026.
[35] Álvarez, Clemente and Verdú, Daniel, "Dos familias frente al calor extremo: los Fernández en Córdoba y los Chevallier en París", El País, 5 de julio de 2026.

4. Would an EU directive on extreme temperatures comply with the principle of proportionality?

The adoption of a directive on extreme temperatures also raises important concerns from the perspective of the principle of proportionality. Even if the proposed measures were considered suitable for achieving their intended objective, it is far from clear that they would be necessary to do so.

If, in order to comply with the principle of proportionality, the directive were to establish only a limited and minimalist regulatory framework, it could inadvertently provide an excuse for those Member States that already afford a high level of protection to lower their existing standards in an attempt to reduce regulatory costs. EU law already provides examples of this phenomenon. Thus, protection against the dismissal of pregnant workers requires, as in other cases of discrimination, that the employer be aware of the worker's pregnancy. This requirement contrasts with the objective protection afforded under certain national legal systems, such as the Spanish legal order, where protection does not depend upon the employer's knowledge of the pregnancy[36]. Consequently, the EU standard may encourage, or at least create an incentive for, some Member States to reduce the level of protection previously guaranteed under domestic law. A similar outcome could arise if a directive on extreme temperatures were to be adopted. For example, if the directive were expressly to refer only to certain sectors of economic activity, Member States might rely upon the wording of the Union instrument as justification for not extending equivalent protection to workers in other sectors.

Conversely, **if the directive were drafted in an excessively detailed and prescriptive manner, it could itself infringe the principles of subsidiarity and proportionality.** Such a result would not be unprecedented. It may well resemble the experience of Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, several provisions of which were annulled by the Grand Chamber of the Court of Justice in its Judgment of 11 November 2025 in Case C-19/23, *Kingdom of Denmark versus European Parliament and Council of the European Union*, on the ground that the Union had acted outside the limits of its competences[37]. Nor should it be forgotten that, in that case, the outcome could have been even more far-reaching. In his Opinion of 14 January 2025, Advocate General Emiliou proposed the annulment of the directive in its entirety on the basis that it was incompatible with Article 153(5) TFEU and, consequently, with the principle of conferral enshrined in Article 5(2) TEU. In the present context, by contrast, the invalidity of a directive could arise from its incompatibility with the principles of subsidiarity and proportionality.

[36] Ushakova, Tatsiana, "Protecting the Pregnant Women against Dismissal: Subjective and Objective Components in EU Law", in Mella Méndez, Lourdes, and Serrani, Lavinia. (eds.), Work-Life Balance and the Economic Crisis. Some Insights from the Perspective of Comparative Law, Vol. II, ADAPT, Cambridge Scholars Publishing, 2015, pp. 93-121.
[37] The judgment annuls the part of the sentence "including the elements referred to in paragraph 2" in the fifth sentence of Article 5(1) of Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, Article 5(2) of that directive and the part of the sentence "provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage" in Article 5(3) of that directive.

Finally, **even a detailed directive containing significant omissions** - for example, by failing to address particular sectors of economic activity - could once again **serve as a justification for incomplete implementation or inadequate protection.** Moreover, if such a directive were adopted without a sufficient degree of political consensus, it might encounter difficulties similar to those experienced by Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, whose implementation gave rise to at least eight infringement proceedings against Member States.

Under the principle of proportionality, the establishment of universal maximum or minimum temperature thresholds would raise difficulties. As noted above, **there appears to be no need for a new European directive to regulate this issue, given that several existing EU directives already address thermal conditions in the workplace and that a range of internationally and nationally recognised thermal indices already provides reliable and scientifically robust methods for assessing heat exposure**. Accordingly, any future proposal to establish EU-wide maximum or minimum temperature thresholds triggering specific employer obligations should be subject to - and capable of satisfying - a rigorous proportionality assessment, particularly as regards the requirement of necessity. For such legislation to be valid, it would have to be demonstrated not only that it pursued an objective of general interest recognised by EU law, but also that it was both appropriate and necessary to achieve that objective. Since occupational safety and health falls within the sphere of shared competence, Union action in this field is permissible only where the objectives pursued cannot be sufficiently achieved by the Member States acting individually. The Union must therefore demonstrate that its intervention is both necessary and objectively justified in comparison with national regulatory action.

One of the classic contexts in which the principle of proportionality operates is legislative interference with the individual's sphere of freedom, that is, with the exercise of fundamental rights. In certain circumstances, a new directive on extreme temperatures could likewise interfere with the **freedom to conduct a business**, as guaranteed by Article 16 of the Charter of Fundamental Rights of the European Union. Admittedly, one of the fundamental objectives of labour law is to limit the employer's managerial prerogatives to safeguard workers' dignity and fundamental rights. Even so, any restriction on the freedom to conduct a business must itself comply with the principle of proportionality Indeed, Article 52(1) of the Charter provides that limitations on the exercise of the rights and freedoms recognised therein may be imposed only if they respect the principle of proportionality, are necessary, and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

The issue is by no means merely theoretical. In a controversial decision delivered on 12 January 2002, the French *Conseil constitutionnel* declared unconstitutional Article 107 of the Social Modernisation Act of 17 January 2002 (Loi n° 2002-73 du 17 janvier 2002 de modernisation sociale) on the ground that, in regulating dismissals for economic reasons, it imposed a disproportionate restriction on the freedom to conduct a business. According to the *Conseil constitutionnel*, the contested provision gave rise to a conflict between two constitutional rights: the freedom to conduct a business, on the one hand, and the right to work, on the other. Resolving such a conflict requires the legislature to strike a fair balance between the competing constitutional interests. Although constitutional requirements may justify restrictions upon one fundamental right to protect another, the legislature's discretion is not unlimited. Any limitation must not constitute a disproportionate or manifestly excessive interference with the freedom to conduct a business in relation to the legitimate objective pursued. The decision of the French *Conseil constitutionnel* therefore illustrates how proportionality review may render certain legislative policy choices constitutionally untenable.

A further manifestation of the principle of proportionality is found in the final sentence of Article 153(2)(b) TFEU, which provides that **directives adopted by the European Union "shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings"**. This provision may itself be regarded as a concrete expression of the principle of proportionality. In the same vein, the final paragraph of Article 5 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality provides that: "Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved".

Against this background, certain proposals may raise concerns under the principle of proportionality. One example would be the creation of a 'climate leave' entitlement financed exclusively by employers. Such a measure could impose significant financial and organisational burdens, particularly on small and medium-sized enterprises, and would therefore require scrutiny as to whether it satisfies the requirements of necessity and proportionality.

Beyond the principles of subsidiarity and proportionality, it is also necessary to consider a number of other general principles enshrined in EU law, whether in the Treaties or in the case law of the Court of Justice, as well as principles deriving from the legal systems of the Member States, which, taken together, contribute to safeguarding legal certainty, the legitimate exercise of economic activity and the coherent balancing of competing fundamental rights. A specific directive on extreme temperatures could, depending on its content, give rise to tensions with several of these principles.

One such principle is the long-established maxim *ad impossibilia nemo tenetur* (Digest 50.17.185), according to which **no one is bound to perform the impossible**. This general principle of law would be called into question if employers were required to guarantee workers' safety and health in circumstances that lie wholly or partly beyond their effective control. Such situations may arise, for example, where work is carried out in premises or facilities owned or managed by third parties, in public spaces, or in outdoor environments where climatic conditions cannot be materially altered by the employer. Although employers are unquestionably under a duty to adopt all reasonable preventive measures, that obligation cannot reasonably be interpreted as requiring them to eliminate risks that are objectively unavoidable or impossible to control.

Likewise, **occupational safety and health obligations should not be framed in such a way as to compel employers to infringe other rights protected under EU law.** The pursuit of a high level of worker protection must therefore be reconciled with other fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union. This is particularly true of **the rights to privacy and the protection of personal data** enshrined in Articles 7 and 8 of the Charter. For example, compliance with obligations relating to the prevention of heat stress may encourage the use of continuous physiological monitoring, wearable devices capable of recording body temperature or heart rate, geolocation systems, or AI-assisted surveillance technologies. While these tools may enhance occupational safety, they also entail the processing of highly sensitive personal data and may result in intrusive forms of workplace monitoring. Any regulatory framework requiring or encouraging their use would therefore have to ensure that the collection and processing of personal data remain strictly necessary, proportionate and accompanied by appropriate safeguards, in accordance with the Charter and the General Data Protection Regulation (GDPR).

Finally, **consideration should also be given to the practical implications of situations akin to a state of necessity, in which employers may find themselves unable simultaneously to comply with all applicable legal obligations.**

Circumstances may arise in which compliance with mandatory temperature thresholds would require the suspension of production or the interruption of essential services, while alternative measures could themselves create conflicts with other legal requirements, like environmental, energy-efficiency, public safety or noise-control legislations. A well-designed regulatory framework should therefore recognise that occupational safety and health obligations do not operate in isolation but must be interpreted and applied in a manner that allows for a reasonable reconciliation of competing legal duties. Otherwise, employers may be placed in situations where full compliance with one legal obligation necessarily entails the breach of another; an outcome that would undermine both legal certainty and the coherence of the legal system.

To conclude, considering the diversity of climatic conditions, national legal systems and workplace practices across the European Union, the adoption of a specific legislative instrument on extreme temperatures does not appear to be either necessary or appropriate, particularly when examined against the constitutional requirements of subsidiarity and proportionality. The Framework Directive, together with the individual occupational safety and health directives adopted pursuant thereto, already provides a sufficiently comprehensive legal framework for addressing occupational risks associated with heat exposure resulting from climate change. Their effectiveness over more than three decades of application suggests that the existing legislative framework should be further developed and complemented by non-binding instruments, such as EU technical guidance or a Council Recommendation, rather than by the adoption of a new directive.

This position has consistently been supported by the Employers' Interest Group within the Advisory Committee on Safety and Health at Work (ACSH). By contrast, both the Governments' Interest Group and the Workers' Interest Group have advocated the adoption of a specified directive on extreme heat. Ultimately, however, the debate is not simply about the desirability of further Union action in response to climate change. Rather, it concerns whether the adoption of a directive would satisfy the constitutional conditions governing the exercise of EU legislative powers. The crucial issue is whether such an instrument would genuinely provide more effective protection for workers than the existing regulatory framework or whether its principal added value would lie in expressing the European Union's political commitment to combating the consequences of climate change. Significantly, some of the academic literature advocating a particular directive expressly acknowledges its symbolic and institutional dimension[38].

There can be little doubt that the European Union has a legitimate and important role to play in promoting high standards of occupational safety and health and in supporting adaptation to climate change. However, political objectives, even legitimate, cannot in themselves justify the exercise of legislative competence. Under Article 5 TEU, Union action must remain within the limits of the competences conferred upon the Union and must comply with the principles of subsidiarity and proportionality. Legislative action cannot therefore be justified solely because it conveys a strong political message or demonstrates institutional commitment to a pressing social challenge. If the overriding objective is to ensure effective protection for workers against occupational risks arising from extreme temperatures, the analysis should remain firmly anchored in legal rather than political considerations. The decisive question is not whether a new directive would enhance the visibility of Union action, but whether it would constitute a necessary, proportionate and constitutionally legitimate exercise of Union competence capable of providing more effective protection than the legal framework already in force. A genuine commitment to workers' protection - one that avoids purely symbolic or rhetorical legislative initiatives - requires that legal reasoning, rather than political aspiration, ultimately determine the choice of the appropriate regulatory instrument.

[38] Thus, some authors argue that: "A binding directive does more than establish rules; it sends a clear political and institutional signal that occupational heat is a serious hazard demanding systematic prevention. It ensures that risk assessments, work organisation, rest periods, hydration strategies, and acclimatisation protocols are not merely recommendations, but enforceable requirements. The EU must use legislation to ensure that recognition of the risk translates into real protection, not empty rhetoric". Cfr. Marouane Laabbas-el-Guennouni, Marouane; Flouris, Andreas; Salas, Sergio; Schneider, Sebastian; Schooneveldt, Marike; Ivanov, Ivan and Theodori, Dimitra, "Will the European Union protect workers from deadly heat?", February 06, 2026, and, more generally, on the proposal for a directive, Laabbas-el-Guennouni, Marouane, and Andreas D. Flouris, Andreas D., Climate change and workers' health. Protecting workers against heat and other climate-related hazards, European Trade Union Institute, Report 2026.07, Brussels, 83 pp.

5. Main conclusions

The analysis undertaken in this study leads to a few conclusions concerning both the need for further EU legislative action and the appropriate regulatory response to occupational risks arising from extreme temperatures. The main findings may be summarised as follows:

1. **Climate change is a reality that manifests itself in various extreme weather events.** These events can occur, especially during the winter months, like torrential rains, tornadoes, hurricanes, or extreme cold waves; conversely, during the summer months, they can take the form of dreaded heatwaves. Indeed, **climate change has transformed** extreme temperatures from an occasional environmental phenomenon **into a structural challenge for occupational safety and health.** Among the most important extreme weather events are heatwaves, which are becoming more frequent, intense and longer lasting, exposing an increasing number of workers to risks that affect not only their health, but also productivity, business continuity and the sustainability of labour markets. There can therefore be little doubt that preventing occupational risks arising from extreme temperatures constitutes a legitimate public objective and one that deserves an effective legal response.

2. The central question addressed in this study, however, is not whether workers should be better protected, but rather whether the adoption of a specific European Union directive represents the most appropriate legal instrument for achieving that objective. That **question cannot be answered solely by reference to policy considerations or the desirability of demonstrating the Union's commitment to combating climate change.** It must instead be examined within the constitutional framework governing the exercise of Union competences, and in the light of the principles of conferral, subsidiarity and proportionality laid down in Article 5 TEU.

3. The analysis undertaken suggests that **the existing EU occupational safety and health acquis already provides a sufficiently broad legal basis for addressing risks associated with extreme temperatures.** The Framework Directive establishes a comprehensive preventive system founded upon risk assessment, the employer's general duty to ensure workers' safety and health and the adaptation of preventive measures to changing circumstances and working conditions. This framework is complemented by numerous individual directives governing workplaces, construction sites, personal protective equipment, vulnerable workers and other specific matters. Properly interpreted and effectively enforced, these instruments can address occupational risks associated with climate change without the need for an additional directive specifically devoted to extreme temperatures.

4. The principle of subsidiarity does not appear to support further legislative harmonisation in this field. The diversity of climatic conditions, geographical realities, economic sectors, occupations and national legal systems across the European Union makes it **difficult to identify a genuine European added value that could justify the adoption of a uniform legislative instrument.** Extreme temperatures do not affect all Member States, regions, sectors or categories of workers in the same manner. Many of the preventive measures required are therefore necessarily context-specific and may be more effectively designed and implemented at national, regional or even local level.

5. This conclusion reflects a broader distinction between climate adaptation and the traditional logic of internal-market harmonisation. Whereas market integration frequently requires regulatory uniformity to remove barriers, prevent distortions of competition or facilitate the exercise of the fundamental freedoms, effective climate adaptation often depends upon regulatory differentiation. **The existence of a common European challenge does not necessarily imply the existence of a single appropriate regulatory solution.** In the field of extreme temperatures, common objectives may be better pursued through measures adapted to local climatic, economic, occupational and institutional conditions.

6. The principle of proportionality leads to a similar conclusion. A directive drafted in general terms would risk adding little to the existing legal framework and might encourage **downward harmonisation** in Member States that already provide higher levels of protection. Conversely, an excessively detailed directive would be liable to interfere with matters more appropriately regulated at national or subnational level, thereby exceeding what is necessary to attain the objective pursued. Moreover, any new legislative instrument would have to reconcile worker protection with other rights and interests recognised by EU law, including the freedom to conduct a business, privacy and the protection of personal data, environmental and energy obligations, and the need to avoid disproportionate administrative and financial burdens, particularly on small and medium-sized enterprises.

7. The comparative analysis presented in the Annex further demonstrates that effective protection against occupational risks arising from extreme temperatures depends less upon the adoption of new legislation than upon the quality of implementation and enforcement. **The experience of several Member States shows that general preventive obligations can be combined with sector-specific technical guidance, social dialogue, heat-warning systems, organisational measures, technological innovation, urban adaptation policies and targeted public investment.** Such measures can provide substantial protection while remaining responsive to differences in climate, productive structures, working methods and institutional capacity.

8. Comparative evidence also supports a **flexible and multilevel model of climate adaptation.** The European Union may establish common objectives, facilitate coordination, fund research and innovation, promote the exchange of best practices and issue technical guidance. Member States and regional or local authorities may then adopt measures tailored to their climatic and socioeconomic circumstances, while employers and the social partners translate those measures into workplace-specific prevention policies. This distribution of responsibilities is more consistent both with the territorial nature of climate risks and with the constitutional architecture of the European Union than a single, detailed harmonising directive.

9. Accordingly, **the most appropriate role for the European Union** is not necessarily to legislate further, but **to enhance the effectiveness of the existing legal framework.** This may involve, *inter alia*, guidance through EU-OSHA, promoting research and the dissemination of good practices, facilitating financial support for workplace adaptation and improving cooperation between Member States. Soft-law instruments, together with more effective enforcement of existing obligations, may deliver greater practical benefits than an additional legislative instrument whose necessity and constitutional justification remain uncertain.

10. Ultimately, the debate surrounding a possible directive on extreme temperatures raises a broader constitutional question concerning the future development of EU social and climate policy. The urgency of responding to new environmental and social challenges cannot justify an expansion of Union legislative action beyond the limits established by the Treaties. **Political ambition and institutional symbolism, however legitimate, cannot substitute for the constitutional conditions governing the exercise of Union competences.** The protection of workers against the consequences of climate change undoubtedly requires ambitious public action, but that ambition should be measured not only by the quantity of legislation adopted, as the effectiveness, coherence and constitutional legitimacy of the regulatory response is also important. Within the constitutional order of the European Union, effective worker protection and respect for the principles of conferral, subsidiarity and proportionality are not competing objectives, rather mutually reinforcing requirements. Their joint observance offers the most reliable means of ensuring that future European action is not only politically desirable, but also legally sound and practically effective.

Annex: Measures taken by Member States against climate-related risks

As indicated in point 3.2 of Chapter 3, concerning the necessity criterion inherent in the principle of subsidiarity, this annex now provides a concise, non-exhaustive overview of the way Member States are already acting to protect workers against occupational risks arising from adverse weather events, particularly extreme temperatures. To that end, it will first examine the national models for protection against climate-related risks (1), followed by the reference values for extreme temperatures (2), and, finally, the most frequent measures implemented by Member States (3).

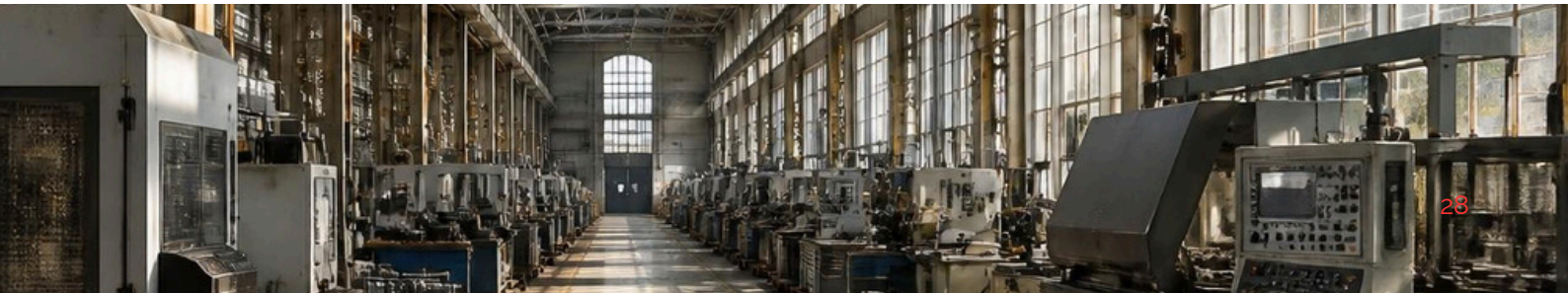
1. National models for protection against climate-related risks

An analysis of national health and safety frameworks shows that **most Member States of the European Union are already addressing the occupational risks arising from extreme weather events linked to climate change.** It is therefore worth examining the extent to which these Member States have developed or supplemented the general obligations arising from European legislation, i.e. Directive 89/391 and other specific directives.

Although each country is in a different situation, the starting point is the same, as all Member States have transposed European occupational health and safety legislation into national law through legislation on the prevention of occupational risks. Even though it sets minimum standards, this national legislation (like Directive 89/391) establishes the employer's general duty to protect workers from all occupational risks, which implicitly includes risks arising from extreme weather events; these must be specifically evaluated as part of the risk assessment. Furthermore, all countries have been adopting supplementary measures that are not legally binding on employers, for example, guidelines and recommendations.

Nevertheless, **in recent years**, some countries have begun to **explicitly address occupational risks arising from such weather phenomena, either through binding regulations or mere recommendations. The first group of countries** includes some of those most affected by these phenomena, such as **Belgium, Malta, Greece or Spain**[39], which have chosen to directly modernise their national labour legislation. The aim is to establish, in a binding manner, specific protective measures for workers against some of these extreme weather events, in particular heatwaves, torrential rain and flooding.

[39] In the case of Spain, Royal Decree-Law 4/2023, of 11 May (entitled: adopting urgent measures in the areas of agriculture and water in response to the drought and the worsening conditions in the primary sector resulting from the armed conflict in Ukraine and weather conditions, as well as measures to promote the use of public land transport by young people and to prevent occupational risks during periods of high temperatures), introduces a Sole Additional Provision to Royal Decree 486/1997, of 14 April, which lays down the minimum health and safety requirements in the workplace. According to this new Additional Provision, "when work is carried out outdoors and in workplaces which, due to the nature of the activity, cannot be enclosed, appropriate measures must be taken to protect workers from any risks associated with adverse weather conditions, including extreme temperatures".



As a general assessment, these new specific protection regulations are varied and diverse in terms of 1) how they affect existing legislation, as some regulations amend the previous ones whilst others merely supplement them; 2) the number and type of regulations affected, whether just one regulation, such as that on occupational risk prevention or that on labour legislation, for example, the Workers' Statute in Spain, or both of them; 3) whether or not they are coordinated with regulations in other legal fields, for example, environmental regulations, health regulations or those relating to the public health system, civil protection and emergencies; 4) their formal status, as it can be an ordinary law or decree in Spain, a ministerial order in Greece or regional ordinances in Italy; 5) their possible content, e.g. setting maximum temperature limits and/or protective measures; 6) the circumstances triggering the application of the measure, which can be a specific weather event or a temperature threshold; 7) their sectoral scope, as the type and number of economic sectors affected can vary, as it happens in Malta; 8) their geographical scope, for example, national in Spain and regional in Italy; and 9) its period of validity, which may be temporary, as in Greece, or permanent, in Spain.

Within this reformist framework, in some countries **new binding standards are introduced through collective bargaining**, which may serve as the sole avenue for reform or as a complementary approach to amendments to national legislation. These clauses in collective agreements, insofar as they are negotiated by the social partners - trade unions and employers' organisations - have two characteristics. On the one hand, they are more likely to be complied with and put into practice; on the other, they allow the protective measures adopted against climate-related risks to be better tailored to the specific sector and company concerned.

Spain is a case in point of a country that uses collective bargaining as a complementary means of reforming state legislation. In Spain, the national legislature has established, in a recent reform of 2024, an obligation on the social partners to agree, through collective bargaining, on 'action protocols setting out risk prevention measures specifically relating to responses to disasters and other adverse weather events' (Article 85.1 of the Workers' Statute)[40]. However, no penalties are provided for in the event of non-compliance with this legal obligation. These protocols, which may form part of the company's risk assessment plan or health and safety plan, must identify critical tasks and the corresponding protective measures for each risk alert issued by the National Meteorological Agency[41].

In Italy, it is worth highlighting the collective agreement for the national transport and logistics sector (2024-2027), which requires employers to assess the occupational risks faced by workers (drivers and non-drivers), taking gender differences into account, and to pay attention to alerts issued by the Civil Protection service. Specific protective measures include reducing the workload and the number of routes or suspending work on affected days and areas (Articles 20 and 46).

Furthermore, in both models of reforming countries (through state legislation or collective bargaining), non-binding measures continue to be reinforced through action protocols, recommendations or information campaigns by various national and international bodies.

In contrast to this 'hard and soft law' model, **the second group of countries** mentioned is also responding to climate change **by adopting mainly non-binding measures.** Consequently, these new risks are addressed through the modernisation or development of new practical guidelines and action protocols, information campaigns and awareness-raising initiatives on these climate risks, or other support tools, such as information apps or emergency hotlines.

[40] This obligation was introduced by the Second Final Provision of Royal Decree-Law 8/2024, of 28 November, adopting urgent supplementary measures within the framework of the Immediate Response, Reconstruction and Recovery Plan in response to the damage caused by the Isolated High-Level Depression (DANA) in various municipalities between 28 October and 4 November 2024.
[41] As an example of this obligation, which reinforces that already established in Royal Decree-Law 4/2023, the VII General Collective Agreement for the construction sector (Resolution of the Directorate-General for Labour of 6 September 2023; Official State Gazette of 23 September) states, in its preamble, that the organisations signing this Agreement hereby undertake, with immediate effect, a protocol which, in relation to the matter indicated, serves as a practical, straightforward and informative guide, summarising the obligations and recommendations to advise companies and workers on how to combat, reduce and mitigate the harmful effects of what are known as 'heatwaves'. Other protocols are broader in scope regarding the meteorological phenomena they cover, and may include heavy rain, flooding, strong winds, thunderstorms, snowfall and low temperatures or, indeed, earthquakes and seismic activity.

These **non-binding instruments** tend to 1) be promoted by national (ministries of labour), regional (autonomous communities) or local (town councils) government authorities, occupational safety and health institutes (OSH Institutes), the Labour and Social Security Inspectorate, or trade unions; and 2) be based on existing international action protocols. As with mandatory regulations, these non-binding instruments also vary greatly in form and scope, although there is overlap between the two models in terms of content, as the specific protective measures are usually the same or similar. Examples of countries that traditionally have followed this approach include **Nordic countries** and **some Eastern European countries**[42].

An intermediate model might be that of Italy, which is responding to climate risks with 'soft law' measures, combined with 'hard law' measures that are becoming increasingly significant. In July 2025, the main trade union and employer organisations (with the support of the Ministry of Labour and Social Policies and other social institutions, such as INAIL and ISS/CNR) signed a 'Framework Protocol for the adoption of measures to mitigate occupational risks related to climate emergencies in the workplace', particularly heat, solar radiation and floods[43]. Subsequently, the protocol was transposed at national level through Ministerial Decree No. 95/2025, a regulatory instrument that is unique in its content, as it does not contain specific rules but only general guidelines on the matter. This protocol is based on Article 2087 of the Civil Code and Article 18 of Legislative Decree 81/2008 (the main legislation on health and safety) and, although it does not create new primary legislation, it aims to reinforce employers' legal obligations regarding protection in the field of occupational risk prevention, whilst providing specific tools to tackle heatwaves across the various productive sectors. However, to be effective, the content of the protocol still needs to be fleshed out, either through agreements on best practice or through collective agreements at different territorial levels. In this way, it is left to the social partners, particularly employers, to put in place concrete measures against climate-related risks.

Alongside this, regional authorities in some Italian sectors have been responding to heatwaves with specific regulations that set, in a binding manner, the maximum temperatures above which workers must be protected.

2. Reference values for extreme temperatures

Most protective measures against climate-related risks are implemented when such events occur. In the case of heatwaves or cold spells, the first issue to be resolved is the temperature threshold at which the employer must implement these measures. On this point, a new European directive to address this issue appears unnecessary, as there are already European directives relating to workplace temperature, as well as **various international and national indices** that provide a reliable framework.

Regarding European legislation, it is worth mentioning Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile constructions sites and Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace. Both Directives specify that, during working hours, the temperature must be 'suitable' for the human body, considering 'the working methods employed and the physical demands placed on workers'. Furthermore, "the temperature of rest areas, on-call staff rooms, toilet facilities, canteens and first-aid rooms must be appropriate to the specific use of those premises"[44]. These requirements have been transposed into national legislation, and EU Member States may lay down more provisions in this regard.

[42] See Study 'The effects of extreme weather conditions on workers' health and safety', cit., p. 79.
[43] Guaglianone, Luciana. 'The consensual resolution of labour disputes. Social dialogue', Revista General de Derecho del Trabajo y de la Seguridad social, no. 72, 2025, pp. 606 et seq.
[44] Directive 92/57/EEC, in Annex IV: Part A, point 7, and in Part B, section 1, point 4; Directive 89/654/EEC, in Annex I, 7.1 and 7.2.

To consider concrete reference values for extreme temperatures, it should be noted that many countries make use of the well-known Wet Bulb Globe Temperature (WBGT) index, as a benchmark; this is utilised in work environments to assess the heat stress to which workers are exposed to direct sunlight, taking into account ambient temperature, humidity, wind speed, the angle of the sun and solar radiation. In other countries, different indices are employed, such as the Universal Thermal Climate Index (UTCI), which assesses how the human body experiences the environment. The UTCI uses an advanced physiological model to determine the equivalent temperature, considering air temperature, humidity, wind speed and solar radiation. These indices are often combined with the warning system - orange and red alerts - operated by national meteorological services, as is the case in **Italy and France.**

The risk of heat stress for a person exposed to a hot environment depends on the body's heat production, resulting from physical activity and the characteristics of the surrounding environment, including clothing and work equipment, which influence heat exchange. As examples of good practice, some countries set a maximum temperature above which it is mandatory to implement measures to protect workers. These national standards allow for adaptation to the specific climatic conditions of the area and the nature of the work to be carried out; thus, the figures may vary depending on the economic sector, whether the work is carried out indoors or outdoors, the type of activity, and the level of exertion required to perform it.

As an example of the above, it can be seen that 1) **in Belgium**, based on the WBGT index, various maximum temperature limits are set - for indoor and outdoor work- depending on the type of work carried out: 29°C, 26°C, 22°C and 18°C, depending on whether the work is light, moderate, heavy or very heavy, respectively[45]; 2) **in Spain**, the limits set, for indoor environments, are 25°C or 27°C, depending on whether the work is physical but light (in workshops) or sedentary (in offices)[46]; and, for outdoor environments, the orange and red alerts issued by the National Meteorological Agency must be taken into account; and 3) **in Germany**, the applicable technical regulations for the workplace, only for indoor environments[47], stipulate that the temperature must not exceed 26°C and that protective measures must be taken once the temperature reaches 30°C; furthermore, if the temperature exceeds 35°C, work is only permitted with special heat-protective equipment.

In other countries, although no mandatory maximum temperature is set, the labour inspectorate or other bodies responsible for occupational risk prevention, such as the national institute for occupational health and safety, draw up specific guidelines which may require measures to be adopted once a certain threshold is reached.

It is becoming increasingly common to provide employers and workers with new technological tools, such as web applications that alert users when a set temperature (high or low) is reached - serving as a reference point for action - or thermal monitoring wristbands and WBGT meters, which assess the level of heat stress experienced by the worker or in the environment, respectively, and trigger alerts to activate protective measures, e.g. **Austria**[48], **the Netherlands and Italy**[49].

[45] Law of 4 August 1996 on well-being at work and the Code on Well-being at Work (Book V, Title I, Chapters V and subsequent chapters).
[46] See Annex 3 of the Royal Decree 486/1997.
[47] SR A.3.5 (Arbeitsstättenregel A3.5). The ideal temperature depends on the activity and the level of physical exertion: 1) very light work (sitting, without intense mental effort): target temperature of +20°C to +22 °C; 2) light work (light movement or standing): target temperature of +19°C to +21°C; 3) moderate work (constant standing or moderate physical exertion): target temperature of +16°C to +19°C; and 4) heavy work (intense physical activity): target temperature of +12°C to +16°C.
[48] In Austria, a heat app (called Heat.App) is used to monitor extreme weather and alert outdoor construction workers in a timely manner when the critical temperature of 32.5°C is reached.
[49] In Italy, the National Institute for Insurance against Accidents at Work (INAIL), in collaboration with the National Research Council (CNR), developed the Worklimate WBGT-based app

3. Most frequent protective measures implemented by Member States

Employers are obliged to carry out a specific assessment of weather-related occupational risks, which must be included in the company's risk prevention plan. This assessment must consider not only the adverse weather phenomena themselves, but also the characteristics of both the work being carried out and the worker, including their known biological condition. On that basis, to avoid the identified risks, appropriate measures must be designed to protect workers. In this regard, **a European directive setting minimum standards does not appear necessary either, as Member States are already adopting - via hard or soft law - a wide range of measures** (individual or collective, sector-specific or general), which are always tailored to the circumstances of each case. Among these measures, the following are worth highlighting, without claiming to be exhaustive[50]:

1) **Preventive measures** taken prior to and concurrently with the occurrence of the extreme weather event. Such measures typically consist of **information, training and awareness-raising activities** regarding the potential hazards to be faced, their likely consequences for a person's health and life, and the available protective measures, for example, emergency procedures in the event of heatstroke. These activities generally follow the standard legal framework applicable to any other training programme, in terms of the target audience, the working-time status of the training, the assessment of its effectiveness, and the formal certification of completion.

These protective measures taken prior to the extreme weather event or, at the very least, prior to the days of greatest intensity, may include - particularly in the case of cold and heatwaves, periods of high humidity, strong winds or heavy rain - a process of gradually **acclimatising** the individual to that extreme working environment. Acclimatisation involves the repeated - generally over one or two weeks - and gradual exposure of the individual to the weather stimulus, which will lead to their physiological adaptation to it, thereby helping to prevent or reduce certain health risks.

2) Measures **to reorganise staff working patterns**, such as regular breaks[51], a reduction in workload or in the required level of performance, changes to shifts, staff rotation, a reduction or adjustment to working hours, for example, switching to a 'tropical' timetable, where work begins in the early hours of the morning, or even a ban on carrying out certain tasks during the hottest hours, for example, from 12 noon or 1 pm until 4 pm or 5 pm, or during the coldest periods or when the risk posed by the relevant weather event is greatest, such as, hurricanes[52].

3) Measures involving the **temporary suspension of work** and even of the employment contract, with financial support - pay or unemployment benefit— for the workers affected. On occasion, an extreme event prevents a worker from travelling to their place of work- e.g. damaged roads and no public transport - or from performing their duties there for a certain period, as might happen if, for example, a hurricane causes damage or subsequent flooding at the workplace. In this case, in 2024, the Spanish legislature introduced, in Article 37.3.g) of the Workers' Statute (WS)[53], a specific paid leave entitlement - at the employer's expense - of up to four days, for situations where it is "impossible to access the workplace or to travel along the routes necessary to reach it, as a result of travel recommendations, restrictions or bans imposed by the competent authorities, as well as where there is a situation of serious and imminent risk, including those arising from a disaster or adverse weather conditions", such as a wildfire[54].

[50] EU-OSHA Heat at work - guidance for workplaces, 1st June 2023, already cited.
[51] In Belgium, for breaks, recommendations are based on ISO indices, advice from occupational physicians, or supplementary guidelines in the Code. For instance, a WBGT of 29.5 for light work or 23 for heavy work may require a 15-minute break every hour, while a WBGT of 30 or more for light work or 24.5 for heavy work would necessitate 30-minute breaks every hour.
[52] As an example of such a ban, in Spain, current legislation stipulates that, in cases where the worker's safety cannot otherwise be guaranteed, "preventive measures shall include a ban on carrying out certain tasks during those hours of the day when adverse weather conditions prevail". See New Sole Additional Provision of Royal Decree 486/1997 of 14 April, cited above, in relation to Article 23 of Royal Decree 1561/1995 of 21 September, on special working hours.
[53] Amendment introduced by Royal Decree-Law 8/2024 of 28 November, cited above.
[54] See also Royal Decree-Law 20/2026 of July 29, establishing urgent labour and social protection measures against forest fires. These extraordinary and urgent labour and Social Security measures are aimed at workers and the companies for which they provide services when they are affected by forest fires that lead to the adoption of civil protection measures affecting the population, such as evacuations, access restrictions, lockdowns, or other similar measures, until the end of the 2026 high-risk annual forest fire season.

After the four days, the leave will be extended until the circumstances justifying it cease to exist; however, from that point onwards, the employer may suspend the employment contract or reduce working hours on grounds of *force majeure* in accordance with the terms set out in Article 47.6 of the WS. In such a case, the employer will no longer bear the financial burden of the inability to resume work, and the employee is not left unprotected either, as they will receive unemployment benefit paid by the public social security system. In these cases, the employee's benefit takes effect from the first day on which the employer notifies the suspension due to the weather-related event, and the daily amount is calculated by applying a percentage to the maximum daily wage. Such unemployment benefits already exist in **Belgium**[55], the **Netherlands**[56]and **Austria**[57].

Another alternative to contractual suspension, which is less costly for the social security system, is for the employer to require employees to work remotely or from home, provided that the nature of the work and the state of the communication networks allow it[58]. In such a case, this would not be voluntary for the employee.

4) **Technical measures** in the workplace, such as a change to the workplace location or its redesign to reduce exposure to extreme weather events, for example, establishing shaded areas for working; the installation of climate control systems, as ventilation or heating, particularly indoors, or the adaptation of machinery used to improve worker safety and protection, which may involve mechanical aids to reduce physical exertion.

5) **Personal protective equipment** (PPE), with clothing and footwear suited to the weather event; for example, during a heatwave, cooling clothing and a cooling cap or helmet, a helmet neck cover, sunglasses, fans and even sun cream should be provided to help cool and protect the body. It is also common practice to ensure continuous hydration throughout the working day by providing water free of charge.

6) **Occupational health services**, including a health monitoring unit. Where, despite protective measures taken before and during the extreme weather event, a residual risk persists, employers may need to monitor the health of workers exposed to it. It may also be appropriate to put in place specific measures to help workers recover from the effects of the extreme weather event outside working hours, which may incorporate medical or psychological treatment.

[55] See: In Belgium, during the floods in Wallonia in the summer of 2021, the so-called 'temporary unemployment due to force majeure caused by exceptional weather conditions' scheme covered between 60 and 80 per cent of wages. https://settlinginbelgium.be/en/do-business/notification-of-temporary-unemployment

[56] The Dutch working conditions Act (Arbowet) (passed in 1980, amendments in 2017 and 2020) requires employers to ensure safe and healthy working environments, which includes preventing "heat stress" (hittestress). In sectors, like construction and infrastructure, extreme weather (whether frost, severe storms, or extreme heat) can cause work to be legally halted, if is too dangerous or impossible to work safely outdoors. The halt of work is documented and officially logged. If work stops after a red alert, the worker is entitled to receive their salary; the Unworkable Weather Scheme provides financial compensation to workers.

[57] In Austria, if there are bad-weather conditions (the temperature in the shade exceeds 32.5°C, continuous or heavy rain or snowfall that disrupts work, frost and severe freezing that halts operations and other conditions, like high winds or storms that make working on construction sites a hazard), employers can initiate (as an option, not mandatory) a paid work stoppage and claim bad-weather compensation for the outdoor construction workers. The economic compensation is regulated under the Construction Workers' Bad Weather Compensation Act (BSchEG; passed in 1957, and amended in 2013 to include heatwaves), and it is about 60% of their hourly wage, for hours missed due to the heat (a waiting period of up to 3 hours may be required at the site for the weather to improve; if it does not, bad weather compensation can be applied). The compensation is reimbursed by the Construction Workers' Leave and Severance Pay Fund (BUAK) founded in 1946.

[58] This is provided for in Article 47.6 of the WS in Spain.

7) **Public financial support measures**, such as grants, loans and special funding schemes through the European Social Fund, to help businesses cover the financial cost of implementing measures to protect workers from climate-related risks, including the adaptation of workplaces or the interruption of work during the working day. This support is beneficial in spreading the financial burden of these measures, which can undoubtedly contribute to greater compliance with them. Countries offering this financial support **include Finland, France, Germany, Italy**[59], **Luxembourg**, **the Netherlands and Spain.**

8) All Member States have a **Labour Inspectorate** responsible for monitoring compliance with employers' obligations to protect workers from climate-related risks. The level of action taken by this body and the resources allocated to this task vary from country to country. In some countries (as in Italy or Spain), the Labour Inspectorate takes a proactive approach and designs specific informative, training and inspection campaigns to tackle the climate-related risks, placing particular emphasis on certain risks, such as heatwaves. In other western countries (for example, Poland), inspection activities are carried out only within the framework of general occupational risk prevention regulations, which include climate-related risks, or when a specific accident or complaint arises.

Furthermore, it is advisable that these measures to protect against extreme weather risks in the workplace and in the field of occupational risk prevention be designed in coordination with the public health, environmental and civil protection regulations of each sector and region. In this way, coordinated action can be taken on several fronts, which can enhance the effectiveness of the measures, as well as the sharing of their economic costs.

9) Finally, it is worth highlighting the role of **social dialogue** to tackle the risks derived from extreme weather events. In this regard, the collaboration of workers' legal representatives, including staff representatives, works councils, health and safety representatives, and trade unions is both positive and essential. Indeed, once these people have been informed and trained regarding these risks and the planned protective measures, they can assist in ensuring that workers implement and comply with them.

[59] In the event of work stoppages due to extreme events (floods, extreme heat or fires), companies can turn to the Ordinary Wage Guarantee Fund (CIGO) or, in the agricultural sector, to the Agricultural Wage Guarantee Fund (CISOA) to replace up to 80% of the worker's gross remuneration for the hours not worked.

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.

The European Employers' Institute's members include:

- European Tech & Industry Employers (Ceemet)
- European Banking Federation (EBF)
- European Chemical Employers Group (ECEG)
- EuroCommerce
- European Construction Industry Federation (FIEC)
- European Employers' Group of Professional Agricultural Organisations (Geopa)
- Association of Hotels, Restaurants & Cafés in Europe (HOTREC)
- SMEunited
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