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CONSULTATION DOCUMENT

Second phase consultation of the social partners under Article 154 of the Treaty on the Functioning of the European Union, on the protection of workers from risks related to exposure to chemical agents at work and to asbestos at work

{SWD(2021) 158 final}

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1. INTRODUCTION

The purpose of this document is to conclude the consultation process of the social partners at European Union (EU) level, in accordance with Article 154(3) of the Treaty on the Functioning of the European Union (TFEU), on the possible content of the envisaged Commission proposal concerning revisions of Directive 98/24/EC[1] on the protection of the health and safety of workers from the risks related to chemical agents at work (Chemical Agents Directive), the fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC[2], as well as Directive 2009/148/EC[3] on the protection of workers from the risks related to exposure to asbestos at work (Asbestos at Work Directive), and to ask whether they wish to enter into negotiations as provided for by Article 154(4) TFEU.

In the context of permanently changing world of work and broader policy developments, the Commission announced in the European Pillar of Social Rights Action Plan[4] that, subject to the outcome of the ongoing consultation of social partners, it will present legal proposals in 2022 to further reduce workers' exposure to hazardous chemicals, including asbestos. It will also present in 2021 a new EU OSH Strategic Framework for the period 2021-2027, aiming at maintaining and improving high OSH standards for workers across the Union, including by tackling new and traditional work-related risks such as hazardous chemicals.

It is to be noted that the European Parliament is preparing a legislative own-initiative report on asbestos (2019/2182(INL))[5]. A section of its draft report focuses on lowering the existing limit value for asbestos. That coincides with the scope of this consultation with regard to the Asbestos at Work Directive.

This initiative aims to enhance **the relevance and the effectiveness of the Chemical Agents Directive and Asbestos at Work Directive by establishing new EU limit values or revising the existing ones**.

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[1] Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work, (*OJ L 131, 5.5.1998, p. 11-23*)

[2] 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, (*OJ L 183 , 29.6.1989, p. 1-8*)

[3] Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work, (*OJ L 330, 16.12.2009, p. 28-36*)

[4] COM(2021) 102 final, 4.3.2021

[5] Draft report with recommendations to the Commission on protecting workers from asbestos

On 17 December 2020, the European social partners were invited to give their views on the possible direction of EU action in a first phase consultation as provided for under Article 154 TFEU. Following the responses received, the Commission is now launching a second phase consultation of the social partners on the envisaged content of possible proposals, as required under the Treaty.

This document brings together the main results of the first phase consultation and it sets out potential avenues for EU-level action. It is accompanied by an analytical document giving further background information and analysis on the problem that the Commission aims to address. It includes the objectives of the initiative, a summary of the results of the first phase consultation, a description of the regulatory framework at EU level and the situation in the Member States. It also covers the legal basis for EU action, the added value of EU action and the measures as well as their impact that could be considered as possibilities for EU action.

2. FIRST PHASE SOCIAL PARTNERS CONSULTATION

The first phase of the social partners' consultation addressed the approach regarding the revision of a limit value for asbestos under the Asbestos at Work Directive, and the establishment or revision of binding occupational exposure limit values for lead and its compounds and diisocyanates under the Chemical Agents Directive. The first phase of the social partners consultation closed on 11 February 2021.

2.1 WORKERS' ORGANISATIONS

Two trade unions replied to the first phase consultation, acknowledging the importance of the existing legislation. The European Trade Union Confederation (ETUC) replied on both revision of a limit value for asbestos and the establishment or revision of binding occupational exposure limit values for lead and its compounds and diisocyanates. The European Federation of Building and Woodworkers (EFBWW) replied in detail only concerning asbestos.

Possible improvements to the EU legal framework

In response to the consultation questions '*(1) Do you agree with the issues identified? (2) Are they accurately and sufficiently covered? (3) If so, do you consider that the EU should address this issue through a binding instrument?'* ETUC and EFBWW are of the opinion that the EU must take new legislative initiatives that are binding to Member States. Concerning question 3, ETUC gave detailed comments on each substance and EFBWW on asbestos.

Asbestos

The workers' organisations, while supporting the revision of the current occupational exposure limit value (OEL), requested a broader scope of action under the Asbestos at Work Directive and beyond.

ETUC and EFBWW proposed that the Directive is updated further than the current OEL. Among other things, they suggested widening the scope to include an updated list of all known forms of fibres with similar harmful effects on human health, to cancel the concepts of sporadic exposure and low intensity exposure, and of friable and non-friable asbestos

containing materials, and to prohibit the encapsulation and sealing of asbestos. Other suggestions were also made on different aspects[6], most of which are already covered by the Directive.

Apart from the aspects related to the revision of the Asbestos at Work Directive, ETUC and EFBWW suggested actions that largely go beyond the scope of safety and health at work policy area. Further details are given in the analytical document.

Lead and its compounds

ETUC, while in principle supporting reducing the current limit values, expressed views that the proposed biological limit value (BLV) in the scientific opinion released by the Committee for Risk Assessment (RAC) of the European Chemicals Agency (ECHA)[7] would be discriminatory for women at the workplace (see further details in the analytical document). Instead, they recommended the adoption of a BLV that in their opinion would guarantee equal treatment of women and men at work. In this regard, it would be useful to obtain views from the other social partners.

In addition, they put forward some general reflections concerning the need to improve workers protection from exposure to reprotoxic substances and concerning the Pregnant Workers Directive 92/85/EEC[8] in this context.

Diisocyanates

ETUC supported that binding EU OEL is needed to ensure minimum requirements for the protection of workers exposed to diisocyanates across the EU. At the same time, they expressed the view that this is the first time that an EU binding OEL would be established, with the main aim to prevent occupational asthma, for sensitisers. Therefore, they highlighted that this point should be discussed and agreed upon within the tripartite EU Advisory Committee on Safety and Health at Work (ACSH) where workers, employers and governments are represented.

Willingness to enter into negotiations

The workers' organisations believe that binding EU legislative action is needed on these issues and therefore sees no need to launch a negotiation procedure pursuant to Article 155

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[6] For example, provision of technical minimum requirements to lower the concentration of asbestos fibres; representative sampling of the personal exposure of the worker and more.

[7] Adopted RAC opinion

[8] Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *OJ L 348, 28.11.1992, p. 1–7*

TFEU concerning the revision of the Chemical Agents Directive and Asbestos at Work Directive to make progress on this.

ETUC indicates, however, that it might wish to discuss complementary issues with employers and seek convergent positions on certain questions, such as the best legal instrument to protect workers from the risk of exposure to substances that are toxic and affect reproduction or the need for a new methodology to be used to limit the volume of non-threshold substances at EU level.

2.2 EMPLOYERS' ORGANISATIONS

Three employers' organisations replied to the first phase consultation: BusinessEurope, SMEunited (European Association of Crafts and SMEs) and the European Construction Industry Federation (FIEC).

The employers' organisations supported the objective to effectively protect workers from exposure to hazardous chemicals, including by setting OELs at EU level, where appropriate. They consider this is in the interest of workers and businesses and contributes to a level playing field. However, they also raised some concerns about the approach taken when setting such values.

Possible improvements to the EU legal framework

Concerning the issues identified in the consultation paper, the employers' organisations supported the general direction of the Commission to a constant improvement of the protection of workers from exposure to carcinogens and mutagens and from risks arising from chemical agents at the workplace, subject to certain conditions. The process of limit values setting should be based on sound scientific evidence, technical and economic feasibility, socio-economic impact assessment and opinion of the tripartite ACSH, as it is done currently by the Commission.

Furthermore, they stressed that a lower limit value does not always mean better protection of workers, as it depends on the feasibility to measure it and for employers to actually implement it.

Business Europe and SMEunited stressed the need to assess the impact on small and medium-sized enterprises (SMEs), in particular on micro-enterprises, in terms of proportionality and feasibility of action, as well as to take account of sectoral differences.

Concerning the question on the binding instrument to be used for addressing the issues, SMEunited pointed out that, without a deeper analysis of the impact of the new values on crafts, SMEs and employers obligations, they cannot assess whether such an instrument would be appropriate.

Asbestos

The employers' organisations recognised that asbestos is a serious threat for workers, which needs to be addressed. BusinessEurope and SMEunited stressed that any revision of an OEL

must be based on sound scientific evidence and a thorough assessment of technical and economic feasibility and socio-economic impact, for which the role of ACSH is central.

BusinessEurope further emphasized that any review should be restricted to a possible amendment of the limit values and not touch any other provisions in the directives. They are also of view that the impact assessment scenarios already developed are based on the limit value in one Member State, which is based on a different analytical model than those used in other Member States. This should be taken into account when going forward, bearing in mind that analytical models have an impact on the limit values set.

BusinessEurope mentioned the need to take into account the widely used protective measures. In addition, they referred to the additional costs and particular challenges for SMEs, a change of measurement method, as a result of a lower limit value, would imply, i.e. additional analysis at workplaces and new requirements for personal protective equipment (PPE).

FIEC emphasized that the current EU legal framework is sufficient and does not support stricter occupational exposure limit values for the substances under consideration. They mentioned as well that the European Commission's action should focus more on preventive measures to eliminate or minimise risks, rather than setting new binding limit values.

SMEunited underlined that, before further tightening the limit, they would prefer a harmonised implementation of the existing OEL: for them, due to a very long delay of up to 40 years between exposure and occurrence of an asbestos-related disease, it is difficult to assess the current OEL and the impact on the protection of workers.

Moreover, they added that reinforcing technical and financial assistance support for homeowners to assess the presence of asbestos in their dwellings before carrying out renovation works would contribute to the reduction of the exposure risk of construction workers.

Lead and its compounds

BusinessEurope referred to the voluntary agreements put in place by industry to continuously lower the exposure levels, as far as technology allows it.

They stressed that OSH legislation at EU and national level already provides a good level of protection for workers and highlighted the importance of the existing binding OEL under the Chemical Agents Directive, together with other protective measures aside from the limit value.

They also highlighted the further protection provided by REACH, which not only restricts the use of lead and its compounds, but also includes obligations for training of workers.

SMEunited underlined that a concrete proposal on the new foreseen OEL should be submitted in order to better assess the impact on companies.

Diisocyanates

BusinessEurope, although agreeing with the existence of risks for workers, highlighted that the introduction of a new binding OEL would put additional obligations on employers not only to comply with the limit value, but also with the other protective measures in the

Chemical Agents Directive. They also stressed the importance of workers protection already provided under REACH through the restriction, as well as obligations concerning the training of workers. Moreover, they noted that the RAC in the framework of the restriction mentioned that the training of workers is the most effective way of reducing exposure and impact on workers.

BusinessEurope expressed the need for the EU to provide more information and analysis on how effective a binding OEL would be in addition to the existing restriction under REACH.

SMEunited is of view that a detailed analysis of the risks for diisocyanates justifying setting a limit value is missing. However, while in principle they did not oppose the introduction of a proportionate and feasible OEL for diisocyanates in indoor workplaces, for outdoor workplaces they considered that training requirements addressing the possible risks and hazards are sufficient.

Willingness to enter into negotiations

The employers' organisations considered that the existing preparatory procedures already involve social partners, including the ACSH consultations. Therefore, they do not want to launch a negotiation procedure pursuant Article 155 TFEU.

3 PROBLEMS RELATED TO WORKERS PROTECTION

3.1 Asbestos

Asbestos is a highly dangerous carcinogenic agent. Airborne fibres are very resistant and when inhaled could lead to mesothelioma, lung cancer and other serious illnesses.

Occupational cancer is the largest cause of work-related deaths in the European Union[9], being primarily caused by exposure to carcinogenic substances such as asbestos, with other causes being, for example, solar radiation and shift work. Occupational cancer is responsible for over 106 000 fatal cases per year in the EU[10][11]. Asbestos, for which there is no level of exposure below which the risk of asbestos-related disease can be eliminated, claims ~88 000 lives in Europe[12] annually, accounting for 55-85% of lung cancers at work. Mortality rates are

[9] Occupational cancer is, with a share of 52 %, the first cause of work-related deaths in the European Union, compared with circulatory illnesses (24 %) and injuries (2 %) and all other causes (22 %). EU-OSHA (2017)[(17)]

[10] EU figures date from before 2021, thus including the UK

[11] EU-OSHA (2017), An international comparison of the cost of work-related accidents and illnesses, available at: https://osha.europa.eu/en/publications/international-comparison-cost-work-related-accidents-and-illnesses/view

[12] EU + 14 countries (AL, AM, AZ, BY, GE, KZ, KG, MD, MK, RU, TJ, TM, UA, UK, UZ)

estimated to continue to increase until the late 2020s and 2030s[13]. Preliminary estimates of the external study indicate up to 6 million workers to be exposed to asbestos, with the major contribution being from workers in situations of sporadic and low intensity exposure[14].

Apart from the significant social and financial burden to those affected by the disease, including their families (in particular, due to long-term care), cancer is also associated with significant costs to society (e.g. loss of productivity, cost for social security systems). Recent estimations indicate that the cost of work-related cancers alone amounts to EUR 119.5 billion[15].

Although the use of asbestos is banned in the EU[16], there is a substantial legacy problem since it is still present in many older buildings that are likely to be renovated, adapted or demolished over the coming years, including through the Renovation Wave initiative[17], part of the European Green Deal[18].

A constant development in scientific and technical evidence in this area requires continued adaptation of the existing legislative framework to further improve workers protection and to ensure level playing field.

3.2 Lead and its compounds

Lead and its compounds are key occupational reprotoxicants[19], which can present two groups of different effects: effects on sexual function and fertility and effects on development of the foetus or offspring (developmental toxicity).[20] Lead accounts for around half of all occupational exposures to reprotoxic substances.

Estimations by extrapolation of the Finnish Biological monitoring (2012) data for EU values return a total of 373 000 workers exposed to lead and its compounds. The same exercise using the French SUMER database (2016/17) gives 1 350 000 workers exposed[21].

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[13] Working with asbestos in energy renovation (own-initiative opinion). https://www.eesc.europa.eu/en/news-media/news/workers-health-should-not-be-jeopardised-order-make-buildings-energy-efficient

[14] Study on collecting information on substances with the view to analyse health, socio-economic and environmental impacts in connection with possible amendments of Directive 98/24/EC (Chemical Agents) and Directive 2009/148/EC (Asbestos) - Interim report for asbestos

[15] EU-OSHA, The economics of OSH, 2017. Available at: https://visualisation.osha.europa.eu/osh-costs

[16] The manufacture, placing on the market and use of asbestos is banned in the EU through REACH Regulation. Regulation (EC) No 1907/2006

[17] https://ec.europa.eu/energy/topics/energy-efficiency/energy-efficient-buildings/renovation-wave_en

[18] https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

[19] https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8220&furtherPubs=yes

[20] For example, spontaneous abortion, stillbirth or impaired cognitive development of the conceived children.

[21] Study on collecting information on substances with the view to analyse health, socio-economic and environmental impacts in connection with possible amendments of Directive 98/24/EC (Chemical Agents) and Directive 2009/148/EC (Asbestos) - Interim report for lead and its compounds

The main sectors for industrial production and use of lead and its compounds are primary and secondary lead production (incl. battery recycling); battery, lead sheet and ammunition production; production of lead oxides and frits; lead glass and ceramics production.

The EU binding occupational exposure limit (OEL) and biological limit value (BLV) for lead and its compounds under the Chemical Agents Directive has not been updated for more than 20 years and therefore does not take into account the latest scientific and technical developments. In addition, limit values adopted at national level differ remarkably in Member States leading to disparities in workers protection and differing operating conditions for business.

3.3 Diisocyanates

Diisocyanates are skin and respiratory sensitisers (also called asthmagens) potentially causing occupational asthma and dermal occupational disease, which are allergic reactions that can occur due to exposure to such substances. They can cause a change in people's airways, known as the 'hypersensitive state'. Once the lungs become hypersensitive, further exposure to the substance, even at quite low levels, may trigger an attack.

Diisocyanates are widely used, for example, in the manufacture of polyurethane foams, plastics, coatings, varnish, two-pack paints and adhesives.

Preliminary data collected through consultation for the external study supporting the impact assessment[22] provides evidence of approximately 2.8 million workers currently exposed to diisocyanates, with the construction sector being the major contributor to this number.

In the absence of an EU level OEL, different limit values have been established at a national level in certain EU Member States.

4 THE NEED FOR EU ACTION

The OSH Framework Directive (89/391/EEC) lays down general principles for improving health and safety of workers and is complemented by individual and other related Directives, introducing also provisions related to exposure to dangerous chemicals.

The Asbestos at Work Directive (2009/148/EC), the Carcinogens and Mutagens Directive (2004/37/EC), the Chemical Agents Directive (98/24/EC), and the Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH'), are the main pieces of legislation for the protection of workers from exposure to carcinogens and mutagens and/or any hazardous chemicals.

The Asbestos at Work Directive, the Carcinogens and Mutagens Directive and the Chemical Agents Directive lay down particular minimum requirements in the area of protection of

[22] Study on collecting information on substances with the view to analyse health, socio-economic and environmental impacts in connection with possible amendments of Directive 98/24/EC (Chemical Agents) and Directive 2009/148/EC (Asbestos) - Interim report for diisocyanates

workers from exposure to asbestos, carcinogens and mutagens, and to hazardous chemicals at work including limit values.

When proposing binding limit values, the Commission draws on various sources of scientific advice. This advice serves as the basis for preparing Commission proposals in consultation with social partners and the tripartite Advisory Committee on Safety and Health at Work, and taking into account an analysis of social, economic and environmental impacts.

Rapid scientific developments and technological change play a crucial role in a better understanding of occupational hazards and exposures, and allowing potentially for better prevention and protection. Therefore, there is a need to regularly update the Directives with new or revised limit values.

Some Member States have reviewed the national limit values for asbestos, and for lead and its compounds. For diisocyanates, some have established national limit values.

However, the values often differ by orders of magnitude leading not only to unequal workers protection, but also to complex considerations for companies operating across the EU. The analytical document accompanying this consultation document provides more details regarding the situation in Member States.

The establishment and regular revision of EU-wide limit values reflecting the latest available scientific evidence is an effective way to ensure the same minimum level of workers protection in all Member States and would contribute to level playing field. It would provide a common reference point for employers, workers, and enforcers. In addition to providing useful benchmarks of exposure during routine work and maintenance activities the limit values may also be useful as regards the inclusion of health and safety considerations during the design, installation, commissioning phases of new or modified processes, plant and machinery and ultimately during de-commissioning of no longer used work equipment or processes.

No considerable change in the situation can be expected to occur if the issue is dealt at Member State level only. Lack of EU action would most likely mean that some Member States will not establish limit values for diisocyanates, and the existent EU values for lead and asbestos do not ensure adequate workers' protection.

5 POSSIBLE AVENUES FOR EU ACTION

The overall conclusion of the first stage consultation is that both sides of the social partners accept further scientific analysis followed by tripartite discussions towards a possible Commission proposal for updated limit values at EU level for the three substances. In addition, the trade unions emphasise the need to go beyond the limit value and increase the scope of protection in a number of aspects, notably for asbestos. The business representatives emphasise on their part the importance of implementation of existing legal provisions and proper impact assessment to ensure that any new or stricter limit values do not disproportionally harm competiveness.

On this basis, and in order to constantly improve workers' protection against the risks of exposure to carcinogens and other chemical agents such as asbestos, as well as to lead and

diisocyanates, to avoid the harmful consequences of avoidable occupational cancer and other health problems, the Commission considers that there is a need for further action at EU level.

Legislative action appears an effective policy avenue for revising and establishing limit values and thus improving workers' protection against the risks arising from exposure to the above mentioned hazardous chemicals and consequently contributing to the decrease of occupational cancer and other occupational diseases.

The legal requirement for businesses across the European Union to follow these limit values would guarantee the effectiveness of the EU action. On the other hand, businesses would face increasing costs to comply with the limit values, including likely expenses for ventilation systems and PPE. The magnitude of the costs and benefits of possible OELs and BVLs would depend on the specific limit values that are proposed taking into account underpinning scientific advice, the opinion of the tripartite Advisory Committee on Safety and Health at Work and related assessments.

Taking into consideration the above, it seems to be appropriate to update the current EU legislative framework, namely:

- amending the Asbestos at Work Directive with the update of the current OEL;
- amending the Chemical Agents Directive with the revision of the current limit values (OEL and BLV) for lead and its compounds, and the addition of a new binding OEL for diisocyanates.

Furthermore, the Commission will give due consideration to further suggestions received during the consultation process to improve workers' protection from the risks related to hazardous chemicals at work. If it is concluded that amendments to the legislative framework are relevant they also could be taken into consideration.

The Commission would take into account the values/range of values and opinions on further suggestions endorsed by the tripartite Advisory Committee on Safety and Health at Work.

Further explanation on the different substances, as well as the elaboration on the legal, social and economic background of the various possible avenues for EU action is indicated in the analytical document. In the case that the Commission decides to put forward legislative proposals, the costs and benefits of the proposed measures will be further assessed, quantified and to the extent of possible monetised. In order to feed the development of the next stage of its work, the Commission would welcome the social partners' views on the potential impact of the measures identified above.

6 POTENTIAL IMPACTS

The main benefits from lowering exposure levels accrue from a reduction of occupational cancer among EU workers and other health problems, such as fertility problems and asthma.

The impacts from a reduction in occupational exposure to hazardous chemicals depend on the specific exposure levels achieved, but also on determinants such as the number of workers exposed, the toxicity of the chemical and the market structure of the industries using those substances.

Benefits would accrue for workers and their families, businesses and Member States, but also costs for businesses and workers could occur.

7 NEXT STEPS

The Commission will take into account the results of this consultation in its further work to develop its proposals to improve workers protection from the risks related to hazardous chemicals at work, including carcinogens.

It will suspend such work if the social partners decide to negotiate between themselves on these matters as provided for under article 154(3) TFEU. In the event that the social partners do not decide to start negotiations, the Commission will consider bringing forward proposals to modify or complement the existing legislation subject to the assessment of their impact.

8 QUESTIONS TO THE SOCIAL PARTNERS

The Commission therefore seeks the views of the social partners on the following questions:

- What are your views on the possible avenues for EU action, potential impacts and the elements set out in section 5 of this document and the analytical document?
- Are the social partners willing to enter into negotiations with a view to concluding an agreement with regard to any of the elements set out in section 5 of this document under Article 155 TFEU?