

EU Committee of the Federal Council, 3 June 2009

Statement to the European Commission

concerning

COM (2009) 71 final/2 of 22 April 2009: Amended proposal for a Directive of the European Parliament and of the Council on the protection of workers from the risks related to exposure to asbestos at work

The proposal on which the statement is made in the interests of a “re-promulgation” of the EC Asbestos Directive.

In accordance with Article 137 of the EC Treaty (formerly Article 118a), the Directive provides minimum requirements for the protection of workers coming into contact with asbestos (e.g. through asbestos removal). The EC legal principle of minimum requirements to protect workers states that in implementing the Directive, existing national regulations offering a higher protection level may not be reduced. Moreover, implementation at the national level must at least comply with the aims of the minimum requirements but may exceed them.

The 2007 amendment of the Asbestos Directive is of a formal nature and mainly concerns harmonisation of reporting to the Commission by Member States of the implementation of EC worker protection directives. The deadline for implementation is 31 December 2012.

It is explicitly pointed out that the proposal does not create any new EC law. It serves to promulgate the existing Directive in a codified form with the deletion in particular of outdated indications in the Recitals and the updating of other references and the formal systematic arrangement of the legislation. In terms of comprehensibility and legal clarity the proposal is therefore welcomed.

The statement in the Recital that a new Article 22 has been inserted is inexact. The new Article 22 paragraph 1 is the same as the current Article 17a (report on implementation). Article 22 paragraph 2, which states that the first report by Member States should cover the period 2007 to 2012, is new. This arrangement does not appear to conflict with the principle of subsidiarity and proportionality.

As the EC Treaty has provided since 1986 for the setting of uniform EC minimum requirements for health protection and worker safety at work in the form of directives that do not obstruct the founding and development of SMEs, and since EC-wide health protection is required in view of the usually fatal diseases caused by asbestos not only for health reasons (and also for workers sent to other Member States) but also as a fundamental right (Article 31 of the Charter of Fundamental Rights of the European Union: “Every worker has the right to working conditions which respect his or her health, safety and dignity”), it would appear that principles of proportionality and subsidiarity are not violated.

Regarding the modifications to the text, the following proposals are made:

- a) Recital (2), first sentence, reads: “Asbestos is a particularly dangerous agent which may cause serious diseases”. This formulation is unreasonably understated. Asbestos causes (in particular) asbestos mesothelioma, which is a particularly aggressive form of cancer, normally resulting in death often within less than a year of diagnosis. There are no treatments or possibilities for recovery. If this is to be expressed in the text of the adapted Directive, Recital (2) should say at least “extremely serious diseases”.
- b) It is urgently recommended that the articles in the planned directive also have titles. This is the usual practice in all other EC worker protection directives and makes them easier to read.
- c) As the modified version of the Directive will be promulgated again as a codified version, it is suggested that the German text be gender-neutral. This would be in line with Article 2 of the EC Treaty (Equality for men and women).