



15.10.2019

NOTICE TO MEMBERS

Subject: Petition No 1140/2018 by Fernando Novella Asensio (Spanish), on behalf of ‘Jubilados Macosa-Alstom Afectados por el Amianto’, on an asbestos-free Europe

1. Summary of petition

The petitioner calls for the provisions on removal of asbestos from public places or places to which the public has access, stipulated in the European Parliament resolution on asbestos-related occupational health threats and prospects for abolishing all existing asbestos (2012/2065(INI)), to be implemented before 2028, for asbestos to be removed from the workplace and from the environment and for all asbestos-related illnesses to be recognised as occupational diseases. The petitioner is adamant that Spain must comply with these points by removing asbestos from sensitive places such as schools and hospitals and making monitoring of asbestos-removal work mandatory so asbestos fibres are not released into the environment.

2. Admissibility

Declared admissible on 5 March 2019. Information requested from Commission under Rule 227(6) (former Rule 216(6)).

3. Commission reply, received on 15 October 2019

At the outset, as regards the European Parliament resolution referred to on asbestos-related occupational health threats and prospects for abolishing all existing asbestos (2012/2065(INI)), it is worth highlighting that the Commission provided a follow-up in that regard on 26 June 2013¹.

Regarding the demolition of buildings, structures and installations containing asbestos and the

¹ <http://www.europarl.europa.eu/oeil/spdoc.do?i=22574&j=0&l=en>

removal therefrom of asbestos or materials containing asbestos involving the release of asbestos fibres or dust, a reference can be made to Council Directive 87/217/EEC². Whereas this Directive does not, as such, require the removal of asbestos or of materials containing asbestos, its Article 7 specifies that such activity – when taking place - must not result in significant asbestos environmental pollution and that Member States, to that end, shall satisfy themselves that the plan of work provided for in - now - Article 11 of Directive 2009/148/EC on the protection of workers from the risk related to exposure to asbestos at work³ prescribes the introduction of all the necessary preventive measures to this end.

In relation to the health and safety at work policy area, a significant legislative acquis containing minimum requirements, based on Article 153 of the Treaty on the Functioning of the European Union, has been developed.

The Framework Directive 89/391/EEC⁴ lays down the general principles in this field. In particular, it requires employers to identify the risks of exposure incurred by workers at their workplace, to assess them and to take the necessary resulting preventive and protective measures. Directive 2004/37/EC⁵ lays down specific rules on the protection of workers from the risks related to exposure to carcinogens or mutagens at work and as regards asbestos, which is dealt with by Directive 2009/148/EC, the provisions of Directive 2004/37/EC apply whenever they are more favorable to health and safety at work.

The specific Directive which addresses issues related to workplace exposure to asbestos is Directive 2009/148/EC. It applies to activities in which workers are or may be exposed to asbestos dust and lays down in particular an occupational exposure limit value (Article 8) as well as detailed prevention and protective measures including health surveillance after the end of exposure. In the case of any activity likely to involve a risk of exposure, employers are required to assess the risks to workers' health and to take measures to limit the exposure to asbestos to a minimum. Article 11 thereof requires from employers, before beginning demolition or maintenance work, to take all necessary steps to identify presumed asbestos-containing materials. The Directive does not require an inventory of buildings in which asbestos is present. The proper implementation of national law requiring an inventory is thus a Member State competence.

Directive 2009/148/EC has been implemented in Spain by Royal Decree 396/2006.

It is therefore the administrative or judicial bodies of the Member State concerned that are primarily responsible for monitoring compliance with EU law.

² Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos, *OJ L 85*, 28.03.1987, p. 40.

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 (Text with EEA relevance), *OJ L 330*, 16.12.2009, p. 28–36.

⁴ 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.

⁵ Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (codified version) (Text with EEA relevance), *OJ L 158*, 30.4.2004, p. 50–76.

⁶ Royal Decree 396/2006 of 31 March 2006 on Minimum Health and Safety Provisions Applicable to Work Involving a Risk of Exposure to Asbestos.

Without prejudice to the obligation of Member States to ensure compliance with the relevant EU legislation, a decision about whether the removal of asbestos from private and public buildings is the most appropriate risk management measure depends on site-specific factors. Therefore, it is for the national authorities of the Member States, including Spain, to decide on the approach to take regarding priorities on asbestos removal.

As far as the recognition of occupational diseases is concerned, it is worth noting that in Article 1 (1) of Commission Recommendation 2003/670/EU⁷, the Commission recommends to Member States to “introduce as soon as possible into their national laws, regulations or administrative provisions concerning scientifically recognised occupational diseases liable for compensation and subject to preventive measures, the European schedule in Annex I.” A number of occupational diseases related to exposure to asbestos, as for instance Silicosis, Asbestosis and Mesothelioma following the inhalation of asbestos dust are, among others, specifically mentioned in this Annex I.

According to Article 2 of the Recommendation "Member States shall themselves determine the criteria for the recognition of each occupational disease in accordance with the national laws or practices in force".

However, the said Recommendation is a non-binding instrument.

Consequently, the determination of the procedure for the recognition of occupational diseases, and the compensation to be paid in relation to occupational diseases is a matter for which Member States have sole competence.

Conclusion

As far as health and safety at work issues are concerned, the matters the petitioner brought to the attention of the Committee on Petitions fall primarily under the competence of the Member States, and the Commission is of the view that they should be dealt with by the competent national authorities.

⁷ Commission Recommendation of 19 September 2003 concerning the European schedule of occupational diseases, OJ L 238 , 25.9.2003, p. 0028.