



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.5.2002  
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2001/0165 (COD)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directive 83/477/EEC on the protection of workers from the risks  
related to exposure to asbestos at work**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

## EXPLANATORY MEMORANDUM

### **A) BACKGROUND**

1. The 20 July 2001 the Commission submitted a proposal for a Directive amending for the second time Directive 83/477/EEC<sup>1</sup> on the protection of workers from the risks related to exposure to asbestos at work.
2. The Economic and Social Committee delivered its opinion on 21 February 2002.

The Committee of the Regions informed the Council, by letter dated 13 February 2002, that it would not deliver an opinion on this subject.

3. On 11 April 2002 the European Parliament adopted 37 amendments at first reading.
4. Out of the 37 amendments adopted by the European Parliament, the Commission accepted on full 9 amendments (1, 11, 17, 18, 19, 22, 31, 32 and 34), partially 3 (20 subject to reformulation, first part of 23 and first part of 25) and rejected 25 amendments (2, 3, 4, 6, 7, 8, 9, 12, 13, 14, 16, 21, 24, 26, 27, 28, 30, 33, 35, 36, 37, 38, 40, 41 and 42).

Taking account of these developments, the Commission is submitting the present amended proposal.

### **B) EXPLANATIONS OF THE PRINCIPAL AMENDMENTS**

1. Prevention of asbestos release

Taking into account the great importance of preventing the release of asbestos dust not only inside, but also outside the workplace, the Commission has accepted amendments 11 (modifying recital 10) , 17 (completing the Article 4, paragraph 2, point (c)) and 19 (completing the paragraph 2 of the article 6).

The reason being that the release of asbestos dust outside the workplace itself is able to endanger workers carrying out their activity in the immediate vicinity of the building.

2. Information to be provided to the exposed workers

The provision of adequate information to workers who may be exposed to asbestos is essential to increase their awareness on the prevention measures needed and health surveillance requirements necessary to counter act the serious risks caused by asbestos. A well informed worker will be more cautious in carrying out its activities.

Therefore amendment 31, which completes Article 12a, paragraph 2, point a, requiring a more detailed information about the asbestos risks, was accepted by the Commission, as well as amendments 32 and 34, adding medical examination frequency and health assessment information requirements.

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<sup>1</sup> OJ L 264, 24.09.83, p. 25.

3. Notification requirements

Article 4, paragraph 2 of Directive 83/477/EEC sets up the data to be included in the notification that the employer must submit to the responsible authority of the Member state.

Amendment 18 adds information to be provided about the undertaking and the worker(s) or the entity contracted to carry out activities involving asbestos, which is indeed a relevant information to be included. Therefore, the Commission accepted amendment 18.

4. Use of individual respiratory protective equipment

Article 10, paragraph 3 of the directive 83/477/EEC specifies that the use of individual respiratory protective equipment may not be permanent and shall be kept to the strict minimum necessary for each worker.

In view of the extremely demanding conditions imposed on workers when using individual respiratory protective equipment, it seems appropriate to establish provisions for appropriate breaks adapted to the physical and climatological conditions.

Therefore, the Commission accepted amendment 22.

5. Technical clarifications and improvements

A number of amendments are intended to make the text clearer and more precise. Amendments 1, 20 (subject to reformulation), and the first part of amendments 23 and 25 have been accepted by the Commission.

Amendment 1 has been accepted by the Commission because it clarifies the origin of the proposal (reference to the Council conclusions of 7 April 1998<sup>2</sup> on the protection of workers against the risks from exposure to asbestos).

Amendment 20 proposes to complete article 7, paragraph 6, subparagraph 1, allowing the use of alternative measuring methods for the fibre counting of asbestos. The Commission accepted amendment 20 subject to the following reformulation "or any other method giving equivalent results". This wording make unnecessary the reference to specific methods, and in particular the SEM-EDX (Scanning Electron Microscopy – Energy Dispersive X-ray Analyser) method.

The first part of amendment 23 completes article 10a, first paragraph, adding "local authorities, civil protection services, and other authorities, bodies or individuals and in general from anyone who can provide, add to or upgrade such information" to the owners in order to provide information to identify presumed asbestos-containing materials. The Commission considers that this is totally relevant to the purposes of the article.

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<sup>2</sup> OJ C 142, 07.05.1998, p. 1

The first part of amendment 25 adds repairing and maintenance to those activities quoted in article 11, paragraph 1, point (c), for which the limit value of exposure can be exceeded and particular preventive measures shall be applied. The Commission considers that these activities indeed can expose workers above the limit value and deserve especial consideration. Therefore amendment 25 was accepted.

6. Amendments rejected in full or in part

The Commission cannot accept:

- amendments 2, 3, 4, 6, 7, 8, 9, 12, 13, 14, the second part of amendment 23, 24, 26 and 28 for reasons of legal coherence and legislative technique, since they are either exhortations of political nature without relationship with the provisions of the directive or they are already contained in substance in different Articles of the proposal.
- amendment 16 and the second part of amendment 25 because the employers' responsibility is clearly established in the framework directive 89/391/EEC and any further qualification would introduce legal uncertainties as regards where this responsibility lies.
- amendments 21 and 42 because they would introduce two different limit values implying different protection levels for workers carrying out different activities. In addition, the expression of the limit values as a time weighted average in a period of 4 hours instead of 8 hours, has to be rejected because it would create confusion when compared to the same values in international standards which use a reference period of 8 hours.
- amendments 27, 38 and 40 because Article 137 of the Treaty does not cover for general public measures or recognition of occupational diseases.
- amendments 30, 33, 35, 36 and 37, on subsidiarity grounds.
- amendment 41 because it would introduce unnecessary bureaucratic overburden to enterprises and administrations without any additional benefit.

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137 (2) thereof,

Having regard to the proposal from the Commission, drawn up following consultation with social partners and with the Advisory Committee on Safety, Hygiene and Health Protection at Work<sup>3</sup>,

Having regard to the Opinion of the Economic and Social Committee<sup>4</sup>,

Having regard to the Opinion of the Committee of the Regions<sup>5</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>6</sup>,

Whereas:

- (1) The Council in its Conclusions of 7 April 1998 on the protection of workers against the risks from exposure to asbestos<sup>7</sup> invites the Commission to bring forward proposals for amending Directive 83/477/EEC<sup>8</sup>, considering in particular the merits of refocusing protective measures on those who are now most at risk.
- (2) The Economic and Social Committee, in its Opinion on “Asbestos”<sup>9</sup>, calls on the Commission to take new measures to reduce the risks to workers.

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<sup>3</sup> OJ C.

<sup>4</sup> OJ C.

<sup>5</sup> OJ C.

<sup>6</sup> OJ C 340, 10.11.1997, p. 1

<sup>7</sup> OJ C 142, 7.5.1998, p.1.

<sup>8</sup> OJ L 263, 24.9.1983, p. 25. Directive as last amended by Directive 98/24/EC (OJ L 131, 5.5.1998, p. 11).

<sup>9</sup> OJ C 138, 18.5.1999, p. 24.

**(3) In view of the Council's Conclusions, the Commission should submit proposals to amend Directive 83/477/EEC in the light of the more detailed research on limits for exposure to chrysotile and the methods for measuring airborne asbestos (having regard to the method adopted by the World Health Organisation (WHO)). Similar steps should be taken regarding substitute fibres.**

~~(3)~~**(4)** The ban on the marketing and use of chrysotile asbestos introduced by Council Directive 76/769/EEC<sup>10</sup> as amended in 1999 by Commission Directive 1999/77/EC<sup>11</sup>, with effect from 1 January 2005, will contribute to a substantial reduction in asbestos-exposure of workers.

~~(4)~~**(5)** All workers must be protected against the risks associated with exposure to asbestos and the derogations applicable to the sea and air transport sectors should therefore be removed.

~~(5)~~**(6)** In order to ensure clarity in the definition of the fibres, they should be redefined either in mineralogical terms or with regard to their Chemical Abstract Service (CAS) number.

~~(6)~~**(7)** Without prejudice to the application of other Community provisions concerning marketing and use of asbestos, limiting the activities involving exposure to asbestos will play a very important role in preventing the diseases associated with such exposure.

~~(7)~~**(8)** The notification system of activities involving exposure to asbestos should be adapted to the new work situations.

~~(8)~~**(9)** Taking account of the latest technical expertise, it is necessary to specify more precisely the sampling methodology used to measure the asbestos level in air and the method of counting fibres.

~~(9)~~**(10)** Even if it has not yet been possible to identify the exposure threshold below which asbestos does not involve a cancer risk, the limit value for occupational exposure to asbestos should be reduced.

~~(10)~~**(11)** The persons responsible for buildings should be required to identify before the start of the asbestos removal project, the presence or presumed presence of asbestos in buildings or installations and communicate this information to others who may be exposed by the use, maintenance or other activities in , **or in the immediate vicinity of or on** the building.

~~(11)~~**(12)** It should be ensured that demolition or asbestos removal work is carried out by undertakings which are familiar with all the precautions to be taken in order to protect workers.

~~(12)~~**(13)** Special training for workers exposed or likely to be exposed to asbestos should be ensured in order significantly to contribute to reducing the risks related to such exposure.

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<sup>10</sup> OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 1999/77/EC (OJ L 207, 6.8.1999, p. 18)

<sup>11</sup> OJ L 207, 6.8.1999, p. 18.

~~(13)~~**(14)** The content of the exposure and medical records provided for in Directive 83/477/EEC should be brought into line with the records referred to in Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)<sup>12</sup>.

~~(14)~~**(15)** It is appropriate to update the practical recommendations on the clinical surveillance of exposed workers in the light of the latest medical expertise, with a view to the early detection of pathologies linked to asbestos.

~~(15)~~**(16)** In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the desired objectives of Directive 83/477/EEC to amend it as proposed. These amendments do not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

~~(16)~~**(17)** The amendments contained in this Directive constitute a concrete contribution towards creating the social dimension of the internal market.

~~(17)~~**(18)** These amendments are limited to the minimum in order not to impose unnecessary burden to the creation and development of small and medium-sized enterprises.

~~(18)~~**(19)** In accordance with Decision 74/325/EEC<sup>13</sup>, the Advisory Committee on Safety, Hygiene and Health Protection at Work must be consulted by the Commission concerning the preparation of proposals in this field.

~~(19)~~**(20)** Directive 83/477/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 83/477/EEC is amended as follows:

- (1) In Article 1, paragraph 2 is deleted.
- (2) Article 2 is replaced by the following:

#### *"Article 2*

For the purposes of this Directive, "asbestos" means the following fibrous silicates:

- Asbestos actinolite, CAS No 77536-66-4\*
- Asbestos grunerite (amosite) CAS No 12172-73-5\*,
- Asbestos anthophyllite, CAS No 77536-67-5\*,

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<sup>12</sup> OJ L 196, 26.7.1990, p. 1. Directive as last amended by Directive 1999/38/EC (OJ L 138, 1.6.1999, p. 66).

<sup>13</sup> OJ L 185, 9.7.1974, p. 15. Decision as last amended by the Act of Accession of Austria, Finland and Sweden.

- Chrysotile, CAS No 12001-29-5\*,
- Crocidolite, CAS No 12001-28-4\*,
- Asbestos tremolite, CAS No 77536-68-6\*.

\* Number in the register of the Chemical Abstract Service (CAS)."

- (3) In Article 3 paragraph 3 is replaced by the following:

"3. Provided that the total exposure time of workers does not exceed two hours in any seven day period, and it is clear from the risk assessment required by paragraph 2 that the exposure limit for asbestos will not be exceeded, Articles 4, 15 and 16 shall not apply where work involves:

- (a) asbestos coating, asbestos insulation or asbestos panelling, or
- (b) air monitoring, clearance inspection or collection of bulk samples to identify whether a material is asbestos".

- (4) Article 4 is amended as follows:

- (a) Paragraph 2 is replaced by the following:

"2. The notification shall be submitted by the employer to the responsible authority of the Member States, in accordance with national laws, regulations and administrative provisions. The notification must include at least a brief description of

- (a) the location of the work site,
- (b) the type and quantities of asbestos used or handled,
- (c) the activities and processes involved **including the measures taken to prevent asbestos pollution outside the location of the work site.**
- (d) the products manufactured.
- (e) **the undertaking and the worker(s) or the entity contracted to carry out activities involving asbestos.**

When asbestos is being removed, the notification shall also include information about the period when the asbestos removal project will actually take place, and information about the measures which will be taken to limit the exposure of asbestos to the workers involved. The notification shall be submitted prior to the start of the asbestos removal project."

- (b) Paragraph 4 is replaced by the following:

"4. Each time a change occurs in working conditions which can result in a change in exposure to dust from asbestos or materials containing asbestos, a new notification must be submitted."



- (5) Article 6 is replaced by the following:

*"Article 6"*

For all activities referred to in Article 3(1), the exposure of workers to dust arising from asbestos or materials containing asbestos at the place of work must be reduced to a minimum and in any case below the limit value laid down in Article 8, in particular through the following measures:

1. The number of workers exposed or likely to be exposed to dust arising from asbestos or materials containing asbestos must be limited to the lowest possible figure.
2. Work processes must, ~~in principle,~~ be so designed as to **prevent the release of asbestos dust in the air inside the workplace and into the general environment of the workplace.** ~~avoid the release of asbestos dust into the air.~~
3. All premises and equipment involved in the treatment of asbestos must be capable of being regularly and effectively cleaned and maintained.
4. Asbestos or dust-generating asbestos-containing material must be stored and transported in suitable sealed packing.
5. Waste must be collected and removed from the place of work as soon as possible in suitable sealed packing with labels indicating that it contains asbestos. This measure shall not apply to mining activities.

The waste referred to in the first paragraph shall then be dealt with in accordance with Council Directive 91/689/EEC\*.

\* OJ L 377, 31.12.1991, p. 20

- (6) Article 7 is replaced by the following:

*"Article 7"*

1. Depending on the results of the initial risk assessment, and in order to ensure compliance with the limit value laid down in Article 8, measurement of asbestos fibres in the air at the workplace shall be carried out regularly.
2. Sampling must be representative of the personal exposure of the worker to dust arising from asbestos or materials containing asbestos.
3. Sampling shall be carried out after consulting the workers and/or their representatives in undertakings.
4. Sampling shall be carried out by suitably qualified personnel. The samples taken shall be subsequently analysed in laboratories equipped to analyse them and qualified to apply the necessary identification techniques.

5. The duration of sampling must be such that representative exposure can be established for an eight-hour reference period (one shift) by means of measurements or time-weighted calculations.

6. Fibre counting shall be carried out wherever possible by PCM (phase contrast microscope) in accordance with the 1997 WHO (World Health Organisation) recommended method<sup>14</sup> **or any other method giving equivalent results**

For the purposes of measuring asbestos in the air, as referred to in the first subparagraph, only fibres with a length of more than five micrometres and a length/breadth ratio greater than 3:1 shall be taken into consideration.“

(7) Article 8 is replaced by the following:

*"Article 8*

Employers shall ensure that no worker is exposed to an airborne concentration of asbestos in excess of 0.1 fibres per cm<sup>3</sup> as an 8-hour time-weighted average (TWA)."

(8) In Article 9 paragraph 1 is deleted.

(9) Article 10 is amended as follows:

(a) In paragraph 1 the first subparagraph is replaced by the following:

“Where the limit value laid down in Article 8 is exceeded, the reasons for the limit being exceeded must be identified and appropriate measures to remedy the situation must be taken as soon as possible.”

(b) Paragraph 3 is replaced by the following:

“3. Where exposure cannot be reduced by other means and where the limit values of individual respiratory protective equipment proves necessary, this may not be permanent and shall be kept to the strict minimum necessary for each worker. **During periods of work which require the use of individual respiratory protective equipment, provision shall be made for breaks appropriate to the physical and climatological conditions, in consultation with the workers and/or their representatives.**”

(10) The following Article 10a is inserted:

*"Article 10a*

Before beginning demolition or maintenance work, employers in control of workplace premises shall take, if appropriate by obtaining information from owners, **local authorities, civil protection services, and other authorities, bodies or individuals and from anyone who can provide, add to or upgrade such information,** all necessary steps to identify presumed asbestos-containing materials.

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<sup>14</sup> Determination of airborne fibre number concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method), WHO, Geneva 1997 (ISBN 92 4 154496 1).

If there is any doubt about the presence of asbestos in a material or construction, the regulations and procedures of asbestos removal work shall be followed."

(11) In Article 11 paragraph 1 is replaced by the following:

"1. In the case of certain activities such as demolition, ~~or~~ removal, **repairing, and maintenance** in respect of which it is foreseeable that the limit value set out in Article 8 will be exceeded despite the use of technical preventive measures for limiting asbestos in air concentrations, the employer shall determine the measures intended to ensure protection of the workers while they are engaged in such activities, in particular the following:

(a) workers shall be issued with suitable respiratory and other personal protective equipment, which must be worn; and

(b) warning signs shall be put up indicating that it is foreseeable that the limit value laid down in Article 8 will be exceeded; and

(c) the spread of dust arising from asbestos or materials containing asbestos outside the premises/site of action shall be prevented."

(12) In Article 12 (2) the first two subparagraphs are replaced by the following:

"2. The plan referred to in paragraph 1 must prescribe the measures necessary to ensure the safety and health of workers at the place of work.

The plan must in particular specify that:

– asbestos and/or asbestos containing products are removed before demolition techniques are applied,

– the personal protective equipment referred to in Article 11 (1) (a) is provided, where necessary.

(13) The following Article 12a is inserted:

*"Article 12a*

1. Employers shall provide appropriate training for all workers who are, or are liable to be, exposed to asbestos-containing dust. Such training must be provided at regular intervals and at no cost to the workers.

2. Training must be easily understandable for workers and must inform them among others of:

**(a) the specific risks associated with each type of asbestos and the consequences for the health of individual workers and outsiders, including the possible side-effects of smoking or of other noxious and similarly harmful substances present within the workplace,**

~~a) — the properties of asbestos and its effects on health including the synergistic effect of smoking.~~

- b) the types of products or materials likely to contain asbestos,
- c) the operations that could result in asbestos exposure and the importance of preventive controls to minimise exposure,
- d) safe work practices, controls and protective equipment,
- e) the appropriate role, choice, selection, limitations and proper use of respiratory equipment,
- f) emergency procedures,
- g) decontamination procedures,
- h) waste disposal,
- i) medical examination requirements, **including the frequency of such examinations,**

3. Practical guidelines for the training of asbestos removal workers shall be developed at Community level."

- (14) The following Article 12b is inserted:

*"Article 12b*

In order to carry out asbestos demolition or removal work, firms must provide evidence of their ability in this field. "

- (15) In Article 14 (2), point (b) is replaced by the following:

“(b) if the results exceed the limit value laid down in Article 8 the workers concerned and their representatives in the undertaking or establishment are informed as quickly as possible of the fact and the reason for it and the workers and/or their representatives in the undertaking or establishment are consulted on the measures to be taken or, in an emergency, are informed of the measures which have been taken.”

- (16) Article 15(3) is replaced by the following:**

**3. Information and advice must be given to workers regarding any assessment of their health which they may undergo following the end of exposure.**

**The approved medical practitioner or approved occupational health services may indicate the need for medical surveillance to continue after cessation of work for as long as they consider it necessary to safeguard the health of the person concerned.**

**Such continuing supervision shall be carried out in accordance with the laws and practices of the individual Member States.**

(~~16~~17) In Article 16, paragraph 2 is replaced by the following:

„2. The register referred to in point 1 and the medical records referred to in point 1 of Article 15 shall be kept for at least 40 years following the end of exposure, in accordance with national laws and/or practice.“

(~~17~~18) In Article 16 the following paragraph 3 is added:

“3. The documents referred to in point 2 shall be made available to the responsible authority in cases where the undertaking ceases activity, in accordance with national laws and/or practice”.

(~~18~~19) Annex I is deleted.

(~~19~~20) Point 3 of Annex II is replaced by the following:

“3. Health examination of workers should be carried out in accordance with the principles and practices of occupational medicine. It should include the following measures:

- keeping records of a worker’s medical and occupational history,
- a personal interview,
- a clinical examination of the chest,
- lung function tests (respiratory flow volumes and rates).

The doctor and/or authority responsible for the health surveillance should decide on further examinations, such as sputum cytology tests or a chest X-ray or a tomodensitometry in each individual case, in the light of the latest occupational health knowledge available”.

## *Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2004, at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*