



11.7.2018

DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (COM(2018)0171 – C8-0130/2018 – 2018/0081(COD))

Rapporteur for opinion: Jiří Maštálka

PA_Legam

SHORT JUSTIFICATION

The proposal for a directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, seeks to improve workers' health protection and safety by reducing occupational exposure to five chemical agents. The proposal is supported by an impact assessment.

Cancer is the leading cause (53%) of work-related deaths in the EU. For the workers and their families, cancer results not only in substantial quality of life losses, but also in direct health care costs and indirect loss of present and future earnings. Occupational cancer affects the economy at large too, reducing labour supply and productivity and increasing the burden on public finances through avoidable public expenditure on health care and other benefits. Finally, occupational cancer implies for businesses staff replacement costs, productivity losses and the need to pay higher wages to compensate for the higher occupational risk.

The social partners, workers 'and employers' organisations confirmed that the five following carcinogens selected for the third amendment of the Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, are of high relevance for the protection of workers and thus encouraged the Commission to continue the preparatory work for the establishment of occupational exposure limit values ("OELs") for:

1. Cadmium and its inorganic compounds under the scope of the Directive
2. Beryllium and inorganic beryllium compounds under the scope of the Directive
3. Arsenic acid and its salts, as well as inorganic arsenic compounds under the scope of the Directive
4. Formaldehyde
5. 4,4'-Methylene-bis(2-chloroaniline) ("MOCA")

The Directive sets a number of general minimum requirements to eliminate or reduce exposure for all carcinogens and mutagens falling under its scope. Employers must identify and assess risks to workers associated with exposure to specific carcinogens and mutagens at the workplace, and must prevent exposure where risks occur

The present initiative for a modification of Directive 2004/37 is in line with European Pillar of Social Rights. It implements its 10th principle "Healthy, safe and well-adapted work environment" directly contributing to a high level of protection of workers' health and safety. Modernising the legal framework by setting updated OELs on exposure to carcinogens and mutagens was also identified as the key priority in the occupational safety and health (OSH) field by the Commission Communication "Safer and Healthier Work for All" of January 2017.

According to the estimates the adoption of the proposal would imply that in the longer term over 1 000 000 EU workers would benefit from improved prevention and protection in relation to occupational exposure to carcinogens and mutagens substances, that can be at the origin of different types of cancers and it would prevent 22 000 cases of ill-health.

Your rapporteur supports strongly the aforementioned proposal, with some amendments,

which aim mainly at stressing the need for regular overview and update of any potential carcinogens or mutagens, which shall be based on scientific data - included in the list. Your rapporteur also believes that all substances, which can increase the risk of occupational cancers, shall be covered by the EU legislation

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The Charter of Fundamental Rights of the European Union guarantees, in particular, the fundamental right to life in Article 2, and the right to fair and just working conditions with respect to health, safety and dignity under Article 31(1), thereof.

Or. en

Amendment 2

Proposal for a directive

Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) Articles 153, 154 and 155 TFEU establish the scope and authority of the social partners to negotiate and enforce agreements relating to occupational health and safety.

Or. en

Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Directive 2004/37/EC of the European Parliament and of the Council⁴⁴ **aims to protect** workers **against risks to their** health and safety from exposure to carcinogens or mutagens at the workplace. A consistent level of protection from the risks related to carcinogens and mutagens is provided for in Directive 2004/37/EC by a framework of general principles to enable Member States to ensure the consistent application of the minimum requirements. Binding occupational exposure limit values established on the basis of available information, including scientific and technical data, economic feasibility, a thorough assessment of the socioeconomic impact and availability of exposure measurement protocols and techniques at the workplace, **are** important components **of the general arrangements for the protection of workers** established by Directive 2004/37/EC. The minimum requirements provided for in **Directive 2004/37/EC** aim to protect workers at Union level. More stringent binding occupational exposure limit values can be set by Member States.

⁴⁴ 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)

Amendment

(2) ***The aim of the amendments to*** Directive 2004/37/EC of the European Parliament and of the Council⁴⁴ ***provided for in this Directive is to improve and strengthen the protection of*** workers' health and safety from exposure to carcinogens or mutagens at the workplace ***in accordance with the precautionary principle***. A consistent level of protection from the risks related to carcinogens and mutagens is provided for in Directive 2004/37/EC by a framework of general principles to enable Member States to ensure the consistent application of the minimum requirements. Binding occupational exposure limit values established on the basis of ***currently*** available information, including scientific and technical data, economic feasibility, a thorough assessment of the socioeconomic impact and availability of exposure measurement protocols and techniques at the workplace. ***Those*** important components established by Directive 2004/37/EC ***must be the subject of constant overview and regular revision and update in light of most recent scientific data***. The minimum requirements provided for in ***Directive 2004/37/EC*** aim to protect workers at Union level. More stringent binding occupational exposure limit values can be set by Member States.

⁴⁴ 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)

Amendment 4

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Occupational exposure limit values are part of risk management under Directive 2004/37/EC. Compliance with those limit values is without prejudice to other obligations of employers pursuant to Directive 2004/37/EC, such as the reduction of the use of carcinogens and mutagens at the workplace, the prevention or reduction of workers' exposure to carcinogens or mutagens and the measures which should be implemented to that effect. Those measures should include, as far as it is technically possible, the replacement of the carcinogen or mutagen by a substance, mixture or process which is not dangerous or is less dangerous to workers' health, the use of a closed system or other measures aiming to reduce the level of workers' exposure. In that context, it is essential to take the precautionary principle into account where there are uncertainties.

Amendment

(3) Occupational exposure limit values are part of risk management under Directive 2004/37/EC. ***The limit values should be revised regularly in accordance with the precautionary principle, the principle of the protection of workers and in light of available scientific and technical data concerning carcinogens and mutagens. Consideration should also be given to improving measurement techniques, risk management measures, and other relevant factors.*** Compliance with those limit values is without prejudice to other obligations of employers pursuant to Directive 2004/37/EC, such as the reduction of the use of carcinogens and mutagens at the workplace, the prevention or reduction of workers' exposure to carcinogens or mutagens and the measures which should be implemented to that effect. Those measures should include, as far as it is technically possible, the replacement of the carcinogen or mutagen by a substance, mixture or process which is not dangerous or is less dangerous to workers' health, the use of a closed system or other measures aiming to reduce the level of workers' exposure. In that context, it is essential to take the precautionary principle into account where there are uncertainties.

Amendment 5

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) For most carcinogens and mutagens, it is not scientifically possible to identify levels below which exposure would not lead to adverse effects. While setting the limit values at the workplace in relation to carcinogens and mutagens pursuant to Directive 2004/37/EC does not completely eliminate risks to the health and safety of workers arising from exposure at work (residual risk), it nonetheless contributes to a significant reduction of risks arising from such exposure in the stepwise and goal-setting approach pursuant to Directive 2004/37/EC. ***For other carcinogens and mutagens, it may be scientifically possible to identify levels below which exposure is not expected to lead to adverse effects.***

Amendment

(4) For most carcinogens and mutagens, it is not scientifically possible to identify levels below which exposure would not lead to adverse effects. While setting the limit values at the workplace in relation to carcinogens and mutagens pursuant to Directive 2004/37/EC does not completely eliminate risks to the health and safety of workers arising from exposure at work (residual risk), it nonetheless contributes to a significant reduction of risks arising from such exposure in the stepwise and goal-setting approach pursuant to Directive 2004/37/EC.

Or. en

Amendment 6

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) This Directive strengthens the protection of workers' health and safety at their workplace. New limit values should be set out in Directive 2004/37/EC in the light of available information, including new scientific and technical data and evidence-based best practices, techniques and protocols for exposure level measurement at the workplace. That information should, if possible, include

Amendment

(6) This Directive strengthens the protection of workers' health and safety at their workplace. New limit values should be set out in Directive 2004/37/EC in the light of available information, including new scientific and technical data and evidence-based best practices, techniques and protocols for exposure level measurement at the workplace. That information should, if possible, include

data on residual risks to the health of workers, recommendations of the Scientific Committee on Occupational Exposure Limits (SCOEL) and opinions of the Committee for Risk Assessment (RAC) of the European Chemicals Agency (ECHA), as well as opinions of the Advisory Committee on Safety and Health at Work (ACSH). Information related to residual risk, made publicly available at Union level, is valuable for any future work to limit risks from occupational exposure to carcinogens and mutagens. Transparency *of such* information should be further encouraged.

data on residual risks to the health of workers, recommendations of the Scientific Committee on Occupational Exposure Limits (SCOEL) and opinions of the Committee for Risk Assessment (RAC) of the European Chemicals Agency (ECHA), as well as opinions of the Advisory Committee on Safety and Health at Work (ACSH). Information related to residual risk, made publicly available at Union level, is valuable for any future work to limit risks from occupational exposure to carcinogens and mutagens. Transparency *as well as prevention and campaigning at Union level* should be further encouraged.

Or. en

Amendment 7

Proposal for a directive Recital 7

Text proposed by the Commission

(7) It is also necessary to consider other absorption pathways than inhalation of all carcinogens and mutagens, including the possibility of uptake through the skin, in order to ensure the best possible level of protection. Amendments to Annex III to Directive 2004/37/EC provided for in this Directive constitute a further step in a longer term process initiated to update Directive 2004/37/EC.

Amendment

(7) It is also necessary to consider other absorption pathways than inhalation of all carcinogens and mutagens, including the possibility of uptake through the skin *concretely through skin notation, and respiratory and skin sensitisation*, in order to ensure the best possible level of protection. Amendments to Annex III to Directive 2004/37/EC provided for in this Directive constitute a further step in a longer term process initiated to update Directive 2004/37/EC.

Or. en

Amendment 8

Proposal for a directive Recital 12

Text proposed by the Commission

(12) With regard to cadmium, a limit value of 0,001 mg/m³ may be difficult to be complied with in some sectors in the short term. A transitional period of *seven* years should therefore be introduced during which the limit value 0,004 mg/m³ should apply.

Amendment

(12) With regard to cadmium, a limit value of 0,001 mg/m³ may be difficult to be complied with in some sectors in the short term. A transitional period of *five* years should therefore be introduced during which the limit value 0,004 mg/m³ should apply.

Or. en

Amendment 9

Proposal for a directive Recital 14

Text proposed by the Commission

(14) With regard to beryllium, a limit value of 0,0002 mg/m³ may be difficult to be complied with in some sectors in the short term. A transitional period of *five* years should therefore be introduced during which the limit value of 0,0006 mg/m³ should apply.

Amendment

(14) With regard to beryllium, a limit value of 0,0002 mg/m³ may be difficult to be complied with in some sectors in the short term. A transitional period of *four* years should therefore be introduced during which the limit value of 0,0006 mg/m³ should apply.

Or. en

Amendment 10

Proposal for a directive Recital 21

Text proposed by the Commission

(21) The limit values set out in this Directive are to be kept under review to

Amendment

(21) The limit values set out in this Directive are to be kept under *on-going*

ensure consistency with Regulation (EC) No 1907/2006 of the European Parliament and of the Council⁵⁰, in particular to take account of the interaction between limit values set out under Directive 2004/37/EC and derived no effect levels for hazardous chemicals under that Regulation in order to protect workers effectively.

⁵⁰ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

scrutiny and regular review to ensure consistency with Regulation(EC) No 1907/2006 of the European Parliament and of the Council⁵⁰, in particular to take account of the interaction between limit values set out under Directive 2004/37/EC and derived no effect levels for hazardous chemicals under that Regulation in order to protect workers effectively.

⁵⁰ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Or. en

Amendment 11

Proposal for a directive Annex – column “Transitional measures” – line 1

Text proposed by the Commission

Limit value 0,004 mg/m³ until xx yyyy
202z [7 years]

Amendment

Limit value 0,004 mg/m³ until xx yyyy
202z [5 years]

Or. en

Amendment 12

Proposal for a directive

Annex – column “Transitional measures” – line 2

Text proposed by the Commission

Limit value 0,0006 mg/m³ until xx yyyy
202z [**5** years]

Amendment

Limit value 0,0006 mg/m³ until xx yyyy
202z [**4** years]

Or. en