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Workers' exposure to asbestos *I**

European Parliament legislative resolution on the 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 (COM(2001) 417 – C5-0347/2001 – 2001/0165(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 417¹),
 - having regard to Article 251(2) of the EC Treaty and Article 137(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0347/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on the Environment, Public Health and Consumer Policy (A5-0091/2002),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 304 E, 30.10.2001, p. 179.

Position of the European Parliament adopted at first reading on 11 April 2002 with a view to the adoption of European Parliament and Council Directive 2002/.../EC amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work

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 Work¹,

Having regard to the Opinion of the Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

- (1) The Council in its Conclusions of 7 April 1998 on the protection of workers against the risks from exposure to asbestos³ invites the Commission to bring forward proposals for amending Directive 83/477/EEC⁴, considering in particular the merits of refocusing protective measures on those who are now most at risk.
- (2) *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) The Economic and Social Committee, in its Opinion on "Asbestos"⁵, calls on the Commission to take new measures to reduce the risks to workers.
- (4) The ban on the marketing and use of chrysotile asbestos introduced by Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing

¹ OJ C 304 E, 30.10.2001, p. 179.

² Position of the European Parliament of 11 April 2002

³ OJ C 142, 7.5.1998, p.1.

⁴ 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).

⁵ OJ C 138, 18.5.1999, p. 24.

*and use of certain dangerous substances and preparations*¹ as amended in 1999 by Commission Directive 1999/77/EC², with effect from 1 January 2005, will contribute to a substantial reduction in asbestos-exposure of workers.

- (5) *In the light of Directive 83/477/EEC, Member States, through the proper official authorities and authorities serving the public interest, notably civil protection services, factories inspectorates, local authorities, employers' organisations in the industries most directly concerned, trade unions, victims' associations, and any bodies that might wish to intervene, should ensure full compliance with European and national legislation by every means available, to avoid asbestos-related diseases claiming further deaths in the future.*
- (6) 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.
- (7) *Those Member States that need to avail themselves of the possibility to extend the deadline for applying the ban on the use of chrysotile should, bearing in mind the socio-economic aspects of the industries concerned, encourage the use of substitute products in order to comply as quickly as possible with the total ban on chrysotile for reasons of health protection, as laid down in point 6.2. of Annex I to Directive 76/769/EEC as amended by Directive 1999/77/EC.*
- (8) *Member States should pay particular heed to the rights of workers, not least their right to health, after mines or factories manufacturing asbestos products have closed down.*
- (9) 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.
- (10) *It is worrying that the Commission at present does not have sufficient human resources to meet the needs of technical scientific updating, assessment of enforcement of legislation and revision thereof, and exchange of good practices and relevant information among Member States, for example in connection with the activities of the European Foundation for the Improvement of Living and Working Conditions and the European Agency for Safety and Health at Work.*
- (11) 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.
- (12) *In the light of legal developments outside the EU, the Commission should, in conjunction with the amendment of Directive 83/477/EEC, support the ILO in seeking the widest possible application among European Union Member States and other countries of Convention 162 and Recommendation 172 and support the IMO initiative to revise SOLAS regulation IX/1, with a view to protecting crews and passengers by laying down specific operating rules to be observed by teams carrying out repair work.*

¹ OJ L 262, 27.9.1976, p. 201.

² OJ L 207, 6.8.1999, p. 18.

- (13) The notification system of activities involving exposure to asbestos should be adapted to the new work situations.
- (14) ***Buildings used by large numbers of people, such as offices, hospitals, schools, and the like, sometimes need to be repaired. Whenever a project supervisor has ascertained the presence of asbestos, that fact should be reported to the proper authorities. The technical specifications of the work to be carried out on the above premises should include the measures required to comply strictly with national and Community legislation, thus protecting not only the workers, but also users and residents.***
- (15) 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.
- (16) ***As regards the ban on the marketing and use of asbestos, the Commission and the Member States should agree on a common position within the WTO to protect European Union Member States which decide to implement the ban before 2005. In addition, they should inform the public about current and future mining operations in the European Union.***
- (17) 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.
- (18) 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, on ***or in the immediate vicinity of*** the building.
- (19) 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.
- (20) 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.
- (21) ***Particular attention should be brought to bear on compliance with labour law, which in this instance is vitally important, especially to help combat precarious employment and ensure compliance with health and safety standards at work.***
- (22) 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)¹.

¹ 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).

- (23) 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.
- (24) 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.
- (25) The amendments contained in this Directive constitute a concrete contribution towards creating the social dimension of the internal market.
- (26) ***The probable admission of new Member States from Central and Eastern Europe increases the need to deal effectively with the problem of exposure to asbestos and resultant ill health. Asbestos was more widely used in these countries than in existing Member States, and can be found in high concentrations both internally and externally, having been used in the construction of workplaces, dwellings, places of entertainment and many other facilities, and in many cases demands a more systematic programme of removal than that laid down for the existing Member States.***
- (27) 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.
- (28) ***In order to avoid unfair competition and inequalities in the level of protection afforded to workers and others, the Commission should bring forward as soon as is possible, and in any case not later than 31 December 2003, proposals laying down minimum standards with which all national registration schemes for firms involved in the demolition, maintenance or renovation of buildings containing or possibly containing asbestos must comply.***
- (29) In accordance with Decision 74/325/EEC¹, 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.
- (30) 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:

¹ OJ L 185, 9.7.1974, p. 15. Decision as last amended by the Act of Accession of Austria, Finland and Sweden.

"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*,
 - 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) **Article** 4 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. The notification shall be submitted by the employer *in charge of the project or project supervisor* 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 measures 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 *to asbestos* of 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."

(4) 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 *values* 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 be so designed as to ***prevent*** the release of asbestos ***dust in the air inside and in the environment of the place of work.***
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 of 12 December 1991 on hazardous waste*.

* OJ L 377, 31.12.1991, p. 20"

(5) 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 *values* laid down in Article 8, measurement of asbestos fibres in the air at the *place of work* 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 by PCM (phase contrast microscope) in accordance with the 1997 WHO (World Health Organisation) recommended method*, ***although this shall not preclude the use of other more rigorous methods, in particular the SEM-EDX (Scanning Electron Microscopy – Energy Dispersive X-ray Analyser) method.***

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.

* Determination of airborne fibre number concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method), WHO, Genève 1997 (ISBN 92 4 154496 1)."

(6) 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:

- (a) 0.1 fibres per cm³ as ***a 4-hour*** time-weighted average (TWA),
- (b) ***0.05 fibres per cm³ as an 8-hour time-weighted average (TWA) in the case of:***
 - ***demolition work,***
 - ***removal work,***
 - ***repair work,***
 - ***maintenance work,******with the exception of asbestos cement."***

(7) In Article 9 paragraph 1 is deleted.

(8) Article 10 is amended as follows:

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

"Where the limit *values* laid down in Article 8 *are* 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 *wearing* 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 breathing equipment,***

provision shall be made for breaks appropriate to the physical and climatological conditions, in consultation with the workers and/or their representatives."

(9) The following *Article* is inserted:

"Article 10a

Before beginning demolition or maintenance work, employers in control of *worksite* premises shall take, if appropriate by obtaining information from owners, ***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***, all necessary steps ***and tests*** to identify presumed asbestos-containing materials.

Where the complete absence of asbestos cannot be guaranteed, work shall be conducted according to the regulations and procedures to be followed when asbestos is present."

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

"1. In the case of certain activities such as demolition, removal, ***repairing, and maintenance*** in respect of which it is foreseeable that the limit values set out in ***Article 8(b)*** will be exceeded despite the use of technical preventive measures for limiting asbestos in air concentrations, the employer ***in charge of the project or project supervisor or subcontracting undertaking*** 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 which the employer must ensure is worn***; and
- (b) warning signs shall be put up indicating that it is foreseeable that the limit values 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. ***Warning signs shall be displayed for the information of any members of the public who may have cause to be in the vicinity."***

(11) 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 *to be* removed before demolition techniques are applied,
- ***where the complete absence of asbestos cannot be guaranteed, work is to be conducted according to the regulations and procedures to be followed when asbestos is present,***

- the personal protective equipment referred to in Article 11 (1) (a) is *to be* provided, where necessary."

(12) The following *Article* 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 *made available* at regular intervals and at no cost to the workers.

2. *The public bodies responsible for civil protection and health and safety at work shall provide information and training for SMUs and self-employed persons, the cost of which shall be financed in accordance with the legislation of each Member State.*

3. 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,***
- (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 the examinations.***

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

(13) The following *Article* is inserted:

"Article 12b

In order to carry out asbestos demolition or removal work, firms must provide evidence of their ability in this field. ***Each Member State shall establish a national register of suitable, competent enterprises.***"

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

"(b) if the results exceed the limit *values* 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."

(15) ***In Article 15, paragraph 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 surveillance must be carried out in accordance with the laws and practices of the individual Member States."

(16) 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) 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) ***The following articles are inserted:***

"Article 16 a

Member States shall introduce adequate and dissuasive sanctions against breaches of the national legislation adopted pursuant to this Directive.

Article 16 b

Member States shall set up a national registry of public buildings and of industrial and commercial buildings and sites containing asbestos."

(19) *Article 17 is replaced by the following:*

"Article 17

Member States shall keep a register of recognised cases of asbestosis, mesothelioma and other asbestos-related cancers. This register shall be comprehensive, thorough and kept up-to-date. It shall form part of a national health monitoring system for persons who may have been exposed to asbestos."

(20) Annex I is deleted.

(21) *Point 1 of Annex II is replaced by the following:*

"1. Current knowledge indicates that exposure to free asbestos fibres can give rise inter alia to the following diseases:

- *asbestosis,*
- *mesothelioma,*
- *bronchial carcinoma,*
- *gastro-intestinal carcinoma.*

In addition, any pathology caused by occupational exposure to asbestos should be considered an occupational disease. Where there is doubt, the burden of proof shall lie with the employer."

(22) 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 tomography in each individual case, in the light of the latest occupational health knowledge available."

(23) *In Annex II, the following point is added:*

"4. Diagnostic criteria shall in principle be common and should be agreed at Community level. The Commission shall, after consultation with the Member States

and interested parties, submit as soon as possible, and in any case by 31 December 2003, a proposal for common diagnostic criteria."

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

For the European Parliament
The President

For the Council
The President