



SECOND PHASE CONSULTATION OF SOCIAL PARTNERS UNDER ARTICLE 154 TFEU ON REVISIONS OF DIRECTIVE 2004/37/EU TO INCLUDE BINDING OCCUPATIONAL EXPOSURE LIMIT VALUES FOR ADDITIONAL CARCINOGENS AND MUTAGENS

20 December 2017

- **What are your views on the possible avenues for EU action, and the elements set out in section 5 of this document?**
 1. We agree that further action at EU level to set binding occupational exposure limit values (BOELs) for additional substances in the framework of the carcinogens and mutagens directive is the right way forward, as long as certain conditions are met, as set out in our response to the first phase consultation. Aside from improving worker protection to exposure to carcinogenic and mutagenic substances at the workplace, setting BOELs at EU level helps to provide a level playing field for industry.
 2. We also continue to support the development of guides and good practices to assist the implementation of the Directive, as well as voluntary product stewardship programmes by companies and sectors on specific substances.
 3. We welcome the recognition by the Commission that businesses will face increased costs to comply with an additional number of OELs, of course depending on the specific limit values proposed and the activities of the business. It is therefore crucial that the process of setting OELs is based firstly on a robust assessment of the latest scientific information and statistical data, as well as availability of measurement techniques.
 4. Scientific information is currently provided by the Scientific Committee for Occupational Exposure Limit Values (SCOEL) and as part of a pilot project, for some substances by the Risk Assessment Committee (RAC). There should be a thorough assessment of this pilot project before any decision is taken on which body/bodies will provide the scientific information for the setting of OELs in the future. In this context, we note that for three of the substances suggested by the Commission for subsequent inclusion in the directive (i.e. Nickel compounds, Acrylonitrile and Benzene), RAC has been requested to provide scientific assessments, whereas SCOEL has not been given any further mandates at this stage. In the absence of any formal decision, we would prefer for the work to continue to be divided between the two bodies, assigning the one that is best placed to make a recommendation, on the basis of specific experience on exposure to similar substances.
 5. In any case, whichever body provides the scientific information for each individual substance, it will be crucial that certain conditions are met:
 - the input is based on the most recent and sound scientific information;



- the body includes people with expertise in occupational safety and health, toxicology, epidemiology, occupational medicine, human biomonitoring, industrial hygiene and occupational measurement methods; and
 - there is adequate stakeholder consultation (including industry), with reasonable deadlines for responding.
6. It is also crucial that the process is based on an assessment of technical and economic feasibility and of socio-economic impact and that this continues to be provided for by the tripartite Advisory Committee on Safety and Health – ACSH, including its dedicated chemicals working party. This assessment is crucial so that the limit values can be implemented by business and therefore have their intended effect of protecting workers. The Commission should ensure that the ACSH chemicals working party is given adequate time and complete information on individual substances, so that it can propose occupational exposure limit values on the basis of a solid assessment and reasoning. This is also important for the follow-up process with Council and European Parliament, once the Commission proposes a revision of the directive.
 7. We support the Commission’s proposal regarding the substances for inclusion in the 3rd wave revision of the directive, as these meet the conditions set out in our response to the first phase consultation, the necessary preparatory work has been done and the correct processes have been followed. The Commission should indeed take account of the values/range of values endorsed by the ACSH on these substances.
 8. Regarding subsequent amendments of the directive, we also support the Commission’s intention to prioritise substances, rather than trying to set limit values for a specific number of substances by a certain date. We are willing to discuss with governments and trade unions how to establish a methodology for prioritising substances in the future, based on the criteria highlighted by the Commission in its first phase consultation document, and the additional criteria of economic feasibility. This could be done for example in the chemicals working party of the ACSH, or by other means. The Commission should also assess, in consultation with the ACSH, whether it would be useful to take into consideration Biomonitoring for certain chemical agents, in cases where this is scientifically justified and relevant.
 9. As already stated in our response to the first phase consultation, we will be able to support the inclusion of BOELs for additional carcinogenic and mutagenic substances, if the conditions we set out in the response are met. At the same time, regarding including nickel compounds classified as carcinogens, Acrylonitrile and Benzene in the directive, discussions are ongoing in the ACSH chemicals working party and we continue to contribute to them constructively. We encourage the Commission to continue its preparatory work and consultation with the ACSH, taking into account feasibility, compliance and socio-economic aspects.
 10. However, we are concerned about the proposal to include diesel engine exhaust emissions in the scope of the directive. We acknowledge that some of the chemical compounds in diesel exhaust emissions are classified as carcinogenic and due to the dangerous substances/gases and particles present, that it is important to take



measures to deal with exposure to diesel exhaust in the air at workplaces. Given that diesel engine exhaust emissions are mixtures of many different chemical compounds, gases and particles emitted at different phases, a BOELV would have to be based on an indicator substance in the exhaust emissions. However, it is difficult and complex to find the most relevant indicator substance in terms of worker exposure, and there is in fact no agreement or conclusive evidence on this yet.

11. Therefore, before taking any action, first of all more clarity is needed on which compound(s), gases, or particles in diesel engine exhaust actually cause a risk for cancer through worker exposure and could be covered by the directive in an effective and efficient way.
12. It is also important to recall that some of the chemical compounds in diesel exhaust emissions, which are known to be carcinogenic, are in fact already included in the directive, or proposed for inclusion as part of the coming waves (e.g. formaldehyde, benzene, 1,3-butadiene, and polycyclic aromatic hydrocarbons (PAH)). Furthermore, in some member states other indicator substances are used, such as nitrogen dioxide (NO₂) and carbon monoxide (CO).
13. There is also an issue of defining exposure and finding appropriate and effective methods for measuring it (as correctly highlighted by the Commission in its consultation document). At present there is no available approved analytical method for measuring diesel exhaust emissions and the methods available today have been shown to yield different results in parallel measurements under the same exposure conditions. A reliable and not too costly measurement method would be necessary if employers would be expected by law to measure exposure. A proposal to include a limit value for exposure to elemental carbon in Annex III of the directive would be problematic in this respect, as measurement of this substance in a workplace setting is difficult and expensive for employers, as there are just a few laboratories in Europe which have the equipment to do such an analysis. For these reasons, at least a standardized and cost-effective method for measuring and analyzing the chemical needs to be available for employers before action is taken. There is also a need for a reliable direct-reading instrument, as this permits real-time or near real-time measurements.
14. Another complexity is that diesel engine exhaust emissions vary depending on a number of factors, including the type of engine, the fuel and lubricant used, emission control systems and engine operating conditions. Therefore, assessment of exposure at a given workplace, particularly if there are different types of engines present, will be difficult to perform, also bearing in mind that work situations where diesel exhaust emissions may occur, are not static, but are constantly changing depending on the number of vehicles and other factors highlighted above. There are also large differences between older and newer engines, so a clear distinction should be made between them. It should be borne in mind that there have been changes over the last decades in terms of the composition of diesel exhaust emissions, due to technological advances, more stringent emissions regulations at EU level and action by companies particularly in some sectors. New engines with new cleaning techniques for the exhaust (e.g. catalysts and filters) means that significantly lower



levels of harmful substances will be released. These aspects must be taken into account before any action is proposed, also bearing in mind that the implications for worker exposure with this new generation of diesel engines have not yet been thoroughly assessed.

15. The situation of certain sectors (e.g. mining, construction, manufacturing, haulage), where use of diesel engines is most prevalent, should be taken into account. For example, the duration of use of certain vehicles can be very long (several decades for some of them). Also, the use of diesel engines can be very close to non-professional sources (e.g. working close to a motorway), where the background level resulting from the environmental pollution needs to be considered when checking exposure to carcinogenic components. In other cases, emission may occur when trucks from another company leave goods at a worksite, where the employer may know little about what kind of engine is used in the trucks that visit the company, making it very difficult to estimate the exposure. Also, in the mining industry, for example, diesel engines cannot be replaced by electrical batteries, since these simply do not exist in a size necessary for the heavy machines used in this sector.
 16. In conclusion on diesel engine exhaust emissions, we agree that work needs to continue on this issue, including exploring the different options, however, action to include it in the directive should not be taken until there has been an adequately thorough assessment of the implications and feasibility of the different options.
 17. Regarding the discussions on whether the scope of the directive should be amended to include reprotoxic substances, we call on the Commission to ensure full transparency, timely and regular information, and involvement of employers, including through the ACSH, in the study that will be undertaken by contractors on behalf of the Commission.
- **Are the social partners willing to enter into negotiations with a view to concluding an agreement with regard to any of the elements set out in section 5 of this document under Article 155 TFEU?**
18. We do not wish to enter into negotiations under Article 155 TFEU on any of the elements set out in section 5 of the consultation document. However, we continue to discuss in an informal way with the trade unions a number of the issues highlighted above.