



3 February 2021

### **First phase social partner consultation on the protection of workers from risks related to exposure to chemical agents at work (lead and di-isocyanates) and to asbestos at work**

- 1. Do you agree with the issues identified above? 2. Are they accurately and sufficiently covered?**

**(Answers to both questions)**

#### ***General remarks***

1. Europe is characterised by high standards of health and safety at work and the existing EU legal framework for occupational safety and health is comprehensive. As highlighted in the consultation document, the framework directive lays down overall principles, combined with numerous specific directives, including those to protect workers from exposure to asbestos and risks arising from exposure to other substances. There is a long-standing experience with these directives and they are generally well transposed by member states. Overall, this approach is important in providing a level playing for companies operating in the internal market and for consistent worker protection across the EU.
2. Employers are committed to protecting workers' health and safety at the workplace, including from occupational cancers and exposure to dangerous substances. The Carcinogens and Mutagens Directive (CMD), Chemical Agents Directive (CAD) and asbestos directive play an important role in this, along with other actions such as the roadmap on carcinogens, of which BusinessEurope is a signatory partner.
3. As highlighted in the consultation document, there is a rolling programme to add new substances to the CMD and revise existing limit values, with a number of changes made in the last few years. There is also a constant updating of existing Indicative Occupational Exposure Limit Values (IOELVs) or for new substances in the CAD, with a number of lists of IOELVs adopted in the last few years and transposed into member state legislation. This means that there is a constant improvement of the protection of workers across Europe from exposure to carcinogens and mutagens and risks arising from chemical agents at the workplace.
4. We remain convinced that it is important to ensure that risks to workers arising from exposure to chemicals at the workplace are effectively controlled, including, where appropriate, by establishing new EU limit values or revising existing ones. However, this must be based on sound scientific evidence and a thorough assessment of technical and economic feasibility and socio-economic impact, for which the role of the Advisory Committee on Safety and Health (ACSH) is central. It must also be based on the availability of common measurement methods, to ensure that there is a level playing field across the EU.



5. As stated in the consultation document, different limit values may exist in different member states for the same substance, as member states are allowed to set lower limit values than those included in EU legislation. However, the limit values set at EU level are already protective, whilst necessarily taking into account technical and economic feasibility. A lower limit value does not always mean better protection for workers, as this depends on whether it is feasible to measure it, including on the basis of common and easily available measurement methods, and for employers to actually implement it. If companies are not able to apply limit values, they will not be able to protect workers as intended. Bearing in mind that many small and even micro enterprises will be affected by measures on these substances, it is important to ensure that the legislation can be implemented by companies of all sizes in all Member States, as this is how we make sure that there is a level playing field for worker protection across the EU. These points could have been better highlighted in the commission's consultation document. It is also important to remember that the limit values are only part of the picture - they are in addition to other protective measures in the asbestos and CAD directives, as well as the more general measures in the EU health and safety framework directive.

#### ***Remarks on specific substances***

6. We understand that the commission is consulting on the three substances - asbestos, lead and di-isocyanates – at the same time, to be able to make progress on all of them. However, it is important to distinguish between the three substances, in terms of their current status, the different legal frameworks, the different uses and industries where they are prevalent, the different risks to workers, and the scientific analysis to date.

- ***Asbestos***

7. As a banned substance, asbestos is clearly of a different nature to the other two substances, as it is no longer used in industrial applications. We therefore agree with the analysis that the potential risks for workers are in renovation, adaptation or demolishing of older buildings, where asbestos is still present. It is also important to note that exposure may occur outside buildings (e.g. in demolitions), as well as in complex situations such as maintenance or repair activities.
8. We agree that since the last revision of the asbestos directive, new knowledge is available and that new scientific developments and technical progress has been made, making it appropriate to assess the existing limit value. At the same time, we note that the impact assessment scenarios that have already been developed, are based on the limit value in France, which is based on a different analytical model than those used in other member states. This should be taken into account going forward, bearing in mind that analytical models have an impact on the limit values set.
9. In all situations, employers are committed to ensuring that work is carried out in a controlled way and managed effectively. In general, activities where there is a risk of exposure are carried out with full use of personal protective equipment (PPE), to



avoid inhalation of fibres, and with a procedure for cleaning to avoid secondary exposure, as well as measures to safely manage waste containing asbestos.

10. Overall, industry is applying a large set of measures to prevent workers and persons in the vicinity of the work site from inhaling asbestos. These include identifying presence of asbestos, information and training of workers, delimitation of areas where there is a risk of inhalation of asbestos fibres, Personal Protective Equipment (PPE) and hygiene practices, health surveillance of workers, etc.
11. It is important to take into account the widely-used protective measures and those specific to certain industry sectors, when assessing the limit value for asbestos. Exposure scenarios must take into account the use of these measures, in particular PPE.
12. A point not adequately addressed by the consultation document is regarding measurement methods for asbestos. Firstly, it is important to take into account that such measurement methods are very specific and can be expensive and time consuming. Secondly, at the workplace, conditions are generally not like in a clean room, which limits the possibilities for measurement at very low levels. Thirdly, there are different measurement methods in different member states, which has a negative impact on the possibility to have a level playing field. Common and readily available measurement methods/protocols are crucial in this respect. Going forward, it will be necessary to take into account that for some member states setting a lower limit value will require a change in measurement method. This will require an additional analysis at workplaces, bringing additional costs and particular challenges for SMEs. It will also be important to take into account whether the new requirements for PPE triggered by a lower limit value will be feasible in companies.

- **Lead**

13. Based on the scientific analysis, it is widely recognised that lead is a reprotoxic substance, having an impact on both men and women's reproductive health, as well as having other risks for workers when exposed at higher levels. We also agree that since the limit value for lead was set in the CAD, new scientific evidence and knowledge has emerged, making an assessment appropriate and opportune.
14. It is also clear that lead is used in a number of industrial applications, as outlined in the consultation document. Moreover, industry has put in place voluntary agreements (e.g. the International Lead Association's Lead Action 21 Programme<sup>1</sup>), to permanently act to lower the exposure levels, as far as technology allows it.
15. At the same time, it is important to note, as stated in the consultation document, that OSH legislation at EU and national level already provides a good level of protection for workers, including through the CAD. In fact, it is important to take into

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<sup>1</sup> This is a voluntary employee blood lead reduction programme. The programme specifies as part of its charter that operations are managed responsibly and safety to continually reduce the impact to human health and encourages the adoption of best practice.



account that lead is the only substance in CAD with a Binding Occupational Exposure Limit Value (BOEL), not to mention the other protective measures aside from the limit value.

16. In addition to this, it is important to take into account the further protection provided by REACH, which not only restricts the use of lead and its compounds, but also includes obligations for training workers.

- ***Di-isocyanates***

17. For di-isocyanates, the situation is clearly different, as it would be the introduction of a new binding OEL in the framework of CAD. This would put additional obligations on employers not only to comply with the limit value, but also with the other protective measures in CAD. This point is unfortunately not prominent in the consultation document. We do however agree that there are some risks to workers, as outlined. Another difference is that di-isocyanates are sensitizers, which means that by inhaling or dermal contact, a worker can be sensitized and potentially develop asthma. This should be reflected in the assessment moving forward.

18. As with lead, it is important to take into account that REACH already provides for worker protection, as there is already a restriction in place for di-isocyanates, as well as obligations for training workers. In fact, based on the assessment done so far by the REACH Risk Assessment Committee (RAC) in the framework of the restriction, it was noted that the training of workers is in fact the most effective way of reducing exposure and impact on workers, as opposed to other measures. Therefore, this will already decrease the exposure and thus impact on workers, even if a binding occupational exposure limit value (BOEL) is not introduced. In this light, the Commission needs to provide more information and analysis on how effective a BOEL would be in addition to the existing restriction under REACH.

**3. If so, do you consider that the EU should address this issue through a binding instrument?**

19. We support the overall goal of ensuring that the CAD and asbestos directive remain relevant and effective in protecting workers and providing a level playing field across the EU. In general, we support adding new substances or reviewing limit values for existing substances in the CAD, when this meets the following conditions:

- It is based on sound scientific evidence;
- It is technically and economically feasible for employers of all sizes, across industry sectors and across EU member states to implement the new or revised limit values;
- Measurement at the level of the limit value is technically feasible and measurement techniques are readily available, including common methods/protocols in view of ensuring a level playing field;
- A thorough assessment of the socio-economic impact has been undertaken in the ACSH.



20. Since both the CAD and asbestos directives work well overall for employers and workers, and are well transposed by member states, any review should be restricted to a possible amendment of the limit values and not touch any other provisions in the directives.
21. We agree in principle on the need to lower the existing BOEL for lead in the CAD, however only if the conditions above are met. This means avoiding excessively low limit values, which would not meet these conditions. It is also right that this substance continues to be dealt with in the framework of CAD, as it is toxic for reproduction.
22. Whilst it may be appropriate to add a BOEL for di-isocyanates in the CAD, to provide for a level playing field in worker protection, a more cautious approach is needed on this, to take into account the additional burden on employers and considering that an excessively low limit value is likely to cause problems in terms of detection, as the analytical methods currently available would not allow for this, thereby requiring excessively costly investments in new measurement techniques. Also, in addition to meeting the conditions above, any new OEL value must have a clear added value to the mandatory training requirements recently introduced for di-isocyanates under REACH.
23. For the asbestos directive, in principle we support a lowering of the existing limit value, as long as it is also based on the conditions highlighted above, bearing in mind that an excessively low limit value is not likely to meet these conditions.
24. There are a number of other important considerations which need to be taken into account if a lower limit value is proposed for asbestos:
- This may trigger the need for more and/or different protective equipment, which may or may not be easily available to employers or feasible to use at the workplace;
  - It may require staff with more or different expertise/knowledge;
  - Both aspects could mean additional costs for employers;
  - Depending on the type of equipment, it could cause other risks to health and safety;
  - It could require use of a different methodology for determining the concentration of the fibres (e.g. electronic microscopy), which requires more specialised staff and may be more costly.
25. For all three substances, there is an important issue of timing in terms of the work of the RAC and the ACSH, including its working party on chemicals. All the scientific analysis needs to be made available so that employers, workers, governments and the Commission can make a thorough analysis and a well-founded judgement, in particular before a decision is taken on the proposed level of any new/revised limit values. The work currently undertaken by RAC is an important first step in the process (although we have concerns regarding the basis of the impact assessment scenarios for asbestos as highlighted in point 8), however, it is equally important that information is made fully available to the ACSH



and adequate time is provided for discussions in the chemicals working party. This includes the information on exposures and associated health, socio-economic and environmental impacts for the three groups of substances that will be gathered by the Commission in its recently launched study.

**4. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation?**

26. Whilst in principle we support action on these three substances in the framework of the CAD and asbestos directive, the scientific, feasibility and socio-economic analysis still needs to be completed. Therefore, it is too early to consider initiating a dialogue under Article 155 TFEU on the issues identified.
27. Furthermore, the tripartite ACSH, including through its chemicals working party, already allows adequate involvement and input of social partners, as long as it has all the scientific analysis in a timely way.