



28 November 2022

Commission package of EU initiatives addressing the health risks of asbestos

KEY MESSAGES

- 1** The European Commission's proposal to lower the occupational exposure limit value to asbestos from 0.1 fibres/cm³ to 0.01 f/cm³ as an 8-hour time weighted average (TWA) in the Asbestos at Work Directive should be maintained as it strikes the right balance between effective worker protection and feasibility for employers to implement and measure the limit value.
- 2** In order to ensure the effective measuring of levels as low as 0.01 fibres/cm³ as well as level the playing field across the EU, the more modern and sensitive measurement methodology based on electron microscopy (EM) should be included in the revision of the Asbestos at Work directive as the common harmonised methodology for counting asbestos fibres.
- 3** Regardless of the measurement methodology used, a transitional period of four to five years should be ensured in the revision of the Asbestos at Work directive.
- 4** In view of being as cost-efficient as possible, the mandatory screening and registration of asbestos in building should be limited to buildings constructed before 2005 or before the year of an equivalent national asbestos ban and should only take place when risks actually present themselves, e.g. during a demolition or, where necessary, renovation, rather than when buildings are sold on the market. The further work of the Commission on this needs to learn from the practices of the Member States that have introduced such systems. This approach is not only cost-efficient but also the safest, i.e. leave the fixed and intact materials undisturbed.

GENERAL AND SPECIFIC COMMENTS

I. General comments

- 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. The Commission's package of EU initiatives addressing the health risks of



asbestos exemplifies this comprehensive approach, not only in its broad scope but also in its collaborative structure as set up between the respective responsible Commission Directorates-General. Overall, this approach is important both in providing a level playing for companies operating in the internal market as well as for consistent worker protection across the EU.

2. BusinessEurope supports the main objective of the Asbestos Package to further protect the European population and workers from exposure to asbestos. As European employers, we are committed to protecting workers' health and safety at the workplace, including from occupational cancers and exposure to dangerous substances. Reducing the exposure of our workers to asbestos' fibres in the workplace, is therefore a key priority to us. Nevertheless, we underline the need for a practical and implementable approach to asbestos, which is underlined by the principle of an "asbestos-safe" future as opposed to an "asbestos-free" future.
3. Overall, industry is already applying a large set of measures to prevent workers and persons in the vicinity of the work site from inhaling asbestos fibres. 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. Against this background, we welcome the Commission's recognition that the general provisions of the 2009 Asbestos at Work Directive (AWD) remain valid and are well implemented across the Member States and only small changes to the directive are warranted.

II. Specific comments

II.1. A Communication on working towards an asbestos-free future

4. We have taken note of the upcoming initiative to update the Commission Recommendation concerning the European Schedule of Occupational Diseases¹ by including additional asbestos-related diseases and underline the important role of the tripartite Advisory Committee on Safety and Health at Work (ACSH) in this regard. Against this background, we furthermore emphasise the importance of establishing a correlation between the exposure to asbestos at the workplace

¹ At present, the following diseases related to asbestos are included in the Recommendation concerning the European Schedule of Occupational Diseases:

In Annex I: 301.21 Asbestosis;

301.22 Mesothelioma following the inhalation of asbestos dust;

302 Complication of asbestos in the form of bronchial cancer;

306 Fibrotic diseases of the pleura, with respiratory restriction, caused by asbestos;

308 Lung cancer following the inhalation of asbestos dust;

And in Annex II: 2.308 Cancer of the larynx following the inhalation of asbestos dust.



and the resulting diseases as the key element to identifying any occupational disease.

5. We are cautious about the proposed 2023 legislation on mandatory screening and registration of asbestos in buildings in view of economic transactions as well as the proposed 2023 revision of the EU Construction and Demolition Waste Management Protocol and the Guidelines for the waste audits before demolition and renovation works of buildings. Overall, it will be important to ensure that any requirements in terms of the screening and registration or waste management do not create diverging national rules of, for example, certification of relevant service providers. Single Market freedom to provide cross-border services needs to be upheld.
6. In order to be as cost-efficient as possible, the mandatory screening and registration of asbestos in building should be limited to buildings constructed before 2005 or before the year of an equivalent national asbestos ban, whichever the earlier. Introducing a general systematic inventory exercise must therefore be avoided at all costs as it will simply function as window-dressing. It is furthermore crucial that any screening and registration system upholds the key principle of an “asbestos-safe” future to leave fixed and intact materials undisturbed. This implies that the screening process should not change the integrity of asbestos-containing materials but should only take place when risks actually present themselves, e.g. during a demolition or, where necessary, renovation stage, when fibres are released. There may therefore be more benefits to focus the EU initiative on removing asbestos at the time of demolition or, where necessary, renovation, rather than when buildings are sold on the market, which creates a risk of additional administrative costs, i.e. asbestos surveys, without a real impact on asbestos removal due to the difficult technical identification of asbestos in buildings, and the high costs involved by asbestos removal for buildings owners. If, however, the EU legislative debate goes on towards asbestos checks to be conducted at the time when buildings are sold on the market, it will be important to ensure consistency between such checks and the employers already existing obligations under article 11 of the asbestos at work directive 2009/148/EC to make sure that employers are well informed about the presence of asbestos before purchasing a building, thereby helping them meet their own obligations under this directive.
7. In this regard, we encourage the Commission to propose a mandatory screening and registration framework, which leaves enough room for Member States to decide on the concrete implementation and timing of such a system and which does not put existing and effective national schemes at risk. Against this background, we reiterate that an effective inventory will be based solely on samples that are taken during the demolition or, where necessary, renovation stage of a building. Best practice examples should therefore be taken from Member States that already have such a screening system in place, such as Belgium (Flanders), in particular with regards to the need for specific expertise and financial support.



8. We furthermore underline that the proposed revision of the EU Construction and Demolition Waste Management Protocol and the Guidelines for the waste audits before demolition and renovation works of buildings should take into consideration the geographical availability and financial accessibility across the Member States of adapted facilities that are qualified to handle hazardous substances such as asbestos. Against this background, we have taken good note of the Commission's intent to launch a study at the end of 2022 to identify asbestos waste management practices and novel treatment technologies, whose results will be used to evaluate whether changes to EU waste legislation are warranted.
9. Finally, we welcome the proposal's call for the Commission, in collaboration with the Senior Labour Inspectors Committee (SLIC), to launch an awareness-raising campaign on the safe removal of asbestos based on a workers' exposure survey on cancer risk factors in Europe, which will be led by the European Agency for Safety and Health at Work (EU-OSHA). BusinessEurope is committed to contribute to the survey, which will look into the most prevalent exposure situations and the number and characteristics of workers exposed to a range of cancer risk factors, including asbestos.

II.2. A Proposal to amend the Asbestos at Work Directive 2009/148/EC (AWD)

10. We support the establishment of new limit values or revision of existing limit values within EU Health and Safety legislation, in order to ensure strengthened worker protection. This must be based on sound scientific evidence; the limit value must be technically and economically feasible for employers to implement and to measure; and the proper and timely consultation procedures must be followed in the ACSH. We therefore welcome the European Commission's proposal to significantly lower the occupational exposure limit value (OELV) to asbestos in article 8 to ten times lower than the current value (from 0.1 fibres/cm³ to 0.01 f/cm³ as an 8-hour time weighted average (TWA)). We positively assess this proposal as it strikes the right balance between effective worker protection and feasibility for employers to implement and measure the limit value. This is reflected by the broad support for this OELV by both the governments and the employers in the ACSH opinion, which was adopted in November 2021.
11. Nevertheless, we regret that the Commission has opted not to include a transition period for the implementation of the revised OELV nor a harmonised measurement method in the proposal. To effectively check that the OELV is not exceeded, there must be standardised measurement methods that detect concentrations one order of magnitude below the proposed OELV. In this regard, the most common measurement method for asbestos fibres today, Phase Contrast Microscopy (PCM), is not as effective for measuring levels as low as 0.01 fibres/cm³ as the more modern and sensitive methodology based on electron microscopy (EM).



12. In addition, introducing a harmonised measurement methodology used for the entire EU is crucial to ensure the level-playing-field between the different Member States. Currently, each Member State has their own measurement approach, both with regards to methodology as well as sampling, laboratory procedures and interpretation, which makes it extremely complicated to compare the implementation of the OEL between countries. A decision on the measurement technology, without considering all these elements, will not lead to a level playing field.
13. Lastly, it should be recognized that the acknowledged reduction of the OELV to 0.01 fibres/m³ for asbestos in combination with the need for establishing EM as the standard detection methodology reduces the OELV effectively by at least a factor of 2 because of the much higher sensitivity of EM compared to PCM. In essence simply much thinner fibres can be recognized and will therefore be counted with electron microscopy methods, leading to more accurate and valid measurement results. Having this in mind, we strongly emphasize the higher effectiveness to combine the lowering of the OELV with the better measurement methodology of the EM than lowering the OELV to an immeasurable level. Against this background, we deem it unfortunate that the use of EM was only referred to in the proposal.
14. Whilst EM is considered a superior method, it would be remiss not to underline the current limits of applicability associated with this fibre counting method. Upgrading to EM would entail laboratories having the time to change their analytical methods to measure asbestos levels as well as require the development of more specialised laboratories in certain Member States and the retraining of the operators. Challenges furthermore include technical aspects, such as sustainable automation of fibre counting, as well as the longer measurement periods and increased costs of using EM (e.g. EM requires around two hours to take one sample, which costs thousands of euros to analyse over several days).
15. We underline that regardless of the measurement methodology used, a transitional period of four to five years should be ensured in the revision of the directive. Aside from the previously mentioned considerations, the introduction of this new OEL will have significant consequences on aspects related to working time of workers, upgrading of personal protective equipment and other protective measures as well as adaptation of other technical work organisation aspects and the upgraded training of workers. We therefore regret that such a transitional period was not supported by the Commission.
16. Moreover, the possible coexistence of both methodologies must be taken into account, at least during the transitional period. In tasks where the concentration of fibres in the air exceeds 0.01 f/m³ (but the exposure of the workers is lower, due to the use of high-protective PPE), PCM could be used. In the measurements to check the proper cleaning of the area after the asbestos removal work has been finished, EM will be needed. This possible coexistence should be considered when developing the harmonized methodology. All these studies should be carried out before adopting the new OEL.



17. We furthermore underline that since asbestos is a carcinogenic substance, the provisions laid down in the CMRD apply whenever they are more favourable to the health and safety of workers. This includes an exposure-minimisation requirement since it has not yet been possible to identify an exposure threshold below which exposure to asbestos does not involve a cancer risk. Against this background, we express concern with regards to the wording used in article 6 of the proposal to amend the AWD, in particular concerning the phrasing “*technically possible*”. We reiterate that seeing as asbestos does not have a minimum threshold in practice, the wording should instead refer to a duty to lower as much as “*practically possible*” to better reflect the proportionality of demand with the current state of technology.
18. We appreciate the commitment to update the guidelines to support the implementation of the directive as they will be of assistance to ensure that appropriate preventive measures are applied across sectors and different sizes of companies. In particular, we welcome the specific reference to the support needed by SMEs to make sure that workers are aware of the precautions needed and to achieve the highest level of protection as we deem it of crucial importance that all actors have the proper knowledge of where asbestos can occur, how the control and investigation of possible occurrences should be carried out, how clean-up and disposal of materials containing asbestos should be conducted in a safe and correct manner, and how workers can best protect themselves.
19. Nevertheless, we regret that the proposal only highlighted the already existing financial support measures available in the EU but did not foresee any additional funding mechanisms for companies to implement these new requirements. Many European companies, in particular SMEs, will be faced with additional costs, including amongst others, costs related to updated training, improved technical and personal protective equipment, and advanced analysis methods. Taking this into consideration, there is an urgent need to introduce a dedicated funding stream to support these necessary changes in the workplace.