



Union of Industrial and Employers' Confederations of Europe
Union des Confédérations de l'Industrie et des Employeurs d'Europe

S/OR/aj/7.3.15/asb-01-f

PROTECTION OF WORKERS AGAINST RISKS LINKED TO EXPOSURE TO ASBESTOS AT WORK

UNICE RESPONSE TO THE EUROPEAN COMMISSION'S FIRST CONSULTATION OF THE SOCIAL PARTNERS

11 July 2000

- A. The Commission recently launched the first phase of the procedure for consulting the social partners on the possible orientation of an EU initiative designed to improve protection of workers against the risks linked to exposure to asbestos at work. In its document, the Commission refers, inter alia, to the conclusions of the 7 April 1998 Council of Ministers¹ and to the Economic and Social Committee's March 1999 opinion, and envisages a "modernisation" of directive 83/477/EEC.
- B. The Commission would like to have the opinion of the social partners on the following three points:
- the need to improve protection of workers against the risks linked to exposure to asbestos at work.
 - the form that this initiative should take (revision of directive 83/477/EEC);
 - the main elements to be taken into account for modification.
- C. UNICE welcomes the fact that the Commission has launched this initiative and would like to use this document to provide elements of a response to the Commission's questions. It would also like to complement its contribution with a number of comments of substance on the procedures followed by the Commission on this question and the mechanisms for consulting the social partners on EU initiatives in the domain of occupational safety and health.

¹ In its conclusions, the Council invited the Commission to present for amendment of directive 83/477/EEC bearing in mind the interest of:

- focusing protection measures on persons who are now the most exposed;
- the risk assessment reflecting the different risks resulting from tasks for which exposure to asbestos is intrinsic or accessory;
- underlining the fact that risk prevention and minimisation can be achieved by a series of measures;
- revising the exposure levels and re-examining the method for assessment of the level of asbestos fibre in the air.

I. NEED FOR AN EU INITIATIVE

- I.1 The pathologies which follow on from inhalation of asbestos fibres have been widely confirmed and employers consider it essential to ensure a better level of worker protection against this type of risk.
- I.2 In parallel to the ban, soon to be general, on placing products or equipment containing asbestos on the market, application of directive 83/477/EEC has involved implementation of very strict prevention and worker protection measures to obviate the risks linked to exposure to asbestos at work in all Member States².
- I.3 However, UNICE shares the Commission's view, and recognises that very major problems remain, relating notably to:
- I.3.a the medical consequences of prolonged exposure to high concentrations in the past;
 - I.3.b professional activities which give rise to exposure to asbestos fibres during work on certain materials or certain equipment already on the market.
- I.4 In UNICE's view, the questions linked to past exposure is the responsibility of the relevant authorities in Member States. Against that, UNICE believes that the presence of asbestos, notably in a large number of equipment and buildings, poses exposure risks and recognises that EU action designed to adapt worker protection is justified.
- I.5 In this context, UNICE would like to make the following points, which should be borne in mind for any EU initiative in this area:
- I.5.a it is essential to target adaptations to directive 83/477/EEC on trades or tasks with potential for exposure, cataloguing these activities as accurately as possible in liaison with the risk of exposure to asbestos;
 - I.5.b for good risk management, it is just as essential to make a clear distinction between **friable materials** and **non-friable materials**.
- I.6 Lastly, UNICE would like to recall that, even if this point should be distinguished from protection of workers at work, management of problems linked to asbestos is not a problem which touches only on the professional sphere; it is also a question of public health for which national authorities must find an appropriate response.

II. INSTRUMENTS NEEDED TO IMPROVE WORKER PROTECTION AGAINST EXPOSURE TO ASBESTOS

- II.1 UNICE does not, in principle, oppose the adaptation or modernisation of the existing legislative framework. However, it believes that the nature of the problems in question is such that the most appropriate response is not necessarily given by legislation.

² On this subject, as already mentioned on several occasions in the framework of other consultation exercises, when the Commission refers to documents in a consultation document, UNICE would like such documents to be attached to the consultation document.

- II.2 Indeed, the existing legislative apparatus at EU level allows application of strict prevention rules. Employers believe that priority at EU level should be given to designing tools for practical implementation of the rules and optimum deployment. Hence, most effort should focus on training, information and awareness-raising among employees and employers and, clearly, devising practical prevention rules; in UNICE's view, this cannot be done via legislation.
- II.3 In order to respond to the concerns expressed by the Council of Ministers in its 7 April 1998 conclusions, UNICE believes that the Commission should develop and/or support actions designed to:
- II.3.a prepare documents, brochures or other types of publication whose purpose is to inform employers and workers about the risks linked to exposure to asbestos, detailing the types of materials and activities likely to pose risks clearly and in a form accessible to a wide public;
 - II.3.b organise awareness-raising campaigns, possibly differentiated by target group;
 - II.3.c produce guidelines and other forms of practical guides, notably based on exchange of experience, for companies and workers, facilitating establishment of effective risk assessment and prevention systems for the activities in question.
- II.4 UNICE believes that, in this area, the Advisory Committee on Safety, Hygiene and Health protection at work (ACSHH) could play a determinant role by providing Commission officials with support and guidance.

III. ELEMENTS TO BE TAKEN INTO ACCOUNT FOR MODIFICATION OF DIRECTIVE 83/477/EEC

III.1 UNICE believes that if the Commission intends to amend directive 83/477/EEC, it should limit the revision to the aspects set out in the paragraphs below.

III.2 Occupational exposure limits

If the Commission wants to revise the limits for occupational exposure to asbestos, it must do so on the basis of the most recent scientific knowledge and in line with the procedures put in place for setting such limits (consultation of SCOEL and ACSHH).

III.3 Inventory

As already mentioned, since the main source of risk arises from uncontrolled intervention on friable materials containing asbestos, it could be useful to tighten up inventory requirements for products, equipment and, above all, buildings which contain it.

Regarding the presence of asbestos in buildings, it should be clearly established not only that the employer/tenant is responsible for taking adequate prevention measures based on risk assessment but also that the owner is responsible for inventorising the materials used in a building containing asbestos, except those introduced by the tenant, and for informing the employer or employers concerned.

In addition, UNICE insists on the fact that this inventory should only be carried for building or equipment presenting risks. It is important to avoid premature removal of already installed asbestos, as it represents a great potential for health hazard.

III.4 Friable materials

As indicated above, any modification of the legislation should make a distinction between friable materials and non-friable materials with regard to the rules for risk control.

III.5 Guides

Following the example of a fair number of occupational safety and health directives, revision of directive 83/477/EEC could include a reference to the production of guides or guidelines linked to its application.

IV. PROCEDURES

IV.1 Apart from questions of substance, UNICE considers this consultation of the social partners extremely important insofar as it represents the first application of the procedures for consultation of the social partners in accordance with article 138 of the Treaty in the area of occupational safety and health, and raises the question - inter alia - of the interaction between these procedures and consultation of ACSHH.

IV.2 In this regard, UNICE very much regrets the hesitations of Commission officials in the procedures followed hitherto. Whereas the social partners have now been consulted on the possible orientation of an EU initiative in this area, an ACSHH working group met on 22 May to comment on a detailed draft amendment of directive 83/477/EEC. Yet, on 15 March, the spokespersons of the three interest groups (employers, workers, governments) had asked for this meeting to be postponed in order to allow the procedure for consulting the social partners to be launched. Given this situation, employer representatives in ACSHH regrettably felt obliged to announce their non-participation in that meeting, for reasons of principle.

IV.3 As long ago as April 1998, UNICE drew the attention of Commission officials to the importance and complexity of this question, recalling that, while extremely attached to the role of ACSHH, it could not accept any limitation on the prerogatives of the social partners³.

IV.4 UNICE intends to use this first concrete application of the consultation procedures to test a series of working assumptions and would like to pursue the discussions under way, notably with the European Trade Union Confederation, in the light of this specific experience with a view to proposing practical and effective solutions, which take account of the prerogatives of all the parties concerned.

³ See attached position paper - notably point 4.

**CONSULTATION OF THE SOCIAL PARTNERS
IN THE FRAMEWORK OF COMMUNITY POLICY
ON HEALTH PROTECTION AND SAFETY
OF WORKERS AT WORK**

UNICE comments

27 April 1998

1. In its policy document on health protection and safety of workers at work dated 17 November 1997 UNICE recalled its attachment to both consultation of the social partners by virtue of article 3 of the social protocol to the Maastricht Treaty and the role of the Advisory Committee on Safety, Hygiene and Health Protection at Work (ACSHH) as the preferred forum for concertation with the social partners on health and safety at work.
2. Developing this position, UNICE would like to make a constructive contribution to the debate on the role and position of each of these consultation channels once the Treaty of Amsterdam comes into force. Generally speaking, it believes that particular attention should be focused on good coordination between the different consultation channels (social partners and ACSHH) in order to avoid any drawbacks arising from a duplication of procedures.
3. It appears that in reality the risk of duplication of procedures concerns only the legislative initiatives envisaged by the Commission on the basis of new article 137 of the Treaty of Amsterdam in the area of health and safety at work. In this case, the Commission is bound to meet, on the one hand and firstly, the obligation to consult the social partners in two stages (possible direction and content), as a direct consequence of the Treaty, and, on the second hand and secondly, to consult ACSHH on proposals for directives.
4. In this area, UNICE could not accept any limitation on the prerogatives of the social partners. That being the case, given the very characteristics of matters linked to health protection and safety of workers at work, it seems clear that negotiations in this area could only be the exception. From the legislative initiatives which will be made, the social partners will be able to identify very early on in the consultation process those which could be further discussed in the ACSHH, on the basis of a draft prepared by the Commission, and those which they wish to further discuss amongst themselves.
5. In addition, UNICE remains firmly attached to preservation of the prerogatives of ACSHH and fully recognises the need for tripartite concertation (workers, employers, governments) in the area of health protection and safety of workers at work.
6. In practice, UNICE considers that ACSHH will remain the main avenue for consultation in the following areas:
 - preparation of the Commission's multiannual work programmes for health and safety matters;
 - legislative initiatives maintained by the Commission after the obligatory process of consulting the social partners has been completed;

- adaptation of legislation to reflect technical progress (article 17 of health and safety framework directive - 89/391/EEC);
 - non-legislative initiatives in the area of health and safety;
7. In addition, UNICE believes that ACSHH should play a role in the follow up of the application of the legislation. To that end, the Commission should systematically inform ACSHH about the reports it is drawing up on implementation of directives. Furthermore, meetings should be held at regular intervals between ACSHH and SLIC (Senior Labour Inspectors Committee). This would enhance ACSHH's capacity to produce non-binding documents (guides, guidelines, etc.) designed to improve information, comprehension and application of legislation on the ground. It would also provide a means of identifying avenues for simplification of legislation.
8. Lastly, UNICE would like to underline the exploratory nature of the questions raised above. It believes that the only action that ought to be taken prior to entry into force of the Treaty of Amsterdam is adoption of the proposed amendment of ACSHH's rules of procedure, which recognises the role of European organisations representing the social partners for coordination of their respective interest groups, in order to enhance coordination between the two channels of consultation. Subsequently, it will be up to the Commission, in concertation with the interested parties (social partners and ACSHH), to learn all useful lessons from experience with application of the new procedures.

* * *