



COMMISSION OF THE EUROPEAN COMMUNITIES

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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**

(presented by the Commission)

PLAINTIFF'S
EXHIBIT
SA-563

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Asbestos is a particularly dangerous substance which can cause serious illnesses among those exposed to it (pulmonary and pleural fibrosis, cancer of the lungs, pleura and peritoneum). It is still present in various forms in a wide variety of working environments. In 1983, when asbestos was much more commonly used, the Council responded to a Commission proposal by adopting Directive 83/477/EEC¹ on the protection of workers from the risks related to exposure to asbestos at work, subsequently updated and amended by Directives 91/382/EEC² and 98/24/EC³.

a) General background

- In September 1996, the Commission, having analysed how Directive 83/477/EEC was being put into practice in the Member States of the European Union, and in consultation with the Member States, adopted a communication on this subject⁴.

The Commission found that the measures provided for under existing Community legislation still had a useful role to play within the overall context of protecting the health of workers exposed to asbestos; even Council Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work, which in certain cases provides for stricter protective measures, was in some respects a useful adjunct to the Directive on asbestos. The Commission therefore considered that Directive 83/477/EEC would only have to be completely revised in the event of a radical change in policy on the marketing of products containing asbestos – in other words, only if it had been decided at Community level to extend the ban on its use. In that case, the Directive could focus on the specific and limited situation in which workers were still likely to be exposed to asbestos.

- In 1997, the Council took formal note of the Commission's communication referred above, and in 1998 set out its conclusions on this subject⁵.

Without prejudice to further measures which might be taken on the marketing and use of chrysotile asbestos and which would need to be taken into account, the Council invited the Commission to submit proposals for amending Directive 83/477/EEC, considering in particular the merits of:

- refocusing protective measures on those who are now most at risk;
- ensuring that risk assessment provisions reflect the different risks arising from work where exposure to asbestos is an intrinsic or incidental feature;

¹ OJ L 263, 24.9.1983, p. 25

² OJ L 206, 29.7.1991, p. 16

³ OJ L 131, 5.5.1998, p. 11

⁴ COM(96)426 final of 5.9.1996

⁵ OJ C 142, 7.5.1998, p. 1

- emphasising that the prevention or minimisation of exposure can be ensured by a range of measures;
- revising the exposure limits and reviewing the method for assessing asbestos fibres in air
- In 1997, the Economic and Social Committee decided to draw up an opinion on asbestos.

Following on from the preparatory work by the Section for Employment, Social Affairs and Citizenship, the Committee adopted an opinion⁶ in March 1999 which set out a whole series of proposals for action by the European Union.

Even though the main aim of this opinion was to support the introduction of a total ban on the first use of all types of asbestos, the Committee emphasised, in line with the Council's conclusions, that it was concerned about the occupational groups currently most at risk of exposure.

According to the Committee, persons engaged in repair, maintenance, refurbishment, demolition and removal work are often exposed by chance to materials containing asbestos in a less than perfect state.

The Committee therefore called on the Commission to review the legislation on the protection of workers and take new measures for reducing the risks to exposed workers; these proposals should include, among other things, tighter limit values for exposure and more intensive training measures.

- In April 1999, in the context of an exchange of views with the *rapporteur* of the Economic and Social Committee and the relevant departments at the Commission, the Committee for Employment and Social Affairs of the European Parliament⁷ supported the Economic and Social Committee's approach while suggesting a more in-depth debate on this issue in the future.
- In July 1999, after years of discussion, the Commission adopted Commission Directive 1999/77/EC⁸ adapting to technical progress for the sixth time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (asbestos).

This Council directive as amended by the aforementioned Commission Directive 1999/77/EC prohibits, as from 1 January 2005, the placing on the market and use of chrysotile (the type of asbestos which had not yet been banned) and of products to which chrysotile has been deliberately added, with a single derogation (diaphragms used for electrolysis), this derogation to be reviewed by the Commission before 1 January 2008.

⁶ OJ C 138, 18.5.1999, p. 24

⁷ Meeting of the Committee for Employment and Social Affairs on 22 April 1999

⁸ OJ L 207, 6.8.1999, p. 18

It should also be pointed out that in the period from 27 August 1999 (the entry into force of the Commission's Directive 1999/77/EC) until 31 December 2004, the Member States may no longer authorise new applications for chrysotile asbestos within their territory.

b) Reason for Community action

Council Directive 83/477/EEC was a very important starting point in the process of harmonising standards for the protection of workers exposed to asbestos. Nevertheless, despite that Directive and others subsequently adopted in the field of the environment and the single market, asbestos still poses a real problem in the workplace.

Even if more stringent preventive measures will not be able to prevent the emergence of a large number of asbestos-related illnesses over the next few years, as a result of the high levels of exposure between 1945 and 1980, a tightening of the existing rules would definitely be a positive step forward.

With the Community-wide prohibition of first use of asbestos now also applying to chrysotile, which had been the only type of asbestos not subject to the ban, it is clear that preventive measures need to be focused on situations in which exposure may actually occur – even if the ban will not become fully applicable until the beginning of 2005.

Demolition, maintenance, repair, electrical and plumbing work in buildings may lead to workers being unexpectedly exposed to asbestos, and it is for this reason that similar protective measures throughout the Member States are essential.

An updating of Directive 83/477/EEC in order to meet these needs, which the various Community institutions would incidentally also like to see, would enable preventive measures and action to protect workers to be brought into line with scientific knowledge and technological progress.

This step would necessarily have to be backed up by other measures aimed in particular at providing information on safer alternatives and any risks inherent in their use.

This exercise will also be of considerable importance in anticipation of the accession of new Member States, given that in a number of applicant countries the effects of asbestos on workers' health are still considerable. An updating of the Directive will make it easier to draw up new measures in this field and will make for a more effective prevention policy.

c) Subsidiarity

The proposal has no bearing on the principle of subsidiarity, as only Community action can guarantee, in all the Member States, a minimum level of protection for workers against the risks associated with exposure to asbestos. Such action will also make it possible to avoid any distortion of competition by preventing non-uniform application of minimum standards on protection for workers in individual Member States.

In addition, this proposal will introduce more flexibility into trans-frontier employment, as workers will be sure of enjoying at least the minimum level of protection for their health and safety in all the Member States. Employers will also have the certainty that production costs will not be unduly subject to distortion because of differences in the level of protection for health and safety at work.

d) Proportionality

The proposal is also in conformity with the principle of proportionality; the amended health and safety provisions meet the requirements for acceptable minimum standards without imposing an unnecessary burden on employers. They also avoid constraints which would hold back the creation and development of small and medium-sized enterprises.

2. MAIN SPECIFIC ASPECTS OF THE PROPOSAL FOR AMENDING DIRECTIVE 83/477/EEC

a) Scope

With the adoption of Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work⁹, which covers all sectors of activity, both private and public, there is a clear need to align all legislative texts in the health and safety at work sector on the same principles. For this reason, sea and air transport should no longer be excluded from the scope of the Directive, in order to ensure that all workers have the same level of protection.

b) Definition of the various types of fibrous silicates

In order to ensure clarity in the definition of the fibres, they have been redefined either in mineralogical terms or with regard to their Chemical Abstract Service (CAS) number.

c) Simplification of the provisions in the event of limited exposure

In the original Directive, in order to minimise provisions which were more bureaucratic in nature (Articles 4 and 16) or had greater economic impact (Articles 7, 13, 14 (2) and 15) in cases where workers' exposure to asbestos was significantly below the exposure limit value, there was the option of establishing an action level at a significantly lower level (i.e. 1/4 of the limit value for fibres other than crocidolite); the same approach was taken with the first amendment to the Directive, 91/382/EEC.

Using the low limit value proposed in the current text, a hypothetical action level would be such as to make it difficult to measure using the proposed sampling and reading method.

It is therefore proposed to replace the action level in the original Directive with particular work situations which suggest that exposure of workers is insignificant in respect to the exposure limit value proposed.

d) Measuring asbestos content in air

In the light of progress in monitoring the concentration of fibres in the atmosphere at the workplace and of the scope for improving the comparability of measurements, the current text proposes that preference be given to the method of determining airborne fibre concentrations recommended by the World Health Organisation¹⁰.

⁹ OJ L 183, 29.6.1989, p. 1.

¹⁰ Determination of airborne fibre number concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method). WHO. Geneva 1997 (ISBN 92 4 154496 1).

This method illustrates, among other things, the advantages of using phase-contrast optical microscopy and taking into account the characteristics of the fibres under consideration.

There are also proposals for the objective conditions which do not require monitoring of airborne fibre concentrations, in order to avoid placing unnecessary burdens on employers.

The concerned Article includes in a simplified way the relevant provisions of the Annex I to the original Directive, which is no more proposed.

e) Exposure limit values for workers

Although scientific data have shown that the fibrogenic and carcinogenic properties of asbestos vary according to the type of fibre, this proposal lays down a single exposure limit value for workers, instead of the two in the original Directive. There are two factors behind the reason for this decision: firstly, the fact that amphiboles were withdrawn from the European market some years ago and workers are therefore likely to be exposed almost exclusively to chrysotile (with rare exceptions linked to existing large-diameter fibre cement tubes); secondly, the method for measuring fibre concentrations in air proposed in the current text makes it difficult to measure concentrations below the 0.1 fibres per cm^3 which would be required for amphiboles, which are recognised as posing a greater risk to human health. The proposed limit is significantly lower than the previous ones (0.6 fibres per cm^3 for chrysotile and 0.3 fibres per cm^3 for other forms of asbestos).

f) Determining the presence of asbestos in buildings

Since nowadays demolition and maintenance activities appear to be the greatest source of exposure to asbestos for workers, particularly in so far as the presence of asbestos or of materials containing it is frequently unsuspected, the current proposal obliges the employer to determine the presence of asbestos-containing materials before beginning any demolition or maintenance work. In order to do this they should obtain the cooperation of the owner of the real estate and of the tenants.

g) Company responsibility

It is recognised that removal of asbestos is one of the operations posing the greatest risk to workers' health; undamaged asbestos should therefore not be removed, as this operation may be more hazardous than leaving the asbestos in place. The operation of removal must take into account also the necessity not to spread asbestos outside the premises/sites of action; this aspect is covered by industrial hygiene good practices and consequently under by Article 137(2) of the Treaty.

If the asbestos is nevertheless removed, it is essential that the operation be carried out in as safe a manner as possible, and that the companies called upon to operate in this field have the appropriate skills and equipment. This proposal obliges companies to provide proof thereof, which may include certification at national level.

h) Training of workers

Training of workers has always been considered a pillar of health and safety at work policy, as underlined by all the relevant Community Directives.

Bearing in mind the specific nature and the level of risk linked to exposure to asbestos, this proposal sets out a (not necessarily exhaustive) series of points which must be included in training for workers prior to exposing them to the risk of inhaling asbestos dust.

i) Keeping of registers and medical records

The framework Directive required the employer or, in the event of their ceasing activity, the competent authority to retain registers of exposure and individual medical records for a period of 30 years.

Bearing in mind the long latency period for cancer caused by asbestos, and the need to ensure consistency with other Community legislation concerning the prevention of occupational cancer, and in particular Council Directive 90/394/EEC¹¹, this proposal extends to 40 years the period during which the above-mentioned documents are to be retained.

j) Practical recommendations for health examination of workers

Health monitoring of workers exposed to asbestos has given rise to many debates in national and international bodies during the last ten years. The main element of discussion has been its usefulness in the prevention and early diagnosis of disease, particularly cancer, caused by exposure to asbestos.

Nevertheless, despite its limitations, the contribution made by health monitoring to the prevention of diseases caused by asbestos should not be underestimated. For this reason, the annex to the Directive 83/477/EEC, containing practical recommendations for monitoring, has been amended in this proposal in order to bring it more into line with current diagnostic guidelines.

3. CONSULTATIONS

In accordance with the provisions of Article 137 (2) of the Treaty on European Union, the Economic and Social Committee and the Committee of the Regions must be consulted.

¹¹ OJ L 196, 26.7.1990, p. 1.

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

(Text with EEA relevance)

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 Work¹²,

Having regard to the Opinion of the Economic and Social Committee¹³,

Having regard to the Opinion of the Committee of the Regions¹⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁵,

Whereas:

- (1) The Council in its Conclusions of 7 April 1998 on the protection of workers against the risks from exposure to asbestos¹⁶ invites the Commission to bring forward proposals for amending Directive 83/477/EEC¹⁷, considering in particular the merits of refocusing protective measures on those who are now most at risk.
- (2) The Economic and Social Committee, in its Opinion on "Asbestos"¹⁸, calls on the Commission to take new measures to reduce the risks to workers.

¹² OJ C.

¹³ OJ C.

¹⁴ OJ C.

¹⁵ OJ C 340, 10.11.1997, p. 1

¹⁶ OJ C 142, 7.5.1998, p.1.

¹⁷ 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).

¹⁸ OJ C 138, 18.5.1999, p. 24.

- (3) The ban on the marketing and use of chrysotile asbestos introduced by Council Directive 76/769/EEC¹⁹ as amended in 1999 by Commission Directive 99/77/EC²⁰, with effect from 1 January 2005, will contribute to a substantial reduction in asbestos-exposure of workers.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) The notification system of activities involving exposure to asbestos should be adapted to the new work situations.
- (8) 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.
- (9) 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.
- (10) 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 or on the building.
- (11) 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.
- (12) 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.
- (13) 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

¹⁹ OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 1999/77/EC (OJ L 207, 6.8.1999, p. 18)

²⁰ OJ L 207, 6.8.1999, p. 18.

related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)²¹.

- (14) 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.
- (15) 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.
- (16) The amendments contained in this Directive constitute a concrete contribution towards creating the social dimension of the internal market.
- (17) 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.
- (18) In accordance with Decision 74/325/EEC²², 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.
- (19) 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:

"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*,

²¹ 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).

²² OJ L 185, 9.7.1974, p. 15. Decision as last amended by the Act of Accession of Austria, Finland and Sweden.

- Crocidolite, CAS No 12001-28-4*,
- Asbestos tremolite, CAS No 77536-68-6*.

* Number in the register of the Chemical Abstract Service (CAS)."

(3) In Article 3 paragraph 3 is replaced by the following:

"3. Provided that the total exposure time of workers does not exceed two hours in any seven day period, and it is clear from the risk assessment required by paragraph 2 that the exposure limit for asbestos will not be exceeded, Articles 4, 15 and 16 shall not apply where work involves:

- (a) asbestos coating, asbestos insulation or asbestos panelling, or
- (b) air monitoring, clearance inspection or collection of bulk samples to identify whether a material is asbestos".

(4) Article 4 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. The notification shall be submitted by the employer 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.
- (d) the products manufactured.

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 of asbestos to 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."

(5) 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 value 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, in principle, be so designed as to avoid the release of asbestos dust into the air.
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*.

* OJ L 377, 31.12.1991, p. 20

(6) 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 value laid down in Article 8, measurement of asbestos fibres in the air at the workplace 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 wherever possible by PCM (phase contrast microscope) in accordance with the 1997 WHO (World Health Organisation) recommended method²³."

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."

(7) 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 0.1 fibres per cm³ as an 8-hour time-weighted average (TWA)."

(8) In Article 9 paragraph 1 is deleted.

(9) Article 10 is amended as follows:

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

"Where the limit value laid down in Article 8 is 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 limit values of individual respiratory protective equipment proves necessary, this may not be permanent and shall be kept to the strict minimum necessary for each worker."

(10) The following Article 10a is inserted:

"Article 10a

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

If there is any doubt about the presence of asbestos in a material or construction, the regulations and procedures of asbestos removal work shall be followed."

²³ Determination of airborne fibre number concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method), WHO, Geneva 1997 (ISBN 92 4 154496 1).

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

"1. In the case of certain activities such as demolition or removal in respect of which it is foreseeable that the limit value set out in Article 8 will be exceeded despite the use of technical preventive measures for limiting asbestos in air concentrations, the employer 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
- (b) warning signs shall be put up indicating that it is foreseeable that the limit value 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."

(12) 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 removed before demolition techniques are applied,
- the personal protective equipment referred to in Article 11 (1) (a) is provided, where necessary.

(13) The following Article 12a 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 provided at regular intervals and at no cost to the workers.

2. Training must be easily understandable for workers and must inform them among others of:

- a) the properties of asbestos and its effects on health including the synergistic effect of smoking,
- 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.

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

(14) The following Article 12b is inserted:

"Article 12b

In order to carry out asbestos demolition or removal work, firms must provide evidence of their ability in this field. "

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

“(b) if the results exceed the limit value 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.”

(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) Annex I is deleted.

(19) 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 tomodensitometry in each individual case, in the light of the latest occupational health knowledge available”.

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 Brussels, [...]

For the European Parliament
The President
 [...]

For the Council
The President
 [...]

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

TITLE OF PROPOSAL

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

REFERENCE NO

.....

1. THE PROPOSAL

Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

A Council Directive on the protection of workers against asbestos has existed since 1983 (Directive 83/477/EEC)²⁴ and has been updated and amended by Council Directives 91/382/EEC²⁵ and 98/24/EC²⁶ *.

On several occasions during 1998-99, the Council²⁷, the Economic and Social Committee²⁸ and the European Parliament²⁹ emphasised the need to *refocus protective measures on the workers now most at risk*, in order to minimise exposure.

Today, manufactured products containing asbestos are very limited in number compared with the 1970s and 1980s, and they contain only white (chrysotile) asbestos, since the use of other types is banned. This situation will be further improved no later than 1 January 2005, the deadline for transposition of Commission Directive 1999/77/EC³⁰, which prohibits the marketing and use of chrysotile asbestos and products to which it has been deliberately added, with the only exception of diaphragms used for electrolysis, which will be phased out in 1 January 2008.

²⁴ OJ L 263, 24.9.1983, p. 25

²⁵ OJ L 206, 29.7.1991, p. 16

²⁶ OJ L 131, 5.5.1998, p. 11

* The second amendment (1998) merely brought the Directive into line with the provisions of Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work ; it severed the previous link with Directive 80/1107/EEC, which has been repealed on 5 May 2001.

²⁷ OJ C 142, 7.5.1998, p. 1

²⁸ OJ C 138, 18.5.1999, p. 24

²⁹ Meeting of the Committee for Employment and Social Affairs of 22 April 1999

³⁰ OJ L 207, 6.8.1999, p. 18

Occupational groups currently most at risk of exposure to asbestos can be found within repair, maintenance, refurbishment and demolition works. In these circumstances, exposure to asbestos is often unforeseen or unexpected. In case of maintenance or removal activities, risk assessment needs to carefully evaluate advantages and disadvantages to remove non-damaged asbestos or to leave it in place. During these operations the risk of high exposure to asbestos fibres is indeed more frequent and protective measures must be more intensive.

Most Member States have already stricter legislation in place than provided for in the Council Directive 83/477/EEC, this particularly with regard to limit values for occupational exposure. The same applies in respect of the ban on marketing and use of products containing asbestos, which was already effective in most Member States even before Directive 1999/77/EC came into force.

Although more stringent preventive measures will not be able to prevent the emergence over the next few years of a large number of asbestos-related illnesses (especially mesotheliomas, for which the period between exposure to asbestos and emergence of the disease can sometimes exceed 30 years), as a result of the high levels of exposure between 1945 and 1980, a tightening of the existing rules would definitely be a positive step forward.

The proposed amendments to Directive 83/477/EEC will accommodate the improved scientific knowledge and technological progress in the field while at the same time responding to the changing working environment for groups most at risk.

This exercise will also be of considerable importance in anticipation of the accession of new Member States to the European Union, given that in a number of applicant countries the effects of asbestos exposure on workers' health are still considerable. Updating the Directive will make it easier to design new measures in this field and develop a more effective prevention policy.

As stated in the introduction to the explanatory memorandum, the proposal is consistent with the principle of subsidiarity. Only Community action can guarantee, in all the Member States, and on the eve of European Union enlargement, a generally comparable level of protection for workers against the risks associated with exposure to such a dangerous substance as asbestos.

2. THE IMPACT ON BUSINESS

a) Who will be affected by the proposal?

– **Which sectors of business?**

Following the steady reduction of asbestos fibres on the market, existing documents and studies carried out as part of the process of banning asbestos, identifies two sectors of industry currently concerned:

- manufacture of cement-asbestos products, which currently takes place at 15 establishments in Spain, Portugal and Greece, with Spain accounting for 68% of total production.

- processing industries involving the manufacture of special braking systems, panels for high-temperature ovens, special ducting and fittings, and filters for electrolysis.

Apart from these two sectors, in which activities will gradually decline and cease as asbestos substitutes are developed for all remaining applications, the construction industry (including shipbuilding, railways, etc.) is continuously affected by maintenance or demolition of structures already containing asbestos.

- Which sizes of business?

The companies involved in production of cement-asbestos materials and processing generally tend to be large.

Data available indicate that in the production of cement-asbestos materials the approximate number of directly affected workers is about 2 500.

By contrast, building and civil engineering firms tend to be small or medium-sized. Work sites are temporary and mobile, and generally have only a small number of workers (fewer than 10). Bearing in mind that operations of removal of asbestos from different structures, such as buildings or ships, are currently increasing in the Member States due to the improved awareness of risks linked to asbestos exposure the member of the most directly affected employers is not identifiable (maybe in the order of around 80.000-100.000).

- Which geographical areas?

As already mentioned, it is possible to identify the geographical areas concerned in respect of the manufacture of cement-asbestos products (Spain, Portugal and Greece).

As regards the processing industries and the building and civil engineering sector, there is no specific geographical area.

b) What will business have to do to comply with the proposal?

The main aim of the proposed changes of Directive 83/477/EEC, is to focus employers' attention on the workers most at risk and on the preferred preventive measures to be adopted. To this end, the proposed amendments are, following more detailed description down the page, a issue for changing priorities in the use of already earmarked human and financial resources for health and safety protection of employees. Apart from Article 8 and the lowering of exposure limit values, the proposed amendments are unlikely to give rise to additional expenditure, as the provisions merely reiterate those already found in existing directives (which are binding on employers). Instead, the amendments are thought to make all these provisions more visible in the context of a single legislative act.

The point likely to have the greatest implications for businesses is the **lowering of exposure limit values** (Article 8).

The lowering of the exposure limit value as envisaged in the proposal is likely to cause limited additional costs in connection with the technical supervision and

additional equipping of workstations and, where appropriate, the purchase of additional personal protective equipment.

However, account should be taken of the fact that since the adoption of Directive 83/477/EEC businesses have had plenty of time to set up a technical infrastructure to contend with a limit on asbestos fibre concentration at the workplace.

As the **measuring method** using optical microscopy described in Directive 83/477/EEC remains in place under the proposal, even though there is a reference to the method recommended by the WHO (World Health Organisation) in 1997³¹, no specific additional constraints are imposed on businesses.

Another important aspect of the proposal is the **identification of asbestos or asbestos-containing materials** (Article 10a) in buildings or other structures before beginning demolition or maintenance work. Here too, it is merely a question of focusing the risk assessment incumbent on employers under all Community legislation on health and safety at work on a specific aspect.

The same principle applies with regard to **worker training** (Article 12a). The proposal for the amending of the Directive merely explains the procedures and content of this provision, which appears in all directives on health and safety at work as an essential component of prevention.

The time period for the **keeping of registers and medical records** for workers (Article 16) is extended under the proposal from 30 to 40 years, this proposal adapts the provisions on exposure to asbestos to other carcinogenic agents covered by Directive 90/394/EEC. This is motivated by the long latency periods between exposure to asbestos and emergence of a mesothelioma, the most serious of the neoplasms caused by this mineral fibre.

c) What economic effects is the proposal likely to have?

– **On employment**

The proposal will have no direct effect on employment in the sector.

– **On investment**

The proposal will have no direct effect on investment in the sector.

– **On the competitive position of businesses**

The proposal will not have any direct effect on either the short nor the long-term competitiveness of European industry.

d) Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

³¹ Determination of airborne fibre number concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method), WHO, Geneva 1997 (ISBN 92 4 154496 1).

This proposal does not contain any exemptions nor specific measures applicable to SMEs. But is in fact, directed to a large extent towards smaller business.

3. CONSULTATION

List of organisations which have been consulted about the proposal, and outline of their main views.

Consultation concerning this proposal has taken place on three fronts:

- (1) informal consultations (three meetings between November 1998 and June 1999) with Member States' representatives, leading to the agreement on a general approach with a view to providing an optimum response to the Council Conclusions of 7 April 1998;
- (2) two-stage consultation of the social partners (ended in August 2000 and April 2001 respectively) in accordance with Article 138 (2) and (3) of the Treaty. The organisations consulted were the 43 bodies listed in the Annex to the Communication from the Commission adapting and promoting the social dialogue³²;
- (3) consultation of the Advisory Committee on Safety, Hygiene and Health Protection at Work, ending with the plenary meeting of 19 December 2000.

All the parties consulted were in more or less unanimous agreement on the main aspects to be considered in the context of amending the Directive with a view to refocusing measures on the workers now most at risk: in particular, the need to identify asbestos, to improve the awareness, information and training of the workers concerned, to draw up guidelines, and finally to further reduce the limit value for occupational exposure and use a single method for measuring the amount of asbestos fibres in air.

In reply to the request from the Commission about their willingness to launch the negotiating procedure, on the basis of the proposal described in its consultation document, pursuant to articles 138 (4) and 139 of the Treaty, the social partners expressed their opinion that the legislative initiative by the European Commission is legitimate and it should prevail.

³² COM(1998) 322 final, 20.5.1998