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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work

I. INTRODUCTION

1. On 28 September 2022, the Commission published its proposal for a directive amending Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work (doc. ST 12863/22) and transmitted it to the Council and to the European Parliament.
2. The main element of the proposal is the reduction of the current occupational exposure limit value ('OEL') for asbestos fibres from 0.1 to 0.01 fibres per cm³. In addition, the proposal addresses aspects related to measuring methods and provides technical clarifications on the text of the amended Directive.

3. The Council adopted a general approach by unanimity on the proposal in December 2022. The general approach maintained the OEL proposed by the Commission but increased ambition by introducing an obligation to transition to a more modern and sensitive method of asbestos fibre-counting based on electron microscopy (EM). A longer transposition period of 7 years was provided to comply with the latter requirement in order to allow for sufficient time for the transition from the currently most-widely used phase-contrast microscopy (PCM) method. Furthermore, the Council proposed to task the Commission to support Member States by providing appropriate technical guidance, including on the transition to the new methodology.
4. The Committee on Employment and Social Affairs (EMPL Committee) of the European Parliament adopted its report on the proposal, including a decision to enter into trilogues, on 26 April 2023. The decision to enter into trilogues was confirmed by the plenary on 8 May 2023.
5. The first trilogue took place on 11 May 2023. It was an occasion for the co-legislators to present their mandates and agree on the roadmap for future work. The positions were far apart, primarily because many of the European Parliament's proposed amendments go beyond the scope of the Commission's proposal and are therefore not covered by the Council's general approach.

II. STATE OF PLAY

6. The European Parliament's position seeks, among other things, to introduce a lower OEL of 0.001 fibres/cm³ and change the asbestos fibre-counting method to electron microscopy, but with a shorter transition period than the one foreseen in the Council's general approach. In addition, the Parliament proposes to extend the material and personal scope of the basic directive *inter alia* to new fibrous silicates as well as to persons subject to passive or secondary, often non-occupational, exposure. The Parliament also seeks to delete the exemption for sporadic and low intensity exposure and to introduce additional and more detailed obligations on, among others, asbestos handling and training of workers. Finally, the Parliament proposes to introduce new requirements concerning asbestos removal and disposal, notification prior to undertaking asbestos work, screening for asbestos, as well as the introduction of a system of permits for undertakings carrying out asbestos removal.

7. The Council's mandate of 8 December 2022 is limited to the Commission proposal and therefore does not include a position on any of the Parliament's subsequent amendments that go beyond the Commission proposal.
8. Emphasising that its report has broad support of all political groups, the European Parliament highlighted the need to find an overall balanced package covering issues put forward in its report. Therefore, a revision of the Council mandate appears necessary in order to be able to pursue trilogues.
9. The Presidency has consulted delegations on the issues covered by the EP mandate. Discussions on the amendments proposed by EP took place at the Social Questions Working Party meetings on May 12, 2023 and June 1st 2023. There were a certain number of issues where delegations expressed strong support for the Council mandate. This related to issues that were assessed to fall outside the scope of an occupational health and safety act, such as non-occupational exposure to asbestos, removal and disposal of asbestos containing materials as well as asbestos screening of buildings. Delegations also expressed support for the Council mandate regarding the proposed occupational exposure limit, fibre counting methodology and transitional period. The technical feasibility of the EP's proposals in this regard was questioned. Regarding several other topics, delegations, although sympathetic to the objective of improving workers' protection, were unsure of the added value and questioned the level of detail of certain amendments, calling for impact assessments to analyze the consequences of the amendment proposals.
10. Based on the positions expressed by delegations at the above-mentioned Working Party meetings, the Presidency requests Coreper to agree on a revised mandate along the lines set out under point III below in order to be able to pursue trilogues. The intention of the Presidency is to pursue a political agreement with the European Parliament on the main political lines in a compromise package.

III. PROPOSAL FOR A REVISED MANDATE

A) Occupational exposure limit value, fibre counting methodology and transposition period (rows 14, 18, 19, 21, 56-57, 60, 60a, 64h-64k, 66a)

The European Parliament position seeks to introduce an OEL of 0.001 fibres per cm³, which represents a tenfold decrease compared to the OEL proposed by the Commission, i.e. a hundredfold decrease compared to the OEL currently in force. Similarly to the Council, the Parliament asks for the introduction of electron microscopy for the counting of asbestos fibres, but with a shorter transition period of 4 years from the date of entry into force of the Directive.

At working party meetings, several delegations expressed their strong support for the Council position on these topics. Delegations put in question the feasibility of the practical implementation of an OEL as low as 0.001 fibres per cm³ combined with a more sophisticated measuring method and counting small fibres. Furthermore, several delegations have stressed the need for sufficient time to adapt to the transition to electron microscopy. Against this background, the Presidency proposes to:

- **reject** the European Parliament's amendments regarding the occupational exposure limit value and **continue to insist** on a reasonable and technically feasible OEL;
- **insist** on the importance of sufficient time for the transition to EM, however with a certain flexibility as regards the length of the transitional period.

B) Definition of asbestos and scope (rows 13, 13a, 13b, 13c, 13d, 25a, 44a, 45a-45b, 62af-62ak), asbestos screening (rows 25, 62, 62a, 62b) and information for emergency services (rows 64e-64g), removal and safe disposal of asbestos-containing materials (rows 25b, 25c, 25d, 45i-45j)

The European Parliament's amendments on these topics introduce passive, secondary and non-occupational exposure as well as further fibrous silicates into the scope of the directive, introduce requirements on screening of buildings for asbestos and obligations on removal and disposal of asbestos-containing materials. These amendments were not positively assessed by delegations as they were to a large extent seen as going outside the scope of occupational health and safety or in the case of asbestos removal, not necessarily the best option for ensuring the protection of workers. Against this background the Presidency proposes to:

- **reject** the European Parliament's amendments related to passive exposure to asbestos, asbestos screening, and removal and safe disposal of asbestos;
- **pursue** possible compromises to the extent that they are covered by the OSH legal basis;
- **maintain** the current material scope of the Directive while showing openness to the assessment of possible future inclusion of new fibrous silicates.
- **acknowledge** the importance of occupational health and safety requirements to avoid secondary exposure to asbestos, as well as **recognize** the specific situation of firefighters and the emergency services.

C) Notification system for national authorities (rows 24a, 45e-45f, 45g-45h), protection measures for workers exposed to asbestos (rows 17, 23, 25f, 26a, 50, 50a) and medical surveillance of workers and asbestos-related diseases (rows 24, 64a-64b, 64c-64d, 64l-64n), samplings (rows 21a, 54a-54b, 54c-54d, 54e-54f)

For these thematic clusters, the European Parliament's amendments seek to make the provisions of the basic Directive more detailed and prescriptive. This relates *inter alia* to proposals regarding the information that employers are required to provide to the enforcement authority prior to performing work with asbestos, the measures to be undertaken to avoid the release of asbestos into the air, as well as the conditions for performing sampling of asbestos dust. The EP also seeks to introduce additions to the list of diseases caused by asbestos. While acknowledging the merit of certain EP proposals, delegations have cautioned against an excessive level of detail which could make the Directive outdated in case of technological developments. In addition, delegations recalled that the EP's proposals are not underpinned by impact assessments. Against this background, the Presidency proposes to:

- **show certain openness** to the intention of the EP, however, stressing the need to reduce the level of detail in the proposed amendments;
- **reject** the EP's proposal to require registers of notifications for 40 years;
- **reject** the EP's proposal to include diseases where the link to asbestos exposure is not deemed to be sufficiently established.

- D) Sporadic and low intensity exposure (rows 14a, 45c, 45d, 62u-62v, 62ac-62ad, 62ae, 62ap), protection measures in case of exceeded OEL (rows 60b-60c) and protection measures in case of likely exceeded OEL value (rows 62c-62d, 62e-62f, 62g-62h), asbestos removal companies (rows 62o-62p, 62q-62r, 62s-62t), personal protective equipment (rows 62w-62x, 62y-62z, 62aa-62ab), training (rows 15a, 62k, 62l, 62m, 62n, 64o-64x), guidelines (Rows 25e, 62al-62ao)**

Regarding the above topics, the Presidency proposes to maintain the Council's general approach, while showing openness to consider the proposals of the European parliament if it is necessary for the sake of reaching an overall balanced agreement.

IV. NEXT STEPS

11. The Committee of Permanent Representatives is invited to:
- examine the Presidency's suggestions as set out above; and
 - grant the Presidency additional flexibility for future trilogues along the lines set out above under point III.
