



Council of the  
European Union

Brussels, 26 September 2018  
(OR. en)

12516/18

LIMITE

SOC 564  
EMPL 438  
SAN 291  
IA 285  
CODEC 1540

---

---

**Interinstitutional File:  
2017/0004(COD)**

---

---

#### NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	5251/17 + ADD 1 - COM(2017) 11 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work

## 1. INTRODUCTION

In January 2017 the European Commission released the second proposal amending Directive 2004/37/EC on the protection of workers from risks related to carcinogens and mutagens at work.<sup>1</sup> The Council agreed to its General Approach<sup>2</sup> in June 2017 and the European Parliament adopted its General Approach<sup>3</sup> in March 2018.

After three trilogues under the Bulgarian Presidency, a revision of the mandate appears to become necessary in view of the fourth trilogue on 11 October.

The last substantial issue in the ongoing negotiations on which a compromise could not yet be identified is the inclusion of diesel engine exhaust emissions (DEEE) in the annexes of Directive 2004/37/EC.

---

<sup>1</sup> Doc. 5251/17  
<sup>2</sup> Doc. 10438/17  
<sup>3</sup> EP Doc. A8-0142/2018

The European Parliament requests in its report the addition of DEEE in Annex I and two limit values for occupational exposure in Annex III, namely elemental carbon and nitrogen dioxide. In the trilogues, the European Parliament has been strongly insisting on an occupational exposure limit value (OEL) for DEEE at 0,05mg/m<sup>3</sup>, measured in terms of elemental carbon, in Annex III, with the understanding that in ‘Work involving exposure to DEEE’ would then also be listed in Annex I.

Emphasising that its report has a very broad support in the Parliament, it made also very clear that without an OEL (measured as elemental carbon) it would not be able to agree on an overall package.

The Council's general approach does not include DEEE. The possibility to include DEEE only in Annex I has been explored but was rejected by the European Parliament.

## **2. STATE OF PLAY**

In the initial Commission proposal exposure to DEEE was not included.

The reason for the exclusion is stated in the impact assessment saying " ... *the option of including DEEE in Annex I is withheld at this stage because the definition of a substance with reference to older or traditional types of engines lacks necessary clarity from a legal point of view and would be very difficult, if not impossible, to implement*".<sup>4</sup>

In a preceding supplementary opinion from 2013, the Advisory Committee on Safety and Health at work (ACSH) had proposed to include exposure to DEEE coming from older types of engines in Annex I. ACSH also agreed on the principle to include a limit value for DEEE in Annex III subject to taking into account the following criteria:

- (i) the limit value, measured as elemental carbon, should not be higher than 0.1 mg/m<sup>3</sup>,

---

<sup>4</sup> Doc 5251/17 ADD2, p. 24 – 25.

- (ii) the limit value should be feasible in certain employment sectors, such as mining and construction, and
- (iii) the background exposure levels at certain workplaces.<sup>5</sup>

As the DEEE was not part of the Commission proposal, the negotiations in the Council did not address this issue. For that reason, the general approach does not offer today the necessary basis to the Presidency to continue the negotiations.

In order to complement the analysis carried out in the impact assessment, the Presidency held, with the support of the European Commission, a seminar in September 2018, designed to provide additional and up-to-date scientific and technical information to the Member States. Scientists and experts from universities, national institutes for occupational safety and health, governmental bodies and the private sector shared with the representatives of Member States their knowledge on the main health effects of occupational exposure to DEEE, the relevance of elemental carbon as a marker to measure exposure to DEEE and the possible economic implications of including DEEE in the Directive considering a reference OEL of 0,05 mg/m<sup>3</sup>.

### 3. COMPROMISE PROPOSAL

Against this background, a compromise can most likely only be found if the Council is ready to move towards an OEL for DEEE in Annex III. After having evaluated the additional information given during the seminar, the Presidency suggests to Member States the following compromise:

- a) add '*Work involving exposure to diesel engine exhaust emissions*' in Annex I;
- b) add an occupational exposure limit value of 0,05mg/m<sup>3</sup> measured in terms of elemental carbon for DEEE in Annex III;

---

<sup>5</sup> ACSH Doc. 727/13, p.7-8;  
[https://circabc.europa.eu/d/d/workspace/SpacesStore/85739c10-4b49-42ac-8982-aafc9a38f0eb/Doc%20%20727-13-%20EN%20Supplementary%20CMD%20Opinion\\_FINAL.pdf](https://circabc.europa.eu/d/d/workspace/SpacesStore/85739c10-4b49-42ac-8982-aafc9a38f0eb/Doc%20%20727-13-%20EN%20Supplementary%20CMD%20Opinion_FINAL.pdf)

- c) acknowledge possible short-term sectoral compliance difficulties for underground mining and tunnel construction by introducing a sector specific transition period of at least 2 years after the end of the transposition period for the above limit value of 0,05mg/m<sup>3</sup> in Annex III.

With a view to reaching an agreement with the European Parliament on the second proposal for a Directive amending Directive 2004/37/EU, the Austrian Presidency suggests to the Delegations to consider the compromise suggestion as set out in the annex.

#### **4. CONCLUSION**

The Committee of Permanent Representatives is invited

- to examine the Presidency's compromise suggestions as set out in the Annex to this note;  
and
- to agree on an amended Presidency negotiation mandate for the forthcoming trilogue, which will take place on 11 October.

The Presidency will report back to the Committee on the results of this next trilogue, which is expected to be that last one on this file.

---

In Annex I to Directive 2004/37/EC, the following point is added:

**“Work involving exposure to diesel engine exhaust emissions.”**

In Part A of Annex III to Directive 2004/37/EC, the following entry is added:

CAS No <sup>(1)</sup>	EC NO <sup>(2)</sup>	NAME OF AGENT	LIMIT VALUES						TRANSITIONAL MEASURES
			8 hour <sup>(3)</sup>			Short-term <sup>(4)</sup>			
			mg/m <sup>3</sup> <sup>(5)</sup>	ppm <sup>(6)</sup>	f/ml <sup>(7)</sup>	mg/m <sup>3</sup>	ppm	f/ml	
		<b>Diesel engine exhaust emissions</b>	<b>0,05<sup>(8)</sup></b>						<b>For underground mining and tunnel construction the limit value shall apply as of [2] years after the end of the transposition period of this Directive.</b>

(8) measured in terms of elemental carbon