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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>General approach</i>

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. This proposal lowers the occupational exposure limit value for asbestos to 0.01 fibres per cm³, addresses aspects related to measuring methods and provides technical clarifications on the text of the amended Directive.
3. The legal basis for this proposal is Article 153(2) of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with point (a) of Article 153(1). The ordinary legislative procedure is applicable.

4. The Committee of the Regions and the Economic and Social Committee have been consulted in good time, but have not yet adopted their opinions.
5. The European Parliament has not yet decided on its position.

II. STATE OF PLAY

6. The Social Questions Working Party examined the proposal in four meetings on 3 October, 18 October, 31 October and 10 November 2022.
7. Delegations provided their views on the Commission's impact assessment (IA). A summary of replies to the IA questionnaire is to be found in the Addendum to this document. All Member States considered the policy context and the legal basis of the initiative as well as problem definition to be clearly explained. The coherence and consistence of the policy objectives were fully or at least partially acknowledged by all delegations. In the view of most delegations, the impact of the proposal was analysed correctly, and the monitoring solutions were presented clearly.
8. Taking into account the outcome of the discussions in the Working Party, the Presidency prepared a compromise text of the proposal, set out in the Annex of this document.

III. COMPROMISE PROPOSAL

9. The Presidency's compromise suggestions cover the following issues:

a) Measuring method (Recital 11, Article 1(4) and Article 2)

At the request of a significant number of delegations, the text introduces an obligation to carry out asbestos fiber-counting by the more modern and sensitive method based on electron microscopy (EM). A longer transposition period of 7 years has been provided to comply with this requirement, in order to allow for sufficient time for the transition from the current phase-contrast microscopy (PCM) method. Article 2 makes clear that the measuring methods currently in use, in accordance with the amended Directive, remain valid until the transposition.

b) Technical guidance (Recital 11, Article 1(4a))

The Commission has been tasked with supporting Member States by providing appropriate technical guidance, including on the technical transition to the new methodology.

10. The Presidency considers that this compromise establishes a balanced text, aiming at reaching an agreement on a general approach in the Council in order to start negotiations with the European Parliament with a view to an agreement at first reading.
11. Changes to the Commission proposal are set out in **bold**. Changes to the presidency compromise text discussed at the SQWP meeting on 10 November 2022 (document ST14389) are set out in **bold underlined**. Changes proposed by the lawyer linguist are marked in **bold underlined italic**. Deletions are marked by [...].

III. CONCLUSION

The Permanent Representatives Committee is invited to:

- examine and confirm the agreement on the Presidency's compromise text as set out in the Annex to this note and
- forward it to the Council (EPSCO) with a view to the latter reaching a general approach at its meeting on 8 December 2022.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2), point (b), in conjunction with paragraph 1, point (a), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 56, 16.2.2021, p. 63.

² Position of the European Parliament of XXXXX (not yet published in the Official Journal) and Decision of the Council of XXXXX.

Whereas:

- (1) Directive 2009/148/EC of the European Parliament and the Council³ aims to protect workers against risks to their health and safety from exposure to asbestos at the place of work. A consistent level of protection from the risks related to the occupational exposure to asbestos is provided for in that Directive by a framework of general principles to enable Member States to ensure the consistent application of minimum requirements. The aim of these minimum requirements is to protect workers at Union level, while more stringent provisions can be set by Member States.
- (2) The provisions of this Directive should apply without prejudice to [...] Directive 2004/37/EC of the European Parliament and of the Council⁴ **whenever the latter provides for more favourable provisions to health and safety at work.**
- (3) Asbestos is a highly dangerous carcinogenic agent, still affecting different economic sectors, such as building and renovation, mining and quarrying, waste management and firefighting, where workers are at high risk of being exposed. Asbestos fibres are classified as carcinogens category 1A according to Regulation (EC) 1272/2008 of the European Parliament and of the Council⁵. When inhaled, airborne asbestos fibres can lead to serious diseases such as mesothelioma and lung cancer, and the first signs of disease may take an average of 30 years to manifest from the moment of exposure, ultimately leading to work-related deaths.

³ Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (Text with EEA relevance)
OJ L 330, 16.12.2009, p. 28.

⁴ Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens, mutagens or reprotoxic substances at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (OJ L 158, 30.4.2004, p. 50).

⁵ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (Text with EEA relevance)
OJ L 353, 31.12.2008, p. 1.

- (4) Following the new scientific and technological developments in the area, there is scope to improve the protection of workers exposed to asbestos and thus to reduce the probability of workers contracting asbestos-related diseases. For asbestos, being a non-threshold carcinogen, it is not scientifically possible to identify levels below which exposure would not lead to adverse health effects. Instead, an exposure-risk relationship (ERR) can be derived, facilitating the setting of an occupational exposure limit ('OEL') by taking into account an acceptable level of excess risk. As a consequence, the OEL for asbestos should be revised in order to reduce the risk by lowering exposure levels.
- (5) The Europe's Beating Cancer Plan⁶ supports the need for action in the field of protection of workers against carcinogenic substances. Improved protection of workers exposed to asbestos will also be important in the context of the green transition and the implementation of the European Green Deal, including in particular the renovation wave for Europe⁷. Citizens' recommendations in the framework of the Conference on the Future of Europe⁸ also highlighted the importance of fair working conditions, in particular the revision of Directive 2009/148/EC.

⁶ https://ec.europa.eu/health/system/files/2022-02/eu_cancer-plan_en_0.pdf

⁷ Renovation Wave: doubling the renovation rate to cut emissions, boost recovery and reduce energy poverty, COM(2020) 662 final

⁸ Conference on the Future of Europe. Report on the final outcome (May 2022). https://prod-cofe-platform.s3.eu-central-1.amazonaws.com/8pl7jfzc6ae3jy2doji28fni27a3?response-content-disposition=inline%3B%20filename%3D%22CoFE_Report_with_annexes_EN.pdf%22%3B%20filename%2A%3DUTF-8%27%27CoFE_Report_with_annexes_EN.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA3LJJXGZPDFYVOW5V%2F20220917%2Ffeu-central-1%2Fs3%2Faws4_request&X-Amz-Date=20220917T104038Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=6806caf5fd75a86ad4e907b934b2194de4c3c0c756a8d2a34c5e8b68985ffbde

- (6) A binding occupational exposure limit value for asbestos, which must not be exceeded, is an important component of the general arrangements for the protection of workers established by Directive 2009/148/EC, in addition to the appropriate risk management measures (RMMs) and to the provision of adequate respiratory and other personal protective equipment.
- (7) The limit value for asbestos set out in Directive 2009/148/EC should be revised in the light of the Commission's evaluations, [...] recent scientific evidence and technical data. The revision of that limit value is also an effective way to ensure that preventive and protective measures are updated accordingly in all Member States.
- (8) A revised limit value should be set out in this Directive in light of available information, including up-to-date scientific evidence and technical data, based on a thorough assessment of the socioeconomic impact and availability of exposure measurement protocols and techniques at the place of work. That information should be based on opinions of the Committee for Risk Assessment (RAC) of the European Chemicals Agency (ECHA), established by Regulation (EC) No 1907/2006 of the European Parliament and of the Council⁹, and opinions of the Advisory Committee on Safety and Health at Work (ACSH), established by a Council Decision of 22 July 2003¹⁰.

⁹ **Regulation (EC) n° 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending directive 1999/45/EC and repealing Council Regulation (EEC) n° 793/93 and Commission Regulation (EC) n° 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC et 2000/21/EC (OJ L 396, 30.12.2006, p. 1).**

¹⁰ Council Decision of 22 July 2003 setting up an Advisory Committee on Safety and Health at Work (OJ C 218, 13.9.2003, p. 1).

- (9) Taking into account the relevant scientific expertise and a balanced approach ensuring at the same time adequate protection of workers at Union level and avoiding disproportionate economic disadvantages and burdens for the affected economic operators (including SMEs), a revised OEL equal to 0.01 fibres/cm³ as an 8-hour time-weighted average (TWA) should be established. This balanced approach is underpinned by a public health objective aiming at the necessary safe removal of asbestos. Consideration has also been given to proposing an OEL that takes into account economic and technical considerations to allow an effective removal.
- (10) The Commission has carried out a two-stage consultation of management and labour at Union level in accordance with Article 154 of the Treaty. It has also consulted the ACSH, which has adopted an opinion providing also information for the successful implementation of the revised OEL options. The European Parliament adopted a resolution¹¹ calling for a proposal to update Directive 2009/148/EC in order to strengthen Union measures for protecting workers from the threat of asbestos.
- (11) **Optical microscopy**, although it does not allow a counting of the smallest fibres detrimental to health, [...] is currently the most used method for the regular measuring of [...] asbestos. **In line with the opinion of the ACSH, a more modern and sensitive methodology based on electron microscopy or any other method giving equivalent or more sensitive results should gradually replace optical microscopy, while taking into account the need for an adequate period of technical adaptation and for a higher coherence among different methodologies currently applied within the Union. In order to allow for sufficient time to comply with the new requirements related to fibre measurement, it is appropriate that a longer transposition period of 7 years for such measures is provided. The Commission should support and facilitate Member States in such replacement, [...] in particular through the development of guidelines.**

¹¹ European Parliament resolution of 20 October 2021 with recommendations to the Commission on protecting workers from asbestos (2019/2182(INL)) (OJ C 184, 5.5.2022, p. 45.)

- (12) Taking into account the exposure minimisation requirements set out in Directive 2009/148/EC [...] and Directive 2004/37/EC [...], employers should ensure that the risk related to the exposure of workers to asbestos at the place of work is reduced to a minimum and in any case to as low a level as is technically possible.
- (13) Special control measures and precautions are needed for workers exposed or likely to be exposed to asbestos, such as subjecting workers to a decontamination procedure and related training, in order to significantly contribute to reducing the risks related to such exposure.
- (14) Preventive measures for the protection of the health of workers exposed to asbestos and the commitment envisaged for Member States with regard to the surveillance of their health are important, in particular the continuation of health surveillance after the end of exposure.
- (15) Employers should take all necessary steps to identify presumed asbestos-containing materials, if appropriate by obtaining information from the owners of the premises as well as other sources of information, including relevant registers. They should record, before the start of any asbestos removal project, the presence or presumed presence of asbestos in buildings or installations and communicate this information to others who may be exposed to asbestos as a result of its use, of maintenance or of other activities in or on buildings.

- (16) Since the objective of this Directive, namely to protect workers against risks to their health and safety arising from or likely to arise from exposure to asbestos at work, including the prevention of such risks, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (17) Since this Directive concerns the protection of the health and safety of workers at the place of work, it should be transposed within two years of the date of its entry into force.
- (18) Directive 2009/148/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/148/EC

Directive 2009/148/EC is amended as follows:

- (1) in Article 1(1), the following third subparagraph is added:

‘The provisions of Directive 2004/37/EC of the European Parliament and of the Council shall apply whenever they are more favourable to health and safety of workers at work....’*

* Directive 2004/37 of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens, mutagens or reprotoxic substances at work (Sixth individual directive within the meaning of Article 16(1) of Council Directive 89/391/EEC (OJ L 158, 30.04.2004, p. 50), as last amended by Directive (EU) 2022/431 of the European Parliament and of the Council of 9 March 2022 (OJ L 88, 16.3.2022, p. 1./...).’;

(2) Article 2 is replaced by the following:

‘Article 2

For the purposes of this Directive, ‘asbestos’ means the following fibrous silicates, *which are classified as carcinogens 1A according to Regulation (EC) 1272/2008**:

[...]

- (a) asbestos, actinolite, CAS** 77536-66-4;
- (b) asbestos, amosite (grunerite), CAS 12172-73-5;
- (c) asbestos, anthophyllite, CAS 77536-67-5;
- (d) asbestos, chrysotile, CAS 12001-29-5;
- (e) asbestos, crocidolite, CAS 12001-28-4;
- (f) asbestos, tremolite, CAS 77536-68-6.

[...]

*** Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1–1355).**

**** CAS: Chemical Abstract Service Number’;**

- (3) 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 shall be reduced to a minimum and in any case *to as low a level as is technically possible* below the limit value laid down in Article 8, in particular through the following measures:

- (a) the number of workers exposed or likely to be exposed to dust arising from asbestos or materials containing asbestos shall be limited to the lowest possible figure;
- (b) work processes shall be designed so as not to produce asbestos dust or, if that proves impossible, to avoid the release of asbestos dust into the air;
- (c) all premises and equipment involved in the treatment of asbestos shall be capable of being regularly and effectively cleaned and maintained;
- (d) asbestos or dust-generating asbestos-containing material shall be stored and transported in suitable sealed packing;
- (e) waste shall 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; such waste shall then be dealt with in accordance with *Directive 2008/98/EC of the European Parliament and of the Council**.

* Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).’;

- (4) in Article 7(6) the first subparagraph is replaced by the following:

‘Fibre counting shall be carried out by **electron microscopy (EM)** or by any other **alternative technology giving equivalent or more accurate results.**’;

- 4(a) In Article 7, the following paragraph [...] is added:

‘7. For the purposes of ensuring compliance with the measures on fibre counting referred to in this Article, the Commission shall support Member States by providing appropriate technical guidance, *including on the technical transition from phase-contrast microscopy (PCM), as applied in accordance with the method recommended in 1997 by the World Health Organization (WHO)*, to Electron microscopy (EM).*

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

- (5) 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 **0.01** fibres per cm³ as an 8-hour time-weighted average (TWA).’;

- (6) in Article 11, the first subparagraph is replaced by the following:

‘Before beginning demolition or maintenance work, employers shall take, if appropriate by obtaining information from the owners of the premises ***as well as from other sources of information, including relevant registers***, all necessary steps to identify presumed asbestos-containing materials.’;

(7) in Article 19, paragraph 2 is replaced by the following:

‘The employer shall enter ***the information on*** the workers ***engaged in*** the activities referred to in Article 3(1) in a register. ***That information shall*** indicate the nature and duration of the activity and the exposure to which they have been subjected. The doctor and/or the authority responsible for medical surveillance shall have access to this register. Each worker shall have access to the results in the register which relate to him or her personally. The workers and/or their representatives shall have access to anonymous, collective information in the register. ’

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***[OJ: please insert two years after the date of entry into force of this Directive]*** at the latest. They shall immediately communicate the text of those measures to the Commission.

[...]

- 1a **[...] Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1, point 4 of this Directive by [OJ: please insert 7 years after the date of entry into force of this Directive] at the latest. They shall immediately communicate the text of those measures to the Commission. [...]**
Member States shall, before having brought into force the laws, regulations and administrative provisions in accordance with this paragraph, carry out fibre counting wherever possible by phase-contrast microscopy (PCM), in accordance with the method recommended in 1997 by the World Health Organisation, or by any other method giving equivalent results.

When Member States adopt the measures referred to in paragraphs 1 and 1a, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main **provisions** of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
