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NOTE

From:	Presidency
To:	Delegations
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 cm^3. 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 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 has been 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 technical 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 under the Swedish Presidency on 11 May 2023. The co-legislators presented their mandates and exchanged views on some of the main political issues. The positions were far apart, primarily because the European Parliament proposed amendments which 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 position seeks, among other things, to introduce an OEL of 0.001 fibres per cm^3, 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. 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 laid down in the current Article 3, paragraphs 3 and 4, and to introduce additional and more detailed obligations on, among others, asbestos handling and training of workers. Finally, the EP proposes to introduce new requirements concerning notification prior to undertaking asbestos work, asbestos removal and disposal, the carrying out of 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 December 2022 is limited to the Commission proposal and therefore does not include a position on any of the Parliament amendments that go beyond the Commission proposal.

8. Emphasising that its report has support of all political groups, the European Parliament didn't specify its priorities, but rather highlighted the need to find an overall balanced package covering issues put forward in its report. It became clear that without a mandate of the Council on the EP proposals, it would not be possible to continue negotiations or agree on an overall package. Therefore, a revision of the Council mandate appears necessary in order to be able to pursue trilogues.

9. A first discussion on the EP proposed amendments took place at the Social Questions Working Party on May 12, 2023. During that meeting delegations expressed their preliminary positions vis-à-vis the EP mandate. 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 the 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 strong support for the Council mandate regarding the proposed occupational exposure limit, fibre counting methodology and transitional period. The EP's proposals in this regard were, in general, not seen as realistic or feasible. Regarding several other topics, delegations, although sympathetic to the objective of achieving better workers' protection, were hesitant of the added value and questioned the level of details of certain amendments. Some delegations asked the Presidency to obtain further clarifications from the EP team regarding the rationale and meaning of the proposed amendments.

III. OUTSTANDING ISSUES AND WAY FORWARD

10. Delegations will find below a set of questions/suggestions by the Presidency designed to provide further guidance for technical work and form the basis of a compromise package for further negotiations with the European Parliament, aiming at swiftly adopting the file. Based on the answers received from delegations, the Presidency intends to ask Coreper for a revised negotiation mandate.

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

As mentioned above, delegations have in general expressed strong support for the Council mandate on these issues. However, in order to asess the scope of a possible new mandate, the

Presidency would appreciate further information from delegations. Therefore, the Presidency asks delegations:

- Can you support the OEL proposed by the EP? If not, could a lower OEL than the one in the Council mandate be envisaged?
- Could delegations support the OEL proposed by the EP, if combined with a longer transitional period?
- How do you see the transposition period for the transition to EM? Could a reduced transition period as proposed by the EP be supported?

B) Provisions for training of workers (rows 15a, 62k-62l, 62m-62n, 64o-64x)

One important aspect for the European Parliament are increased requirements regarding the training of workers that are or may be exposed to asbestos. To that end, the EP proposes a significant number of amendments, specifying the length and content of mandatory training, as well as introducing certification requirements.

At the Working Party meeting on 12 May, a number of delegations expressed their general openness regarding EP amendments on this issue, but asked for the level of detail to be reduced. Against this background, the Presidency asks delegations:

- Can you support the EP amendments regarding training? If not, please specify which amendments you cannot support and why.

C) Other political issues

The Presidency is of the understanding that a number of delegations could show some openness to the EP amendments on the topics of 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) as well as asbestos removal companies (rows 62o-62p, 62q-62r, 62s-62t), provided that the level of detail is reduced and additional administrative burden is avoided. Against this background, the Presidency asks delegations:

- Which amendments related to these topics would you not be able to accept as they stand now?

The presidency has taken note of the positions of delegations also on the topics of definition of asbestos and scope (rows 13, 13a, 13b, 13c, 13d, 25a, 44a, 45a-45b, 62af-62ak), medical surveillance of workers and asbestos-related diseases (rows 24, 64a-64b, 64c-64d, 64l-64n) sporadic and low intensity exposure (rows 14a, 45c, 45d, 62u-62v, 62ac-62ad, 62ae, 62ap) samplings (rows 21a, 54a-54b, 54c-54d, 54e-54f), protection measures in case of (likely) exceeded OEL (rows 60b-60c, 62c-62d, 62e-62f, 62g-62h), asbestos screening (rows 25, 62, 62a, 62b) and information for emergency services (rows 64e-64g) personal protective equipment (rows 62w-62x, 62y-62z, 62aa-62ab), work plan (rows 62i-62j) and guidelines (rows 25e, 62al-62ao).

- Do delegations have additional information on their positions on these topics compared to the working party of May 12th?

IV. NEXT STEPS

Delegations are asked to provide answers to the above questions at the next working party meeting on June 1st. The Presidency intends to use the feedback received from delegations to prepare a proposal for a revised mandate to be sought in Coreper, in view of continuing trilogues.

The Presidency intends to use the opportunity of the Working Party to debrief delegations of the outcome of the discussions at technical level so far.