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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

{SEC(2022) 342 final} - {SWD(2022) 310 final} - {SWD(2022) 311 final} -
{SWD(2022) 312 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

One of the objectives of the European Union (EU) is to promote well-being and sustainable development, based on a highly competitive social market economy, aiming at full employment and social progress[1]. The right of every worker to working conditions that respect their health, safety and dignity is enshrined in Article 31 of the Charter of Fundamental Rights of the European Union. Principle 10 of the European Pillar of Social Rights[2] states that workers have the right to a high level of protection of their health and safety at work.

In her political guidelines, President von der Leyen committed to putting forward a European plan to fight cancer, to support Member States in improving cancer control and care[3]. This proposal delivers on the commitment made in Europe's Beating Cancer Plan[4], the European Pillar of Social Rights Action Plan and the EU strategic framework on health and safety at work for 2021-2027[5] to further reduce workers' exposure to asbestos, which is a highly dangerous carcinogenic substance. This proposal, highlighted as one of the priorities under action 3 - A stronger economy, social justice and jobs - of the Conference on the Future of Europe (CoFE) is a key deliverable of the 2022 Commission work programme[6]

Protecting workers against exposure to asbestos is also a key priority for the European Parliament. In its resolution of October 2021[7], the European Parliament set out an encompassing approach to dealing with legacy asbestos issues. In response, the Commission has adopted its *Communication on working towards an asbestos-free future: a European approach to addressing the health risks of asbestos*[8]. It addresses the public-health risk stemming from asbestos in a holistic manner, presenting EU-level measures to tackle asbestos throughout its life cycle.

Occupational cancer is the first cause of work-related deaths in the EU[9]. It is primarily caused by exposure to carcinogenic substances such as asbestos. As much as 78% of occupational cancers recognised in the Member States are related to asbestos[10]. When inhaled, airborne asbestos fibres can lead, for example, to mesothelioma[11] and lung cancer, with an average lag between exposure and the first signs of disease of 30 years. Therefore, cancers may develop decades after occupational exposure, including when workers have retired from work. This makes it difficult to trace past exposures and identify a causal link between work-related

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1 Article 3 of the Treaty on European Union.

2 https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/

3 https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf

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

5 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0323&qid=1626089672913#PP1Contents

6 https://eur-lex.europa.eu/resource.html?uri=cellar%3A9fb5131e-30e9-11ec-bd8e-01aa75ed71a1.0001.02/DOC_1&format=PDF

7 https://www.europarl.europa.eu/doceo/document/TA-9-2021-0427_EN.html

8 [cross-reference to be added upon adoption]

9 With a share of 52%, occupational cancer is the first cause of work-related deaths in the EU, before circulatory illnesses (24%), injuries (2%) and all other causes (22%) (2017 data, thus covering the EU and the United Kingdom (https://visualisation.osha.europa.eu/osh-costs#!/)).

10 https://ec.europa.eu/eurostat/web/experimental-statistics/european-occupational-diseases-statistics

11 Mesothelioma is a type of cancer that develops from the thin layer of tissue that covers many of the internal organs (known as the mesothelium).

exposure and cancers. For this reason, the number of people affected by asbestos-related occupational diseases may be underestimated.

The progressive ban on the use of asbestos in the EU began in 1988 with the prohibition of crocidolite (also called blue asbestos)[12] and was subsequently extended to cover other asbestos-containing materials. Since 2005, all forms of asbestos are banned in the EU[13].

The first EU action aimed at protecting workers from the specific risks of workplace exposure to asbestos dates back to 1983, when Council Directive 83/477/EEC[14] was adopted. This Directive has been substantially amended several times until its most recent codified version, Directive 2009/148/EC (the Asbestos at Work Directive (AWD))[15]. In addition, since asbestos is a carcinogenic substance, the provisions laid down in Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens, mutagens or reprotoxic substances at work[16] (the Carcinogens, Mutagens and Reprotoxic Substances Directive (CMRD)) apply whenever they are more favourable to the health and safety of workers. This includes an exposure-minimisation requirement since it has not yet been possible to identify an exposure threshold below which exposure to asbestos does not involve a cancer risk. Therefore, and in line with the CMRD, employers should ensure that the risk related to the exposure of workers to asbestos at the workplace is reduced to a minimum and in any case to as low a level as is technically possible.

The AWD protects workers against risks to their health arising or likely to arise from exposure to asbestos at work, including by preventing such risks. Under the AWD, for all activities in which workers are or may be exposed to dust from asbestos or materials containing asbestos, exposure must be reduced to a minimum and in any case below the fixed binding occupational-exposure limit (OEL) of 0.1 fibres/cm^3 as an 8-hour time-weighted average (TWA). This includes situations in which workers re-enter the workplace after carrying out activities such as demolition, asbestos removal work, repair and maintenance in respect of which it is foreseeable that the set limit value will be exceeded despite the use of technical preventive measures for limiting asbestos-in-air concentrations. If the limit value is exceeded, the reasons must be identified and the employer must take appropriate risk-management measures (RMMs) to remedy the situation before work restarts. It is also specified that if the OEL cannot be observed by other means, employers must provide workers with appropriate respiratory and other personal protective equipment. In addition, strict obligations in terms of protection, planning and training apply to employers.

While extracting, manufacturing and processing asbestos is prohibited, a substantial legacy problem exists across the EU, representing a public and occupational health challenge, since

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12 Council Directive 83/478/EEC of 19 September 1983 amending for the fifth time (asbestos) 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 (OJ L 263, 24.9.1983, p. 33).

13 The placing on the market and use of asbestos was banned in the EU by Commission Directive 1999/77/EC of 26 July 1999 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 Directive was repealed by the REACH Regulation (Regulation (EC) No 1907/2006 (OJ L 396, 30.12.2006, p. 1), see its Annex XVII, entry 6, on asbestos fibres).

14 OJ L 263, 24.9.1983, p. 25.

15 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 (OJ L 330, 16.12.2009, p. 28).

16 OJ L 158, 30.4.2004, p. 50 (Article 1(4)).

asbestos is still present in many older buildings, which are likely to be renovated, adapted or demolished over the upcoming years. The renovation wave strategy[17] under the European Green Deal, notably aims at accelerating the pace of building renovations across the EU. As the risk of exposure to asbestos occurs mainly during renovation, maintenance and demolition works it is important to reinforce preventive measures to further limit the exposure to asbestos of workers.

It is estimated that currently 4.1 to 7.3 million workers are exposed to asbestos[18]. The risk of this exposure is mostly linked to the handling of asbestos-containing materials and the dispersion of asbestos fibres during construction works, such as during renovation, maintenance, repair and demolition. Of all workers exposed to asbestos, 97% work in the construction sector, including related occupations such as roofing, plumbing, carpentry or floor-laying. Exposure to asbestos is also present in other economic sectors, e.g. waste management (2% of all exposed workers), mining and quarrying, firefighting, tunnel excavation and maintenance, and asbestos sampling and analysis. There is also a risk of exposure when ships, drilling platforms, and transport means such as trains and aircraft with asbestos insulation are repaired or dismantled.

To ensure that measures for protecting workers from exposure to asbestos are as effective as possible, the AWD needs to be kept up to date with new scientific knowledge developed since its last substantial revision.

The current OEL of 0.1 fibres/cm^3 in the AWD was set in 2003 based on the scientific and technological knowledge available at that time. The AWD includes minimum requirements that should be reviewed on the basis of experience acquired and of the development of technology in this area. Following the latest scientific and technological developments, there is scope to improve the protection of workers exposed to asbestos and thus further reduce the probability for workers to contract asbestos-related diseases. Moreover, four Member States have already introduced stricter OELs in their national legislation[19].

The proposed amendment of the AWD will make the OEL under the Directive more effective by updating it on the basis of the latest available scientific evidence. The proposed amendment is supported by the latest in-depth evaluation of the AWD (2017 *ex post* evaluation of the EU occupational safety and health (OSH) Directives[20]) and by the most recent assessment of the implementation of the EU OSH Directives, covering the period from 2013 to 2017. The latest in-depth evaluation of the AWD concluded that the AWD remains highly relevant and that to increase its effectiveness in light of scientific progress, lowering the OEL set in the AWD should be considered.

The Commission asked the Committee for Risk Assessment (RAC) of the European Chemicals Agency (ECHA) to assess the scientific relevance of the current OEL for asbestos, to inform the preparation of the proposal to amend the AWD. The RAC's scientific opinion

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17 Commission Communication *A Renovation Wave for Europe – greening our buildings, creating jobs, improving lives* (COM(2020) 662 final).

18 External study, RPA, 2021. European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Lassen, C., Christens, F., Vencovska, J., et al., *Study on collecting information on substances with the view to analyse health, socio-economic and environmental impacts in connection with possible amendments of Directive 98/24/EC (Chemical Agents) and Directive 2009/148/EC (Asbestos): final report for asbestos*, Publications Office, 2021, https://data.europa.eu/doi/10.2767/981554.

19 Germany, Denmark, France and the Netherlands.

20 SWD(2017) 10 final.

was adopted in June 2021[21]. It confirmed that asbestos does not have a safe exposure level, which means that any exposure to asbestos may eventually lead to disease. Thus, a relation between exposure levels and the associated risk (exposure-risk relationship, ERR) was derived, expressing the excess risk of lung cancer and mesothelioma mortality (combined) as a function of the fibre concentration in the air. In addition, the tripartite Advisory Committee on Safety and Health at Work (ACSH) unanimously agreed on the need to lower the current OEL.

Reducing exposure to asbestos at the workplace by lowering the EU-wide OEL effectively helps prevent cancer cases and deaths. Consequently, it improves the protection of workers by increasing the length, quality and productivity of the working lives of EU workers and ensuring a similar minimum level of protection across the EU. It also creates a level playing field for businesses, as it prevents companies that do not take appropriate measures from acquiring a competitive advantage over those who do.

If no action is taken and due to the latency period of the consequences of ineffective prevention (i.e. the health effects), businesses are expected to bear higher costs in the future and to suffer from reduced productivity due to absenteeism and loss of expertise. For Member States, this would lead to increased social-security costs (e.g. due to higher costs for medical treatment and incapacity benefits) and missed tax revenues.

Revising the OEL under the AWD will lead to a greater harmonisation of limit values across the EU, which is expected to level the playing field for businesses. Companies willing to operate in multiple Member States will further benefit from streamlined applicable limit values. This may result in savings, as common solutions can be adopted across facilities, as opposed to having to design site-specific solutions to meet various OEL requirements.

EU-level action will also create fairer conditions for posted, cross-border and mobile workers exposed to asbestos in the construction sector (which has a significant number of posted workers moving from one site to another, often in multiple Member States) and also a fairer distribution of healthcare costs across Member States.

- **Consistency with existing policy provisions in the policy area**

This initiative is in line with the European Pillar of Social Rights, in particular its principle 10 on the right to a healthy, safe and well-adapted work environment, and its action plan. Revising the OEL for asbestos helps achieve a high level of protection of workers' health and safety.

This initiative also builds on the commitment the Commission made in the EU strategic framework on health and safety at work for 2021-2027 and Europe's Beating Cancer Plan to further lower the OEL for asbestos in the AWD in 2022.

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work[22] (the 'OSH Framework Directive') and the CMRD have no bearing on more stringent or specific rules under the AWD.

[21] RAC, *Opinion on scientific evaluation of occupational exposure limits for Asbestos* (ECHA/RAC/A77-O-0000006981-66-01/F).

[22] OJ L 183, 29.6.1989, p. 1.

- **Consistency with other Union policies**

The REACH Regulation[23] (in force since 2007) created, among others, two distinct EU regulatory approaches: restrictions and authorisations.

Since 1988, the placing on the market and use of crocidolite and products containing it has been prohibited. The placing on the market of products containing other forms of asbestos has been restricted. Those provisions were amended several times before the final ban on the manufacture, placing on the market, and use of all forms of asbestos, and of articles and mixtures containing them and to which they were added intentionally[24] was introduced in 2005.

Together, the AWD and the REACH Regulation are relevant for workers' protection from the risks of exposure to asbestos.

The AWD and the REACH Regulation are legally complementary. The OSH Framework Directive[25] lays down the main principles of prevention of occupational risks and protection of safety and health. It applies to all sectors of activities and has no bearing on current or future national and EU rules that ensure a higher level of protection of workers' health and safety at work. A series of individual Directives in the area of OSH were adopted on the basis of Article 16 of the OSH Framework Directive (including the AWD). The REACH Regulation, in turn, states that it applies without prejudice to worker-protection legislation, including the AWD.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 153(2)(b) of the Treaty on the Functioning of the European Union (TFEU) provides that the European Parliament and the Council 'may adopt, in the fields referred to in paragraph 1(a) to (i) [of Article of the 153 TFEU], by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings'. Article 153(1)(a) TFEU states that the EU shall support and complement the activities of the Member States in the field of 'improvement in particular of the working environment to protect workers' health and safety'.

The AWD was adopted on the basis of Article 153(2)(b) TFEU to improve workers' health and safety. The present proposal aims to strengthen the level of workers' health protection in line with Article 153(1)(a) TFEU, in the form of a revised OEL accompanied by some technical adaptations. Therefore, Article 153(2)(b) TFEU is the proper legal basis for the Commission's proposal.

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23 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006R1907.

24 Commission Directive 1999/77/EC of 26 July 1999 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), repealed by the REACH Regulation (Regulation (EC) No 1907/2006 (OJ L 396. 30.12.2006. p. 1), see its Annex XVII, entry 6, on asbestos fibres).

25 See footnote 22.

Pursuant to Article 153(2) TFEU, the improvement in particular of the working environment to protect workers' health and safety is an aspect of social policy, where the EU shares competence with the Member States.

- **Subsidiarity (for non-exclusive competence)**

As risks to workers' health and safety arising from exposure to asbestos are broadly similar across the EU, there is a clear role for the EU in supporting Member States in addressing such risks.

Data gathered during the preparatory work indicate that there are differences in the Member States regarding the setting of limit values for asbestos. As a result, workers in the EU have various levels of protection. Three Member States have set binding OELs below the EU OEL (Denmark[26], the Netherlands[27] and France[28]), while one Member State (Germany[29]) has set a limit value corresponding to an acceptable concentration[30] in addition to the binding limit value, providing for a stricter approach than using the current EU OEL.

These four Member States have already reduced their exposure limit values for asbestos below the OEL enshrined in EU legislation, acknowledging the recent development of scientific knowledge and technology in this area.

Updating the AWD is an effective way to ensure that preventive measures are updated accordingly in all Member States. It will help achieve a uniform level of minimum requirements designed to guarantee a better standard of health and safety, and thus minimise differences in the protection of workers' health and safety between Member States and across the EU single market.

Therefore, a revised EU OEL helps achieve a more harmonised and better protection of workers, and level the playing field for businesses across the EU.

Companies willing to operate in multiple Member States can further benefit from streamlined applicable limit values. This may result in savings, as common solutions can be adopted across facilities, as opposed to having to design site-specific solutions to meet various OEL requirements.

Revising the limit value is very complex and requires a high level of scientific expertise. A significant advantage of the revision of the EU OEL is that it eliminates the need for Member States to carry out their own scientific analysis, with likely substantial savings on administrative costs. Instead, these saved resources could be dedicated to further improving OSH policies in each Member State.

It follows that EU-level action to achieve the objectives of this proposal is necessary, as these objectives cannot be sufficiently achieved by the Member States, either at central or at regional and local level, because of the scale and effects of the proposed action. This is in line with Article 5(3) of the Treaty on European Union (TEU). Amending the AWD can only be

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26 Since 2022, the limit value for asbestos is 0.003 fibres/cm^3 (https://asbest-huset.dk/graensevaerdi/).

27 Since 2017, asbestos fibres of the chrysotile type and amphibolic asbestos fibres, respectively, should not exceed 0.002 fibres/cm^3.

28 Since 2015, the OEL is 0.01 fibres/cm^3, measured by transmission electron microscopy, thus including 'thin asbestos fibres'.

29 While the current binding OEL in Germany is 0.1 fibres/cm^3, mandatory guidelines require measures that are considered to bring the exposure concentration below the 'acceptance level' (0.01 fibres/cm^3) in practice.

30 The acceptable risk is the additional cancer risk that is accepted, meaning that statistically, 4 out of 10,000 persons exposed to the substance throughout their working life will develop cancer. BAUA, *National Asbestos Profile for Germany*, 2014.

done at EU level and after a two-stage consultation of the social partners (management and labour) in accordance with Article 154 TFEU.

- **Proportionality**

The proposed amendment of the AWD is focused on: (i) revising the OEL for asbestos by amending Article 8 of the AWD on the basis of the available scientific and technological data, as provided for by recital 3 of the AWD; (ii) addressing some aspects directly linked to the lowering of the current OEL (such as measurement techniques); and (iii) providing technical clarifications of the text of the Directive.

With regard to the proposed limit value, socio-economic feasibility factors have been considered after thorough discussions with all stakeholders (representatives of workers' organisations, representatives of employers' organisations and representatives of governments). This initiative aims to ensure a balanced approach, i.e. to prevent companies from facing severe economic disadvantages while providing an appropriate protection to workers at EU level. The initiative is considered balanced and justified in light of the accrued and long-term benefits in terms of reducing health risks arising from workers' exposure to asbestos and saving lives, without putting a disproportionate burden on businesses in the concerned sectors, including on micro-, small- and medium-sized enterprises.

In accordance with Article 153(4) TFEU, this proposal lays down minimum requirements and does not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties, for example, in the form of lower limit values or other provisions ensuring greater protection for workers.

It follows that in line with the principle of proportionality, as set out in Article 5(4) TEU, this proposal does not go beyond what is necessary to achieve its objectives. Detailed information on compliance with the principle of proportionality is provided in the impact assessment accompanying this proposal (point 8.2).

- **Choice of the instrument**

Article 153(2)(b) TFEU specifies that minimum requirements in the field of workers' health and safety protection may be adopted 'by means of directives'.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The most recent in-depth evaluation of the AWD (2017 *ex post* evaluation of the EU OSH Directives[31]) concluded that according to the available evidence, the AWD remains highly relevant and effective. At the same time, the study supporting this evaluation concluded that to increase the AWD's relevance and effectiveness, lowering the OEL for asbestos should be considered. The study also suggested that this issue needed more in-depth analysis. This proposal addresses those findings and is based on a thorough analysis of the issues identified.

- **Stakeholder consultations**

Two-stage consultation of the EU social partners in accordance with Article 154 TFEU

[31] SWD(2017) 10 final.

In 2020 and 2021, the Commission carried out a two-stage consultation of the social partners at EU level pursuant to Article 154(2) TFEU. The first phase of the social partners' consultation ended on 11 February 2021 and confirmed the social partners' overall support for revising the current OEL for asbestos. The second phase of the consultation, which focused on the envisaged content of the possible proposal, ended on 30 September 2021.

This consultation enabled the Commission to collect EU social partners' opinions on the possible direction and content of EU action on revising the binding OEL for asbestos.

The results of the first phase of the consultation confirmed the social partners' overall support for an EU-level approach to OELs for hazardous chemicals for workers across the EU.

The two workers' organisations that replied to the consultation[32] acknowledged the importance of revising the current OEL for asbestos and requested a broader scope of action under the AWD. Among other things, they suggested: (i) widening the scope of the AWD to include an updated list of all known forms of fibres with similar harmful effects on human health; (ii) deleting the concepts of sporadic exposure and low-intensity exposure, and of friable and non-friable asbestos-containing materials; and (iii) prohibiting the encapsulation and sealing of asbestos. They also made suggestions on technical aspects[33], most of which are already covered by the general terms of the AWD, while others go beyond its scope. Their suggestions mirror the proposals of the European Parliament resolution[34]. Some suggestions go beyond the scope of the OSH policy area, such as mandatory screening of buildings or the creation of national asbestos registers. Other suggestions go beyond EU competences, such as a legislative proposal for the recognition of occupational diseases, with minimum standards for recognition procedures, and for the compensation of victims.

The three employers' organisations that replied to the consultation[35] supported the objective of effectively protecting workers from exposure to hazardous chemicals, including by setting OELs at EU level, where appropriate. They considered that this is in the interest of workers and businesses and helps level the playing field for businesses. However, they also raised some concerns about the approach taken to setting such values. Two employers' organisations[36] highlighted that any revision of an OEL must be based on sound scientific evidence and a thorough assessment of technical and economic feasibility and socio-economic impact, for which the role of the ACSH is pivotal.

In the second phase of the consultation, two workers' organisations that replied to the consultation[37] recognised the importance of further improving the protection of workers from exposure to asbestos, and supported the revision of the OEL in the AWD. Both workers' organisations reiterated their position from the first stage of the consultation, calling for the same measures as proposed in the European Parliament resolution.

Three out of four employers' organisations that replied to both the first and the second phase of the consultation[38] reiterated their previous statements. The Shipyards' & Maritime Equipment Association of Europe, which only answered to the second phase of the

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32 European Trade Union Confederation and European Federation of Building and Woodworkers.

33 For example, laying down technical minimum requirements to lower the concentration of asbestos fibres, representative sampling of workers' personal exposure, and more.

34 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).

35 BusinessEurope, SMEunited (European Association of Crafts and SMEs) and European Construction Industry Federation.

36 BusinessEurope and SMEunited.

37 European Trade Union Confederation and European Federation of Building and Woodworkers.

38 BusinessEurope, SMEunited, European Construction Industry Federation and Shipyards' & Maritime Equipment Association of Europe.

consultation, referred to encapsulation as the best and safest method for dealing with asbestos in the maritime industry.

Consultation of the ACSH

The tripartite ACSH is composed of representatives of national governments and workers' and employers' organisations. It was consulted on this proposal via its dedicated Working Party on Chemicals, in accordance with the ACSH's mandate. In this mandate, the Commission requests the Working Party on Chemicals to actively participate in recommending priorities for new or revised scientific evaluations. The Working Party on Chemicals' opinion takes into account the RAC's scientific input, and socio-economic and feasibility factors.

On 24 November 2021, the ACSH adopted an opinion[39] on a binding EU OEL under the AWD. In this opinion, a consensus agreement was reached on the need to substantially lower the current binding OEL to better protect workers' health and safety, taking into account scientific and technical developments since the adoption of the current OEL of 0.1 fibres/cm^3 in 2003. However, no consensus was reached on the limit value to be proposed. The Government Interest Group (GIG) and the Employers Interest Group (EIG) agreed that the new limit value should be set at 0.01 fibres/cm^3, while the Workers Interest Group (WIG) stressed its preference for a new OEL equal to 0.001 fibres/cm^3, corresponding to the limit value put forward in the European Parliament's resolution.

Taking into account technical developments, the ACSH also suggested to replace the phase-contrast microscopy (PCM), currently the most widely used methodology for workplace measurement of asbestos fibres in the air, with a more modern and sensitive methodology based on electron microscopy (EM).

In this respect, the GIG highlighted that since many Member States still use PCM, a transitional period will be needed to allow laboratories to acquire new equipment, train technicians and organise interlaboratory comparison. The GIG added that based on the experience of the Member States using EM, laboratories will need 2-3 years to adapt. The GIG recommended that the new OEL be implemented no later than 4 years after the entry into force of the amending Directive, while the EIG suggested a longer deadline (4-5-years). The WIG demanded that the new OEL be implemented as soon as possible after the entry into force of the updated AWD.

- **Collection and use of expertise**

In reviewing the limit value under the AWD, the Commission follows a well-established procedure that involves seeking scientific advice and consulting the ACSH. A sound scientific basis is indispensable in underpinning any OSH action, particularly in relation to asbestos. In this regard, the Commission sought advice from the RAC.

The RAC develops high-quality comparative analytical knowledge and ensures that Commission proposals, decisions and policy on the protection of workers' health and safety are based on sound scientific evidence. Members of the RAC are highly qualified, specialised, independent experts selected on the basis of objective criteria. They provide the Commission with opinions that are helpful for the development of EU policy on workers' protection.

[39] ACSH, *Opinion on an EU Binding Occupational Exposure Limit Value (BOEL) for Asbestos under the Asbestos at Work Directive 2009/148/EC* (Doc. 008-21), adopted on 24.11.2021.

The scientific opinion of the RAC necessary for the revision of the asbestos OEL was adopted in June 2021[40]. According to it, asbestos does not have a safe exposure level, which means that any exposure to asbestos may eventually cause an asbestos-related disease. Thus, an ERR was derived, which is presented as the relation between exposure levels and the associated risk.

For this initiative, the Commission has used the RAC's opinion on an updated risk assessment for asbestos. The opinion proposes an ERR expressing the excess risk of cancer mortality (lung cancer and mesothelioma) related to various levels of exposure. The relationship between the various exposure values and the risk of developing cancer shows the risk for exposed workers at various OELs. For example, for an exposure value equivalent to the current OEL, there is a risk that 125 out of 100 000 exposed workers could develop lung cancer or mesothelioma.

- **Impact assessment**

This proposal is supported by an impact assessment. The impact-assessment report was supported by a study that collected information to analyse health, socio-economic and environmental impacts in connection with possible amendments of the AWD[41]. The impact assessment was presented to and reviewed by the Regulatory Scrutiny Board (RSB) on 27 April 2022. It received a positive opinion with reservations dated 29 April 2022. The comments of the RSB were addressed in the final impact-assessment report.

The following options for various limit values for asbestos were examined:

- a baseline scenario of no further EU action (option 1); and
- options for various OELs, taking into account the scientific assessment of the RAC[42], the opinion of the ACSH[43], and the OELs in place in the Member States (the scientific evaluation provides a solid evidence-based approach, while the ACSH's opinion provides important information for the successful implementation of the revised OEL options).

Several other options were discarded at an early stage as they were considered disproportionate or less effective in reaching the objectives of this initiative. These discarded options were related to the way of setting an OEL, to the choice of another instrument, or to support to small to medium-sized enterprises (SMEs). Non-regulatory alternatives such as guidance documents or examples of good practice were not considered effective enough in reaching the objectives of this initiative since they would result in non-binding provisions. Adopting a different solution for SMEs was also discarded as a very significant number of workers affected by asbestos exposure are employed by SMEs and all workers should have the same level of protection independently of the size of the enterprise.

The Commission analysed the economic, social and environmental impacts of the various policy options. The results of this analysis are presented in the impact assessment accompanying the present proposal. The policy options were compared and the preferred option was chosen based on the following criteria: effectiveness, efficiency and coherence. Costs and benefits were calculated over a 40-year period. The future disease burden was

40 RAC opinion. See footnote 21.
41 See footnote 18.
42 RAC opinion. See footnote 21.
43 See footnote 39.

estimated over the same period to take proper account of the latency period for cancer. All analytical steps were performed in line with the Better Regulation Guidelines[44].

The Commission compared the envisaged options and took into account the positions of the various ACSH interest groups. Based on this, the Commission selected the preferred option of setting an OEL equal to 0.01 fibres/cm^3 as an 8-hour TWA and translated this into a corresponding legislative provision set out in this proposal. This option is considered balanced and justified in light of its accrued and long-term benefits in terms of reducing health risks arising from workers' exposure to asbestos and saving lives, without putting a disproportionate burden on businesses in the concerned sectors, including on micro-, small- and medium-sized enterprises.

Taking into account technical developments and the need to measure much lower exposure levels to check compliance with the potentially revised OEL, all ACSH interest groups agreed that in addition to PCM (currently the reference method for quantifying asbestos fibres in the air at the workplace), a more modern and sensitive methodology based on EM could be used when feasible. The GIG and the EIG also underlined that some time will be needed to implement the new measurement methodology since many Member States still use PCM. Therefore, an adaptation period will be necessary to allow laboratories to acquire new equipment, train technicians and organise interlaboratory comparison.

Without EU action, it is estimated that workers exposed to asbestos will continue to face a higher risk of developing occupational cancer. According to a baseline scenario[45], if no action is taken, current exposure levels will lead to 884 cases of cancer attributable to occupational exposure to asbestos[46] in the EU-27 over the next 40 years, ultimately leading to 707 deaths over the same period. The study supporting the impact assessment[47] estimates that these estimated cancer cases will result in health costs of between EUR 228 million and EUR 438 million.

Impact on workers

As regards the impact on workers, this initiative should help avoid work-related cases of cancer, while reducing effects such as suffering of workers and their caring families, reduced quality of life or undermined well-being. It is estimated that 663 cases of cancer (lung cancer, mesothelioma, laryngeal cancer and ovarian cancer) could be prevented. The initiative's monetised health benefit is assessed at between EUR 166 million and EUR 323 million. In addition, the wider public may benefit from reductions in the generation and spreading of asbestos dust in surrounding areas as a result of increased/improved RMMs.

Impact on employers

As regards the impact on employers, this initiative could lead to higher operating costs for companies, which will have to adjust their working practices to comply with the new OEL. Those costs will consist of incremental costs of RMMs (including respiratory protective equipment), costs of notification and medical surveillance, monitoring costs and training costs. The possible costs of additional measurements due to a lower limit value would entail a

44 Available at: https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en.
45 As close as possible to the future situation.
46 Including mesothelioma and lung, laryngeal and ovarian cancer.
47 See footnote 18.

very limited additional administrative burden for companies. The selected option would entail the lowest costs for companies.

Only a few small companies in a limited number of sectors (e.g. repair of electrical equipment) are estimated to face a moderate negative impact. Costs are, to a large extent, likely to be passed on to customers.

It is not expected that a significant number of companies would discontinue operations as a result of the preferred option. Consequently, no significant net loss of employment is predicted[48]. The benefits of healthier staff could have indirect effects on companies' reputation, as work with asbestos may be perceived less as a risky line of work associated with health issues. As a result, companies may find it easier to recruit and retain staff, reducing the cost of recruitment and increasing the productivity of workers.

The proposal does not add any information obligations and will thus not increase the administrative burden on businesses.

Impact on the environment

There is little measured data on the impact on the environment. Nevertheless, the release of asbestos is believed to be relatively low based on the current rules on asbestos waste and on demolition or maintenance activities involving asbestos in buildings[49]. Due to these low release levels, the environmental impacts of asbestos are believed to be relatively low despite asbestos fibres' persistence and toxicity. Further RMMs to comply with a stricter OEL may also help to marginally improve environmental exposure to asbestos, even though it is unlikely that significant differences will be observed. The environmental impact of asbestos is reduced by current EU waste legislation, which comprehensively regulates the environmentally sound management of asbestos waste once it is generated[50]. Asbestos waste is classified as hazardous waste[51]. Therefore, under EU waste legislation, specific and more stringent rules apply to the generation, transport and management of such waste, including reporting and traceability obligations to ensure that the waste is managed in a way that protects the environment.

As companies could pass additional costs from stricter OELs to consumers, potential negative impacts on renovation and green objectives (e.g. postponed renovations and missed energy savings) should be considered. The more stringent the OEL, the greater these negative impacts will be. Buildings are responsible for 36% of energy-related greenhouse-gas emissions. Given that more than 85% of current buildings will still be standing in 2050, energy-efficiency renovations will be essential in reaching the objectives of the European Green Deal[52]. In this context, the renovation wave strategy[53] aims to double the annual energy-renovation rate by 2030. Specialised renovation works to reduce energy consumption

48 See footnote 18.

49 The Waste Framework Directive (2008/98/EC) and the Landfill Directive (1999/31/EC), which address the environmentally sound management of asbestos waste, and the *EU Construction & Demolition Waste Management Protocol* and the *Guidelines for the waste audits before demolition and renovation works of buildings*, published by the Commission, which aim to assist businesses in the safe removal and management of asbestos.

50 According to Article 2(1)(b) of Directive 2008/98/EC on waste, 'buildings permanently connected with land' are excluded from the scope of the Directive since they are not regarded as waste.

51 In accordance with Annex III to Directive 2008/98/EC on waste and Decision 2000/532/EC on the list of waste.

52 https://eur-lex.europa.eu/resource.html?uri=cellar:c51fe6d1-5da2-11ec-9c6c-01aa75ed71a1.0001.02/DOC_1&format=PDF

53 https://ec.europa.eu/energy/sites/ener/files/eu_renovation_wave_strategy.pdf

can boost the long-term value of properties and create jobs and investment, often rooted in local supply chains.

Impacts on climate change

Asbestos has the property of absorbing carbon dioxide molecules dissolved in rainwater or floating through the air[54], thus can play a role in climate change. However, as releases into the environment will be low, this initiative is not expected to have an impact on climate change.

On the other hand, extreme weather conditions due to climate change may increase erosion of asbestos materials that are still in place (e.g. roof sheets and other external building materials containing asbestos) and thus potentialy releasing them to environment.

Impact on Member States / national authorities

As regards the impact on Member States / national authorities, Member States that have in place an OEL for asbestos at the level of the limit value set in this initiative or lower will be less affected than Member States that have in place a higher OEL. The costs for national authorities estimated at around 390 thousand EUR per country and per year are not expected to be significant. Those costs relate to: (i) transposition costs for adopting national provisions to accommodate the changes to the OEL; (ii) costs for changing guidelines (including recommended measures to ensure that occupational exposure concentrations are well below the OEL); and (iii) enforcement, monitoring and adjudication costs. Costs under point (iii) derive exclusively from the processing of new notifications[55], and are estimated to be in a range between EUR EUR 650 million and EUR 2.18 billion over 40 years or EUR 16.25 million and EUR 54.5 million per year.

Based on the experience gathered from the work of the Senior Labour Inspectors Committee (SLIC) and taking into account the way enforcement activities are organised in various Member States, it is unlikely that the revision of the limit value for asbestos in the AWD would have any impact on the overall cost of inspections. Inspections are mostly planned independently of the proposal, often following complaints, or in line with a given authority's inspection strategy. However, inspections may address relevant industries where asbestos is present.

This initiative should also help mitigate financial losses of Member States' social-security and healthcare systems by preventing ill health. The estimated benefits for public authorities (EUR 3.4 million over 40 years) are smaller than the quantified costs (around EUR 421 million over 40 years).

As regards simplifying current legislation and making it more efficient, the preferred option eliminates the need for Member States to carry out their own scientific analysis to revise the OEL. Simplification also helps employers in ensuring legal compliance, particularly employers operating in multiple Member States.

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54 https://www.technologyreview.com/2020/10/06/1009374/asbestos-could-be-a-powerful-weapon-against-climate-change-you-read-that-right/

55 The planned revision of the AWD does not change the notification system. Lowering the OEL can indirectly increase costs for Member States and businesses if the number of notifications increases. This cost would rather be linked to how the AWD is currently implemented in the Member States (in relation to the notification system) than to an administrative obligation imposed by the OEL change.

Contribution to sustainable development

The initiative will help achieve the Sustainable Development Goals (SDGs) on good health and well-being (SDG 3) and decent work and economic growth (SDG 8). It is also expected to have a positive impact on the SDG on industry, innovation and infrastructure (SDG 9) and on responsible production and consumption (SDG 12).

Impact on digitalisation

While the impact on digitalisation was not analysed in detail, it can be expected to be positive, for example because of the development of artificial-intelligence tools combined with measurement techniques to improve fibre counting, or the development of robotic extraction of asbestos from buildings.

- **Regulatory fitness and simplification**

Impact on SMEs

This proposal does not contain any exceptions for micro-enterprises or SMEs. Under the AWD, SMEs are not exempted from the obligation to reduce the exposure of workers to dust from asbestos or materials containing asbestos at the place of work to a minimum and in any case below the limit value laid down in Article 8 of the AWD.

Revising the limit value for asbestos as provided for in this proposal should have no impact on SMEs located in Member States where the national limit values are either equal to or lower than the proposed values. However, there may be an economic impact on SMEs and other businesses in Member States that currently have in place higher OELs for asbestos.

Small companies, which account for 99.32% of companies working with asbestos in all sectors, will more likely be affected by the reduced OEL for asbestos.

Costs are expected to have a small impact (cost/turnover ratio between 2 and 4%) in the sectors of repair of electrical equipment, repair and maintenance of ships and boats, and maintenance and repair of motor vehicles (0.02% of all companies dealing with asbestos). With the exception of SMEs in these sectors, the big majority of SMEs will not necessarily be impacted by cost increases.

Therefore, it can be concluded that the overall analysis presented in the impact assessment accompanying this proposal has duly taken into account the specificities, limitations and particular challenges of SMEs.

Impact on EU competitiveness or international trade

This initiative will have a positive impact on competition in the single market by: (i) reducing competitive differences between firms operating in Member States with different national OELs for asbestos; and (ii) providing greater certainty on an enforceable exposure limit across the EU.

Introducing a lower OEL will have a smaller impact on the competitiveness of companies that are already closer to any OEL that is being assessed. This is particularly relevant for companies working in France, Denmark, the Netherlands and Germany, where OELs are similar to or lower than the proposed OEL option (0.01 fibres/cm^3).

This might make these companies more cost-competitive than companies traditionally working elsewhere in the EU or outside the EU. However, most of the work involving asbestos is carried out *in situ* (i.e. at the location of the building). Consequently, companies cannot benefit from any competitive advantages stemming from less strict requirements in their country of origin. Although most asbestos-related activities are performed by companies working in one Member State only, larger companies (and, to a lesser extent, also medium-sized companies) with facilities in multiple Member States could benefit from administrative simplification, owing to a harmonised set of compliance requirements.

- **Fundamental rights**

The impact on fundamental rights is considered positive, in particular with regard to Article 2 (Right to life) and Article 31 (Fair and just working conditions) of the Charter of Fundamental Rights of the European Union.

In terms of gender equality, 97% of workers in the construction sector are men[56].

4. BUDGETARY IMPLICATIONS

The proposal does not require additional budget and staff resources for the EU budget or bodies set up by the EU.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The core indicators used when monitoring the impacts of this Directive are: (i) the number of occupational diseases and work-related cancer cases in the EU; and (ii) the reduction of costs related to occupational cancer for businesses and social-security systems in the EU.

Monitoring of the first indicator is based on: (i) available data collected by Eurostat; (ii) data notified by employers to the competent national authorities on cases of cancer identified in accordance with national law or practice resulting from occupational exposure to asbestos in accordance with Article 14(8) CMRD, which may be accessed by the Commission in accordance with Article 18 CMRD; and (iii) data submitted by Member States pursuant to Article 22 AWD on the submission to the Commission of reports on the practical implementation of the AWD in accordance with Article 17a of the OSH Framework Directive.

Monitoring of the second indicator requires the comparison of the estimated data on the burden of occupational cancer in terms of economic loss and healthcare costs and the data collected on these matters after the adoption of the revision. The productivity loss and the healthcare costs can be calculated using the number of occupational cancer cases and the number of occupational cancer deaths.

Compliance of the amended provisions' transposition will be assessed in two stages (transposition and conformity checks). The Commission will evaluate the proposed amendment's practical implementation as part of the periodical evaluation that it must carry

[56] Eurostat, *Jobs still split along gender lines*.

out pursuant to Article 17a of the OSH Framework Directive. Application and enforcement will be monitored by national authorities, in particular by national labour inspectorates.

At EU level, the SLIC informs the Commission of any practical problems relating to the enforcement of the AWD, including difficulties regarding compliance with a binding limit value for asbestos.

Collecting reliable data in this area is complex. Therefore, the Commission and the European Agency for Safety and Health at Work (EU-OSHA) are actively working on improving data quality and availability, so that the actual impact of the proposed initiative can be measured more accurately and additional indicators can be developed (e.g. on mortality caused by occupational cancer).

Ongoing projects generating useful data include cooperation with national authorities on the European Occupational Diseases Statistics data collection[57] and the workers' exposure survey on cancer risk factors to be implemented by EU-OSHA[58]. Legislative action needs to be followed by effective implementation at the workplace. Companies can use the broad range of tools, information and good practices provided by EU-OSHA as part of the Healthy Workplaces Campaign on dangerous substances[59].

The Commission, in cooperation with the ACSH, also intends to develop guidelines to support the application of the AWD once its proposed amendment is adopted. The guidelines could provide in-depth information on provisions already included in the current version of the AWD (for example on training and use of personal protective equipment). Some of these provisions fall within the competence of the Member States (such as certification of asbestos-removal firms), but clarification and advice on them might be beneficial.

It is crucial to promote appropriate training for workers who handle asbestos as part of construction, renovation and demolition works. The guidelines could help Member States and employers, especially SMEs, to make sure that workers are aware of the precautions to be taken, to achieve the highest level of protection.

The guidelines could also address other issues related to the decontamination procedure, supplementing the current AWD provisions on:

the drawing up of a work plan before starting demolition work or work on removing asbestos and/or asbestos-containing products from buildings, structures, plants or installations or from ships, which, at the request of the competent authorities, must include information on protection and decontamination of those carrying out the work (Article 13(2), third subparagraph, point (d)(i)); and

the training of workers, which enables them to acquire the necessary knowledge and skills in terms of prevention and safety, particularly as regards decontamination procedures (Article 14(2)(g)).

The guidelines could also address some provisions that fall within the competence of the Member States (such as certification of asbestos-removal firms). Additional support on these

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57 https://ec.europa.eu/eurostat/web/experimental-statistics/european-occupational-diseases-statistics

58 https://osha.europa.eu/en/facts-and-figures/workers-exposure-survey-cancer-risk-factors-europe. The survey will initially be carried out in a broadly representative selection of 6 Member States and cover 24 cancer risk factors, including asbestos, with the first findings expected in 2023.

59 The campaign pursued several objectives, including raising awareness of the importance of preventing risks from dangerous substances, promoting risk assessment, heightening awareness of risks of exposure to carcinogens at work, or increasing knowledge of the legislative framework. It was carried out in 2018-2019. One of the features is a database of guidance and good practices available at https://osha.europa.eu/en/themes/dangerous-substances/practical-tools-dangerous-substances.

provisions could be beneficial. The guidelines could also provide practical information on concepts related to the AWD's implementation, such as sporadic and low-intensity exposure, non-friability, sampling, work plans, notifications to national authorities, fitting checks for personal protective equipment, custody of medical records and medical certificates. When appropriate, the guidelines will include sector-specific responses. This would enable all those involved to carry out the expected number of renovations, ensuring the highest level of protection of workers from exposure to asbestos.

- **Explanatory documents (for directives)**

Member States must send the Commission the text of national provisions transposing the AWD and a correlation table between those provisions and the AWD. Unambiguous information on the transposition of the new provisions is needed to ensure compliance with the minimum requirements laid down by this proposal.

Because of the above, it is suggested that Member States notify the Commission of their transposition measures by providing one or more documents explaining the relationship between the components of the AWD and the corresponding parts of national transposition instruments.

- **Detailed explanation of the specific provisions of the proposal**

Article 1

Article 1 provides for the amendment of the AWD, in particular with regard to the update of the limit value for asbestos and to other minor aspects linked to the lowering of the current OEL (such as measurement techniques and technical and linguistic clarifications and adaptations of the text of the AWD).

Therefore, it is proposed that Article 8 be replaced by a new Article 8 requiring employers to ensure that no worker is exposed to a higher airborne concentration of asbestos than 0.01 fibres/cm^3 as an 8-hour TWA. As it is possible to measure an OEL equal to 0.01 fibres/cm^3 with PCM, no transition period is needed for the implementation of the revised OEL.

However, following the ACSH's opinion, the use of a more modern and sensitive methodology based on EM wherever possible is explicitly mentioned in the article, in addition to the recommended fibre counting by PCM, as a method giving equivalent or better results than PCM.

An explicit provision that asbestos within the meaning of the AWD is carcinogenic and that asbestos means fibrous silicates classified as carcinogens 1A according to Regulation (EC) 1272/2008[60] was included to avoid ambiguities and divergent interpretations.

Article 1 also clarifies the obligation of employers to reduce the exposure of workers to dust from asbestos or materials containing asbestos at the place of work to a minimum, with the precision that in any case it must be as low a level as is technically possible below the limit set by the proposal.

[60] 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).

The obligation of employers to take all necessary steps to identify presumed asbestos-containing materials before beginning demolition or maintenance work by obtaining information from the owners of the premises, is extended to cover other relevant sources of information, such as relevant registers.

Articles 2 to 4

Articles 2 to 4 contain provisions on transposition into the Member States' national law. Article 3 lays down the date of entry into force of the proposed Directive.

2022/0298 (COD)

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 Committee[1],

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

Acting in accordance with the ordinary legislative procedure[2],

Whereas:

(1) Directive 2009/148/EC of the European Parliament and the Council[3] 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 more stringent and/or specific provisions contained in Directive 2004/37/EC of the European Parliament and of the Council[4].

(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 1A according to Regulation (EC) 1272/2008 of the European

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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.

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).

Parliament and of the Council [5]. 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.

(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 Plan[6] 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 Europe[7]. Citizens' recommendations in the framework of the Conference on the Future of Europe[8] also highlighted the importance of fair working conditions, in particular the revision of Directive 2009/148/EC.

(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 and recent scientific evidence and technical data. Its revision 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

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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.

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%2Feu-central-1%2Fs3%2Faws4_request&X-Amz-Date=20220917T104038Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=6806caf5fd75a86ad4e907b934b2194de4c3c0c756a8d2a34c5e8b68985ffbde

Chemicals Agency (ECHA), established by Regulation (EC) No 1907/2006 and opinions of the Advisory Committee on Safety and Health at Work (ACSH) established by a Council Decision of 22 July 2003[9].

(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/cm^3 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 resolution[10] 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. As it is possible to measure an OEL equal to 0.01 f/cm³ with phase-contrast microscope (PCM), no transition period is needed for the implementation of the revised OEL. In line with the opinion of the ACSH, a more modern and sensitive methodology based on electron microscopy should be used, while taking into account the need for an adequate period of adaptation and for more EU level harmonisation of different electron microscopy methodologies.

(12) Taking into account the exposure minimisation requirements set out in Directive 2009/148/EC of the European Parliament and the Council and Directive 2004/37/EC of the European Parliament and of the Council, 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

[9] 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).

[10] 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.)

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. 1–14).;

(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****:

* 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).;

1. (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.'

*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 phase-contrast microscope (PCM) in accordance with ***the*** method recommended in 1997 by the World Health Organization (WHO)* or***, wherever possible,*** any other method giving equivalent ***or better*** results, ***such as a method based on 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 cm^3 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 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.

   When Member States adopt those measures, 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 measures 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	*For the Council*
The President	*The President*