Asbestos Ban – towards a European consensus (II)

The Commission is pushing ahead with its consultations on whether or not to ban asbestos from the European market. While general opinion seems to be edging towards a consensus for a ban, the asbestos debate is far from clear-cut, or over. The opinion – regarded by some as provisional – handed in by the Consumer Policy Directorate's new scientific committee has fuelled the confusion.

Last March, the European Commission's Directorate-General III (Internal Market) held its third meeting[1] to review the pros and cons of tightening up restrictions on the marketing and use of chrysotile asbestos, the only asbestos fibre not completely banned in Europe[2].

The meeting's agenda included:

- the historical and legal context of DG XXIV's new Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE), its remit and future role in Commission legislative decisions,
- the SCTEE's interim opinion and its legal impact on the final version[3] of the ERM's recent report[4] on the hazards of asbestos and substitute fibres;
- ERM's draft report[5] on the implications of replacing asbestos cement products.

The Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE)

The main prompting for the Commission's re-organisation of its existing six scientific committees on consumer health protection was the European BSE affair, so that "*independent sound scientific advice should be achieved in the future*".

Another reason was the multidisciplinary nature of a raft of consumer health issues requiring input from different scientific committees. But that requires effective co-ordination. To that end, the Commission set up[6] a Scientific Steering Committee tasked with co-ordinating the work of the eight new scientific committees also set up by the Commission[7]. DG XXIV has overall charge of these committees.

The precise point at which these committees must be consulted varies. In some cases, European legislation expressly requires it. But the Commission can also decide to consult them on matters of particular importance to consumer health and food safety. Their tasks include critically examining the risk assessments made by scientists belonging to national organisations, and drafting scientific opinions designed to enable the Commission to evaluate the scientific basis of the recommendations, standards and guidelines prepared in international forums.

The 15-member SCTEE is one of these new scientific committees.

One of its first jobs was to peer-review the ERM assessment of the hazards of asbestos and substitute fibres to determine whether the conclusions of the study were justified, and what was the general quality of the study.

Other documents made available to the group include a draft copy of a confidential (unpublished) IPCS[8] report for the Environmental Health Criteria Document on Chrysotile Asbestos, and a Canadian commentary (dated 6 September 1997) on the draft ERM report (dated June 1997)[9].

The SCTEE Working Group Opinion on the ERM Report

The Working Group's opinion was published on 9 February to a chorus of reactions and considerable confusion, not least within the Commission. This was partly because , although originally described at the meeting as 'an interim opinion', the DG XXIV representative did not regard it as such and the word "interim" is not to be found anywhere in the document as published on the internet. But the TUTB's information is that the Working Group itself does not regard its opinion as final because it is still waiting for other documents which the Commission is supposed to send it (e.g. on chrysotile substitutes).

Some of the SCTEE's remarks have attracted fierce criticism, including:

- *"….it is not possible to be certain whether or not there is a true threshold dose for lung carcinogenesis or mesothelioma. It may be appropriate in the absence of definitive information to assume that there is no safe dose of chrysotile."* and
- *" …. the conclusion that specific substitute materials pose a substantially lower risk to human health, particularly public health, than the current use of chrysotile, is not well founded although it might eventually prove to be correct."* [10]

The Commission itself finds some of the conclusions unclear (particularly the statement on a threshold value for chrysotile and the section on substitutes[11]), leading it to reaffirm that:

- as regards a threshold limit value for chrysotile, all Member States who have introduced a ban must be guided by the precautionary principle, and
- as regards substitutes and the risks arising from them, the Commission follows a consistent approach in Council Directive 76/769/EEC[12], based on available evidence. In the future it will be based on the results of the evaluation and control of existing chemicals[13].

The fact is that the opinion – interim or final - can be and has been used by all sides for their own ends:

- Opponents of a blanket asbestos ban interpret the report to mean that further research is necessary and less dangerous substitutes are not available. The ERM report concludes that the risk of exposure to chrysotile at concentrations below 1 F/ml - already the case throughout Europe – is very small. The SCTEE's support for this is taken by the opponents as meaning that there is no risk to workers and hence no need for a ban. They also appeal to the solidarity of the other Member States, drawing a bleak picture of industries on the scrap heap and thousands of job losses across southern Europe as the result of a total ban in Europe. They also plead the environmental damage that some substitutes might cause.
- Supporters of a ban attacked the report's ambiguity and half-hearted conclusions. The recommendation for further research into substitutes, in particular, could put off a total ban more or less indefinitely. A complete risk assessment for substitutes is not in line with the Technical Guidance Document for Existing Substances. Chrysotile asbestos may be less potent than all other asbestos fibres, but it is still regarded as carcinogenic in humans and no exposure limit, however minute, could protect workers against the risk of cancer or other asbestos-related diseases. One solution could be a time-limited ban with exceptions for specified applications until proper substitutes/alternatives became available. The experience of Member States who have banned all asbestos fibres show that industries can modify their production lines without courting financial disaster.

Commission policy bodies regard the report as of limited value.

The legal status of SCTEE opinions to the Commission

One of the new consultative committees covers consumer health and safety. It has to be consulted on cosmetics and food, otherwise any legal provisions are null and void. In all other cases, consultation takes place under a common political agreement between the different Directorates General. So any statements made by a scientific committee have only an advisory status. Even so, the Commission cannot go beyond the recommendations made in those statements and DG XXIV does not wish to give its blessing to legal provisions on which the relevant committee(s) have not been consulted.

ERM's Interim Report on the implications of replacing asbestos cement products

ERM's first report was on evaluating the hazards and risks posed by asbestos and substitutes (see above and lead article in *TUTB Newsletter* No. 7). Its second report – still in the draft stage – looks at the possible ramifications of replacing chrysotile asbestos cement products and the availability of safer alternatives for industries and countries where they are still in use.

Asbestos cement is the main application for asbestos still in Europe (85%) followed by friction materials (9%), textiles, seals, gaskets etc. (6%) and a handful of special applications like electrolysis diaphragms in chlorine plants.

Because Spain, Portugal and Greece are the Member States most likely to be affected by a ban, the study focuses on the implications for them. Specifically, the potential implications considered were:

- economic impacts like factory/company closures and job-losses, and their knock-on effects (cuts in tax revenues, increased social security spending on unemployment benefit, etc.) and the need to import substitutes;
- socio-economic spin-offs like effects on local housing and labour markets, local population structure and the impact on demand for services, effects on lifestyles, social ills, etc.

ERM reported its preliminary findings (cost-assumptions of capital losses, job losses, business failures, introduction and development of new technologies / asbestos-free substitutes), conclusions and mitigating measures (such as a ban with exemptions rather than a blanket ban) to the Commission meeting.

The main criticisms voiced at the meeting were that so far the study read more like a worse-case scenario of the likely unemployment rate in the asbestos cement industry in Spain, Greece and Portugal, disregarding the experiences of those Member States that banned asbestos products years ago.

The Member States asked for the final report to take account of:

- the social and economic benefits of employment and other spin-offs in the substitute-product industry;
- cost savings to social security from the reduced rate of occupational diseases etc.;
- the costs of safe handling and use of asbestos.

Because the case-study on France's recently-imposed asbestos ban is not yet completed, no information which may have pointed in a different direction was available, preventing any firm conclusions from being drawn.

What can the Commission do now?

Given the key findings of the first ERM report[14] the Commission is still ready and willing to frame a proposal for a directive on an EU-wide ban of chrysotile asbestos (with some exceptions). This is like to receive a qualified majority within the Member States[15].

The Commission is legally bound to wait for ERM's second final report on socio-economic impacts and the SCTEE 's final report on the first ERM report (on the hazards and risks of chrysotile asbestos and its substitutes). Once it has them, two possibilities are open to it:

- it could adapt the existing Asbestos Directive 91/659/EEC to technical progress. This would mean Member States' representatives voting on a Commission proposal in a technical progress committee (TPC) without going formally through Council and the European Parliament. The vote would be by qualified majority.
- or it could adopt a Council Directive. This would entail readings in the European Parliament and a vote by the Ministers, which would be very time-consuming, especially as Parliament has already expressed its opinion on this subject several times.

The Commission's time-table suggests that a first formal proposal could be ready by the end of summer 1998.

Belgium has fallen in line with eight other EU countries in outlawing the sale and use of chrysotile asbestos and products that contain it. The Royal Decree implementing the ban was gazetted on 21 February 1998.

The new Belgian regulations advance EU law slightly. EU legislation bans not the marketing and use of chrysotile as such, but simply 14 categories of products that contain it. They also allow temporary exemptions for products for which there is as yet no substitute.

No asbestos in brake pads

In early 1998, the Commission adopted a Directive adapting to technical progress Council Directive 71/320/EEC on the approximation of the laws of the Member States relating to the braking devices of certain categories of motor vehicles and their trailers.

Article 2.5. provides that *"Member States shall permit the sale or entry into service of replacement brake linings intended for fitting to vehicle types for which type-approval was granted prior to the entry into force of this Directive and on condition that such replacement brake linings do not contravene the provisions of the previous version of Directive 71/320/EEC which was applicable at the time of entry into service of these vehicles. In any case these brake linings shall not contain asbestos."*
Article 2.6. stipulates that *"with effect from 1 October 1999 Member States shall prohibit the entry into service of vehicles fitted with brake linings containing asbestos."*

Commission Directive 98/12/EC of 27 January 1998, *OJ* L 081 of 18 March 1998.

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[1] Attended by representatives from nearly all Member States, relevant Directorate Generals, ERM (Environment Resources Management), industry and the TUTB.
[2] See first article on asbestos in *TUTB Newsletter* No. 7, December 1997.
[3] November 1997.
[4] Recent Assessment of the Hazards and Risks posed by Asbestos and Substitute Fibres, and Recent Regulation of Fibres World-wide.
[5] The Implications of replacing Asbestos Cement Products with Substitutes and the Availability of Alternatives to Asbestos containing Products.
[6] Commission Decision 97/404/EC of 10 June 1997.
[7] Commission Decision 97/579/EC of 23 July 1997.
[8]WHO International Programme of Chemical Safety.
[9]The review was carried out by G.W. Gibbs, J.M.G. Davis, J. Dunnigan and R.P. Nolan.
Dr. Graham Gibbs represents the International Commission on Occupational Health's Committee on Fibres, Canada; Jacques Dunnigan is the former Director for Health and Environment of the Asbestos Institute in Quebec.
[10]The full document is available on the Commission's Internet site at: http://europa.eu.int/comm/dg24/health/sc/ncomm8/out05_en.html.
[11]E.g. SCTEE's reference in section 4.2 to 'chrysotile, MMMFs and other substitutes' might create the impression, that MMMFs are substitutes for chrysotile applications, when in fact they are substitutes for banned amphibole asbestos fibres. In section 4.1 SCTEE clearly stated what the substitutes for chrysotile are.
[12]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.
[13] Council Regulation EEC 793/93 of 23 March 1993.
[14]No threshold of exposure has been identified below which chrysotile asbestos does not have carcinogenic effects and the main substitutes for the remaining uses of chrysotile (polyvinylalcohol fibres (PVAQ), cellulose and p-aramid fibres) are - on the basis of the available evidence likely to pose less of a risk to health than chrysotile.
[15]Nine out of fifteen EU Member States have already banned asbestos (the last government to do so at the start of 1998 was Belgium. Ireland and Luxembourg support a ban in principle). Britain's New Labour Government was expected to bring in a UK ban in 1998 after having come out in support of an EU-wide ban several times, but has back-pedalled somewhat in recent months. For more information, see the article in British Asbestos newsletter, Issue 30, Spring 1998, available on the Internet at http://www.lkaz.demon.co.uk/ban30.htm.