

Chemical Agents Directive adopted

European legislation on the protection of workers' health has finally been completed with a directive laying down the general rules relating to the risks resulting from exposure to chemical agents at the workplace. This legislation, which has been under discussion for seven years, has provoked uncertainty, even apprehension, about how exposure limit values will be set in the future.

Last April, the Social Affairs Council adopted Directive 98/24/EC on the protection of workers from the risks related to chemical agents at work. This is the fourteenth individual Directive within the meaning of Article 16.1 of the Framework Directive.

This directive finally concludes the negotiations, abandoned in 1994 and taken up again under the Irish presidency, on the establishment of minimum standards for the protection of workers against chemical agents.

Following publication of the directive in the *Official Journal*, Member States have three years to transpose it into their respective national legislation. Every five years, Member States have to report to the Commission on the implementation of the provisions, taking into consideration the point of view of the social partners.

Indicative occupational exposure limit values (OEL_{ind}) have been under discussion from the very beginning of the negotiations for several reasons. Contrary to the expectations of the Commission, one important change proposed by the European Parliament concerning the setting of OEL_{ind} was not accepted by the Council.

Member States have to establish a national OEL for any chemical agent for which an OEL_{ind} is established at Community level. However, they only have to take into account the Community limit value, 'determining its nature in accordance with national legislation and practice.' (Article 3.3). What this actually means is that Member States still have the possibility to exceed the Community limit value. This has triggered a lot of concern - particularly from workers - about the usefulness of such values.

The proposed amendment of the European Parliament had tried to establish a safeguard clause, giving the Commission the right to intervene if the national reports reveal wide divergences in indicative OELs within the Member States.

However, Article 3.9 now only stipulates that the Commission must "*carry out an assessment of the way in which Member States have taken account Community indicative limit values when establishing the corresponding national occupational exposure limit values*". It is clear that, should wide divergences between the Member States become evident, the Commission's possibility to undertake appropriate action with a view to achieving closer harmonisation has now been eliminated.

The procedure for setting the different types of OEL varies according to their legal status and the time it takes to set them. The Commission obviously prefers the less time-consuming and less complicated procedure for setting indicative limit values to that for binding limit values. It follows that the majority of European OELs will be indicative, and therefore will not place any legal obligation on the Member States to adopt them as minimum standards in their national legislation, even though this procedure is based on Article 118A of the Treaty. A minimum standard is only guaranteed for a few binding OELs. It is therefore up to the national trade unions to ensure that their national government does not adopt OELs_{ind} which exceed those set at Community level.

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See also our previous articles: "*Proposal for Chemical Agents Directive back on track*", TUTB Newsletter n° 5, February 1997, pp. 17-18; and "*The ongoing debate on the Chemical Agents Directive*", TUTB Newsletter n° 6, June 1997, p 21.