

Asbestos ban: towards a European consensus (IV)

Final page turned in an epic tale?

¹ See previous articles: Asbestos ban: towards a European consensus (I), *Newsletter* n° 7, December 1997, pp. 2-4; (II), *Newsletter*, n° 9, June 1998, pp. 15-17; (III). Asbestos-free Europe next stop?, *Newsletter* n° 10, December 1998, pp. 2-3; Asbestos ban in France: too late for many, *Newsletter* n° 4, November 1996, pp. 2-5.

² 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).

³ See Asbestos ban: towards a European consensus (III). Asbestos-free Europe next stop?, *Newsletter* n° 10, December 1998, pp. 2-3.

⁴ The other changes in the new proposal are more or less the result of that deadline being dropped.

⁵ The Commission needed 62 of the 87 votes to get a qualified majority – i.e., fewer than 25 votes against a proposal. Greece, Portugal and Spain together have 18 votes, which with Germany's 10, could have defeated the proposal.

⁶ in particular asbestos cement products e.g. pipes, roofing and wall cladding.

⁷ according to a study commissioned by the Commission on the social and economic impacts of an asbestos ban.

⁸ The real reason for Canada's action is not the loss of a market in Europe but the possible domino effect on particular Third World or less-developed countries.

⁹ Because it will take the form of a Commission Directive adopted under the adaptation to technical progress procedure, no further consultation of the Council or European Parliament is necessary.

¹⁰ There are two possibilities:

1) The written procedure is circulated and all the Commissioners sign it. A date (deadline) is set and if no objections are made by that date, it is deemed to be passed by default.

2) The written procedure is put on the agenda for the Commission's weekly Wednesday meeting; it is debated and can be passed by a simple majority of Commissioners (11 votes are needed).

¹¹ OJ L 207 of 6 August 1999, p. 18. This article was written before the directive was adopted. The reference was included in final revision.

On 4 May 1999, the EC's DG III (Industry) put its final proposal for banning the remaining asbestos fibre applications in Europe¹ to the Technical Progress Committee (TPC), where it was adopted by a qualified majority. The ban will be established as a Commission Directive, adapting to technical progress for the sixth time Annex I to Council Directive 76/769/EEC² restricting the marketing and use of dangerous substances and preparations within the European Union.

Up to December last year, the proposal was the focus of a fairly intensive discussion relaunched in 1997 between representatives of Member States, Industry, the Trade Unions and the Commission itself. At that time, the Commission's hope was that after 20 years of EU asbestos legislation, Member States might be able to reach a qualified majority decision to ban it.

The draft proposal presented and discussed last December³ imposed an all-out ban on all asbestos fibres with a five-year transitional period and a ten-year derogation for one specific chrysotile asbestos application (diaphragms for existing electrolysis installations).

Other than some minor changes due to the Amsterdam Treaty, the key change in the proposal put to Member State representatives last May was the deadline for ending the derogation on electrolysis diaphragms. This was dropped in the face of German government protests that it would spell closure for those installations still using such diaphragms. This, Germany said, would also threaten many other workplaces in dependent and/or linked industries⁴.

Decision finally taken after a bumpy ride

There were real fears that a qualified majority might not be achieved⁵ because Germany's votes were far from sure, while three other Member States (Spain, Portugal and Greece) had already come out in favour of keeping the status quo.

As a consequence, Spain, Portugal and Greece would be able to continue with the marketing and use of their asbestos products⁶ where some 2400 jobs are directly at risk⁷ as against - according to our information - the fewer than 60 people apparently employed in the German plants concerned.

Even more significant, however, are the larger numbers of workers who may be affected through these production chains, now and especially in the future (if the experience of other fibres is anything to go by).

Further postponing the adoption of the Directive could also have been used by Canada in its WTO complaint against France for banning the use of chrysotile. If the ruling in the proceedings to re-open the French market for the import of chrysotile-containing products⁸ goes against France, all other European countries where asbestos has been outlawed for several years might find themselves also forced to re-open their own markets.

Those are some of the reasons why the proposal finally did get its qualified majority in the Technical Progress Committee. A formal announcement in the Official Journal was expected for mid-June⁹ which, in turn, would have brought the Directive into force 20 days later. But nothing happened until the end of July. It was rumoured that after the meeting Greece said it intended challenging the TPC's decision on the grounds that the Commission lost the right to take policy decisions with its mass resignation in April 1999, and now had only administrative powers.

Another more persistent rumour was that one of the Commissioners blocked the passage of the Directive in the normal written procedure to become EU law¹⁰ by not signing it. However, the Commission finally succeeded in adopting the directive on 26 July, just ahead of the summer recess (Directive 1999/77/EC)¹¹.

The key question, then, remains what else must be done, especially from the union view, to protect workers still exposed to asbestos (see inset). But other issues, like what to do

about asbestos-containing waste, are also clamouring for answers.

The ban, if brought in, will have no immediate results, especially for exposed workers in the maintenance, refurbishment, demolition and removal sectors.

The ETUC resolution on the protection of workers exposed to asbestos

In October 1998, the ETUC gave its full backing to the Social Affairs Council's resolution for a root-and-branch review of existing legislation to protect workers against asbestos and its call for the Commission to allocate the necessary financial and human resources.

The ETUC resolution also stressed the need to lower existing exposure limit values for all asbestos fibres at least to the lowest level already achieved in the Member States, and for European regulations to ensure professional skills for removal, demolition and maintenance.

The ETUC also called for a register of the incidence of mesotheliomas and cancers to be kept in each Member State, and for the Commission to consider the scope for harmonising existing national rules on registration of asbestos in building, plants, infrastructure, transport equipment, household equipment etc., and intervention on sites.

The ETUC's demands are in line with the Economic and Social Committee Opinion of 11 March 1999¹². The question remains, how can the Commission, and DG V in particular, be urged along that road?

DGV action to date

As the Directorate General responsible for health and safety protection of workers at work, DGV held a first round of consultations with Member States last September to review existing legislation on the protection of workers exposed to asbestos. A second meeting in March this year was due to be followed by a final meeting in June. All these meetings are regarded as groundwork prior to canvassing the social partners' views.

Our information is that Council Directive 83/477/EEC (as amended by Directive 91/382/EEC) will be further amended, taking

into account the demands of the Council Conclusions of 7 April 1999 and the Europe-wide ban on asbestos. The amendment should also provide for a review of existing exposure limit values. A European register of asbestos-containing buildings is thought to be too complicated.

The question remains why some Member States can do this and others cannot. The ETUC / TUTB should take it upon themselves to collect all the information available in different Member States on provisions and legislation dealing with the issues we as trade unions would like to see improved Europe-wide. The new ad hoc group of the Advisory Committee for Safety, Hygiene and Health at Work on Asbestos set up at last May's Advisory Committee plenary seems an apt forum for action.

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Protection of workers exposed to asbestos in the EU

Protection of workers against asbestos exposure is - so far - regulated at Community level by:

- Council Directive 83/477/EEC (as amended by Directive 91/382/EEC) on the protection of workers from the risks related to exposure to asbestos at work; and
- Council Directive 90/394/EEC (as amended by Council Directive 97/42/EC) on the protection of workers from the risks related to exposure to carcinogens at work. A proposal for a second modification of Directive 90/394/EEC has recently been adopted by the Commission.

Whereas Council Directive 83/477/EEC set requirements for a risk assessment, exposure limit values (currently 0.6 fibres per cm³ for chrysotile), personal protective equipment, and medical surveillance, among other things, Council Directive 90/394/EEC also provides a wider framework for controlling workplace activities where workers might be exposed to carcinogens, including asbestos.

One key provision of Directive 90/394/EEC which employers must bear in mind is the principle that when technically possible, a carcinogen must be replaced with a substance, which is not dangerous or less dangerous to health.

Directive 83/477/EEC takes precedence over Directive 90/394/EEC where it provides more stringent measures than those laid down in the latter Directive.

¹² Opinion of the Section for Employment, Social Affairs and Citizenship on Asbestos, SOC/004 (Ex. SOC/340), Brussels, 11 March 1999.