

## Asbestos – refocusing protective measures on those who are now most at risk

On 27 July 1999, Commission Directive 99/77/EC introducing a ban on chrysotile asbestos Europe-wide was finally adopted. Based on this and on the Council Conclusions of 7 April 1998, DG Employment and Social Affairs started work on one of the last items still to be tackled at the European level: the protection of workers involved in handling the burden of the past, i.e. in maintenance, demolition and removal work during which exposure to asbestos will or is very likely to occur.

A proposal for a Council Directive amending the existing workers' protection Directive 83/477/EEC<sup>1</sup> was presented and discussed at the first meeting of the AHG 'Asbestos' of the Advisory Committee in May 2000. In parallel, the Commission initiated the social partner consultation procedure provided in Article 138 of the Amsterdam Treaty.

### Proposal presented to the Advisory Committee

The draft proposal presented to the 'Asbestos' ad hoc group of the Advisory Committee on Safety, Hygiene and Health Protection at Work at its May 2000 meeting, makes provision for the long overdue abolition of the exclusion of certain branches/workers from the provisions of the Directive<sup>2</sup> and contains a number of issues which are in line with the demands put forward by either the Council<sup>3</sup>, the ETUC<sup>4</sup> or the Social and Economic Committee<sup>5</sup>:

- identification of a material presumed to contain asbestos must be carried out prior to any demolition, reconstruction or maintenance work;
- firms must provide evidence of their competence in the field of demolition and/or the removal of material containing asbestos; and
- the employer is required to provide an adequate training programme for all workers who handle, or are liable to handle, products or materials containing asbestos.

Other demands probably cannot be covered by this proposal for a Directive:

- continuous reviewal of the risks associated with commonly used substitutes and of the regulatory provisions including exposure limits and measurement techniques applying to these fibres; or
- reviewal of the existing regulatory provisions and initiatives in the Member States in respect of the need to provide information on the presence of asbestos, taking account of the respective responsibilities of employers and owners of premises.

But the proposal also contains a very crucial point which will not be accepted by the workers' group and

which in fact was already rejected by the majority of the members of the ad hoc group at the May 2000 meeting. The proposal provides, for example, that certain types of work are to be exempted from the measures/provisions provided in a number of articles:

- work on asbestos coating, asbestos insulation or asbestos panelling during which the total exposure time of workers does not exceed two hours;
- work with asbestos cement;
- air monitoring, clearance inspection or the storage of bulk samples for identifying whether a material contains asbestos.

First of all, a statement to the effect that 'the total exposure time... does not exceed two hours' is totally unacceptable, since it does not take account of the actual nature of exposure. Secondly, there is no reason for excluding any type of exposure whatever from:

- the obligation for the employer to notify the competent authority of the types and quantities of asbestos used and the activities and processes involved in activities in which workers are or may be exposed... to dust arising from asbestos or materials containing asbestos, as well as the right for workers and/or their representatives to have access to the documents which are the subject of the notification<sup>6</sup>;
- measurements of asbestos in the air at the workplace;<sup>7</sup>
- the demarcation of the work posts to be taken into consideration, prohibited access for workers who are not involved, specific hygiene measures, the wearing of appropriate working and protective clothing and the need for separate storage places, etc.<sup>8</sup>;
- access for workers and their representatives to the results of measurements and the obligation for the employer to inform the workers concerned and their representatives if limit values are exceeded<sup>9</sup>;
- regular monitoring of the health of the workers exposed<sup>10</sup>; and
- the obligation to keep an exposure register to which the doctors/authorities responsible for medical surveillance and the workers concerned have access<sup>11</sup>.

<sup>1</sup> Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, adopted on the basis of Article 100 (amended for the first time by Directive 91/382/EEC of 25 June 1991).

<sup>2</sup> Sea and air transport workers have hitherto been excluded from the provisions of the Directive.

<sup>3</sup> Council Conclusions of 7 April 1998 on the protection of workers against the risks of exposure to asbestos.

<sup>4</sup> Resolution of the ETUC Executive Committee of 8 October 1998.

<sup>5</sup> Opinion of the Economic and Social Committee of 24 March 1999.

<sup>6</sup> Article 4

<sup>7</sup> Article 7

<sup>8</sup> Article 13

<sup>9</sup> Article 14(2)

<sup>10</sup> Article 15

<sup>11</sup> Article 16

Even if the Commission is planning to reduce the actual exposure limit values to 0.2 fibre per cm<sup>3</sup> over an average exposure time of 8 hours for all types of fibres<sup>12</sup> for all existing types of exposure, and even if this reduction is in line with the demands of the Council, the Social and Economic Committee and the ETUC, it does not go far enough. When one considers the health risk which is still present through exposure to any asbestos fibre dust as well as the fact that the French industry seems to be able to apply an OEL of 0.1 fibre per cm<sup>3</sup>, there is no reason whatever for establishing an OEL at a higher level in a new Directive.

### Parallel consultation of the Social Partners

The Amsterdam Treaty provides that the Commission must consult the social partners at the European level on the possible orientation of Community action before presenting proposals in the social policy field (Article 138 of the Amsterdam Treaty). Since the protection of workers from the risks related to exposure to asbestos at work clearly falls within the social policy fields listed in Article 137, the Commission was obliged to launch the first stage of this consultation procedure. Since the Commission did not consult the Social Partners first but only parallel to the consultation of the Advisory Committee, the Employers decided to boycott the meeting of the ad hoc group. Depending on the result of the consultation of the Social Partners, the Commission can decide either to stop consulting the Advisory Committee or to continue to follow the usual procedure.

It is not yet clear in which order the Commission will follow these two procedures in future. This is the first proposal for a Directive (in this case, a proposal for amending an existing Directive) in the health and safety field for which the procedure laid down in Article 138 of the Treaty applies. The ETUC and UNICE, which represent workers' and employers' organisations respectively at the European level, have issued diverging opinions<sup>13</sup> on how this procedure should be followed. Discussions between the two organisations have commenced. ■

<sup>12</sup> In the existing directive the limit value is 0.6 fibre per cm<sup>3</sup> for chrysotile and 0.3 fibre per cm<sup>3</sup> for other types of fibres respectively.

<sup>13</sup> See ETUC Position on the application of the Amsterdam Treaty in the field of Health and Safety at Work adopted by the Executive Committee on 16-17 September 1999, and UNICE Comments on consultation of the Social Partners in the framework of Community policy on the protection and safety of workers at work, 27 April 1998.

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