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POSITION PAPER

08/12/2022

Revision of the Asbestos at Work Directive

COM(2022)489 FINAL

KEY MESSAGES:

- Focusing ONLY on lowering the occupational exposure limit value (OEL) will not ensure that the workers' protection objective will be achieved in the actual circumstances.
- In any case, FIEC does not support going lower than the target proposed by the European Commission, namely 0.01fibres/cm³ (8-hour time weighted average), as asking for a lower OEL at the EU level would not be a realistic target in the present circumstances.
- While it would be advisable to work with common available and economically accessible measurement methodologies and protocols at the EU level, the transition from Phase Contrast Microscopy (PCM) to Electron Microscopy (EM) is not an easy and quick step. Moreover, the PCM is still adapted to the OEL proposed by the European Commission.
- Regardless of the measurement methodology used, a transitional period of 4 to 5 years should be ensured in the revision of the directive.
- Moreover, to achieve stricter objectives, construction companies will need a set of support measures, including: upgraded training to workers, financial support to upgrade technics, processes, etc., better information on asbestos present in buildings, easily accessible and affordable waste treatment facilities, as well as guidance and awareness-raising campaigns.

1. General comments

Workers' health and safety are a top priority for companies in the construction sector. It is the obligation of the employer to exclude hazards to health and safety of workers during activities involving hazardous substances. However, if it is not possible in practice, he must reduce hazards to a minimum. In this respect, FIEC shares the objective of pursuing constant improvement in this field, provided that it is based on sound scientific evidence.

In its Communication on “working towards an asbestos-free future”, the European Commission acknowledges that “Overall, the Asbestos at Work Directive remains fit for purpose”¹.

¹ European Commission Communication COM(2022)488 final on working towards an asbestos-free future: a European approach to addressing the health risks of asbestos

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FIEC welcomes that the European Commission explicitly makes this statement. Indeed, the existing legislative framework covers all relevant aspects and is applied in a strict manner across the EU. Moreover, the Asbestos at Work Directive is only part of the picture. It comes in addition to the more general measures foreseen in the EU health and safety framework Directive², as well as the more specific CMR Directive³.

2. The OEL is not everything

The European Commission proposes to lower the EU occupational exposure limit value (OEL) from 0.1 fibre/cm³ by 10 times, that is, to 0.01 fibre/cm³ (8-hour time weighted average).

FIEC is convinced that it is important to ensure that risks to workers arising from exposure to hazardous substances at the workplace are effectively controlled, including, where appropriate, by establishing or revising EU OEL.

However, this 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 Advisory Committee on Safety and Health (ACSH) is central.

Hence, in the present case, FIEC believes that focusing on lowering the OEL – in the sense, focusing on this element only – will not ensure that the protection purpose will be achieved in the actual circumstances.

In any case, FIEC does not support going lower than the target proposed by the European Commission, namely 0.01 fibres/cm³ (8-hour time weighted average). Asking for a lower OEL at the EU level would not be realistic at this stage, and the risk would be that works take place outside of the regulatory framework.

Indeed, it is one thing to set an OEL, but it is another thing to be able to implement and enforce it.

It is the responsibility of the regulators to ensure that the targets remain proportionate and implementable. In this respect, FIEC stresses that the revision of binding OELs towards lower limit values does not always mean better protection for workers, as it depends on whether it is feasible to measure it, including on the basis of common and easily available measurement methods, and for the employers to actually implement it.

Bearing in mind that the construction industry is very fragmented, it is important to ensure that the legislation can be implemented by companies of all sizes in all Member States, as this is how we make sure that there is a level playing field for worker protection across the EU.

Moreover, beyond imposing binding OELs, the most important aspect – and a more pragmatic approach – is to apply the most appropriate removal technics and protective measures, to protect workers from exposure to asbestos.⁴

² Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC)

³ 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

⁴ This is the approach that we have taken in the EU-funded social dialogue project “Effectively Reducing Respirable Crystalline Silica Dust in Construction”: <https://www.fiec.eu/our-projects/completed-projetcs/rcsd>

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3. The OEL cannot be envisaged without a measurement methodology

The European Commission proposes to continue working with the Phase Contrast Microscopy (PCM), as recommended by the WHO in 1997. It simply **encourages** Member States to shift to methods based on electron microscopy and providing better results.

FIEC believes that reflections on the OEL and the measurement methodology go hand in hand.

Firstly, it is important to take into account that measurement methods for asbestos are very specific and can be expensive and time consuming. Secondly, on construction sites, conditions are not like in a clean room. The immediate environment is often loaded with dust. The presence of other types of dust limits the possibilities for measurement of asbestos fibres at very low levels. Thirdly, there are different measurement methods in the different Member States, which provide different results, thereby having a negative impact on the possibility to ensure the reliability of the results and a level playing field.

Indeed, most Member States still use the **PCM**, while only the **Analytical Transmission Electron Microscopy (ATEM)** – currently the most advanced technology, but used in a minority of countries⁵ – allows to identify asbestos fibres in the most complete way.⁶ But of course, this most advanced technology also requires additional sampling at workplaces (i.e. collection of samples from more surfaces), investment in expensive microscopes (and also more expensive in terms of maintenance), training of laboratory operators to more complex analyses and finally longer analyses in laboratories, bringing additional challenges and costs for construction companies.

This means that imposing a very strict OEL does not fulfil the protective purpose, if the broad accessibility of the therefore necessary detective methodology is (economically) not given. Moreover, the transition from PCM to EM is – for the above-mentioned reasons – not an easy and quick step.

Therefore, while the PCM is still adapted to the OEL proposed by the European Commission, it would be advisable to work with common and readily available measurement methods and protocols – which are also economically viable, as they might otherwise refrain certain companies from doing measurements at all – in the future.

4. The OEL cannot be envisaged without the appropriate protective measures and equipment

The European Commission proposal does not address the issue of protective measures and protective equipment.

FIEC believes that reflections on the OEL and on workers protective equipment go hand in hand.

To ensure compliance with the OEL, works in the presence of asbestos require to wear a respiratory protective device.

⁵ It is used in France, where the measurement costs represent 10 to 20% of the total value of the asbestos removal market!

⁶ See table under Annex 1. A.

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However, the levels of protection provided by these respiratory protective devices translate into different coefficients which correspond to the levels of tightness: the Nominal Protection Factor (NPF) is given by the producer of the equipment; the Assigned Protection Factor (APF) is calculated, where it exists, by a specific national body (e.g. regulatory body or research institute). Currently, Member States use either one or the other.⁷

For a given device, the NPF is usually greater than the APF. And the APFs measured by different bodies may vary depending on the methods used.

Consequently, the coefficient used (NPF or APF) and its value will have a major impact on the final calculation of the exposure. This means that a lowering of the OEL will impact to a lesser extent the countries which use the NPF for their calculation of the exposure of the employees, but will have important consequences for those using the APF, based on the real working conditions of the workers.

In order to ensure a level playing field across the EU, together with supporting future technical improvement of protective devices, FIEC recommends promoting best practices at the EU level.

5. Implementing a new OEL creates a number of challenges for construction companies (as well as for the value chain)

The European Commission does not address the issue of adaptation challenges to a lower OEL.

Based on previous national experiences, FIEC believes that construction companies will face a number of challenges when implementing a lower OEL.

- In most cases, companies will have to adapt their technical processes (i.e. upgrade their removal technics, as well as their waste management).
- They will have to shift to upgraded protective measures and protective equipment.
- They will have to adapt the shifts of their employees. Concretely, working hours will need to be reduced.
- They will have to upskill their workers according to the new circumstances.
- In case Member States decide to upgrade their measurement methodology, the upgraded screening, sampling and analysing process will become more time-consuming and more costly.
- In case specialised companies have to be hired, standstills of higher costs have to be considered. This might hinder the ambitions of the Renovation Wave.

⁷ See table in Annex 1. B.

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- In case the European legislation on waste treatment is revised, the costs borne by construction companies will probably also increase, due to higher constraints on waste disposal sites.

All in all, and although it is difficult to evaluate precisely as they are linked to a number of different factors, we can expect that the costs of the whole asbestos removal process will rise significantly (i.e. according to similar former legislative review at national level, it might be multiplied by 3 or 4 times).

Against this backdrop however, FIEC believes that, considering the ambition of the European Commission’s Renovation Wave flagship initiative, which aims at doubling the rate of energy renovations by 2030, and knowing that it is estimated that a very high number of the buildings requiring energy renovation still contain asbestos or asbestos-containing products, the vast majority of construction companies will have to be mobilised. Notably, construction SMEs have to deal with asbestos on a daily basis, as it might be contained in plasters, fillers and tile adhesives in existing buildings. Consequently, it is not realistic to think that only a handful of very specialised companies will be able to do the job. There is a risk at closing the market and/or creating a bottleneck.

Hence, all companies need to be on board, including “traditional” construction companies.

6. To achieve stricter objectives, construction companies need a set of support measures, including financial incentives

- **Financial support:** Considering the above, construction companies will need financial support to tackle the additional costs involved. In this respect, the Communication of the European Commission does not bring any new solution on the table but simply lists the existing schemes which can be used at national level. The problem is that whatever new rules will be imposed, the European Commission cannot force Member States to make use of what is available in terms of financial support for companies and the whole value chain.
- **Transition period:** Even if the Phase Contrast Microscopy remains the norm, as proposed by the European Commission, construction companies (and the whole value chain) will need time to adapt to the new OEL. **It is therefore requested that a 4 to 5-year transition period be applied.**
- **Upskilling of the workforce:** As mentioned above, applying a stricter OEL will also require staff with more or different expertise and knowledge. Companies may need their workers to benefit from the necessary upgraded training, while avoiding that the amount of extra training become too burdensome.

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- **Guidance:** Furthermore, construction companies need updated guidance and awareness-raising campaigns should be organised to spread the word broadly, including towards the wider public. This is already done at EU and more specifically at national level and should be further promoted⁸. In particular, EU Sectoral Social Partners should be involved in the preparation of any new activity of this kind (i.e. guidance and awareness raising campaign foreseen by the European Commission in its Communication).
- **Screening and registration of asbestos in buildings:** FIEC also believes that screening measures before demolishing or renovating buildings built before the (national) asbestos ban, together with a registration system, are effective ways to allow companies to take the right steps and reduce the risk of workers' exposure to asbestos. For that purpose, clients (i.e. homeowners or project owners) should bear the responsibility of such screening and therefore benefit from financial incentives. But again, as the certification and/or registration of specialised companies, and the screening protocols can diverge from one country or from one region to another, this can lead to results which are not always comparable. In any case, screening protocols should ensure that the integrity of asbestos-containing materials is preserved as much as possible. Whenever it appears necessary to take samples in order to detect hidden asbestos, this should be done according to the state of the art. As regards the setup of a (centralised and/or digital) registration system, it should be under the responsibility of Member States.
In any case, FIEC advocates that the European Commission should base its future proposal on the existing national and regional schemes and avoid putting them at risk.

FIEC also supports the idea that each Member State should put in place an overall removal strategy in order to progress towards an “asbestos-safe” future.

- **Waste management of hazardous substances:** FIEC support proposals that can further improve the handling of hazardous waste. Basically, construction companies need a greater availability and affordability of adapted waste facilities for asbestos at their regional/local level. Moreover, considering the amount of asbestos waste which will be collected in the near future, it is time to find more sustainable waste treatment solutions.

⁸ See the (non-exhaustive) list of national initiatives in Annex 2

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ANNEX 1:

A. Air analytical method (Source: OPPBTP)

Mineral fibers identification						
Air analytical method	OMS fibers l > 0,2 µm	Fine fibers 0,2 > l > 0,02 µm	Chemical (EDX)	Physical (Diffraction)	Total Identification	Routine use
PCM Phase Contrast Microscope	Yes	No	No	No	No	Yes
Low definition SEM Scanning Electron Microscope	Yes	No	Yes	No	No - classification	Yes
High definition SEM Scanning Electron Microscope	Yes	Yes	Yes	No	No - classification	No
TEM Transmission Electron Microscope	Yes	Yes	Yes	Yes	Yes	Yes

B. Comparison of methods and classifications used in several Member States

Country	France	Belgium	Spain	Italy	Switzerland
OELV (8 hours)	10 F/L	100 F/L	100 F/L	100 F/L	10 F/ L
Analytical method	TEM	PCM	PCM	PCM	SEM
Protection factor	APF AV = 60 APF AA= 250	NPF=2000	NPF=2000	APF=400	
Duration of shift	6 h max/ day with 2h30 continuous max	No limit	4h max / day with 2h continuous max		
Country	Germany	Austria	Sweden Finland Denmark	United Kingdom	Netherlands
OELV (8 hours)	10F/L (AC)* 100F/L (TC)**	250 F/L	100 F/L	100 F/L (4 continuous hours	2 F/L for chrysotile 10 F/L for other varieties
Analytical method	PCM	PCM	SEM	PCM	SEM
Protection factor		NPF=2000	NPF=2000	APF AV =40 APF AA=200	NPF =2000
Duration of shift	8h shift: AC and TC respected as shift mean value	No limit	No limit	4h maximum recommended with 9h max/ day	6 H maximum recommended with 2H continuous max

Source: European Decontamination Institute (*Acceptance Concentration / **Tolerance Concentration)

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ANNEX 2: List of best practices from EU and national/regional/local level (not exhaustive!)

EU (FIEC and EFBWW):

- Information modules on asbestos: <https://www.fiec.eu/our-projects/completed-projetcs/information-modules-asbestos>

FRANCE:

- Rapport Carto Amiante (OPPBTP): https://www.preventionbtp.fr/ressources/documentation/ouvrage/rapport-carto-amiante_tuwAtUsiqiH8ieSZDrzM4g
- Les règles de l'art amiante en sous-section 4 : <https://www.reglesdelartamiante.fr/>
- Page amiante du ministère du travail : <https://travail-emploi.gouv.fr/sante-au-travail/prevention-des-risques-pour-la-sante-au-travail/article/amiante>
- Questions-Réponses métrologie (DGT) : https://travail-emploi.gouv.fr/IMG/pdf/gr_metrologie_amiante_dgt_edition_2020.pdf

GERMANY:

- Guideline for asbestos surveys in preparation for work in and on older buildings: <https://www.baua.de/DE/Angebote/Publikationen/Kooperation/Asbesterkundung.html>
- A sectoral solution “Asbestos in existing buildings”, which was developed as an action guide for the handling of plasters, fillers and tile adhesives containing asbestos: https://www.bgbau.de/fileadmin/Medien-Objekte/Medien/Broschuere_Flyer/BranchenI%C3%B6sung_Asbest_beim_Bauen_im_Bestand.pdf
- E-learning possibilities: https://lernportal.bgbau.de/ilias.php?baseClass=ilrepositorygui&reloadpublic=1&cmd=frameset&ref_id=1
- Dissemination of information about low exposure processes: <https://www.bgbau.de/service/angebote/medien-center-suche/medium/emissionsarme-verfahren-nach-trgs-519-fuer-taetigkeiten-an-asbesthaltigen-materialien-1>
- Hazards-related concepts with exposure-risk assessment are elaborated in TRGS 519 and 910

ITALY:

- National sectoral information and awareness campaign promoted by FORMEDIL – national paritarian body for training and H&S created by the national social partners of the construction sector: <https://occhioallamianto.it/>

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THE NETHERLANDS:

- Information about the current certification system and legislation: [Ascert | Asbest certificeringen, regelgeving en informatie](#)
- Tips, information, tools and e-learning: [THEMA'S \(vezelveiligheid.nl\)](#)
- Government information about safe and healthy working with asbestos: [Asbest | Arboportaal](#)

SWITZERLAND:

Désamiantage

Directive CFST [6503 Amiante \(12/2008\)](#)

General publications

[Désamiantage en cas de travaux de transformation ou de déconstruction](#)

[Désamiantage: contrôles visuels et mesures de l'air ambiant](#)

[Liste de contrôle: Contrôle visuel avant et pendant les travaux de désamiantage](#)

[Liste de contrôle: Contrôle visuel après la fin des travaux de désamiantage](#)

[Amiante dans les locaux -Détermination de l'urgence des mesures à prendre](#)

[Amiante dans les maisons](#)

[Rénovations: Attention à l'amiante](#)

[Identifier et manipuler correctement les produits contenant de l'amiante](#)

[Informations détaillées sur l'amiante](#)

[Amiante. Tout ce que vous devez savoir en tant que propriétaire](#)

[De l'amiante dans les chauffages électriques à accumulation](#)

[Messungen von Asbestfasern bei Asbestzementdächern](#)

[Valeurs limites d'exposition aux postes de travail](#)

Désamiantage

[Amiante](#)

Publications médicales

[Factsheet, Maladies professionnelles causées par l'amiante](#)

Analytique

[Recommandations de la Suva pour les analyses d'amiante complexe](#)

Elimination

<https://www.suva.ch/fr-ch/prevention/par-danger/materiaux-rayonnements-et-situations-a-risque/amiante/eliminer-amiante>