FIEC is the European Construction Industry Federation, representing via its 32 National Member Federations in 27 countries (24 EU, Norway, Switzerland & Ukraine) construction enterprises of all sizes, i.e. small and medium-sized enterprises as well as "global players", carrying out all forms of building and civil engineering activities.

POSITION PAPER 22/03/2022

FIEC contribution to the European Commission's call for evidence
On protecting workers exposure to asbestos

Reference: Ares (2022)1332881, dated 22/02/2022

In this call for evidence, the European Commission explains that it intends to lower the current EU Occupational Exposure Limit value (OEL) for asbestos according to the most recent scientific knowledges. It says it is even more important with the expected boost on the EU building stock renovation works driven by the "Renovation Wave".

Even if we appreciate the willingness of the European Commission to give attention to this fundamental issue for the construction sector and its workforce, we do not support the lowering of the current EU Occupational Exposure Limit value[1]. Generally speaking, FIEC believes that the European Commission's action should focus more on preventive measures to eliminate or minimise risks, rather than setting new binding limit values.

- **Possible options under consideration:**

The call for evidence presents 3 possible options.

⇨ **No EU policy change**: We have no comment here.

⇨ **Legislative option**:
We don't support this option because it will open the Pandora's box. Considering the latest resolution of the European Parliament[2], it is expected that the co-legislators (at least on the European Parliament's side) will ask to revise in depth the existing Directive, leading to difficult and lengthy debates which might be counterproductive for the success of the Renovation Wave.

⇨ **Non-legislative option**:
We support this option because we believe that it is the most efficient one. In addition to the measures stated under this option, we believe that more financial support should be provided to contractors and households in view of jumping on the Renovation Wave. In this framework, existing guidance could be updated, in collaboration with the EU-OSHA and the ACSH dedicated working group. New ones could be created. It would be useful to organize new awareness-raising campaigns, aimed at both employers and workers, on the prevention of risks arising from exposure to asbestos.

[1] See also FIEC contributions to the social partners' consultation, phase 1 and 2: https://www.fiec.eu/fiec-opinions/position-papers-pl

[2] EP resolution of 20/10/2021 with recommendations to the Commission on protecting workers from asbestos (2019/2182(INL))

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We also point out that the EU social partners for construction jointly developed "information modules on asbestos"[3] a few years ago.
A lot more of prevention and information campaigns are undertaken at national level and should be further supported (e.g. by INAIL in Italy[4], OPPBTP in France, BG BAU in Germany, etc.). Such guidance documents containing recommendations and best practices on how to protect workers from exposure are appropriate tools for minimizing the risks related to the exposure of workers to asbestos.

- **Likely impacts:**

Under the likely impacts, the European Commission states only positive or neutral impacts to a potential lowering of the EU OEL for asbestos.

In particular, it is stated that *"The policy options are not expected to have a significant impact on simplification or administrative burden. Nonetheless, a somewhat positive impact on simplification is expected, as revising the EU OEL should spare EU countries the burden of costly procedures to revise national OELs. This is not expected to have a negative impact, since the aim is to revise the current EU OEL."*

We don't understand and we don't share this statement. As most EU Member States are currently applying the EU OEL, if this one is revised downwards, all these Member States will have to undertake revision procedures at national level too, in order to implement the new OEL in their national law, with all the related consequences. Indeed, national stakeholders will have to adapt their measurement methodologies and their prevention / protection measures accordingly. This will have a significant cost for a number of actors in the market, as well as their clients. Moreover, we cannot expect that the companies' life will be simplified from an administrative point of view.

It is also stated that *"It would also contribute to minimising the disparities in the levels of protection of the health and safety of workers between EU countries, as well as to creating a level playing field for economic operators in the single market."*

We don't understand and we don't share this statement. As long as this matter is regulated through a Directive, Member States will always be able to make some adaptions and go beyond the requested objectives, as it is already the case today. Following a potential lowering of the OEL for asbestos, we can expect that those Member States who are more advanced nowadays will want to go even further, recreating the exact same disparities between Member States, both in terms of levels of protection of workers' health and level playing field for economic operators in the single market.

[3] https://www.fiec.eu/our-projects/completed-projetcs/information-modules-asbestos

[4] As paritarian body for health and safety, INAIL is very committed to this issue and has created a specific campaign on asbestos: https://www.inail.it/cs/internet/attivita/prevenzione-e-sicurezza/conoscere-il-rischio/polveri-e-fibre/amianto.html

- **Outcomes of the independent study undertaken by RPA and COWI[5]**

The socio-economic and environmental study published by RPA and COWI in September 2021 raises a number of relevant issues.

- *"The study estimates that approximately 4.1 – 7.3 million workers are exposed to asbestos. If no further action is taken, approximately 22 cases of cancer will occur each year over the next 40 years due to exposure during this period."*

  We note that these figures do not look very high considering the overall number of exposed workers. Hence, we can consider that the current legislation and related measures are already working well. Of course, we can expect that the total workforce exposed to asbestos will increase over the coming decade due to the Renovation Wave, but this does not mean that the current legislation will be less efficient than it is today.

- *"If the current OEL is lowered to any of the OEL options under consideration in this study, the electron microscopy methods appear to be the more appropriate analytical method."*

  This is important to note that all other methods will become outdated. Even if the electron microscopy is already used in many Member States, this is not systematically the case, leading to significant costs for those economic operators which will have to adapt to it.

- *"The main arguments for not including policy options below 0.001 fibres/cm3 (NB: in the study) are that: a lower limit seems not to be feasible given the current thinking among experts about the limit of detection. Already the feasibility of measuring at the 0.001 fibres/cm3 level is challenged by several Steering Committee members and experts; and the lowest level suggested is already half of the lowest national OEL."*

  We support these arguments. Very specific tools and expertise would be required (mostly using electron microscopic methods). This is particularly costly and challenging for SMEs.

- *"Regarding the cost-benefit ratios of the various OEL options under consideration in this study, the costs are estimated to very significantly outweigh the benefits for all the policy options considered."*

  This conclusion of the study is worrying and confirms our expectation that a lowering of the current EU OEL would have a significant financial impact for companies and households. The European Commission should seriously consider the impact of its action.

[5] Study on collecting information on substances with the view to analyse health, socio-economic and environmental impacts in connection with possible amendments of Directive 98/24/EC (Chemical Agents) and Directive 2009/148/EC (Asbestos), Study overview and key findings, September 2021

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- *"A key uncertainty relates to the implications for workers with passive exposure in buildings at the option of 0.001 fibres/cm3. The costs and benefits for this group are highly uncertain and the costs for this group could significantly increase the total costs estimated in this study at this option, because employees may need to take action to reduce passive exposure in buildings."*

  We are quite concerned about this statement and the related (uncertain) additional costs.

- *"It is expected that a large proportion of enterprises where exposure is subject to Article 3 (3) waiver and incidental exposure will opt to no longer accept asbestos related contracts and specialised asbestos removal companies will see their business increase. These income losses or gains can thus be seen as transfer costs with a low net impact overall, although some impacts may occur due to specialised asbestos removal companies benefiting from greater economies of scale."*
  "When the costs of specialised asbestos removal companies in the construction sector increase, they are likely to pass them on to their clients without suffering any losses themselves (this is due to the relatively inelastic demand for asbestos removal). (…) It cannot, however, be ruled out that significant price increases would result in clients delaying or abandoning plans to remove asbestos thus resulting in a reduction in asbestos removal revenues and delays in removing passive exposure to asbestos."

  Considering the increase of activity in the next decade, we consider that the specialised asbestos removal companies cannot tackle the challenge alone. Traditional construction SMEs need to be on board as well, benefitting from concrete (financial) support and guidelines.
  Taking the experience of the Netherlands, which currently applies the lowest OEL in the whole EU, we observe that the asbestos removal work is undertaken by a small group of certified companies which shares this very specific market, making this type of work very costly for the clients (general contractors and homeowners). We speak of several thousands of euros, depending on the size of the job, while there are no subsidies available for homeowners.
  If the OEL is lowered in the whole EU, we can expect that a lot of private homeowners will hesitate to pay the cost-intensive works by specialised refurbishers.

- *"Major concern has been raised about the applicability of the existing electron microscopy methods for compliance monitoring at the two lowest OEL options in settings with high dust levels and small asbestos fibre to dust ratios, e.g. by working with building materials with low asbestos concentrations or by exposure to naturally occurring asbestos."*

  We support these arguments. In particular, with low concentrations of asbestos and with a lot of "contamination" from different kind of dust particles that would cover the asbestos fibres, it will be necessary to scan very large filter surfaces. All of this will involve significant costs.

- *"Monitoring compliance with the current OEL is complex and the requirements for monitoring will depend on the initial risk assessments undertaken. If the OEL is lowered, more often it will be uncertain if the exposure concentration is below the OEL, and more measurements will be needed to confirm the results of the risk assessment*

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or to adjust the working procedures. However, the estimated increase in monitoring costs is highly uncertain."

We are quite concerned about this statement and the related (uncertain) additional costs.

- **Additional concerns:**

⇨ It is important to be clear on the type of fibres which must be measured. The conclusions of the RPA/COWI study are based on the scenario that there will be no change regarding the type (i.e. size) of fibres measured. Otherwise, the consequences (i.e. technical and financial implications) would be very different.

⇨ Referring to the OEL of 1000 fibres/m3 requested in the latest European Parliament resolution, such OEL is critical in particular in combination with Art. 8 which does not refer any longer to an "average value" but to a "value of the moment", which seems to be an unrealistic target. For asbestos fibres, no measurement method is currently available for determining the instantaneous value. According to the current state of the art, there are only very few working procedures for activities involving asbestos in which the requirement of 1,000 fibres/m³ can be reliably met. As a result, implementation of the OEL proposed by the European Parliament would mean that respiratory protection would almost always have to be worn. This puts a strain on employees. Therefore, there would have to be limits on the amount of time they can wear such protective equipment, as well as additional occupational health precautions.

⇨ Last but not least, if companies are not able to apply limit values, they will not be able to protect workers as intended. Bearing in mind that many small and even micro construction enterprises will be affected by measures on these substances, 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.

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