

Revision of the Carcinogens Directive: anything happening?

The key law that protects workers against carcinogens in the workplace has been under revision for close on a decade. The process has long been stymied by disagreements over extending occupational exposure limits and the scope of the law to substances harmful to reproductive health. Latterly, there has been some movement on exposure limits.

Tony Musu
ETUI

When will workers see the health benefits of REACH? Not yet awhile!
Image: © ImageGlobe



An estimated 1 300 000 people will die of cancer in the European Union in 2013. A significant percentage of these deaths will be the direct result of workers being exposed to carcinogens in the workplace. The available data suggest that at least 8% of cancer deaths are work-related¹. For some cancers, like lung and bladder cancer, the figure is even well above 10%. Cancer is now unquestionably the leading cause of working conditions-induced mortality in Europe.

The 1990 Carcinogens Directive spells out rules for protecting workers against the risks of exposure to "known or presumed" carcinogens or mutagens in the workplace². It has been implemented into national law in all Member States, and lays down an order of priority for employers' obligations to minimise and control the use of workplace carcinogens (see box).

The Directive also provides for occupational exposure limit values (OELVs) to be set. Unlike those adopted under the Chemicals Directive (98/24/EC), which are indicative and so leave individual EU countries free to set the value to be introduced into national law, the limits adopted under the Carcinogens Directive are binding. This means that EU countries have no choice but to require firms to apply at least the minimum value set at EU level.

Since the Carcinogens Directive was adopted 23 years ago, binding OELVs have only been set for three substances (benzene, vinyl chloride monomer and hardwood dusts), while indicative OELVs have been adopted for 122 substances under the Chemicals Directive. In practice, each EU Member State has both (indicative or binding) OELVs set at EU level and carried over into its national laws, and national OELVs for many other substances (including carcinogens) brought in under its own specific rules.

Business vs. Workers' interests

The European Commission first proposed revising the Carcinogens Directive to bring it into line with advances in scientific knowledge, technical progress and the world of work in the early 2000s when it wrote the aim into the EU Strategy on Health and Safety at Work 2002-2006. Ten years on, it is still in the Commission's pending tray. The shilly-shallying bespeaks the interests involved. The two big stumbling blocks are extending the Directive's scope to reprotoxins, and setting occupational exposure limit values (OELVs) for a bigger number of carcinogens.

The workers' voice in the EU, the European Trade Union Confederation (ETUC), wants the Directive extended to reprotoxins, and for new OELVs to be set. The EU employers' lobby, Business Europe, is dead set against. Both agendas were extensively argued during the two phases of social partner consultations organised by the Commission as required by the EU treaties where laws affecting worker protection are to be brought in or changed.

The unions point to the type, severity and irreversibility of the health effects for workers of both sexes (especially pregnant women) from exposure to reprotoxins and want the stricter prevention rules for carcinogens and mutagens already in the Directive to be extended to them. They also want a more rational link to the REACH Regulation which groups together carcinogens, mutagens and reprotoxins (category 1A or 1B) under the category of "substances of very high concern". The unions also want to minimise the exposure of workers to the hundreds of carcinogens and mutagens still being used in European workplaces by having binding OELVs adopted for additional substances, including carcinogens like crystalline silica generated during industrial processes.

The employers' organisations, by contrast, see no reason to extend the Directive's scope to reprotoxins since they are already covered by the Chemicals Directive, nor to adopt additional OELVs which they see as an added administrative burden on businesses.

Employers' main obligations under the Carcinogens Directive

The first duty is to eliminate or replace the carcinogen (or mutagen) by a substance that is not or is less dangerous. Where a safer alternative exists, the employer must replace regardless of the cost to the company. If replacement is "technically impossible", the employer must ensure that the carcinogen is manufactured or used in a closed system. If he cannot do that, he must ensure that the level of exposure of workers is "reduced to as low a level as is technically possible".

1. Estimate derived from the work of Finnish researchers. See: Nurminen M., Karjalainen A. (2001) Epidemiologic estimate of the proportion of fatalities related to occupational factors in Finland, *Scandinavian Journal of Work, Environment & Health*, 27 (3), 161-213.

2. Category 1A or 1B (Directive 2004/37/EC, codified version).

3. One on 5 December 2012, a second on 30 May 2013, and a third set to be formally adopted in November 2013. See www.etui.org > Topics > Health and Safety > Occupational Cancer > News.

4. Germany, Austria, Finland, France, the Netherlands and the Czech Republic.

5. Final Report for the analysis at EU-level of health, socioeconomic and environmental impacts in connection with possible amendments to 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 and mutagens at work to extend the scope to include category 1A and 1B reprotoxic substances, February 2013, Risk & Policy Analysts Ltd. and Milieu Ltd. Available on www.labourline.org.

Without a big move forward on revising the Carcinogens Directive, László Andor will leave a meagre health and safety at work legacy.

Table 1 Carcinogens which the Advisory Committee on Safety and Health proposes adding to Annex III of the Carcinogens and Mutagens Directive

Substance name	Proposed binding OELV (8hr Time-Weighted Average)	Included in the REACH candidate list
Respirable crystalline silica	100 µg/m ³	no
Refractory ceramic fibres	0,1-0,3 fibre/ml	yes
Chromium VI	25 µg/m ³	no
Trichloroethylene	10 ppm	yes
Hydrazine	13 µg/m ³	yes
Acrylamide	70-100 µg/m ³	yes
Epichlorhydrin	1,9 mg/m ³	no
1,2-dibromoethane	0,8 mg/m ³	no
Methylenedianiline	80 µg/m ³	yes
Hardwood dust*	3 mg/m ³	no
Diesel engine exhaust emissions	100 µg/m ³	no
Benzo(a)pyrene	2 µg/m ³	no
Vinyl chloride monomer*	1 ppm	no
o-toluidine	0.1 ppm	yes
1,3-butadiene	1 ppm	no
Bromoethylene	1 ppm	no
4,4-mythylene bis 2-chloroaniline	definition available in near future	yes
Ethylene oxide	1 ppm	no
1,2-epoxypropane (propylene oxide)	1 ppm	yes
1,2-dichloroethane	2 ppm	yes

*updating an existing binding OELV

20 million workers safer

After several years in the doldrums, however, a major milestone was recently passed in the European Advisory Committee on Safety and Health at Work (ACSH), a tripartite committee of government, employer and worker representatives tasked with giving an opinion to the European Commission on any proposed changes in workplace health and safety law.

The ACSH has previously adopted two opinions³ in favour of revising the Carcinogens Directive to add new OELVs.

If the Commission goes with the ACSH opinion, 20 new substances, including crystalline silica, refractory ceramic fibres, chromium VI and trichloroethylene, will soon be added to the list of occupational carcinogens for which a binding OELV will apply in all EU countries.

The tripartite opinions adopted at European level in December 2012 and May 2013 should therefore help jump-start the revision of the Directive, to keep an estimated 20 million European workers safer from the risks of exposure to workplace carcinogens.

Employers and workers are still split, however over bringing reprotoxins within the scope of the Directive (see ACSH opinion adopted on 30 May 2013). The Commission's decision on this aspect of the revision will probably be informed by two important factors. One is that six European countries⁴ have already brought reprotoxins within the Directive when implementing it into their national laws. The other is the findings of the socio-economic impact study it commissioned showing that an integrated approach to prevention which also covers reprotoxins would raise the level of protection of exposed workers⁵.

The employers' risky gamble

The looming May 2014 European elections mean that Employment and Social Affairs Commissioner László Andor's term of office is rapidly running out. Without a big move forward on revising the Carcinogens Directive,

László Andor will leave a meagre health and safety at work legacy, not least as for probably being the first EU Commissioner with the occupational health portfolio not to put up an EU strategy on it for close to 35 years⁶.

Then, too, there is the influence of REACH, and the requirement for producers to get an authorisation from the European Commission for the use of Annex XIV carcinogens. The industry is hoping to use Article 58 (2) of REACH to get around this requirement. What this provides is that specific uses can be exempted from the authorisation requirement if the risks are properly controlled, on the basis of the existing specific Community legislation imposing minimum requirements relating to the protection of human health or the environment. The recent progress in the ACSH with regard to the adoption of binding limits for a series of carcinogens may in part be due to the benefits that manufacturers hope to draw from their obligations under the REACH Regulation. But it is a risky gamble because there is no saying that the Commission's legal services will put the same interpretation on Article 58 (2) when the first case comes up. The producers concerned could therefore find themselves having to comply with a binding OELV for a workplace carcinogen and having to get an authorisation for its use. Which would be a win-win for human health and the environment.

The Commission now needs to bring forward a proposal for a Directive without delay so the European Parliament and Council can do their job, because without a formal proposal from the Commission, the process will be stalled. Various stages still have to be

gone through, not least the impact assessment, although the ability to prevent thousands of unnecessary deaths surely ought to be sufficient justification for revising the Directive. But even after that, it will have to be implemented into Member States' law, so the new binding exposure limits are unlikely come into force before 2015.

The Directive could then be revised again later on to extend its scope to reprotoxins and include a reform of the current process for setting binding OELVs at Community level. ●

⁶ Vogel L. (2013) Community health and safety strategy: going nowhere, HesaMag, 7, 6-11. Available on www.etui.org > Publications > Periodicals > HesaMag.