



MINUTES OF THE TECHNICAL PROGRESS COMMITTEE MEETING of Directive 89/391/EEC on a Commission Directive establishing a 4th list of indicative occupational exposure limit values Luxembourg, 15/09/2016 (9.30 – 17.30 h)

Participants: 26 Member States delegations were present as well as representatives of 2 EFTA countries (Norway and Switzerland). 2 Member States were absent (BE and LV). See annex.

Commission services (DG EMPL): Charlotte Grevfors Ernoult, Maria Teresa Moitinho de Almeida, Alexandra Eftimie, Alick Morris, Matthew Heppleston and Nuria Cavalle Oller.

The Chairwoman (Ms Charlotte Grevfors Ernoult) welcomed the participants and highlighted the importance of this meeting as a key step towards the adoption of a new Commission Directive setting indicative limit values for the protection of EU workers.

The draft Commission Directive on a 4th list of indicative occupational exposure limit values (EU IOELVs) pursuant to Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work¹ was put in the context of other ongoing initiatives in the field of Health and Safety at Work. These include the *ex-post* evaluation of 24 Occupational Health and Safety (OSH) Directives, the recently adopted Commission proposal for a Directive amending Directive 2004/37/EC² on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (COM(2016) 248 final) to set out binding occupational exposure limit values for more carcinogens/mutagens and, in a more general perspective, the Social Pillar initiative (COM(2016) 127 final).

1. Adoption of the Agenda

The agenda was adopted with no changes.

2. Information from the Commission concerning the new voting rules

The Chairwoman summarized the contents of the background document sent to the committee members in advance of the meeting regarding the new voting rules applicable as from 1 November 2014 in this Technical Progress Committee, replacing the rules referred to in Article 5a of Decision 1999/468/EC³ and Article 5 of the Rules of Procedure for the Technical Progress Committee. The Chairwoman informed about the possibility for any committee

¹ OJ L 131, 5.5.1998, p. 11

² OJ L 229, 29.6.2004, p. 23

³ OJ L 184, 17.7.1999, p. 23

member to still request the application of the former system of weighted votes, during a transitional period until the 31st March 2017. No committee members requested this.

3. Introduction and presentation by the Commission of the draft Commission Directive on a 4th list of Indicative Occupational Exposure Limit Values (IOELVs) for hazardous chemicals pursuant to Directive 98/24/EC

The draft Directive and its Annex had been transmitted to the committee members in advance of the meeting.

The Commission services presented some key aspects regarding the EU IOELVs put forward in accordance with article 3 of Directive 98/24/EC, and explained the steps fulfilled in the preparation of the draft Directive: 1) Independent scientific assessment of the concerned chemicals by the Scientific Committee on Occupational Exposure Limits (SCOEL) in accordance with Art. 3 (1) of Directive 98/24/EC and subsequent adoption by SCOEL, in accordance with Decision 2014/113/EU⁴, of Recommendations for occupational exposure limit values for the hazardous chemicals included in the draft Directive, and 2) Consultation of the Advisory Committee on Safety and Health at Work (ACSH) in accordance with Art. 3 (2) of Directive 98/24/EC on the limit values recommended by SCOEL with the adoption by that committee of two opinions (November 2014 and December 2015), where an agreement among the three interest groups was reached in putting forward limit values for a number of chemicals on the basis of SCOEL Recommendations.

The procedure following a positive opinion of the Technical Progress Committee was outlined: 1) Transmission of the draft measures for scrutiny to European Parliament and Council who may oppose the draft Directive within three months from the date of referral on three types of grounds 2) In case the EP and the Council do not oppose the draft Directive, adoption of the Directive by the Commission after the 3 months period expires and 3) Publication of the Commission Directive in the Official Journal of the European Union.

The general aspects of the draft Directive were presented, together with the specific provisions laid down in article 6 according to which Member States have the possibility to use a transitional period of 5 years after the final date for transposition for implementing in underground mining and tunnelling the limit values for the substances carbon monoxide, nitrogen monoxide and nitrogen dioxide. The background on which the Commission services took this decision was explained, in particular the assessment made of the ACSH opinion in this respect where an agreement among the three interest groups (workers', employers' and governments' representatives) on putting forward these limit values in a Commission Directive was reached, while recognising the difficulties that this might pose in those sectors because of local details of the process, equipment and mine or tunnel design/layout. The Commission services also considered other elements put forward by interested parties and experts. Attention was drawn to recital 17 of the Draft Directive that explains the rationale of this specific provision.

Finally, it was pointed out two editorial corrections to make to the draft Directive: 1) deletion of the word '*respectively*' in recital 5 of the Directive as it had no added value and could even be misleading, and 2) change of the footnote reading 9 for the substance acrylic acid in the

⁴ OJ L 62, 4.3.2014, p. 18

annex, which was incorrect and should read 10. These two changes were accepted by all the delegations in the room without further discussion.

4. Exchange of views on the draft Commission Directive on a 4th list of Indicative Occupational Exposure Limit Values (IOELVs) for hazardous chemicals.

The Chairwoman of the Committee initiated a *'tour de table'* inviting the Member States delegations to express their views on the draft Directive and to indicate any aspect they wished to further discuss.

Some delegations expressed that they receive positively the draft Directive without further comments (BG, CZ, DK, EE, IE, EL, FR, HR, CY, LT, MT, NL, AT, PT, FI, SE, Switzerland). RO indicated initially that they were in principle favourable but they would abstain. Other delegations explained that they receive positively the draft Directive while making comments or raising the need to discuss some issues (DE, ES, IT, SI, SK, HU, Norway). Some delegations (LU, PL, UK) indicated the need to discuss certain specific issues before expressing their general position on the draft Directive.

The comments or questions that were answered by the Commission services or that were object of a more in-depth discussion in the meeting are summarized below. The name of the delegation(s) is indicated for each comment.

Request for clarifications regarding the use of the inhalable and respirable fractions: ES, IT requested clarifications as regards the reason for assigning limit values in relation to the respirable fraction for Calcium oxides and ES as regards the reason for stating in a footnote that the inhalable fraction should be measured for Bisphenol A.

The Chairwoman stated that the draft Directive follows in this respect the recommendations made by SCOEL. In this sense, the measurable fraction for calcium oxides was the respirable one and in the case that SCOEL, in the light of new available scientific information in the future, revises its recommendations and concludes on the necessity to also measure the inhalable fraction, these changes would need to be incorporated in the legislation in due course. Regarding the footnote for Bisphenol A, even if by default this is the fraction to measure and therefore the footnote was not strictly necessary, it was decided to express the limit value for clarity as done in the SCOEL Recommendation, as this was an issue which entailed thorough discussion during the preparation of the SCOEL Recommendation.

Suggestion to set out a period for transposition of the Directive longer than 18 months (PL, Norway).

Only 2 countries mentioned this possibility. Since there was no general support on this request, this was not considered for an amendment of the draft Directive.

Suggestion to delete the obligation of Member States to accompany the notification of the national implementing measures with explanatory documents in the form of correlation tables (PL).

PL requested that the requirement in article 7 of the Directive to provide explanatory documents in the form of tables showing the correlation between the national implementing provisions and the Commission Directive should be deleted and rather be set out solely in a recital, in order to give the Member States flexibility in how to report the national transposing measures. In that regard, PL referred to the 2011 Joint Political Declaration of the Commission

and the Member States in relation to EU acts adopted by the Council and European Parliament. LU expressed support to the position of PL. Article 7 could instead refer to the provision of a communication document.

The Chairwoman responded that for this type of technical Commission Directive, the provision of correlation tables is useful to enhance clarity on the national transposing measures and compliance checks and should also be seen in relation to the obligation of Member States under Directive 98/24/EC to provide to the Commission documentation on the scientific and technical data supporting the corresponding national limit values. PL accepted this explanation.

Indication of possible problems for the implementation of some EU IOELVs at national level (eg. for Tetrachloroethylene, Nitroethane, Dichlorobenzene, Ethyl acetate, Calcium oxides, Bisphenol A), and lack of necessary knowledge at this point on time on the actual capacity of the national industry to comply with the values (Norway, PL, SI, SK). In particular for Bisphenol A, PL requested to consider the extension of the transitional period for transposition up to 5 years.

The Chairwoman reminded the Committee about the margin of discretion for Member States which is provided for in article 3 of Directive 98/24/EC when setting out national occupational exposure limit values. In this regard, technical and socio-economic feasibility factors may be taken into account according to national or sectoral particularities. Regarding an extended transitional period for Bisphenol A, this was not considered for an amendment of the draft Directive since there was no general support on this request.

Suggestions to develop guidance on sampling and measuring of airborne concentrations in the workplace for the substances for which an EU occupational limit value is set out (HU).

The Commission services recognised this as a valuable observation of which they took note for further future action in the area.

Concerns by several delegations on the special provisions of article 6 of the draft Directive

Several delegations expressed concerns on the ability of the underground mining and tunnelling sectors to comply with the limit values for carbon monoxide, nitrogen monoxide and nitrogen dioxide, and outlined some actions to be taken forward before the expiry of the extended transitional period of 5 years set out in the draft Directive (DE, EL, IE, LU, PL and UK).

One Member State (PL) indicated that widespread consultations took place in PL on the issue of carbon monoxide, nitrogen monoxide and nitrogen dioxide in the mining industry which concluded that the 5 years transitional period is appropriate. However, there are difficulties to comply with the proposed IOELVs in the copper mining using explosives and diesel engine equipment. In this sub-sector, solutions could be implemented in 10 years. On that basis, PL suggested extending the transitional period for the transposition of the values for these substances in the underground mining and tunnelling from 5 years to 10 years to allow for compliance. LU supported this position, given the financial costs involved and the need for financial solidarity among the Member States.

UK referred to the work of the Standing Working Party on Extractive Industries of the ACSH on these issues which refers to difficulties for compliance in the mining sector in general, not only in certain sub-sectors. Taking that into account, the UK suggested that the draft Directive be changed to add a new paragraph 3 to Article 6, stating that before the end of the transitional period, the Commission is to review the issues of technical feasibility and challenges related to

measurement methodologies in the concerned sectors, prepare a report for the ACSH and make recommendations accordingly. This position was supported by other delegations (EL, IE, LU, PL).

NL indicated that it would be confusing to refer to technical feasibility in the text of the directive, given that EU IOELVs are health based values.

DE reminded that, given the indicative character of the limit values, after the end of the transitional period, Member States may still, in accordance with Directive 98/24/EC, take into account for mining and tunneling subsectors, feasibility factors when establishing national occupational exposure limit values transposing the EU IOELVs for nitrogen monoxide, nitrogen dioxide and carbon monoxide set in the Annex to the Commission Directive. This statement was reinforced by some other delegations (NL) and the Commission services reminded that this results from article 3 of Directive 98/24/EC. In addition, it was agreed by all 26 Member States that this should be included in the Minutes of the meeting.

The Commission services after having assessed the comments received regarding the provisions on IOELVs for carbon monoxide, nitrogen monoxide and nitrogen dioxide in the mining and tunnelling sectors, proposed to change the text of recital 17 of the draft Directive to indicate that it is appropriate "for the Commission to review the aforementioned issues *[concerns regarding the technical feasibility of the proposed IOELVs and challenges relating to the availability of measurement methodologies]* before the end of the transitional period". All the 26 Member States delegations agreed with the proposed insertion in recital 17 of the draft Directive.

5. Adoption of the Opinion of the Technical Progress Committee on the draft Commission Directive establishing a 4th list of Indicative Occupational Exposure Limit Values

As all the 26 Member State delegations present in the meeting agreed with the draft Directive, as amended during the meeting, the Technical Progress Committee gave a positive opinion on the draft Directive.

Closing of the meeting

The Chairwoman congratulated the delegates for the outcome of the meeting and thanked them for their contribution in the procedure for adoption of a Commission Directive establishing a 4th list of indicative occupational exposure limit values.

The meeting was closed without further remarks.