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## COMMISSION STAFF WORKING DOCUMENT

### Subsidiarity Grid

#### *Accompanying the document*

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/148/EC on the protection of workers from the risk related to exposure to asbestos at work**

[...]

{COM(2022) 489 final} - {SEC(2022) 342 final} - {SWD(2022) 311 final} -  
{SWD(2022) 312 final}

## Subsidiarity grid

<b>1. Can the Union act? What is the legal basis and competence of the Union's intended action?</b>
<b>1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?</b>
<p>Article 153 of the Treaty on the Functioning of the European Union (TFEU), which empowers the EU to support and complement the activities of the Member States in the field of improvement in particular of the working environment to protect workers' health and safety. It also empowers the European Parliament and the Council to adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.</p> <p>Article 154 TFEU, which requires the Commission to carry out a two-stage consultation of the social partners at EU level before submitting proposals in the social policy field.</p>
<b>1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?</b>
<p>The Union's competence in social policy is shared. Article 153(1)(a) TFEU states that the Union shall support and complement the activities of the Member States in the field of 'improvement in particular of the working environment to protect workers' health and safety'.</p> <p><i>Subsidiarity does not apply to policy areas where the Union has <b>exclusive</b> competence as defined in Article 3 TFEU<sup>1</sup>. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU<sup>2</sup> sets out the areas where competence is shared between the Union and the Member States and Article 6 TFEU<sup>3</sup> sets out the areas for which the Union has competence only to support the actions of the Member States.</i></p>
<b>2. Subsidiarity Principle: Why should the EU act?</b>
<b>2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2<sup>4</sup>:</b>
<ul style="list-style-type: none"><li>- Has there been a wide consultation before proposing the act?</li><li>- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?</li></ul>
<p>Under Article 154 TFEU, a formal two-stage consultation of the social partners at EU level is required before submitting proposals in the social policy field. Such a two-stage consultation was carried out in 2021. The Commission also consulted the tripartite Advisory Committee on Safety and Health at Work (ACSH) and its Working Party on Chemicals. Both are composed of representatives from Member States, representing national governments and workers' and employers' organisations. The ACSH adopted an opinion on 24 November 2021. In addition, a call for evidence was published for feedback on the Europa website in February 2022.</p> <p>The explanatory memorandum and the impact assessment contain a section on the principle of subsidiarity. More information is available under question 2.2.</p>
<b>2.2 Does the explanatory memorandum (and any impact assessment) accompanying the</b>

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

<sup>3</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

**Commission's proposal contain an adequate justification regarding conformity with the principle of subsidiarity?**

Both the explanatory memorandum and the impact assessment accompanying the Commission's proposal contain an adequate justification regarding conformity with the principle of subsidiarity.

As risks to workers' health and safety are broadly similar across the EU, there is a clear role for the EU in supporting Member States in addressing such risks.

Data gathered during the preparatory work indicate that there are differences in the Member States regarding the setting of limit values for asbestos. As a result, workers in the EU have various levels of protection. Three Member States have set binding occupational-exposure limits (OELs) below the EU OEL (Denmark, the Netherlands and France), while one Member State (Germany) has set a limit value corresponding to an acceptable concentration in addition to the binding limit value.

Updating the Asbestos at Work Directive<sup>5</sup> (AWD) is an effective way to ensure that preventive measures are updated accordingly in all Member States. It will help achieve a uniform level of minimum requirements designed to guarantee a better standard of health and safety, and thus minimise differences in the protection of workers' health and safety between Member States.

Moreover, revising the AWD OEL can only be done by action at EU level. Such revision is necessary because of the development of scientific knowledge in this area. The fact that four Member States have already reduced their exposure limit values for asbestos demonstrates this need. The tripartite ACSH has also recognised the need for revision.

Revising the AWD OEL will lead to a greater harmonisation of limit values across the EU. Companies willing to operate in multiple Member States will further benefit from streamlined applicable limit values. This may result in savings, as common solutions can be adopted across facilities, as opposed to having to design site-specific solutions to meet various OEL requirements.

Revising limit values is very complex and requires a high level of scientific expertise. A significant advantage of the revision of the EU OEL is that it eliminates the need for Member States to carry out their own scientific analysis, with likely substantial savings on administrative costs. Instead, these saved resources could be dedicated to further improving occupational safety and health (OSH) policies in each Member State.

**2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?**

Risks to workers' health and safety are broadly similar across the EU. National action alone leads to insufficient and divergent levels of protection of workers' health, and to an uneven playing field for businesses.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

As explained in point 2.2, risks to workers' health and safety are broadly similar across the EU. However, data gathered during the preparatory work indicate that there are differences in the Member States regarding the OEL for asbestos.

It is estimated that currently 4.1 to 7.3 million workers are exposed to asbestos, with the major share (3.5 to 5.5 million) being workers in a situation of sporadic and low intensity exposure.

In the construction sector, which is the main sector concerned, workers move across countries.

<sup>5</sup> Directive 2009/148/EC.

<p>Therefore, OEL differences result in large disparities in the protection of workers' health and in an unfair distribution of healthcare costs across Member States.</p> <p>The impact assessment accompanying the proposal contains more detailed information on the presence of asbestos in the residential building stock at EU regional level (based on a recent Joint Research Centre study<sup>6</sup>).</p>
<p>(b) Would national action or the absence of EU level action conflict with core objectives of the Treaty<sup>7</sup> or significantly damage the interests of other Member States?</p>
<p>National action alone leads to large disparities in national OELs, with the consequences described in point 2.3(a) above. EU-level action would not conflict with any core objectives of the TFEU or significantly damage the interests of other Member States. On the contrary, it would make it possible, among other things, to:</p> <ul style="list-style-type: none"> <li>- ensure a similar and fair minimum level of protection across the EU;</li> <li>- help level the playing field for businesses;</li> <li>- clarify and enforce the AWD; and</li> <li>- shoulder the burden of revising the OEL at EU level, eliminating the need for Member States to individually carry out their own scientific analysis.</li> </ul>
<p>(c) To what extent do Member States have the ability or possibility to enact appropriate measures?</p>
<p>The AWD aims to protect workers against risks to their health and safety from exposure to asbestos at the workplace. A framework of general principles provides a consistent level of protection from the risks related to asbestos. This framework enables Member States to ensure the consistent application of minimum requirements. The minimum requirements provided for in the AWD aim to protect workers at EU level. Member States can set more stringent binding OELs or take other protective measures.</p>
<p>(d) How does the problem and its causes (e.g. negative externalities, spill over effects) vary across the national, regional and local levels of the EU?</p>
<p>Risks to workers' health and safety are broadly similar across the EU.</p> <p>However, without EU action, the level of workers' protection from exposure to asbestos can vary between Member States depending, among other things, on whether the national OEL has already been revised following scientific development. For instance, France, the Netherlands and Denmark have implemented binding OELs below the current EU OEL, and Germany has a limit value corresponding to an acceptable concentration in addition to the binding limit value.</p>
<p>(e) Is the problem widespread across the EU or limited to a few Member States?</p>
<p>Although four Member States already have a revised OEL for asbestos, the problem is widespread across the EU as risks to workers' health and safety are broadly similar. Indeed, exposure to asbestos at the workplace is a reality in each Member State, in particular given the continued presence of asbestos-containing materials in all Member States' built environment.</p>

<sup>6</sup> Maduta, C., Kakoulaki, G., Zangheri, P., Bavetta, M., *Towards energy efficient and asbestos-free dwellings through deep energy renovation*, EUR 31086 EN, Publications Office of the European Union, Luxembourg, 2022, ISBN 978-92-76-52961-3, doi:10.2760/00828, JRC129218.

<sup>7</sup> [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)

(f) Are Member States overstretched in achieving the objectives of the planned measure?

The process of setting limit values is very complex and requires a high level of scientific expertise. This could partly explain why some Member States have not yet introduced an OEL for asbestos lower than the EU OEL. A significant advantage of setting OELs at EU level is that it eliminates the need for Member States to carry out their own scientific analysis, with likely substantial savings on administrative costs. Given the limited resources for OSH at national level, this could release funds to be redirected to other OSH priorities.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

The Council Conclusions entitled *A New EU Strategic Framework on Health and Safety at Work: Enhancing the implementation of Occupational Safety and Health in the EU*<sup>8</sup> state: 'Work on identifying further carcinogens and mutagens at the workplace and setting limit values for them therefore needs to continue to be a high priority.'

Acknowledging the development of scientific knowledge, four Member States have already reduced their limit value.

In November 2021, the tripartite ACSH (composed of representatives of national authorities and employers' and workers' organisations from all Member States) reached a consensus on the need to substantially lower the current binding OEL to better protect workers' health and safety and thus reduce the probability for asbestos-related diseases to develop<sup>9</sup>.

**2.4 Based on the answers to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of the scale or effects of that action (EU added value)?**

Acting at EU level would make it possible, among other things, to:

- ensure a fair, similar minimum level of protection across the EU;
- help level the playing field for businesses; and
- improve clarity and enforcement.

Revising the OEL at EU level would also make it possible to eliminate the need for Member States to carry out their own scientific analysis, with likely substantial savings on administrative costs.

(a) Are there clear benefits from EU level action?

Amending the AWD provides EU added value by:

- ensuring a similar and fair minimum level of protection across the EU;
- helping to level the playing field for businesses; and
- shouldering the burden of revising the limit value at EU level.

See point 3.2 of the impact assessment for more information.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

The process of setting limit values is very complex and requires a high level of scientific expertise. A significant advantage of setting OELs at EU level is that it eliminates the need for Member States to carry out their own scientific analysis. This economy of scale will likely lead to substantial savings on

<sup>8</sup> [14942/19](#).

<sup>9</sup> [ACSH, Opinion on an EU Binding Occupational Exposure Limit Value \(BOEL\) for Asbestos under the Asbestos at Work Directive 2009/148/EC \(Doc. 008-21\), adopted on 24.11.2021.](#)

administrative costs. Given the limited resources for OSH at national level, this could release funds to be redirected to other OSH priorities.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The AWD does not aim to replace national policies and rules but rather to set minimum requirements to protect workers at EU level. Member States can set more stringent binding OELs or take other protective measures.

However, the minimum requirements under the AWD aim, among other things, to ensure a similar minimum level of protection across the EU while helping to level the playing field for businesses and improving the functioning of the internal market.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, local and regional levels)?

The fight against occupational cancer remains a high priority in the area of OSH at EU level.

Tackling work-related exposure to asbestos is one of the priorities under the EU strategic framework on health and safety at work for 2021-2027, in line with the Vision Zero for work-related deaths, and of the cancer-prevention pillar of Europe's Beating Cancer Plan. In the letter of intent accompanying the 2021 State of the Union address, the Commission made a commitment to the European Parliament and the Council to present a legislative proposal on the protection of workers from the risks related to exposure to asbestos at work. This commitment was confirmed in the 2022 Commission work programme. Furthermore, it is also highlighted as one of priorities under action 3 - A stronger economy, social justice and jobs – in the Commission Communication on the follow-up of the [Conference on the Future of Europe \(CoFE\)](#).

Therefore, acting at EU level will make it possible to support all Member States in addressing occupational cancer. In addition, Member States can continue to set additional or more stringent binding OELs and to take other protective measures.

(e) Will there be improved legal clarity for those having to implement the legislation?

Revising the EU OEL under the AWD will lead to a greater harmonisation of limit values across the EU, which is expected to level the playing field for businesses, particularly those operating in multiple Member States.

### 3. Proportionality: How the EU should act

**3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?**

Both the explanatory memorandum and the impact assessment accompanying the Commission's proposal contain such a justification.

This proposal is a step forward in achieving the objectives set to improve living and working conditions of workers.

With regard to the proposed revision of the limit value, socio-economic feasibility factors have been taken into account after intensive discussions with all stakeholders (representatives of workers'

organisations, representatives of employers' organisations, and representatives of governments).

The proposed OEL option has the best cost/benefit ratio and the estimated cost/turnover ratio is small for all companies and sectors. Employers endorsed it, meaning that although the quantified costs may be higher than the benefits, businesses consider it a proportionate option. On average, the yearly cost per company will be EUR 375.

In accordance with Article 153(4) TFEU, this proposal does not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties, for example in the form of lower limit values. Article 153(3) TFEU gives Member States the possibility to entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to Article 153(2) TFEU, thus respecting well-established national arrangements for regulation in this area.

It follows that in line with the principle of proportionality, as set out in Article 5(4) of the Treaty on European Union, this proposal does not go beyond what is necessary to achieve its objectives.

**3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?**

The European Pillar of Social Rights<sup>10</sup>, jointly proclaimed by the European Parliament, the Council and the Commission at the Social Summit for Fair Jobs and Growth on 17 November 2017, enshrines workers' right to a healthy, safe, and well-adapted work environment, including protection from carcinogens including asbestos.

Therefore, it is appropriate to act at EU level to ensure workers' right to a high level of protection of their health and safety at work, and to support and complement the activities of the Member States in this regard, pursuant to Article 153 TFEU.

It is all the more appropriate as the AWD already exists, and this initiative is limited to revising the OEL for asbestos laid down in Article 8 AWD on the basis of scientific and technical data available.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

This initiative aims to ensure a balanced approach, i.e. to prevent companies from facing severe economic disadvantages while providing appropriate protection to workers at EU level. The initiative is considered balanced and justified in light of the accrued and longer-term benefits in terms of reducing health risks arising from workers' exposure to asbestos and saving lives, without putting a disproportionate burden on businesses in the concerned sectors, including on micro-, small- and medium-sized enterprises.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with, the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-regulation, etc.)?

Under Article 153(2)(b) TFEU, minimum requirements in the field of workers' health and safety protection may be adopted 'by means of directives'. In addition, the AWD already exists, and this

<sup>10</sup> Available at: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en).

initiative is limited to revising the OEL on the basis of scientific and technical data available.

- (c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit European action to minimum standards or use a less stringent policy instrument or approach?)

Under Article 153(2)(b) TFEU, minimum requirements in the field of workers' health and safety protection may only be adopted 'by means of directives'. These minimum requirements are proposed by the European Commission after consulting representatives of workers' organisations, representatives of employers' organisations, and representatives of governments. This initiative does not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties.

- (d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

This initiative will affect operating costs for companies, which will have to put in place additional protective and preventive measures. However, these costs represent a very small share of companies' turnover.

Enforcing authorities might incur additional administrative and enforcement costs. However, these costs are not expected to be significant (around EUR 390 000 per country per year). Moreover, this initiative should help reduce the costs related to occupational diseases for social-security systems. Revising the EU OEL would also limit the need for national administrations to carry out the costly and burdensome work that is necessary to revise limit values at national level.

In addition, this initiative should result in benefits in terms of avoided occupational cases of cancer, and related monetised health benefits including intangible costs such as reduced quality of life, suffering of workers and their families, etc. The estimated benefits for public authorities (EUR 3.4 million over 40 years) are smaller than the quantified costs (around EUR 421 million over 40 years).

- (e) While respecting Union law, have special circumstances applying in individual Member States been taken into account?

As mentioned above, the Commission consulted the tripartite ACSH, composed of three full members per Member State, representing national governments, trade unions and employers' organisations. This broad representation makes it possible to take into account special circumstances applying in individual Member States.