

Commission Statement following the presentation of Commission Directive (EU) 2020/739 to the European Parliament and the Council in respect of the prevention and protection of the health and safety of workers that are or can be occupationally exposed to SARS-CoV-2

(2020/C 212/03)

1. The Commission is committed to achieving the best possible level of protection of the health and safety of workers in the Union. Since the pandemic started, the EU and its Member States have taken unprecedented measures to protect lives and livelihoods. The EU supported national efforts to tackle the health crisis and cushion the impact of the economic hit. It freed-up every available euro in its budget to fight the virus and used the full flexibility in the budgetary and State aid rules. It took several initiatives to ensure availability of personal protective equipment to help protect citizens and workers.
2. The Commission stresses that the proposal for REACT-EU will provide additional resources for the Structural Funds for the period 2020 to 2022 at the amount of EUR 58,3 billion. This will amongst other support workers, including their protection in the face of the SARS-COV-2, support SMEs, health systems and the green and digital transitions, and will be available across sectors.
3. The Commission considers that Commission Directive (EU) 2020/739 ⁽¹⁾ brings a significant improvement of the existing level of protection by including SARS-CoV-2, the virus that causes COVID-19, in Annex III of the Biological Agents Directive 2000/54/EC of the European Parliament and of the Council ⁽²⁾, in particular as regards the protection of frontline workers.
4. The Commission recalls that as regards health and safety at work, the Framework Council Directive 89/391/EEC ⁽³⁾ lays down a non-negotiable obligation for all employers to carry out and hold a full and up-to-date **risk assessment** according to its Articles 6 and 9. This implies that all risks – including the exposure to SARS-CoV-2 - at the workplace need to be considered and assessed together, including with its interaction of psychosocial, biological, chemical and other risks.
5. The Commission stresses that as a result, relevant **preventive and protective measures** shall be put in place, including in the specific case of possible exposure to SARS-CoV-2 and that the employer shall provide all the necessary **information** concerning the complete safety and health risks and the full protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job.
6. The Commission also recalls that adequate **training** to workers who may be exposed to SARS-CoV-2 is also of the utmost importance as well as the right for every worker to receive such training, in particular in the form of information and instructions specific to his workstation or job.
7. The Commission further draws the attention to the following specific and stringent health and safety obligations laid down in the Biological Agents Directive 2000/54/EC:
 - Article 6, which includes **detailed measures for the reduction of risks**, including collective and individual protective measures, hygiene measures, work processes to avoid or minimise exposure, and use of relevant warning signs;
 - Article 8 on **hygiene and individual protection**, which establishes, amongst other, the right for workers to be provided with appropriate protective clothing or other appropriate special clothing;
 - Article 9 on **information and training**, which provides workers with the right to receive clear information concerning for instance potential risks to health, precautions to be taken to prevent exposure, hygiene, and wearing and using personal protective equipment;

⁽¹⁾ OJ L 175, 4.6.2020, p. 11.

⁽²⁾ OJ L 262, 17.10.2000, p. 21.

⁽³⁾ OJ L 183, 29.6.1989, p. 1.

- Article 10, which requires employers to provide **written instructions and to display notices** including the procedure to be followed for the cases of a serious accident or incident involving the handling of a biological agent independent of its group classification.
8. The Commission stresses that all the above-mentioned provisions **apply to all workers and all workplaces**. The only exception is paragraph 1(b) in Article 10. This provision refers to instructions for workers handling a group 4 agent, which is mentioned as a minimum requirement and does not therefore exclude that this would apply to other workers and which refers to workers who are actually handling the virus and not to those who are unintentionally exposed to it. The Commission strongly encourages Member States to ensure that written instructions are provided to all workers exposed to SARS-CoV-2, as also recommended in the EU guidance on protecting workers ⁽⁴⁾.
 9. The Commission confirms its determination to ensure strict implementation by the Member States, including the obligation to provide written instruction at the workplace and, if appropriate, display notices, which shall as a minimum include the procedure to be followed in the case of workers exposed to this biological agent. It will invite the Senior Labour Inspectors Committee to carry out supporting enforcement actions in this regard. In close cooperation with the tripartite Advisory Committee for Safety and Health at Work, the Commission will promote at the workplace level the inclusion in all cases of the procedures to be followed as good practice in this area and will also task EU-OSHA to include this good practice in the related **on-line risk assessment tool and guidance**.
 10. The Commission highlights that, as the SARS-CoV-2 virus has been classified in risk group 3 in line with SARS-CoV-1 and MERS this implies that in material terms the specific and stringent rights and obligations set out in articles 7, 11, 13, 14(4), 15 and 16 will be covered. These include the right and related obligation to an **emergency plan**, to a **list of workers exposed** (indicating the type of work done as well as records of exposures, accidents and incidents), to a **prior notification** to the competent authority of the use for the first time, to **medical records** being kept for a defined number of years or to the containment measures indicated in Annexes V and VI.
 11. The Commission further stresses that there is **no difference in workers' protection** according to the group 3 or 4 classification outside laboratories or industrial process that handle and manipulate samples of the virus, for example to develop or produce a vaccine, or isolation facilities where there are patients who are, or who are suspected of being, infected with the virus.
 12. These facilities follow the provisions of Annex V and VI specific to these processes. These provisions apply **without any room for flexibility for group 4 agents**. Most of them also apply to group 3, with the most stringent ones being 'recommended', meaning that they apply in principle unless the results of the risk assessment indicate otherwise.
 13. The Commission notes that in line with Annex III point 6 of the Biological Agents Directive, the list of classified biological agents reflects the state of knowledge at the time that it was devised and that it will be **updated** as soon as it no longer reflects the latest state of knowledge. The Commission recognizes that science is in constant evolution and therefore commits to keeping this categorisation under constant review in the light of scientific developments. This is also in line with Article 19 of the Biological Agents Directive as well as Article 16 of the Framework Directive 89/391/EEC. The Commission commits to **keep European Parliament and Council regularly informed** of the results of such reviews.
 14. The Commission stresses that the new measures are already in place and that Member States must transpose them into national law within 5 months at the latest. The Commission will support Member States **transpose the measures with the shortest possible delay**. The Commission notes in this context that several Member States are already applying the group 3 classification as set out in Directive (EU) 2020/739.

⁽⁴⁾ COVID-19: BACK TO THE WORKPLACE — Adapting workplaces and protecting workers.

15. The Commission will address in the **new Strategic Framework on Health and Safety at Work** the need for further actions to improve the functioning of the regulatory existing EU Health and Safety framework, inter alia, in pandemic situations. The Commission will ensure the close involvement of the European Parliament, the Advisory Committee for Safety and Health at work and the Senior Labour Inspectors Committee to this effect.
 16. The Commission will without delay assess the need to amend the Biological Agents Directive following the lessons learnt from the unprecedented crisis in view of better preparedness and response planning in all workplaces and inform the European Parliament by the end of 2020.
-