

UEAPME¹ Reply to the 1st phase consultation of the social partners on revisions of Directive 2004/37/EU to include binding occupational exposure limit values for additional carcinogens and mutagens

UEAPME takes note of the first phase social partners' consultation launched on 26 July 2017 by the European Commission and wishes to make the following comments.

Introduction

As indicated in its position² on the Commission's Communication of January 2017 on the Modernisation of the EU Occupational Safety and Health Legislation and Policy, UEAPME welcomes in principle the Commission's focus on carcinogenic substances as one of the highest risk factors in the field of Occupational Safety and Health. UEAPME supports the general objective to protect workers from occupational diseases including cancer.

UEAPME is committed to addressing real risks, and maintains its position promoting a culture of prevention in SMEs. At the same time, general OSH policy should be based on the 'Think Small First' principle, meaning that legislation should be designed with an easy implementation in small businesses in mind. Concretely, SMEs have a need for clear rules that take into account their socio-economic impact. To facilitate compliance with the rules, the particular impact of legislation on SMEs should at all levels be thoroughly assessed in terms of proportionality and feasibility.

In the context of the first two updates of the annexes of Directive 2004/37/EU to include new substances and set limit values, UEAPME has written³ that risk assessment and procedures for decision-making concerning the inclusion of further substances in the Annexes should be evidence-based (i.e. based on scientific evaluation by SCOEL), on a case-by-case basis, underpinned by a thorough impact assessment that takes account of sectoral differences, and an opinion of the Advisory Committee on Safety and Health. **UEAPME continues to support this procedure.**

¹ UEAPME subscribes to the EC's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35

² http://ueapme.com/IMG/pdf/UEAPME_position_on_modernisation_of_EU_OSH_Legislation_and_Policy.pdf

³ http://ueapme.com/IMG/pdf/UEAPME_position_on_Carcinogens_and_Mutagens_Directive_Revision.pdf

- **Do you agree with the issues identified above: are the issues accurately and sufficiently covered?**

UEAPME wishes to point out that establishing limit values for carcinogenic substances has a particular impact on SMEs. The measurability of substances is an important criterium when deciding whether or not to introduce a limit value. When limit values are low, the measuring becomes more difficult and burdensome and when different methods of measuring are used, the risk emerges of an unequal playing field between companies in different Member States, running counter to the Commission's objective.

Furthermore, too restrictive limit values will lead to strong and excessive investment requirements which have a higher negative impact on SMEs and micro-enterprises than on large businesses. Such investments relate to the substitution and/or adjustment of (new) machines and tools, tools to assist in reducing exposure to substances, and other burdens related to increased measuring and compliance requirements. The need for extreme investments and measures might result in a real risk of non-compliance, without improving the protection of workers.

For those reasons, **without having seen concrete proposals for limit values, UEAPME considers that it is currently not possible to take a complete position with regard to the question above.** Occupational, cancer-related risks need to be prevented, but for a real assessment the height of the limit values matters significantly.

Finally, in concrete reference to the priority list of substances the Commission has identified, especially Beryllium, Cadmium, and Formaldehyde play an important role in recycling and trade in secondary raw materials. Too low limit values in these cases will become extremely burdensome for employers, and will subsequently complicate recycling efforts.

- **Do you agree with the approach regarding the third and fourth amendment for the establishment and/or revision of binding occupational limit values in Annex III to Carcinogens and Mutagens Directive?**

UEAPME welcomes the Commission's approach for updating Directive 2004/37/EU periodically with new substances and revising existing limit values in light of evolving scientific and technological developments. . Crucial in this regard is maintaining the existing procedure to decide on the substances and limit values through scientific analysis taking into account the socio-economic impact of different scenarios (e.g. in SCOEL), and through thorough consultation of social partners in the tripartite Advisory Committee on Safety and Health. In all these matters, it is essential that the view of SMEs and in particular of micro-companies is also taken into account.

Furthermore, UEAPME wishes to highlight the need for robust Impact Assessments of any proposal for substances to be added or for limit values to be established. The particular impact on SMEs and micro-companies needs to be more thoroughly assessed to ensure the proportionality and feasibility of limit values, and to keep compliance costs of micro-companies and SMEs to a minimum. Sectoral differences should also be more taken into account.

Feasibility is not a mere 'stakeholders' interest' but has potential consequences for workers' protection and needs to be taken seriously. UEAPME considers the criteria to prioritise the work of the Commission broadly relevant, but believes that due to the possible link between the feasibility of limit values and their impact on workers' protection when implemented on the ground, the former requires more attention in these criteria.

When prioritising the substances based on criteria including the number of workers exposed, it is important that such numbers are based on recent research. The data collection which has currently been used dates from 1990 to 1993 and can be considered to be outdated. The Commission should invest in new data collection efforts to better assess the risks.

Finally, UEAPME believes that the relation between the establishment of DNEL or DMEL values in the framework of REACH needs to be better fine-tuned and clarified. Better defining the competences and role of SCOEL and ECHA could help establishing more transparent procedures.

- **What other substances/mixtures in addition to (or instead of) the substances indicated above under point 4 should be considered for inclusion in the next amendments of Annex III to the Carcinogens and Mutagens Directive?**

UEAPME believes that the existing procedures for updating Directive 2004/37/EU should be followed. Scientific analysis and agreement in the Advisory Committee on Safety and Health should be leading.

- **What other processes and/or process-generated substances should be considered for inclusion in Annex I to the Carcinogens and Mutagens Directive?**

UEAPME believes that the existing procedures for updating Directive 2004/37/EU should be followed. Scientific analysis and agreement in the Advisory Committee on Safety and Health should be leading.

- **Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in point 3 of this consultation?**

UEAPME is of the opinion that existing procedures for discussing the acquis on Occupational Health and Safety, including through the tripartite Advisory Committee on Safety and Health, are sufficient to address updates also to Directive 2004/37/EU. Therefore, UEAPME sees no need to engage in a dialogue under Article 155 TFEU.

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