

Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work

(codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC) [3] has been substantially amended several times [4]. In the interests of clarity and rationality the said Directive should be codified.

(2) Asbestos is a particularly dangerous agent which may cause serious diseases and which is found in a large number of circumstances at work. Many workers are therefore exposed to a potential health risk. Crocidolite is considered to be a particularly dangerous type of asbestos.

(3) Although current scientific knowledge is not such that a level can be established below which risks to health cease to exist, a reduction in exposure to asbestos will nonetheless reduce the risk of developing asbestos-related disease. It is accordingly necessary to provide for the establishment of specific harmonised procedures regarding the protection of workers with respect to asbestos. This Directive includes minimum requirements which will be reviewed on the basis of experience acquired and of developments in technology in this area.

(4) Optical microscopy, although it does not allow a counting of the smallest fibres detrimental to health, is the most currently used method for the regular measuring of asbestos.

(5) Preventive measures for the protection of the health of workers exposed to asbestos and the commitment envisaged for Member States with regard to the surveillance of their health are important.

(6) In order to ensure clarity in the definition of the fibres, they should be defined either in mineralogical terms or by reference to their Chemical Abstract Service (CAS) number.

(7) Without prejudice to other Community provisions concerning the marketing and use of asbestos, limiting the activities involving exposure to asbestos should play a very important role in preventing the diseases associated with such exposure.

(8) The notification system for activities involving exposure to asbestos should be adapted to new work situations.

(9) The prohibition on the application of asbestos by means of the spraying process is not sufficient to prevent the release of asbestos fibres into the air. It is also important to prohibit activities which expose workers to asbestos fibres during the extraction of asbestos or the manufacture and processing of asbestos products or the manufacture and processing of products containing intentionally added asbestos fibres, in view of their high and unpredictable level of exposure.

(10) Taking account of the latest technical expertise, it is necessary to specify the sampling methodology to be used to measure the asbestos level in air and the method of counting fibres.

(11) Even though it has not yet been possible to identify the exposure threshold below which asbestos does not involve a cancer risk, occupational exposure of workers to asbestos should be reduced to a minimum.

(12) Employers should be required to record, before the start of any asbestos removal project, the presence or presumed presence of asbestos in buildings or installations and communicate this information to others who may be exposed to asbestos as a result of its use, of maintenance or of other activities in or on buildings.

(13) It should be ensured that demolition or asbestos removal work is carried out by undertakings which are familiar with all the precautions to be taken in order to protect workers.

(14) Special training for workers exposed or likely to be exposed to asbestos should be provided in order significantly to contribute to reducing the risks related to such exposure.

(15) Practical recommendations on the clinical surveillance of exposed workers should be laid down in the light of the latest medical expertise with a view to the early detection of pathologies linked to asbestos.

(16) Since the objective of the proposed action, namely improvement in the protection of workers from the risks related to exposure to asbestos at work, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In

accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(17) The provisions contained in this Directive constitute a concrete contribution towards creating the social dimension of the internal market. These provisions are limited to the minimum in order not to impose an unnecessary burden on the creation and development of small and medium-sized enterprises.

(18) This Directive is without prejudice to the obligations of the Member States concerning the time limits for transposition into national law and application of the Directives set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive has as its aim the protection of workers against risks to their health, including the prevention of such risks, arising or likely to arise from exposure to asbestos at work.

It lays down the limit values for this exposure, as well as other specific requirements.

2. This Directive shall not prejudice the right of Member States to apply or introduce laws, regulations or administrative provisions ensuring greater protection for workers, in particular as regards the replacement of asbestos by less dangerous substitutes.

Article 2

For the purposes of this Directive, "asbestos" means the following fibrous silicates:

- (a) asbestos actinolite, CAS No 77536-66-4 [5];
- (b) asbestos grunerite (amosite), CAS No 12172-73-5 [5];
- (c) asbestos anthophyllite, CAS No 77536-67-5 [5];
- (d) chrysotile, CAS No 12001-29-5 [5];
- (e) crocidolite, CAS No 12001-28-4 [5];
- (f) asbestos tremolite, CAS No 77536-68-6 [5].

Article 3

1. This Directive shall apply to activities in which workers are or may be exposed in the course of their work to dust arising from asbestos or materials containing asbestos.

2. In the case of any activity likely to involve a risk of exposure to dust arising from asbestos or materials containing asbestos, this risk must be assessed in such a way as to determine the nature and degree of the workers' exposure to dust arising from asbestos or materials containing asbestos.

3. Provided that worker exposure is sporadic and of low intensity, and if it is clear from the results of the risk assessment referred to in paragraph 2 that the exposure limit for asbestos will not be exceeded in the air of the working area, Articles 4, 18 and 19 may be waived where the work involves:

(a) short, non-continuous maintenance activities in which only non-friable materials are handled;

(b) removal without deterioration of non-degraded materials in which the asbestos fibres are firmly linked in a matrix;

(c) encapsulation or sealing of asbestos-containing materials which are in good condition;

(d) air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos.

4. Member States shall, following consultation with representatives from both sides of industry, in accordance with national law and practice, lay down practical guidelines for the determination of sporadic and low-intensity exposure, as provided for in paragraph 3.

5. The assessment referred to in paragraph 2 shall be the subject of consultation with the workers and/or their representatives within the undertaking or establishment and shall be revised where there is reason to believe that it is incorrect or there is a material change in the work.

Article 4

1. Subject to Article 3(3), the measures referred to in paragraphs 2 to 5 shall be taken.

2. The activities referred to in Article 3(1) must be covered by a notification system administered by the responsible authority of the Member State.

3. The notification referred to in paragraph 2 shall be submitted by the employer to the responsible authority of the Member State, before the work commences, in accordance with national laws, regulations and administrative provisions.

The notification must include at least a brief description of:

(a) the location of the worksite;

(b) the type and quantities of asbestos used or handled;

- (c) the activities and processes involved;
- (d) the number of workers involved;
- (e) the starting date and duration of the work;
- (f) measures taken to limit the exposure of workers to asbestos.

4. Workers and/or their representatives in undertakings or establishments shall have access to the documents which are the subject of the notification referred to in paragraph 2 concerning their own undertaking or establishment in accordance with national laws.

5. Each time a change in working conditions is likely to result in a significant increase in exposure to dust from asbestos or materials containing asbestos, a new notification must be submitted.

Article 5

The application of asbestos by means of the spraying process and working procedures that involve using low-density (less than 1 g/cm³) insulating or soundproofing materials which contain asbestos shall be prohibited.

Without prejudice to the application of other Community provisions on the marketing and use of asbestos, activities which expose workers to asbestos fibres during the extraction of asbestos or the manufacture and processing of asbestos products or the manufacture and processing of products containing intentionally added asbestos shall be prohibited, with the exception of the treatment and disposal of products resulting from demolition and asbestos removal.

Article 6

For all activities referred to in Article 3(1), the exposure of workers to dust arising from asbestos or materials containing asbestos at the place of work must be reduced to a minimum and in any case below the limit value laid down in Article 8, in particular through the following measures:

- (a) the number of workers exposed or likely to be exposed to dust arising from asbestos or materials containing asbestos must be limited to the lowest possible figure;
- (b) work processes must be designed so as not to produce asbestos dust or, if that proves impossible, to avoid the release of asbestos dust into the air;
- (c) all premises and equipment involved in the treatment of asbestos must be capable of being regularly and effectively cleaned and maintained;
- (d) asbestos or dust-generating asbestos-containing material must be stored and transported in suitable sealed packing;

(e) waste must be collected and removed from the place of work as soon as possible in suitable sealed packing with labels indicating that it contains asbestos; this measure shall not apply to mining activities; such waste shall then be dealt with in accordance with Council Directive 91/689/EEC of 12 December 1991 on hazardous waste [6].

Article 7

1. Depending on the results of the initial risk assessment, and in order to ensure compliance with the limit value laid down in Article 8, measurement of asbestos fibres in the air at the workplace shall be carried out regularly.

2. Sampling must be representative of the personal exposure of the worker to dust arising from asbestos or materials containing asbestos.

3. Sampling shall be carried out after consultation of the workers and/or their representatives within the undertaking or establishment.

4. Sampling shall be carried out by suitably qualified personnel. The samples taken shall be subsequently analysed, in accordance with paragraph 6, in laboratories equipped for fibre counting.

5. The duration of sampling must be such that representative exposure can be established for an 8-hour reference period (one shift) by means of measurements or time-weighted calculations.

6. Fibre counting shall be carried out wherever possible by phase-contrast microscope (PCM) in accordance with the method recommended in 1997 by the World Health Organization (WHO) [7] or any other method giving equivalent results.

For the purpose of measuring asbestos in the air, as referred to in paragraph 1, only fibres with a length of more than 5 micrometres, a breadth of less than 3 micrometres and a length/breadth ratio greater than 3:1 shall be taken into consideration.

Article 8

Employers shall ensure that no worker is exposed to an airborne concentration of asbestos in excess of 0,1 fibres per cm³ as an 8-hour time-weighted average (TWA).

Article 9

The amendments necessary to adapt Annex I to this Directive to technical progress shall be adopted in accordance with the procedure referred to in Article 17 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [8].

Article 10

1. Where the limit value laid down in Article 8 is exceeded, the reasons for the limit being exceeded must be identified and appropriate measures to remedy the situation must be taken as soon as possible.

Work may not be continued in the affected area until adequate measures have been taken for the protection of the workers concerned.

2. In order to check the effectiveness of the measures mentioned in the first subparagraph of paragraph 1, a further determination of the asbestos-in-air concentrations shall be carried out immediately.

3. Where exposure cannot be reduced by other means and where compliance with the limit value makes necessary the wearing of individual protective breathing equipment, this may not be permanent and shall be kept to the strict minimum necessary for each worker. During periods of work which require the use of such equipment, provision shall be made for breaks appropriate to the physical and climatological conditions and, where relevant, in consultation with the workers and/or their representatives within the undertaking or establishment, in accordance with national laws and practice.

Article 11

Before beginning demolition or maintenance work, employers shall take, if appropriate by obtaining information from the owners of the premises, all necessary steps to identify presumed asbestos-containing materials.

If there is any doubt about the presence of asbestos in a material or construction, the applicable provisions of this Directive shall be observed.

Article 12

In the case of certain activities such as demolition, asbestos removal work, repairing and maintenance, in respect of which it is foreseeable that the limit value set out in Article 8 will be exceeded despite the use of technical preventive measures for limiting asbestos in air concentrations, the employer shall determine the measures intended to ensure protection of the workers while they are engaged in such activities, in particular the following:

(a) workers shall be issued with suitable respiratory and other personal protective equipment, which must be worn;

(b) warning signs shall be put up indicating that it is foreseeable that the limit value laid down in Article 8 will be exceeded; and

(c) the spread of dust arising from asbestos or materials containing asbestos outside the premises or site of action shall be prevented.

The workers and/or their representatives in the undertaking or establishment shall be consulted on these measures before the activities concerned are carried out.

Article 13

1. A plan of work shall be drawn up before demolition work or work on removing asbestos and/or asbestos-containing products from buildings, structures, plant or installations or from ships is started.
2. The plan referred to in paragraph 1 must prescribe the measures necessary to ensure the safety and health of workers at the place of work.

The plan must in particular specify that:

- (a) asbestos and/or asbestos-containing products are to be removed before demolition techniques are applied, except where this would cause a greater risk to workers than if the asbestos and/or asbestos-containing products had been left in place;
- (b) the personal protective equipment referred to in point (a) of the first paragraph of Article 12 shall be provided, where necessary;
- (c) when the asbestos demolition or removal work has been completed, the absence of asbestos exposure risks in the workplace shall be verified in compliance with national laws and practice.

At the request of the competent authorities, the plan shall include information on the following:

- (a) the nature and probable duration of the work;
- (b) the place where the work is carried out;
- (c) the methods applied where the work involves the handling of asbestos or of materials containing asbestos;
- (d) the characteristics of the equipment used for:
 - (i) protection and decontamination of those carrying out the work;
 - (ii) protection of other persons present on or near the worksite.

3. At the request of the competent authorities, the plan referred to in paragraph 1 must be notified to them before the start of the projected work.

Article 14

1. Employers shall provide appropriate training for all workers who are, or are likely to be, exposed to dust from asbestos or materials containing asbestos. Such training must be provided at regular intervals and at no cost to the workers.

2. The content of the training must be easily understandable for workers. It must enable them to acquire the necessary knowledge and skills in terms of prevention and safety, particularly as regards:

(a) the properties of asbestos and its effects on health, including the synergistic effect of smoking;

(b) the types of products or materials likely to contain asbestos;

(c) the operations that could result in asbestos exposure and the importance of preventive controls to minimise exposure;

(d) safe work practices, controls and protective equipment;

(e) the appropriate role, choice, selection, limitations and proper use of respiratory equipment;

(f) emergency procedures;

(g) decontamination procedures;

(h) waste disposal;

(i) medical surveillance requirements.

3. Practical guidelines for the training of asbestos removal workers shall be developed at Community level.

Article 15

Before carrying out demolition or asbestos removal work, firms must provide evidence of their ability in this field. The evidence shall be established in accordance with national laws and/or practice.

Article 16

1. In the case of all activities referred to in Article 3(1), and subject to Article 3(3), appropriate measures shall be taken to ensure that:

(a) the places in which the above activities take place:

(i) are clearly demarcated and indicated by warning signs;

(ii) are not accessible to workers other than those who by reason of their work or duties are required to enter them;

(iii) constitute areas where there should be no smoking;

(b) areas are set aside where workers can eat and drink without risking contamination by asbestos dust;

(c) workers are provided with appropriate working or protective clothing; this working or protective clothing remains within the undertaking; it may, however, be laundered in establishments outside the undertaking which are equipped for this sort of work if the undertaking does not carry out the cleaning itself; in that event the clothing shall be transported in closed containers;

(d) separate storage places are provided for working or protective clothing and for street clothes;

(e) workers are provided with appropriate and adequate washing and toilet facilities, including showers in the case of dusty operations;

(f) protective equipment is placed in a well-defined place and checked and cleaned after each use, and appropriate measures are taken to repair or replace defective equipment before further use.

2. Workers may not be charged with the cost of measures taken pursuant to paragraph 1.

Article 17

1. In the case of all activities referred to in Article 3(1), appropriate measures shall be taken to ensure that workers and their representatives in the undertaking or establishment receive adequate information concerning:

(a) the potential risks to health from exposure to dust arising from asbestos or materials containing asbestos;

(b) the existence of statutory limit values and the need for the atmosphere to be monitored;

(c) hygiene requirements, including the need to refrain from smoking;

(d) the precautions to be taken as regards the wearing and use of protective equipment and clothing;

(e) special precautions designed to minimise exposure to asbestos.

2. In addition to the measures referred to in paragraph 1, and subject to Article 3(3), appropriate measures shall be taken to ensure that:

(a) workers and/or their representatives in the undertaking or establishment have access to the results of asbestos-in-air concentration measurements and can be given explanations of the significance of those results;

(b) if the results exceed the limit value laid down in Article 8, the workers concerned and their representatives in the undertaking or establishment are informed as quickly as possible of the fact and the reasons for it and the workers and/or their representatives in the undertaking or establishment are consulted on the measures to be taken or, in an emergency, are informed of the measures which have been taken.

Article 18

1. Subject to Article 3(3), the measures referred to in paragraphs 2 to 5 shall be taken.

2. An assessment of each worker's state of health must be available prior to the beginning of exposure to dust arising from asbestos or materials containing asbestos at the place of work.

This assessment must include a specific examination of the chest. Annex I gives practical recommendations to which the Member States may refer for the clinical surveillance of workers; these recommendations shall be adapted to technical progress in accordance with the procedure referred to in Article 17 of Directive 89/391/EEC.

A new assessment must be available at least once every 3 years for as long as exposure continues.

An individual health record shall be established in accordance with national laws and/or practices for each worker referred to in the first subparagraph.

3. Following the clinical surveillance referred to in the second subparagraph of paragraph 2, the doctor or authority responsible for the medical surveillance of the workers shall, in accordance with national laws, advise on any individual protective or preventive measures to be taken or determine such measures.

Those measures may include, where appropriate, the withdrawal of the worker concerned from all exposure to asbestos.

4. Information and advice must be given to workers regarding any assessment of their health which they may undergo following the end of exposure.

The doctor or authority responsible for the medical surveillance of workers may indicate that medical surveillance must continue after the end of exposure for as long as they consider it necessary to safeguard the health of the person concerned.

Such continuing surveillance shall be carried out in accordance with national laws and/or practice.

5. The worker concerned or the employer may request a review of the assessments referred to in paragraph 3, in accordance with national laws.

Article 19

1. Subject to Article 3(3), the measures referred to in paragraphs 2, 3 and 4 shall be taken.
2. The employer must enter the workers responsible for carrying out the activities referred to in Article 3(1) in a register, indicating the nature and duration of the activity and the exposure to which they have been subjected. The doctor and/or the authority responsible for medical surveillance shall have access to this register. Each worker shall have access to the results in the register which relate to him personally. The workers and/or their representatives shall have access to anonymous, collective information in the register.
3. The register referred to in paragraph 2 and the medical records referred to in the fourth subparagraph of Article 18(2) shall be kept for at least 40 years following the end of exposure, in accordance with national laws and/or practice.
4. The documents referred to in paragraph 3 shall be made available to the responsible authority in cases where the undertaking ceases trading, in accordance with national laws and/or practice.

Article 20

Member States shall provide for adequate penalties to be applicable in the event of infringement of national legislation adopted pursuant to this Directive. These penalties must be effective, proportionate and dissuasive.

Article 21

Member States shall keep a register of recognised cases of asbestosis and mesothelioma.

Article 22

Every 5 years, Member States shall submit to the Commission a report on the practical implementation of this Directive in the form of a specific chapter in the single report provided for in Article 17a(1), (2) and (3) of Directive 89/391/EEC, which serves as a basis for the evaluation carried out by the Commission under Article 17a(4) of that Directive.

Article 23

Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 24

Directive 83/477/EEC, as amended by the Directives listed in Annex II, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 25

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 26

This Directive is addressed to the Member States.

Done at Brussels, 30 November 2009.