



Proposal of the European Commission to amend Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work

Opinion by the German Social Insurance dated 31 January 2023

The German Federal Pension Insurance (DRV Bund), the German Social Accident Insurance (DGUV), the National Association of Statutory Health Insurance Funds (GKV-Spitzenverband), the national associations for statutory health and longterm care insurance funds at the federal level and the Social Insurance for Agriculture, Forestry and Horticulture (SVLFG) have joined forces to form the "German Social Insurance - Working Group Europe" (Deutsche Sozialversicherung Arbeitsgemeinschaft Europa e. V.) with a view to their common European policy interests.

The association represents the interests of its members vis-à-vis the bodies of the European Union (EU) as well as other European institutions and advises the relevant stakeholders in the context of current legislative projects and initiatives.

As part of the statutory insurance system in Germany, health and longterm care insurance, pension insurance and accident insurance offer effective protection against the consequences of major risks to life.

I. General remarks

On 28 September 2022, the European Commission published its proposed amendment to Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work (COM(2022)489 final, Asbestos Directive).

The umbrella organisations of the German social insurance welcome the European Commission's initiative to further reduce workers' exposure to asbestos. According to the European Commission, occupational cancers are the most common cause of work-related deaths in Europe. In addition, 78 per cent of occupational cancers currently recognised in the Member States are attributed to asbestos. The average time between exposure and the first signs of disease is over 30 years. Therefore,

cancers can still occur decades after occupational exposure. Some of the workers would have retired by then.

The aim of occupational health and safety is to reduce the incidence of diseases caused by asbestos as far as possible. Therefore, preventive measures to protect workers from exposure to asbestos must be strengthened. This is imperative, especially in view of the energy-efficient renovation of buildings and the expected "renovation wave" within the framework of the European Green Deal.

Effective prevention measures also help to avoid the financial burdens on the responsible social insurance institutions caused by illness or disability and to stabilise the social insurance systems.

The European Commission's proposal to adapt the current Asbestos Directive to the state of the art is a welcome contribution in this context. Against the background of continuous scientific and technical progress, adjustments may be made in the future, if necessary, leading to even higher occupational health and safety.

II. Notes on individual regulations

1 Proposal of the European Commission: Article 1 Number. 4 (Amendment to Article 7 of Directive 2009/148/EC)

Methods for the analysis of asbestos fibres

The European Commission proposes to amend Article 7, paragraph 6, subparagraph 1 of the Asbestos Directive to require asbestos fibres to be counted using the phase-contrast microscope (PCM) recommended by the World Health Organisation (WHO 1997). However, methods that lead to equivalent or better results, such as a method based on electron microscopy (EM), should also be possible.

The German Social Insurance supports, in principle, the goal of modernising the methods of asbestos fibre measurement throughout Europe. However, an alternative application of different measurement methods is critically viewed. Continued reference to the phase contrast microscopy method (WHO 1997) ensures that past results are consistent with future measurement results and that measurement results from different countries are comparable. If different methods of light microscopy or methods of electron microscopy (TEM and SEM) are used, a comparability of the analysis results and thus, also a risk assessment based on a fixed limit is not



possible. This is because the different methods assess different numbers of asbestos fibres of different lengths and not exclusively according to the definition of "WHO fibres". An adjustment of the limit according to the respective method applied would then be indispensable. As a result, different limits would have to be used, which would make it more difficult to monitor compliance with occupational health and safety requirements and would not be internationally comparable.

2 Proposal of the European Commission: Article 1 Number. 5 (Amendment to Article 8 of Directive 2009/148/EC)

Reduction of the maximum allowable concentrations from 0.1 to 0.01 fibres/cm³ as a time-weighted average concentration

The European Commission proposes to lower the limit from 0.1 to 0.01 fibres/cm³ by replacing Article 8 of the Asbestos Directive by Article 1 No. 5. As a consequence, employers must ensure that no worker is exposed to airborne asbestos concentrations higher than 0.01 fibres/cm³. As before, the new maximum allowable concentrations is to be measured as a time-weighted average concentration. Thus, the decisive factor for compliance or non-compliance with the limit is an average asbestos concentration determined within an eight-hour working shift.

According to the European Commission, the proposed approach reflects the state of the art and contributes significantly to improving the protection of workers from the risks of exposure to asbestos. The goal of a high level of occupational safety and health is shared by the German social partners. Therefore, the proposal of the European Commission is supported by the German Social Insurance.

Reduction of the maximum allowable concentrations from 0.1 to 0.001 fibres/cm³ as instantaneous value

The European Parliament had called for an even stricter limit of 0.001 fibres/cm³ in a resolution in October 2021, citing the International Commission on Occupational Health. In contrast to the European Commission's proposal, this should not be determined as a time-weighted average concentration. The instantaneous value should be measured, i.e. the concentration in a (person-related) short-term phase, which must not be exceeded at any time.



The German Social Insurance sees the specification of a stricter limit of only 0.001 fibres/cm³ as positive, in principle. However, there are serious doubts about the practicability of determining this as an instantaneous value.

On the one hand, the introduction of a momentary value is not expedient. According to the state of the art, instantaneous values are used as a measurand for substances with an acute effect, especially for locally acting, corrosive or irritant substances affecting the respiratory tract. However, asbestos does not produce acute symptoms in the human body. Therefore, the instantaneous value cannot be justified in terms of toxicology.

On the other, an instantaneous value of 0.001 fibres/cm³ is not measurable according to the state of the art. Such a large reduction requires either an extension of the sampling time, if the activity allows this, or a considerable additional analytical effort. Compliance with a 0.001 fibres/cm³ limit would already be a great challenge as a time-weighted average concentration and would only be metrologically verifiable with high analytical effort. According to the state of the art, there are only very few activities or work processes in which the requirement of 0.001 fibres/cm³ could be reliably met.

The German Social Insurance explicitly welcomes the fact that the protection of workers from exposure to asbestos is a high priority in the European Parliament. The limit of 0.001 fibres/cm³ favoured by the parliamentarians represents a desirable target value in perspective. The German Social Insurance sees the exposure value of 0.01 fibres/cm³ proposed by the European Commission as a start in a process and as a call to continuously improve the protection of workers from asbestos. However, a decision for a stricter limit must be made, depending on the options for technical implementation; this can be implemented in stages, if necessary.