



Council of the
European Union

Brussels, 9 June 2017
(OR. en)

9926/17

Interinstitutional File:
2017/0004 (COD)

SOC 460
EMPL 355
SAN 230
IA 97
CODEC 973

REPORT

From:	Permanent Representatives Committee (Part 1)
To:	Council
No. prev. doc.:	9045/17 SOC 325 EMPL 244 SAN 189 IA 82 CODEC 781
No. Cion doc.:	ST 5251/17 SOC 12 EMPL 8 SAN 24 IA 4 CODEC 32
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work - General approach

I. INTRODUCTION

On 10 January 2017, the Commission submitted its proposal for amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. The Commission based its proposal on Article 153(2) of the Treaty on the Functioning of the European Union (TFEU) and Article 17(1) of Directive 2004/37/EC.

The proposed revision concerns in particular Annex I and III of Directive 2004/37/EC. It follows an earlier Commission proposal which already included 13 carcinogenic agents. This proposal introduces in Annex III new exposure limit values supplemented by skin notations for further five additional carcinogens as well as skin notation independently of limit values for two more carcinogens, covering seven carcinogens in total in this proposal. In Annex I, a provision is added on work involving exposure to oils that have been used before in internal combustion engines to lubricate and cool the moving parts within the engine.

The Commission carried out a two-stage consultation of the European social partners in accordance with Article 154 of the TFEU. The Commission subsequently consulted the tripartite Working Party 'Chemicals at the Workplace' (WPCs), which is part of the tripartite Advisory Committee on Safety and Health at Work (ACSH), taking into account the scientific advice of the Scientific Committee on Occupational Exposure Limits for Chemical Agents (SCOEL).

The retained limit values are based on an analysis of economic, social and environmental impacts of the different policy options for each chemical agent, on the criteria of the scientific advice of SCOEL, effectiveness, efficiency and coherence. The limit values were also agreed by the ACSH. Another package of proposed limit values is expected to be adopted by the Commission at the beginning of next year.

The legal basis of Article 153(2)(b), in conjunction with Article 153(1)(a) of the Treaty, requires the Council to act by qualified majority, in accordance with the ordinary legislative procedure with the European Parliament.

The European Parliament has not yet delivered its opinion.

The Committee of Regions has decided on 31 January 2017 not to issue an opinion.

The European Economic and Social Committee adopted its opinion on 31 May 2017.

II. THE COUNCIL'S WORK

Under the Maltese Presidency, the Social Questions Working Party (SQWP) examined the proposal as of February 2017. The related Impact Assessment¹ (IA) and the Member States replies' to the distributed questionnaire were examined at the beginning of the discussions on the proposal. Delegations expressed the will to proceed as quickly as possible given the importance of the matter. They voiced broad support for amending the list of carcinogens and mutagens, hence reinforcing the protection of workers. Building on this strong support, the Maltese Presidency was able to finalise the technical discussions in four meetings.

During the examination of the text, the discussions focused mainly on clarifying further the recitals. The Presidency adjusted the general recitals based on the recitals already agreed in the General Approach on the first batch of carcinogens², and the recitals specific to the substances with regard to the concerns and suggestions expressed by delegations. The Presidency also aligned the legal basis to the one agreed upon in the General approach on the first batch.

In the Annex, the Presidency has suggested maintaining the limit values as proposed by the Commission³ while clarifying the definition of one substance (polycyclic aromatic hydrocarbons mixtures - PAH). Some delegations indicated that they would have preferred a Commission proposal that included more substances.

The UK maintained a general and a parliamentary scrutiny reservation.

The last Working Party meeting and the informal consultation showed a broad support for the Presidency's compromise, representing a balanced compromise.

¹ The proposal and the related Impact Assessment can be found in doc. 5251/17 + ADD1 to 3.

² Doc. 13324/16.

³ COM(2017) 11 final, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work

In Coreper, it was agreed to clarify that the directive relates to "mineral" oils, changing the corresponding recital (5), Article 1(1) and the related entry in the Annex.

In recital (1ab), a reference was added to the set up of other protective measures than the minimum requirements contained in Directive 2004/37/EC.

A group of Member States expressed reservations as to the Presidency's compromise text on the definition of PAH mixtures.

The final draft text is to be found in ADD 1 to this Report.

III. CONCLUSION

The Council (EPSCO) is invited to reach a General approach on the text as set out in ADD 1 to this Report, at its session on 15 June 2017.