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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL amending Directive 2001/37/EC on the protection of
workers from the risks related to exposure to carcinogens or mutagens at
work
- Preparation for the trilogue

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (11.03.2019)

I. INTRODUCTION

1. On 5 April 2018, the Commission published its proposal for a directive amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (doc. 7733/18 + ADD1).
2. The directive aims to improve workers' health protection by reducing occupational exposure to five carcinogenic chemical agents: cadmium, beryllium, arsenic acid, formaldehyde and 4,4' methylene-bis.

II. STATE OF PLAY

3. On 6 December 2018, the Council reached a general approach (doc. 15393/18).
4. The Committee on Employment and Social Affairs (EMPL) of the European Parliament adopted a draft report on the proposal on 20 November 2018. The decision to enter into trilogue negotiations was confirmed by the EP plenary on 30 November 2018.
5. The first trilogue took place under the Romanian Presidency on 16 January 2019. Both co-legislators are committed to advancing rapidly in the negotiations.

III. PRESIDENCY COMPROMISE SUGGESTIONS

Delegations will find below a set of suggestions by the Presidency that form a compromise package to cover all the core issues which will form the basis for further negotiations and the swift adoption of the file.

1) Cadmium

Member States considered that the introduction of the biological limit value for cadmium would first require substantial analysis. Therefore in its General Approach the Council proposed that within five years the Commission would assess the option of including a combination of an airborne occupational exposure limit and a biological monitoring value for cadmium.

The Parliament highlighted the fact that some Member States already use biomonitoring, and argued that a biological limit value should therefore be introduced into the directive.

In the spirit of compromise and with a view to reach a swift agreement, the EP moved towards Council's position, but insisted for a shorter deadline for the Commission's assessment is needed. In this context, Presidency invites Member States to accept a compromise proposal based on Council position with a deadline for the assessment by the Commission of **three years**, instead of five years. The Presidency notes, moreover, that the Council position does not prevent Member States from applying additional measures, such as a biological limit value.

2) **Dermal and respiratory sensitisation**

The Parliament supported the Commission's original proposal regarding references to the dermal and respiratory sensitization of beryllium and formaldehyde. In its view these references were useful and reflected scientific progress. During negotiations, the EP has argued that transparency in terms of the substances' effects should prevail over consistency reasons. Furthermore, these references would not add to obligations as employers are in all cases obliged to perform risk assessment taking into account all relevant information, including sensitization properties.

The Presidency therefore invites the Member States to consider **reintroducing the above-mentioned references** in Recital 13, Recital 17 and the notations in the Annex to this directive.

3) **Hazardous Drugs**

The Parliament insisted very strongly on an assessment by the Commission of the possibility to amend the scope of the directive to include hazardous drugs.

The idea was not in the original Commission proposal and is consequently not included in the Council's General Approach.

The EP amendments only propose that Commission should assess the possibility of widening the scope of the directive. If the assessment shows the scope should be expanded, then based on the Commission proposal the co-legislators would further decide. Therefore, the Presidency believes there can be flexibility on this point and invites the Member States **to accept the Parliament's amendments regarding hazardous drugs.**

4) **Formaldehyde**

The Parliament stressed that the limit value for formaldehyde needed to be introduced as soon as possible in all sectors except the funeral and embalming sector where a short transitional period would be justified. In addition, the EP underlined that social partners in other sectors (for example healthcare and wood industry) did not request for transitional periods.

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5) **Transitional periods**

According to the Council position, the transition period should count after the end of the transposition period. In the Parliament's opinion the starting date of the transitional period would be the date of entry into force of the directive, because it makes it clear for the public and stakeholders.

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IV. CONCLUSION

The Committee of Permanent Representatives is invited

- to examine the Presidency's compromise suggestions as set out above; and
- to agree on an updated Presidency negotiation mandate for future trilogues.