

EU's self-contradiction undermines fight for a global ban

The European Commission has for two years been trying to push through a derogation that would let some firms carry on importing asbestos into the European Union indefinitely. Extending this let-out undermines the 1999 political agreement to outlaw asbestos in the EU.

Behind it is active lobbying by the multinational Dow Chemical, backed by Belgium's Solvay group. Solvay, Dow Chemical and Zchem are still using asbestos diaphragm cells, but only in their German and Polish factories. The rest of Europe's chlorine industry has made the change to asbestos-free operation. In the United States, Dow Chemical announced a programme of investment in January 2008 to purge asbestos diaphragm technology from its Portland (Texas) cement factory. The national authorities in two EU Member States – Sweden and Bulgaria – also look to have granted derogations for asbestos diaphragm electrolysis installations. The policy of these countries is anything but transparent, and the precise conditions in which these let-outs were granted are not known. Under existing derogations, about a hundred tonnes of chrysotile a year can be imported in total. But this is only a guesstimate, as neither the companies or States concerned, nor the Commission, publish hard figures. In most cases, the fibres imported are already incorporated in diaphragms, but this does not necessarily preclude further fibres being imported to renew diaphragms.

Dow Chemical and Solvay have built a technical case for their lobbying. They claim that the specific technology they use would make asbestos replacement unprofitable and force them to reorganize their production. It is an argument that tries to put private investment choices first before the public rules designed to take the most hazardous substances off the market. Between 1999 and 2005, all European user companies had to adjust to the banning of asbestos regardless of the specific characteristics of their production process. For some, it meant huge investments in completely reorganizing the production process. The capital outlay needed to change over the electrolysis plants of multinationals like Dow Chemical and Solvay amounts to no more than a tiny percentage of their turnover.

A political issue

Industry employers' federations' support for a demand from just three firms about a very limited economic issue illustrates the political aspect of the affair. The EU banned asbestos in 1999 after widespread action by asbestos victims and high profile lawsuits in various countries. Industry had to back

down, aware that there was no way of avoiding a public debate and a political decision. This inroad by a form of social/workers' control in business management stuck in the chemical industry's craw. It is now looking to turn the tables by demanding to be sole arbiter of what is lawful in how production is carried out. It regards any intervention by politicians as an imposition. The agenda of both the European and world chemical industry was clear to see in the lobbying campaign against the new EU Chemicals Regulation REACH. The chemical industry's intention as REACH is rolled out is to set a precedent where economic and technical considerations win out over health protection. This may also explain why the chlorine industry's demands for derogations have attracted support from various governments who had not applied such let-outs in their countries. The United Kingdom's position may well be motivated by such a political agenda, as may the inaction of most of the other Member States.

After REACH passed into law, the Commission tried to push matters further by adding a second let-out clause to Annex XVII of REACH (see box, p. 18) which allowed asbestos-containing articles to be put on the market and used, provided they were produced before 2005. The wording of this derogation is unclear and woolly, and open to different interpretations. It seems to have originated in an intervention by the UK's workplace health and safety agency, the Health and Safety Executive. Asbestos is used in the manufacture of a wide range of goods: work equipment, consumer goods, construction materials, personal protective equipment, and so on. To allow such articles back onto the market would pose a huge threat to workers' and public health. The date-of-manufacture requirement for such articles is impossible to police in practice. There is no test that can state with certainty exactly when car brake linings or an asbestos cement pipe were made. And the reference back to national law makes no sense given that the point of REACH is to harmonize the rules in force.

Commission back-pedals

The Commission put the two derogations to the Member States at the 17 December meeting in the hope of getting them approved and brought into force in June 2009. At the meeting's close, the

Commission decided not to press for a vote in the light of fierce opposition to its proposal from several Member States. A further meeting on 19 December was to examine the European Trade Union Confederation's (ETUC) note against the asbestos derogations. Four Member States - France, Italy, Belgium and the Netherlands - raised objections to the derogations at that meeting; most of the other delegates took no stand. On 20 February, the Commission got Member States to approve the draft of the new Annex XVII to the REACH Chemicals Regulation. One provision of it relates to asbestos. The Commission will let electrolysis plants that already used asbestos diaphragm

cells keep on using asbestos. A provision of Annex XVII also allows asbestos-containing articles to be put on the market under rules that can vary from one country to the next.

The ball is now in the European Parliament's court. It has six months in which to pass a resolution throwing the text out. The European Trade Union Confederation has called for a halt to imports of asbestos and asbestos-containing articles into the European Union (EU). It argues that the Commission's position clashes with the EU's support for a global asbestos ban.

Asbestos in Annex XVII of REACH

The Commission's proposed text is in the proposal for Annex XVII of REACH, which lists the different substances for which measures that restrict their marketing or use have been adopted by the European Union since 1976.

The provisions on asbestos were worded as follows:

1. The placing on the market and use of these fibres and of articles containing these fibres added intentionally is prohibited. However, Member States may except the placing on the market and use of diaphragms containing chrysotile (point (f)) for existing electrolysis installations until they reach the end of their service life, or until suitable asbestos-free substitutes become available, whichever is the sooner.
2. The placing on the market or use of articles containing asbestos fibres referred to in paragraph 1 which were already installed and/or in service before 1 January 2005 shall continue to be permitted until they are disposed of or reach the end of their service life. However, Member States may, for reasons of protection of human health, make subject to specific conditions, restrict or prohibit the placing on the market or use of such articles before they are disposed of or reach the end of their service life.
3. Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, the placing on the market and use of articles containing these fibres, as permitted according to the preceding derogations, shall be permitted only if the articles bear a label in accordance with the provisions of Appendix 7 to this Annex.

A previous version of this text concerned only the use of asbestos-containing articles, making no reference to placing them on the market. It enunciated the principle that any new use of chrysotile was totally prohibited.

Opposition from several Member States and an ETUC campaign prompted the Commission to announce plans for a new version, to be published in January 2009. Watch this space!

Commission's policy pledge to withdraw the derogations for 1 January 2008

The document put forward by the Commission for the second stage of social partner consultations on the protection of workers from the risks related to exposure to asbestos at work* is very clear on the timetable. It says, "This situation (the document refers to the increasingly reduced use of asbestos) will be remedied by 1 January 2005 at the latest, the deadline for the implementation of Commission Directive 1999/77/EC, which bans the marketing and use of chrysotile asbestos and products to which it has been deliberately added, with one exception (diaphragms used for electrolysis) until 1 January 2008".

EU policy on asbestos in the world

"In an increasingly globalised economy, it is in the EU's interest to raise labour standards throughout the world by taking multilateral action in cooperation with the competent international bodies, and bilateral action in its relations with third countries. It must also help the candidate countries prepare for implementation of the acquis. Against this background, the EU should promote the preventive principles set out in its policy on safety and health at work by: (...) working with third countries and international organisations to obtain a global ban on the production, marketing and use of asbestos or products containing asbestos, and promoting health and safety at work in general" (Commission Communication on the Community strategy 2007-2012 on health and safety at work).

* Document EN-1775/1 of 30 November 2000. See: http://ec.europa.eu/employment_social/social_dialogue/docs/asbestos_ll_en.pdf.

The Commission's proposed let-outs are a big retreat from the principles of REACH. They will keep the door open for asbestos imports when it is entirely technically feasible to produce chlorine without using asbestos.

It is significant that Canada has welcomed the inconsistent policy pursued by the Commission in the last two years. The Chrysotile Institute, which is subsidized by the governments of Canada and the Province of Quebec, sees the extension of the chlo-

rine industry derogations as a positive element¹. This international aspect is not to be disregarded. The health risk in Europe may be less, but the signal sent out would do grievous harm to all those worldwide working for an asbestos ban.

Direct action by victim support groups and trade unions has paid a first dividend. This initial success needs to be entrenched so that Europe pursues a coherent asbestos ban policy. ■

¹ See the editorial in its February 2008 News Letter.

ASBESTOS

History-making trial in Turin Eternit in the dock for more than 2000 deaths

Marzabotto in Italy, Deir Yassin in Palestine, Oradour-sur-Glane in France, Lidice in the Czech Republic, My Lai in Vietnam. All stand as symbols of war crimes in the collective consciousness. Peace crimes, committed not in rage or hatred but simply for profit, are less firmly-rooted and prominent in historical memory. Who now remembers the Potosi mine, the Triangle Factory fire in New York, the Gotthard rail tunnel, the Congo-Océan railway? The small Italian town of Casale Monferrato may enter the history books as a monument to work-related deaths. An unusual trial has started in Turin in April 2009 over the deaths of more than 2200 people and the cancers developed by a further 700-odd survivors. For the first time, the top executives of a multinational, Eternit, are indicted on charges based on the policy decisions they made for this group worldwide. Decisions that were central to the management of each individual group company, especially Eternit's Casale Monferrato factory in Piedmont.

Eternit's Casale Monferrato factory started up in 1906. Located near the Balangero mine, it was a major production centre for asbestos cement goods, especially the celebrated corrugated sheeting synonymous with the name Eternit. The Balangero mine's output could not keep pace with production demand. Casale Monferrato had the dubious claim to fame of sourcing its asbestos supplies from countries in three continents - Brazil, Canada, South Africa and Russia. Up to 1980, the asbestos bags were unloaded and slit open by hand, and their contents forked into huge silos. The production process at this stage differed little from peasant farmers' hay gathering techniques. So severe was the pollution that the factory seemed shrouded in a permanent haze. During the second world war, US bombers' repeated attempts to blow up the strategically important Po bridge failed, with pilots reporting a bizarre

atmospheric phenomenon whereby the small town seemed to be enveloped in thick white clouds in all seasons.

Deaths in the Kremlin

Eternit was a paternalistic business, and offered its workers free asbestos cement "tiles". The bags the asbestos had come in could be taken home and used to harvest potatoes. Local people were free to take the factory spoil to use for roof insulation, or garden paths. It was a benevolent paternalism: the works medical officers gave assurances that there was no risk from working with asbestos. Workers who expressed concerns might be provided with largely useless protective equipment. But it turned harsh and repressive when challenged. There was one production shop universally known as the Kremlin, situated in a canalside building on its own. This was where exposure to asbestos was the highest. This was where the tubes and pipes were finished, turned at breast height in a very low-ceilinged room. This is where management put activists from the Italian General Confederation of Labour (CGIL)

"Eternit is not dangerous"

"Eternit is not dangerous because the asbestos fibres are incorporated into the product", Max Schmidheiny, who inherited the business in the 1960s, assured us, seemingly unaware that asbestos had a long journey to get to the factory gate, during which the fibres were at large in the air, doing their deadly work... I wondered then if he thought we were stupid. Now, his words can't be seen as anything less than criminal."

From I. Knill, *Asbestfolgen - bauen am Abschied*, *Mannerzeitung*, March 2006.