

# Cancer at work: more needs to be done to achieve better legislation

Putting more than 10 years of paralysis behind it, in May 2016 the European Commission officially launched a review of the Directive on the prevention of occupational cancers. The proposal is minimalist but it has resulted in an unblocking of the legislative process. What is at stake?

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**More than 15 years after the film *Erin Brockovich* was released, the European Commission is finally gearing up to adopt a limit value for hexavalent chromium with a view to protecting workers.**

Image: © Belga



Riky Hesse is a quiet, elderly lady with sparkling eyes. She appears on the screen doing day-to-day tasks around her home<sup>1</sup>. When she looks at the camera, a soft smile appears as if to apologise for being the bearer of bad news. She has mesothelioma (a pleural cancer caused by exposure to asbestos). She knows she has no more than three years to live. She is determined not to be overcome by emotion. At the age of 16, she began working in a factory that made insulation materials. That was in 1956. People were already aware of the dangers of asbestos. Her bosses said nothing to her throughout the three long years she worked in that factory. She remained unaware until the day, two years ago, when a doctor gave her the diagnosis. Riky Hesse appeared on the big screen on the first day of the conference organised in Amsterdam by the Dutch Presidency of the European Union at the end of May 2016. Her testimony was followed by that of Rik van Gompel, who is suffering from cancer of the nasal cavities linked to the manufacture of furniture, a trade he practised from the age of 18. In a composed voice, the Belgian researcher Lode Godderis emphasises that this is not a tale that has been consigned to the history books. Around one in five workers in Europe are still exposed to carcinogenic agents today.

### Netherlands wins the first battle

From the outset, the participants in the Amsterdam conference understood that they were not attending one of the usual occupational health meetings organised every six months by the Member State that holds the Presidency of the European Union. A grassroots union member generally feels completely out of place at one of these. The language used is often a consensual one focused on rather vague issues where nothing is said about the reality of worsening working conditions, or the paralysis that has characterised EU policies since 2004 in an area that is of such great importance to us all.

This time, the Netherlands wanted to highlight the importance of the issue. Their government had the European Commission with its back against the wall. It was demanding a concrete legislative initiative for the first half of 2016. It was intending to launch a more ambitious programme of legislative improvement with regard to occupational cancers.

The first objective was achieved. Some days prior to the Amsterdam conference, the European Commissioner for Employment,

**1.** The short documentary involving Mrs Hesse can be viewed at <https://www.youtube.com/watch?v=n9rTB0rGb4U#t=39> with subtitles in English.  
**2.** National Institute for Public Health and the Environment (2016) *Work related cancer in the European Union. Size, impact and options for further prevention.*

Marianne Thyssen, announced a limited review of the existing directive. Annex III to this directive should now increase from three occupational exposure limit values (OELVs) to 14. There are to be 11 new OELVs while 2 OELVs already in force are likely to be lowered. At Amsterdam, Mrs Thyssen also undertook to establish a second list of 12 OELVs by the end of 2016 and a third list of 25 OELVs in 2017 or 2018.

### A minimalist review

The content of the proposed review is minimalist given the need for effective work to prevent occupational cancers. The most important factor in this, however, is of a political nature: the paralysis that had previously blocked all European legislative initiatives in this regard has been overcome. It has taken years of difficult campaigning on the part of unions, public health organisations and patient associations to unblock this situation. Important gaps have been identified in this legislation since 2002. The Commission, however, had other priorities: a need to "simplify", to reduce the weight of legislation on corporations, to conduct interminable "impact studies" on the hypothetical economic consequences of each legislative proposal. Once an impact study was complete, it would become apparent that new, more sophisticated and impractical criteria now required a new impact study to be conducted! In Community jargon, this is what is known as "better regulation".

The health disaster caused by occupational cancers leaves little room for doubt: more than 100 000 deaths a year in the European Union. It is the number one cause of death, a result of insufficient prevention within companies. These cancers alone account for around 53% of all deaths caused by poor

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working conditions. The cost of these occupational cancers is estimated at 334 billion euros a year, according to a recent study by the Dutch National Institute for Public Health and the Environment<sup>2</sup>.

Faced with these figures, there is cause to wonder exactly what is delaying their prevention. The cost to the companies responsible for these cancers remains minimal. These costs are borne largely by public health systems, social security, the victims and their families. The time lag between the period of exposure at work and the appearance of cancer often prevents a link from being made between the disease and the workplace, hence the overriding need for a detailed legislative framework on preventing occupational cancers. Expecting companies to take voluntary action based on goodwill is illusory.

Community legislation for the most part dates back to 1990 (with partial amendments adopted in 1997 and 1999). At that time, the Directive on carcinogens in the workplace was more progressive than the legislation of many Member States. The intention was to update it regularly, adapting it to changing circumstances and to take account of prevention experiences.

Over time, significant weaknesses became evident. The possibility of revising this directive was noted in the Community health and safety at work strategy for the 2002-2006 period. Initial discussions and consultations were organised at that time. The revision process began to slow down, however, from 2004 onwards. The European Commission came under pressure from employers. Under Barroso's two presidencies, from 2004 to 2014, occupational health was presented as an excessive cost for companies.

Gradually, different Member States felt that the Commission's inertia was becoming unjustifiable. National legislation on prevention had, in many cases, been improved and

extended beyond the minimal requirements of the directives. Suddenly, a number of European employers decided that progress in legislation would create the conditions for a more level playing field. The united front of employers against the directive being revised began to break down. The Dutch employers' confederation came out clearly in favour of adopting stricter OELVs, and the sectoral employers' organisations followed. They felt that the absence of binding European rules on occupational health would increase the "risk" of being subjected to the authorisation processes of the REACH regulation.

Ongoing union action to raise awareness of the extent of occupational cancers has also contributed greatly to this changing balance of power, as has the mobilisation of associations of cancer sufferers. For its part, the European Parliament has come out in favour of strengthened legislation on several occasions over the last five years.

The proposals put forward in May by the Commission offer only very limited reforms. They do, however, open a path by which to reinstate the political debate: the European Parliament and Council of Ministers will now be able to amend these proposals. In fact, the Commission has a monopoly of legislative initiative within the European Union. No legislation can be adopted without its initial proposal and this obstacle has thus now been removed. Both Parliament and the Council will be able to amend the text from now on. Improvements are thus possible provided they have been agreed between these two institutions.

### Preventing risks to reproductive health

Since 2002, the Commission has recognised the need to expand the field of application of the Directive on carcinogens to that of reprotoxins. In fact, there is much to be gained by a consistent organisation of all substances of greatest concern. Reprotoxins have two effects. On the one hand, they affect human fertility. On the other, they cause diseases among the children of those who have been exposed: birth defects, child cancers, developmental disorders, etc. Some Member States have already included reprotoxins in their national legislation on occupational cancers, establishing a duty of improved prevention identical to that adopted for carcinogens. The absolute priority here is to find replacements for these substances. When substitution is impossible from a technical point of view then work that involves them needs to be carried out within a closed system. Failing this, the level of exposure needs to be minimised. Records need to be held in order to make it possible to monitor the consequences of exposure.

The current Commission is opposed to extending the scope of application of the Directive on occupational cancers to reprotoxins. On this point, Commissioner Thyssen relies on the traditional political cant of the supporters of "better regulation". In her opinion, the impact evaluation of this proposal "did not sufficiently clarify the potential costs and benefits"<sup>3</sup>. In short, until the Commission has quantified in euros the tragedy of miscarriages, birth defects and other impacts of reprotoxins, it does not intend to make a move.

### Essential amendments

A policy of fragmented prevention, on a company-by-company basis, is inefficient. Action on the part of the public authorities, both national and European, is therefore crucial. This involves establishing programmes to encourage the substitution of carcinogenic substances. These were, broadly, the initial conclusions of the report of Prof. Joel Tickner from the Lowell Center for Sustainable Production (US), presented in June 2016. This study, commissioned by the European Chemicals Agency (ECHA), highlights the weakness of the programmes established in Europe to substitute the most dangerous chemical products. It notes that leaving the initiative to industry has not resulted in any great success. Public policies should also establish priorities in line with the developments observed in the different sectors of activity.

For this public action to take place, the relevant information needs to be gathered.

The European directive currently provides that companies in which there is a risk of cancer must gather this information and make it available to the relevant authorities in their country. Member States, however, are not making use of this invaluable resource. An ignorance has grown up due to the apathy of the public authorities. In most European countries, there is data available on work-related exposure to carcinogens dating back more than 20 years. The directive should establish an obligation for Member States to gather data from companies and present a summary of it in the report they submit to the European Commission every five years. It should also require the Commission to consolidate this information at European level.

The current directive only anticipates monitoring health for the period in which workers are exposed to carcinogens. And yet most cancers appear long after the end of this exposure. Early detection of cancer often makes all the difference between recovery and death. Some countries have put health monitoring systems in place that enable all people exposed in the past to benefit from this. This should become the rule in Europe.

Annex I to the Directive lists the production processes that result in carcinogenic exposure. It covers numerous situations in which people are not working with substances identified as carcinogenic as such but where it is the processing of the substance during production that causes the risk of cancer. Wood, leather and rubber are thus not in themselves carcinogenic but the dust released when they are cut, sawn or processed is. The same goes for most oils used in the machining of metal parts. They degrade under the effect of heat, resulting in the formation of carcinogenic substances. Annex I covers only a small number of these situations. It therefore needs to be completed. The Commission's legislative proposal anticipates including crystalline silica. This is significant progress against which many employer organisations have fought tooth and nail, advocating, as an alternative, a plan of voluntary initiatives to control exposure. This plan, established by an agreement signed in 2006 within the context of the social dialogue, has had no proven results.

### Limit values: method of use

The Commission's proposal focuses on occupational exposure limit values (OELVs)<sup>4</sup>. The current directive only establishes three OELVs: vinyl chloride monomer (used in the manufacture of plastic substances), benzene and hardwood dusts. Even if you take into account the binding OELVs in other directives (asbestos and lead), fewer than 20% of current situations of exposure to carcinogens are covered by a European OELV.

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**Cancer represent around 53% of all deaths caused by poor working conditions.**

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3. Roberts G., Thyssen rules out adding reprotoxins to workplace law, *Chemical Watch*, site visited on 12 July 2016.

4. When a binding OELV is established at European level, Member States retain the possibility of adopting or maintaining an OELV that provides better protection of workers. Nonetheless, this does tend to become the country's OELV in many Member States.

For the majority of carcinogenic agents, there is no safe exposure. Even very low levels of exposure can cause cancer. By contrast, minimising exposure levels does reduce the risks. This is the main objective of OELVs for carcinogens. This requires that OELVs are set at a level that is clearly lower than the current one. And even if exposure does not exceed the OELV, the companies should undertake to reduce it if a replacement product cannot be envisaged. By establishing OELVs, which involves establishing collective prevention measures (extraction systems, for example), legislation is encouraging substitution. The more complex and costly the measures, the more investment there will be in technological innovations enabling the use of carcinogenic substances to be avoided.

There is no uniform methodology for determining OELVs in Europe. Member States often work on a case-by-case basis. An OELV is a political compromise between the need to protect health and how much employers are willing to invest in prevention. In some countries (primarily the Netherlands and Germany), a more consistent methodology does exist. This consists of determining, in advance, a health protection objective to be achieved on the basis of a quantitative model that links a certain level of cancer risk with a certain level of exposure. In practice, this methodology often results in lower (and thus more protective) OELVs than in other countries.

At Community level, the Directive on cancers establishes no methodology. Only the starting point is defined: a specialist committee of experts<sup>5</sup> proposes a limit value on the basis of a summary of available scientific work. Then the Commission makes a proposal, which may be far removed from the initial recommendation. In practice, the Commission has adopted – without any legal basis – the approach advocated by the British government. For each OELV, it undertakes a cost-benefit analysis. This methodology is based on assumptions that are largely unverifiable. The costs of occupational cancers attributable to each substance, taken in isolation, along with the costs of prevention depend on extrapolations that involve enormous margins of uncertainty. This results in highly unequal levels of protection. In fact, for some substances, the cost of prevention may be low. This is the case when current exposure is not very far off the proposed OELV. For other substances, the costs are higher and the cost-benefit analysis then tends to result in an OELV that allows a significant risk of cancer to remain.

The proposed revision of the directive does not resolve the problem. It applies a method that contradicts a basic principle of Community legislation, namely that prevention must not be subordinate to economic concerns.

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5. The Scientific Committee on Occupational Exposure Limits is known by its English acronym SCOEL.

The most flagrant consequences concern two substances to which millions of people in Europe are currently exposed. For crystalline silica, the OELV proposed by the Commission is 100 mcg per cubic metre even though several European countries and the US have already established an obligatory OELV of 50 mcg. The difference between these two levels would result in several hundred deaths a year, according to US estimates. Thanks to the success of the film *Erin Brockovich*, the general public are no longer unaware of the dangers of hexavalent chromium. Despite this, occupational exposure to this substance affects around a million workers in European workplaces. The OELV proposed by the Commission (25 mcg per cubic metre) equates to one case of lung cancer for every 10 workers exposed, which is an enormous level of risk. Such an OELV would only marginally improve the levels of exposure already observed in companies. By way of comparison, the OELV in France is 1 mcg per cubic metre.

### What next?

The Council of Ministers and European Parliament now have to amend the proposal that has been submitted to them. The legislative debate will probably run from autumn 2016 to spring or summer 2017. The European Parliament has given a Swedish (Socialist) MEP, Marita Ulvskog, the task of drawing up the report that will guide the discussions on this issue. She wants to fight for substantial improvements in the Commission's proposal. She is convinced that she can get a majority of parliamentary members on board in this regard. Within the Council of Ministers, several states have already indicated the same aim. The discussions there will be more strained, particularly as they will take place behind closed doors, out of the control of public opinion. There will be intensive corporate lobbying of some Member States to get them to favour the Commission's minimalist approach.

Alongside this, future revisions of the directive need to be prepared. With regard to limit values, it will be necessary to both ensure respect for the timetable of the two new lists announced (12 and 25 OELVs respectively) and to ensure that the OELVs proposed enable real improvements in prevention. There is also a need to go beyond the list of OELVs and improve the directive's other provisions.

When the European Commission presented its proposals in May, it announced that their application would enable 2 000 lives to be saved per year. Each year, more than 100 000 people die of an occupational cancer in the European Union. We therefore need to go much further than this modest objective, which would reduce mortality by scarcely 2%. All occupational cancers can be avoided. This is what is at stake in the important political battle that is currently being waged. ●

### Further reading

Two important reports can be found on the website of the Dutch National Institute for Public Health and the Environment (<http://www.rivm.nl/en>): *Work related cancer in the European Union. Size, impact and options for further prevention, 2015.*

*Identifying prevalent carcinogens at the workplace in Europe, 2015.*

The following are also of particular relevance and can be found on the ETUI site (<http://www.etui.org> > Publications):

Mengeot M.A. (2014) *Preventing work cancers. A workplace health priority*, ETUI.

Mengeot M.A. (2008) *Production and reproduction*, ETUI.

Musu T., Vogel L. and Wriedt H. (2016) *Cancer risks in the workplace: better regulation, stronger protection*, ETUI.

Takala J. (2015) *Eliminating occupational cancer in Europe and globally*, ETUI.

Wriedt H. (2016) *Carcinogens that should be subject to binding limits on workers' exposure*, ETUI.