

Human lives weighed against corporate profit

At the end of February, the European Parliament's Employment and Social Affairs (EMPL) Committee backed a tightening of the Directive protecting workers against cancer-causing chemicals. Unions have won the first round of their fight with the industry. But the fight continues, with employers having more than one card up their sleeve – as witnessed by the investigation into industry lobbying strategies aimed at influencing European legislation on occupational cancers.

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Industrial maintenance workers find themselves exposed to a wide range of carcinogenic substances.

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The days when fat-cat factory owners could reap profits by letting their employees routinely inhale poisons are long gone ... Really? This is 21st-century Europe, not a 19th-century textile mill! We no longer accept profit as a justification for endangering human life ... Really?

Alas, in the case of occupational cancers, it seems that we do. Many companies do not want to be subject to rules that would save workers' lives, because stricter rules could increase costs. And certain European institutions seem to be all too willing to put employers' profits before employees' health. The European Union (EU) risks missing a key opportunity to prevent hundreds of thousands of avoidable deaths resulting from workplace exposure to carcinogens – because of industry lobbying.

At present, the enormous costs of occupational cancers are not borne by the companies generating the risks, but by society and the victims. Without laws to protect workers, risks will remain high. Yet cancers caused by workplace exposure to carcinogenic substances could be dramatically reduced or even eliminated. It is estimated that there are 100 000 deaths every year in the EU which could be avoided through proper protection. But the lack of linkage between those producing the risks and those bearing the costs leaves industry with little incentive to take action. Risks will only be reduced if employers face binding and enforceable restrictions on worker exposure to carcinogens.

The healthcare costs of occupational cancers in the EU are in the realm of € 2.5 to € 4.5 billion. But the costs to cancer victims, and their family and friends, go much deeper – as anyone who has experienced cancer at first or second hand will know. Sadly, very many of us have. And it can be easy to succumb to the belief that cancer is simply an unavoidable reality of our modern world. But the view that the causes of cancer are 'random', with little that can be done to prevent it, has, says occupational health expert Jukka Takala, 'been strongly rejected by the scientific community, the World Health Organisation, the International Agency for Research on Cancer, the International Commission on Occupational Health and others who consider it unethical to accept high levels of workplace exposures that could be tackled systematically'.¹

When the agony and grief of cancer are due to unnecessary exposure to carcinogenic substances at work, this is a colossal injustice, with employee lives being sacrificed to keep down company operating costs. And an injustice that disproportionately affects the most vulnerable workers.

The rhetoric of 'Better Regulation'

Instead of better EU laws on workplace carcinogens that could prevent many cancer deaths, an ideological framework promoted by the European Commission called 'Better Regulation' equates 'better' with 'better for big business'. 'Better Regulation' is about reducing the regulatory 'burden' on business, often regardless of the cost to workers, consumers or the environment. And the 'Better Regulation' framework has created new opportunities for industry to steer EU rule-making in a pro-business direction.

The revision of the EU's Carcinogens and Mutagens Directive, a legislative act covering workplace exposure to these dangerous substances, shows how industry employs the tools of 'Better Regulation' and co-opts its rhetoric to forestall and weaken public-good legislation. Industry lobby groups use euphemisms like 'simplifying' regulations, reducing 'burdens' on business, or 'harmonising' different rules – language that is lapped up by a European Commission with a self-professed mission to cut 'red tape'. The result of industry's efforts is that the Commission has delayed acting on workplace cancer legislation for ten years. Ten years in which 100 000 annual deaths from workplace cancers could have been avoided. A million lives sacrificed.

When the European Commission's hand was finally forced, thanks to pressure from trade unions, health bodies and several EU member state governments, it made a proposal that contained far too few, and too high, exposure limits for workplace carcinogens. The Commission's May 2016 proposal contained only 13 binding occupational exposure limits for carcinogenic substances, with the promise of 12 more by the end of 2016. But this promise was broken: in early January 2017, the Commission added a measly 7 more substances to the directive, and only 5 of these had exposure limits. Notably absent was exposure to diesel fumes, to which three million workers in the EU are exposed at work.²

This total of 18 occupational exposure limits listed in the two proposals, many of which are too high to adequately protect workers, is a long way from the 50 exposure limits recommended by the Dutch National Institute for Public Health and Environment, and called for by the Dutch, Belgian, German and Austrian governments. And even further from the 71 substances and processes considered by the European Trade Union Institute (ETUI) as requiring an EU-wide exposure limit.

But not everyone has been unhappy with the Commission's proposals: many

industry lobbies have been patting themselves on the back.

Digging through records of lobby correspondence between industry groups and the European Commission revealed some of the tactics used by industry lobbies to delay and water down the revised Carcinogens Directive. These included using voluntary initiatives to delay regulation, attacking studies whose results didn't serve their interests as scientifically unsound, commissioning ones that did, and pushing for greater influence via more impact assessments. Some industry lobbies even tried to pit different EU rules against each other, pushing standards down to the least 'burdensome' option.

The silica dust saga

The case of respirable crystalline silica, better known as silica dust, illustrates how the myth of self-regulation has been used by industry to ward off binding legislation. Exposure to silica dust is commonplace, especially in construction, mining and metalworking, but it can also cause lung cancer. Industry successfully kept silica dust out of the Carcinogens Directive for ten years by insisting that NePSi, a voluntary agreement on crystalline silica's 'good handling and use', was sufficient to protect workers' health.³ It is a classic industry tactic to pre-empt regulation by indicating that industry is already committed to tackling the problem.

But NePSi does not even measure the effectiveness of any measures to lower worker exposure to silica dust. Instead, it focuses on raising industry awareness and sharing best practices – for which it receives public funding from the Commission! But what is really needed are strict and enforceable rules.

1. EU Parliament urged to beef up fight against occupational cancer, *The Parliament Magazine*, 16 December 2016, <https://www.theparliamentmagazine.eu/articles/news/eu-parliament-urged-beef-fight-against-occupational-cancer>
2. European Commission fails to protect workers against diesel fumes, ETUI, 11 January 2017, <http://www.etui.org/Topics/Health-Safety/News/European-Commission-fails-to-protect-workers-against-diesel-fumes>

3. NePSi (the 'European Network for Silica') is comprised of signatories (15 employers' organisations, 1 employees' organisation) to the Social Dialogue Agreement on Workers' Health Protection Through the Good Handling and Use of Crystalline Silica and Products Containing It. It does not cover construction, the sector with the majority of exposed workers.

Despite its ineffectiveness, NePSi has been a useful tool for industry to fend off effective regulation of silica dust.

Twenty industry associations, led by the Industrial Minerals Association (IMA) Europe, made the thinly veiled threat to the Commission that since ‘progress does not happen without industry commitment’, it should stick to minimising silica dust exposure ‘through the use of good practices’ (*i.e.* voluntary) rather than regulating with exposure limits (*i.e.* legally binding). But they also suggested that, should the Commission regulate silica dust, NePSi signatories should be exempt. This is a plainly ridiculous demand: exempt us from being subject to a law to protect workers’ health, because we’re already voluntarily protecting workers’ health!

The industry lobbies also argued that the Carcinogens Directive shouldn’t include silica dust because it is ‘ubiquitous’. This is perverse! Quite the contrary, the fact that silica dust is a danger in many industries and thus affects millions of workers, is very much a reason to include it. They also pushed for more say for the industry sectors concerned, including through impact assessments. But cost-benefit impact assessments based on stakeholder input ensures regulation is viewed through the lens of competitiveness, side-lining the protection of workers’ health.

When it became clear that an exposure limit for silica dust could no longer be avoided, or bypassed, industry lobbies changed tactics and pushed for it to be implemented under less ‘burdensome’ regulation. The ‘Industry Silica Task Force’, comprised of several lobby groups including IMA Europe, commissioned a study from a consultancy firm. The study concluded that a silica exposure limit under the Chemical Agents Directive would cost industry far less than one under the Carcinogens Directive, because of the latter’s stricter risk management requirements. A legal evaluation concluded this wasn’t possible, putting an end to this industry strategy; unless of course, the strategy was simply a delaying tactic.

Finally, however, after delaying action for many years, industry interests still took precedence: the Commission proposed an exposure limit that is twice as high as that recommended by trade unions, or that existing in the USA, and which would fail to prevent around 2000 deaths from silica dust exposure in the EU every year.

Industry over-REACH

Certain industry lobbies have also pushed for workplace cancer legislation to exempt them from the EU’s REACH regulation. For

example, a cluster of industry lobbies calling themselves the ‘Cross-Industry Initiative for better regulation in chemicals management’ (run by lobby consultancy Hanover Brussels) has zeroed in on the ‘Better Regulation’ goals of simplifying legislation and removing ‘duplications’. The industry initiative is comprised of corporate lobby groups including car lobby ACEA, US big business group AMChamEU, metals lobby Eurometaus and mining lobby Euromines. They cynically reckoned that exposure limits under the Carcinogens Directive would not be very strict (thanks to their influence) and would be weakly enforced. They consequently gambled that they could exempt chemicals from costly market authorisation under REACH by arguing that they would be adequately regulated under the Carcinogens Directive. In other words, they argued against a need for two safety nets, viewing risk management under REACH and exposure limits under the Carcinogens Directive as an unnecessary duplication of rules. They subsequently argued that only the less ‘burdensome’ option for companies should be kept.

But REACH and the Carcinogens Directive are not duplications. They have different scopes, serve different purposes and are both necessary. REACH, for example, is more effective at encouraging the substitution of the most dangerous substances by safer alternatives. REACH also takes a chemical’s intrinsic hazard as its starting point, while

the Carcinogens Directive takes ‘feasibility’ into account *i.e.* not eliminating all risk. Unlike REACH, the Carcinogens Directive does not apply to consumers but only to workers (but excluding the self-employed). Essentially, waiving REACH market authorisation for a chemical because it already had an exposure limit in the Carcinogens Directive would open up dangerous loopholes, reducing overall protection against cancer.

The Cross-Industry Initiative however has not only tried to pit different EU rules against each other. It has also pushed for more say for industry over the setting of exposure limits, and less say for the European Parliament. With the innocuously sounding demand ‘for a more modern and lighter approach’ to adopting exposure limits, it has pushed for affected industries ‘to be requested to contribute’ to impact assessments. This would give industry more say, and more sway, over the rules that govern it, ensuring that the impacts given most weight are those which impact its profits. Even more disturbingly, it lobbied for a ‘less onerous decision-making process’ to set exposure limits via processes that only involve the (industry-permeable) Commission, and bypass the only elected EU institution, the European Parliament.

Worryingly, the Commission appeared to be receptive to the Cross-Industry Initiative’s self-interested ideas. Correspondence shows Commission officials describing the

Lobby battles over other carcinogenic substances

Rubber dust and fumes: The European Tyre & Rubber Manufacturers Association (ETRMA) warned a Commission advisory body that including ‘rubber process fumes and dust’ in the Carcinogens Directive would ‘impose a disproportionate burden on EU rubber manufacturing in comparison to non-EU competitors... creating a potential impact on EU employment.’ Instead, ETRMA wanted the Commission to take ‘into account the improvements to workers’ protection made by industry over the last 30+ years’. Lo and behold, despite being urged to do so by worker representatives, the Commission did *not* include rubber dust and fumes in its May 2016 proposal, or in its second proposal of January 2017.

Formaldehyde: There is still no exposure limit for formaldehyde in the Carcinogens Directive, despite pleas from employee organisations

representing woodworkers and furniture-makers. Over a million employees in the EU furniture sector face a lack of protection against formaldehyde emissions from materials used in furniture production. The Commission’s own Scientific Committee on Occupational Exposure Limits (SCOEL) also recommended a binding exposure limit. But the voice of industry groups was, apparently, louder. The European Panel Federation (EPF), Kronochem, a German company manufacturing resins for wood-based panels, and Formacare, the employer organization representing European formaldehyde producers met with the Commission to underline the ‘extreme difficulty and economic cost for the industry’ of complying with the SCOEL limit. They referred to an ‘independent’ study (commissioned by EPF and Formacare) which, they claimed, demonstrated ‘safe use’ of formaldehyde for workers. Should an exposure limit need to be set, the study recommended a dangerously high limit of 0.4 ppm; twice as high as the limit called for by the European Federation of Building and Woodworkers (EFBWW). In July 2016, the industry finally got off its backside, recommending a limit of 0.3 ppm.

The result of industry's efforts is that the Commission has delayed acting on workplace cancer legislation for ten years. Ten years in which 100 000 annual deaths from workplace cancers could have been avoided. A million lives sacrificed...

4. Launched in January 2016, the REFIT Platform consists of a Stakeholder Group, with 18 members and two representatives from the European Social and Economic Committee and the Committee of the Regions, and a Government Group, with one high-level expert from each of the EU's 28 Member States.

5. BusinessEurope *et al.*, *Letter to European Parliament Employment Committee*, 4 January 2017, https://www.businessseurope.eu/sites/buseur/files/storage/publications/2017-01-04_employers-ep_empl_-_carcinogens.pdf

Initiative's 'valuable insights' and 'thoughtful suggestions' as 'most welcome', with the Commission 'happy' to arrange further meetings to discuss its suggestions. Notes from a January 2016 meeting revealed that the Initiative's proposals would be considered by the Commission REFIT Platform. REFIT is one of the main tools of the 'Better Regulation' agenda to reduce the 'burden' on business from EU legislation.⁴ A June 2016 opinion showed that the Initiative's wishes had been picked up by the REFIT platform's government group, which mirrored the Initiative's rhetoric, indicating that REACH authorisation may not be necessary where workplace legislation provides sufficient 'regulatory control of risks'.

Parliament won't let the wool be pulled over its eyes

In October 2016, at a hearing of the European Parliament's EMPL committee, employers association BusinessEurope (Brussels' most influential corporate lobby) urged MEPs not to slow things down by changing the Commission's Carcinogens Directive proposal. This was a predictable line for industry to take: it was quite happy with the weak and underwhelming proposal from the Commission, so didn't want Parliament to make amendments that might impact profits by requiring them to properly protect their workers from cancer.

But since Europe will be stuck with the exposure limits set in the Carcinogens Directive for many years to come, workers' organisations instead deemed it far more important that sufficient time be taken now to achieve adequately protective limits in the directive and add further dangerous substances.

In January 2017, a throng of industry lobby groups including BusinessEurope, ECFIA, IMA-Europe and Eurometaux wrote to the EMPL Committee rejecting any amendments that would promote stricter (i.e. lower) exposure limits, better monitoring of employees' health, or the addition of other dangerous substances (including those toxic to reproduction).⁵ They implied that the sharing of best practices among corporations made stricter regulation unnecessary, and expressed concern over 'drawn-out and difficult discussions with the Council and Commission' that could result from such amendments.

This is an extraordinarily weak argument. Invoking possible 'drawn-out and difficult' discussions as a reason to uphold a bad legislative proposal is absurd. It is the role of the EU institutions to engage in thorough discussions to produce rules that genuinely serve the public interest. And, it is job of MEPs to amend Commission proposals to better reflect the interests of the public they're elected by. It is not their job to protect company profits at the expense of the health of millions of workers across Europe, dependent on the EU's revised workplace cancers legislation for the foreseeable future.

The outcome of this protracted battle between industry interests and workers' health will ultimately depend on how our law-makers balance costs to business against human lives. 2017 is set to be a pivotal year in this battle.

A first victory was won by the proponents of legislation providing greater protection for workers at risk from carcinogenic substances. On 28 February, the European Parliament's EMPL Committee voted by a large majority for amendments providing *in ter alia* for stricter limits than those proposed

Refractory ceramic fibres

Refractory ceramic fibres are used in insulation. ECFIA, the lobby group for the High-Temperature Insulation Wool industry, argued that an 'adequate' exposure limit on ceramic fibres in the Carcinogens Directive would put 'less administrative burden' on industry than REACH authorisation. But its notion of 'adequate' is far from that promoted by trade unions as sufficient to protect workers. ECFIA commissioned a study from consultancy firm Everest Consulting Associates, which recommended a 'technically and economically feasible' exposure limit of 0.5 f/ml. By contrast, trade unions recommended 0.1 f/ml, citing evidence that certain fibres 'exhibit a carcinogenic potency comparable to asbestos'. But ECFIA intimated that 'compliance costs' for this limit would result in production processes being relocated. In other words, if the EU forces them to properly protect their workers from cancer, they might just close their factories!

The tripartite committee tasked with advising the Commission on safety and health issues, in which employers, governments and workers are equally represented, reflected this split. The employers' side described 0.5 f/ml as a 'protective' limit, but conceded that the limit should be 0.3f/ml. The workers' side recommended a limit of 0.1 f/ml, as exists in the Netherlands and Germany. Which limit did the Commission go with? The employer's limit, 0.3 f/ml.

by the Commission for wood dust, hexavalent chromium and silica dust. This is the basis upon which the Parliament started in March 2017 negotiating the directive's text with the Council of Ministers.

How those amendments fare in the face of a tide of industry lobbying will be a litmus test. It is of paramount importance, and a matter of justice, that the EU institutions hashing out this legislation recognise that corporate profits can never be valid justification for endangering human lives. ●

Further reading

This article is based on the December 2016 report published by CEO (Corporate Europe Observatory), *Using 'Better Regulation' to make things worse: Industry tactics to delay and weaken workplace cancers law*, by Rachel Tansey, <https://corporateeurope.org/environment/2016/12/better-regulation-make-things-worse>. See report for full references.