EU Occupational Safety & Health Legislation 2020 on Chemicals: What are the challenges for workers?

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Henning Wriedt
Beratungs- und Informationsstelle Arbeit & Gesundheit
Hamburg, Germany
wriedt@arbeitundgesundheit.de
Overview

**OSH legislation on chemicals – legal framework**

**Analysis** of
- assets
- deficits & challenges

**Suggestions** regarding
- legislation
- enforcement
- use of workers’ rights

if time allows, brief report on **Current WPC activities** (IOELVs, BOELs)
OSH legislation – legal framework

Which elements of the legal framework will be addressed?

Certain elements of

- **OSH** (Framework Directive, 89/391/EEC)
- **CAD** (Chemical Agents Directive, 98/24/EC)
- **CMD** (Carcinogens and Mutagens Directive, 2004/37/EC)
- **REACH** (EU/1907/2006)
OSH legislation – analysis

What will be assessed?

- Assets
- Deficits
- Specific challenges

Separate issue outside the scope of this presentation

A major challenge in the past, in the presence, and in the future that must not be overlooked by any means:

The lack of compliance with, and the lack of enforcement of, existing obligations
OSH legislation – analysis

**Assets (1) – obligations and potentials**

OSH legislation (FD, CAD, CMD)
- continuous improvement of OSH (FD Art. 1 (1))
- workers’ participation (FD Art. 11; CAD Art. 11; CMD Art. 13))

CAD / CMD
- substitution (CAD Art. 6 (2); CMD Art. 4 (1))
- minimization of exposure (CAD Art. 5 (2) & 6 (1); CMD Art. 5 (3))
- information and training for workers / of workers (CAD Art. 8; CMD Art. 11 & 12))
OSH legislation – analysis

Assets (2) – obligations and potentials

REACH
- additional information (useable for better focused risk assessment under CAD): toxicity data, RMMs, DNEL, eSDS, ES
- promotion of substitution of certain chemicals (SVHC) (through authorisation process)
- access to information (eSDS) for workers (REACH Art. 35)

Observation:

Participation of workers / workers’ reps only foreseen by OHS legislation!
Deficits & challenges (1) – CMD

Minimization of exposure
- lack of transparency on what minimization has been achieved and is planned
- lack of overview on current exposure situation in EU / MS
- lack of clear statement on obligatory minimization also below BOEL

Control measures
- lack of criteria for application of certain control measures, in particular of RPE

Scope
- chemicals toxic to reproduction not included

Scientific basis outdated
- different mechanisms of carcinogenicity not accounted for
OSH legislation – analysis

Deficits & challenges (2) – REACH

**Risk management measures (RMMs)**
- hierarchy of control measures not addressed in the legal text
- permanent use of PPE not restricted

**Authorisation**
- pace of process extremely slow

**(Extended) Safety Data Sheet**
- usefulness for non-experts severely limited
Deficits & challenges (3) – Interface REACH - CAD/CMD

Risk assessment: CSA vs. employer’s risk assessment
- lack of clarity on continuing obligation of employer’s risk assessment despite CSA / communicated RMMs

OEL: DNEL vs. IOELV
- lack of clarity that DNEL does not make IOELV (or national OEL) redundant
- lack of clarity on quality differences between DNELs and IOELVs

Substitution: authorisation vs. obligation of substitution
- lack of clarity that authorisation of specific use does not annul employer’s obligatory substitution check
OSH legislation – analysis

Additional challenges (1)

Beyond the legal framework

▪ dealing with uncertain risks / applying the precautionary principle: the example of nanomaterials

▪ new materials: under which regulatory scope – chemical or biological agents? the challenge of synthetic biology

▪ standardisation: need to limit its expansion into genuine OSH issues (see certain standardisation projects on nanomaterials, such as “safe handling of nanomaterials” and “risk evaluation”)
Beyond the arena of chemicals

- Is the current OHS legislation (incl. that on chemicals) adequate for an ever more inhomogeneous workforce?

- Might workers suffering under the burden of ever more intensified work perceive certain OSH requirements (incl. some for chemicals) not as supportive but, instead, as too burdensome and, thus, as additional stressors?
OSH legislation – suggestions

To what end?
- Preserve the assets
- Remedy the deficits
- Prepare for specific challenges

In all arenas:
- Legislation
- Enforcement
- Use of workers’ rights
OSH legislation – suggestions

Legislation (1) – modernisation of the CMD

Scope
- extend to include chemicals toxic to reproduction – at least those without a known effect threshold

Minimisation
- introduce an enforceable concept for minimisation of exposure
- consider the introduction of a DMEL-like approach for minimisation targets (which would enhance the compatibility with REACH)

Control measures
- consider the introduction of differentiated control measures for different types of carcinogens (to have a coherent concept available for dealing with different modes of action)
OSH legislation – suggestions

Legislation (2) – modernisation of the CMD

Conditions and aims for the modernisation

- no lowering of the level of protection currently prescribed in the Directive
- enhance the level of protection at the workplace
- preserve workers’ participation rights prescribed in the Directive
- facilitate an extended use of workers’ participation rights at the workplace

Imminent task of TU experts on chemicals:

Preparation of detailed proposals to influence the on-going revision process of the CMD
OSH legislation – suggestions

Legislation (3) – amendments / clarifications to REACH

Risk management measures
- stress the need to observe the hierarchy of control when prescribing risk management measures
- indicate that personal protective equipment should not be prescribed as a permanent risk management measure

Safety Data Sheets
- consider the introduction of an additional, concise information tool based on the eSDS targeted specifically at SMEs

DNELs
- enhance the quality control of DNELs – consider the introduction of certain accompanying, publicly accessible scientific documentation
Legislation (4) – amendments / clarifications to REACH

**Authorisation**
- enhance the throughput of SVHC through the authorisation process
- prioritize candidate substances according to significance in the workplace

**Risk assessment**
- clarify that employer’s risk assessment under CAD is not rendered redundant by CSA and RMMs communicated in eSDS but remains necessary

**Substitution**
- clarify that employer’s obligation to check possibility of substitution is not annulled by authorisation of specific use
OSH legislation – suggestions

**Enforcement of the CMD by Member States**

**Minimisation of exposure**
- enforce minimisation of exposure by using the powers under art. 3 (2)

**Transparency on exposure**
- based on the information received under art. 3 (2), each MS should set up a comprehensive national register of exposure to carcinogens, which should also be forwarded to COM
- COM should compile MS information and should set up a comprehensive EU-wide register
Use of workers’ rights at the workplace by workers and their representatives

**Direct use**
- demand **participation** in the risk assessment at the workplace (art. 4, CAD; art. 3, CMD) and **to be consulted** on the derived control measures (art. 5 & 6, CAD; art. 4 & 5, CMD)

**Indirect use**
- request the labour inspectorate to enforce both REACH and the OHS legislation at the workplace, if necessary
OSH legislation – suggestions

Use of workers’ rights at the workplace by workers and their representatives

Some useful questions (1)

- Is the information from the eSDS taken into account for the risk assessment at the workplace?
- Are the RMMs described in the eSDS taken into account for the derivation of control measures, in particular for chemicals without an OEL and for carcinogens?
- Is the hierarchy of control (see art. 6 (2), CAD) – the “STOP principle“ – observed when deriving the control measures?
Use of workers’ rights at the workplace by workers and their representatives

Some useful questions (2)

- Has personal protective equipment to be used as a measure of last resort only?
- Has respiratory protective equipment to be used temporarily only, rather than permanently?
- Is Annex XIV of REACH regularly checked for chemicals used which might be phased out soon and need to be substituted urgently?
Current WPC activities
Current WPC activities

Preparation of 4th list of IOELVs

Proposal for 4th list of IOELVs forwarded to WPC in spring 2011 – to be discussed 2011 / 2012

List contains 41 candidate substances, comprising:

- Ethyl acetate
- Cyclohexanone
- Hydrogen selenide
- Sulphur dioxide
- Acrolein
- Methyl formate
- Zinc oxide
- Formaldehyde
- Nickel
- Nickel compounds
- Acetic acid
- MMVF
- Cyanides
- Manganese
- Acrylic acid
- Diacetyl
- Aniline
- Mineral oils
- Flour dust
- Cadmium
- Carbon tetrachloride
- Methylene chloride
- Tetrachloroethylene
- Ethylhexanol
- Hydrogen peroxide
- Calcium oxide
- Tributyltin compounds
- RCF
- Trichlortroethylene
- Propylene oxide
Current WPC activities

Preparation of BOELs

Proposal for additional BOELs forwarded to WPC in spring 2011 – to be discussed 2011 / 2012

List contains 26 candidate substances:

- Hard wood dust
- Crystaline silica
- Chromium VI
- Diesel engine emissions
- Benzo(a)pyrene
- Rubber fumes
- Rubber process dust
- Epichlorohydrine
- Acrylamide
- RCF
- Butadiene
- Beryllium
- Nitropropane
- o-Toluidine
- Hydrazine
- Methylene-dianiline (MDA)
- MOCA
- Used mineral oils
- Vinyl chloride monomer
- Vinyl bromide
- Dichloroethane
- Trichloroethylene
- Ethylene oxide
- Propylene oxide
- Ethylene dibromide
- Hexachlorobenzene