

## EBC position paper on the revision of the Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work

### About EBC

Established in 1990, the European Builders Confederation (EBC) is the European professional organisation representing national employer associations of construction micro, small and medium-sized enterprises and crafts. EBC is part of the employers' delegation in the European sectoral social dialogue for construction. EBC is a member of SMEunited, the European association of SMEs, and founding partner of Small Business Standards (SBS), the European association representing SMEs in standardisation.

With around 3 million enterprises and a total direct workforce of 16 million, the construction sector is of vital importance to the European economy and society, contributing around 10% to the GDP of the European Union. 99.9% of the European construction sector is composed of micro, small and medium-sized enterprises, active mostly at the local, regional and national level.

### Political context

In its Renovation Wave Strategy, the European Commission (EC) aims to renovate 35 million buildings by 2030, also ambitioning to upkeep a set of quality standards, such as high health, safety, and environmental standards. This includes *"the removal of and protection against harmful substances such as asbestos,"* which is to be achieved while paying *"particular attention to protecting workers renovating old buildings from exposure to asbestos, also through appropriate training."*

The Commission therefore aims to improve the existing framework, notably by considering revising Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work, on which it published a legislative proposal in September 2022. In addition, the Commission adopted a *Communication on working towards an asbestos-free future*, aimed at tackling asbestos in a comprehensive way, from improving diagnoses and treatment of diseases caused by asbestos, to identification and safe removal and waste treatment of asbestos. In this vein, the Commission is also exploring the possibility of a new legislative instrument on screening, registering and monitoring of asbestos. All the above are put forward as part of the prevention pillar of Europe's Beating Cancer Plan,

and will contribute to the objectives of the European Green Deal, the Zero-Pollution Action Plan and the European Pillar of Social Rights.

In parallel, in October 2021, the European Parliament had already adopted an own initiative report with recommendations to the Commission on protecting workers from asbestos. The report was calling, inter alia, for the Commission to propose a radically lower EU-wide binding occupational exposure limit value (OELV) for asbestos, specifically at 0.001 fibres/cm<sup>3</sup> as an 8-hour time-weighted average, instead of the current EU threshold of 0.1 fibres/cm<sup>3</sup>, coupled with the use of new methodology, the Analytical Transmission Electron Microscopy (ATEM).

As of January 2023, the Council of the EU had achieved a consensus on a general approach regarding the EC proposal, with an OELV set at 0.01 fibres/cm<sup>3</sup> in alignment with the Commission proposal. The Employment and Social Affairs (EMPL) committee in the European Parliament started discussing a draft report put forward by MEP V. Trillet-Lenoir (Renew, France), who also retained the OELV proposed by the Commission.

### General remarks

In light of the above, the European Builders Confederation (EBC) reiterates its firm belief that workers' health must always be a top priority in the construction sector and its active engagement in this direction, as construction SMEs and crafts take the utmost care to ensure the highest health and safety standards are applied to their workers across the EU.

At the same time, EBC feels compelled to stress that the frameworks currently being discussed by the Commission, the Council of the EU and the European Parliament needs to take into account the presence of asbestos in the built environment, the need for an enforceable framework to achieve an asbestos-safe and eventually asbestos-free building stock in Europe, but also the reality of construction SMEs and crafts.

Too ambitious targets when it comes to both new occupational exposure limits and methodologies, but also a consequent short transition to new equipment and assessment tools, could be counterproductive and lead to potential perpetuation of the presence of asbestos in existing buildings, which will undermine the implementation of the Renovation Wave and the European Green Deal.

Such an approach could also damage the activity of SMEs and especially small and micro construction companies in the market of asbestos removal. Instead, priority should be given to strong preventive and accompanying measures for workers, SMEs, building owners and inspectors, together with training schemes for workers and entrepreneurs, a rationalisation and streamlining of inspection tools and methods at EU level, and the possibility for Member States to use European funds to implement these prevention and support actions.

Only by putting in place a realistic, truly applicable and controllable legislative framework, accompanied by strong prevention and training, will it be possible to effectively and optimally protect contractors and

construction workers, in a context of very dynamic activity for SMEs in the building sector who aim to deliver the Renovation wave aspired by the European Union (EU).

### Specific remarks

- **Define an applicable OELV that protects workers without hindering the Renovation Wave**

EBC stresses that any revision of occupational exposure limit values to asbestos should be realistic, as their application on the ground greatly depends on whether it is feasible for employers, especially smaller companies, and inspectors to measure and implement them, despite the political attention that the issue has acquired. **If companies are not able to apply limit values, they could be obstructed in their efforts to protect workers.**

Bearing in mind that many small and micro construction enterprises will be affected by such measures, it is important to **ensure that the legislation can be implemented by construction SMEs in all Member States**, taking them as the norm to make sure that there is a level playing field for workers' protection across the European Union. Any development in the opposite direction will effectively result in penalising the companies that already strictly abide by the rules and do their best to protect workers from exposure

Therefore, EBC reiterates its position that **the existing OELV of 0.1 fibres/cm<sup>3</sup> is sufficient and does not need to be modified. However, the current framework needs to be implemented better and more strictly, with zero tolerance for any actors freeriding or not fully following the rules.** The fact that the current OEL is functioning well can also be understood through the results of the independent study commissioned by DG Employment, Social Affairs and Inclusion (EMPL) of the Commission and undertaken by RPA and COWI in 2021<sup>1</sup>. According to those findings, approximately between 4.1 and 7.3 million workers are exposed to asbestos, and if no further action is taken, approximately 22 cases of cancer will occur each year over the next 40 years due to exposure during this period. This data indicates that the current limit is functional. Further lowering the OELV would do little to restrict exposure, while on the other hand a better application of existing rules accompanied with improved guidance could be key.

However, EBC has taken note of the alignment by the Council and the European Parliament's Rapporteur with the European Commission's proposal of introducing an OELV of 0.01 fibres/cm<sup>3</sup>, 10 times lesser than the current limit. **EBC considers that any limit lower than this this proposal will prove unworkable for construction SMEs and not realistic to implement across Europe.**

Construction SMEs and crafts need a stable regulatory framework to focus on their business and thrive. This is why any OELV that will be set within the current revision of rules must apply for the foreseeable future to provide stability and clarity. **Any short or medium term revision clauses would be**

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<sup>1</sup> [Study on collecting information on substances with the view to analyse health, socio-economic and environmental impacts in connection with possible amendments of Directive 98/24/EC \(Chemical Agents\) and Directive 2009/148/EC \(Asbestos\)](#) (page 5)

counterproductive as they will cause uncertainty and unpredictability for SMEs and citizens across the EU, and would disincentivise investment and engagement of SMEs in asbestos removal.

- **Towards a streamlined framework for measurement methodologies and tools**

EBC calls on the Commission and co-legislators to **base any future actions on sound scientific evidence**, a thorough assessment of technical and economic feasibility and an analysis of the consequent socio-economic impact, for which the role of the Advisory Committee on Safety and Health (ACSH) is central. These actions will depend on the availability of streamlined measurement methods, to ensure comparability across the EU.

It should be noted that the **measurement methods and tools available or chosen vary greatly across Member states**, do not focus on the same indicators and test environments, and do not perform equally. This reality constitutes a difficulty to compare the OELVs and their impact across Member States. There is currently no harmonised EU standard on defining the sampling procedure for asbestos removal.

Often used, the example of the Netherlands, which has introduced an OELV of 0.002 fibres/cm<sup>3</sup> of air, provides a skewed image, as the methodology used in the country is not the ATEM. Even in the Dutch case, should the limit be lowered further and/or the measurement method be harmonised opting for ATEM, the equipment of Dutch construction SMEs and laboratories would need to undergo broad and expensive changes to meet the demands of the new framework. The same applies to a larger extent to SMEs of other countries, such as in Belgium and Italy.

EBC therefore calls for the introduction of a **streamlined reference framework allowing the comparability of different methods** across Member States, while not closing the door to further alignment when the situation in Member States is comparable. Such a framework would answer to the issue of comparability of data across different measuring methods and with different limit values in the short to medium term.

- **Considering the technical difficulty of measuring extremely low concentrations of asbestos**

An example from French laboratories could be useful to understand the significant practical difficulty of applying a limit lower than 0.1 fibres/cm<sup>3</sup>. The Analytical Sensitivity (AS) is an indicator used by laboratories on the accuracy of the measurement<sup>2</sup>: the lower the AS, the more accurate the measurement. For instance, the current French regulations require a minimum AS of 1 fibre/litre, i.e., 1/10<sup>th</sup> of the OEL/8h

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<sup>2</sup> The Analytical Sensitivity (AS) corresponds to the concentration obtained if 1 asbestos fibre is observed during the analysis.

(currently set at 10 fibres/litre in France), for low dust levels and for short interventions. This measurement accuracy parameter is already difficult to obtain for low dust levels.<sup>3</sup>

If the OELV were lowered to 1 fibre/litre, it would not be possible to maintain this accuracy as it would also be necessary to lower this SA to 0.1 fibre/litre. **Today accredited laboratories already have difficulties in reaching an AS of less than or equal to 1 fibre/litre.** Therefore, lowering the SA will only be possible under the following scenarios: either changing the environment for the testing phase (increasing the volume of air sampled for example), developing new methods and tools for extremely low OELV, or considerably multiplying the observation time in the laboratory. **All these scenarios would result in significant additional costs for all relevant actors, an increase in the time taken to deliver the results of dust measurements, and additional training to be provided to construction professionals and inspectors.**

Innovation in construction evolves rapidly, however it does not quickly reach the day-to-day construction sites ran by SMEs, which take time to adapt to novelty. In the event of the introduction of a lower OELV than 0.1 fibres/cm<sup>3</sup> and new methodologies and measurement tools, Member States will need time to adapt but mostly SMEs will need increased financial, technical, and training support to effectively implement any changes. Given the magnitude of the task that such an adaptation represents for SMEs, but also for inspectorates and laboratories, be it in terms of protection or measuring equipment, training of workers or laboratory equipment, **a transition period of at least 7 years should be put in place.**

- **Focusing more on preventive and accompanying measures**

A polarising but crucial topic, the debates around how to best protect the construction workforce from the risks related to exposure to asbestos at work too often revolved around the topic of reducing the OELV and not enough on prevention and supporting actions. In this sense, before setting a new OELV, EBC recommends a major focus on the implementation of the existing rules, as well as on preventive and accompanying measures to eliminate or minimise risks.

The **development or updating of specific treatment protocols on asbestos for disposal/removal operators of construction/demolition waste** would facilitate this complex process, especially considering that asbestos is not recyclable. Such protocols are already in place in certain Member States and should be used for an exchange of practices at European level. Information and prevention campaigns as well as guidance documents developed by national specialised bodies (e.g., OPPBTP in France, INAIL in Italy) already used at national level should be further supported in this sense.

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<sup>3</sup> Rapport Carto Amiante (OPPBTP, France):

[https://www.preventionbtp.fr/ressources/documentation/ouvrage/rapport-carto-amiante\\_tuwAtUsiqiH8ieSZDrzM4g](https://www.preventionbtp.fr/ressources/documentation/ouvrage/rapport-carto-amiante_tuwAtUsiqiH8ieSZDrzM4g)

Questions-Réponses métrologie (Direction Générale du Travail, France): [https://travail-emploi.gouv.fr/IMG/pdf/gr\\_metrologie\\_amiante\\_dgt\\_edition\\_2020.pdf](https://travail-emploi.gouv.fr/IMG/pdf/gr_metrologie_amiante_dgt_edition_2020.pdf)

Finally, the support and extension of the role of inspectors is key. A large part of the issues we encounter when it comes to asbestos removal has to do with the poor application or even illegal activities that are undertaken by outlaw actors. Construction SMEs are in favour of a strict application of the rules and call for the **strengthening of the means and capacities of inspectors, who should focus their controls on problematic sites or cases where illegal activity is suspected or reported.**

Regarding guidance, construction companies need up-to-date advice and awareness campaigns should be organised to disseminate information widely, including to the general public, at all levels. **EBC thus calls for increasing technical and financial support for training, awareness-raising, and exchange of best practices** on asbestos removal, for both employers and workers, building owners and inspectors, and to make it a central element of this revision process.

- **Limiting the financial impact of revised rules on resilient but fragile construction SMEs**

Depending on the investment needs caused by new legislation, the situation for construction SMEs could turn for the worse if new expensive equipment and training is required. By nature, construction SMEs have limited human and financial resources, and therefore limited investment capacity. **High investment and adaptation costs could lead to the exclusion of construction SMEs from the asbestos removal market,** which would undermine energy efficient renovation works.

In this context, an SME-friendly approach is key, especially for the overwhelming majority of small and micro construction companies. **Member States need to ensure that asbestos removal activities do not become monopolized by few large actors and the market remains accessible to SMEs.** This is especially important if strong **certification** schemes are introduced; indeed, companies specialised in asbestos removal, already certified in some Member States, have had to make major investments to achieve this. However, **specialisation and certification costs are difficult to reflect in the billing to clients for small companies active in asbestos removal;** if facing higher costs, clients might feel forced to postpone their renovation project, or worse, to call on uncertified and untrained actors offering a lower price to remove asbestos. **Certification should therefore remain optional and affordable for construction SMEs** to ensure a level-playing field and an open market.

In the same vein, the problem of **the cost of disposal in the waste facilities is a major obstacle for construction SMEs,** especially for those companies whose core business is not asbestos removal. Additionally, these facilities need to be easily accessible within an acceptable distance, including cross-border. It is thus essential to ensure the access of construction enterprises to an **appropriate number of adapted waste facilities for asbestos at the regional/local level at a realistic price.** Indeed, these elements are pushing up tariffs and prices, jeopardising renovation projects and putting the workers involved at risk.

As a matter of fact, **strengthening the technical and financial assistance support for homeowners and SMEs** to assess the presence of asbestos in dwellings would reduce the risks upfront, by securing a safe handling of asbestos by appropriate actors. To anticipate solutions to the potential significant rise of costs deriving from new rules and to support the financial efforts expected from SMEs, **linking European funding to the necessary accompanying measures for the transition to a more ambitious framework for asbestos removal** could be a key step. Member States need to make sure that the relevant actors are supported,

especially SMEs, in the face of an ambitious reform. That is why European funding, stemming from specific EU Funds and financial frameworks, such as the EU Recovery and Resilience Facility, the European Regional Development Fund (ERDF), the Cohesion Fund (CF), EU4Health or the European Social Fund+, where applicable, needs to be earmarked within this Directive, to facilitate Member States in allocating funding for the various adaptations needed, such as for equipment and training.

- **Equipping the construction workforce with the right skills to remove asbestos safely**

In view of the expected increase in activity in the next decades with the Renovation Wave, EBC considers that the **specialised asbestos removal companies cannot tackle the challenge alone**, even less so in a sector historically struggling with attracting and maintaining a sufficient qualified workforce. To achieve an asbestos-free Europe, **both specialised and traditional construction SMEs need to be considered for asbestos removal projects** and benefit from concrete financial support and guidelines, as well as of updated training schemes adapted to their needs.

In this sense, an **overly restrictive certification system could reduce the participation of SMEs in asbestos removal projects**. Certification requires heavy and frequent administrative burden, in addition to investment costs. Schemes to recognise actual experience and successful records should be considered, facilitated and included in any certification system envisaged.

In France for instance, only 1500 enterprises are certified for the removal of asbestos. More will need to be done in this respect, not only to increase the number of certified companies allowed to remove asbestos, but also to train all professionals that are involved in renovation processes that could potentially include the handling of asbestos (e.g., plumbers, electricians, floor covering craftsmen etc.). In France, a worker currently needs to be trained between 2 to 5 days, depending on their function on the construction site, to be allowed and able to handle asbestos. Similar requirements apply to Germany and many other Member States. This time can be a considerable burden, especially for construction micro and small companies. It is therefore **important not only to support SMEs in training workers, but also to keep the amount of training time required at reasonable levels** (ideally not more than 2 working days), to encourage the training of more workers in light of the Renovation Wave.

In this context, **EBC calls for all construction SMEs and workers to be provided a baseline and up-to-date training on asbestos removal**, in the context of financial support from Members States. Additionally, **EBC rejects any stringent or mandatory certification scheme at EU or national level**, that would act as an obstacle to the Renovation Wave. Eventually, **EBC calls for close monitoring and sanctioning of the dangerous and reckless practices** of actors who base their business on very low prices with no logic of training or protection for their workers.

- **Reinforcing the screening, registering and monitoring of asbestos through its own legislation**

In parallel, EBC welcomes the Commission's initiative to introduce a European framework for screening, registering and monitoring of asbestos across the EU. This initiative is a separate part of the legislative work, and should remain as such. As a consequence, there should be no binding provisions on asbestos screening registering and monitoring within the asbestos at work Directive, to avoid legal uncertainty, while ensuring coherence between existing and future legislative vehicles aiming at asbestos-free built environment in Europe.