

Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

### SECTION III

#### MISCELLANEOUS PROVISIONS

##### *Article 9*

##### **Prohibitions**

1 To prevent the exposure of workers to health risks from certain chemical agents and/or certain activities involving chemical agents, the production, manufacture or use at work of the chemical agents and the activities set out in Annex III shall be prohibited to the extent specified therein.

2 Member States may permit derogations from requirements of paragraph 1 in the following circumstances:

- for the sole purpose of scientific research and testing, including analysis,
- for activities intended to eliminate chemical agents that are present in the form of by-products or waste products,
- for the production of the chemical agents referred to in paragraph 1 for use as intermediates, and for such use.

The exposure of workers to chemical agents referred to in paragraph 1 must be prevented, in particular by providing that the production and earliest possible use of such chemical agents as intermediates must take place in a single closed system, from which the aforesaid chemical agents may be removed only to the extent necessary to monitor the process or service the system.

Member States may provide for systems of individual authorisations.

3 When derogations are permitted pursuant to paragraph 2, the competent authority shall request the employer to submit the following information:

- the reason for requesting the derogation,
- the quantity of the chemical agent to be used annually,
- the activities and/or reactions or processes involved,
- the number of workers liable to be involved,
- the precautions envisaged to protect the safety and health of workers concerned,
- the technical and organisational measures taken to prevent the exposure of workers.

4 The Council, in accordance with the procedure laid down in Article 118a of the Treaty, may amend the list of prohibitions under paragraph 1 of this Article, to include further chemical agents or activities.

## Article 10

### Health surveillance

1 Without prejudice to Article 14 of Directive 89/391/EEC, Member States shall introduce arrangements for carrying out appropriate health surveillance of workers for whom the results of the assessment referred to in Article 4 of this Directive reveal a risk to health. These arrangements, including the requirements specified for health and exposure records and their availability, shall be introduced in accordance with national laws and/or practice.

Health surveillance, the results of which shall be taken into account in applying preventive measures in the specific workplace, shall be appropriate where:

- the exposure of the worker to a hazardous chemical agent is such that an identifiable disease or adverse health effect may be related to the exposure, and
- there is a likelihood that the disease or effect may occur under the particular conditions of the worker's work, and
- the technique of investigation is of low risk to workers.

Furthermore, there shall be valid techniques for detecting indications of the disease or effect.

Where a binding biological limit value has been set as indicated in Annex II, health surveillance shall be a compulsory requirement for work with the hazardous chemical agent in question, in accordance with the procedures in that Annex. Workers shall be informed of this requirement before being assigned to the task involving risk of exposure to the hazardous chemical agent indicated.

2 Member States shall establish arrangements to ensure that for each worker who undergoes health surveillance in accordance with the requirements of paragraph 1, individual health and exposure records are made and kept up-to-date.

3 Health and exposure records shall contain a summary of the results of health surveillance carried out and of any monitoring data representative of the exposure of the individual. Biological monitoring and related requirements may form part of health surveillance.

Health and exposure records shall be kept in a suitable form so as to permit consultation at a later date, taking into account any confidentiality.

Copies of the appropriate records shall be supplied to the competent authority on request. The individual worker shall, at his request, have access to the health and exposure records relating to him personally.

Where an undertaking ceases to trade, the health and exposure records shall be made available to the competent authority.

4 Where, as a result of health surveillance:

- a worker is found to have an identifiable disease or adverse health effect which is considered by a doctor or occupational health-care professional to be the result of exposure at work to a hazardous chemical agent, or
- a binding biological limit value is found to have been exceeded,

the worker shall be informed by the doctor or other suitably qualified person of the result which relates to him personally, including information and advice regarding any health surveillance which he should undergo following the end of the exposure, and

the employer shall:

- review the risk assessment made pursuant to Article 4(1),
- review the measures provided to eliminate or reduce risks pursuant to Articles 5 and 6,
- take into account the advice of the occupational health-care professional or other suitably qualified person or the competent authority in implementing any measures required to eliminate or reduce risk in accordance with Article 6, including the possibility of assigning the worker to alternative work where there is no risk of further exposure, and
- arrange continued health surveillance and provide for a review of the health status of any other worker who has been similarly exposed. In such cases the competent doctor or occupational health-care professional or the competent authority may propose that exposed persons undergo a medical examination.

#### *Article 11*

### **Consultation and participation of workers**

Consultation and participation of workers and/or their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC on the matters covered by this Directive, including the Annexes hereto.

#### *Article 12*

### **Adaptation of the Annexes, preparation and adoption of technical guidance**

[<sup>F1</sup> The Commission is empowered to adopt delegated acts in accordance with Article 12a to make strictly technical amendments to the Annexes, in order to take account of technical harmonisation and standardisation concerning chemical agents, as well as technical progress, changes in international standards or specifications and new findings with regard to chemical agents.

Where, in duly justified and exceptional cases involving imminent, direct and serious risks to workers' and other persons' physical health and safety, imperative grounds of urgency require action in a very short timeframe, the procedure provided for in Article 12b shall apply to delegated acts adopted pursuant to this Article.]

2 The Commission shall draw up practical guidelines of a non-binding nature. These guidelines shall address the topics referred to in Articles 3, 4, 5 and 6, and Annex II, section 1.

The Commission shall first consult the Advisory Committee on Safety, Hygiene and Health Protection at Work in accordance with Decision 74/325/EEC.

In the context of the application of this Directive, Member States shall take account as far as possible of these guidelines in drawing up their national policies for the protection of the health and safety of workers.

#### **Textual Amendments**

- F1** Substituted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

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## *F<sup>2</sup> Article 12a*

### **Exercise of the delegation**

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 3(2) and Article 12(1) shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 3(2) and Article 12(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>(1)</sup>.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 3(2) and Article 12(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### **Textual Amendments**

- F2** Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

## *Article 12b*

### **Urgency procedure**

1 Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and the Council shall state the reasons for the use of the urgency procedure.

2 Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 12a(6). In such a case, the Commission shall

repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.]

#### Textual Amendments

- F2** Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

### Article 13

#### Repeal and amendment of earlier Directives

- 1 Directives 80/1107/EEC, 82/605/EEC and 88/364/EEC shall be repealed on the date referred to in Article 14(1).
- 2 Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC)<sup>(2)</sup>, is amended as follows:
  - a in the first sentence of Article 1(1), the following words shall be deleted:

which is the second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC;
  - b Article 9(2) shall be replaced by the following:
2. The amendments necessary to adapt the Annexes to this Directive to technical progress shall be adopted in accordance with the procedure laid down in Article 17 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at the workplace<sup>(3)</sup>;
  - c in the second subparagraph of Article 15(1) the words ‘in accordance with the procedure set out in Article 10 of Directive 80/1107/EEC’ shall be replaced by ‘in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC’.
- 3 Council Directive 86/188/EEC of 12 May 1986 on the protection of workers from the risks related to exposure to noise at work<sup>(4)</sup> is amended as follows:
  - a in Article 1(1), the following words shall be deleted:

which is the third individual Directive within the meaning of Directive 80/1107/EEC;
  - b in Article 12(2), the second subparagraph shall be replaced by the following:

Annexes I and II shall be adapted to technical progress in accordance with the procedure laid down in Article 17 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at the workplace<sup>(5)</sup>.
- 4 Any other reference in Directive 83/477/EEC and Directive 86/188/EEC to Directive 80/1107/EEC shall be obsolete from the date of repeal of the said Directive.
- 5 Directives 91/322/EEC and 96/94/EC remain in force.

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- (1) [<sup>F2</sup>OJ L 123, 12.5.2016, p. 1.]
- (2) OJ L 263, 24.9.1983, p. 25. Directive as amended by Directive 91/382/EEC (OJ L 206, 29.7.1991, p. 16).
- (3) OJ L 183, 29.6.1989, p. 1.;
- (4) OJ L 137, 24.5.1986, p. 28.
- (5) OJ L 183, 29.6.1989, p. 1.'

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#### **Textual Amendments**

- F2** Inserted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).