Using ‘Better Regulation’ to make things worse:

Industry tactics to delay and weaken workplace cancers law

CEO

Table of contents

1. Introduction 4

2. Let's talk about Silica Dust 7
- 2.1. Voluntary steps to avoid regulation 7
- 2.2. Go for the lightest regulation possible 10

3. Hollowing out REACH with 'Better Regulation' 12
- 3.1. A false dichotomy 12
- 3.2. More say for industry on "impacts" 14
- 3.3. Getting cosy with Cross-Industry Initiative 15
- 3.4. 'Harmonising' a byword for weakening 15

4. Contented industry wants no improvements from MEPs 17

5. Conclusion 19

Annex 1: Overview of EU Workers' Health and Safety laws and EU Chemicals rules 24

Annex 2: Lobby case book on other carcinogenic substances 25

Acknowledgements

Published by Corporate Europe Observatory, December 2016

Author: Rachel Tansey;

Editor: Katharine Ainger;

Design: Stijn Vanhandsaeme (nestor.coop)

With thanks to Laurent Vogel, Tony Musu, Olivier Hoedeman, Martin Pigeon, Vicky Cann, Theresa Crysmann and others, for invaluable input, comments and support;

Executive summary

The revision of the Carcinogens Directive is a telling example of how industry is using the rhetoric and tools of 'Better Regulation' to pre-empt, delay, and weaken urgently needed rules, and how it plays off regulations against each other. Industry lobbies speaking the language of 'simplification', 'burden reduction', and 'harmonisation' have been well received by a European Commission that is keen to 'cut red tape'. As a result, its proposal contains far too few, and too weak, exposure limits for workplace carcinogens. The European Parliament, however, still has a chance – and an obligation - to stop worker's lives being sacrificed for industry's profits.

As this report outlines, the inadequate regulation of carcinogenic substances in the workplace has devastating consequences: an estimated 100,000 deaths in the EU every year. The cost to society is a minimum of €2.5 billion annually. And yet, occupational cancers are avoidable. But without strict and binding rules they won't be prevented, for industry has little incentive to do so; the risks and costs of exposure to workplace carcinogens are borne by the victims and society. Despite this, the Commission – heavily influenced by industry lobbies – delayed taking action for ten years. Now that it has finally acted, its proposal still only contains 13 substance exposure limits (promising 12 more by the end of 2016). This is contrary to the recommendation of various member states, health bodies, and trade unions, which advise including exposure limits for at least 50 carcinogenic substances.

Analysing lobby documents on workplace exposure limits for carcinogenic substances like silica dust and ceramic fibres, among others, this report highlights how 'Better Regulation' is in fact an attempt to reduce the regulatory 'burden' on businesses, regardless of the cost to people and planet, giving industry new opportunities to steer EU rule-making in a pro-business direction. The building blocks of Better Regulation (impact assessments, stakeholder input, evaluations, self-regulation, etc) have been instrumental in industry lobbying on the Carcinogens Directive, with industry tactics including voluntary initiatives to delay regulation, attacks on studies that don't serve their interests, pushes for greater influence via more impact assessments, and the pitting of different EU rules against each other to erode standards.

Unsurprisingly then, industry was fairly happy with the Commission's May 2016 proposal: there are not many exposure limits, and it is not very strict. BusinessEurope urged MEPs not to slow things down by changing the Commission's proposal. But since we'll be stuck with these exposure limits for many years, it is vital for hundreds of thousands of workers exposed to carcinogens across the EU that we get adequate protective limits now. Thankfully, the European Parliament's rapporteur has proposed amendments to the Commission's proposal that go a long way towards achieving this. But it remains to be seen what improvements MEPs are willing to make: ultimately, it will come down to how they assess the relevance of costs to businesses against cost to human life.

1. Introduction

An estimated 100,000 people die every year in the EU due to the lack of prevention against work related cancer (102,500 deaths in 2014).[1] The European Trade Union Institute (ETUI) has documented how the "huge costs of occupational cancers are borne not by the businesses that produce the risks but by society and the victims, so voluntary instruments or purely indicative limit values will not improve matters."[2] According to the Dutch National Institute for Public Health and the Environment, the annual societal cost of work-related cancer in the EU in 2012 was estimated to be between €242 and €444 billion at least.[3] And without a strict, precise, and binding regulatory framework, this situation won't change.

Yet for a decade the European Commission has delayed making proposals for much needed standards on the cancer-causing substances workers are being exposed to. Trade unions have repeatedly made the link between this slow progress and the Commission's business-friendly so-called 'Better Regulation' agenda (see box 2). The former General Secretary of the European Trade Union Confederation (ETUC), Bernadette Ségol, condemned as shameful the way measures "to protect workers from cancer and fertility difficulties, are being treated as 'red tape' and a so-called 'unnecessary burden' on industry".[4]

BOX 1

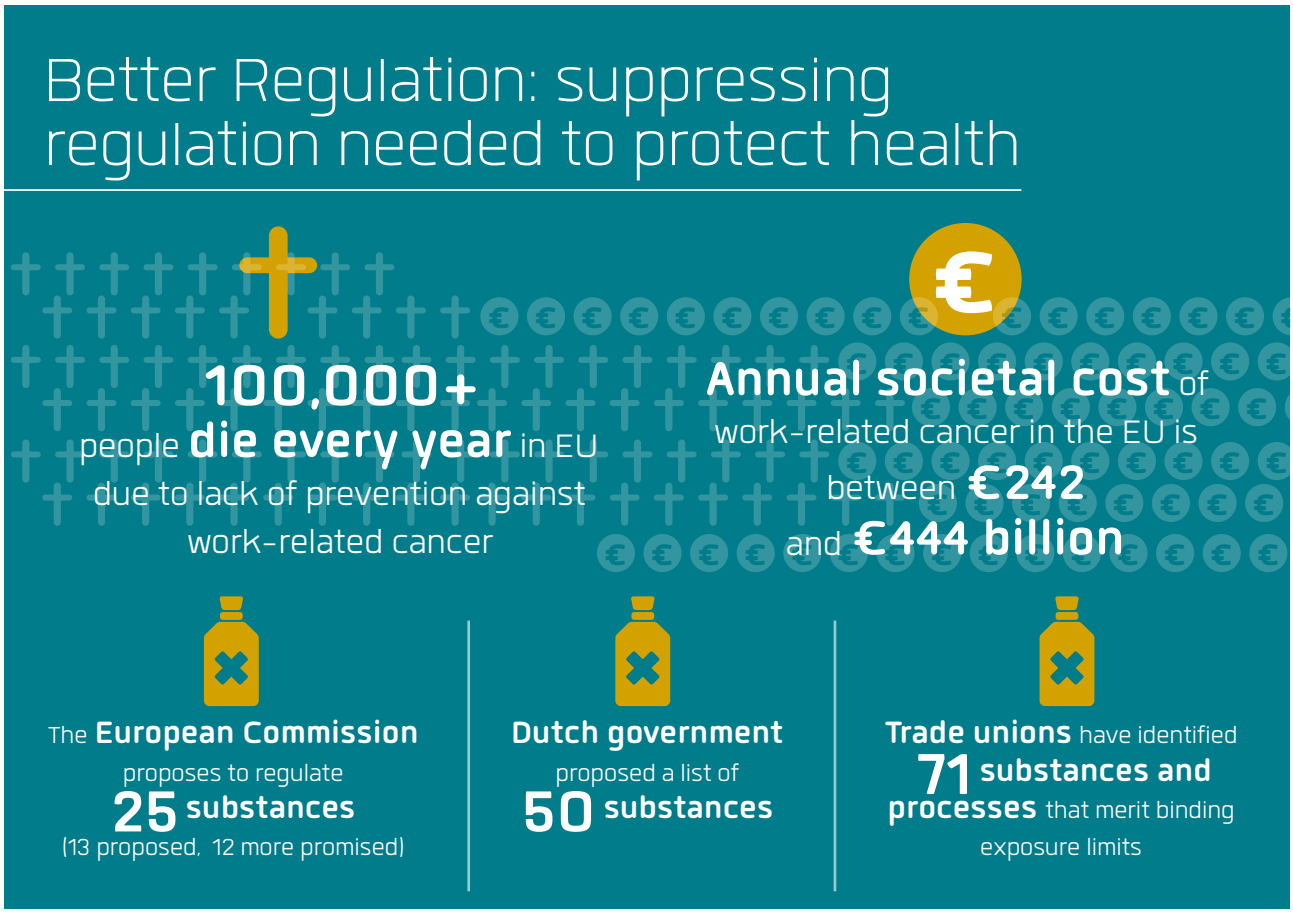
Carcinogens and mutagens at work

The Carcinogens Directive covers substances that people are exposed to at work which are **carcinogens** (can cause cancers) or **mutagens** (can lead to genetic mutations). These include substances like chromium VI, butadiene, formaldehyde, trichloroethylene and beryllium. Some carcinogenic substances are generated by processes that take place in the workplace, for example, silica dust (see Part 2), ceramic fibres, wood dust, rubber dust and fumes, and diesel exhaust. Some believe the scope of Carcinogens Directive should also to be extended to cover 'reprotoxins', substances which can damage human reproductive processes (see Part 4).

Huge costs of occupational cancers are borne not by the businesses that produce the risks but by society and the victims

ETUI has expounded on how the Commission's "approach to legal rules through the prism of a cost-benefit calculation" profoundly affects the way EU decisions are made. So, whilst the Treaty still requires tripartite – member state, employer, and worker – consultations, the dominance of the cost-benefit approach means their effect is marginal: "Only the employers' voice is listened to," concludes ETUI.[5] Although 'Better Regulation' claims to be about 'cutting red tape', it has in fact created new bureaucratic procedures and bodies to steer EU rule-making in a pro-business direction. And this "bureaucratisation of the Community's legislative process enables industrial lobbies to exert effective pressure against any legislative initiative that might improve working conditions"[6] - at the expense of big business profits. The revision of the Carcinogens and Mutagens Directive certainly falls under this category (see box 1).

The Carcinogens Directive requires carcinogenic or mutagenic substances to be replaced in the workplace as far as technically possible, and if not, to be manufactured and used while working in a closed environment. Where a closed system is not technically possible, the employer shall reduce exposure to minimum. Occupational exposure limit (OEL) values included in the Directive's Annex III help ensure that workers' exposure does not exceed a set limit.[7] However, to date only three substances are covered by such limits. The revision of the Directive is needed to include many more dangerous substances in the legislation, with adequately protective limits set for worker exposure. But as Laurent Vogel, Senior Researcher at ETUI, has described 'Better Regulation' "has completely paralysed the process" of revising the Carcinogens Directive, through business lobby group tactics like demanding endless impact assessments, ensuring "paralysis by analysis" for ten years.[8]



Over the last couple of years however, pressure to revise and update the Carcinogens Directive has been mounting on the Commission from multiple directions. In August 2013 the Dutch Government wrote to the Commission highlighting the large differences between member states' levels of protection and pointing out that more, and stricter, exposure limits at EU level would help create a "level playing field" and so avoid "false competition".[18] This concern reflects a 2009 report by the European Agency for Safety and Health at Work, which showed huge discrepancies between exposure limits for carcinogenic substances in member states (ranging from over 50 – Austria, Finland, Poland and Spain – to just 3 in Greece and Cyprus), triggering unfair economic competition.[19] In March 2014, the Dutch, Belgian, German, and Austrian governments wrote to the Commission describing the "urgent nature" of updating this "key law... under revision for almost a decade and no progress has been made."[20] They pushed for the Carcinogens Directive to include 50 "high-quality" binding exposure limits. In October 2015 Belgian trade unions reiterated that binding rules at EU level are the only way to avoid "good employers in countries with strict standards" suffering a cost disadvantage: "In the context of 'Better Regulation', what is urgently needed here is more regulation, not less."[21] Added to all this, discontent with the Commission's inaction has also come from the European Parliament and patients groups like the Cancer Patients Coalition. Finally, some industry groups decided they would support (weak) occupational exposure limits in the Carcinogens Directive as an attempt to avoid costly authorisations under chemicals regulation REACH (see part 3 and annex 1).

And so in May 2016 with pressure from the Dutch EU presidency, the Commission finally made a proposal for a revised Carcinogens Directive. It includes 13 exposure limits (11 new substances, plus two updates of existing limits)[22] for occupational carcinogens.[23] The Commission also promised it would propose a second wave of exposure limits, bringing it up to 25, by the end of 2016. The Commission's proposal is now being discussed by the European Parliament's Employment and Social Affairs (EMPL) committee[24] with a vote expected in February 2017. But the Commission's 13 (and promised further 12) substances is far, far fewer than what trade unions and health groups have asked for. In March this year, ETUI published a report identifying 71 substances and processes that merit an EU binding exposure limit. The Dutch Government proposed a list of 50, based on a study by the National Institute for Public Health and Environment, which converges strongly with ETUI's list.[25] Added to the inadequate number of limits proposed, many of the Commission's values are considered by trade unions as inadequate to protect worker health (see table 1).

It is vital to understand that the question of rules around occupational cancers is a question of social justice. With "their attendant agonies, grief, and lives cut short,

work-related cancers affect almost exclusively the most vulnerable workers" and "should be tackled on the same basis as other inequalities". As ETUI points out, it cannot be over-emphasised that "occupational cancers are avoidable".[26]

With "their attendant agonies, grief, and lives cut short, work-related cancers affect almost exclusively the most vulnerable workers"

Which leads to second question. If occupational cancers are avoidable, in whose interest is it to scupper rules that reduce risk of cancers as far as possible? The answer, as dozens of documents released to Corporate Europe Observatory reveal, is the many industry lobbies who are determined to put employers' profits before employees' lives. Below, we look at the case of silica dust, and how industry used self-regulation to keep rules at bay (annex 2 contains other substance case studies, including ceramic fibres and formaldehyde). Next, we look at the so-called 'Cross-Industry Initiative for better regulation in chemicals management', and their use of 'Better Regulation' to hollow out chemicals law REACH. Finally, we turn towards the European Parliament, and its role in protecting workers' health.

BOX 2

'Better Regulation': deregulation by another name

A deregulatory push to cut costs for business has been institutionalised in the EU over the past 15 years, branded 'Better Regulation'.[9] This rhetoric whitewashes a reality of prioritising 'competitiveness' over public health, social rights, and environment. It is often rule-making at its worst, giving those with most lobby spending power the biggest say. Here are six key tactics:[10]

1. **Demand more impact assessments:** These tend to serve industry interests. They put monetary values on the expected costs and benefits of a policy, but economic impacts are easier to quantify than environmental and social ones. And if industry *doesn't* like an impact assessment's results, there's room to dispute its methodology, dismiss it as incomplete or relying on bad data, or demand it is opened up to stakeholder input.
2. **Discredit opponents over 'sound science':** 'Sound science' is a PR term coined by the tobacco industry "to manipulate the standards of scientific proof to serve the corporate interests".[11] It spins industry-favourable science as 'sound', whilst critical science is dismissed as 'junk' or unscientific. It's used to attack the precautionary principle (where action can be taken when harmful effects are identified but scientific uncertainty exists – as is almost always the case). Industry can call for the highest, if not impossible, levels of evidence as a way to block protective standards.
3. **Over-emphasise costs to business:** A narrow 'cost-benefit' focus on the price of regulation to business ignores the costs of lack of regulation to society. Companies can inflate estimates of the cost of new regulations to weaken or delay them.[12] 'Better Regulation' enables industry to demand lead-times to delay new laws.
4. **Focus on voluntary measures and self-regulation:** 'Simplifying' regulations often means including industry-friendly voluntary measures and self-regulation; but research shows these are highly ineffective at regulating companies' behaviour.[13]
5. **Demand more stakeholder engagement:** The Commission promises stakeholder engagement "at every stage of the process".[14] But stakeholder consultations disproportionately allow for greater, earlier, and more frequent access for big business to influence policy-making.
6. **REFIT and fitness checks:** Existing regulations are not safe from the 'Better Regulation' agenda. Under REFIT (Regulatory Fitness and Performance programme), every year the EU must screen its entire body of law for regulations to scrap, weaken, or simplify.[15]

'Better Regulation' is being used by big business lobby groups to draw up hit lists of unwanted regulation.[16] Rules over social, environmental, health, and safety measures are being increasingly portrayed as a burden for businesses that need to be cut or reduced.[17]

2. Let's talk about Silica Dust

Respirable crystalline silica (RCS) – or silica dust – is produced when materials containing silica (eg rocks, sand, clay, bricks, concrete) are cut, sanded down, etc. Exposure to silica dust can cause silicosis and lung cancer. Exposure is very common, for example in construction, cement and brick manufacturing, stone-cutting, rock drilling, quarry work, tunnelling, china and ceramic manufacturing, abrasive blasting (eg to remove paint, oils, or rust; to etch glass, etc), as well as in the steel, foundry, and maritime industries.[27] Industry groups have fought tooth and claw to stop silica dust from being included in the Carcinogens Directive. Ultimately, they may not have succeeded in preventing its inclusion, but the proposed exposure limit is far higher than is needed to protect the health of workers (see Box 3).

2.1. Voluntary steps to avoid regulation

A classic industry tactic to delay or weaken strict regulation or a ban is to promote 'self-regulation', a set of non-binding principles that claim to address the issue and demonstrate that industry can be a reliable 'stakeholder'. In reality, other than minor concessions, it allows industry to keep putting commercial interests above all else. Enter the 2006 voluntary agreement NePSi (the "European Network for Silica") formed of signatories to the Social Dialogue Agreement on Workers' Health Protection Through the Good Handling and Use of Crystalline Silica and Products Containing. According to ETUI's Laurent Vogel, industry's concern to keep silica dust out of the Carcinogens Directive was the raison d'etre for its creation.

Drawing historical parallels with industry tactics over asbestos, Vogel describes the way industry started cancer prevention platforms in many countries which focused on 'good practice' sharing, in an attempt to show that the safety and health of workers could be adequately protected on the basis of voluntary initiatives by employers. Industry's use of this tactic to pre-empt regulation by – seemingly – rendering it redundant has helped keep the revision of the Carcinogens Directive, and the introduction of new binding exposure limits, at bay for the last ten years.[33] The European trade union federation ETUC refused to be associated with NePSi over concerns such as these, as did the European Federation of Wood and Building Workers.[34] Indeed, tellingly among the signatories to NePSi there is only one employees' organisation – the industrial-sector trade union IndustriALL – to 15 employers' organisations.

European coal lobby group EURACOAL documents released to Corporate Europe Observatory offer a key example

BOX 3

Commission sees 100,000 avoidable deaths as acceptable?

The US recently adopted an exposure limit for silica dust that is twice as strict as that proposed by the Commission: it has reduced the limit from 0.1 mg/m3 to 0.05 mg/m3. The US concluded that a limit of 0.1 mg/m3 (ie what the Commission has proposed) left employees exposed to levels of silica dust that put them at "significant risk of material impairment to their health", including "increased risk of developing silicosis and other non- malignant respiratory diseases, lung cancer, and kidney disease."[28] The US concluded that reducing the limit to 0.05 mg/m3 (the level EU trade unions also propose) would eliminate 60 per cent of silica-related deaths.[29] This "is estimated to prevent 642 fatalities" *each year* in the US.[30]

The Commission's proposed 0.1mg/m3 limit for silica dust still leaves a very high level of risk for workers. A calculation made by the former Director of the European Agency for Safety and Health at Work suggests that with this limit there would still be 2000 people dying from silica exposure in Europe, every year for the next 50 years.[31] The Commission estimates that its 0.1 proposed limit would save 100,000 lives over 50 years – but if it took the US and trade union advised limit of 0.05, an additional 100,000 lives could be saved.[32]

Regulation of silica dust: failing to prevent 2000 deaths each year

Trade union proposal
= US standard
0.05 mg/m^3

Commission proposal
= Industry happy
0.1 mg/m^3

If trade union proposal adopted,
an additional 100,000 lives could be saved over 50 years

Industry lobbyists include EUROSIL (silica producers), CEFIC (chemicals), CEMBUREAU (cement), EURACOAL (coal), EURIMA (insulation), ASASP (Glass Fibre) and IMA-Europe (minerals).

of the way industry lobbying has used NePSi as a shield against the regulation of silica dust. In 2012 EURACOAL provided the Commission with a position paper on silica dust in the Carcinogens Directive, offering its experts free of charge.[35] Its analysis emphasised existing 'good practices' in the coal industry which help "to reduce the risks of pneumoconiosis and other diseases linked with dust inhalation".[36] Translation: don't worry about regulating this, we've already got it sorted! They called on the Commission "to consult widely" before considering action on silica dust, so as to avoid "undue public fear and damage to EU industry". Quite what kind of public fear they imagined protecting workers' health from silica dust would engender is unclear, but scaremongering about the damage of regulation to industry is a typical threat used by big business.

These messages were then amplified in a joint statement signed by 20 industry sectors and sent to the Commission by the Industrial Minerals Association Europe (IMA-Europe) in February 2012.[37] Alongside IMA-Europe and EURACOAL, signatories included GlassFibreEurope, CEMBUREAU (cement), CERAME-UNIE (ceramics), EURIMA (insulation) and EUROMINES (mining). Notably, although this letter wasn't sent on behalf of NePSi, it was signed by all bar one of its industry members.[38] They claimed that it is "widely recognised" that NePSi provides "adequate control measures and workers' protection" – one wonders what IndustriALL, the sole trade union member of NePSi (and not among the signatories of this letter) thought of this assessment. The letter also argued that if industry won't implement and comply with exposure limits, the stricter rules won't lead to any benefits – so the Commission had better do it industry's preferred way if it wants success:

> "As progress does not happen without industry commitment, no real improvement may be expected unless the process guarantees the commitment from every stakeholder. The approach to minimise RCS [silica dust] exposure by using good practices is a better way to reach the same aim.[39]

Industry's voluntary commitment through NePSi, they said, has "achieved this goal of obtaining stakeholders' perennial commitment" and an EU exposure limit "will not ensure a better commitment of stakeholders". Again, in other words, don't regulate us, we're already solving it! But this time, the added hint of a threat: if you do regulate us, the situation will not "progress".

Despite their preference for voluntary 'action' over regulation, the industry groups pragmatically added that if regulation is considered for silica dust, then the Commission should look at "the possibility to grant an exemption to the NePSi signatories in order to take full benefit of the social dialogue initiative". Yes, read that again. They suggest they should be exempt from following a law to protect workers' health, because they're already voluntarily protecting workers' health! This suggestion was repeated at a Glass Alliance

Europe meeting with the Commission in May 2015 in which the glass industry lobby asked the Commission what it thought of NePSi's "good results", as "an alternative" to the inclusion of silica dust in the Carcinogens Directive, and asked how it would "take account and consider NePSi signatories in case of a future EU regulation". The Commission did at least remind NePSi signatories that they "are nonetheless subject to comply with existing legislation".[40]

Ultimately however the weaknesses of the voluntary initiative NePSi, combined with growing evidence and pressure from trade unions, health groups, and some member states, meant industry couldn't delay regulatory limits on silica dust exposure forever. One of NePSi's biggest weaknesses is that whilst the chemicals and metals industries signed up, the construction sector (a major sector for silica dust exposure) did not. And NePSi is voluntary in two ways: even if an industry has signed, any individual company within that industry is still under no obligation to do so.

It is also worth noting that as well as helping to avoid the introduction of a silica dust exposure limit for many years, NePSi has also been supported with public money. The Commission has poured millions of euros into the voluntary agreement (for example for awareness campaigns),[41] despite a lack of information on, or measurement of, its effectiveness. NePSi's reports do not focus on results, ie whether it has actually contributed to lowering levels of exposure of workers. Thus its 2016 report's "key indicators" do not include a measurement of any reduction in silica dust air concentration![42]

BOX 4

Disingenuous arguments and self-interested recommendations

These are some disingenuous industry arguments to avoid (or render inadequate) regulation of workers' exposure to silica dust:

- **The bigger the problem, the less need to regulate it?** The 20 industry sectors that wrote to the Commission in 2012[43] said that "the frame of the Carcinogens Directive is not the right one" for silica dust because silica is "ubiquitous". Yet the fact that silica dust is present in multiple industries affecting millions of workers is *more* of a reason to include it. Industry lobbies assert that setting a limit for silica dust exposure in the Carcinogens Directive "would impact a huge number of European producing and manufacturing industries... and would simply mean closing a number of factories"[44] – and demanded an impact assessment to address this (see box 2). They also argue that for some sectors it would be impossible to "reduce or replace the use of the substance as far as is technically possible, and to prevent and reduce exposure by deploying closed systems" as the Directive requires. These amoral and fatalistic arguments are tantamount to threatening to close factories if industry is made to bear the expense of protecting workers' health. As ETUI has pointed out, it's not new for industry to use such catastrophic arguments (eg with asbestos and REACH), yet it is not yet shown that safety and health measures have destroyed employment.[45]
- **The "secondary mechanism" defence:** Another argument made by the 20 industry sectors is that lung cancer is a secondary effect of silicosis, so the "prevention of silicosis also prevents the risk of lung cancer".[46] However, even if proven, this wouldn't change silica dust's definition as a carcinogen.[47] The World Health Organisation's International Agency for Research on Cancer has concluded that there is enough evidence to consider silica dust as a cause of cancers.[48]
- **More influence for industry in impact assessments:** The industry groups said it was "imperative" that an impact assessment "debates the relevance and the benefits, if any" of silica dust in the Carcinogens Directive, adding, "All the sectors concerned should be given a chance to provide expert judgement on their specific exposure conditions and health protection measures."[49] However, using cost-benefit analysis style impact assessments based on stakeholder input hollows out the goal of protecting workers' health. The regulation becomes refracted through the lens of competitiveness – rather than being based on medical expertise – and workers' health becomes a side issue to be negotiated between 'stakeholders' (see box 2).

2.2. Go for the lightest regulation possible

If industry is unable to achieve its goal of avoiding regulation altogether, the next step is to render it the least 'burdensome' possible. For example after being informed by the Commission itself that silica dust regulations would be tighter under the Carcinogens Directive than the Chemical Agents Directive (see annex 1), industry commissioned a study to show that it would be far better to regulate silica under – surprise, surprise – the Chemical Agents Directive.

A meeting took place at BusinessEurope's offices in September 2013 between the Commission's Employment Directorate (DG EMPL) and the 'Industry Silica Task Force', an informal network of industry lobbies including CEFIC (chemicals), CEMBUREAU, EURACOAL, EURIMA, ASASP (Glass Fibre), IMA-Europe. The Commission told industry that regulating silica dust under the Carcinogens Directive would have greater impact on employers due to "stricter risk management requirements" such as substituting it or containing it with closed industrial systems, as opposed to regulating it under the Chemical Agents Directive.[50] The Commission added that the Advisory Committee on Safety and Health had agreed on a limit for silica dust of 0.1 mg/m³, but not under which legal framework it should be set.

With this information under their belt, recognising that avoiding regulation was no longer an option (though the exposure limit was still very weak, as they wanted), industry commissioned a study from specialist consultancy firm BIPRO. This concluded, unsurprisingly, that it would be better to regulate silica dust through the Chemical Agents Directive than the Carcinogens Directive.

The Carcinogens Directive can only set binding exposure limits, but another EU workplace law called the Chemicals Agents Directive can set either binding or indicative limits (see box 5 and annex 1 for more information).

The Commission: adopting business proposals for health regulation

	Binding Exposure Limit				
Chemical Agent	**Commission proposal**		**Industry proposal**		**Trade union proposal**
Silica dust	0.1 mg/m³	=	0.1 mg/m³ (under less 'burdensome' regulation)*	>	0.05 mg/m³
Wood dust	3 mg/m³	=	3mg/m³ (no change to Commmission proposal)**	>	1 mg/m³
Chromium compounds	0.025 mg/m³	=	0.025 mg/m³ (no change to Com proposal, but "may need to review in future")**	>	0.001 mg/m³
Butadiene	1 ppm	=	1 ppm (no change to Com proposal)**	>	0.5 ppm
Ceramic Fibres	0.3 f/ml	=	0.3 f/ml *** / 0.5 f/ml ****	>	0.1 f/ml

* EUROSIL ** BusinessEurope *** Employers group in advisory committee ****ECFIA

The study, commissioned by the European Association of Silica Producers (EUROSIL), compared "the socio-economic costs" of a binding limit of 0.1 mg/m³ set under each directive, plus the "option" of an indicative limit under the Chemical Agents Directive[51] (see box 5). It concluded that a binding limit in the Carcinogens Directive would be vastly more costly than a binding limit in the Chemical Agents Directive. And, in turn, the latter would cost more than an indicative limit under the Chemical Agents Directive.[52] Unsurprisingly, industry asked the Commission to take "this significant difference in costs" into account.[53]

Later correspondence between industry and DG EMPL reveals industry presented their study to the EMPL Commissioner's services in Luxembourg, where they reinforced their message that the Chemical Agents Directive "offers a more appropriate framework" to regulate silica dust than the Carcinogens Directive.[54] This was reiterated by the Industrial Minerals Association and minerals companies Quarzwerke and SIBELCO in March 2015.[55] Unfortunately for industry however, and despite DG EMPL's willingness to evaluate whether it is "legally possible to establish for a carcinogenic substance with an identified threshold a limit value under CAD",[56] the Commission's legal service put an end to this lobbying strategy. It concluded that it is not legally possible to have a limit value for a carcinogen in the Chemical Agents Directive. This had also been one of NePSi's goals, but as ETUI researchers note, it is not clear whether pushing for a limit under the Chemical Agents Directive was a sincere attempt or just an avoiding and delaying strategy.

BOX 5

Binding vs Indicative limits

Binding exposure limits are mandatory limits on exposure to dangerous substances in the workplace: members states can set stricter *but not higher* binding national limits.

Indicative exposure limits set a guide for member states, which can then set stricter or weaker national limits, that may be binding or non-binding.

BOX 6

Attacking studies unfavourable to industry interests

Industry has attacked a 2009 study that was commissioned by DG EMPL, and carried out by the Institute of Occupational Medicine. The study was a socioeconomic, health and environmental impact assessment of possible changes to the Carcinogen Directive, but as industry didn't like its conclusions, it attacked its methodology. Worried that the study would recommend a silica dust limit in the Carcinogens Directive, in 2012 EURACOAL wrote to the Commission urging it to consider its "biases or weaknesses" before taking any decisions, and warning that "the study's methodology has been subject to some criticism".[57] Together with a long list of other industry lobby groups, EURACOAL asked the Commission to "open up a public discussion on this study", as industry wished to "be involved in the evaluation of the study outcomes".[58] The European Tyre & Rubber Manufacturers Association attacked the study in June 2013, claiming its "unfounded and/or incorrect postulates" led to an "over-estimation of both the number and the significance of future potential cancer incidents", so its conclusions should be challenged.[59]

What were the weaknesses and biases industry was so keen to bring attention to? The study indeed had had to extrapolate numbers, because the data available was outdated and incomplete. There was a good reason for this: the Commission stopped funding a project called CAREX, which in the 1990s had gathered data about workers exposed to carcinogens in member states. Since then, clear and up-to-date figures on exposed workers do not exist. As ETUI researchers have pointed out however, although exact numbers of exposed workers can't be precisely calculated, this doesn't change the fact action is still needed to protect those that are. And contrary to industry, ETUI considers the study estimates to be quite conservative.[60]

3. Hollowing out REACH with 'Better Regulation'

The **Cross-Industry Initiative (CII) for better regulation in chemicals management** is a super-lobby group of many industry sectors: car lobby ACEA, US big business group AMChamEU, CEMBUREAU (cement), Cerame-Unie (ceramics), Eurometaus (metals), Euromines (mining), Glass Alliance Europe, Nickel Institute and many more.[61] The raison d'etre of the Cross-Industry Initiative is "streamlining chemicals management" in the EU through so-called 'better regulation'. And they have made an extremely cynical calculation. Faced with rules under EU chemicals law REACH (see annex 1), which require an expensive process of market authorisation for dangerous or carcinogenic substances, they gamble that it would be easier if they could instead be covered under the remit of workers' health and safety rules. Namely, occupational exposure limits under a Carcinogens Directive that could well be weakly enforced (see box 7).

"REACH and the workers protection legislation do not cover the same issues and both are needed".

– Theresa Kjell

3.1. A false dichotomy

The Cross-Industry Initiative is run by Brussels lobby firm Hanover Brussels, whose 2014 lobby clients include the likes of the Nickel Institute and Metal Packaging Europe.[63] Hanover Brussels' Managing Director Christian Hierholzer is the Coordinator of the Cross-Industry Initiative.[64] His interactions with the Commission on behalf of the Initiative show him presenting an 'either/or' world where it is nonsensical to have a system of two safety nets: chemicals market rules from one side (REACH) and worker protection from the other (eg the Carcinogens Directive) - see box 7. The Initiative's argument, in a nutshell, is that we must avoid a "duplication" of rules, by identifying the "burdens" for companies in both and choosing the least burdensome option.[65] And in some cases, the least 'burdensome' (to companies) regulation is the worker protection rules.

Alas, this dichotomy shouldn't be accepted: as NGO ChemSec's Senior Policy Advisor Theresa Kjell says, "REACH and the workers protection legislation do not cover the same issues and both are needed".[66] To begin with, an exposure limit under the Carcinogens Directive is not a full guarantee against cases of cancer – rather, it merely offers a certain level of protection, which takes into account 'feasibility' (including economic considerations), and therefore does not mean that *all* risk is avoided.[67] Additionally, from a legal point of view, the Carcinogens Directive doesn't cover self-employed persons, and so its risk management provisions don't cover all relevant workers (eg a self-employed

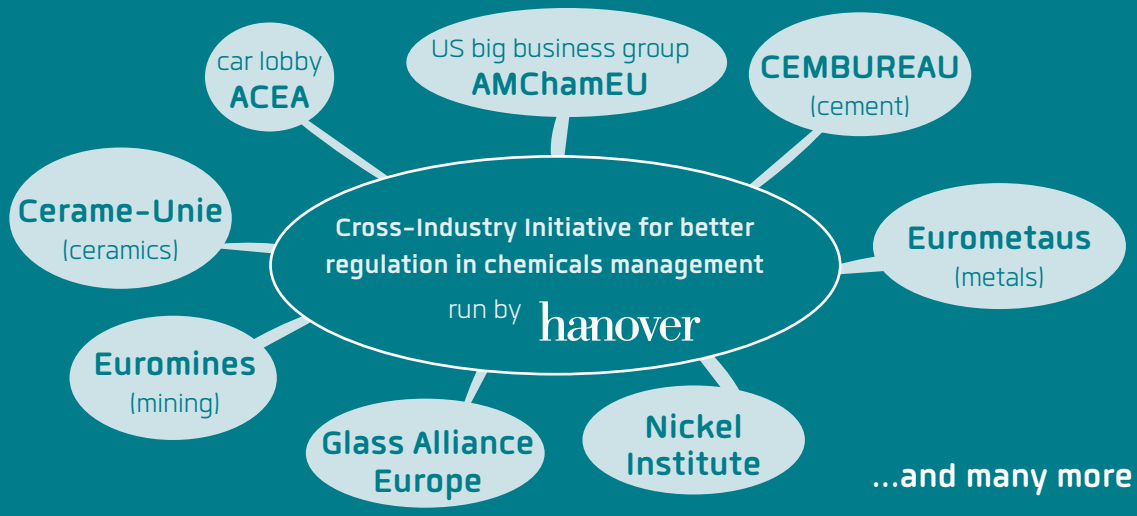
BOX 7

Industry's gamble: Carcinogens Directive instead of REACH

The cynical maths worked by some industry lobbies is that even if a binding occupational exposure limit comes into force through the Carcinogens Directive, it won't be very well-enforced. REACH is more expensive for them, with costly (and only temporary) chemicals authorisations (see annex 1). So, they gamble on getting a substance out of the requirement for REACH authorisation by arguing the substance can be adequately regulated under the Carcinogens Directive. Of course, industry lobbies will still push hard for the Carcinogens Directive's exposure limits not to be very strict, but with the idea that even if the limits do end up being stricter and more protective than they'd have liked, there's a lack of enforcement in most EU countries (by national enforcement agencies), so it won't be a dramatic problem for them. As the Commission itself points out in its own proposal, given "the long latency periods to develop cancer (10 to 50 years), it will not be possible to measure the real impact of the revision before 15-20 years".[62]

Cross-Industry Initiative (CII) for better regulation in chemicals management

A super-lobby industry group for lowest health regulation



CII has over 50 members, including many representing the manufacturing and chemical industries. The CII aims to "streamline" chemicals management through the 'Better Regulation' agenda by lobbying for the lowest regulatory burden for companies. It pits different sets of rules against each other, even though they're both needed, to serve different purposes. It is run by lobby firm Hanover Communications.

person in the building sector).[68] Nor, as a workplace regulation, does it cover consumers.

REACH on the other hand does cover consumers, but its authorisations for chemicals are use-specific, and not all uses are covered in the scope of REACH authorisations. REACH authorisations set exposure limits based only on a chemical's intrinsic hazards (ie how dangerous it is, not how economically feasible it is to meet that limit), hence are likely to be stricter. There are also reasons why REACH is more effective at encouraging substitutions of the most dangerous substances to safer alternatives, as described by ChemSec.[69] So, if you waived REACH authorisation because of an exposure limit in the Carcinogens Directive, big loopholes would open up, and overall protection against cancer would drop.

For all these reasons, both authorisations under REACH *and* binding occupational exposure limits under the Carcinogens Directive are needed. The example of Chromium VI helps to illustrate this. Nearly one million workers in the EU are exposed to Chromium VI, a human carcinogen brought into public consciousness by the work of US activist Erin Brockovich. Only 200,000 of these workers are covered by uses under the scope of REACH authorisations. Welding fumes, for example, are not in the scope of REACH, though a major source of worker exposure to Chromium VI is 'hot work' such as welding steel alloys containing chromium.[70] Hence, an exposure limit in the Carcinogens Directive is needed to reduce the exposure of workers outside of REACH's scope. But an exposure limit (even if it were strict enough, which it is not – see part 4) under the Carcinogens Directive would not by itself be enough, for it wouldn't ensure chromium's swift substitution and phase-out as effectively as REACH.[71] The number of carcinogenic substances covered by REACH authorisations should be substantially increased, not reduced with the excuse that the workplace Carcinogens Directive suffices. Nor should REACH be an excuse to avoid exposure limits in the Carcinogens Directive.

Yet the Cross-Industry Initiative's lobbying tactic to play the legislations off against one another has apparently been well-received. At a "very positive" (the Commission's words) meeting with DG EMPL in January 2016, the Initiative promoted the idea that exposure limits set via workplace safety laws like the Carcinogens Directive should be taken "fully into account" under REACH's risk management options, with a "preferred approach" of setting limits under workplace laws.[72] At several meetings over 2015, the Initiative met with high-level Commission officials to discuss this, with the message that it was key "to avoid any perception of, or actual, duplication of legal requirements"[73]. In the context of the Juncker Commission's drive for regulatory

simplification via 'Better Regulation' (see box 2) this rhetoric no doubt went down well. But this phrasing is extremely broad: if merely the "perception" of duplication were grounds to scrap part of the chemicals safety rules, then industry need only cry wolf to get rid of "burdensome" requirements!

"Encouraged by the interest in our proposal", in a 2015 paper[74] the Cross-Industry Initiative moves on to a defence of indicative exposure limits set via the Chemical Agents Directive (see box 5). It argues against their "perceived weaknesses", alleging it is a "clear misunderstanding" that indicative limits are not binding on industry. The Initiative argues they are "indicative to member states, where they are turned into enforceable" limits. But this is not so. Member states do not *have* to transpose them as binding, enforceable limits, it is up to them to choose whether to make them binding or leave them as recommendations.[75] The Initiative also defends the fact that a "member state can set a different and less strict" limit, since it "was the legislator's choice to grant member states the possibility to deviate from [indicative limits].... Hence we do not consider this a weakness of the existing legislation." Yet this sudden respect for the 'legislator's choice' is completely absent when that same legislator decides *against* industry's interests. If the "legislator's choice" was a reason for laws to be permanently fixed and unalterable, then lobbying would not exist!

Worries about workplace safety laws being less effective than REACH authorization at driving substitution of hazardous substances are waved aside by the Cross-Industry Initiative. They say that the number one driver for substitution is that the "health and safety of their workers is crucial for employers". Unfortunately, the long history of industry prioritising profits over workers' health and safety tells a different story. There is abundant evidence suggesting for example that health effects that only appear many years later, such as silicosis or lung cancer, when workers are no longer employees, are often not taken on as an industry responsibility. Since the "cost of occupational cancers is almost totally externalised to social security and public health structures",[76] there is little incentive for employers to invest in expensive substitutions to safer substances.

3.2. More say for industry on "impacts"

The Cross-Industry Initiative also advocates "for a more modern and lighter approach" to adopting exposure limits,[77] demanding that "Affected industries should be requested to contribute to the impact assessment."[78] This is the very same approach industry uses via 'Better Regulation' to ensure that industry has more say, and more sway, over the rules which govern it (see box 2): ensuring that the impacts that matter most are the ones that impact business' profits. It is unsurprising that the Initiative has also suggested that if the Advisory Committee on Safety and Health (comprised equally of member state, employer, and employee representatives – see annex 1) can't reach consensus on an exposure limit, "further impact assessments would be carried out". This would offer yet another chance for economic impacts and "competitiveness" considerations to trump health and safety ones, and for decision-making based on medical expertise to be bargained away. Impact assessments can easily be used as political tools to kill, delay or shape a proposal by critiquing it as either incomplete, containing bad data, using a weak methodology, and so on. By their nature, there are so many criteria, and so much extrapolation in an impact assessment, that there's always room to dispute and disregard.

Another recommendation of the Cross-Industry Initiative, which follows in the vein of giving industry greater influence, concerns "the fastest regulatory process to establish EU-wide" exposure limits. They suggest that a "less onerous decision-making process seems adequate" to set exposure limits. Specifically, they argue that binding limits should be set via processes that only require the Commission's hand, known as Implementing Measures or Delegated Acts, rather than the EU ordinary legislative procedure (which involves a co-decision with the European Parliament and Council). In practice, this means completely bypassing the only elected EU institution, the European Parliament, and putting all decision-making power in the hands of the Commission which is more permeated by lobbyists, and less accountable.

3.3. Getting cosy with Cross-Industry Initiative

What has the Commission had to say in response to the Cross-Industry Initiative's recommendations? It told the Initiative coordinator (and lobby firm Hanover Brussels' boss) that their "input into the Commission's work on the interface between REACH and [workplace safety laws] is most welcome".[79] Referencing their "valuable insights" and "thoughtful suggestions", the letter notes the Cross-Industry Initiative's "kind offer of further engagement" and that the Commission "would be happy to arrange a combined meeting to further discuss your suggestions".[80] In fact, notes from a January 2016 meeting reveal that the Initiative's lobbying on REACH vs workplace safety laws made it onto the Commission Secretary General's "Refit Platform agenda for burden reduction/ simplification and will be discussed in the near future".[81] A major win for industry: the REFIT platform is a group of expert stakeholders with a remit to recommend how to make EU laws more 'efficient'.[82] REFIT is the main tool of the big-business friendly 'Better Regulation' agenda to "reduce unnecessary regulatory burdens" (see box 2). The REFIT platform, comprised of a government group and a stakeholder group, considers stakeholder suggestions for what "red tape" should be cut. However, it issued an opinion in June 2016 revealing that Cross-Industry Initiative's wishes had received a mixed response.[83]

Fortunately the REFIT platform stakeholder group (consisting of social partners, business, and civil society representatives) concluded that REACH and workplace laws are complementary. Companies must comply with the obligations of both:

> "the existence of a binding limit value for a carcinogen at EU level is not a reason to grant exemptions under REACH authorisation. This was confirmed in "Vecco case" (EU General Court judgement in case T-360/13). When workers are exposed to carcinogens (because substitution or use in closed system are not feasible), the best way to protect them is to have both a binding limit value under [workplace safety laws] and an authorisation under REACH.[84]

The rhetoric of "simplification and consolidation" is an excuse to erode important differences and weaken rules to the lowest common denominator

The more progressive elements of the stakeholder group (which, following civil society criticism, includes consumer and environmental groups, amongst others) – not to mention the weight of European Court of Justice case law – prevailed. However, the government group (of member state representatives) mirrors much of the industry rhetoric. Its opinion said the Commission should work "to attain the necessary regulatory efficiencies" between REACH and workplace health and safety laws "including reducing the double burden on companies".[85] Even more tellingly, it said that REACH authorisation may not be necessary where workplace laws are shown to provide sufficient "regulatory control of risks". This is a much closer – and worrying – reflection of the Cross-Industry Initiative's "recommendations", which merits a keen eye being kept on industry lobbying towards member state governments, as things go forward.

3.4. 'Harmonising' a byword for weakening

Another industry lobby group pushing back against protecting the health of workers is CEEMET, the Council of European Employers of the Metal, Engineering and Technology-Based Industries. Once again, the 'Better Regulation' rhetoric of 'simplifying' and 'harmonising' regulation, as well as reducing the 'burden' on industry has come in very useful. Describing EU rules around chemicals as "inconsistent, overlapping, confusing, and uncoordinated",[86] in 2014 CEEMET urged the Commission to "harmonise" REACH with workplace safety rules "as part of the on-going REFIT exercise". It complained of the "distinct differences"

between the two sets of rules: workplace legislation, says CEEMET, addresses health risks from substances in the place of employment, including by-products like fumes and dust, whilst REACH applies to health and environmental risks of chemicals that are made, imported, marketed or used in the EU (see annex 1). CEEMET's view seems to argue that because *different* rules, designed to achieve *different* ends, are *different*, these *differences* should be got rid of. It complains that REACH, unlike workplace legislation, requires substitution of the most dangerous chemicals based not only on health risks but also environmental risks. This broader scope adds "complexity for employers".[87]

Broader, yes, but necessarily so. Health *and* environmental risks are both important when REACH considers whether a chemical should be authorised for the EU market. Whilst in a workplace, it is the health of exposed workers that is particularly relevant to the Carcinogens Directive. But CEEMET attempts to use this difference, and its rhetoric of "simplification and consolidation", as an excuse to erode important differences and weaken rules to the lowest common denominator. Its suggestion that REACH and the Carcinogens Directive be consolidated "to reduce administrative burdens" is not sound: different means are needed to meet different ends. The assertion CEEMET uses is the familiar lobbyists' cry that EU rules are "pushing industry away from Europe", with "increased regulatory complication affecting EU competitiveness"[88] (which even if it were true would not be relevant to workers' health protection). So the "consolidated" rulebook CEEMET wants "must allow the development of new chemical entities without unnecessary restrictions",[89] rolling-back the "increasing administrative burdens" that protect workers, consumers and the environment from toxic contamination.

4. Contented industry wants no improvements from MEPs

As an ETUI report concluded earlier this year, the only *better* regulation in the case of workplace cancers is *stricter* regulation that provides *stronger* protection for workers:

> “ The fact is cancer costs practically nothing to the companies that cause it. Instead the costs fall to the victims, to social security provisions and to public health systems. Without strict regulation, no prevention measures can have a serious impact across the sectors.[90]

The fact that industry lobbies are, by and large, happy with the content of the Commission’s May 2016 revised Carcinogens Directive proposal, and keen for the European Parliament not to change the substances or exposure limits in it, shows that it doesn’t provide strong enough protection for workers. At a meeting in April 2016 just before the Commission published its proposal, DG GROW presented an overview of it to industry and trade union representatives. According to trade union researchers present, the very body language of the industry representatives revealed a pleasantly surprised “we can live with that!” attitude. This led the researchers to predict that industry’s tactics going forward, as the proposal went to Parliament and Council, would be to argue against adopting amendments such as stricter exposure limits, to avoid these ‘slowing the process down’.[91]

As predicted, at a European Parliament EMPL Committee stakeholder exchange on the proposal in October 2016, BusinessEurope’s representative “encouraged” MEPs “to stick as closely as you can to the Commission’s proposal” which is “based on scientific evidence” and has broad support from member states. And, since it’s “important to get the revision through quickly”, BusinessEurope wasn’t in favour of opening up the articles (as opposed to the annexes, which contain the exposure limits) to complicated discussion (eg to include reprotoxins under the scope of the Directive – see box 1 and below), which would slow things down. MEPs, they argued, should concentrate “on what the Commission has proposed, to really move forward.”[92] But the flaw with this argument is that we’ll likely be stuck with these exposure limits for many years to come – judging by the decade it took to get this revision under way. Once passed, debate on the Carcinogens Directive likely won’t be re-opened quickly or easily, so if we don’t get adequately protective limits now, it will be very difficult to get them in the near future.

Asking MEPs not to amend the Commission’s proposal is asking them to leave one in ten workers exposed to chromium with cancer.

BusinessEurope’s also argued that exposure limits must be based on “sound scientific evidence” (a favourite ‘Better Regulation’ catchphrase, see box 2), technical and economic “feasibility” and a thorough assessment of socioeconomic impacts. It reiterated how important cost-benefit analysis is, and supported the proposal’s reference to the voluntary NePSi (see part 2). It was also emphasised that the Commission’s proposal closely follows the line of the tripartite Advisory Committee on Safety and Health, comprised of governments, business, and workers. But, as ETUI’s Tony Musu (a member of the committee) notes, the committee’s consensus on exposure limits was reached four years ago. Since then new information has come to light. Take Chromium VI, for example, which the committee agreed a 25 µg/m^3 exposure level limit for; it has since been shown that this limit “would render fatal lung cancer in every tenth worker over a working-life exposure,” according to NGO ChemSec, based on data from the European Chemicals Agency![93] Clearly this risk, not understood four years ago, is unacceptable. Asking MEPs not to amend the Commission’s proposal is asking them to leave one in ten workers exposed to chromium with cancer. This is why ETUC calls on the European Parliament to amend the Chromium VI limit to 1 µg/m^3 (see Table 1).

On 22 November 2016, the European Parliament’s Rapporteur on the revision of the Carcinogens Directive, Swedish S&D MEP Marita Ulvskog, produced her draft report on the Commission’s proposal. In it Ulvskog reiterates two foundational points. One, that all work-related cancers

TABLE 1:

Who wants what limit of exposure to carcinogens?

Chemical Agent	Binding Exposure Limit				Number of Workers Exposed
	Commission proposal[94]	Industry proposal	Trade union proposal[95]	Rapportuer's proposal[96]	
Silica dust (RCS) See part 2	0.1 mg/m³	0.1 mg/m³ (under less 'burdensome' Chemical Agents Directive) - EUROSIL[97]	0.05 mg/m³	0.05 mg/m³	5,300,000
Ceramic Fibres (RCF) See annex 2	0.3 f/ml	0.3 f/ml – Employers group in Advisory Committee on Safety and Health 0.5 f/ml - ECFIA[98]	0.1 f/ml	0.1 f/ml	10,000
Chromium VI See parts 3 and 4	0.025 mg/m³	No change from Commission proposal ("review in future") - BusinessEurope[99]	0.001 mg/m³	0.001 mg/m³	916,000
Butadiene	2.2 mg/m³ (1 ppm)	No change from Commission proposal - BusinessEurope[100]	- (0.5 ppm)	1.12 mg/m³ -	27,600
Wood dusts	3 mg/m³	No change from Commission proposal - BusinessEurope[101]	1 mg/m³	2 mg/m3 (initially)	3,333,000

are preventable. And two, that the Carcinogens Directive states that the "precautionary principle should be applied in the protection of workers".[102] From this rational and established starting point, her report recommends that the directive's scope be extended to reprotoxins (see box 1). This is in line with previous calls from the European Parliament[103] and trade union demands, as well as reflecting that France, Austria, Finland, Germany, Sweden and the Czech Republic have already extended the scope of the directive when they transposed it into national law. Industry groups like BusinessEurope, do not, it would seem, support this effort.[104]

The Rapporteur's report proposes stricter, more protective exposure limits for silica dust, ceramic fibres, chromium, and several other substances – largely in line with trade union recommendations (see Table 1). Ulvskog also urges that "further limit values for additional substances should be introduced without delay", referencing the 50 to 70 substances listed as priorities by different groups, including the World Health Organization.[105] The 50-70 bracket of priority substances is, it should be remembered, far more than the Commission's promised 25 (or its currently proposed 13). Ulvskog's report states that additional limits should be included for diesel exhaust, formaldehyde, cadmium, dichloromethane, PCB, and many more substances. This is a particularly important pronouncement in light of rumours that the Commission may be set to break its own promise to propose 12 more binding exposure limits by the end of 2016. This second wave proposal of substance exposure limits is expected around 21 December 2016. An EMPL committee vote on the Directive is scheduled for 28 February 2017,[106] with trialogue discussions between the Commission, Council and Parliament to reach a compromise likely to be between April and June 2017. This means the European Parliament still has the power to ensure that workers' health is given priority over employers' pockets in the revised Carcinogens Directive.

5. Conclusion

The root of this story is the portrayal of hundreds of thousands of avoidable deaths from occupational cancers as less of a 'burden' than companies being required to implement strict, protective laws to safeguard their workers' health. Industry lobbies have managed to successfully delay revision of the Carcinogens Directive for a decade. And ensured that, once its revision could no longer be put off, the exposure limits for the (so far) only 13 carcinogenic substances proposed are too weak and too few. But the question of who the 'burden' falls on is key – neither the pain and grief of individuals, families and friends, nor the economic and social costs to national healthcare systems, have much influence or visibility in EU policy-making. Compare this to industry, which has a custom-made set of tools (under the umbrella of 'Better Regulation') to enable them to undermine health and safety laws as 'red tape', and put costs to business above costs to human life.

The European Parliament still has a chance to make the Carcinogens Directive stronger. Trade union groups like ETUC have been encouraging MEPs to propose amendments that better protect workers – thankfully, reflected in the Rapporteur's draft report. But it remains to be seen how Ulvskog's amendments will fare, what kind of amendments other MEPs propose, and whether the Parliament will continue to stand up against more industry-friendly forces in the Commission and Council.

As for the rest of us, we have a responsibility to challenge so-called 'Better Regulation' for what it really is – an industry-friendly agenda that shamelessly piles more influence at the door of big business lobbies, whilst eroding the chance for laws that really serve the interests of people and our environment.

Neither the pain and grief of individuals, families and friends, nor the economic and social costs to national healthcare systems, have much influence or visibility in EU policy-making.

Footnotes

1 Dr Jukka Takala, European estimates of work-related injury and ill health, Work-related Illnesses Identification, Causal Factors and Prevention Safe Work — Healthy Work — For Life, Workplace Safety and Health Institute, Singapore, presentation to EU Presidency Conference, Athens, June 2014. Cached version available at http://bit.ly/2gbpXNS

2 ETUI, The machinery of occupational safety and health policy in the European Union History, institutions, actors, Laurent Vogel, 2015

3 National Institute for Public Health and the Environment, Work related cancer in the European Union: Size, impact and options for further prevention, 2016, http://bit.ly/2hcCGgg

4 Euractiv, European Commission's 'Better Regulation' has killed 100,000, say unions, By Henriette Jacobsen, 24 Apr 2015, https://www.euractiv.com/section/health-consumers/news/european-commission-s-better-regulation-has-killed-100-000-say-unions/

5 ETUI, The machinery of occupational safety and health policy… ibid

6 *ibid.*

7 Further details about the Carcinogens and Mutagens Directive can be found here: https://osha.europa.eu/fr/legislation/directives/directive-2004-37-ec-carcinogens-or-mutagens-at-work

8 Euractiv, Cynical' EU blamed for 100,000 workplace-related cancers, By Frédéric Simon, 9 Jul 2015, http://www.euractiv.com/section/science-policymaking/news/cynical-eu-blamed-for-100-000-workplace-related-cancers/

9 CEO, FoEE, The crusade against red tape, October 2014, https://corporateeurope.org/sites/default/files/attachments/red_tape_crusade.pdf

10 All references in this box unless indicated otherwise: Smith et al (2015) Corporate Coalitions and Policy Making in the EU, Journal of Health Politics, Policy and Law

11 American Journal of Public Health, Constructing "Sound Science" and "Good Epidemiology": Tobacco, Lawyers, and Public Relations Firm, by Elisa K. Ong, MD, MS, and Stanton A. Glantz, PhD, November 2001, Vol 91, No. 11, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446868/pdf/0911749.pdf

12 nef, Threat to democracy: The impact of 'better regulation' in the UK, October 2015, https://b.3cdn.net/nefoundation/9c5f5f6281c949ddd9_uom6bvj9y.pdf

13 RSPB, Using regulation as a last resort? 2015, http://www.rspb.org.uk/Images/usingregulation_tcm9-408677.pdf

14 European Commission communication 'Better regulation for better results - An EU agenda, 19 May 2015, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0215&from=EN

15 EU Occupational Health and Safety (OSH) legislation – of which the Carcinogens Directive is a part – has been subject to a REFIT evaluation. In May 2015, the Commission said that it was "scheduled to be finalised by the end of 2015".* But the results of the REFIT evaluation had still not been published when the Commission published its revised Carcinogens Directive proposal in May 2016 (they were finally published in November 2016, six months after the Commission's proposal.** A *European Parliament's briefing notes that "it is not entirely clear why the Commission has come forward with this proposal before the ex-post evaluation of the OSH Framework undertaken within the remit of REFIT has been completed."*** *This raises questions of clarity and transparency around this REFIT initiative, and how it was foreseen to – or actually did relate to the revision of the Carcinogens Directive.*

[Source: Documents released to CEO; annex II.2_Redacted, ibid.*

** *The evaluation results were published in a DG EMPL Roadmap Communication on* Health and Safety at Work, 21 November 2016, http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_empl_004_occupational_safety_en.pdf

*** European Parliament, Briefing Initial Appraisal of a European Commission Impact Assessment: Protection of workers from exposure to carcinogens or mutagens, July 2016, http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/581419/EPRS_BRI(2016)581419_EN.pdf

16 See, e.g. BusinessEurope, Business input to the screening exercise by vice-president Timmermans, November 2014, https://www.businesseurope.eu/sites/buseur/files/media/imported/2014-01070-E.pdf

17 See e.g. European Commission, Commission follow-up to the 'Top Ten' consultation of SMEs on EU regulation, June 2013, http://ec.europa.eu/europe2020/pdf/top10_en.pdf; UK Government, Cut EU red tape: report from the Business Taskforce, October 2013, https://www.gov.uk/government/publications/cut-eu-red-tape-report-from-the-business-taskforce

18 Dutch government (Minister of Social Affairs and Employment, L. F. Asscher) and national employers' and workers' organisations, Letter to Commissioner Andor re. Public Consultation on an Occupational Safety and Health strategy, 28 August 2013

19 EU-OSHA – European Agency for Safety and Health at Work, Exploratory Survey of OELs for CMR substances at EU member states Level, 2009, https://osha.europa.eu/en/tools-and-publications/publications/reports/548OELs

20 Letter from Dutch government (Minister of Social Affairs and Employment, L. F. Asscher), and Belgian, Austrian and German counterparts, to Commissioner Andor re. Need for urgent update of the Carcinogens directive, 4 March 2014,

21 Confederation of Christian Trade Unions of Belgium (ACV-CSC), General Labour Federation of Belgium (ABVV-FGTB) and General Confederation of Liberal Trade Unions of Belgium (ACLVB-CGSLB), Letter to Commissioner Thyssen

re. Proposed overall review and simplification of European directives on occupational health and safety, 6 October 2015

22 The existing exposure limits being updated are for wood dust & vinyl chloride.

23 ChemicalWatch, EU Commission proposes OELs for 13 carcinogens, 13 May 2016, https://chemicalwatch.com/47381/eu-commission-proposes-oels-for-13-carcinogens

24 European Parliament, Briefing EU Legislation in Progress, June 2016, Limits on exposure to carcinogens and mutagens at work, http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583849/EPRS_BRI%282016%29583849_EN.pdf

25 ETUI, Cancer risks in the workplace: better regulation, stronger protection — Tony Musu, Laurent Vogel and Henning Wriedt, Working Paper, May 2016

26 ETUI, Preventing work cancers: A workplace health priority, Marie-Anne Mengeot, Tony Musu, Laurent Vogel, 2014

27 US OSHA Factsheet on Crystalline Silica Exposure, https://www.osha.gov/OshDoc/data_General_Facts/crystalline-factsheet.pdf

28 US Federal Register, Vol. 81, March 25, 2016, Department of Labor Occupational Safety and Health Administration (OSHA), 29 CFR Parts 1910, 1915, and 1926, Occupational Exposure to Respirable Crystalline Silica; Final Rule

29 Injuries and Illnesses at Work; ILO Methods and Estimates in Europe, Asia and Globally; EPICOH, Barcelona 5-7 September, 2016; Takala J, Hämäläinen P, Tan BK, Yong E...Presentation by Dr Jukka Takala Workplace Safety and Health Institute, Singapore and International Commission of Occupational Health

30 US Federal Register, Vol. 81, *ibid.*

31 Interview with Laurent Vogel, Senior Researcher at ETUI, 11 October 2016, by Rachel Tansey

32 Injuries and Illnesses at Work; *ibid.*

33 Interview with Laurent Vogel, *ibid.*

34 See Musu, T. and Sapir, M., 'Will the silica agreement foil EU legislation?', HESA Newsletter, No. 30–31 ETUI-REHS Health and Safety Department, October 2006, pp. 4–8

35 Documents released to CEO; Annex 2_Redacted, 17 February 2012, letter from EURACOAL re. EURACOAL Position Paper on Silica and the Carcingoens Directive

36 Documents released to CEO; Annex 2a, EURACOAL Position Paper on Silica and the Carcinogens Directive

37 Documents released to CEO; annex 3_Redacted, Ref. Ares(2012)241640 – 01/03/2012, 28 February 2012, Letter from Industrial Minerals Association Europe (IMA-Europe), and; annex 3a_Redacted, Ref. Ares(2012)241640 – 01/03/2012, Preliminary comments on the possible inclusion of Respirable Crystalline Silica in a revised Carcinogen at Work Directive, 27 February 20, signed by EHBM -The International Bureau for Precast Concrete; CAEF - The European Foundry Association; CEEMET- Council of European Employers of the Metal, Engineering and Technology-Based Industrie;s CEMBUREAU-The European Cement Association; CEPE -The European Council of producers and importers of paints, printing inks and artists' coiours; CERAME-UNIE--The European Ceramics Industries; EFFCM - The European Federation of Fibre-Cement Manufacturers; EMO-The European Mortar Industry Organization; ESGA-The European Special Glass Association; EURACOAL - The European Association for Coal and Lignite; EURIMA - European Insulation Manufacturers Association EURO ALL! AG ES - The Association of European ferro-Alloy producers; EUROGYPSUM - The European manufacturers of gypsum products; EUROMINES - The European Association of Mining Industries; EUROROC - The European and International Federation of Natural Stones Industries; EXCA - The European Expanded Clay Association; FEVE - The European Container Glass Federation; GlassFibreEurope - The European Glass Fibre Producers Association; Glass for Europe - Europe's Manufacturers of Building, Automotive and Transport Glass; IMA-Europe-The European Industrial Minerals Association.

38 NePSi, Signatory European industry sector associations, as listed at http://www.NePSi.eu/NePSi, accessed 7 December 2016, are: BIBM, CAEF, CEEMET, CEMBUREAU, CERAME-UNIE, EMO, EURIMA, EUROMINES, EUROROC, EXCA, FEVE, GlassFibreEurope, Glass for Europe, IMA-Europe and UEPG (the European Aggregates Association, which was only NePSi signatory that did not sign the industry letter.

39 Documents released to CEO; annex 3a_Redacted, ibid.

40 Documents released to CEO; annex II.2_Redacted, Minutes of the Annual Meeting With Representatives Of The European Glass Industry – GLASS ALLIANCE EUROPE, 28 May 2015

41 European Commission-funded national webinars under NePSi refered to at http://www.rospa.com/rospaweb/docs/advice-services/occupational-safety/noshc/minutes/2016/february/NePSi-report.pdf, and http://www.nemo.nl/emo/emo-newsflash/emo-newsflash-2016-04. Also, see next footnote.

42 NePSi, Executive Summary, September 2016, http://www.NePSi.eu/sites/NePSi.eu/files/content/document/file/NePSi_2016_executive_summary_final.pdf

43 Documents released to CEO; annex 3_Redacted and annex 3a_Redacted,ibid.

44 Documents released to CEO; annex 3a_Redacted,ibid.

45 Interview with Laurent Vogel, ibid.

46 Documents released to CEO; annex 3a_Redacted, ibid.

47 Interview with Laurent Vogel, ibid.

48 "The establishment of exposure–response relationships not only provides critical evidence of causation, but the availability of quantitative exposures on crystalline silica and other exposures of relevance facilitates the accurate assessment of exposure–response relationships in the presence of potential confounders." IARC. Silica, some silicates, coal dust and para-aramid fibrils. IARC Monogr Eval Carcinog Risks Hum. 1997;68:1–475. Referenced at https://www.ncbi.nlm.nih.gov/books/NBK304370/

49 Documents released to CEO; annex 3_Redacted and annex 3a_Redacted, ibid.

50 Documents released to CEO; annex 10_Redacted, Mission Report, 15/10/2013, Service EMPL/B/3, Re. meeting with Industry Silica Task Force at BusinessEurope office on 27 September 2013

51 Documents released to CEO; annex 11a, Ref. Ares(2014)733009 – 14/03/2014, A socio-economic impact study to an EU limit value for RCS in CAD compared to CMD; A study conducted for the European Association of Silica Producers (EUROSIL)

52 Based on questionnaires sent out to industry, the study concluded a binding limit in the Carcinogens Directive would cost industry €152 billion and 7508 jobs, compared to just €25 billion and 50 job losses from a binding limit in the Chemical Agents Directive (or €23 billion for an indicative limit in the Chemical Agents Directive). This is because Carcinogens Directive, on top of the provisions of the Chemical Agents Directive, requires the use of closed systems and the reduction of exposure as far as technically possible when substitution cannot be applied.

53 Documents released to CEO; annex 12_Redacted, Ref. Ares(2014)733121 – 14/03/2014, Email sent Wednesday, February 19 from IMA-Europe

54 Documents released to CEO; annex 1.14_Redacted, Email 1 April 2014, Subject: Respirable Crystalline Silica BLV From IMA-Europe to EMPL Commissioner Andor's cabinet

55 Documents released to CEO; annex 1.16_redacted, DG EMPL Mission Report, 30 March 2015, Service EMPL/B/3 Re. meeting between Cabinet and the representatives from SIBELCO and IMA

56 Documents released to CEO; annex 11.2_Redacted, *ibid.*

57 Documents released to CEO; Annex 2a, EURACOAL Position Paper on Silica and the Carcinogens Directive, sent to DG EMPL 17 February 2012

58 Documents released to CEO; annex 3a_Redacted, *ibid.*

59 Documents released to CEO; annex 25a_Redacted, ETRMA input to the June 2013 meeting of the EU Commission working party on chemicals: Rubber Process and Dust Fumes; annex 25b_Redacted, ETRMA Technical Report on Rubber Fume and Dust

60 Interview with Laurent Vogel, ibid.

61 Cross-Industry Initiative, About http://www.cii-reach-osh.eu/about-the-cii.html; Members http://www.cii-reach-osh.eu/members.html, accessed 11/10/16.

62 European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, 13 May 2016, COM(2016) 248 final, https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-248-EN-F1-1.PDF

63 Transparency Register, Hanover Communications International, last modified on: 26/04/2016 http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=71298731457O-57, as accessed 11/10/16, Hanover's listed clients do not include the Cross-Industry Initiative

64 Documents released to CEO; annex 4_Redacted, DG EMPL Mission Report, 22/04/2016; annex 17_Redacted and annex 17a_Redacted final, Email and letter from CII's Christian Hierholzer to Commissioner Thyssen's cabinet, 24 April 2015, re. Follow-up to meeting of 17 March 2015; annex 17b; annex 18_Redacted, DG EMPL note to DG GROW and DG ENV, 3 July 2015; annex 18a_Redacted, Ref. Ares(2015)2840021 – 07/07/2015, Note for the File, Cross- industry initiative: Recommendations for better regulation in chemicals management, Meeting between Industry representatives and EMPL B3 Luxembourg, 2 July 2015; annex 18b, Cross- industry initiative: Recommendations for better regulation in chemicals management; annex 19_Redacted, Ref. Ares(2015)5010254 – 11/11/2015, Letter from DG EMPL, GROW and ENV to Mr Hierholzer; annex 19_Redacted, Ref. Ares(2015)5010254 – 11/11/2015, Letter from DG EMPL, GROW and ENV to Mr Hierholzer

65 *ibid.*

66 ChemSec, New proposal for exposure limit to Chromium VI calculates for cancer in every tenth worker, 19 May 2016, chemsec.org/new-proposal-for-exposure-limit-to-chromium-vi-calculates-for-cancer-in-every-tenth-worker

67 Chemsec, Why REACH authorisation and workers protection should both apply, May 2016, http://chemsec.org/wp-content/uploads/2016/05/reach-and-osh-paper_160603.pdf

68 Based on interview with Laurent Vogel, *ibid.*

69 See Chemsec, Why REACH authorisation and workers protection should both apply, *ibid.*

70 Example provided by Tony Musu, 24 November 2016

71 ChemSec, New proposal for exposure limit to Chromium VI calculates for cancer in every tenth worker, *ibid.*

72 Document released to CEO; annex 4_Redacted, *ibid.*

73 Document released to CEO; annex 18a_Redacted, *ibid.*

74 Document released to CEO; annex 18b, *ibid.*

75 "For any chemical agent for which an indicative occupational exposure limit value is established at Community level, member states shall establish a national occupational exposure limit value, taking into account the Community limit value, ***determining its nature in accordance with national legislation and practice.***" Chemical Agents Directive Article 3.3. "Determining its nature" refers to a binding or indicative nature ie member states can determine for themselves if the EU indicative limit shall be transposed as binding or indicative at national level. Directive 98/24/EC, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998L0024

76 ETUI, Cancer risks in the workplace… *ibid.*

77 Document released to CEO; annex 4_Redacted, *ibid.*

78 Documents released to CEO; annex 18b, *ibid.*

79 Documents released to CEO; annex 19_Redacted, ibid.

80 ibid.

81 Document released to CEO; annex 4_Redacted, *ibid.*

82 See REFIT Platform Members, http://ec.europa.eu/smart-regulation/refit/refit-platform/index_en.htm, and Remit, http://europa.eu/rapid/press-release_IP-16-188_en.pdf

83 REFIT Platform Opinion, Date of Adoption: 27/28 June 2016, REFIT Platform Opinion on the submission by the Cross Industry Initiative on the interface between REACH and the EU Occupational Safety and Health (OSH) legislation, http://ec.europa.eu/smart-regulation/refit/refit-platform/docs/recommendations/opinion_chemicals.pdf

84 REFIT Platform Opinion, *ibid.*

85 REFIT Platform Opinion, *ibid.*

86 Documents released to CEO; annex 22a, Ref. Ares(2016)1653454 – 07/04/2016, Position Paper 30 January 2014, CEEMET Advocates a Universal Approach to Chemicals at EU Level

87 Documents released to CEO; annex 22a, ibid.

88 ibid.

89 ibid.

90 ETUI, Cancer risks in the workplace… *ibid.*

91 Interview with Laurent Vogel, *ibid.*

92 Rebekah Smith, Senior adviser, Social Affairs Department, BusinessEurope, presentation at EMPL committee meeting, 13 October 2016, Agenda item 14. Amendment to Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, Europarl TV recording here: http://www.europarl.europa.eu/ep-live/en/committees/video?event=20161013-0900-COMMITTEE-EMPL#managehelp

93 *According to ECHA's dose-response curve, which shows potential deaths related to different levels of exposure.* Source: ChemSec, New proposal for exposure limit to Chromium VI calculates for cancer in every tenth worker, *ibid.*

94 European Commission, Commission proposes better workers' protection against cancer-causing chemicals, Brussels, 13 May 2016, http://europa.eu/rapid/press-release_MEMO-16-1655_en.htm; and, Annex to the Commission's proposal, https://www.eumonitor.eu/9353000/1/j4nvgs5kjg27kof_j9vvik7m1c3gyxp/vk477ljzzxyq/f=/8962_16_add_1.pdf

95 Trade Union demands to stop cancer at work, Presentation by ETUC at Public Hearing on the Protection of workers from exposure to carcinogens or mutagens at work, European Parliament, Brussels, 13 October 2016, http://www.emeeting.europarl.europa.eu/committees/agenda/201610/EMPL/EMPL%282016%291012_1/sitt-3266470

96 European Parliament EMPL Committee, DRAFT REPORT on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (COM(2016)0248 –C8-0181/2016 –2016/0130(COD)), 22 November 2016, Rapporteur: Marita Ulvskog, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-593.996+01+DOC+PDF+V0//EN&language=EN

97 EUROSIL-commissioned study – see Part 2 of main article. Documents released to CEO; annex 11a, Ref. Ares(2014)733009 – 14/03/2014, A socio-economic impact study to an EU limit value for RCS in CAD compared to CMD; A study conducted for the European Association of Silica Producers (EUROSIL)

98 See Annex 2. ECFIA-commissioned study recommends 0.5 f/ml, but the Employers Interest Group of the Advisory Committee on Safety and Health recommended 0.3 f/ml

99 *ibid.*

100 Based on comments by Rebekah Smith, Senior adviser, Social Affairs Department, BusinessEurope, presentation at EMPL committee meeting, 13 October 2016, Agenda item 14. Amendment to Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, Europarl TV recording here: http://www.europarl.europa.eu/ep-live/en/committees/video?event=20161013-0900-COMMITTEE-EMPL#managehelp

101 Based on comments by Rebekah Smith, *ibid.*

102 European Parliament EMPL Committee, Draft Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (COM(2016)0248 –C8-0181/2016 –2016/0130(COD)), 22 November 2016, Rapporteur: Marita Ulvskog, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-593.996+01+DOC+PDF+V0//EN&language=EN

103 European Parliament resolution of 15 December 2011 on the mid-term review of the European strategy 2007-2012 on health and safety at work (2011/2147(INI))

104 Rebekah Smith, Business Europe, EMPL presentation, *ibid*. BusinessEurope's representative told the EMPL committee that "we're not in favour of opening up the articles of the directive" and that "only substances that are scientifically proven and classified as carcinogens should be added to annex, as at the end of the day this is the carcinogens directive". Together, these would seem to imply BusinessEurope is against expanding the scope of the Carcinogens Directive to include reprotoxins, which would require changing the articles.

Interestingly, extending the Occupational Carcinogens and Mutagens Directive to include reprotoxins would actually make it more consistent with REACH, which classes carcinogens, mutagens and reprotoxins together as 'substances of very high concern'.

105 Amendment 6, *ibid.*

106 European Parliament, Carcinogens Directive Procedure File, http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0130(COD

Annex 1: Overview of EU Workers' Health and Safety laws and EU Chemicals rules

EU Occupational Safety and Health (OSH) laws include several Directives, notably:

* **Occupational Safety and Health Framework Directive** (89/391/EC)
* **Chemical Agents Directive** (98/24/EC)
* **Carcinogens and Mutagens Directive** (2004/37/EC)
* **Exposure to asbestos at work Directive** (2009/148/EC)

Both the Chemical Agents Directive and Carcinogens Directive can be used to set EU-wide occupational exposure limits (OELs). Their nature (ie binding or indicative) depends on which directive they are set under:

* **Indicative Occupational Exposure Limit Values** (iOELVs) are established under the Chemical Agents Directive. In response, Member States must establish a national exposure limit which takes into account the EU indicative one, but it can be higher or lower, and may be transposed into national law as a binding or non-binding exposure limit. In this article, iOELVs are referred to as 'indicative exposure limits'
* **Binding Occupational Exposure Limit Values** (BOELVs) can be established under the Carcinogens Directive, the Asbestos Directive or the Chemical Agents Directive. They are binding 'upper limits' for all Member States. National exposure limits can be lower (ie stricter) but not higher (ie weaker). In this article we will call BOELVs 'binding exposure limits'.

Several advisory bodies are involved in the setting of substance exposure limits. The European Commission's DG Employment can start the process by selecting "candidate substances". These are then assessed by the Scientific Committee on Occupational Exposure Limits (SCOEL), on the basis of scientific evidence only. But the Scientific Committee can also decide to prepare a recommendation without any mandate from the Commission. The Scientific Committee's recommendations (subject to a consultation with national authorities) are then used as a starting point for discussion in the tripartite Advisory Committee on Safety and Health (ACSH). This Advisory Committee is composed of national representatives of government, employees and employers. The Advisory Committee's Chemicals Working Party (WPC) produces an opinion concerning the workability of the Scientific Committee's recommended exposure limits, which may include feasibility and socio-economic considerations. The Commission is not bound by the Advisory Committee opinion, though it will be taken into account.

The EU's main chemicals law is **REACH**, which stands for **Registration, Evaluation, Authorisation and Restriction of Chemicals**. REACH considers both health and environmental risks with regards to whether a chemical should be allowed to be manufactured, imported, marketed or used in the EU. Its provisions for requiring the substitution of the most dangerous chemicals refer not only to health risks (which is the case for the Occupational Safety and Health laws, above) but also to environmental risks. Under REACH, companies must apply for authorisations for chemicals on a use-specific basis. Authorisations are costly, and only temporary – granted for a certain number of years, on a case by case basis, after which authorisation must be applied for again.

It is because REACH authorisation – which requires companies to provide information on information on the hazards and risks – is a very costly procedure, that some industry groups have calculated that if they can use Occupational Safety and Health laws, like the Carcinogens Directive – including occupational exposure limits – as an excuse to get out of REACH authorisation, they can save money. Whilst in other cases (e.g. silica dust – which is not covered under REACH), binding occupational exposure limits under the Carcinogens Directive have been vehemently opposed by industry, because they would be costly.

Annex 2: Lobby case book on other carcinogenic substances

Refractory Ceramic Fibres

Much of the industry lobbying around Refractory Ceramic Fibres (RCF), which are used in insulation, has focused on attempting to use the inclusion of ceramic fibres in the Carcinogens Directive as a way to avoid the more costly REACH authorisation (see Part 3 and Annex 1).[1] So, for example, ECFIA, which represents the European High Temperature Insulation Wool industry, lobbied the Commission that establishing an EU binding exposure limit in the framework of occupational health and safety laws is "in their view a better risk management option than authorisation"[2] of ceramic fibres under REACH, which "would not add value for society and workers".[3] Together with the likes of ACEA, Cerame-Unie, Eurofer and GlassAlliance, ECFIA warned the Commission of the doomsday scenarios that would unfold if ceramic fibres were to be REACH authorisation rather than just occupational health and safety rules, describing authorisation as "disproportionate, inefficient and potentially damaging to European industry and society as a whole".[4] However, as explained in Part 3, both safety nets – REACH and the Carcinogens Directive – are needed.[5]

ECFIA's lobby arsenal has included inviting the Commission to meet with a "number of eminent industry experts" at a fiber toxicology conference[6] (one which cost £495 to attend and was partially sponsored by ECFIA),[7] and commissioning industry favourable-recommendations from consultancies (see below). It has described its "main mission" as being to develop and "promote **science based** occupational health & safety practices for inorganic insulation wools".[8] The compelling-sounding but vague term 'science based' is a favourite of industry lobbies keen to use the Better Regulation agenda to dismiss precautionary approaches to health and environmental harm as "unscientific". And we know ECFIA has jumped on the Better Regulation bandwagon because REFIT is number one in its list of topics lobbied on, in its Transparency Register entry.[9] Again, Better Regulation-style rhetoric is invoked by ECFIA in arguing that an "adequate" binding limit on ceramic fibres under the Carcinogens Directive is the best risk management option under REACH (rather than authorisation) as it would put much "less administrative burden on both industry and regulators".[10] But its idea of an "adequate" binding limit differs greatly from that advocated by trade unions as adequate to protect workers.

ECFIA commissioned a firm called Everest Consulting Associates to come up with a "protective yet feasible regulatory limit value".[11] The result was a recommended binding exposure limit of 0.5 f/ml, a figure they claimed was "technically and economically feasible". It would lead "to an overall reduction of workplace exposures across the EU" by driving "industry to target lower average exposure levels". Trade unions on the other hand have recommended a ceramic fibres limit of 0.1 f/ml.[12] But ECFIA was quite clear on what the "compliance costs" of a 0.1 f/ml limit would be – in France, where this

1 Industry lobbies haven't however succeeded in keeping RCF out of the REACH authorisation list: both Zirconia Aluminosilicate Refractory Ceramic Fibres (https://echa.europa.eu/candidate-list-table/-/dislist/details/0b0236e1807db873) and Aluminosilicate Refractory Ceramic Fibres (https://echa.europa.eu/candidate-list-table/-/dislist/details/0b0236e1807db749) are listed in the REACH candidate list. This corresponds with trade union recommendations, see https://www.etuc.org/IMG/pdf/TUListREACH.pdf

2 Documents released to CEO; annex 15_Redacted, Mission Report,, 05 May 2014, Service EMPL/B/3, Re. meetings on 25-26 March 2014 including with Refractory Ceramic Fibres (RCF) Industry and with EURIMA (mineral wool)

3 Documents released to CEO; annex 5a, Presentation, branded ECFIA

4 Documents released to CEO; annex 23a, Ref. Ares(2016)2616458 – 06/06/2016, Inclusion of RCF in Reach Annex XIV? Socio-Economic Implications, 27th November, 2014

5 Interview with Laurent Vogel, Senior Researcher at ETUI, 11 October 2016, by Rachel Tansey

6 Documents released to CEO; annex 37a_Redacted, Ref. Ares(2016)2616370 – 06/06/2016, Letter from ECFIA, 20 May 2014

7 ECFIA website, Cranfield University Fibre Toxicology Conference, http://blog.ecfia.eu/?p=568

8 Documents released to CEO; annex 34a, Presentation branded ECFIA: RCF | Definition ofa BOELV, Meeting with DG Employment| Luxembourg, 20 November 2013

9 TR, ECFIA, http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=43706791464 5-34

10 Documents released to CEO; annex 34a, ibid.

11 ibid.

12 Tony Musu, Trade union demands to stop cancer at work, Public hearing on the Protection of workers from exposure to carcinogens or mutagens at work, European Parliament, Brussels, 13 October 2016. Can be downloaded from

is already the limit, ECFIA "explained" to the Commission how "some of the tasks in the production process had to be relocated, while automatic procedures and other protective measures had to be adopted."[13]A thinly veiled threat perhaps? If you protect our workers properly, we might just close our factories, or replace people with machines… You could be forgiven for wondering what century we're in, because that does sound a lot like the threat of a 19th Century mill-owning industrialist!

Interestingly, the 2012 opinion of the Advisory Committee on Safety and Health (in which employers and workers are equally represented) notes with respect to ceramic fibres that "there is difference of view on the exact numerical value that would be appropriate. The Workers Interest Group request a value of 0.1 f/ml whereas the Employers Interest Group request a value of 0.3 f/ml".[14] Workers wanted 0.1, due to evidence that certain fibres "exhibit a carcinogenic potency comparable to asbestos", noting that this value correspondents to upper risk limits agreed in both the Netherlands and Germany. Employers agreed on 0.3, which they stressed was even stricter than the "protective level" of 0.5 f/ml that industries have been working on for many years, further reduction beyond which "is technically difficult" - in other words, they imply, its a generous offer! And which limit did the Commission proposal goes with? The employer's limit, 0.3 f/ml.

Formaldehyde

In December 2013, the European Federation of Building and Wood Workers (EFBWW) and the European Furniture Manufacturers Federation (UEA) wrote to the Commission and the Advisory Committee on Safety and Health to say that they were "particularly concerned about the non-inclusion of formaldehyde in the list of carcinogenic products".[15] The furniture sector has more than a million employees in the EU, and the workers organisations' concern was the lack of protection around formaldehyde emissions from materials used in the production of furniture. At the time, the EU didn't classify formaldehyde as strictly as the World Health Organisation, and so the Commission responded that it didn't fall under the Carcinogen Directive's scope.[16] As of April 2015 however, formaldehyde is classed as a carcinogenic (1B) in the EU and so falls under the scope of worker protection in the Carcinogen Directive.[17] So far, so good...

But has formaldehyde been included in the Carcinogen Directive? Not in the first wave list, and according to inside information, it won't be in the second wave either (which the Commission is expected to publish around 21st December 2016). Meaning it may be relegated to the third wave, if there is one, which could be as late as the end of 2020.[18] So why the delay? Well, we know that the Scientific Committee on Occupational Exposure Limits recommended its inclusion, as did ETUI, which included it in its March 2016 list of 71 substances and processes that require a binding exposure limit through the Carcinogen Directive.[19] To find the opposition to formaldehyde's inclusion, we need look no further than a cluster of industry lobby groups with vested financial interest in avoiding costly health and safety protections: the European Panel Federation (EPF), Kronochem and Formacare.

With reference to a study analysing the risk management options for formaldehyde, these industry groups met the Commission in January 2014 and "underlined the extreme difficulty and economic cost for the industry for complying with the limit values in the current SCOEL Recommendation (or values in the same range)".[20] The so-called 'independent' study they referred to was commissioned by EPF and Formacare, and carried out by TNO Triskelion bv and Risk & Policy Analysts Limited (RPA). The study claimed that "safe use for workers and consumers was demonstrated" by the study, but went on to recommend an EU exposure limit of 0.4 ppm.[21] For comparison, the EFBWW – representing workers exposed to formaldehyde – calls on the Commission

http://www.emeeting.europarl.europa.eu/committees/agenda/201610/EMPL/EMPL(2016)1012_1/sitt-3266470

13 Documents released to CEO; annex 35_Redacted, Ref. Ares(2016)2493017 – 30/05/2016, Note on the meeting with the Refractory Ceramic Fibres industry on the 18/02/2014, DG EMPL B.3, European Ceramic Fibre Industry Association (ECFIA), UNIFRAX, Morgan Thermal Ceramics

14 European Commission Advisory Committee on Safety and Health at Work, Opinion, Doc. 2011/12, Opinion on the approach and content of an envisaged proposal by the Commission on the amendment of Directive 2004/37/EC on Carcinogens and Mutagens at the workplace, Adopted on 05/12/2012, https://www.etui.org/content/download/8265/78905/file/ACSH+CMD+Opinion_Adopted+05+12+2012.pdf

15 Documents released to CEO; annex 7_Redacted, Joint letter from EFBWW and UEA to Advisory Committee on Safety and Health, DG EMPL, DG ENER, 3 Dec 2013; annex 7a_Redacted; annex 7b

16 Documents released to CEO; annex 8_Redacted, DG EMPL response letter on formaldyhyde to EFBWW and UEA, reference dated March 2013

17 ETUI, Cancer risks in the workplace: better regulation, stronger protection — Tony Musu, Laurent Vogel and Henning Wriedt, Working Paper, May 2016

18 Based, in part, on interviews with ETUI's Tony Musu (member of the ACSH), 03/11/16, and Laurent Vogel, 11/10/16

19 ETUI, Carcinogens that should be subject to binding limits on workers' exposure — Henning Wriedt, 2016

20 Documents released to CEO; annex 20_Redacted final, DG EMPLNotes of the meeting with industry representatives for formaldehyde, 22/01/2014 with European Panel Federation (EPF), Kronochem, Formacare

21 Formacare, CEFIC, Independent study confirms safe use of formaldehyde, News release 30 April 2014, www.formacare.org/wp-content/uploads/2014/09/Independent_study_confirms_safe_use_of_formaldehyde.pdf

to set a binding limit value half that, of 0.2 ppm.[22] Yet the industry-commissioned study "estimates that reducing occupational exposure limits below 0.4 ppm will incur substantial cost to the industry, without significant improvement in the health and safety of workers".[23] The industry lobbies also stated that "there is no epidemiological evidence for diseases associated with exposure to formaldehyde and that the most sensitive effects are eye blinking and irritation."[24] Commission correspondence also refers to a meeting to be scheduled in May/June 2014, with later emails showing Formacare met with DG GROW – who helpfully provided Formacare with lobbying tips of who to meet in DG EMPL, SCOEL and the appropriate legal officers – and again with DG EMPL in Spring 2015.[25]

Trichloroethylene

Trichloroethylene (TCE) is likely to be included in the second wave list of substances to be included in the Carcinogen Directive. It is another instance where industry has leapt on its inclusion in the workplace cancers directive as an opportunity to circumvent costly and 'burdensome' chemical authorisation requirements under REACH (see Part 3). In January 2012, "specialist management consultancy" EPPA, whose clients at the time included Bayer, Total, Arkema, Banner Chemicals and Dow Europer CropScience,[26] wrote to DG EMPL. EPPA argued that since REACH might allow an authorisation exemption for industrial use of TCE as surface cleaning in closed systems if and when a binding exposure limit for TCE is adopted, one should be "introduced as soon as possible so as to avoid high administrative authorisation costs for companies".[27] With a list of questions it would like confirmed or clarified, EPPA ended its communication "We do not need written answers, just let us know when we can call you" - all the better to leave no paper trail!!

A Commission report of a later meeting with EPPA, in July 2012, describes the firm as "representing the European Suppliers of Trichloroethylene (TCE)"[28] - though no such named client was listed in their lobby register entry at the time.[29] This report reveals that the lobby firm on the payroll of the TCE industry asked DG EMPL to support its "policy approach", as "DG ENTR and DG ENV would not accept that the existing general requirements of the Carcinogens and Mutagens Directive (2004/37/EC) and/or the SCOEL recommendation to be sufficient to justify an exemption from the authorisation system".

Rubber dust and fumes:

The European Tyre & Rubber Manufacturers Association (ETRMA) told the Commission's Working Party on Chemicals in June 2013 that the inclusion of 'rubber process fume and dust' in the Carcinogens Directive "will be counter-productive". They said it would "impose a disproportionate burden on EU rubber manufacturing in comparison to non-EU competitors... creating a potential impact on EU employment." Instead, ETRMA suggested that the Commission should take "into account the improvements to workers' protection made by industry over the last 30+ years" and pointed towards a study being "supported by ETRMA".[30] This contrasts with ETUI's position that the Carcinogens Directive should be broadened to include process-generated substances including rubber process dusts and fumes.[31] But lo-and-behold, the Commission did not include rubber dust and fumes in its May 2016 proposal, and although there are indications that it may be included in the second wave list of carcinogens, it is feared that it will be included without an exposure limit value.[32]

22 EFBWW Policy on the protection of workers exposed to dangerous chemicals at workplaces http://www.efbww.org/pdfs/efbww%20policy%20paper%20on%20chemicals%20gb%20final%20final.pdf

23 Formacare, CEFIC, Independent study... ibid. At their January 2014 meeting with DG EMPL, the industry lobbies also referred to recent findings of the study of Prof. [redacted] et al (2013), with the academic's name redacted – yet this Professor, the industry lobbies insisted, would be willing "to attend a SCOEL meeting and present personally the results of his recent study." Annex 20_Redacted final, ibid.

24 Documents released to CEO; annex 20_Redacted final, DG EMPLNotes of the meeting with industry representatives for formaldehyde, 22/01/2014 with European Panel Federation (EPF), Kronochem, Formacare

25 Documents released to CEO; annex 20_Redacted final, ibid.; annex 1.21_Redacted, Subject: Request for a meeting with Formacare, to DG EMPL B3, 31 March 2015,

26 Data from LobbyFacts, EPPA SA, Clients listed for financial year: 1 Jan 2012 - 1 Dec 2012, https://lobbyfacts.eu/representative/235839a07d834734a533bcd9df956aac/eppa-sa; EPPA, http://www.eppa.com/about-us

27 Documents released to CEO; Annex 1 Ares 2012 53783_Redacted, Ref. Ares(2012)53783 – 17/01/2012, Email from EPPA to DG EMPL B3, January 17, 2012, Subject: URGENT - Trichloroethylene (TCE) - Occupational Exposure Limit (OEL) under the Chemical Agents and Carcinogens and Mutagens Directives (Directives 98/24/EC - 2004/37/EC) - Binding and indicative OEL

28 Documents released to CEO; annex 6_Redacted, Mission Report, 02/07/2012, Service EMPL/B/3, re. meeting with EPPA

29 LobbyFacts, ibid.

30 Documents released to CEO; annex 25_Redacted, Email from ETRMA to DG EMPL, 17 May 2013 re. Rubber fume and dust: ETRMA input to the WPC (June 2013 meeting); annex 25a_Redacted, ETRMA input to the June 2013 meeting of the EU Commission working party on chemicals: Rubber Process and Dust Fumes; annex 25b_Redacted, ETRMA Technical Report on Rubber Fume and Dust

31 ETUI, Cancer risks in the workplace... ibid.

32 Interview with Laurent Vogel, ibid.

CEO

Corporate Europe Observatory (CEO) is a research and campaign group working to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy making.

This corporate capture of EU decision-making leads to policies that exacerbate social injustice and accelerate environmental destruction across the world. Rolling back corporate power and exposing greenwash are crucial in order to truly address global problems including poverty, climate change, social injustice, hunger and environmental degradation. Corporate Europe Observatory works in close alliance with public interest groups and social movements in and outside Europe to develop alternatives to the dominance of corporate power.

Cover picture: iStock.com/Jezperklauzen | Design: stijn@nestor.coop