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Directorate-General for Employment, Social Affairs & Inclusion

Unit B3: Health, Safety and Hygiene at Work

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**Public Consultation: Ref. Ares(2020)6089500 -
29/10/2020: Health & Safety at Work – EU Strategic
Framework (2021-2027)**

Stanowisko Związku Pracodawców Polska Miedź w sprawie ram strategicznych UE (2021-2027) dotyczących zdrowia i bezpieczeństwa w miejscu pracy.

The Polish Copper Employers' Association position paper on EU Strategic Framework on Health and Safety at Work [2021- 2027]

Konsultacje publiczne: „Zdrowie i bezpieczeństwo w miejscu pracy – ramy strategiczne UE (2021–2027)” Ref. Ares(2020)6089500 - 29/10/2020

Commission Communication - Roadmap - Ref. Ares(2020)6089500 - 29/10/2020 – EU Strategic Framework on Health and Safety at Work [2021- 2027]

The Polish Copper Employers' Association (former Employers' Organization of Polish Copper) (Związek Pracodawców Polska Miedź) was established in 1996. We are the biggest, independent and not-for-profit regional employers' organization whose goal is to represent and protect employers' interests. As the representative of the Polish metals mining, processing and smelting industry and also SME sector, we are writing to express our opinion as part of public consultations to the document "Roadmap" under the initiative "EU Strategic Framework on Health and Safety at Work [2021 - 2027]" and the provisions of Article 153 of the Treaty on the Functioning of the European Union. Roadmap is a document that contains strategic goals related to maintaining and improving the health and safety of employees.

The legal basis for the Roadmap is Article 153 (1) (a) of the Treaty on the Functioning of the European Union. It is an initiative in the area of the improvement of the working environment to protect workers' health and safety, which is a shared competence between the EU and Member States.

It takes into account the risks arising from new working methods and technologies, digitization and the COVID-19 pandemic. At the same time, the continuation of the current directions of activities is indicated, including those related to limiting exposure to substances harmful to health.

As part of the public consultation for the Roadmap, we would also like refer to the provisions of the Employment, Social Policy, Health and Consumer Affairs Council's conclusions on "A New EU

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Strategic Framework on Health and Safety at Work: Enhancing the implementation of Occupational Safety and Health in the EU" from 10 December 2019, including the statement that:

"Setting binding occupational exposure limit values for priority carcinogens and mutagens has been a very important improvement in OSH legislation in recent years. Binding exposure limit values are now set for 25 substances. These exposure limits should reduce the risk of millions of workers developing cancer. Work on identifying further carcinogens and mutagens at the workplace and setting limit values for them therefore needs to continue to be a high priority."

For several years, we have been observing changes taking place in this area, in particular changes in the CMD Directive, which consist in a sharp reduction of BOEL values. These tightenings are a multiple of the previously binding values. The following are values of BOELS referring only to our member companies, for example:

The restrictions which were introduced in 2017-2019

1. Cadmium	was: 0,01 mg/m ³	is: 0,001 mg/m ³
2. Diesel engine exhaust emissions	was: 0,5 mg/m ^{3*}	is: 0,05 mg/m ^{3**}
3. Nitrogen monoxide NO	was: 3,5 mg/m ³	is: 2,5 mg/m ³

*respirable fraction

**elemental carbon

The restrictions planned in the coming years:

1. Lead	is: 0,05 mg/m ³ proposition: 0,004 mg/m ³
2. Cobalt	is: 0,02 mg/m ³ proposition: 0,001 mg/m ³
3. Nickel	is: 0,25 mg/m ³ proposition: 0,01 mg/m ³

We emphasize that the health and safety of employees is the highest value, nevertheless, we have a number of significant comments related to the process of introducing BOEL into the legal circulation in the European Union.

Procedural changes have occurred over the past year on the power equilibrium between the various actors involved throughout the process, namely with (i) the transfer of responsibilities from SCOEL to the ECHA and (ii) the introduction of delegated acts for IOELVs.

In January 2019, the Commission (DG EMPL) and ECHA signed a Service Level Agreement on OEL scientific evaluations to be carried out by ECHA (RAC) instead of SCOEL. This agreement requires ECHA to assess four to five OELs per year from 2020 onwards.

Regarding the activities of ECHA in the chemicals evaluation process in the BOEL value assessment process, we would like to point out some facts regarding some of its steps:

- Scientific reports – in our opinion, they are often a compilation of various scientific studies - even from distant years - not always taking into account the results of the latest research or research data provided by various industries. An example of such a critical assessment of ECHA's scientific report is the International Lead Association report submitted to ECHA as part of the 2019 public consultation on lead.
- During the public consultations of the scientific reports, only their scientific content may be referred to. At this stage, it is not possible to provide information on the socio-economic impact of changing the BOEL value on industry, which is often very severe.
- The impact assessment for new BOEL values is developed after recommendations of their values by RAC (ECHA) and then after their adoption by ASCH. Neither RAC and ACSH take



into account the socioeconomic conditions and evaluations that are only developed after their opinion has been obtained by DG EMPLOYMENT.

To better illustrate and support our position - we would like to use an example concerning one of our member company. Underground mining is one of the areas where new values of indicators for employee exposure to diesel engine exhaust emissions, which decreased from 0.5 mg/m³ (respirable fraction) to 0.05 mg/m³ (elemental carbon), will be implemented. For the new BOEL value - measured as elemental carbon - the new value will apply from February 21, 2026, but to date, no test method has been developed to measure elemental carbon. In Poland, the Central Institute for Labor Protection - National Research Institute plans that the measurement method for exhaust gases emitted from diesel engines - measured as elemental carbon - will be published in the fourth quarter of 2020. Moreover, the new BOEL value has not been implemented into the national law to date. Therefore, at the moment we do not know if and to what extent we exceed the standards set in the directive.

In Polish copper industry, we use over 1,200 machines equipped with this type of engines. The value of one machine is approximately \$ 1 million on average. You can easily calculate the cost of replacing all machines. At this point, it should also be emphasized that such an operation, if it were to take place, should not only be spread over time, but also the company would expect support in a form such as inclusion in the European Union's strategy for the years 2021-2027, activities aimed at:

- a) development of technical solutions used to reduce the emission of toxic substances in exhaust emissions of diesel engines used in underground mining excavations,
- b) supporting activities related to the construction of filtering systems for machine operators' cabins and / or sealing these workstations,
- c) creating new solutions in the field of personal protective equipment for employees exposed to diesel exhaust fumes, including those limiting the exposure to nitrogen oxides,
- d) development of new low-emission technological solutions in the field of exploitation of deposits and tunnel works,
- e) a holistic approach to monitoring the health of employees working in a hazardous work environment, health prevention and rehabilitation,
- f) developing methods of monitoring the fatigue of employees working in a difficult working environment and managing fatigue.

The above actions, if implemented, would have a positive impact on the entire mining industry (especially underground and tunnel mining) and all other using machines equipped with diesel engines.

Introduction to the Directive 2019/130, which includes changes to the BOEL norms for diesel engines, point 17 states: „**With regard to diesel engine exhaust emissions, a limit value of 0,05 mg/m³ measured as elemental carbon may, in some sectors, be difficult to achieve in the short term.** Therefore, in addition to the transposition period, a two year transitional period should be introduced before the limit value should apply. However, for the sectors of underground mining and tunnel construction, a five year transitional period, in addition to the transposition period, should be introduced before the limit value should apply.”

In view of the above, we would expect you to consider the following proposals:

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- Companies or their associations **should be more involved** in bringing BOEL into legal circulation in EU. The process of establishing BOEL needs to be remodeled.
- **The quality of the scientific reports** prepared by ECHA for public consultation, which are also the basis for the recommendation of the BOEL values by RAC, **should be significantly improved**, for example taking into account/analysis data provided by industry or its representatives.
- As part of the above postulate, we believe that **impact assessment should be compulsorily developed at ECHA in parallel with the scientific report and**, similarly to the scientific report, **should be subject to open public consultation**, and its authors should refer to comments collected during this process.
- **Support for enterprises adapting to stricter BOEL values** in the form of facilities for financing research and development works and expenditure incurred on activities aimed at adapting production processes or/and the technologies used by them to new requirements.
- From our point of view, **further tightening of the BOEL values, without support** for the employers in adapting to them, **significantly reduces the effectiveness of these activities and leads to a serious increase in the costs of their operation**, which may in turn lead to **loss of jobs and lower competitiveness** of European industry.
- **Memorandum to tighten all OELs due to COVID-19 by the end of 2022.** The industry has been hit particularly hard by the economic impact of the pandemic, has to make huge effort to protect workplaces and at the same time needs to make an expensive green transformation.

We also would like to draw your attention to the issues connected with personal protective equipment.

As a justification for our proposal, we would like to draw attention to the fact that personal protective equipment (PPE), although it is the last element in ensuring the employees' safety working in the presence of risks, is often the only technical solution used. This is particularly the case for SMEs, where the number of accidents and occupational diseases is worryingly high.

An important factor in ensuring protection for users is the selection, training and proper fit of personal protections. This aspect is stated in the PPE Regulation highlighting the adaptation of PPE to users' morphology. There are currently a number of normative documents describing the methodology and requirements for the implementation of the PPE fitting assessment for specific persons. Tools and guides are also available to perform these tests at a quantitative and qualitative

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level, such as respiratory or hearing protection, which belong to the highest 3rd category of PPE. Simultaneously, it should be stressed that such an assessment for a specific employee cannot be obtained during tests in accredited laboratories.

Several countries in Europe have implemented fit testing requirements for employees using a particular type of PPE. Only a small proportion of employers operating in countries with no such regulations, respecting high standards of safety and health at work, use such practices. The issue of fit testing of PPE, including respiratory protection, is of particular importance with regard to risks such as chemical agents and carcinogens (as part of the previous EU-OSHA campaign) as well as the biological risks currently covering SARS-CoV-2 spread (in particular ensuring effective protection for healthcare professionals directly exposed to such risks).

As a justification for the importance of fit tests for improving working conditions and health of employees, we would like to emphasize the fact of eliminating lead in the copper industry in Poland. One of the important elements of reducing the level of lead in the blood of employees was the implementation of regular fit tests of respiratory protection and related practical trainings.

In view of the above, we would like to emphasize the need to harmonise the approach and strengthen the enforcement of fit testing of PPE applied by promoting the tools available in countries where requirements are not in place and include it in all related training procedures. Following the experience of OSH leaders and practices, we believe that increasing awareness of the importance of PPE fit test will improve the safety and health of workers in many areas, including occupational diseases caused by the penetration of respiratory hazards, but also from hearing loss. Both of these are the cause of a significant part of occupational diseases, affecting the costs incurred by employers but also the huge social expenditure.

Beata Staszaków,

President of the Board & CEO of The Polish Copper Employers' Association

The position was prepared on the basis of expert opinions from member entities of the The Polish Copper Employers' Association.