

Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (codified version) (Text with EEA relevance)

[^{X1}CHAPTER II

EMPLOYERS' OBLIGATIONS

Article 4

Reduction and replacement

- 1 The employer shall reduce the use of a carcinogen or mutagen at the place of work, in particular by replacing it, in so far as is technically possible, by a substance, [^{F1}mixture] or process which, under its conditions of use, is not dangerous or is less dangerous to workers' health or safety, as the case may be.
- 2 The employer shall, upon request, submit the findings of his investigations to the relevant authorities.

Textual Amendments

- F1** Substituted by [Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation \(EC\) No 1272/2008 on classification, labelling and packaging of substances and mixtures.](#)

Article 5

Prevention and reduction of exposure

- 1 Where the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, workers' exposure must be prevented.
- 2 Where it is not technically possible to replace the carcinogen or mutagen by a substance, [^{F1}mixture] or process which, under its conditions of use, is not dangerous or is less dangerous to health or safety, the employer shall ensure that the carcinogen or mutagen is, in so far as is technically possible, manufactured and used in a closed system.
- 3 Where a closed system is not technically possible, the employer shall ensure that the level of exposure of workers is reduced to as low a level as is technically possible.
- 4 Exposure shall not exceed the limit value of a carcinogen as set out in Annex III.
- 5 Wherever a carcinogen or mutagen is used, the employer shall apply all the following measures:
 - a limitation of the quantities of a carcinogen or mutagen at the place of work;
 - b keeping as low as possible the number of workers exposed or likely to be exposed;

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- c design of work processes and engineering control measures so as to avoid or minimise the release of carcinogens or mutagens into the place of work;
- d evacuation of carcinogens or mutagens at source, local extraction system or general ventilation, all such methods to be appropriate and compatible with the need to protect public health and the environment;
- e use of existing appropriate procedures for the measurement of carcinogens or mutagens, in particular for the early detection of abnormal exposures resulting from an unforeseeable event or an accident;
- f application of suitable working procedures and methods;
- g collective protection measures and/or, where exposure cannot be avoided by other means, individual protection measures;
- h hygiene measures, in particular regular cleaning of floors, walls and other surfaces;
- i information for workers;
- j demarcation of risk areas and use of adequate warning and safety signs including 'no smoking' signs in areas where workers are exposed or likely to be exposed to carcinogens or mutagens;
- k drawing up plans to deal with emergencies likely to result in abnormally high exposure;
- l means for safe storage, handling and transportation, in particular by using sealed and clearly and visibly labelled containers;
- m means for safe collection, storage and disposal of waste by workers, including the use of sealed and clearly and visibly labelled containers.

Textual Amendments

- F1** Substituted by [Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation \(EC\) No 1272/2008 on classification, labelling and packaging of substances and mixtures.](#)

Article 6

Information for the competent authority

Where the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, employers shall, when requested, make available to the competent authority appropriate information on:

- (a) the activities and/or industrial processes carried out, including the reasons for which carcinogens or mutagens are used;
- (b) the quantities of substances or [F1mixtures] manufactured or used which contain carcinogens or mutagens;
- (c) the number of workers exposed;
- (d) the preventive measures taken;
- (e) the type of protective equipment used;
- (f) the nature and degree of exposure;
- (g) the cases of replacement.

[^{F2}The Member States shall take into account the information under points (a) to (g) of the first paragraph of this Article in their reports submitted to the Commission under Article 17a of Directive 89/391/EEC.]

Textual Amendments

- F1** Substituted by [Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation \(EC\) No 1272/2008 on classification, labelling and packaging of substances and mixtures.](#)
- F2** Inserted by [Directive \(EU\) 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work \(Text with EEA relevance\).](#)

Article 7

Unforeseen exposure

- 1 In the event of an unforeseeable event or an accident which is likely to result in an abnormal exposure of workers, the employer shall inform the workers thereof.
- 2 Until the situation has been restored to normal and the causes of the abnormal exposure have been eliminated:
 - a only those workers who are essential to the carrying out of repairs and other necessary work shall be permitted to work in the affected area;
 - b the workers concerned shall be provided with protective clothing and individual respiratory protection equipment which they must wear; the exposure may not be permanent and shall be kept to the strict minimum of time necessary for each worker;
 - c unprotected workers shall not be allowed to work in the affected area.

Article 8

Foreseeable exposure

1 For certain activities such as maintenance, in respect of which it is foreseeable that there is the potential for a significant increase in exposure of workers, and in respect of which all scope for further technical preventive measures for limiting workers' exposure has already been exhausted, the employer shall determine, after consultation of the workers and/or their representatives in the undertaking or establishment, without prejudice to the employer's responsibility, the measures necessary to reduce the duration of workers' exposure to the minimum possible and to ensure protection of workers while they are engaged in such activities.

Pursuant to the first subparagraph, the workers concerned shall be provided with protective clothing and individual respiratory protection equipment which they must wear as long as the abnormal exposure persists; that exposure may not be permanent and shall be kept to the strict minimum of time necessary for each worker.

2 Appropriate measures shall be taken to ensure that the areas in which the activities referred to in the first subparagraph of paragraph 1 take place are clearly demarcated and indicated or that unauthorised persons are prevented by other means from having access to such areas.

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Article 9

Access to risk areas

Appropriate measures shall be taken by employers to ensure that access to areas in which the activities in respect of which the results of the assessment referred to in Article 3(2) reveal a risk to workers' safety or health take place are accessible solely to workers who, by reason of their work or duties, are required to enter them.

Article 10

Hygiene and individual protection

- 1 Employers shall be obliged, in the case of all activities for which there is a risk of contamination by carcinogens or mutagens, to take appropriate measures to ensure that:
 - a workers do not eat, drink or smoke in working areas where there is a risk of contamination by carcinogens or mutagens;
 - b workers are provided with appropriate protective clothing or other appropriate special clothing;
 - c separate storage places are provided for working or protective clothing and for street clothes;
 - d workers are provided with appropriate and adequate washing and toilet facilities;
 - e protective equipment is properly stored in a well-defined place and is checked and cleaned if possible before, and in any case after, each use;
 - f defective equipment is repaired or replaced before further use.
- 2 Workers may not be charged for the cost of the measures set out in paragraph 1.

Article 11

Information and training of workers

- 1 Appropriate measures shall be taken by the employer to ensure that workers and/or workers' representatives in the undertaking or establishment receive sufficient and appropriate training, on the basis of all available information, in particular in the form of information and instructions, concerning:
 - a potential risks to health, including the additional risks due to tobacco consumption;
 - b precautions to be taken to prevent exposure;
 - c hygiene requirements;
 - d wearing and use of protective equipment and clothing;
 - e steps to be taken by workers, including rescue workers, in the case of incidents and to prevent incidents.

The training shall be:

- adapted to take account of new or changed risk, and
- repeated periodically if necessary.

- 2 Employers shall inform workers of installations and related containers containing carcinogens or mutagens, ensure that all containers, packages and installations containing

carcinogens or mutagens are labelled clearly and legibly, and display clearly visible warning and hazard signs.

Article 12

Information for workers

Appropriate measures shall be taken to ensure that:

- (a) workers and/or any workers' representatives in the undertaking or establishment can check that this Directive is applied or can be involved in its application, in particular with regard to:
 - (i) the consequences for workers' safety and health of the selection, wearing and use of protective clothing and equipment, without prejudice to the employer's responsibility for determining the effectiveness of protective clothing and equipment;
 - (ii) the measures determined by the employer which are referred to in the first subparagraph of Article 8(1), without prejudice to the employer's responsibility for determining such measures;
- (b) workers and/or any workers' representatives in the undertaking or establishment are informed as quickly as possible of abnormal exposures, including those referred to in Article 8, of the causes thereof and of the measures taken or to be taken to rectify the situation;
- (c) the employer keeps an up-to-date list of the workers engaged in the activities in respect of which the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, indicating, if the information is available, the exposure to which they have been subjected;
- (d) the doctor and/or the competent authority as well as all other persons who have responsibility for health and safety at work have access to the list referred to in point (c);
- (e) each worker has access to the information on the list which relates to him personally;
- (f) workers and/or any workers' representatives in the undertaking or establishment have access to anonymous collective information.

Article 13

Consultation and participation of workers

Consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance with Article 11 of Directive 89/391/EEC.

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[^{F3}Article 13a

Social partners' agreements

Social Partners' agreements possibly concluded in the field of this Directive shall be listed on the website of the European Agency for Safety and Health at Work (EU-OSHA). That list shall be regularly updated.]]

Textual Amendments

- F3** Inserted by [Directive \(EU\) 2019/130 of the European Parliament and of the Council of 16 January 2019 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work \(Text with EEA relevance\)](#).

Editorial Information

- X1** Substituted by [Corrigendum to Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work \(Sixth individual Directive within the meaning of Article 16\(1\) of Council Directive 89/391/EEC\) \(codified version\) \(Official Journal of the European Union L 158 of 30 April 2004\)](#).