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GENERAL INTRODUCTION TO SECTORAL SOCIAL DIALOGUE

Sectoral social dialogue at European level has its roots in informal relations between representative bodies of workers and employers in the 1960s and 1970s: Joint committees established by the Commission served for the consultation of the European social partners, while informal working groups were set up at the request of social partners.

The bipartite social dialogue was launched in 1985 at Val Duchesse, on the initiative of the President of the Commission at the time, Jacques Delors. From then on, bipartite activities mainly led to the adoption of non-binding resolutions, declarations and joint opinions.

The integration of the provisions of the agreement negotiated on 31 October 1991 between social partners into Articles 138 and 139 of the Treaty of Amsterdam allowed the agreements negotiated between the European social partners to be given legal force through a decision by the Council and its transposition into the legislation of each Member State, or else to be implemented by the social partners themselves at national level. The first possibility led to the implementation of three agreements through Council Directives: on parental leave in 1995, on part-time work in 1997 and on fixed-term contracts in 1999.

The same year the Commission offered to fund sectoral social dialogue committees (SSDCs) at the joint request of social partners. Between 1999 and 2004, the number of committees has grown from 20 to 31. Currently, each committee sets its own internal rules and agenda, while the participants' mandate to negotiate depends on the power delegated by its national members. The representativeness of European sectoral employer and worker organisations members of SSDCs is continuously monitored by the Commission.

IMA-Europe and its counterpart EMCEF are Members of the Sectoral Social Dialogue Committee for the Extractive Industry. Along with 15 other industries and their representatives at European level, they have negotiated the first European multi-sectoral agreement.

INTRODUCTION TO NEPSI

NePSi is the acronym for the multi-sectoral Negotiation Platform on Silica. This platform held its first meeting in May 2005 to launch the negotiation of the *'Agreement on Workers Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it'*. The final version of the text was approved in February 2006.

The Agreement was signed on 25 April 2006, and entered into force 6 months after its signature.

1. BACKGROUND

In 1997, the International Agency for Research on Cancer evaluated crystalline silica inhaled in the form of quartz or cristobalite from occupational sources as carcinogenic to humans (group 1).

In 2003, the Scientific Committee for Occupational Exposure Limits¹ (European Commission) concluded that *'The main effect in human of the inhalation of respirable silica dust is silicosis. There is sufficient information to conclude that the relative risk of lung cancer is increased in persons with silicosis'*.

More recently in 2004, the European Commission launched a two step consultation of social partners on the possibility of a revision of the Carcinogens Directive. This consultation addresses different areas of work, among which the establishment of occupational exposure limit values

¹ SCOEL SUM Doc 94-final

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(OELVs) for carcinogens and substances not yet listed in the Directive. Crystalline silica is listed among other substances like diesel exhaust, wood dust, solar radiation, passive smoking, radon decay products etc.

Acknowledging that crystalline silica is ubiquitous and that its hazard is limited to the workplace (sometimes only a few processes are concerned) where exposure to it may be controlled, the main industries using crystalline silica gathered to agree on appropriate and credible measures for the improvement of the health conditions in industries where respirable crystalline silica exposure has been and still is a concern.

The adoption of good practices for the handling and use of crystalline silica soon became the basis for the negotiation of a related social dialogue agreement.

2. THE NEGOTIATION

The industry sectors organizations and their counterpart trade union federations (a list of the signatories is included below) negotiated the social dialogue agreement within the NePSi platform.

The European Commission supported the project, qualifying it as innovative. An EC budget was granted to cover the costs of the negotiation, and the European trade associations which were not yet members of a social dialogue committee at EU level were considered after scrutiny by the Commission as eligible to participate in this negotiation.

Two working groups were set up for the negotiation: one Steering Working Group to draft the Agreement and discuss political aspects, and one Technical Working Group (made up of producers and consumers of products and materials that contain crystalline silica) to draft the technical annexes of the Agreement, especially the Good Practice Guide. The negotiations started on the 1st of September 2005 and ended on 2 February 2006 with a final plenary meeting. The text was unanimously approved by the negotiating parties.

After its signature, the Agreement will remain open for signature at any time by other industry sectors and their counterparts.

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3. SIGNATORY EUROPEAN INDUSTRY SECTOR ASSOCIATIONS

European Glass Fibre Producers Association (APFE)
International Bureau for Precast Concrete (BIBM)
The European Foundry Association (CAEF)
The European Cement Association (Cembureau)
Council of European Employers of the Metal Engineering and Technology-Based Industries (CEEMET)
The European Ceramics Industries (Cérame-Unie)
European Mortar Industry Organization (EMO)
European Association of Mining Industries (Euromine)
European and International Federation of Natural Stones Industries (EuroRoc)
European Special Glass Association (ESGA)
European Insulation Manufacturers Association (EURIMA)
European Container Glass Federation (FEVE)
European Aggregates Association (UEPG)
European Industrial Minerals Association (IMA-Europe)
European Association of Flat Glass Manufacturers (GEPVP)

4. SIGNATORY EUROPEAN TRADE UNION FEDERATIONS

European Mine, Chemical and Energy Workers' Federation (EMCEF)
European Metalworkers' Federation (EMF)

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READING GUIDELINES TO THE AGREEMENT AND ITS ANNEXES

The '**Agreement on Workers Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it**' is structured as follows:

Articles 1 to 15, respectively: *Objectives, Scope, Definitions, Principles, Good Practices, Monitoring, Reporting and Improvement, The Council-Secretariat, Confidentiality, Health Surveillance, Research-Data Collection, Duration-Revision, Change of Parties, Miscellaneous, Entry into effect.*

The following documents are included as annexes to the Agreement:

Annex 1	Good Practices (Good Practice Guide)
Annex 2	Dust Monitoring Protocol
Annex 3	Reporting Format
Annex 4	List of Research Projects
Annex 5	Descriptions of Industries
Annex 6	The Council – The Secretariat
Annex 7	Procedure for the Adaptation of the Good Practices
Annex 8	Health Surveillance Protocol for Silicosis

1. LEADING PROVISION OF THE AGREEMENT: THE APPLICATION OF GOOD PRACTICES

The Agreement is applicable in the EU-25. It aims at protecting the health of employees by:

- minimizing exposure to respirable crystalline silica through the application of good practices as required in the EC Directives
- increasing knowledge of these good practices and the potential effects of respirable crystalline silica.

National and EU law in the area of health and safety must still be complied with at all times. If, in the future, a new legislative proposal related to crystalline silica was to be issued, the signatories of the Agreement have reserved the right to meet in order to decide on appropriate action.

The signatory sectors have compiled in a 'Good Practice Guide' (Annex 1 of the Agreement) some 60 task sheets **illustrating** good practices applicable in their industries: other good practices as efficient, or more stringent national practices, may also be kept in use in order to fulfil the Agreement's objectives.

The good practice guide provides a risk assessment procedure to be performed regularly so as to ensure continuous improvement, and to help determine which measures or good practices to apply.

2. ANCILLARY OBLIGATIONS: TRAINING, DUST MONITORING & HEALTH SURVEILLANCE

Whether deriving from the risk assessment requirements **and results**, or from provisions of the Agreement, complying with EU legislation, the signatories have committed to a number of ancillary obligations, namely:

Training

Training sessions on good practices must be organised on site. It is stipulated in the Agreement that the concerned employees commit to attend these training sessions. Advice on training is given in the Good Practice Guide (Annex 1, Task sheet 2.1.19).

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Dust Monitoring

Personal exposure monitoring must be done according to the 'Dust Monitoring Protocol' of the Agreement (Annex 2). Smaller sites may adapt this protocol to their needs. Within a single company made up of a multitude of smaller sites, these can be selected randomly.

Health Surveillance

The scope of the medical examinations to be performed on workers can be defined in accordance with local public authorities and the 'Health Surveillance Protocol on Silicosis' (Annex 8).

This annex provides in addition that employers will facilitate the medical follow-up of ex-workers having been in contact with respirable silica at the time they were employed by the company, **at the latter's request**.

3. OTHER COMMITMENTS: MONITORING & REPORTING OF THE APPLICATION, RESEARCH

In addition to the obligations above, the signatories commit to:

? Monitoring of the application of the Agreement at site level

Within each company, the employer will designate:

- (1) An employee or several employees to monitor the application of the good practices on one or several sites.
- (2) An individual responsible at company level to elaborate an action plan with the works Council and the workers' representatives for the above-mentioned monitoring of the application, and to collect and consolidate site reports (see below).

The employee under (1) responsible for the monitoring will report on the application of the good practices to the individual under (2) responsible for company reporting.

? Reporting and application

Reporting will be done once every two years at site, company, national and European level using the reporting format provided in the Agreement (Annex 3). At company level, the site reports will be consolidated by the individual responsible under (2) above.

Reporting will allow the Council to assess the level of application of the agreement and good practices in a confidential and consolidated way. The Council is made up of a maximum of 15 Employee representatives and 15 Employer representatives taking decisions by consensus or at a double qualified majority of 75%.

Individual company reports will be sent to the company's national sector association, including a list of sites which are repeatedly in a situation of non-application. The national sector association will in turn communicate to the Council a consolidated sector report. After having reviewed the sector reports, the Council will issue a Summary Report to be forwarded to the signatories of the agreement and their members, the EC and national authorities, and an Executive Summary for the public if desirable.

The objective of the Council is to identify existing problems and to propose possible solutions, in order to see the number of non application situations of the agreement decrease in time. The Council will therefore concentrate its efforts on promoting improvement situations. A confidentiality clause is applicable to the members of the Council, and to all the interested parties.

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The Council is exclusively in charge of issues related to the interpretation, implementation and application of the Agreement, which can thus never be submitted to national courts.

Contacts with the Council will mainly be taken through its Secretariat.

Research

Bearing in mind that crystalline silica and materials, products and raw materials containing it are basic, useful and often indispensable components or ingredients for a large number of industrial and professional activities, the agreement makes provision for recommendations as to research on safer products and processes, or data collection.

The Agreement was signed on 25 April 2005, and entered into effect on 25 October 2006. By that date, its translations to the 20 official EU languages will be ready, although the English version is binding for interpretation.

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QUESTIONS & ANSWERS

1. WHERE IS THE AGREEMENT APPLICABLE?

The Agreement is applicable on all sites (and ancillary activities such as handling, storage and transport, as well as mobile workplaces) simultaneously fulfilling the following criteria: the site is situated in the EU-25, respirable crystalline silica is present on the site, the company is directly or indirectly a member of one of the signatory European industry associations, the workers are directly or indirectly represented by one of the signatory European trade union federations.

If all these criteria are not fulfilled, the agreement may be applied on a voluntary basis (no monitoring and reporting of the application are necessary).

2. WHEN DID THE AGREEMENT COME INTO FORCE?

The agreement was signed on 25 April 2006, and will come into force 6 months later, on 25 October 2006, when its translation into the 20 official EU-languages will be available and circulated.

3. WHAT IS THE OBJECTIVE OF THE AGREEMENT? AM I STILL ALLOWED TO USE CRYSTALLINE SILICA OR PRODUCTS CONTAINING IT?

Yes. Silicosis is a well known 100% preventable disease: the agreement was negotiated in order to propose appropriate, responsible, credible and applicable measures to improve workers health protection.

The signatories of the agreement acknowledge that silica is essential to a large number of industrial and other professional activities and can therefore not be substituted. The object of the agreement is to address how to handle crystalline silica.

4. WHAT IS NON APPLICATION?

We talk about non application when exposure to respirable crystalline silica in the workplace increases, and that this increase could have been avoided by observing the agreement and good practices.

The reporting format (Annex 3) to be filled in at site level and consolidated at company, national and European sector level provides indicators of the application of the agreement. A Council set up by the signatories is responsible notably for the follow-up of the implementation of the agreement and will review the sector level reports, focusing on improvement situations and exceptional cases of repeated non application.

5. WHAT ARE THE INDICATORS OF APPLICATION?

The reporting format (Annex 3) provides a number of indicators of the application of the agreement at workplaces where workers are potentially exposed to respirable crystalline silica. On the basis of the number of workers potentially exposed, the information below is required:

- number of workers covered by risk assessment
- number of workers covered by exposure monitoring

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- number of workers with risk assessment requiring Health Surveillance Protocol for Silicosis (Annex 8).
- number of workers covered by generic Health Surveillance Protocol
- number of workers covered by the Health Surveillance Protocol for Silicosis (Annex 8)
- number of workers covered by training on General Principles of Prevention
- number of workers covered by training on task sheets
- technical and organizational measures to reduce RCS
- Use of PPE where necessary

The 'key notes' section allows the reporting sites, companies or organizations to explain or justify significant data (e.g. an increase of the exposure due to new acquisitions of entities where the Agreement was not implemented).

The reporting format includes clear references to the relevant parts of the Agreement and Good Practice Guide.

6. CAN NON APPLICATION HAVE LEGAL CONSEQUENCES?

This Agreement is autonomous (not implemented through a directive). It has therefore NO direct binding effect.

Moreover, elements in the Agreement prevent companies from facing a law suit due to Non application of the Agreement:

- No local national court can rule on the application of the Agreement, or its interpretation. Those matters will be exclusively handled by the Council set up by the signatory organizations. National courts are not competent for the interpretation of European agreements.
- The Council's summary reports shall not disclose the identity of a non-compliant company, and do not disclose any specific Non application issue in sufficient detail which would allow identifying a particular company without investigation.
- 'Non application' bears no legalistic connotation

7. IF THIS AGREEMENT APPLIES TO ME, DOES IT REPLACE THE EXISTING REGULATIONS WITH WHICH I MUST CURRENTLY COMPLY?

No. The agreement clearly states that EU and national law on issues such as health and safety must be complied with at all times (notably Directive 89/391 and Directive 98/24). However, if a proposal for a new EU legislation conflicting with the Agreement was to be issued, the signatories would have the opportunity to meet to agree on appropriate action (e.g. withdrawal from the agreement, or modification of its provisions).

8. WHAT DOES 'INDIRECTLY REPRESENTED' MEAN?

Indirectly represented designates the companies or employees which are not direct members of the European associations which negotiated the agreement (the Parties) but belong to national organisations themselves affiliated to each one of the Parties.

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9. WHAT IS THE GOOD PRACTICE GUIDE?

The Good Practice Guide is the major tool to implement the Agreement (Annex 1) and its fundamental provisions, i.e. risk assessment and the implementation of good practices at the workplace.

10. WHAT IS THE RISK ASSESSMENT PROCEDURE AND WHERE CAN I FIND IT?

The risk assessment is the first step to take in order to apply the Agreement. It is a procedure which:

- helps you to determine the risk related to respirable crystalline silica,
- gives instructions on the appropriate measures to implement, according to risk identification.

The detailed procedure can be found in Part I - chap 4 of the Good Practice Guide.

11. WHAT ARE THE 'GENERAL PREVENTION PRINCIPLES'? WHAT ARE 'GOOD PRACTICES'? WHERE CAN I FIND EXAMPLES OF GOOD PRACTICES?

The phrase 'Good Practices' refers to the general principles of Directives 89/391 and 98/24 (on the improvement of the safety and health of workers at work and on the protection of the health and safety of workers from the risks related to chemical agents at work respectively)

These general prevention principles are explained and illustrated in the Good Practice Guide (Annex 1 of the Agreement), notably in the general and specific task sheets of Part II of the Good Practice Guide. These task sheets provide instructions, for each job function, to employers and workers to better handle crystalline silica at the workplace in each of the signatory industries.

national practices.

12. IS THE APPLICATION OF THE TASK SHEETS MANDATORY?

As they are an illustration of good practices, these task sheets are not mandatory, provided you implement other good practices as efficient or more stringent. The Good Practice guide is comprehensive: it gathers all the good practices applicable at the workplace in each of the signatory industries.

13. WILL I HAVE TO DO RESEARCH ON CRYSTALLINE SILICA?

No. There is a sector-level commitment related to research, with no obligation as to results, requesting the signatory European sector associations to make recommendations as to research on safer products and processes, or data collection.

14. WILL I HAVE TO PROMOTE THE GOOD PRACTICES?

Only within your own structure: it is up to companies or sites to give information and training on Good Practices to their workers, and up to the national and sector organizations to promote these Good Practices within their membership.

15. TO WHICH EXTENT DO I HAVE TO REDUCE EXPOSURE TO RESPIRABLE CRYSTALLINE SILICA?

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In any case, European and national regulations should at all times be complied with, and the level of exposure at the workplace should remain below the national occupational exposure limit. The Agreement provides appropriate protection and prevention measures contributing to the required risk management. These measures are developed in the Agreement (training, dust monitoring, health surveillance, application of Good Practices). In addition, the Agreement requires you to monitor the application of these measures and report on it.

16. IF EXPOSURE ON MY SITE IS BELOW THE NATIONAL OCCUPATIONAL EXPOSURE LIMIT, DO I STILL HAVE TO APPLY THE AGREEMENT?

Yes. The Agreement also aims at continuous review and improvement: If further minimization of exposure is not possible, you should ensure that a status quo remains. You should therefore conduct a risk assessment regularly.

17. WHAT IS THE COUNCIL AND ITS SECRETARIAT?

As from the entry into effect of the Agreement, each signatory European industry sector association and trade union federation will be represented within a bi-partite Council set up by them.

This Council will be in charge of: the follow-up of the implementation of the agreement, interpretation and application issues, revision recommendations and adaptation of the Good Practices, communication with third parties, review of the sectors' consolidated reports, drafting of summary reports and executive summaries.

The Council will take decisions by consensus. If consensus fails, the decisions will be taken at a double majority of 75%.

The Council will be assisted in his tasks by a Secretariat, which will act as an intermediary for contacts with Council members.

18. WHAT DOES 'CEASE TO EXIST' MEAN?

'Cease to exist' refers to any process by which the sector association would be deprived of a legal personality.

19. WHEN CAN THE AGREEMENT BE MODIFIED?

- The Council can make recommendations for modifications of the agreement.
- If a new EU legislation related to crystalline silica is proposed, the signatories can meet to evaluate the impact of this proposal on the Agreement and take appropriate action
- Annex 7 of the Agreement provides a procedure for the modification of Good Practices.

20. CAN GOOD PRACTICES BE MODIFIED?

The Good Practice Guide is meant to be a dynamic document: individuals, sites, companies and national associations can propose modifications to the task sheets at any time. Proposals for new or revised existing task sheets must be sent to the adequate European industry sector association, or trade union federation. These proposals should include a justification of why and how these modifications improve the level of protection or provide an alternative way of reaching the same level of protection.

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If the association or federation supports the suggestion, it will submit it to its counterpart. If both agree, the suggestion is submitted to the Council which may adopt it.

The adopted modifications are valid and circulated 3 months after the Council's approval.

21. WHAT DO I HAVE TO DO IF I ALREADY IMPLEMENT GOOD PRACTICES ON MY SITE?

You should conduct a risk assessment to determine whether these are efficient. The risk assessment should be performed regularly so as to ensure continuous improvement or status quo if further improvement is not possible.

If the good practices you apply provide better protection from exposure than those contained in the Good Practice Guide (Annex 1), or if amendments to existing good practices contained in the Good Practice Guide can provide better protection, please notify the European industry sector association of European trade union association to which you are affiliated. This input will be considered by the Council according to the procedure in Annex 7.

22. DOES THE AGREEMENT APPLY TO THE ENTIRE SECTORS, OR ONLY TO THE AFFILIATED MEMBERS OF THE SIGNATORY PARTIES?

The Agreement should only apply to the affiliated members of the signatory parties, although some have already decided to apply it voluntarily. It is always easier to apply measures within an entire company than on selected sites. Moreover, the signatories of the Agreement have committed to *'make their best efforts to obtain application of this Agreement to all companies within the whole sectors they represent'*.

23. CAN WORKERS REFUSE TO ATTEND TRAINING SESSIONS?

Directive 89/391 states that *"It shall be the responsibility of each worker to take care as far as possible of his own safety and health and that of other persons affected by his acts or Commissions at work in accordance with his training and the instructions given by his employer"*.

In this respect, the European industrial sector associations and European trade union federations signing the Agreement have agreed on a reciprocal commitment: Employers undertake to organise training sessions, while all concerned employees (exposed to respirable crystalline silica) undertake to followed these training sessions.

Guidance on training can be found in the Good Practice Guide, task sheet 1.1.19.

24. HOW DO I ORGANISE ON SITE MONITORING OF THE APPLICATION?

Monitoring of the application of the Good Practices at site level is necessary to reinforce protection, and enhance responsibility at all levels. The Employer will designate:

(1) An Employee or several Employees to monitor the application of the good practices on one or several sites.

(2) A responsible individual at company level to elaborate an action plan with the works council and the workers' representatives for the monitoring of the application, and to collect and consolidate site reports.

The periodicity and form of the reporting by the designated Employee(s) on site were expressly not specified, it is up to each company to organize internally in the most suitable way.

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The Employee designated at company level will also be in charge of the company's report to the Council (Annex 3).

25. WHAT IS THE REPORTING PROCEDURE?

Reporting will be done once every two years at site, company, national and European level using the reporting format provided in Annex 3 of the Agreement. At company level, the site reports will be consolidated by the responsible employee.

Individual company reports will be sent to the company's national sector association, including a list of sites which are repeatedly in a situation of non-application. The national sector association will in turn communicate to the Council a consolidated sector report. After having reviewed the sector reports, the Council will issue a Summary Report to be forwarded to the signatories of the agreement and their members, the EC and national authorities, and an Executive Summary for the public if desirable.

In 2007, a preliminary reporting on the status of implementation of the Agreement will take place.

The first reporting year was set to 2008. The time frame for reporting following the signature of the Agreement is as follows:

- 25 April 2006: Signature of the Agreement.
- 25 October 2006: Entry into effect of the Agreement, provided it has been translated into the 20 official EU-25 languages.
- 2007: Intermediate report on the status of implementation of the Agreement
- 2008: First site, company, national and sector reports to the Council.

Reporting will take place every second year as from this date (2010, 2012, 2014,...)

The Council will meet in June of each year in order to draft the Summary report, which should be made available by the 30th of June. Companies should arrange that their reports are sent in time to their national / sector association, in order to meet the deadline for the Council's Summary Report.

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