

Comments 112/2024/L

Riitta Työläjärvi, The Central Organisation of Finnish Trade Unions SAK
Miia Kannisto, Confederation of Unions for Professional and Managerial Staff in Finland AKAVA
Ville Kirvesniemi, Finnish Confederation of Professionals STTK

Ministry of Economic Affairs and Employment 23 October 2024
kirjaamo.tem@gov.fi
paivi.kantanen@gov.fi
katja.peltola@gov.fi

Request for comments VN/23871/2024, 23 September 2024

Trade unions' joint comments – protection against biological hazards in the working environment

Report for item IV on the agenda of the 113th Session (2025) of the International Labour Conference: Protection against Biological Hazards (standard-setting, second discussion)

The International Labour Organization ILO has requested comments from Finland regarding the report concerning protection against biological hazards in the working environment. The report contains the texts of the proposed Convention supplemented by a Recommendation concerning protection against biological hazards in the working environment. In order to prepare Finland's comments, the Ministry of Economic Affairs and Employment has requested comments from the trade unions on the said report and its proposal for a Convention and Recommendation concerning protection against biological hazards in the workplace. The request for comments included a request to suggest changes as necessary as well as to submit other general observations.

The Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland Akava and the Finnish Confederation of Professionals STTK have the following comments to make on the proposals included in the ILO draft report.

The Central Organisation of Finnish Trade Unions (SAK)
Confederation of Unions for Professional and Managerial Staff in Finland Akava
Finnish Confederation of Professionals STTK

Riitta Työläjärvi, SAK
Miia Kannisto, AKAVA
Ville Kirvesniemi, STTK

I. Definition and scope

Office point 18, page 8, Article 1; The Office wishes to draw the tripartite constituents' attention to some aspects of the current definition that could benefit from further clarification. Specifically, some of the listed examples, such as prions and DNA and RNA materials, do not fit neatly into the defined categories, as they are not "microorganisms, cells or cell cultures". The classification of viruses as "microorganisms" also remains a subject of debate within the scientific community. Furthermore, the term "microorganisms" typically refers to bacteria, fungi and sometimes protozoa such as *Plasmodium* spp., *Giardia* spp. and *Trypanosoma* spp., but not to larger parasites, for example human endoparasites such as helminths or ectoparasites such as ticks, fleas, lice, parasitic flies and mites. It may be that Members will confirm that the definition is limited only to protozoa among parasites. However, Members may also wish to include all parasites. In that case, it may be useful to refer explicitly to "parasites" in the first part of the definition. If, in addition to protozoa, endoparasites, but not other parasites, are to be covered in the definition, it may be useful also to refer to them explicitly. **The Office invites the tripartite constituents' comments on this matter so that it can better reflect Members' intentions in the draft instrument to be submitted to the Conference.**

Answer: We support the broad definition outlined in the Convention, along with explicit examples to illustrate its meaning.

Office point 20, page 8-9, Article 1; While mindful not to change the scope of protection agreed by the Committee, **the Office invites the tripartite constituents' comments on an alternative, simplified formulation for Article 1(a)**, which could be complemented by further clarifications and examples in the Recommendation. The proposal below adds "or other non-cellular microbiologic entities" to the categories of biological hazards so as to explicitly cover prions and DNA and RNA materials and to ensure that viruses are included. The proposed text also includes parasites (subject to the comments to be received from the tripartite constituents) and ensures that all potentially allergenic or toxic microbiological entities, regardless of classification, are appropriately covered. The proposed new text of Article 1(a) of the Convention would read as follows:

(a) "biological hazards" refer to any microorganisms, cells or cell cultures, parasites or other non-cellular microbiological entities, including those which have been genetically modified and including their associated toxins and allergens, that can cause harm to human health ...

Answer: We accept the proposed addition.

Office point 21, page 9, Article 1; **The Office also invites the tripartite constituents' comments on the following proposed new Paragraph** that could be added to the Recommendation to further clarify the definition under Article 1 of the Convention:

With reference to the definition contained in Article 1 of the Convention, examples of biological hazards include:

(a) pathogenic microorganisms and their associated toxins and allergens, including certain bacteria, protozoa, fungi, oomycetes, and algae;

(b) cells and cell cultures, including both primary cultures and immortalized cell lines, that are contaminated with other biological hazards or carry inherent risks such as tumourinducing potential, toxins or allergens;

(c) parasites, namely protozoa, endoparasites and ectoparasites;

(d) other non-cellular microbiological entities, including viruses, prions and recombinant, genetically modified or synthetic DNA and RNA materials originating from pathogens, that can lead to adverse health effects upon unintentional exposure.

Answer: We accept to include the proposed new paragraph in the Recommendation to provide clarification without limiting the scope of the definition.

Office point 22, page 9, Article 1 (a); The Committee also discussed several amendments to point 6, which is now part of Article 1(a), before reverting to the original text from the Office. The Office proposes that “communicable and non-communicable” could be replaced with “infectious and non-infectious”. This would ensure that diseases that can be caused by exposure to biological hazards as defined in Article 1 and that are not communicable but are still infectious (such as tetanus, which is caused by a biological toxin) are covered. “Infectious” is also the term used in the ILO List of Occupational Diseases Recommendation, 2002 (No. 194), and in the World Health Organization International Classification of Diseases (ICD-11). The Office also proposes to add the words “exposure to” for the purposes of technical accuracy and to align with other Articles in the proposed instruments. **The Office invites the tripartite constituents’ comments on the following rewording of the end of Article 1(a):**

(a) ... Harm to human health caused by exposure to biological hazards in the working environment includes infectious and non-infectious diseases and injuries.

Answer: We accept the new rewording of the end of Article 1 (a).

Office point 23, page 9-10, Article 1; During the discussion and in the replies to the questionnaire in Report IV(2), there were several comments about different examples of health effects which could potentially be included under this provision. With the aim of providing further clarity, **the Office invites the tripartite constituents’ comments on the following proposed new Paragraph in the Recommendation**, which could complement Article 1(a) of the Convention by providing examples:

1. Harm to human health caused by exposure to biological hazards in the working environment includes:

(a) infectious diseases such as brucellosis, viral hepatitis, AIDS, tetanus, tuberculosis, anthrax and leptospirosis, including health effects secondary to acute or chronic infection, such as liver carcinoma secondary to viral hepatitis, and their sequelae once the original infection is no longer present;

(b) non-infectious diseases such as toxic or inflammatory syndromes associated with bacterial or fungal contaminants or toxins;

(c) injuries to health, where injury is defined as death or any personal injury or disease resulting from an occupational accident involving exposure to a biological hazard in the working environment.

2. Health does not only indicate the absence of disease or infirmity but also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work.

Answer: We accept the proposed new paragraph to be put in the Recommendation in order to clarify and exemplify but not limit the definition of biological health risks.

Office point 24, page 10, Article 1; Regarding Article 1(b) (point 5 of the Conclusions), there was consensus among the Committee members to list specific examples of sources of exposure or modes of transmission of infectious biological hazards. Their identification is crucial for effective risk assessment and management. To ensure clarity and comprehensiveness in identifying modes of transmission of biological hazards in the working environment, and to align technically with the definition of biological hazards in Article 1(a) and established epidemiological principles, **the Office invites the tripartite constituents' comments on the following alter-native text for Article 1(b):**

(b) "Exposure to biological hazards in the working environment" refers to an event during which a worker comes into contact with or is in close proximity to biological hazards. The potential for infection to occur is intrinsically linked to the modes of transmission, which are critical in devising appropriate preventive strategies. These modes include:

(i) direct transmission, which involves living organisms, including humans, that transmit an infectious biological hazard through direct contact or droplet spread;

(ii) indirect transmission, which occurs via vectors, other transmitters such as contaminated water, food, organic materials or bodily fluids, fomites or medical instruments, or airborne particles.

Answer: The Office's proposed text is insufficient, and should also include both infectious and non-infectious risks, as well as other hazards arising from biological sources.

Office point 25, page 10, Article 1; The Committee also discussed a proposal to add a definition of "biological risk" to point 5, which was ultimately not adopted due to concerns about the lack of a precise definition of "risk" and potential legal ambiguities in some French- and Spanish-speaking countries where the distinction between the terms "hazard" and "risk" is not clearly made in their legal frameworks. These concerns were discussed by the Committee under different points (such as 10 and 13), and again by the Drafting Committee. The Office published an information note during the discussion. Given that a distinction between "biological hazards" and "biological risks" (corresponding to "dangers biologiques" and "risques biologiques" in French and "peligros biológicos" and "riesgos biológicos" in Spanish) is clearly established in technical terminology related to occupational safety and health and is of critical importance for consistency and clarity across different language versions of the instrument, **the Office invites the tripartite constituents' comments on the possible inclusion in Article 1 of the Convention of a definition of "biological risk"**. This proposal is based on the understanding that risks result from existing hazards and are defined by their likelihood and severity. For consistency with terminology already adopted by ILO constituents, the Office proposes to use the definition of "risk" of the ILO Guidelines on occupational safety and health management systems (ILO-OSH 2001), whose glossary defines it as "a combination of the

likelihood of an occurrence of a hazardous event and the severity of injury or damage to the health of people caused by this event". The new subparagraph would read as follows:

"Biological risk" refers to the combination of the likelihood of an occurrence of a hazardous event caused by exposure to a biological hazard and the severity of injury or damage to the health of people caused by this event.

Answer: We accept the proposed new subparagraph.

II. National Policies

Office point 29, page 11, Article 3; The wording "based on an evaluation of risk" was adopted by the Committee after extensive discussions. Members of the Committee noted difficulties in the interpretation of this terminology, and wished to differentiate it from a "risk assessment" at the workplace level. To remove ambiguity and ensure that this term is distinct from a workplace risk assessment, which remains the employer's responsibility, **the Office invites the tripartite constituents' comments on whether "an evaluation of risk" should be replaced with "an assessment of biological hazards and risks at the national level" throughout the text.**

Answer: We accept the use of "an assessment of biological hazards and risks at the national level" instead of "an evaluation of risk" throughout the text.

Office point 30, page 11, Article 3; Based on the definition of hazard assessment from the ILO Guidelines on occupational safety and health management systems (ILO-OSH 2001), 11 the legislation of several Member States, and the opinion of the Committee that "preventive and protective measures should be optimized based on risk assessment that includes the characteristics and degree of concern of the biological substance", **the Office invites the tripartite constituents' comments on the possible inclusion of the following definition for such an assessment** capturing these elements, which could be placed as a new subparagraph along with the other definitions in Article 1:

"Assessment of biological hazards and risks at the national level" refers to a systematic evaluation of biological hazards and risks, based on the hazards' characteristics including the potential to cause harm to human health and the severity of this harm, the availability of effective diagnosis and prophylaxis or treatment, the public health risks in terms of spread to the population or the environment, and the degree of concern.

Answer: The problem with the suggested subparagraph is that it does not take into account precautionary measures. New risks may arise quickly, which is why it is important to include precautionary measures in the paragraph as well. This should be considered when supplementing the suggested text.

Office point 31, page 11-12, Article 3; During the discussion, there were several calls for clear technical guidance to be provided in the instruments. There were also debates about the concept of "degree of concern" and the intent to capture the concepts of "risk" and "probability of harm". To better reflect the wishes of the Committee, **the Office invites the tripartite constituents' comments on the possible inclusion of further details about this assessment, in two new Paragraphs in the Recommendation, which would read:**

“Assessment of biological hazards and risks at the national level” should be considered to refer to a systematic process of gathering and evaluating information to support the development of a regulatory framework that is risk- and evidence-based in order to select appropriate and proportionate risk control measures for the identified biological risks associated with the work being performed. This involves:

- (a) identification and characterization of biological hazards based on their potential to cause harm and the severity of this harm;
- (b) evaluation of the availability and effectiveness of diagnostic tools and prophylactic or treatment measures;
- (c) assessment of the public health risk of spread of these hazards to the population or the environment, considering country-specific conditions and available resources;
- (d) consideration of the degree of concern regarding the biological hazards, including potential social and economic impacts.

Members should periodically review and update the assessment of biological hazards and risks at the national level to reflect changing knowledge of regulated pathogens and activities and advances in technologies.

Answer: We accept the suggestion.

Office point 35, page 12, Article 4; The Office therefore invites the tripartite constituents’ comments on the following rewording for subparagraph (c):

- (c) the need to develop arrangements for the effective management of biological hazards in the working environment, including emerging and re-emerging hazards, and preparedness and response plans and procedures to deal with accidents and emergencies related to biological hazards in the working environment, and also considering workers’ physical and mental health and general well-being

Answer: We accept the reworded subparagraph.

Office point 36, page 12, Article 4; Divergent opinions emerged during the first discussion as to whether a “gender-responsive needs assessment” should be included in the current Article 4(b). Nevertheless, the Office notes that Article 17 of the proposed Convention refers to a gender-responsive perspective in risk assessments. Emerging research highlights the importance of incorporating gender in biological risk assessments. Such assessments can identify situations where women and men face different levels of exposure and risk due to their roles and responsibilities and societal norms, leading to more effective and equitable safety and health measures. In this context, **the Office invites the tripartite constituents’ comments on the inclusion of a new subparagraph under Article 4 which would read:**

- (f) the importance of incorporating gender-responsive biological risk assessments to address the different levels of exposure and risk faced by women and men due to their roles and responsibilities and societal norms, ensuring more effective and equitable safety and health measures.

Answer: We support the inclusion of the new subparagraph.

III. Preventive and protective measures

Office point 40, page 13, Article 6; The periodic review and update of assessments and measures was discussed by the Committee in relation to other points. **The Office invites the tripartite constituents' comments on whether the process of developing, periodically reviewing and updating guidelines for preventive and protective and, as appropriate, precautionary measures should apply to the guidelines referred to in Article 6 (point 14), as it does to the specific guidance mentioned in Article 8 (point 16).**

Answer: We support to develop, review and update all types of policy documents for preventive and protective and, as appropriate, precautionary measures.

Office point 42, page 13-14 Article 6; Bearing in mind the comments from Committee members calling for a clear separation between the guidance to be applied during crises such as pandemics and that to be applied during interpandemic periods, **the Office also invites the tripartite constituents' comments on including the following additional clause recognizing the need for specific guidance for essential workers during pandemics or public health emergencies**, reflecting their critical role in societal functioning and well-being and their heightened risk of exposure. The term "essential workers" is aligned with definitions in global health frameworks, emphasizing their prioritization for protective measures.

(iii) essential workers during pandemics or other public health emergencies, as defined at the national level.

Answer: We accept the proposition by the Office which we agree to be included in the Convention.

Office point 46, page 15, Article 8; The Committee adopted an amendment that inserted "timely" before "information and support". However, following questions raised in the Drafting Committee, the Committee adopted the text, "Each member shall provide timely information, and support to employers ...", in which "timely" only applies to "information" and not to "support". **The Office invites the tripartite constituents' comments on whether the adopted formulation accurately reflects the Committee's intent.**

Answer: We prefer the wording "information and support".

IV. Occupational health and occupational health services

Office point 50, page 15, Article 9; **The Office invites the tripartite constituents' comments on whether "and, as appropriate, precautionary measures" should also be added to the introductory text for this Article**, to ensure consistency with the previous Articles.

Answer: We accept the suggested addition.

VI. Employment injury benefits

Office point 54, page 16, Article 12; The Office notes that deaths due to occupational exposure to biological hazards in the working environment are covered by the Employment Injury Benefits Convention, 1964 (No. 121), and are eligible for compensation under social security

or workers' compensation schemes or programmes, in accordance with national law and practice. **The Office therefore invites the tripartite constituents' comments on whether "death" should be added before "disease, injury or incapacity" in Article 12.**

Answer: We accept that the word "death" is added before "disease, injury or incapacity".

VII. Enforcement of laws and regulations

Office point 55, page 16, Article 13; The Office notes that the wording "including preventive and supportive measures" would benefit from increased precision and **invites the tripartite constituents' comments on whether it should be changed to "including the supply of technical information and advice to employers and workers"**. This would be aligned with the primary duties of labour inspectors under Article 3 of the Labour Inspection Convention, 1947 (No. 81), and Article 6 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

Answer: We accept the addition, but the wording "preventive and supportive measures" should not be replaced.

Office point 56, page 16, Article 14; The Office notes that concerns were raised during the Committee's discussion about the ambiguity of the term "systematic approach" and **invites the tripartite constituents' comments on replacing it with the more precise term "management systems approach"**. This would be aligned with the wording of the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), and the ILO Guidelines on occupational safety and health management systems (ILO-OSH 2001). The Office also proposes to replace "when assessing compliance with relevant national laws and regulations" with "according to their mandates and national law and practice".

Answer: We do not support the proposed replacement of "systematic approach" with "management systems approach". If "management system approach" is used here, it needs to be defined.

We accept the second replacement where "when assessing compliance with relevant national laws and regulations" is replaced with "according to their mandates and national law and practice".

Office point 57, page 16, Article 13 and 14; The Office also invites the tripartite constituents' comments on whether the current Articles 13 and 14 should be combined into two paragraphs of a single Article:

1. Each Member shall ensure the enforcement of national laws and regulations concerning biological hazards in the working environment through an adequate and appropriate system of inspection and, where applicable, other mechanisms for ensuring compliance, including the supply of technical information and advice to employers and workers, and shall allocate adequate resources and support needed for these functions.
2. Each Member shall ensure that labour inspectors with duties related to biological hazards and risks in the working environment:

(a) are trained on those hazards and risks and that, as appropriate, other officials are also trained;

(b) promote a management systems approach to occupational safety and health according to their mandates and national law and practice.

Answer: We accept that the current Articles 13 and 14 are combined into two paragraphs of a single Article.

Office point 58, page 16, Article 15; To further align this provision with Article 18 of the Labour Inspection Convention, 1947 (No. 81), and Article 9(2) of the Occupational Safety and Health Convention, 1981 (No. 155), the Office has replaced the verb “apply” with “provide for”. The Office notes that sanctions are established by national legislation and therefore **invites the tripartite constituents’ comments on whether to change “in accordance with national law and practice” to “in accordance with national laws and regulations”**.

Answer: We accept the suggested change.

VIII. Duties and responsibilities of employers

Office point 65, page 17, Article 17; In subparagraph (e), the reference to “in accordance with national law and practice, and on the basis of a risk assessment” has been deleted, as it is already included in the introductory text.

Answer: We prefer the original text because the word “practice” could not be found anywhere in the Article 17 after the suggested change.

IX. Rights and duties of workers and their representatives

Office point 72, page 18, Article 20; The Office notes that, in clause (f) of the Conclusions adopted by the Committee, medical examinations are listed in parallel with “health surveillance”. In order to ensure consistency with the Occupational Health Services Convention, 1985 (No. 161), and its accompanying Recommendation (No. 171), and the definition included in the ILO Technical and ethical guidelines for workers’ health surveillance, the Office suggests deleting the reference to “medical examinations”. “Workers’ health surveillance” is a generic term that covers procedures and investigations to assess workers’ health to detect and identify any abnormalities. Medical examinations are a type of health assessment. Other health assessment procedures can include, but are not limited to, biological monitoring, radiological examinations, questionnaires and a review of health records. **The Office thus invites the tripartite constituents’ comments on the possible deletion of the reference to “medical examinations”**. The alternative version would read:

(f) receive reports on health surveillance, subject to confidentiality rules for personal and medical data

Answer: We are flexible with the suggested changes but prefer the following wording “(f) receive reports on health surveillance including medical examination, subject to confidentiality rules for personal and medical data”.

Preamble

Office point 84, page 20, Paragraph 4; Amendments received in the first discussion included proposals to incorporate additional sectors, and to specify subsectors within existing sectors, to provide clearer guidance for the development of targeted preventive and protective measures. Similar views were expressed in the replies to the questionnaire. **The Office invites the tripartite constituents' comments on the following proposal**, in which it has also inserted “recognized harm due to” before “exposure to biological hazards” in the introductory text to align it with Articles 8 and 9 of the Convention:

4. The sectors and occupations where workers are at high risk of recognized harm due to exposure to biological hazards and for which specific preventive and protective or, as appropriate, precautionary measures should be developed under Article 8 of the Convention should include:

- (a) the healthcare sector;
- (b) agricultural work, including in the animal (such as livestock, poultry), vegetable and grain sectors;
- (c) the water and waste sector;
- (d) cleaning and maintenance work, including hospital cleaning and industrial maintenance;
- (e) humanitarian work;
- (f) laboratory work;
- (g) the biotechnology and pharmaceutical sectors;
- (h) funeral services and mortuary work.

Answer: We think that the sectors and occupations where workers are at high risk of recognized harm due to exposure to biological hazards and for which specific preventive and protective or, as appropriate, precautionary measures should be developed under Article 8 of the Convention should include, but not be limited to the mentioned sections in paragraph 4.

Office point 85, page 21, Paragraph 5; Several amendments were received during the Committee's first discussion, including proposals to broaden the scope and to eliminate the subparagraph referring to “workers in need of protection due to their social situation and multiple disadvantages”. Accordingly, **the Office invites the tripartite constituents' comments on the possible deletion of this subparagraph and the addition of “migrant workers”** to the list of categories of workers who may need special protection under certain conditions. This would also be in line with the comments from Members summarized in Report IV(2), which highlighted migrant workers' vulnerabilities in terms of unstable social conditions and limited access to health services.

Answer: This paragraph should not exclude other categories which are similar to migrants, and e.g. are vulnerable to exploitation or have only limited access to health services.