

Dear Member of the Employment Committee,

I am contacting you regarding the extraordinary meeting of the Committee organized tomorrow to discuss with the European Commission on the draft measure decided by the Technical Progress Committee regarding the categorization of SARS-CoV-2 (the virus causing Covid-19) within the system provided by Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work.

ETUC welcomes the Commission proposal to include the Covid-19 virus in the Biological Agents Directive (hereafter 'the Directive'). We do however not agree with including SARS-CoV-2 only as a group 3 agent (in Annex III of the Directive). According to the definitions in Article 2 of the Directive, the virus needs to be in group 4.

Article 2, Directive 2000/54/EC:

"Biological agents" shall be classified into four risk groups, according to their level of risk of infection: [...]

3. group 3 biological agent means one that can cause severe human disease and present a serious hazard to workers; it may present a risk of spreading to the community, but there is usually effective prophylaxis or treatment available;

*4. group 4 biological agent means one that causes severe human disease and is a serious hazard to workers; it may present a **high** risk of spreading to the community; there is usually **no** effective prophylaxis or treatment available.*

I would also like to draw your attention to Article 18 of the Directive:

3. If the biological agent to be assessed cannot be classified clearly in one of the groups defined in the second paragraph of Article 2, it must be classified in the highest risk group among the alternatives.

This Article would mean, in our view, that if it is not clear which group the virus should be classified in, or if only a partial element of group 4 applies to the virus, it should legally be considered to belong to group 4.

Apart from the legal reasons, research shows that the characteristics of the Covid-19 virus justify its classification in the highest risk group (group 4), not only because of the lack of effective treatment or vaccine, but because of the high risk of workers who are in contact with the public spreading the virus to the community.

Classifying the virus in the highest risk group would send a strong political signal: employers have to take the highest possible prevention measures to protect the life of workers. Work is a vector of contagion for SARS-CoV-2. Contact with an infected person is sufficient to propagate, regardless of whether that person has clear symptoms of the disease. The general public has been asked to stay in their homes, because every outside contact can lead to contamination, and therefore to disease. In the workplace, social interactions are, for the most part, the rule.

An argument raised by the European Commission for supporting the classification of SARS-CoV-2 as a group 3 agent is that some of the preventive measures prescribed are not feasible for key activities in the fight against the pandemic, such as laboratories or

the health sector. This narrative doesn't change the fact that the virus meets all the criteria for biological agents under group 4, according to Article 2 of the Directive. The argument used is also a false dichotomy: it overlooks the possibility of using a flexible approach and derogations for the operation of certain services. Resorting to derogations should however only be done for public purposes, not for economic reasons. Under no circumstance should the health of workers be a trade-off for profit. Solutions can also be found on the basis of a risk assessment and by way of risk management. Annex V of the Directive ("Indications concerning containment measures and containment levels") clearly states that the "measures contained in this Annex shall be applied according to the nature of the activities, the assessment of the risks to workers and the nature of the biological agent concerned."

The procedure followed so far by the European Commission to categorize SARS-CoV-2 has been opaque and thereby made democratic control very difficult. The procedure was defined as a technical update of the Directive and therefore only involved experts. An expert meeting was held on the 27th of April 2020, to which the Advisory Committee for Safety and Health at Work (ACSH) provided its opinion with disagreement between the different interest groups on the category to place the virus in. The Technical Progress Committee met on the 15th of May and advised to categorize the virus in group 3. It is now up to the Commission to adopt the measures. Afterwards, the European Parliament will only be able to object "on a limited number of grounds".

Neither the ACSH nor the European Parliament were informed about the composition of the above-mentioned expert group that met on 27 April nor of the Technical Progress Committee. ETUC is concerned that the Committee only, or mostly, consisted of public health experts and not experts on occupational safety and health, because one can deduct from the outcome of the meeting that the reasoning was based on public health statistics. But the situation of a nurse, a cleaner, a police officer, a public transport worker or any 'frontline worker' cannot be compared with that of a worker being able to work from home. These workers are not in the same situation regarding exposure to the virus and risk of infection. It is also clear that the experts did not apply the criteria mentioned in the Directive, yet the criteria used by the experts has not been made public.

Conclusion:

A classification of SARS-CoV-2 in the highest risk group could lead to a stronger protection for workers in hospitals and elderly care homes, and all workers in contact with the public. It could improve occupational health but also strengthen the possibility of reducing the spread of the virus, and thereby the mortality, among the general population. However, as soon as there is an effective treatment or vaccine available, the risk group classification should change.

Considering the above-mentioned arguments, **we therefore propose the following questions to be asked to the European Commission** at the extraordinary meeting of the EMPL Committee:

- What was the criteria used for the selection of the experts for the meeting of the 27th of April?
- What criteria have been used by these experts to categorize the virus?
- What experts are in the Technical Progress Committee?
- What criteria have they applied to come to their decision?
- How do these criteria relate to the criteria in the Directive?

On a more long-term note:

- The Directive needs a more thorough revision to be able to properly include a pandemic situation like the one we are facing now.
- Occupational Safety and Health needs a prominent place in the exit strategies now being developed by the EU member states. The safety and health of workers is not only an objective in itself but also one that will contribute to keeping the contamination to the broader society limited.
- A new EU Strategic Framework on Occupational Safety and Health should be developed urgently, taking into account the health and safety challenges posed upon us by the Covid-19 pandemic.

In order to further support our argument, I attach a note from the European Trade Union Institute (ETUI) explaining the issue further.

I would like to thank you very much in advance for your support on this very pressing matter.

I remain at your disposal should you require additional information or further clarifications.

Best regards,

Per Hilmer
ETUC Deputy General Secretary