

Misclassification of the Covid-19 virus

In June 2020, following the Covid-19 outbreak caused by the coronavirus strain SARS-CoV-2, the EU Commission urgently revised the Biological Agents Directive (BAD) (Directive 2000/54/EC; Directive (EU) 2020/739) to include this new virus in the list of biological agents known to infect humans and for which preventive and protective work-related measures must be put in place. The Commission eventually concluded that the virus ought to be classified as a group 3 agent. It did so in spite of the ETUC and ETUI alerting it to the perils arising from the misclassification of the virus as anything less than a group 4 agent (ETUI 2020). Our analysis of the process that led to this conclusion shows that the Commission did not correctly apply the rules for classifying new agents as laid down in the BAD. Moreover, this analysis brings to light some deficiencies in the Directive itself.

The classification system in the Biological Agents Directive

The BAD lays down minimum requirements to protect workers against risks that arise or are likely to arise from exposure to biological agents at work. The provisions of the BAD apply to all workers and all workplaces in the EU Member States. The BAD legal text provides that the biological agents must be classified into four risk groups according to the criteria shown in Figure 5.1. The higher the risk group, the more stringent the preventive and protective measures to be implemented at the workplace.

Article 18(3) of the BAD reads as follows: '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.'

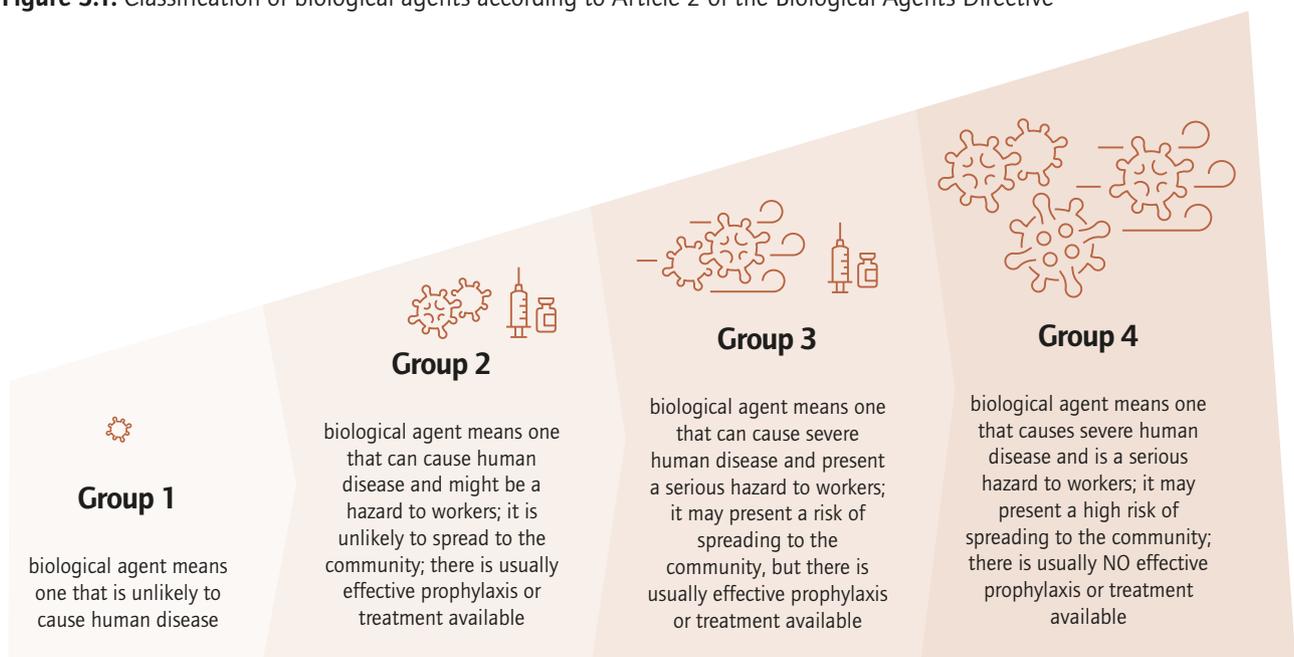
The classification of SARS-CoV-2 by the EU Commission

In its revision of the Directive, the EU Commission eventually classified SARS-CoV-2 in risk group 3, based on the unanimous opinion of experts from Member States and international health organisations. However, looking at the characteristics of this virus in relation to the definitions in the Directive, this conclusion is hard to understand. The SARS-CoV-2-virus:

- can cause severe human disease (group 3) (the virus does not always cause serious disease, but can cause one);
- is a serious hazard to workers (group 4) (work is a key vector in the spreading of the virus)
- may present a high risk of spreading to the community (group 4);
- and there is no effective prophylaxis or treatment available (group 4).

Therefore, a correct application of Article 18 of the Directive would clearly lead to including SARS-CoV-2 in group 4. This was why a nurses' union in Spain brought a case to the European Court of Justice asking for the annulment of this revision of the Directive (Case T-484/20).

Figure 5.1. Classification of biological agents according to Article 2 of the Biological Agents Directive



SARS-CoV-2 in the same category as SARS and MERS

By locating SARS-CoV-2 in group 3, the Commission ended up classifying the virus in the same category as SARS and MERS, whereas a comparison of the current pandemic with the 2003 SARS and the 2012 MERS outbreaks shows that, although having a lower mortality rate than SARS, the SARS-CoV-2 virus has proved much more pervasive, and thereby effectively caused many more deaths at work, let alone in the community. Unger (2020) points out the importance of taking into account the 'occupational concentration' of the virus, which is a major factor for the healthcare and elderly care sectors and for frontline workers. Moreover, he rightly emphasises the contextual and geographical relevance of 'the occurrence of the disease in Europe'. While no SARS nor MERS outbreaks occurred in Europe, there has been a heavy toll in EU/EEA countries due to Covid-19, with more than 5,905,285 cases and over 208,627 deaths reported by 25 October 2020. As argued by Unger, it is almost self-evident that these factors ought to have been considered when deliberating the classification of SARS-CoV-2, and would have led a reasonable decision-maker to concede the necessity of including this virus in risk group 4.

Experts developed their own classification system

On closer scrutiny, the process leading to the inclusion of the Sars-CoV-2 virus in what, according to the authors of this chapter, is an inappropriate risk category, reveals a number of poor practices in the BAD classification decision-making processes that have existed for a long time, and can no longer be deemed as acceptable. As already pointed out in a 2012 report by the Dutch National Institute for Public Health and the Environment (RIVM), it would appear that the experts advising the Commission on the classification of new biological agents do not necessarily apply the BAD classification system,

but have developed their own classification practice, and one that is visibly not in line with the definitions of the four groups. Moreover, it seems that they base the classification of the virus on public health statistics rather than on knowledge about working conditions in occupations and sectors, arguably defeating the entire purpose of the BAD. Research by Klein (2012) shows that the first element of the definition, 'virulence/pathogenicity', is decisive in the experts' classification, but that hardly any (if any) weight is given to 'transmissibility' and 'treatment'. We would add to this that neither is the fourth element of the definition (the extent to which the virus causes a hazard to workers) properly taken into account, or at least given the weight it deserves, in the classification exercise (see also Klein 2012).

A more adequate classification system

We venture to suggest that a more stringent application of the BAD's own classification system would have resulted in a more accurate categorisation of SARS-CoV-2 as a class 4 agent. But it is also clear to us that the failures evidenced by this revision exercise reveal the need for a deeper revision of the classification system envisaged by the Directive, in order to place additional emphasis on how an agent such as this virus can constitute 'a serious hazard for workers'. This would also do more to highlight the importance of OSH knowledge, instead of exclusively relying on public health statistics. Moreover, to acknowledge the importance of context-based decision-making, the classification system should also take into consideration the occurrence of a pandemic situation.

The system failed in the pandemic, revealing a number of intrinsic inadequacies. The good news is that the European Commission, pushed by the ETUC and the EP, 'will without delay assess the need to amend the Biological Agents Directive, following the lessons learnt by the current pandemic' (European Commission 2020a).