



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.5.2002
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1992/0449 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on the minimum health and safety requirements regarding the exposure of workers to
the risks arising from physical agents (noise) (nth individual Directive within the
meaning of Article 16(1) of Directive 89/391/EEC)**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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1. BACKGROUND

The Commission sent the above proposal for a Directive based on Article 118A of the Treaty (now Article 137) to the Parliament and the Council on 8 February 1993 (COM(1992) 560 final - 1992/0449 (COD)).

The Economic and Social Committee gave its Opinion on 30 June 1993. The Committee of Regions stated in a letter dated 13 January 2000 that it would not issue an opinion.

The European Parliament adopted an Opinion on First Reading on 20 April 1994.

The Commission accepted 31 amendments proposed by the Parliament, 4 of these in part. An amended proposal was presented by the Commission on 8 July 1994.

The Council adopted its Common Position unanimously on 29 October 2001. The Commission supported the common position.

On 13 March 2002, at its second reading, the European Parliament adopted 19 amendments to the Council Common Position.

This opinion sets out the Commission's position on the European Parliament's amendments in accordance with Article 251 (2)(c) of the EC Treaty.

2. AIM OF COMMISSION PROPOSAL

The original proposal was based on Article 118A of the Treaty (now Article 137) and takes the form of an individual directive within the meaning of Article 16(1) of the Framework Directive 89/391/EEC.

It aims at the protection of workers against the risks to their health and safety arising from exposure to physical agents. The proposal covers four physical agents: noise (risks to hearing), vibrations (risks to the hand, arm and whole body), electromagnetic fields and optical radiation (risks to the health from induced currents in the body, shock and burn hazards and from absorption of thermal energy).

The general approach taken by the Council had been to concentrate on the one element at a time, starting with vibrations.

All delegations and the Commission accepted this approach to deal with the proposal on a step by step basis which does not discard the other parts of the Commission's proposal which remain on the table of Council for future discussions. A statement of the Council in the Council Minutes confirms that the proposal remains on the table of the Council and reiterates the commitment of the Council to deal with the other physical agents at a later stage.

This proposal covering noise is the second phase of the approach adopted by the Council and its aim is to align Directive 86/188/EEC with the general preventive principles laid down by Directive 89/391/EEC.

3. COMMISSION'S OPINION ON THE AMENDMENTS PROPOSED BY THE PARLIAMENT

3.1. Summary of the Commission's position

The Commission can accept eleven of the amendments (1, 2, 6, 7, 10, 11, 12, 14, 17, 18 and 22) and two amendments in part (15 and 16).

The Commission cannot accept six of the amendments (3, 13, 20, 21, 23 and 25) adopted by the Parliament.

3.2. Parliament's amendments on second reading

3.2.1. Amendments accepted

3.2.1.1. Amendment 1 ("priority to collective protection measures") (Recital 10)

The amendment clarifies the prevention based approach.

3.2.1.2. Amendment 2 ("reference to ISO standard") (Recital 11 a (new))

The amendment explains the provision related to measuring.

3.2.1.3. Amendment 6 ("*reduction of the peak pressure level of the upper exposure action level*") (Article 3, paragraph 1, point (b))

The amendment aligns the peak pressure level of the upper exposure action level with the original Commission proposal thus providing for some leeway between the upper action level and the exposure limit value.

3.2.1.4. Amendment 7 ("*reference to effective exposure*") (Article 3, paragraph 2)

The amendment clarifies and improves the wording of the text in clearly stating that the effective exposure of worker is determinant for applying the exposure limit values.

3.2.1.5. Amendment 10 ("*risk assessment to take account of hearing protectors*") (article 4, paragraph 6, point (j) (new))

The amendment improves the text by pointing to an important element.

3.2.1.6. Amendment 11 ("*deletes end of sentence*") (Article 5, paragraph 3)

The amendment improves the text by deleting a superfluous part.

3.2.1.7. Amendment 12 ("*matches or exceeds action value*") (Article 6, paragraph 1, point (b))

The amendment renders the wearing of hearing protectors mandatory as soon as the upper exposure action value is exactly matched.

3.2.1.8. Amendment 14 (Article 7, paragraph 1)

The amendment is of a linguistic nature.

3.2.1.9. Amendment 17 ("*specifies matters for consultation of workers*") (Article 9)

The amendment adds useful precisions to the text.

3.2.1.10. Amendment 18 ("*right for a simplified audiometric testing*") (Article 10, paragraph 2)

The amendment entitles workers exposed above the lower exposure limit value to a simplified audiometric testing, thus reinforcing the prevention aspects of the directive through the possibility of early detection of hearing loss.

3.2.1.11. Amendment 22 ("*overall assessment in Commission report*") (Article 15, second paragraph)

The amendment provides that the Commission report on the implementation of the directive shall be based also on new knowledge and research and shall include the result of an overall assessment of the implementation.

3.2.2. *Amendments accepted in part*

3.2.2.1. Amendment 15 ("*specifies information and training on hearing protectors*") (Article 8 (e))

The amendment clarifies the obligations of the employers, but needs to be generalized and transferred to a new paragraph 2 of Article 8, as follows:

"2. The employer shall ensure that information and training on the proper use the various hearing protectors available in the enterprise is given to those workers which might have to use them."

3.2.2.2. Amendment 16 ("*references to other articles*") (Article 8 (g))

The Commission accepts the part relating to Article 10 of the present directive but rejects the reference to Article 14 of Directive 89/391/EEC since this is redundant.

3.2.3. *Amendments not accepted*

3.2.3.1. Amendment 3 ("*Bilbao Agency to encourage exchange of good practices*") (Recital 12 a (new))

Although adhering to the underlying idea the Commission rejects this amendment.

A political commitment should not take the form of a recital as it contravenes the "Inter-institutional Agreement on Common Guidelines for Quality of Drafting of Community Legislation" which foresees that recitals "shall not contain normative provisions or political exhortations".

3.2.3.2. Amendment 13 ("*enforcing the wearing of hearing protectors*") (Article 6, paragraph 2)

The Commission rejects this amendment because its content is already covered if paragraphs 1 and 2 of Article 6 are read jointly.

3.2.3.3. Amendment 20 ("*reference to paragraph (1a)*") (Article 11, paragraph 2)

The Commission had accepted this amendment which would have been a technical adjustment resulting from amendment 19. Since amendment 19 has not been voted, this amendment no longer makes sense.

3.2.3.4. Amendment 21 ("*opinion of the medical authorities responsible*") (Article 11, paragraph 2)

The Commission considers that the way in which Member States obtain a scientific or medical opinion for granting derogations is to be dealt with as a matter of subsidiarity.

3.2.3.5. Amendment 23 ("*exemption for music and entertainments sectors*") (Article 1, paragraph 2, subparagraph 1 a (new))

There are no scientific reasons that justify an exclusion, even temporarily, of the music and leisure sectors from the scope of the directive.

Furthermore, there are hearing protectors available on the market specifically conceived and adapted to these working environments that do not impair understanding of speech or musical performance.

3.2.3.6. Amendment 25 ("*keeping in force of directive 86/188/EEC on the music and entertainment sectors*") (Article 14)

Since this amendment is a technical adjustment resulting from the exemption of the music and entertainment sectors in amendment 23, the Commission rejects it for the same reasons.

Moreover the keeping in force of Directive 86/188/EEC in the music and entertainment sectors could lead to legal complications.

3.3. Amended proposal

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.