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*****II**

RECOMMENDATION FOR SECOND READING

on the Council Common Position for adopting a European Parliament and Council directive amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (2nd individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(5766/2/2001 – C5-0135/2001 – 1998/0327(COD))

Committee on Employment and Social Affairs

Rapporteur: Peter William Skinner

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 21 September 2000 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive amending for the 2nd time Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (2nd individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (COM(1998) 678 - 1998/0327 (COD)).

At the sitting of 27 October 2000 the President of Parliament announced that the opinion of the Commission on the European Parliament's amendments to the Council's Common Position concerning the proposal for a Council directive for the 2nd time Directive (89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (2nd individual directive within the meaning of Article 16 of Directive 89/391/EEC) had been received and referred to the Committee on Employment and Social Affairs (COM(2000) 648 - C5-0530/2000).

At the sitting of 4 April 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Employment and Social Affairs (5766/2/2001 - C5-0135/2001).

The committee had appointed Peter William Skinner rapporteur at its meeting of 27 July 1999.

The committee considered the common position and the draft recommendation for second reading at its meeting of 24 April 2000.

At the latter meeting it adopted the draft legislative resolution by 34 votes to 3, with 0 abstentions.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman; José Ribeiro e Castro, vice-chairman; Peter William Skinner, rapporteur; Elspeth Attwooll (for Luciano Caveri), María Antonia Avilés Perea, Ieke van den Burg, Philip Bushill-Matthews, Chantal Cauquil (for Sylviane H. Ainardi), Alejandro Cercas, Luigi Cocilovo, Elisa Maria Damião, Proinsias De Rossa, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Ian Stewart Hudghton, Stephen Hughes, Karin Jöns, Ioannis Koukiadis, Jean Lambert, Thomas Mann, Mario Mantovani, Manuel Medina Ortega (for Jan Andersson), Claude Moraes, Mauro Nobilia, Manuel Pérez Álvarez, Bartho Pronk, Herman Schmid, Miet Smet, Ilkka Suominen, Helle Thorning-Schmidt, Anne E.M. Van Lancker and Barbara Weiler.

The recommendation for second reading was tabled on 30 April 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (5766/2/2001 – C5-0135/2001 – 1998/0327(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (5766/2/2001 – C5-0135/2001),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(1998) 678²),
 - having regard to the Commission's amended proposal (COM(2000) 648³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 78 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A5-0156/2001),
1. Approves the common position;
 2. Notes that the act is adopted in accordance with the common position;
 3. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 4. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Communities;
 5. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ

² OJ C 247E, 31.8.1999, p. 23

³ OJ C 62E, 27.2.2001, p. 113

EXPLANATORY STATEMENT

The Council formally adopted its Common Position on 23 March 2001. However, Council had already reached an initial political agreement on 17 October 2000, and issued a press communiqué stating specifically that Council had decided to delay adoption of the Common Position so that the Presidency could pursue its contacts with the European Parliament with a view to reaching overall agreement at first reading.

The informal contacts which followed between the rapporteur and both the Swedish and French Presidency representatives contributed significantly to the final text of the Common Position. Indeed, the rapporteur would like to place on record his appreciation of the efforts of successive Council Presidencies, going back to the Portuguese early in the year 2000, which have demonstrated a new openness to practical cooperation between Council and Parliament, and which hopefully bodes well for the future of codecision in the social policy field.

Parliament's amendments at first reading

Parliament adopted 21 amendments at first reading on 21 September 2000. The Commission's amended proposal accepted over half of these, at least in part, as did the text of the political agreement reached in October in Council.

The informal discussions with Council

Process: Given that such informal contacts are a relatively new phenomenon, there are no firm rules on how these should be conducted. The rapporteur met representatives of both the French and Swedish Presidencies in the weeks and months that followed the adoption at first reading already in committee, so that discussions could be stepped up immediately after Parliament's adoption in plenary. To back up the rapporteur, and to make such discussions more effective, a working group was established of group coordinators and shadow rapporteurs from the Employment and Social Affairs Committee, so that as broad a consensus as possible could be reached. This group was consulted right up to the final discussions with the Presidency at the beginning of this year.

Parliament priorities

The rapporteur is pleased that the vast majority of the amendments adopted at first reading have now been incorporated, in spirit or to the letter, in the Common Position. He was concerned that certain amendments in particular should be accepted in the text of the directive. These covered the following themes:

- **Self-employed:** Parliament's amendment 4 in first reading was aimed at showing not only that the self-employed are already covered by Directive 92/57/EEC on temporary and mobile work sites (usually in the construction sector), but also that a solution has to be found to the overall problem whereby the self-employed are not generally covered by European health and safety legislation and yet their activities can have a direct impact on the health and safety of employees.

The rapporteur believes that the Common Position adequately addresses this issue: two recitals have been included (Numbers 7 and 8), acknowledging that self-employed persons and employers may affect employees' health and safety, and making direct reference to Directive 92/57/EEC to show to what extent this will include these workers in the current directive on work at a height. In addition, the Council and Commission have agreed to add a statement declaring that a solution must be found to take account of all persons involved in temporary work at a height, thus in line with the 2nd part of the Parliament's amendment 4 (the draft of this statement is to be found in the Commission's Communication on the Common Position - SEC(2001) 511 final).

- **Collective protection measures:** Parliament's amendment 8 at first reading had added a new definition on "collective fall protection safeguards", particularly in response to the confusing use of slightly different terminology leading to inconsistency throughout the Commission's original proposal. Not only has the Commission corrected these inconsistencies in its amended proposal, but also the Common Position has strengthened the emphasis on collective protection measures, with a recital (Number 10) stating that *collective* protection measures offer better protection than *personal* protection measures, and this can be seen to be confirmed in the text of Annex 4.1.1, which states even more clearly that "collective protection measures must be given priority over personal protection measures". Given that the potential confusion caused by different terminology in the earlier text has now been resolved, the rapporteur believes that the concerns embodied in amendment 8 have now been covered.
- **Safety signs:** Parliament's amendment 21 had stressed the importance of adequate warning signs during use of scaffolding, quoting the Annex to Directive 92/57/EEC. The rapporteur acknowledges the Commission's argument that the latter directive does indeed cover temporary work at a height and that the amendment is therefore superfluous. He notes, however, that the Commission is due to report this year on the implementation of Directive 92/58 on minimum requirements for the provision of safety and/or health signs at work, and is pleased to learn that the Council has agreed to add a statement undertaking to reexamine that directive if the Commission's report shows that to be appropriate.

Transition period for SMEs

Article 2 of the Common Position allows Member States an optional two years further transition period (ie 5 years, when added to the overall transposition period) "to take account of the various situations which might arise from the practical implementation of this directive in particular by small and medium-sized enterprises". As the Commission acknowledges in its Communication on the Common Position, proper implementation of this Directive might require in particular acquisition of new equipment and preparation of appropriate training modules. The rapporteur has been concerned throughout discussions on this particular piece of legislation to keep in mind the possible impact on small and medium-sized enterprises, given their predominance in sectors such as painting and decorating or window-cleaning. He is therefore prepared to accept for this particular legislation an extended transition period for SMEs.

Conclusion

In light of the above comments, the rapporteur would share the Council's own conclusion that "it has taken account of the essential features of the objectives pursued by the European Parliament in its proposed amendments". He therefore recommends acceptance of the Common Position, and believes that this legislation can contribute to the prevention of accidents at work involving falls from height, which currently account for some 10% of all industrial accidents, and which all too frequently lead to the permanent disability or death of the victim concerned.