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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (16th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(7914/1/2001 REV 1 – C5-0293/2001 – 1992/0449(COD))

Committee on Employment and Social Affairs

Rapporteur: Helle Thorning-Schmidt

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 20 April 1994 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (16th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (COM(1992) 560 - 1992/0449 (COD)).

At the sitting of 5 July 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Employment and Social Affairs (7914/1/2001 REV 1 - C5-0293/2001).

The committee had appointed Helle Thorning-Schmidt rapporteur at its meeting of 27 July 1999.

It considered the common position and draft recommendation for second reading at its meeting of 4 September and 8–9 October 2001.

At the latter meeting it adopted the draft legislative resolution by 42 votes to 2.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad and José Ribeiro e Castro, vice-chairmen; Helle Thorning-Schmidt, rapporteur; Jan Andersson, María Antonia Avilés Perea, Regina Bastos, Roberto Felice Bigliardo, Theodorus J.J. Bouwman (for Jillian Evans), André Brie (for Sylviane H. Ainardi), Philip Bushill-Matthews, Luciano Caveri, Alejandro Cercas, Luigi Cocilovo, Harald Ettl, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Richard Howitt (for Proinsias De Rossa), Stephen Hughes, Anne Elisabet Jensen (for Luciana Sbarbati), Ioannis Koukiadis, Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Manuel Medina Ortega (for Elisa Maria Damião), Claude Moraes, Mauro Nobilia, Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Peter William Skinner (for Ieke van den Burg), Miet Smet, Ilkka Suominen, Bruno Trentin (for Karin Jöns), Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for James L.C. Provan).

The recommendation for second reading was tabled on 9 October 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 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (16th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (7914/1/2001 REV 1 – C5-0293/2001 – 1992/0449(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (7914/1/2001 REV 1 – C5-0293/2001),
- having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(1992) 560²),
- having regard to the Commission's amended proposal (COM(1994) 284³),
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 80 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A5-0320/2001),

1. Amends the common position as follows;
2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 128, 9.5.1994, p. 128

² OJ C 77, 18.3.1993, p. 12

³ OJ C 230, 19.8.1994, p. 3

Amendment 1
Recital 3

(3) As a first step, it is considered **appropriate** to introduce measures protecting workers from the risks arising from vibrations owing to their effects on the health and safety of workers, in particular muscular/bone structure, neurological and vascular disorders. These measures are intended not only to ensure the health and safety of each worker on an individual basis, but also to create a minimum basis of protection for all Community workers in order to avoid possible distortions of competition.

(3) As a first step, it is considered **necessary** to introduce measures protecting workers from the risks arising from vibrations owing to their effects on the health and safety of workers, in particular muscular/bone structure, neurological and vascular disorders. These measures are intended not only to ensure the health and safety of each worker on an individual basis, but also to create a minimum basis of protection for all Community workers in order to avoid possible distortions of competition.

The Council and the European Parliament undertake to continue considering directives on the other physical agents covered by the Commission's original 1992 proposal, with a view to their adoption as soon as possible.

Justification

The Commission's original proposal from 1992 also contains provisions governing the protection of workers from noise, electro-magnetic fields and waves and optical radiation. In connection with its common position the Council has stated its commitment to continuing its examination of the original proposal. The European Parliament should make a corresponding politically binding commitment in cooperation with the Council.

Amendment 2
Article 3, paragraph 2

2. For whole-body vibration:

(a) the daily exposure limit value standardised to an eight-hour reference period shall be **1,15 m/s²** or, at the choice of the Member State concerned, a vibration dose value of **21 m/s^{1,75}**;

(b) the daily exposure action value standardised to an eight-hour reference

2. For whole-body vibration:

(a) the daily exposure limit value standardised to an eight-hour reference period shall be **0,8 m/s²** or, at the choice of the Member State concerned, a vibration dose value of **14,6 m/s^{1,75}**;

(b) the daily exposure action value standardised to an eight-hour reference

period shall be **0,6 m/s²** or, at the choice of the Member State concerned, a vibration dose value of **11 m/s^{1,75}**.

Workers' exposure to whole-body vibration shall be assessed or measured on the basis of the provisions of Point 1 of Part B of the Annex.

period shall be **0,5 m/s²** or, at the choice of the Member State concerned, a vibration dose value of **8,5 m/s^{1,75}**.

Workers' exposure to whole-body vibration shall be assessed or measured on the basis of the provisions of Point 1 of Part B of the Annex.

Justification

No new scientific documentation has been produced which would alter the assessment of the deleterious health effects of whole-body vibrations on the back, and there is consequently no scientific justification for the very considerable increases in levels set out in the common position. An increase from 0.7 m/s to 1.5 m/s is a very considerable increase indeed.

According to ISO-2631, as regards whole-body vibration, actual risks to health lie above 0.8 m/s² in respect of an exposure period of eight hours. This figure should therefore be retained as the exposure limit value.

Amendment 3

Article 5, paragraph 2, point c

(c) the provision of auxiliary equipment that reduces the risk of injuries caused by vibration, such as seats that effectively reduce whole-body vibration;

(c) the provision of auxiliary equipment that reduces the risk of injuries caused by vibration, such as seats that effectively reduce whole-body vibration **and equipment fitted with vibrations reducing handles**;

Justification

The amendment adds a more positive point about possible injury reduction.

Amendment 4

Article 8, paragraph 3, point b, introduction

(b) the employer shall:

(b) the employer shall **be informed of any significant findings from the health surveillance and**:

Justification

There is currently no route through which the employer gains feedback from the health surveillance. This is essential if he is to manage the process.

Amendment 5
Article 9

With regard to implementation of the obligations laid down in Article 5(3), Member States shall be entitled to make use of a maximum transitional period of **6 years** from * where work equipment is used which was given to workers before ** and which does not permit the exposure limit values to be respected, taking into account the latest technical advances and/or the organisational measures taken. With regard to equipment used in the agriculture and forestry sectors, Member States shall be entitled to extend the maximum transitional period by up to **3 years**.

* **3 years** after the entry into force of this Directive

** **6 years** after the entry into force of this Directive.

1. With regard to implementation of the obligations laid down in Article 5(3), Member States shall be entitled to make use of a maximum transitional period of **5 years** from * where work equipment is used which was given to workers before ** and which does not permit the exposure limit values to be respected, taking into account the latest technical advances and/or the organisational measures taken. With regard to equipment used in the agriculture and forestry sectors, Member States shall be entitled to extend the maximum transitional period by up to **2 years in respect of whole-body vibrations**.

2. The Member States shall determine the derogations referred to in paragraph 1 after consulting the two sides of industry in accordance with national legislation or practice.

* **2 years** after the entry into force of this Directive

** **3 years** after the entry into force of this Directive.

Justification

The original Commission proposal did not contain any transitional arrangements other than the normal 3-year period for implementation. Under Annex II it was also possible to make derogations of up to 5 years. The Council has permitted a transitional period of up to 6 years, with a further 3 years for the agricultural and forestry sector.

The transitional arrangements should be seen in conjunction with technical advances, the health and safety effects on the workers affected and the economic burden which the directive imposes on employers. The original proposal allowed a 5-year period for the sectors in question to replace the tools and machinery covered by the directive in accordance with technical developments. These developments have fortunately not ceased, and a 5-year transitional period seems sufficient.

Within the agricultural and forestry sector the rate of replacement of the machinery which gives rise to whole-body vibration is not as rapid as in other sectors. This should be taken into account by permitting a further extension of 2 years, as in the original proposal.

The directive states that there can only be transitional arrangements if it is not possible to comply with the limit values irrespective of technical advances. To ensure that there is no question of transitional arrangements being permitted as a matter of course, but also to ensure that these provisions are not interpreted too strictly, they should only be adopted after the two sides of industry have been consulted in accordance with national legislation or practice.

The original Commission proposal did not contain any transitional arrangements other than the normal three-year period for implementation. Under Annex II it was also possible to make derogations of up to five years.

Amendment 6
Article 13

Reports

Every five years Member States shall provide a report to the Commission on the practical implementation of this Directive, indicating the points of view of both sides of industry.

On the basis of those reports, the Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work thereof.

Reports

Every five years Member States shall provide a report to the Commission on the practical implementation of this Directive, indicating the points of view of both sides of industry. ***This report shall include a list, giving detailed reasons, of the transitional arrangements and derogations which the Member States have adopted. It shall also contain a description of best practice in the prevention of vibrations with a harmful effect on health and other forms of work organisation, together with the action taken by the Member States to impart knowledge of such best practice.***

On the basis of those reports, the Commission shall ***carry out an assessment of the implementation of the directive, including implementation in the light of research and scientific information, and shall*** inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work thereof ***and of proposals for appropriate amendments.***

Justification

The aim of this amendment is to ensure that the Member States also provide detailed information on the directive's implementation in practice. As co-legislator the European Parliament has a clear interest in being provided with information on the extent to which the European Union's citizens are enjoying the improvement in health and safety which the directive promised.

One concrete way of doing this might be the provision of information on, and exchange of, best practice. The transmission of experience in the Member States should take place via the European Agency for Safety and Health at Work in Bilbao.

On the basis of information from the Member States, the Commission should carry out an overall assessment taking account of research and new knowledge. This is particularly important in the light of the major debate which has taken place on the result of research in this field in conjunction with the adoption of this directive.

Amendment 7
Annex, part A, point 2 b

(b) in the case of devices which need to be held with both hands, measurements must be made ***on*** each hand. The exposure is determined by reference to the higher value of the two; information for the other hand shall also be given.

(b) in the case of devices, which need to be held with both hands, measurements must be made ***for*** each hand. The exposure is determined by reference to the higher value of the two; information for the other hand shall also be given.

Justification

The amendment improves the sense of this paragraph.

EXPLANATORY STATEMENT

1. Background

On 23 December 1992 the Commission submitted a proposal for a directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents, such as mechanical vibrations, noise, optical radiation, electro-magnetic fields and waves (COM(1992) 560).

The common position on which Parliament's opinion is now requested at 2nd reading relates solely to mechanical vibrations.

24 % of all workers in Europe are exposed to mechanical vibrations at work. 9 out of 15 countries consider that further preventive measures should be taken on mechanical vibrations.

Mechanical vibrations occur in particular in the following groups of occupations:

- unskilled employees in the mining, building, manufacturing and transport industries;
- workers in the extraction industry and the building trades,
- drivers and operators of mobile equipment.

Source: European Agency for Health and Safety at Work, 'State of occupational safety and health', 2000.

The proposal for a directive sets action and limit values for two types of vibrations:

- Hand-arm vibration,
- Whole-body vibration.

Hand-arm vibration can lead to loss of feeling in the fingers, 'white finger', permanently impaired feeling and grip, pains in the shoulders and limbs and a risk of arthrosis.

Whole-body vibration can contribute to back problems, including lumbar pain, as well as to slipped discs and premature degeneration of the spinal column. A higher level of vibration and a longer exposure increases the risk, while rest periods reduce it.

Inflexible working postures and frequent twisting of the back increases the risk of damage. The same is true when the muscles are tired or the back is compressed following hard physical work; a jolt or an unexpected movement, resulting for example from an uneven surface or minor collisions, also increases the risk.

2. Assessment of the common position as compared with Parliament's first reading

2.1 *Extent to which Parliament's amendments have been taken into account*

At first reading, Parliament tabled a total of 26 amendments with relevance to mechanical vibrations.

In your rapporteur's opinion, 21 of these have been taken up, 2 have been taken up in part and 3 are considered not to have been taken up.

The three amendments not taken into account (nos. 15, 29 and 32) would all have made it a duty, rather than a right, to undergo health surveillance when the limit value for exposure to vibrations is exceeded.

Under Article 8(1) of the common position employees are entitled to health surveillance as soon as the action value – and not, as Parliament proposed, the limit value – is exceeded. Your rapporteur therefore considers that the common position can be accepted on this point.

One of the amendments (no. 20) which has been partly taken up is the one stating that the Member States shall forward, every other year, a list of the derogations granted from the directive. The common position does include a requirement for such a list to be forwarded, but only every 4 years (see Article 10(4)). Your rapporteur considers an ongoing review and survey of derogations to be important and regards the common position as an acceptable compromise. Your rapporteur is generally against derogations; if she has not chosen to propose a tightening of the rules on the use of derogations, this is largely because she considers that the limit values should be reduced from the levels set in the common position.

The other (no. 21) concerns the technical committee. Here the common position is in line with the procedure which has been in force since 1991, and your rapporteur does not think there is any need for amendments on this point.

In spite of the very high level of take-up of Parliament's amendments, your rapporteur does not consider the common position to be satisfactory. She cannot recommend that Parliament adopt it without amendment.

This is because the common position has weakened the Commission's original proposal, which Parliament supported at first reading, on several crucial points regarding whole-body vibration.

Regarding hand-arm vibration, the common position is close to the level which Parliament approved at first reading.

2.2 *Changes to action values and limit values for whole-body vibration*

The Council has amended the limit values and action values set for whole-body vibration and has set very long transitional periods. Your rapporteur has therefore decided to table amendments seeking to restore the values to the levels proposed by the Commission in the original proposal for a directive, which Parliament accepted without amending them.

In the original Commission proposal the *limit value* is set at 0.7 m/s² for a reference period of 8 hours, while the common position sets this value at 1.15 m/s².

In the Commission's original proposal, the *action value* is set at 0.5 m/s² for a reference period of 8 hours, while the common position sets this value at 0.6 m/s².

Your rapporteur is sceptical in principle about limit values, since they can be interpreted as acceptance of the effects produced below these levels. The alternative to limit values is a very clear and precise requirement stating what protection measures the employer must take to

ensure that employees are not exposed to harmful vibrations. As your rapporteur understands it, the limit values set in this directive seek to give the industry a degree of flexibility to take the measures which are most appropriate to the individual business. Your rapporteur therefore has no problem accepting limit values in this case, but they should give workers real protection. This acceptance is also linked to the fact that the action values are accompanied by a requirement to take measures if these values are overstepped.

Under ISO Standard 2631 the following values may be determined on the basis of an exposure time of 8 hours:

- Under 0.5 m/s² there is no documented health risk;
- Between 0.5 m/s² and 0.8 m/s² there may be a potential health risk;
- Over 0.8 m/s² there is a health risk.

This is the health assessment on which the Commission proposal is based and which your rapporteur considers should be reflected in the action values and limit values respectively. Seen against this background, the common position represents a very significant increase in the limit value.

This is a minimum standards directive. It will be possible for the Member States to set stricter rules. It is also important from the point of view of competition that there should be a level playing field at Community level.

In the debate on the vibrations directive it has been claimed in some quarters that there is no scientific documentation for the limit values. At the meeting of the Committee on Employment and Social Affairs on 21 June your rapporteur was able to ask the Commission to submit the documentation in question.

Since then the Commission has sent your rapporteur 24 reports on mechanical vibrations which support its original proposals on the limit value.

The scientific material leaves no room for doubt that increasing strength of vibration leads to a higher risk of damage. It is clear from the level of vibrations when a risk is present. The limit stands at 0.8 m/s². It is not possible to say – and we should admit this openly – exactly how many more people will suffer injury at one value as opposed to another. However, to use the absence of a precise correlation as an argument for not setting a limit value would be to take a calculated risk with the health of people exposed to harmful vibrations.

The scientific investigations stress that whole-body vibrations are often not the only factor causing such damage. Working posture, for example, also plays a part. Your rapporteur has encountered the argument that this must mean it is impossible to set limit values. However, your rapporteur would point out that the very method of legislation chosen – the setting of limit values – takes this into account, in other words further preventive measures have to be taken if one wants to bring exposure below the limit values. Your rapporteur would remind you that the alternative would be very strict and precise requirements as to measures for the prevention of back injury.

2.3 *Transitional provisions*

In the original proposal, the directive required the Member States to bring the necessary laws and administrative provisions into force no later than 31 December 1995. This corresponds to the general 3-year implementation period.

The annex on mechanical vibrations (Section A no. 12 and Section B no. 12) also provides for the possibility of granting derogations regarding limit values for up to 5 years from the implementation deadline, if technical advances do not permit the limit values to be complied with.

Article 9(1) of the common position provides for the possibility of a transitional period of not more than 6 years where work equipment is used which does not permit the exposure limit values to be respected, taking into account the latest technical advances and/or the organisational measures taken. Your rapporteur does not see any technical justification for extending this period from the original 5 years.

Your rapporteur is opposed to long transitional periods on principle. However, she recognises that some work equipment, even if correctly used, cannot comply with the limit values originally proposed by the Commission and which your rapporteur now proposes should be reinstated. She therefore considers that the transitional period should be set in accordance with technical advances and the general rate of replacement of work equipment, and feels that the original 5 years are appropriate.

Article 9(2) of the common position also allows the possibility of extending that period by a further 3 years in the case of the forestry and agriculture sectors.

Your rapporteur recognises that the rate of replacement of work equipment in these sectors is not the same as in other sectors, and that there may be some particular problems as a result, particularly in view of the very uneven surfaces on fields or on the forest floor. Your rapporteur is therefore inclined to favour an extension for another 2 years, but only in relation to whole-body vibrations. As regards hand-arm vibration, the technical advances appear to be the same in this sector as in other sectors.