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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 (Noise) (Seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(10479/1/2001 – C5-0546/2001 – 1992/0449A(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 Council directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (COM(1992) 560 - 1992/0449A (COD)).

At the sitting of 15 November 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Employment and Social Affairs (10479/1/2001 - C5-0546/2001).

The committee had appointed Helle Thorning-Schmidt rapporteur at its meeting of 26 July 1999.

It considered the common position and draft recommendation for second reading at its meetings of 7–8 January and 18–19 February 2002.

At the latter meeting it adopted the draft legislative resolution by 27 votes to 16, with 2 abstentions.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig, Winfried Menrad and Marie-Thérèse Hermange, vice-chairmen; Helle Thorning-Schmidt, rapporteur; Sylviane H. Ainardi, Jan Andersson, Elspeth Attwooll, Regina Bastos, Philip Bushill-Matthews, Martin Callanan (for Daniel Varela Suanzes-Carpegna), Chantal Cauquil (for Arlette Laguiller), Alejandro Cercas, Luigi Cocilovo (for Enrico Ferri), Elisa Maria Damião, Proinsias De Rossa, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti (for Enrico Boselli), Anne-Karin Glase, Lisbeth Grönfeldt Bergman (for Lennart Sacrédeus), Christopher Heaton-Harris (for James L.C. Provan, pursuant to Rule 153(2)), Roger Helmer, Richard Howitt (for Claude Moraes), Stephen Hughes, Anne Elisabet Jensen (for Daniel Ducarme), Anna Karamanou, Dieter-Lebrecht Koch (for Raffaele Lombardo), Ioannis Koukiadis (for Karin Jöns), Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Thomas Mann, Ria G.H.C. Oomen-Ruijten (for Mario Mantovani), Manuel Pérez Álvarez, Bartho Pronk, Herman Schmid, Miet Smet, Gabriele Stauner (for Mario Clemente Mastella), Ieke van den Burg, Anne E.M. Van Lancker and Barbara Weiler.

The recommendation for second reading was tabled on 21 February 2002.

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 (Noise) (Seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (10479/1/2001 – C5-0546/2001 – 1992/0449A(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position 10479/1/2001 – C5-0546/2001),
- 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 (A5-0038/2002),

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, pp. 146-154.

² OJ C 77, 18.3.1993, pp. 12-29.

³ OJ C 230, 19.8.1994, pp. 3-29.

Amendment 1
Recital 10

(10) The level of exposure to noise can be more effectively reduced by incorporating preventive measures into the design of work stations and places of work and by selecting work equipment, procedures and methods so as to give priority to reducing the risks at source. Provisions relating to work equipment and methods thus contribute to the protection of the workers involved.

(10) The level of exposure to noise can be more effectively reduced by incorporating preventive measures into the design of work stations and places of work and by selecting work equipment, procedures and methods so as to give priority to reducing the risks at source. Provisions relating to work equipment and methods thus contribute to the protection of the workers involved. ***In accordance with the general principles of prevention as laid down in Article 6 (2) of the Framework Directive 89/391/EEC, collective protection measures have priority over individual protection methods***

Justification

The general principles of prevention from the framework directive should be explicitly referred to in this context.

Amendment 2
Recital 11 a (new)

(11a) In order to correctly assess the exposure of workers to noise it is useful to apply an objective measuring method, and thus references to the generally recognised standard ISO 1999:1990 are made. The assessed or objectively measured values should be determinant for initiating the actions foreseen at the lower and upper action levels. Exposure limit values are needed to avoid irreversible hearing damage to workers; the noise reaching the ear should be kept below the exposure limit values.

Justification

The amendment underlines the importance of objective measuring methods and the need for limit values to protect workers.

Amendment 3
Recital 12 a (new)

(12 a) In order to provide employers with the opportunity to choose the technical and/or organisational measures ensuring optimum safety and health for employees, the European Agency for Health and Safety at Work should encourage the exchange of good practice aimed at reducing exposure to noise.

Justification

The exchange of information and good practice can help encourage proper implementation of the directive, particularly in small and medium-sized businesses, provided it is coordinated by the relevant agency.

Amendment 4
Recital 13

(13) Since this Directive is an individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, that Directive applies to the exposure of workers to noise, without prejudice to more stringent and/or specific provisions contained in this Directive.

(13) Since this Directive is an individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, that Directive applies to the exposure of workers to noise, without prejudice to more stringent and/or specific provisions contained in this Directive. ***Self-employed persons and employers may, where they themselves pursue an occupational activity, affect the health and safety of employees; this Directive therefore covers all persons who may expose or do expose workers to noise.***

Justification

Self-employed persons and employers may also affect the health and safety of workers in the context of noise. By analogy with the amended scaffolding directive, this item needs to be clarified also in the noise directive.

Amendment 5
Recital 13 a (new)

(13a) The necessary adjustments should be made to internal market legislation with a view to establishing databases containing information on the hearing protectors and machinery available on the market. This should be done in order to provide employers with the opportunity to choose equipment that ensures the best possible level of safety and health for employees. The databases should contain information both on the quality and effectiveness of hearing protectors and on noise emissions from machinery, etc.

Justification

The objective is to help employers in purchasing the best possible equipment. In order to ensure that the databases are fed regularly with all the relevant information from manufacturers and do not have the effect of restricting competition, the necessary adjustments are to be made to the internal market legislation on machinery, hearing protectors, etc.

Amendment 6
Article 3, paragraph 1, point (b)

(b) Upper exposure action values: $L_{EX,8h} = 85$ dB(A) and $p_{\text{peak}} = \mathbf{200\ Pa^2}$ respectively.

² **140 dB** in relation to 20 μPa .

(b) Upper exposure action values: $L_{EX,8h} = 85$ dB(A) and $p_{\text{peak}} = \mathbf{112\ Pa^2}$ respectively.

² **135 dB** in relation to 20 μPa .

Justification

The value of very powerful impulses (peak sound pressure) is fixed at 112 Pa for both the upper and the lower action value. This amendment should also be seen in conjunction with the amendment guaranteeing the right to hearing tests at 80 dB.

Amendment 7
Article 3, paragraph 2

2. When applying the exposure limit values, ***assessment of the noise exposure level*** shall take account of the attenuation provided by the individual hearing protectors worn by the

2. When applying the exposure limit values, ***the determination of the worker's effective exposure*** shall take account of the attenuation provided by the individual

worker. The exposure action values shall not take account of the effect of any such protectors.

hearing protectors worn by the worker. The exposure action values shall not take account of the effect of any such protectors.

Justification

The amendment seeks to improve the conceptual clarity on the common position. It should be noted that taking account of the effect of the attenuation of hearing protectors does not free the employer from the obligation to take action to reduce the noise exposure.

Amendment 8 Article 3, paragraph 2 a (new)

2a. Member States shall take appropriate steps to reduce noise exposure levels in the case of activities which call for particular vigilance. Member States shall lay down values which are lower than the exposure limit values and the action limit values laid down in this Directive where this is necessary with regard to the health and safety of workers.

Justification

This amendment is based on the Commission's original proposal. There are a number of activities which may be very unpleasant and stressful even where noise exposure levels are substantially lower than the general limit and action values. The situations envisaged here are not industrial activities but work in offices and similar environments. Member States should take these into account and take the necessary steps.

Amendment 9 Article 3, paragraph 3

3. In duly justified circumstances, for activities where daily noise exposure varies markedly from one working day to the next, Member States may, for the purposes of applying the exposure limit values and the exposure action values, use the weekly noise exposure level in place of the daily noise exposure level to assess the levels of noise to which workers are exposed, on condition that:

deleted

(a) the weekly noise exposure level as shown by adequate monitoring, does not

exceed the exposure limit value of 87 dB(A), and

(b) appropriate measures are taken in order to reduce the risk associated with these activities to a minimum.

(See amendment 28 for Article 11, paragraph 1 a)

Justification

The possibility of using the weekly noise exposure level should be considered a derogation to be granted in exceptional cases only. It should therefore be moved from Article 3, paragraph 3 to Article 11 with slight modifications.

Amendment 10

Article 4, paragraph 6, point (j) (new)

(j) the possibility of using individual hearing protectors and their likely effectiveness.

Justification

As the assessment of the level of exposure to noise takes account of the attenuation provided by individual hearing protectors for the purposes of applying exposure limit values, it is important that the employer pay particular attention, when making a risk assessment, to the specific opportunities for using such protectors and their actual effectiveness.

Amendment 11

Article 5, paragraph 3

3. On the basis of the risk assessment referred to in Article 4, workplaces where workers are likely to be exposed to noise exceeding the upper exposure action values shall be marked with appropriate signs. The areas in question shall also be delimited and access to them restricted where this is technically feasible ***and the risk of exposure so justifies.***

3. On the basis of the risk assessment referred to in Article 4, workplaces where workers are likely to be exposed to noise exceeding the upper exposure action values shall be marked with appropriate signs. The areas in question shall also be delimited and access to them restricted where this is technically feasible.

Justification

The deleted part of the text is superfluous. If workers are at risk of being exposed to noise exceeding the exposure action values, the measures referred to are justified in any case.

Amendment 12
Article 6, paragraph 1, point (b)

(b) where noise exposure exceeds the upper exposure action values, individual hearing protectors shall be used;

(b) where noise exposure ***matches or*** exceeds the upper exposure action values, individual hearing protectors shall be used;

Justification

The benefit of this protection must be available as soon as the level of noise exposure reaches 85 dB(A) and peak sound pressure 200 Pa, since the available scientific and medical studies indicate that, between 80 and 85 dB(A), the possible adverse effects on the health of employees from noise exposure are minor.

Amendment 13
Article 6, paragraph 2

2. The employer shall be responsible for checking the effectiveness of the measures taken in compliance with this Article.

2. The employer shall be responsible for ***enforcing the wearing of hearing protectors*** and checking the effectiveness of the measures taken in compliance with this Article.

Justification

This is to make it clear that the employer is also responsible for enforcing the wearing of hearing protectors in the cases required by this directive.

Amendment 14
Article 7, paragraph 1

1. Under no circumstances shall the ***exposure limit values*** as ***assessed*** in accordance with Article 3(2) ***be exceeded***.

1. Under no circumstances shall the ***exposure of the worker*** as ***determined*** in accordance with Article 3(2) ***exceed the limit values***.

Justification

The amendment is mostly linguistic. The wording of the paragraph is brought into harmony with the amended Article 3, paragraph 2.

Amendment 15

Article 8(e)

(e) training in the correct use of hearing protectors

(e) the correct use of hearing protectors, **with** training in ***the proper use of the various hearing protectors available in the workplace being offered to employees liable to use them;***

Justification

Article 8 of the common position is ambiguous on this point; it states that 'the employer shall ensure that workers (...) receive information and training relating to risks resulting from exposure to noise concerning, in particular: (...) training in the correct use of hearing protectors'.

This amendment seeks to clarify the guarantees for employees by spelling out that the employer must ensure that they receive information and training on the various specific models of hearing protectors which they might be required to use.

Amendment 16

Article 8(g)

(g) the circumstances in which workers are entitled to health surveillance and the purpose of health surveillance;

(g) the circumstances in which workers are entitled to health surveillance and the purpose of health surveillance, **in accordance with Article 10 of this Directive and Article 14 of Directive 89/391/EEC;**

Justification

This is to reiterate the point that workers should be informed not only about the right to health surveillance provided by this directive but also of the rights provided by Article 14 of the Framework Directive, in particular that 'each worker, if he so wishes, may receive health surveillance at regular intervals'.

Amendment 17

Article 9

9. Consultation and participation of workers and/or of their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC on the matters covered by this Directive.

9. Consultation and participation of workers and/or of their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC on the matters covered by this Directive, ***in particular:***

- *the assessment of risks and identification of measures to be taken, referred to in Article 4*
- *the actions aimed at reducing exposure referred to in Article 5*
- *the choice of individual hearing protectors referred to in Article 6 (1c).*

Justification

These requirements are mentioned already in general terms in the Framework Directive, but there is still reason to specify the role of workers' representatives in controlling noise at work. Setting them out in detail in this Directive would reinforce their role by restating the general rights from the Framework Directive, and explain how they are to be applied to the specific issues in controlling noise at work.

Amendment 18 Article 10, paragraph 2

2. A worker whose noise exposure exceeds the **upper** exposure action values shall have the right to have his/her hearing checked by a doctor or by another suitably qualified person under the responsibility of a doctor, in accordance with national law and/or practice. The objectives of this check are to provide early diagnosis of any loss of hearing due to noise, and to preserve the hearing function.

2. A worker whose noise exposure exceeds the **lower** exposure action values ***shall be entitled to an appropriate audiometric testing carried out by a competent person. If the results of this testing show that it is necessary, and in any case if the noise exposure exceeds the upper exposure action values, the worker*** shall have the right to have his/her hearing checked by a doctor or by another suitably qualified person under the responsibility of a doctor, in accordance with national law and/or practice. The objectives of this check are to provide early diagnosis of any loss of hearing due to noise, and to preserve the hearing function.

Justification

The amendment improves the protection of the workers and makes preventive action possible at an early stage.

Amendment 19 Article 11, paragraph 1a (new)

1a. In duly justified circumstances, given the specific characteristics of the work-places and only for those activities where daily noise exposure varies markedly from one working day to the next, Member States may, for the purposes of applying the exposure limit values and the exposure action values, use the weekly noise exposure level in place of the daily noise exposure level to assess the levels of noise to which workers are exposed, on condition that:

(a) the weekly noise exposure level as shown by adequate monitoring, does not exceed the exposure limit value of 87 dB(A), and

(b) appropriate measures are taken in order to reduce the risk associated with these activities to a minimum.

(See amendment 18 to Article 3, paragraph 3. The new text is slightly modified)

Justification

The possibility of using the weekly noise exposure level should be considered a derogation to be granted in exceptional cases only. It should therefore be moved from Article 3, paragraph 3 to Article 11. In addition, the amendment provides a more precise and restrictive wording of the text.

Amendment 20 **Article 11, paragraph 2**

2. The derogations referred to in paragraph 1 shall be granted by Member States following consultation with both sides of industry in accordance with national laws and/or practice. Such derogations must be accompanied by conditions which guarantee, taking into account the special circumstances, that the resulting risks are reduced to a minimum and that the workers concerned are subject to increased health surveillance. Such derogations shall be reviewed every four years and withdrawn as soon as the justifying circumstances no longer obtain.

2. The derogations referred to in paragraphs 1 **and 1a** shall be granted by Member States following consultation with both sides of industry in accordance with national laws and/or practice. Such derogations must be accompanied by conditions which guarantee, taking into account the special circumstances, that the resulting risks are reduced to a minimum and that the workers concerned are subject to increased health surveillance. Such derogations shall be reviewed every four years and withdrawn as soon as the justifying circumstances no longer obtain.

Justification

The amendment should be seen in conjunction with the proposal to move Article 3(3) on possible use of the weekly noise exposure level to Article 11 dealing with derogations. It is thus covered by the principles governing derogations in the Council's common position both on the noise directive and on the vibration directive (time limit, consultation of both sides of industry, etc.).

Amendment 21 Article 11, paragraph 2

2. The derogations referred to in paragraph 1 shall be granted by Member States following consultation with both sides of industry in accordance with national laws and/or practice.

2. The derogations referred to in paragraph 1 shall be granted by Member States following consultation with both sides of industry in accordance with national laws and/or practice ***and after obtaining the opinion of the medical authorities responsible.***

Justification

The derogations that may be granted by the Member States in exceptional cases for the use of individual hearing protectors must be substantiated by a competent medical opinion that assesses whether the risk incurred to the health or safety of the employee is greater with or without an individual protector.

Amendment 22 Article 15, second paragraph

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.

On the basis of those reports ***and of new knowledge and research***, the Commission shall ***carry out an overall assessment of implementation of the directive 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.

Justification

The reports should contain a thorough assessment of the directive's implementation and impact on the safety and health of employees in order to ensure the best possible basis for future improvements to the directive.

EXPLANATORY STATEMENT

1. Background

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

The common position on which Parliament is called upon to deliver its opinion at second reading relates only to noise. It is intended that the proposed directive will replace the existing directive on noise (86/188/EEC).

The purpose of the proposed directive is to protect workers against the harmful effects of exposure to noise, including damage to their hearing.

The risks inherent in exposure to noise are well-known:

- * Continuous exposure to noise over 80 decibels dB(A) can damage hearing.
- * Continuous exposure to noise over 85 dB(A) can cause serious damage to hearing.
- * 11% of those continuously exposed to noise at 90 dB(A) will suffer serious damage to their hearing. This is just under three times the number affected at 85 dB(A).
- * Very strong impulses (over 130-140 dB(A)) may damage a person's hearing even exposure is short-lived.
- * Noise may cause other physical damage, and even low-level noise may adversely affect a person psychologically.
- * Noise also increases the risk of accidents, as it may not be possible to hear warning signals or faults in machinery.

Damage to hearing is very often the reason for the payment of industrial injury benefit.

28% of workers in the European Union state that they are exposed to noise which makes it difficult to conduct a conversation. More than a third of them say that they work in such conditions for most of the day or all day (Source: The European Agency for Safety and Health at Work (2000): 'The State of Occupational Safety and Health in the European Union').

2. Assessment of the common position in relation to Parliament' first reading.

The Council states that Parliament's first-reading Amendments 5, 8, 9, 14, 16, 17 and 19 have been taken up in the common position. It also considers that Amendments 4, 7, 10, 11, 12, 13, 18 and 20 have been maintained in a modified form or in part.

Your rapporteur acknowledges that most of the amendments referred to have been satisfactorily incorporated into the common position. This cannot be said of Amendment 4, however, where, in the Council's text, limit values are to take account of the effect hearing protectors.

It is also noted that the Council was unwilling to incorporate Amendments 2, 3, 6, 15, 21, 22, 23, 24, 25 and 26.

Amendments 2, 3, 22 and 26 reflected Parliament's wish to have the existing noise directive reviewed on the basis of its impact and of new findings and research. The intention was not to create an exception in respect of noise but, on the contrary, to achieve a number of improvements in workers' health and safety.

Your rapporteur's overall assessment is that the common position accommodates a number of Parliament's proposals. Despite this, however, she cannot recommend that Parliament approve the common position as it stands.

3. Main problems posed by the common position

The common position contains three sets of exposure values, namely limit values and upper and lower action values. It is thus easier to follow than the Commission's proposal, which provided for four sets of values.

However, your rapporteur takes the view that more should be done to improve the protection of workers, with the emphasis on preventive measures. It is therefore proposed that the upper action values be lowered from 85 to 83 dB(A)¹.

The proposed limit values (87 dB(A)) are lower than the corresponding values in the existing directive and the Commission proposal. Your rapporteur considers this to constitute progress and so is not proposing lower values.

The fundamental problem, however, is that the common position introduces a new principle for measuring the limit values, whereby the effects of hearing protectors (Article 3(2)) is to be taken into account. This is unacceptable. If hearing protectors are not fitted properly, if they are slightly damaged, or if a specific work situation exceptionally does not make it possible to use them, workers could be exposed to noise levels far in excess of 90 dB(A). The common position could therefore have the direct effect of reducing the level of protection afforded to workers compared with that provided under the existing noise directive.

Reference to the use of hearing protectors could shift responsibility for ensuring a safe working environment from the employer to the employee. It is also an unfortunate arrangement from a legal point of view. The framework directive on the protection of workers (89/391/EEC) is based on a number of clear principles of prevention, in accordance with which personal protective equipment such as hearing protectors is considered to be a last resort as a means of prevention. The principle is that of 'collective protection before individual protection'.

Your rapporteur therefore wishes to maintain the original Commission proposal, which does not make allowances for the effects of hearing protectors.

The common position also clears the way for measuring noise using a week rather than an eight-hour working day as the reference period under certain circumstances (Article 3(3)).

¹ The value for maximum noise pressure is, like the lower action value, set at 135 dB(A).

This increases the length of the periods for which workers could be exposed to levels of noise exceeding the limit values. This would be a retrograde step as far as health is concerned.

It is therefore proposed that the Commission's proposal, based exclusively on an eight-hour working day as the reference period, be maintained.