COMMON POSITION (EC) No 8/2002
adopted by the Council on 29 October 2001

with a view to adopting Directive 2002/.../EC of the European Parliament and of the Council of ... on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (17th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission (1), submitted after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

Having regard to the opinion of the Economic and Social Committee (2),

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty (3),

Whereas:

(1) Under the Treaty the Council may adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the health and safety of workers. Such directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

(2) While, in accordance with the Treaty, this Directive does not prevent any Member State from maintaining or introducing more stringent protective measures, its implementation should not serve to justify any regression in relation to the situation which already prevails in each Member State.


(4) The communication from the Commission on its programme concerning safety, hygiene and health at work (5) provides for the adoption of measures to promote safety at work, particularly with a view to extending the scope of Directive 86/188/EEC and the re-evaluation of the threshold values. The Council, in its resolution of 21 December 1987 on safety, hygiene and health at work (6), took note of this.

(5) The communication from the Commission concerning its action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers provides for the introduction of minimum health and safety requirements regarding the exposure of workers to the risks caused by physical agents. In September 1990 the European Parliament adopted a resolution concerning this action programme (7), inviting the Commission in particular to draw up a specific directive on the risks caused by noise and vibration and by any other physical agent at the workplace.


(7) As a second step, it is considered appropriate to introduce measures protecting workers from the risks arising from noise owing to its effects on the health and safety of workers, in particular damage to hearing. 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.

(5) OJ C 28, 3.2.1988, p. 3.
(8) OJ L . . .
(8) Current scientific knowledge of the effects which exposure to noise may have on health and safety is not sufficient to enable precise exposure levels covering all risks to health and safety, especially as regards the effects of noise other than those of an auditory nature, to be set.

(9) A system of protection against noise must limit itself to a definition, free of excessive detail, of the objectives to be attained, the principles to be observed and the fundamental values to be used, in order to enable Member States to apply the minimum requirements in an equivalent manner.

(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.

(11) The Code on Noise Levels on Board Ships of the International Maritime Organisation Resolution A 468 (12) provides guidance for achieving a reduction of noise at source on board ships. Member States should be entitled to provide for a transitional period with regard to the personnel on board seagoing vessels.

(12) Employers should make adjustments in the light of technical progress and scientific knowledge regarding risks related to exposure to noise, with a view to improving the health and safety protection of workers.

(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 (1), that Directive applies to the exposure of workers to noise, without prejudice to more stringent and/or specific provisions contained in this Directive.

(14) This Directive constitutes a practical step towards creating the social dimension of the internal market.

(15) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (2).

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL PROVISIONS

Article 1

Aim and scope

1. This Directive, which is the 17th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC, lays down minimum requirements for the protection of workers from risks to their health and safety arising or likely to arise from exposure to noise and in particular the risk to hearing.

2. The requirements of this Directive shall apply to activities in which workers are or are likely to be exposed to risks from noise as a result of their work.

3. Directive 89/391/EEC shall apply fully to the whole area referred to in paragraph 1, without prejudice to more stringent and/or specific provisions contained in this Directive.

Article 2

Definitions

For the purposes of this Directive, the physical parameters used as risk predictors are defined as follows:

(a) peak sound pressure ($p_{\text{peak}}$): maximum value of the ‘C’-frequency weighted instantaneous noise pressure;

(b) daily noise exposure level ($L_{\text{EX,8h}}$) (dB(A) re. 20 $\mu$Pa): time-weighted average of the noise exposure levels for a nominal eight-hour working day as defined by international standard ISO 1999: 1990, point 3.6. It covers all noises present at work, including impulsive noise;

(c) weekly noise exposure level ($L_{\text{EX,8h}}$): time-weighted average of the daily noise exposure levels for a nominal week of five eight-hour working days as defined by international standard ISO 1999:1990, point 3.6 (note 2).


Article 3

**Exposure limit values and exposure action values**

1. For the purposes of this Directive the exposure limit values and exposure action values in respect of the daily noise exposure levels and peak sound pressure are fixed at:

(a) exposure limit values: \( L_{\text{EX,8h}} = 87 \text{ dB(A)} \) and \( p_{\text{peak}} = 200 \text{ Pa} \) (1) respectively;

(b) upper exposure action values: \( L_{\text{EX,8h}} = 85 \text{ dB(A)} \) and \( p_{\text{peak}} = 200 \text{ Pa} \) (2) respectively;

(c) lower exposure action values: \( L_{\text{EX,8h}} = 80 \text{ dB(A)} \) and \( p_{\text{peak}} = 112 \text{ Pa} \) (3) respectively.

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

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:

(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.

**SECTION II**

**OBLIGATIONS OF EMPLOYERS**

Article 4

**Determination and assessment of risks**

1. In carrying out the obligations laid down in Articles 6(3) and 9(1) of Directive 89/391/EEC, the employer shall assess and, if necessary, measure the levels of noise to which workers are exposed.

2. The methods and apparatus used shall be adapted to the prevailing conditions particularly in the light of the characteristics of the noise to be measured, the length of exposure, ambient factors and the characteristics of the measuring apparatus.

These methods and this apparatus shall make it possible to determine the parameters defined in Article 2 and to decide whether, in a given case, the values fixed in Article 3 have been exceeded.

3. The methods used may include sampling, which shall be representative of the personal exposure of a worker.

4. The assessment and measurement referred to in paragraph 1 shall be planned and carried out by competent services at suitable intervals, taking particular account of the provisions of Article 7 of Directive 89/391/EEC concerning the necessary competent services or persons. The data obtained from the assessment and/or measurement of the level of exposure to noise shall be preserved in a suitable form so as to permit consultation at a later stage.

5. When applying this Article, the assessment of the measurement results shall take into account the measurement inaccuracies determined in accordance with metrological practice.

6. Pursuant to Article 6(3) of Directive 89/391/EEC, the employer shall give particular attention, when carrying out the risk assessment, to the following:

(a) the level, type and duration of exposure, including any exposure to impulsive noise;

(b) the exposure limit values and the exposure action values laid down in Article 3 of this Directive;

(c) any effects concerning the health and safety of workers belonging to particularly sensitive risk groups;

(d) as far as technically achievable, any effects on workers’ health and safety resulting from interactions between noise and work related ototoxic substances, and between noise and vibrations;

(e) any indirect effects on workers’ health and safety resulting from interactions between noise and warning signals or other sounds that need to be observed in order to reduce the risk of accidents;

(f) information on noise emission provided by manufacturers of work equipment in accordance with the relevant Community Directives;

(g) the existence of alternative work equipment designed to reduce the noise emission;

(h) the extension of exposure to noise beyond normal working hours under the employer’s responsibility;

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(1) 140 dB in relation to 20 \( \mu \text{Pa} \).
(2) 140 dB in relation to 20 \( \mu \text{Pa} \).
(3) 135 dB in relation to 20 \( \mu \text{Pa} \).
appropriate information obtained following health surveillance, including published information, as far as possible.

7. The employer shall be in possession of an assessment of the risk in accordance with Article 9(1)(a) of Directive 89/391/EEC, and shall identify which measures must be taken in accordance with Articles 5, 6, 7 and 8 of this Directive. The risk assessment shall be recorded on a suitable medium, according to national law and practice. The risk assessment shall be kept up-to-date on a regular basis, particularly if there have been significant changes which could render it out-of-date, or when the results of health surveillance show it to be necessary.

Article 5

Provisions aimed at avoiding or reducing exposure

1. Taking account of technical progress and of the availability of measures to control the risk at source, the risks arising from exposure to noise shall be eliminated at their source or reduced to a minimum.

The reduction of such risks shall be based on the general principles of prevention set out in Article 6(2) of Directive 89/391/EEC, and take into account in particular:

(a) other working methods that require less exposure to noise;

(b) the choice of appropriate work equipment, taking account of the work to be done, emitting the least possible noise, including the possibility of making available to workers work equipment subject to Community provisions with the aim or effect of limiting exposure to noise;

(c) the design and layout of workplaces and work stations;

(d) adequate information and training to instruct workers to use work equipment correctly in order to reduce their exposure to noise to a minimum;

(e) noise reduction by technical means:

   (i) reducing airborne noise, for example by shields, enclosures, sound-absorbent coverings;

   (ii) reducing structure-borne noise, for example by damping or isolation;

(f) appropriate maintenance programmes for work equipment, the work place and workplace systems;

(g) organisation of work to reduce noise:

   (i) limitation of the duration and intensity of the exposure;

   (ii) appropriate work schedules with adequate rest periods.

2. On the basis of the risk assessment referred to in Article 4, if the upper exposure action values are exceeded, the employer shall establish and implement a programme of technical and/or organisational measures intended to reduce the exposure to noise, taking into account in particular the measures referred to in paragraph 1.

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.

4. Where, owing to the nature of the activity, a worker benefits from the use of rest facilities under the responsibility of the employer, noise in these facilities shall be reduced to a level compatible with their purpose and the conditions of use.

5. Pursuant to Article 15 of Directive 89/391/EEC, the employer shall adapt the measures referred to in this Article to the requirements of workers belonging to particularly sensitive risk groups.

Article 6

Personal protection

1. If the risks arising from exposure to noise cannot be prevented by other means, appropriate, properly fitting individual hearing protectors shall be made available to workers and used by them in accordance with the provisions of Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (1) and Article 13(2) of Directive 89/391/EEC and under the conditions set out below:

(a) where noise exposure exceeds the lower exposure action values, the employer shall make individual hearing protectors available to workers;

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

(c) the individual hearing protectors shall be so selected as to eliminate the risk to hearing or to reduce the risk to a minimum.

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

Article 7

Limitation of exposure to the ear

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

2. If, despite the measures taken to implement this Directive, exposures above the limit values are detected, the employer shall:

(a) take immediate action to reduce the exposure to below the exposure limit values,

(b) identify the reasons why overexposure has occurred, and

(c) amend the protection and prevention measures in order to avoid any recurrence.

Article 8

Worker information and training

Without prejudice to Articles 10 and 12 of Directive 89/391/EEC the employer shall ensure that workers who are exposed to noise at work at or above the lower exposure action values, and/or their representatives, receive information and training relating to risks resulting from exposure to noise concerning, in particular:

(a) the nature of such risks;

(b) the measures taken to implement this Directive in order to eliminate or reduce to a minimum the risks from noise, including the circumstances in which the measures apply;

(c) the exposure limit values and the exposure action values laid down in Article 3 of this Directive;

(d) the results of the assessment and measurement of the noise carried out in accordance with Article 4 of this Directive together with an explanation of their significance and potential risks;

(e) training in the correct use of hearing protectors;

(f) why and how to detect and report signs of hearing damage;

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

(h) safe working practices to minimise exposure to noise.

Article 9

Consultation and participation of workers

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.

SECTION III

MISCELLANEOUS PROVISIONS

Article 10

Health surveillance

1. Without prejudice to Article 14 of Directive 89/391/EEC, Member States shall adopt provisions to ensure the appropriate health surveillance of workers where the results of the assessment and measurement provided for in Article 4(1) of this Directive indicate a risk to their health. Those provisions, including the requirements specified for health records and their availability, shall be introduced in accordance with national law and/or practice.

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.

3. Member States shall establish arrangements to ensure that, for each worker who undergoes surveillance in accordance with paragraphs 1 and 2, individual health records are made and kept up-to-date. Health records shall contain a summary of the results of the health surveillance carried out. They shall be kept in a suitable form so as to permit any consultation at a later date, taking into account any confidentiality.

Copies of the appropriate records shall be supplied to the competent authority on request. The individual worker shall, at his or her request, have access to the health records relating to him or her personally.
4. Where, as a result of surveillance of the hearing function, a worker is found to have an identifiable hearing damage, a doctor or a specialist if the doctor considers it necessary, shall assess whether the damage is likely to be the result of exposure to noise at work. If this is the case:

(a) the worker shall be informed by the doctor or other suitably qualified person of the result which relates to him or her personally.

(b) the employer shall:

(i) review the risk assessment carried out pursuant to Article 4;

(ii) review the measures provided for to eliminate or reduce risks pursuant to Articles 5 and 6;

(iii) take into account the advice of the occupational health-care professional or other suitably qualified person or the competent authority in implementing any measures required to eliminate or reduce risk in accordance with Articles 5 and 6, including the possibility of assigning the worker to alternative work where there is no risk of further exposure; and

(iv) arrange systematic health surveillance and provide for a review of the health status of any other worker who has been similarly exposed.

**Article 11**

**Derogations**

1. In exceptional situations where, because of the nature of the work, the full and proper use of individual hearing protectors would be likely to cause greater risk to health or safety than not using such protectors, Member States may grant derogations from the provisions of Articles 6(1)(a) and (b) and 7.

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.

3. Every four years Member States shall forward to the Commission a list of derogations referred to in paragraph 1, indicating the exact reasons and circumstances which made them decide to grant the derogations.

**Article 12**

**Technical amendments**

Amendments of a strictly technical nature shall be adopted in accordance with the regulatory procedure laid down in Article 13(2) and in line with:

(a) the adoption of Directives in the field of technical harmonisation and standardisation with regard to the design, building, manufacture or construction of work equipment and/or workplaces, and

(b) technical progress, changes in the most appropriate harmonised European standards or specifications and new findings concerning noise.

**Article 13**

**Committee**

1. The Commission shall be assisted by the Committee referred to in Article 17 of Directive 89/391/EEC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

**Article 14**

**Repeal**

Directive 86/188/EEC is repealed with effect from the date set out in the first subparagraph of Article 16(1).

**SECTION IV**

**FINAL PROVISIONS**

**Article 15**

**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.
Article 16

Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before . . . (*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. In order to take account of particular conditions, Member States may, if necessary, have an additional period of five years from . . . (*), that is to say a total of eight years, to implement the provisions of Article 7 with regard to the personnel on board seagoing vessels.

3. The Member States shall communicate to the Commission the text of the provisions of national law which they adopt or have already adopted in the field covered by this Directive.

Article 17

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 18

Addressees

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament
The President

For the Council
The President

(*) Three years after the date of entry into force of this Directive
STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 8 February 1993 the Commission submitted to the Council, on the basis of Article 118a of the Treaty establishing the European Community, a proposal for a Council Directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents.

The proposal was intended to supplement Directive 89/391/EEC (the ‘framework Directive’) by specifying the way in which some of its provisions were to apply in the particular case of exposure to physical agents. It covered all activities where workers may be subject to risks arising from such exposure, with the exception of certain specific public service or civil protection situations.

The European Parliament and the Economic and Social Committee delivered their opinions on 20 April 1994 and 30 June 1993 respectively; the European Parliament confirmed its opinion on 16 September 1999.


Following the entry into force of the Amsterdam Treaty, the legal basis changed from ex-Article 118a to Article 137(2), which provides for co-decision with the European Parliament and consultation of the Committee of the Regions.

The Committee of the Regions stated in a letter dated 13 January 2000 that it would not be submitting an opinion on the proposal for a Directive.

II. THE COMMISSION’S PROPOSAL AND ITS DIFFERENT ELEMENTS

The main feature of the proposal was that it combined in a single instrument four types of physical agents (noise, mechanical vibration, optical radiation, electromagnetic fields and waves), each of which would have been the subject of a separate annex.

However, the Council’s general approach, which was accepted by the Commission, consisted in focusing initially, in view of the technical difficulties regarding the other physical agents, on the one element (vibration) for which an agreement could be found within a reasonable period of time, the other parts of the proposal remaining on the Council’s table. Moreover, the Council confirmed in a statement for the minutes its commitment to continuing its examination of the other elements of the Commission proposal (noise, optical radiation, electromagnetic fields and waves).

Following political agreement on the draft Directive covering vibration, the Council went on to examine a further separate draft on the noise element, and adopted a Common Position on 29 October 2001, in accordance with the procedure laid down in Article 251 of the Treaty. Unlike the draft Directive on vibration, it proved possible to formulate the text in such a way that it did not require annexes.

III. OBJECTIVE

The draft Directive aims to improve protection of the health and safety of workers from risks arising or likely to arise from exposure to noise, and in particular the risk to hearing. The Directive would also replace the existing Directive on noise at work of 12 May 1986 (86/188/EEC), the provisions of which were considered no longer to be adequate.

IV. ANALYSIS OF THE COMMON POSITION

I. GENERAL OBSERVATIONS

According to Article 136 of the Treaty, the Community and the Member States ‘shall have as their objectives (. . .) improved living and working conditions (. . .), the development of human resources (. . .), etc.

According to Article 137(1) of the Treaty ‘the Community shall support and complement the activities of the Member States in (. . .) improvement in particular of the working environment to protect workers’ health and safety;’ etc.
To this end, Article 137(2) of the Treaty states that the Council 'may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States'.

The Council’s Common Position is in accordance with the objectives of Article 137(2) of the Treaty in the area covered, since it is designed to introduce minimum requirements to protect the health and safety of workers from the risks arising from exposure to noise.

Furthermore, the Common Position respects the objectives put forward by the Commission and supported by Parliament, despite having a different structure as a result of the original proposal being split. It includes many of the amendments resulting from Parliament’s first reading of the Commission’s proposal.

2. STRUCTURE AND KEY ELEMENTS

2.1. The noise exposure values

The Common Position fixes the values of three levels of noise exposure, namely lower exposure action values, upper exposure action values, and exposure limit values. Each of these values is expressed both as a time-weighted average, dB(A) (decibels), and as a peak sound pressure, $p_{\text{peak}}$ (Pascals or Pa). The time-weighted averages are defined in accordance with the international standard ISO 1999:1990, point 3.6. As a rule, the time-weighted average should be measured on a daily basis, as a daily noise exposure level, but Member States may in duly justified circumstances and on certain conditions use a weekly noise exposure level instead.

The two exposure action values are to be measured as the ambient noise surrounding the workers, i.e. without taking into account the effect of any hearing protectors, while the exposure limit values are to be measured ‘in the protected ear’, i.e. taking into account the effect of hearing protectors.

In its Common Position, the Council fixed the following exposure values:

— exposure limit values: $87$ dB(A) and $p_{\text{peak}} = 200$ Pa

— upper exposure action values: $85$ dB(A) and $p_{\text{peak}} = 200$ Pa, and

— lower exposure action values: $80$ dB(A) and $p_{\text{peak}} = 112$ Pa.

Even though a direct comparison with the values in the existing Directive of 1986 and in the Commission’s amended proposal is not possible because of conceptual and structural differences, the new values are generally speaking lower. The current Directive of 1986 only fixes two values, namely 85 and 90 dB(A), and the Commission’s amended proposal contained three comparable values, 80, 85 and 90 dB(A). The Council considers that the values adopted represent a fair balance between, on the one hand, the requirement to protect the health and safety of workers and, on the other hand, the need to ensure that implementation of the Directive does not entail excessive costs for undertakings, in particular small and medium-sized undertakings.

2.2. Action to be taken when exposure values have been exceeded

The purpose of the various exposure values is that, once they have been reached or exceeded, certain action is triggered, as follows:

When the lower exposure action values have been reached, the employer shall ensure that the workers concerned and/or their representatives receive information and training related to the risks resulting from exposure to noise, and when they have been exceeded, the employer shall make individual hearing protectors available to the workers.
Workplaces where the upper exposure action values are likely to be exceeded shall be marked with signs and delimited. Once these values have been exceeded, individual hearing protectors must be used by the workers. They also have the right to have their hearing checked by a doctor or another suitably qualified person, to provide early diagnosis. In addition, the employer shall establish and implement a programme of technical and/or organisational measures intended to reduce the exposure to noise.

Member States may grant derogations from the abovementioned obligations to provide and to use hearing protectors in exceptional situations where their full and proper use would be likely to cause greater risk than not using them, for example where the use of protectors would render audible warning signals ineffective. Such derogations are possible only under certain severe conditions guaranteeing both a reduction of risks and increased health surveillance, and they have to be reviewed every four years.

The exposure limit values must under no circumstances be exceeded. Should this happen, however, despite the preventive measures taken, the employer must take immediate action to reduce the exposure below the limit values, identify the reasons for overexposure, and amend the protection and prevention measures to avoid recurrence.

2.3. Other major elements

In line with the framework Directive the employer should assess and, if necessary, measure the levels of noise to which workers are exposed, at suitable intervals. The employer must be in possession of an assessment of the risk and must identify the preventive measures to be taken. The risks arising from exposure to noise must be eliminated at their source or reduced to a minimum.

Member States must adopt provisions to ensure appropriate health surveillance of workers where the results of the employer’s assessment and measurement indicate a risk to their health. A doctor or other specialist must assess whether any hearing damage is likely to be the result of exposure to a worker’s noise at work, and if so, the worker has to be informed, and certain preventive and corrective measures have to be taken.

Individual health records must be made and kept up-to-date, taking into account any confidentiality requirements. Copies must be supplied to the competent authority, and the individual worker shall have access to his/her records.

2.4. Major differences from the Commission’s amended proposal

The major differences vis-à-vis the Commission’s amended proposal concern:

— the restructuring and redefinition of the noise exposure values,

— the deletion of the threshold level, because the Council considered that no scientific evidence existed for defining exposure values below which exposure has no adverse effects,

— the abolition of the requirement to consider certain activities as presenting an increased risk and to declare them to the responsible authority, in order not to increase unnecessarily the administrative burdens of undertakings, in particular in the SME sector,

— the introduction of the effects of interactions between, on the one hand, noise and, on the other hand, work-related ototoxic substances, vibration, and warning signals and other necessary sounds, among the factors to which the employer should give particular attention in his/her risk assessment,
— the right of the workers to have their hearing checked at a lower level of noise exposure,

— more stringent requirements on the employer to review his/her risk assessment and preventive measures and to arrange systematic health surveillance in case a doctor or a specialist has found that a worker's hearing damage is the result of exposure to noise at work, and

— certain additions to the list of elements covered by noise-related information and training to be given to the workers and/or their representatives.

3. THE EUROPEAN PARLIAMENT’S AMENDMENTS ON FIRST READING

3.1. European Parliament amendments adopted by the Council

Amendments 5, 8, 9, 14, 16, 17 and 19 were taken up in their entirety, if not word for word at least in spirit, in the Council Common Position.

In addition, the Council slightly reworded amendments 7, 10, 11, 13 and 18, which had already been incorporated in the amended Commission proposal, but without altering the meaning. Amendment 10 was improved from the point of view of workers' protection, amendment 11 was reworded to better correspond to the contents of the Article on determination and assessment of risks, amendment 13 was adapted to the changed definition of the exposure limit value, and amendment 18 on derogations was limited to the use of the weekly noise exposure level, to the obligation to provide and to use hearing protectors, and to the prohibition to exceed the exposure limit values.

Amendment 4 was partly accepted, the major difference being that the exposure limit values take account of the effect of hearing protectors.

Furthermore, amendment 12, which was not included in the amended Commission proposal, was incorporated in the Council Common Position, in a slightly amended form.

As far as amendment 20 was concerned, the Council accepted the principle of a reporting requirement in respect of derogations but provided for a reporting interval of every four years.

3.2. European Parliament amendments not adopted by the Council

The Council did not consider it advisable to adopt amendments 2, 3, 6, 15, 21, 22, 23, 24, 25 and 26 in its Common Position, for the following reasons:

— amendments 2, 3, 22 and 26 were no longer relevant after the Council’s decision to divide the Commission’s proposal into separate directives and to take up the noise element as a matter of urgency. In so doing the Council has followed the requirement laid down in Article 10 of Council Directive 86/188/EEC, and the wish of the European Parliament and the Commission, to reinforce Community legislation in the area of noise at the workplace,

— the threshold level, for which a new definition was put forward in amendment 6, was deleted, as explained under point 2.4,

— amendment 15 imposed an obligation on workers which was excessively binding; the Council felt that health surveillance should be considered as a right, and not as an obligation on workers; however, this right comes into play at a lower exposure level than that proposed by the Commission and the European Parliament; this position is in line with the Council’s position on the pending Directive on the vibration element,
— amendment 21 was replaced by a more general reference to the existing committee operating on the basis of Directive 89/391/EEC,

— amendment 23 was considered no longer to be relevant in the context of a text dealing with noise alone; moreover, action in the remaining fields identified by the European Parliament would depend in the first instance on the Commission’s right of initiative,

— amendment 24 was rejected because the Council considered it logical, in the light of the new text, to repeal the existing Directive covering the same subject, and

— the obligation on the Commission to submit a report, as laid down in amendment 25, was already covered by the submission of the Commission’s annual implementation report.

4. ADDITIONAL TRANSITIONAL PERIOD

The Council considered it necessary to make provision for an optional additional transitional period of five years for the implementation, in respect of personnel on board seagoing vessels, of the prohibition of exposure to noise exceeding the exposure limit values. This was considered necessary because of the substantial changes to current practice which will be necessary in the particularly difficult conditions obtaining at sea, especially on board older vessels. It is recalled, moreover, that the personnel on board seagoing vessels were entirely excluded from the scope of the 1986 Directive.

V. CONCLUSION

The Council considers that, as a whole, the Common Position is in line with the fundamental objectives of the amended Commission proposal. It also considers that it has taken account of the principal objectives pursued by the European Parliament in its proposed amendments.