



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT**

**pursuant to the second subparagraph of Article 251(2) of the EC Treaty**

**concerning the**

**common position adopted by the Council for the purposes of adopting a Directive of  
the European Parliament and of the Council on the minimum health and safety  
requirements regarding the exposure of workers to the risks arising from physical  
agents (electromagnetic fields) (nth individual Directive within the meaning of  
Article 16(1) of Directive 89/391/EEC)**

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**1. BACKGROUND**

Proposal (document COM(1992) 560 final – 1992/0449 (COD)) forwarded to the European Parliament\* and Council on:

8.2.1993 (OJ C 77, 18.3.1993)

\* not subject to the codecision procedure at the time of the proposal.

Opinion delivered by the European Economic and Social Committee on:

30.6.1993 (OJ C 249, 13.9.1993).

Opinion delivered by the Committee of the Regions on\*:

\* stated in a letter dated 13 January 2000 that it would not deliver an opinion.

Opinion of the Parliament (first reading) delivered on:

20.4.1994 (OJ C 128, 9.5.1994), confirmed on 16.9.1999 (OJ C 54, 25.2.2000).

Amended proposal forwarded to the Council on:

8.7.1994 (OJ C 230, 19.8.1994).

Date of unanimous formal adoption of the common position by the Council:

17.12.2003.

**2. AIM OF THE COMMISSION PROPOSAL**

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

Its aim is the protection of workers against risks to their health and safety arising from exposure to physical agents. The proposal covers four physical agents: noise (risks to hearing), vibration (risks to the hand, arm and whole body), electromagnetic fields and optical radiation (risks to health from induced currents in the body, shocks, burns and absorption of thermal energy).

The provisions concerning vibration, electromagnetic fields and optical radiation are new, whereas those concerning noise already existed in Council Directive 86/188/EEC.

Generally speaking, the Council has opted to concentrate on a single physical agent at a time, starting with vibration.

All delegations and the Commission have accepted this approach, consisting in dealing with one aspect of the Commission's proposal at a time, though without abandoning the other aspects, which remain on the Council's agenda to be discussed at a later date.

The European Parliament and the Council have adopted two directives covering the first two physical agents, i.e. vibration (Directive 2002/44/EC) and noise (Directive 2003/10/EC). The present proposal constitutes the third phase of the general approach adopted by the Council, namely to introduce a separate individual directive for each physical agent<sup>1</sup>.

### **3. COMMENTS ON THE COMMON POSITION**

#### **3.1. General**

Owing to the splitting of the proposal, the common position is concerned only with the specific minimum requirements for the protection of workers from risks to their health and safety arising or likely to arise from exposure to electromagnetic fields.

The common position sets exposure limit values which are based directly on health effects and biological considerations. Compliance with these limits will ensure that workers exposed to electromagnetic fields are protected from all known harmful effects on their health. The common position also establishes action values which constitute directly measurable parameters for taking action under the Directive, compliance with which will ensure that the relevant exposure limit values are not exceeded.

These values are largely based on the ICNIRP<sup>2</sup> guidelines for limiting exposure to non-ionising radiation (ICNIRP 7/99).

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<sup>1</sup> See statement in the Council minutes of 25 June 2001.

<sup>2</sup> International Commission for Non-Ionising Radiation Protection.

The common position does not cover long-term effects, including carcinogenic effects, which could arise as a result of exposure to electrical, magnetic and electromagnetic fields which vary in time, in respect of which there are as yet no scientific data which make it possible to establish a causal link.

The common position lays down action values for static magnetic fields. However, like the Commission's proposal, and to the extent that current scientific knowledge is uncertain as to the health effects of exposure to such fields, the common position does not stipulate exposure limit values for static magnetic fields.

In a statement entered in its minutes, the Council regretted that it was not able to address the health effects resulting from occupational exposure to static magnetic fields and invited the Commission to closely monitor developments at the ICNIRP in this area. The Commission replied to this statement by explaining that it will propose any updating that it considers necessary in the light of the evolution of scientific knowledge in this field.

The common position describes the preventive measures needed to reduce the risks to which workers are exposed. These preventive measures are primarily based on the employer's obligation to identify and assess the various risks resulting from exposure to electromagnetic fields. One of the main elements in the common position is therefore the assessment of the levels of electromagnetic fields to which workers are exposed, which may require measurements and/or calculations. In this connection, the common position states that until harmonised European standards established by the European Committee for Electrotechnical Standardisation (CENELEC) cover all assessment, measurement and calculation situations, Member States may employ other scientifically-based standards or guidelines.

On the basis of the risk assessment, and unless the assessment carried out demonstrates that the exposure limit values are not exceeded and safety risks can be excluded, the employer is required to devise and implement an action plan comprising technical and/or organisational measures intended to prevent exposure exceeding the limit values.

The common position includes detailed provisions on information and training for workers exposed to risks from electromagnetic fields. It also imposes "appropriate health surveillance" for workers who might suffer adverse health or safety effects.

Overall, the Council's common position follows the lines of the Commission's proposal, even though its structure differs as a result of the splitting of the proposal.

However, one major difference compared with the Commission's amended proposal lies in the watering down of the provisions on health surveillance. The Commission has expressed a reservation on this; it feels that the provisions are inadequate, as they take away the preventive aspect of health surveillance and do not entitle workers to a medical examination in the event of overexposure. The Commission regards this as unjustifiable in a directive specifically concerned with excessive exposure to electromagnetic fields, the main consequences of which are harmful effects on health.

It is a fact that internal damage resulting from unrecognised overexposure can only be detected by a health professional through regular health surveillance.

Furthermore, Article 8 of the common position (health surveillance) does not comply with the rules on legislative drafting, as it does not contain any additional obligation compared with Article 14 of the Framework Directive 89/391/EEC. In practice, the text of the common position merely copies the said Article 14, despite the fact that the proposed Directive is concerned with the specific risks of exposure to electromagnetic fields.

### **3.2. The European Parliament's amendments on first reading**

The European Parliament's amendments adopted on first reading which concern electromagnetic fields are numbers 1, 4-21, 25 and 37-40.

Amendments 1, 5, 9, 14, 37 and 38 have been accepted in full, both in the common position and in the amended proposal.

Amendments 4, 7, 13 and 17 have been accepted in part in the common position, whereas they were accepted in full in the amended proposal.

Amendments 6, 8, 10, 11, 18, 19, 20, 21, 39 and 40, which were included in the amended proposal, have not been included in the common position. The Commission accepts the non-inclusion of these amendments, which are not relevant in view of the new structure of the text and the new preventive approach imposed by the evolution of technical knowledge since 1994.

Amendments 15 and 16 on health surveillance, which were included in the amended proposal, have not been included in the common position, contrary to the Commission's wishes.

Amendment 12 has not been included either in the common position or in the amended proposal, for reasons linked to the new structure of the text and the preventive approach adopted.

Amendment 25, which was not included in the amended proposal, has been incorporated into the common position in a slightly modified form.

The main differences between the amended proposal and the Council's common position are as follows:

- The structure has been modified and the articles renumbered following the decision to replace a general directive on physical agents by four individual directives dealing separately with the four physical agents.

The Commission has accepted this split, provided that the amended proposal remains on the Council's agenda until all physical agents have been covered and the Council gives a firm undertaking to continue its work until all the remaining parts of the proposal have been dealt with.

- The definitions of exposure limit values and action values have been amended.

The Commission accepts the new definitions, which emphasise the significance of these values.

- The common position no longer includes threshold levels.

The Commission agrees to this, as threshold levels are of no significance in respect of electromagnetic fields, since there are no established health effects below the exposure limit values.

- There is a reference to harmonised European standards from the European Committee for Electrotechnical Standardisation (CENELEC) for the assessment, measurement and/or calculation of workers' exposure to electromagnetic fields.

The Commission accepts this reference, which improves the implementation of the Directive by making it easier for employers (especially SMEs) to fulfil their obligations.

- The common position makes provision for the possibility of not carrying out the assessment, measurement and/or calculation of exposure to electromagnetic fields in workplaces open to the public provided that an evaluation has already been undertaken in accordance with the provisions of Council Recommendation 1999/519/EC.

The Commission accepts this new provision, which avoids bureaucratic constraints and the duplicated assessment of exposure levels while ensuring health protection for workers, as the values laid down for the public are five times more severe than those set out in the common position.

- The provisions on health surveillance have been significantly watered down; the common position merely refers to Articles 14 and 15 of Framework Directive 89/391/EEC.

The Commission has a reservation concerning this aspect of the common position and has had a statement entered in the Council minutes regretting that the common position does not include those elements of the Commission's amended proposal, following two amendments of the European Parliament, that emphasise the preventive character of medical surveillance by giving workers the right to a medical examination in the event of overexposure and allowing additions to the undertaking's prevention system based on the findings.

- The provisions on activities involving an increased risk which should be declared to the competent authorities have been deleted.

The Commission accepts this deletion, as the risk assessment should in any event identify such cases.

- The appended tables and provisions have been updated in relation to the latest ICNIRP recommendations on this subject.

The Commission of course accepts this update, which is based on the latest scientific and technical developments.

### **3.3. New provisions introduced by the Council, and the Commission's position**

Article 4(3) of the common position states that the assessment, measurement and/or calculation of workers' exposure to electromagnetic fields need not be carried out in workplaces open to the public provided that an evaluation has already been undertaken in accordance with Council Recommendation 1999/519/EC on the limitation of exposure of the general public to electromagnetic fields, and the restrictions as specified therein are respected for workers and safety risks are excluded.

The Commission agrees with the Council that introducing this provision reduces the administrative burden while adequately guaranteeing workers' health, as exposure values for the public are significantly lower and therefore provide more protection.

## **4. CONCLUSIONS/GENERAL COMMENTS**

The Commission supports the common position in its entirety, with the exception of the provisions of Article 8 on health surveillance, which it considers to be inadequate.

## **5. COMMISSION STATEMENT**

### **Commission's response to the Council's statement in its minutes**

"The Commission reminds the Council that the preparatory scientific work for the Commission's proposal was undertaken in close cooperation with ICNIRP.

On the basis of this continuous cooperation, the Commission will propose any updating that it considers necessary in the light of the evolution of scientific knowledge in this field."

### **Statement by the Commission concerning Article 8**

"The Commission, in noting the Council's unanimity, considers the provisions on health surveillance unsatisfactory. The Commission regrets that the Council has not been able to maintain in the common position those elements of the Commission's amended proposal, following two amendments of the European Parliament, that emphasise the preventive character of the medical surveillance and give the right to medical examination to workers in case of overexposure."