Opinion on the proposal for a European Parliament and Council Directive relating to cableway installations designed to carry passengers [1]

(94/C 388/06)

On 17 February 1994 the Council decided to consult the Economic and Social Committee, under Articles 57, paragraph 2 and 100a of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 8 June 1994. The Rapporteur was Mr Mobbs.

As its 317th Plenary Session (meeting of 6 July 1994), the Economic and Social Committee adopted the following Opinion unanimously.

1. Background

1.1. The Machinery Directive 89/392/EEC [2] includes certain types of lifts installed for the transport of handicapped persons and devices fitted to staircases. Most types of lifting equipment including those covered by the present cableway proposal are excluded.

1.2. During discussions concerning harmonization of all other lifting equipment, cableway installations were originally intended to be included in proposals for other lifts. Subsequently this was found to be impossible due to many differing applications.

1.3. Thus Article 1(3) of the Machinery Directive 89/392/EEC amended by Directives 91/368/EEC [3] and 93/44/EEC [4] now specifically excludes:

— cableways, including funicular railways, for the public or private transportation of persons.

1.4. The present legislative position relating to lifting equipment involving persons/passengers, now all of a sectoral nature, is:

— Passed by Council. Industrial Applications — Directive 89/392/EEC and amendments. (Legal basis — Article 100a of the Treaty).

— Under discussion within Council. Proposed Passenger Lifts Directive COM(92) 35/EEC. (Legal basis — Article 100a of the Treaty).

— This proposed Cableway Installations Directive COM(93) 646/EEC. (Legal basis — Articles 57(2), 66, 100a of the Treaty).

The legal bases are shown above in order to demonstrate the different Articles involved.

2. The Commission's proposal

2.1. This proposed Cableway Installations Directive covers safety and health, environmental issues, consumer protection as well as technical standards relating to the machines and equipment involved, their operation and provisions for evacuation and rescue. This means the complete installation of cableways from planning through the purchase and or manufacture of components, installation, operation and maintenance. The proposal follows the current practices in most individual Member States with approval by existing national regulators.

2.2. Current national regulations in Member States covering both components and installations, are usually of a very detailed nature and invariably incompatible between Member States due to the use of techniques peculiar to a national industry as well as local customs and know-how. Almost all installations are unique. Whilst the installation may be based upon a standard design concept, using some standard components, it is specially designed, constructed and installed at each and every location. This produces a situation in which the ability of manufacturers to sell freely their equipment and provide their services within the European Union may be adversely affected. This can reduce competitiveness and restrict the free movement of goods and services within the European Union.

2.3. Member States, as a result of discussions within Council, have brought cableway installations within the scope of the public purchasing Directive 90/531/EEC [5] to be replaced by Directive 93/38/EEC [6] which comes into effect on 1 July 1994 and includes services for the

[1] OJ No C 70, 8. 3. 1994, p. 8.
[2] OJ No L 183, 29. 6. 1989.
[3] OJ No L 198, 22. 7. 1991.
[4] OJ No L 175, 19. 7. 1993.
[5] OJ No C 139, 5. 6. 1989.
[6] OJ No L 199, 9. 8. 1993.

first time — all in one Directive. Cableway installations are carefully monitored by public services in the Member States, whether the actual installations are publicly or privately owned.

2.4. In order to achieve transparency and the genuine opening up of the market, a specific course of action is needed, having considered the following:

— Mutual recognition can only be envisaged if each Member State accepted the regulations of other Member States. This is neither technically nor politically possible.

— Voluntary standardization can only apply to components and thus does not cover installation. Since this comes up against the barrier of regulatory incompatibility, such an approach is also not possible.

This unsatisfactory situation can only be resolved by a Community measure.

2.5. The Commission proposes a Directive which is as far as the components are concerned based on the concept of the new approach on technical harmonization and standards (Council Resolution 7 May 1985) [1]. In addition, the Commission's cableway proposal also covers the installation, operation and maintenance. The Commission's proposal lays down the basic requirements with which the whole installation and its operation has to comply. The proposal does not detail the manner in which it shall be achieved but merely specifies the results required. Furthermore the proposal draws attention to the authorities in the Member States of their responsibilities regarding the approval and operation of cableway installations.

2.6. The Commission's cableway proposal involved all national authorities in such additional matters as essential requirements, harmonized standards, safeguard clauses, conformity assessment modules, notified bodies, etc.

2.7. As in the case of existing national regulations, responsible authorities will be required to carry out controls at two levels:

— components critical to safety;

— complete installations to ensure, in particular, safety of users and respect for the environment.

3. General comments

3.1. The Committee welcomes the Commission's proposal and understands after determining their views that generally industry and operators also welcome the proposal. The Committee is especially supportive of the Commission in its perceived objective of ensuring that all Member States act in a coordinated manner and that vital supervision is organized throughout the European Union in order to achieve and maintain a high level of safety and thus reduce the risk of future accidents.

3.2. The result of the Commission's proposal should be a broader based and more competitive industry which is better placed to compete in world markets. This is important since the European Market for new installations is rather small and is reducing. Since most of the manufacturers for world use are from Europe, any action taken to enhance sales prospects must be a sensible and supportable approach.

3.3. The legal bases cited by the Commission are worth noting:

— Articles 57(2) and 66 of the Treaty are required to allow installers to practice freely throughout the European Union in order to plan, design, install and maintain the equipment.

— Article 100a of the Treaty for the acknowledged base for the free movement of goods and services.

3.4. Whilst it may be thought that this proposal applies only to those Member States with ski resorts, the description of equipment covered also includes passenger carrying installations to be found in a wide range of locations. Furthermore the proposed Directive is of interest to those Member States having industries producing components.

3.5. It is important to differentiate between installations for the transportation of passengers which are covered by this proposal and installations for the amusement of people, normally found at themeparks and funfairs, which are not covered by this proposal.

3.6. The Committee considers that:

3.6.1. there are weaknesses in some of the translations. The Commission should have all translations double checked for consistency and clarity of translation;

3.6.2. the competent authorities in the Member States must ensure that the general conditions and essential requirements are also complied with by manufacturers and operators, as well as all other involved bodies;

3.6.3. the Commission's use of the statement 'State of the Art' preceded by either 'current' or 'acknowledged' may be confusing. The Committee would like to see a consistent use of these words especially since the 'State of the Art' is not a wholly definable statement anyway;

[1] OJ No C 136, 4. 6. 1985.

4. Specific Comments

4.1. *Article 1*

In order to be consistent with the manner of description used in sub-paras. a-d, subpara. e should be reworded as:

'drag lifts where persons standing on their skis are moved upwards'.

4.2. *Article 10*

In order to ensure that only genuine wholly or partially new designs are affected, the words 'involving real innovation for a significant item(s)' should be inserted. Unless this is included it is conceivable that there could be endless discussions and or disputes over what is meant by wholly or partially new.

4.3. *Article 14*

The Committee understands from the commission that only work which has been subject to major repairs or alterations is meant to be covered by this part of the proposed directive. The Commission should make this absolutely clear since, in accordance with Annex II of the proposal, virtually every single part of an installation is considered an essential requirement. Also a clear definition of 'major' (in the context of this Article) is considered necessary.

If the intention of this Article is not completely clear and it can be understood to mean the whole installation comes under the proposed Directive, then there may be an unacceptable risk that some desirable repairs will not be undertaken by cableway operators.

4.4. *Article 18*

The Commission has verbally stated that due to the proliferation of Committees, it is planned to establish a new/expanded Committee responsible for all 'Guided Transport' viz, trains, metros/underground trains and cableways etc.

4.5. *Articles 20 and 21*

The Commission has explained that the wording here is a new legal approach and is designed to avoid abuse by any Member State who does not promptly enact agreed legislation.

4.5.1. Problems may arise regarding work in progress (that is installations being considered but not yet in operation) and the Committee considers that this should be clarified. Some installations can take many years from inception to operation. The Committee has been told by the Commission that when a Directive like this proposal is passed, it is not normal practice for a Directive to be retroactive. However, the Commission would expect new installations to be reviewed especially from the point of view of meeting the essential requirements and especially safety. Any action then considered necessary would be on a case by case basis. The Committee asks the Commission to review carefully these specific problems and ensure solutions are found.

4.5.2. The Committee considers that the Commission should make absolutely clear the requirements of these Articles and avoid any ambiguity and possible misinterpretation.

4.6. *Annex II*

4.6.1. Sub-para. 2.6

The Committee considers that since the heading of this paragraph is 'Integrity of the installation', 2.6.1 should have more exact wording than 'adequate margin' and 'highly improbable'.

4.6.2. Sub-para. 4.2

The requirements for 'control devices' should be no less severe than those required for equipments or components covered by 2.6.1.

Done at Brussels, 6 July 1994.

The President

of the Economic and Social Committee

Susanne TIEMANN