Opinion 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 [1]

(93/C 249/11)

On 31 March 1993 the Council decided to consult the Economic and Social Committee, under Article 118 A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 10 June 1993. The Rapporteur was Mr Etty.

At its 307th Plenary Session (meeting of 30 June 1993) the Economic and Social Committee adopted the following Opinion by 92 votes to 48, with 7 abstentions.

1. Introduction

1.1. The Commission proposal follows on from the Framework Directive of 12 June 1989. It covers a range of exposures to physical agents not so far addressed in EC Directives, with the exception of Noise, which is already the subject of a Directive in force.

1.2. The proposal now before the Committee is intended to cover a substantial part of the risks from physical agents, including up-dating of the earlier Directive on Noise. It covers noise, vibration, optical radiation and electromagnetic fields and waves. It does not cover ionizing radiation which has long been the subject of separate detailed EC control, nor the non-auditory effects of noise (where the Commission, as a first step, will prepare a supplementary Recommendation). Neither does it cover amongst other things exposure to compression/decompression, heat/cold stress, or physical effects on the musculo-skeletal system which are attributable to work methods rather than a specified agent, nor for instance electrical accidents. The degree of information and knowledge about risks varies among the agents, now considered being much greater for noise and vibration which are recognized as serious occupational risk agents; nevertheless there are recognized dangers from certain optical radiations (for example ultraviolet and laser).

1.3. The Commission has chosen the format of a Directive embodying general principles of risk assessment, measurement, exposure control, protection, training and consultation, and health surveillance, and has applied these principles to the four Agents in specific Annexes. This systematic approach is chosen in preference to separate individual Directives, and is in conformity with the Resolution of 13 September 1990 of the European Parliament in which it invited the Commission to prepare a proposal for a Directive in the field of risks due to noise and vibration and any other physical agent at work.

2. General remarks

2.1. The Committee considers that the Commission proposal is an important addition to existing Community regulations in the field of safety and health at work, and takes serious note of the size of these particular areas of risk affecting tens of millions of workers within the Community.

2.2. At the same time, the Committee notes the gaps in, and disparities, between national regulations. It also recognizes the complexity of drafting Community regulations laying down standards requiring measurement and compliance. The aim is to achieve control to a level of acceptable risk determined through the Community democratic procedures.

2.3. The Committee can accept the format chosen by the Commission for this Directive.

2.4. As regards the proposed legal instrument for Noise, the Committee can agree with an updating of the existing Directive 86/188/EEC. It is aware of the fact that some Member States have only recently implemented this Directive and that therefore important experience has not yet sufficiently been obtained. Taking into account the obligations on the Council to re-examine the Directive before 1 January 1994, the great number of workers involved and technical progress made since the adoption of the Directive, revision of the existing instruments is legitimate. The Committee notes that the provisions are specifically directed to the auditory damage effects of noise, and draws attention to the inclusion of deafness caused by noise in the Commission Recommendation of 22 May 1990 concerning the adoption of a European schedule of occupational diseases.

[1] OJ No C 77, 18. 3. 1993, p. 77.

2.4.1. The Committee notes that the Proposal for Noise concerns air and sea transport sectors, which are not covered by the existing Directive 86/188/EEC. This extension will certainly have important cost implications. However, insufficient information is available on the possible financial impact. With a view to forthcoming steps in the decision-making process regarding this draft directive, the Committee thinks it is important that the Commission supplement their Proposal with more adequate calculations. Obviously, it will be necessary to include in these calculations the costs for society in terms of negative effects on the health of workers as a consequence of unchanged safety and health policies.

2.5. The Committee welcomes in general the Commission proposals in the draft Directive regarding vibrations, and considers it to be of the utmost importance that a Community Directive dealing with this problem be introduced. Adverse health effects from vibration are similarly included in the Commission Recommendation on a European Schedule of occupational diseases.

2.6. The Committee has examined some difficulties relating to the assessment and measurement and control of the occupational risks of optical radiation and electromagnetic fields and waves, but considers it possible to extend some protective measures to workers in such areas. It notes examples where specific measures are required (ultra-violet radiation, lasers). Simple measures are already available and practical. Given the present level of knowledge it might be premature to develop instruments for optical radiation and electromagnetic fields and waves at this point of time. With a view to the current scientific debates, the Committee wishes, however, to encourage the Commission to continue its work leading to formulation of relevant protective measures in the future.

2.7. The Committee has examined the general measures proposed in Section II of the proposal and considers that they conform with Community principles for protection of health and safety at work. It also endorses the proposals in Section III for the development of appropriate measures in respect of health surveillance, equipment and working methods and the consultation procedures envisaged in Article 10 (and notably in Article 14 on exemptions).

2.8. The Committee has been informed of the differing views on the specification of target levels: a ceiling level beyond which exposure must be prevented; a threshold level towards which the protective measures within the proposed Directive are aimed; and an action band within which specified measures would achieve reduction appropriate to the case.

2.8.1. While accepting the Commission's intent that the threshold level should be a long-term objective, the Committee also notes that the Directive also requires that risk arising from exposure to physical agents must be reduced to the lowest achievable level. Furthermore, it is not clear in the text of the Directive if the threshold level constitutes a legal requirement or not.

2.8.2. The Committee therefore recommends the Commission to rethink the relevant formulations.

2.9. This issue is the 'Leitmotiv' of the Specific Remarks below, in which the Articles of the Directive and the Annexes particular to each of the four sections of Physical Agents are considered. It would also be of significance for agents which might be brought under this Directive in the future.

3. Specific remarks

3.1. *Article 3(3)*

3.1.1. The Commission should provide guidance regarding the groups at particular risk (e.g. in terms of occupations). This should not be left to the individual Member States.

3.1.2. It should be made clear that the measures to be taken for special risk groups should exclusively serve prevention and must not constitute a basis for selection of workers.

3.1.3. The Committee raises the question of possible synergy effects from concurrent exposure to a physical agent with other exposures to physical or chemical agents.

3.2. *Article 15*

3.2.1. Both sides of industry should be involved in the formulation of the additional documents.

3.3. *Annex I, Noise*

3.3.1. Recalling its general observation in paragraph 2.8 above regarding the threshold level, the Committee notes that it subscribes to the Commission's aim to establish a long-term objective of 75 dB(A). The Commission might, however, rethink the relevant formulations as the present ones could give rise to confusion.

3.3.2. As regards the intermediate level, which the Commission set at 80 dB(A), the Committee thinks that the Commission should state more clearly the arguments for the proposed decrease of the actual level of 85 dB(A).

3.3.3. The Committee notes the lack of information on the financial impact of the decrease of the intermediate level from 85 to 80 dB(A) on the costs of health surveillance.

3.3.3.1. It thinks that the Commission should explain why the text on health surveillance in this Annex refers to the worker's 'right' to health surveillance while other Annexes state that the worker is 'entitled' to it.

3.4. *Annex II, Vibrations*

3.4.1. The Committee has examined the arguments pro and contra a different standard measure for vibrations and for other physical agents (for instance, 4 instead of 8 hours). It can accept the choice the Commission has made for 8 hours. It appears that there is no compelling reason for dealing with vibrations in a different manner than with other physical agents.

3.4.2. As far as whole body vibrations is concerned, the Committee thinks that reduction of risk can, in most instances, be achieved by ergonomic prescriptions.

3.4.3. As regards individual protection from whole body vibrations, the Committee notes that it can, in many cases, be achieved by construction of the seat on machines, generally at low costs.

Done at Brussels, 30 June 1993.

The Chairman

of the Economic and Social Committee

Susanne TIEMANN

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendment, which received at least one quarter of the votes cast, was defeated during the discussion.

'Omit sections 1 and following of the Opinion and replace by:

1. Introduction

1.1. The Commission proposal, under the Framework Directive 89/391/EEC, is intended to update the existing Directive on Protection against Noise (86/188/EEC) and, at the same time, incorporate this updating within a Sub-framework Directive covering protection of workers against risk of exposure to a number of other physical agents.

1.2. The proposal covers noise, vibration, optical radiation, and electromagnetic fields and waves. The Commission has chosen the format of a Directive which attempts to apply common principles to all four physical agents selected (and, presumably, to any further physical agents added in due course). These principles include the assessment of risk; measurement; control of exposure; protective measures; training; consultation; health surveillance; exposure threshold, intermediate action levels as well as a maximum level.

2. General comments

Let there be no doubt that the Committee wishes that workers should be protected against risks from exposure to physical agents.

The Committee, however, believes that the proposed Directive does not provide an effective means to achieve this. The reasons for this can be briefly summarized as follows:

2.1. The format of the proposal, attempting to apply a single set of principles to four very different physical agents (with the possibility of adding further agents) is unsatisfactory. Differences in the four Annexes illustrate this difficulty which arises out of the inherent differences between the agents and the very different extent of knowledge of the various agents and their effects.

For example: the multiplicity of the various levels is potentially confusing and difficult to comply with. (It is significant that a similar proposed Directive on the protection of workers against risks of exposure to

Chemical Agents limits itself to only one coherent group of chemical agents, as far as control, but not necessarily banning, is concerned, leaving chemicals such as carcinogens and biological substances to be controlled by separate Directives.)

2.2. The proposal is not clearly written, so that it can lead to misunderstandings and different interpretations by different authorities. Those expected to apply the provisions in practice face uncertainties as to how they are intended to apply them.

For example: in Article 5(1), it is not clear what is meant by 'exposure to physical agent must be reduced to the lowest achievable level'; nor is it clear what is meant by this reduction having to be to 'below the threshold level referred to ...'. The Commission states that this is a long term objective, but this statement is not supported in the text of the proposal and has, therefore, no regulatory status.

2.3. The Committee regrets that an informative cost benefit analysis has not been performed. The Committee believes that the requirements would impose substantial costs for dubious improvement in health at work and would have a disproportionately adverse effect on small and medium size enterprises who would require advice from consultants on how to tackle the implementation of the proposal. In addition, no account is taken of financial feasibility in the text of Article 5 [in particular Article 5(2)] yet this aspect is of paramount importance in many cases.

2.4. The Committee is concerned that this proposal is envisaging controls on certain physical agents which do not appear to be supported by scientific evidence.

3. **Comments on Specific Parts of the Proposal (Individual Physical Agents)**

The following technical examples of concerns regarding individual physical agents included in the proposal illustrate the general comments above and the conclusion which follows:

3.1. *Noise*

3.1.1. Directive 86/188/EEC specifically requires, in Article 10, that the Directive shall be re-examined, 'taking into account in particular progress made in scientific knowledge as well as experience gained in the application of this Directive'. The Committee is not aware of any report on such experience gained; this is understandable, since the Directive came into force relatively recently, in certain Member States very recently. Because of this lack of a report on experience gained, not only is the Commission proposing that the Council should act in breach of Directive 86/188/EEC, but an important foundation on which to base such a review is missing.

3.1.2. The quantitative selection of 75 dB(A) for the threshold level is extremely contentious. It is understood that hearing loss is very small even at exposure to levels of the order of 80 dB(A), (including the most sensitive fractile of the population) when the contribution of the natural ageing process is taken into account. 75 dB(A), therefore, appears to be without secure foundation. The very need for the threshold level is questioned for this reason, and those referred to in the following paragraph.

3.1.3. The purpose of setting a threshold level is not clear particularly since it triggers no clearly defined action. Bearing in mind the problems mentioned above in paragraph 2.2 with reference to Article 5(1), if this unclearly worded paragraph is interpreted to mean that exposure is to be reduced to the threshold level, in particular by means of technical and/or organizational measures according to Article 5(2), then compliance will be in a number of cases technically not feasible, and will entail disproportionately high costs in many of the cases when it is technically feasible. Statements in Annex 1.2, confuse the text further, because they introduce the doubt whether the programme of reduction referred to in Article 5(2) is to be aimed to reach the threshold of 75 dB(A) or the action level of 85 dB(A). Moreover, the use of personal protection—the most frequently applicable protection measure—is left unclear.

3.1.4. The proposed creation of rest areas at very low levels is problematical in many cases, and reduction to 60 dB(A) during sleep frequently unrealistic.

3.1.5. The proposed extension of the provisions also to cover air and sea transport activities is bound to have serious cost implications, but no assessment is presented and the extension is not justified by corresponding benefits.

3.2. *Vibrations*

3.2.1. The threshold and other levels proposed are very contentious as regulatory specifications.

Their measurement in the workplace, particularly as a personal dosage and effect, is difficult and uncertain, depending not only on the equipment producing the vibration, but also on the manner of use, on the material being worked and on ambient circumstances.

Application of regulatory levels is impractical without meaningful measurement.

3.2.2. Experience outside the Community suggests that compliance with regulatory requirements is, therefore, not always possible and practicable, and that guidelines provide a better way to worker protection.

3.2.3. 'No adequate personal protective equipment against vibration is presently available' (Statement in Annex 2).

3.2.4. The various derogations permitted according to the Annex indicate some of the problems in applying the proposed measures in the present state of knowledge.

3.3. *Optical Radiation*

3.3.1. Scientific knowledge is still relatively limited, and means of measurement are at a laboratory stage rather than suitable for workplace application.

3.3.2. An enormous number of workers working in the open are likely to be exposed to levels of ultraviolet radiation from the sun exceeding the values proposed in Annex 4 after even a short exposure, but their protection is extremely problematical. Even if advantage is taken of the possibility of derogation for workers working in the open, this derogation does not exempt them from medical surveillance. Compliance with such regulatory specifications is virtually impossible for small and medium enterprises.

3.3.3. Hazards of lasers appear to be under control without the need for additional regulatory measures.

3.4. *Fields and Waves*

3.4.1. Similarly to previously mentioned physical agents, the scientific knowledge regarding fields and waves is still in the development stage, as are also means of measurement and protective measures.

3.4.2. 'There is no adequate and practical way to shield against magnetic field exposure' (Statement in Annex 4).

4. Conclusions

The Committee, therefore, believes that effective protection of workers is not best served by means of the proposed Directive COM(92) 560 final. The text is not conducive to effective implementation and, in some cases, inadequate knowledge and equipment exist for proper implementation.

5. Recommendations

The Committee recommends that the Council should refer this proposal back to the Commission, in particular to:

5.1. Prepare a report on progress made in scientific knowledge and technology as well as on experience gained in the application of Directive 86/188/EEC. On the basis of this report, and on the basis of other relevant facts, the Commission should then review Directive 86/188/EEC and prepare a new proposal for an amended Directive on the protection against noise if this is found necessary.

5.2. Promote further research into the properties of the other physical agents included in the present proposal, their effects on workers, and means of measurement and of protection with the view to considering the preparation of scientifically and practically based proposals for any necessary legislative instruments.

5.3. In the meanwhile, to prepare Guidance Documents aimed at the most effective information for employers and workers, as well as at their protection in practice against the effects of mechanical vibrations, optical radiation, and fields and waves.'

Reasons

Self-explanatory.

Voting

For: 56, against: 92, abstentions: 5.

Opinion on the proposal for a Council Decision concerning a Community Technology Initiative for Disabled and Elderly People (TIDE) (1993/1994) [1]

(93/C 249/12)

On 11 June 1993 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Committee instructed the Section for Social, Family, Educational and Cultural Affairs to prepare its work on the subject. In the course of its work the Committee appointed Mr Frandi as Rapporteur-General (Articles 18 and 46 of the Rules of Procedure).

At its 307th Plenary Session (meeting of 30 June), the Economic and Social Committee unanimously adopted the following Opinion.

1. The Committee deplores the fact that a very tight deadline has prevented it from making a thorough examination of the proposed Decision concerning the TIDE initiative because the necessary documentation was sent to it too late.

2. The Committee endorses the need for an initiative to encourage the creation of an internal market in rehabilitation technology in the EC in order to help the elderly and disabled to play a more active part in economic and social life.

3. The proposed TIDE initiative, which builds on the results of the TIDE pilot action, is undoubtedly a positive step in this direction.

4. The Committee reserves the right to make more general comments and to put forward further ideas in an Additional Opinion.

5. In order to meet the twofold objective of (a) creating a market in dedicated rehabilitation aids and technologies and (b) allowing disabled and older people to play a full role in the world of work, the Committee notes that further action will be needed; the type of assistance should be extended, as it at present focuses on a few particular aspects of applied science such as telematics.

6. In the interests of the twofold objective mentioned above, it is important that the initiative should not be too narrowly based. Systematic multidisciplinary and interdisciplinary links should be forged with the four-year research and technological development (RTD) framework programme and with the planned applications of the Structural Funds.

7. The only way to create a largescale market and to integrate the elderly and disabled properly is to ensure that all types of aid for overcoming physiological

[1] OJ No C 166, 17. 6. 1993, p. 12.