



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.11.2001  
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**OPINION OF THE COMMISSION**

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the  
proposal for 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 (vibrations) (nth individual Directive within the  
meaning of Article 16(1) of Directive 89/391/EEC)**

**AMENDING THE PROPOSAL OF THE COMMISSION  
pursuant to Article 250 (2) of the EC Treaty**

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**1. BACKGROUND**

The Commission sent the above proposal for a Directive based on Article 118A of the Treaty (now Article 137) to the Parliament and the Council on 8 February 1993.

The Economic and Social Committee gave its Opinion on 30 June 1993. The Committee of Regions stated in a letter dated 13 January 2000 that it would not issue an opinion.

The European Parliament adopted an Opinion on First Reading on 20 April 1994.

The Commission accepted 31 amendments proposed by the Parliament, 4 of these in part. An amended proposal was presented by the Commission on 8 July 1994.

The Council adopted its Common Position unanimously on 25 June 2001. The Commission supported the common position.

On 23 October 2001, at its second reading, the European Parliament adopted 7 amendments to the Council Common Position and 1 additional amendment concerning certain linguistic versions.

This opinion sets out the Commission's position on the European Parliament's amendments in accordance with Article 251 (2)(c) of the EC Treaty.

**2. AIM OF COMMISSION PROPOSAL**

The original proposal was 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.

It aims at the protection of workers against the risks to their health and safety arising from exposure to physical agents. The proposal covers four physical agents: noise (risks to hearing), vibrations (risks to the hand, arm and whole body), electromagnetic fields and optical radiation (risks to the health from induced currents in the body, shock and burn hazards and from absorption of thermal energy).

The general approach taken by the Council had been to concentrate on the one element (vibrations).

All delegations and the Commission accepted this approach to deal with the proposal on a step by step basis which does not discard the other parts of the Commission's proposal which remain on the table of Council for future discussions. A statement of the Council in the Council Minutes confirms that the proposal remains on the table of the Council and reiterates the commitment of the Council to deal with the other physical agents at a later stage.

### **3. COMMISSION'S OPINION ON THE AMENDMENTS PROPOSED BY THE PARLIAMENT**

#### **3.1. Summary of the Commission's position**

The Commission can accept three of the amendments (3, 4 and 7) and one amendment in part (1).

The Commission cannot accept four of the amendments (2, 5, 6 and 11) adopted by the Parliament, two of these amendments (5 and 6) could be acceptable in parts if redrafted.

#### **3.2. Parliament's amendments on second reading**

##### *3.2.1. Amendments accepted*

##### **3.2.1.1. Amendment 3 ("*vibrations reducing handles*") (Article 5(2), point c)**

The amendment adds positive reference to vibrations reducing handles thus improving the text.

##### **3.2.1.2. Amendment 4 (*information of the employer*) (Article 8(3), point b, new)**

This amendment clarifies the text to ensure that the employer gains feedback from the health surveillance.

##### **3.2.1.3. Amendment 7 (Annex, part A, point 2b)**

This amendment improves the sense of this paragraph (only applicable in some linguistic versions).

### 3.2.2. *Amendments accepted in part*

#### 3.2.2.1. Amendment 1 (*coverage of other physical agents*) (Recital 3)

Further to the splitting of the proposal the common position added a recital in order to continue negotiations on the physical agents other than the vibrations. The amendment replaces the word "appropriate" by "necessary" which reinforces the text. The Commission can therefore support this part.

However, a political binding commitment as it is contained in the proposed 2<sup>nd</sup> paragraph of the 3<sup>rd</sup> recital should not take the form of a recital as it contravenes the "Inter-institutional Agreement on Commission Guidelines for Quality of Drafting of Community Legislation" which foresees that recitals "shall not contain normative provisions on political exhortations".

### 3.2.3. *Parts of amendments accepted in principle*

#### 3.2.3.1. Amendment 5 (*Transitional periods – consultation of social partners*) (Article 9)

The purpose of the last part of this amendment is to ensure that the two sides of industry are consulted in accordance with national legislation or practice. The Commission could accept this part if inserted in the first sentence of article 9 redrafted as follows: "With regard to implementation of the obligations laid down in Article 5(3), Member States, *after consultation of the two sides of industry in accordance with national legislation or practice*, shall be entitled to make use of a maximum transitional period of 6 years from \* where work equipment is used which was given to workers before \*\* and which does not permit the exposure limit values to be respected, taking into account the latest technical advances and/or the organisational measures taken. With regard to equipment used in the agriculture and forestry sectors, Member States shall be entitled to extend the maximum transitional period by up to 3 years in respect of whole-body vibrations".

#### 3.2.3.2. Amendment 6 (*Reports*) (Article 13)

The first part of this amendment requesting justifications from the Member States on any transitional periods granted by them could be acceptable if redrafted transferred to the end of paragraph 1 of Article 14. Article 14, paragraph 1 would then read as follows: "1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than \*. They shall forthwith inform the Commission thereof. *They shall also include a list, giving detailed reasons, of the transitional arrangements which the Member States have adopted in accordance with Article 9.*

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 Member States."

### 3.2.4. *Amendments not accepted*

#### 3.2.4.1. Amendment 2 (*Limit values*) (Article 3, paragraph 2)

This amendment substantively decreases the exposure values for whole-body vibrations in the common position. The Commission, would have preferred lower values but accepted the Council's common position with a view to achieving a global compromise. Therefore, for reasons of consistency the Commission cannot accept this amendment.

#### 3.2.4.2. Amendment 5 (*Parts on transitional periods*) (Article 9)

The Commission rejects the parts of this amendment reducing the length of transitional periods because the practical implementation in particular in small and medium size undertakings will require awareness-raising and targeted information campaigns, the preparation of training modules and organisation of courses, and the acquisition of new equipment and/or accessories.

#### 3.2.4.3. Amendment 6 (*Justifications on derogations and collection of best practices and assessment*) (Article 13)

The parts of the amendment aimed at ensuring that the Member States provide detailed information on the directive's implementation and on justifications on derogations are covered elsewhere (eg. adaptation to technical progress or in Article 10(4)).

#### 3.2.4.4. Amendment 11 (*Agriculture and Forestry Sectors*) (Article 10(1) and 1a))

The Commission rejects this amendment since it would exclude workers of the two highest risk sectors, agriculture and forestry, from the benefits of the Directive. In addition an incoherence might result from this exclusion and the simultaneous establishment at a latter stage of a different exposure limit value.

### 3.3. **Amended proposal**

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.