

EN

EN

EN

## COMMISSION DECISION

### **First consultation of the social partners on the protection of workers from the risks related to exposure to electromagnetic fields at work**

#### **1. INTRODUCTION**

The purpose of this document is to consult the social partners in accordance with Article 138(2) of the EC Treaty with a view to obtaining their views on the advisability and the scope of measures to ensure the protection of the safety and health of workers exposed to electromagnetic fields at work.

This initiative follows up the commitment given by the Commission when it presented its proposal<sup>1</sup> for a directive of the European Parliament and the Council amending Directive 2004/40/EC<sup>2</sup> on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

That proposal was adopted on 23 April 2008 as Directive 2008/46/EC of the European Parliament and the Council, with the effect of postponing to 30 April 2012 the deadline for the Member States to transpose Directive 2004/40/EC. The Commission was to take advantage of the later transposition deadline to carry out a comprehensive review of the situation in order to be able to present a new legislative proposal in due time.

Where required, the new proposal should substantially amend Directive 2004/40/EC to take account of specific factors, such as medical Magnetic Resonance Imaging (MRI) procedures and the results of the most recent research and technical developments, while maintaining an appropriate standard of safety and health protection for the workers concerned.

#### **2. GENERAL CONTEXT**

Directive 2004/40/EC, which is currently in force and is due to be transposed by 30 April 2012, is the 18th 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. It relates to the harmful short-term effects of occupational exposure to electromagnetic fields on the health and safety of workers.

The Directive lays down minimum requirements. Each Member State may adopt stricter rules.

---

<sup>1</sup> COM(669) 2007 of 26 October 2007.

<sup>2</sup> OJ L 184, 24.5.2004, p. 23.

The Directive establishes exposure limit values for electric and magnetic fields varying in time with frequencies of between 0 and 300 GHz<sup>3</sup>. No worker may be exposed to values exceeding those limits, which are based on the health impact and biological considerations.

The Directive also sets ‘action values’ for time-varying and static fields. Action values are levels expressed in values which are directly measurable and indicate a threshold above which employers must take one or more of the actions provided for in the Directive. Compliance with these action values will ensure compliance with the relevant exposure limit values.

The limits laid down by the Directive were established on the basis of the recommendations issued at the time by ICNIRP (International Commission on Non-Ionising Radiation Protection)<sup>4</sup>, the organisation internationally recognised as the authority on assessment of the health impact of this type of radiation. ICNIRP works closely with all the international organisations concerned, such as the WHO, ILO, IRPA, ISO, CENELEC, IEC, CIE and IEEE.

The Directive is based on the prevention approach laid down in more general terms in framework Directive 89/391/EEC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>5</sup>. These call for:

- wide scope of application: the Directive covers all sectors of activities;
- an obligation on employers to determine and assess risks and to apply adequate protection and prevention measures;
- the combating of risks at source; the elimination or, where this is impossible, the limiting of risks identified;
- adaptation to technical progress, giving priority to collective protection measures over personal protective measures;
- specific information and training for and consultation of the workers concerned;
- appropriate medical surveillance.

During the inter-institutional discussions preceding the adoption of Directive 2004/40/EC, the specific case of magnetic resonance imaging (MRI) was discussed in detail both in the Council and in the European Parliament. National experts from the competent national authorities provided technical support for the Member States’ representatives responsible for negotiations in the Council. The Council Presidency sought, on several occasions, the opinion of the ICNIRP.

The co-legislators adopted the Directive subject to certain amendments to the values originally proposed by the Commission: in particular they did not set an exposure limit value for static magnetic fields, an essential component of MRI, because the value was being amended by ICNIRP in the light of the latest scientific findings, which appeared as the Directive was being adopted.

---

<sup>3</sup> 300 GHz = frequency of 300 billion hertz. The hertz (abbreviation Hz) is the international unit of frequency.

<sup>4</sup> Guidelines on limiting Exposure to Non-Ionising Radiation, ICNIRP 7/99, ISBN 3-9804789-6-3.

<sup>5</sup> OJ L 183, 29.6.1989, p. 1.

However, since its adoption, concerns have been expressed that the Directive's provisions on exposure limit values would unduly hamper the performance of MRI in diagnostic and curative medicine as well as in research. Such a development could have serious undesirable effects on public health. Moreover, some stakeholders have claimed that restrictions on MRI could lead to increased use of diagnostic procedures using ionising radiation, which would in turn also have an unintended adverse effect on the protection of workers. New research findings, including a study commissioned by the Commission, appear to confirm at least some of these concerns.

The Commission and the co-legislators have acted to find remedies to the situation.

The first step was the adoption of Directive 2008/46/EC, which postponed the deadline for transposition by four years.

In preparation for the second step, i.e. a possible new legislative proposal from the Commission for substantial amendments to Directive 2004/40/EC, the Commission has already taken a number of important actions, including:

- making regular contact with stakeholders, in particular for medical use of MRI;
- making regular contact with the social partners and government representatives, in particular through a working party mandated by the Advisory Committee for Safety and Health at Work;
- following up the latest technical and scientific developments and new recommendations, in particular from ICNIRP, WHO and IEEE;
- carrying out a comprehensive investigation into occupational exposure of workers performing medical MRI;
- launching a study to assess the impact of the various legal options on the effectiveness of workers' safety and health protection, on the one hand, and on the carrying-out and development of medical and industrial activities, on the other hand.

### **3. IMPORTANCE OF COMMUNITY ACTION**

Directive 2004/40/EC is currently in force. On its adoption, the Commission, Parliament and Council were of the opinion that Community action was the best way to protect workers from risks arising from occupational exposure to electromagnetic fields. While the initiative behind Directive 2008/46/EC was due to implementation problems limited to certain exposure limit values, the Commission considers that the overall context and the constant evolution in the field call for a comprehensive review of Directive 2004/40/EC.

Consequently the purpose of this consultation is to ascertain the views of the social partners on the advisability of a Community initiative, which could contemplate the various policy options outlined below.

The main policy options are:

- (1) To consider that no new legislation is needed. As a consequence, the European Union would take no new initiative in this field. Directive 2004/40/EC and national regulatory provisions on the subject would be considered satisfactory and would

remain in force. The Member States would need to adopt national legislation transposing Directive 2004/40/EC by 30 April 2012.

- (2) To amend the existing binding legislative provisions. The Commission could make a proposal that takes due account of specific situations and of the latest international recommendations; it could introduce new exposure limit values based on those recommendations and provide for special conditions or exemptions.
- (3) To propose new non-binding legislative provisions in place of the existing binding provisions. The Commission would propose that due account be taken of specific situations and of the latest international recommendations and that (partly) new non-binding measures and recommendations on occupational exposure to electromagnetic fields be adopted. This could entail the production of good practice guides, the launching of regular information campaigns, the setting-up of appropriate training programmes, and the drawing-up of voluntary agreements between the social partners at EU or sector level.
- (4) To consider that Community action is no longer necessary. The Commission could consider it inappropriate to take any Community legislative initiative in this field. Directive 2004/40/EC would be repealed and national regulatory provisions on the subject would be considered sufficient.

#### **4. POINTS FOR CONSULTATION**

In the light of the above, the social partners are requested to answer the following questions:

- (1) Do you consider the current Directive 2004/40/EC sufficient for the health and safety protection of workers exposed to electromagnetic fields during their work?

If not, please explain why and say what the practicable alternative(s) could be.

- (2) Do you think that a Community initiative is the best way to ensure a high standard of protection of workers exposed to electromagnetic fields?
- (3) Do you think that certain categories of workers should be excluded from the scope of any future Community initiative because of reported implementation problems (e.g. medical procedures involving MRI) with some provisions (exposure limit values) of Directive 2004/40/EC?

If so, how would you provide for the protection of such workers?

If not, do you think that there should be some flexibility for workers exposed under special circumstances in their sector (e.g. MRI personnel during certain MRI procedures when normal protection measures cannot provide adequate protection) by

- a) introducing higher/other exposure limit values?
- b) introducing different methods for evaluating exposure?
- c) introducing the possibility of occasional or conditional derogations?

- (4) Would you find non-binding measures such as the production of good practices guides, launching of regular information campaigns, setting-up of appropriate training programmes, and drawing-up of voluntary agreements between the social partners at EU or sector level – useful, and for what purpose?
- (5) Should a possible future EU Community initiative cover the long-term effects of workers' occupational exposure to electromagnetic fields?