

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 OPTICAL RADIATION

UNICE POSITION PAPER

GENERAL COMMENTS

1. UNICE has noted the amended proposal for a directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from optical radiation¹. The proposal for a directive addresses exposure to artificial as well as natural sources of radiation that may cause damage to the eye and skin. It aims at establishing exposure limit values for optical radiation other than that emitted by natural sources on the one hand and sets out a preventive approach for addressing exposure to natural optical radiation on the other. Moreover, the proposal for a directive includes provisions on risk assessment, information and training and health surveillance.
2. European employers attach great importance to the protection of workers' safety and health.
3. They stress however that any legislative proposal needs to be based on a proper feasibility evaluation and a socio-economic impact assessment and firmly criticise that this is not the case. The initial, so-called, impact assessment drawn up in 1993 was neither substantial nor is it relevant for the detailed and far-reaching new proposal of June 2004.
4. Employers agree that in the case of possible exposure to laser radiation and important infrared radiation, a full risk assessment and management controls are appropriate. In any case, existing EU legislation already provides for this.
5. UNICE highlights that, with regard to ultra-violet radiation and its possible carcinogenic effects on the skin, many individual factors – such as the colour of skin, hair and eyes, sensitivity to sunburn and the antecedent of repeated sunburn in the past – will play an important role in predisposition to skin cancer. This makes it difficult to determine valid limit values. In addition, regarding ultra-violet radiation and its possible carcinogenic effects on the eye, there is no conclusive scientific evidence that enables the establishment of dose-response relationships and thus the setting of limit values.
6. UNICE welcomes the priority given to a preventive approach that refrains from setting exposure limit values for situations of exposure to natural sources of radiation (particularly solar radiation). However, the simple fact that the proposal for a directive attempts to address exposure to artificial sources, which is subject to limit values, and

¹ Proposal for a Directive presented by the Irish Presidency on 18 June 2004, Council reference: 10678/04.

exposure to natural sources, which is not, in the same text runs will create considerable ambiguity and uncertainty for employers when it comes to what is required from them and their responsibilities.

7. Moreover, exposure to solar radiation is not limited to the workplace. This may generally lead to uncertainties with regard to determining the origin, whether occupational or not, of a health problem, with resulting unclear or problematic situations for companies when it comes to liability issues.
8. In its reply to the consultations of social partners on the possible revision of the carcinogens directive, UNICE already stressed that managing professional solar radiation exposure situations calls for different approaches than those provided by the legislative route. Only very specific professions may be concerned by sometimes higher occupational exposure situations. A particular focus should therefore be put on practical guidance and enhanced sectoral prevention efforts to help deal with these situations successfully.

SPECIFIC COMMENTS

Assessment, measurement and calculations

9. There are a number of problems arising in relation to the current legislative proposal and the implementation of proposed provisions at the workplace level, which cannot be overlooked:
 - Considerable practical difficulties when it comes to measuring exposure and risk evaluation. Measurement of radiation is highly complex, difficult and costly and will in most cases have to involve specialist services.
 - For some exposure situations, assessment, measurement and calculations will be even more difficult insofar as no EU standards or recommendations are yet available. Generally, the EU should refrain from proposing legislation that requires complex assessment, measuring and calculation of exposure in the absence of any EU standard or recommendation. Referring to available national methods in the meantime is not helpful, with the resulting divergence in approaches and new burdens on companies once another method is available.
 - This raises the general question of practicability for business and particularly SMEs in dealing with this.
 - In the light of this, the contribution that manufacturers of equipment generating radiation can make by providing relevant information on nature and level of radiation to users becomes particularly important for reducing some of the burdens the directive will put on user companies.
 - The requirements stipulated in Article 4 (4) concerning the need for the employer to give particular attention when carrying out the risk assessment to any indirect effects (point d) and to the existence of replacement equipment designed to reduce the levels of exposure to optical radiation (point e) are very far-reaching and impracticable. The need to evaluate any possible indirect effect creates considerable uncertainty for employers and in many cases imposes unnecessary burdens. Such a requirement should only apply in cases where there is sound scientific evidence of particular and precise indirect effects that are very likely to occur under certain circumstances and where there is a true potential risk in the actual workplace. Equally, the need to provide in any case for information on the existence of replacement equipment is not helpful. It is not of relevance in a majority of workplaces where there is no risk of exposure beyond the proposed limit values.

Health surveillance

10. The provisions on health surveillance are unnecessarily detailed and could be streamlined.

Information and training of workers

11. Article 6 creates confusion between elements to be considered when it comes to worker information and issues relating to worker training, namely - as regards the latter - only points (f) and (g).

CONCLUSIONS

12. The proposal for a directive should focus on well-established risks arising from lasers and infrared radiation. Many health and safety authorities such as the US National Institute for Occupational Safety and Health recognise the difficulties of rigid approaches towards all forms of optical radiation and therefore concentrate their actions on laser radiation. Due to the high complexity involved in managing such risks, UNICE invites the European Commission and Member States to draw up practical guidance for companies to accompany any new legislation.
13. The proposal for a directive should also be focused on artificial sources only and refrain from addressing in the same text exposure to natural sources, as this creates legal uncertainties and liability problems for companies. Moreover, the issue of exposure to natural sources of radiation is best addressed through practical guidance, adapted to the specific professions where there can be considerable exposure during working time and not through the legislative route.
14. More generally, EU legislation would gain from being less complex and detailed and from being based on sound scientific evidence, a thorough evaluation of technical feasibility and socio-economic impact assessments, as confirmed by the Commission's evaluation of the implementation of the framework directive and its first five individual directives². UNICE would welcome if more consideration was given to this in the future and in relation with newly proposed legislation.

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² Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of Regions on the Practical Implementation of the Provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment) 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment) – COM(2004) 62 final, 5 February 2004.