

CEEMET / ORGALIME Position

on the [Common Position of the Council](#)¹ on the

**Amended 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
(Optical Radiation)
92/0449/D (COD)**

26 January 2005

¹ Not yet published. This position is based on the draft text of the Directive as set out in Addendum 1 of the political agreement of the COREPER of 30 November 2004.

Introduction

CEEMET represents the interests of employers' organisations in the metal, engineering and technology-based industries from 18 European countries with a particular focus on social policy issues. Furthermore, CEEMET has established and is developing a network of contacts with employer organisations from the new EU Member States. ORGALIME represents the mechanical, electrical, electronic and metal working industries of 23 European countries. Between them CEEMET and ORGALIME represent about 200 000 companies employing some 12 million people, 97% of them are small and medium sized enterprises (SMEs). Employers' organisations in Europe recognize that good health and safety management is an essential feature of profitable and sustainable businesses. Engineering industries in Europe are particularly committed to providing safe electrical and electronic products and machinery to their professional customers.

This position has been worked out in broad consultation with the European trade sector associations, especially in the fields of lighting industry and machine tools.

This directive is at odds with the better regulation principles

The dossier is at odds with the Commission's better regulation principles endorsed in 2003 by the European Parliament and reiterated as a priority by the new Commission. No detailed impact assessment or any proper consultation of stakeholders accompanies the text, its true impact on business is still unknown and any benefits said to accrue from its introduction have not been identified. We furthermore regret that the Commission has failed to provide evidence of work accidents or ill-health directly linked to exposure to optical radiation in support of this individual Directive. The proposal, implements the Framework Directive 89/391/EEC within the meaning of its Article 16(1) on the prevention of accidents at work. However, despite being more than 10 years after its launch, the Council has not required any referral of its proposal to the Commission.

CEEMET and ORGALIME believe that this directive places a disproportionate administrative burden and assessment cost on companies without corresponding health benefits. This negative impact will be felt most keenly in the manufacturing sector and even more disproportionately by small and medium sized enterprises.

Thousands of jobs in engineering are at stake

Well-considered legislation provides the foundation for the system and minimum harmonised standards across Member States assists in the development of the single market. However, all health and safety legislative proposals must have a sound scientific basis and be proportionate, in taking into account the interest of all. Without this, society will be faced with additional cost without consequent benefit. In particular, European workers may be faced with a loss of job opportunities due to further relocations of industrial plants outside Europe.

The outcome of the political agreement reached by the Council on 7 December 2004 improves the initial proposal of the Commission for this physical agent. However, we firmly believe that this directive may still raise major difficulties for a significant number of our members' companies, especially SMEs in the mechanical and metalworking field. In the years to come, we may fail to meet the needs and challenges of future generations that could be provided by developing innovative solutions using optical radiation.

CEEMET and ORGALIME have some comments and are of the opinion that the formulation of some provisions could be improved, in order to make them clearer to users of the future Directive. These are specified hereafter.

Brussels, 26 January 2005

Definition of “exposure”

①Article 2, Point I (new)

Council Common Position

Proposed Amendment

“When applying the exposure limit values, the determination of the workers’ effective exposure shall take account of the attenuation provided by individual personal protective equipment or other control measures.”

Justification

This proposed amendment would bring this proposal in-line with the Physical Agents (Noise) directive which requires that the *limit value* is assessed as being that which applies to the protected ear. The same should apply here where it is not the light emission generated from for example, a welding process but the potential for exposure to the worker after protection and control measures. The amendment would clarify the situation for duty holders.

Reference to existing harmonised standards

②Article 4, Paragraph 1

Council Common Position

1. In carrying out the obligations laid down in Articles 6(3) and 9(1) of Directive 89/391/EEC, the employer, in the case of workers exposed to artificial sources of optical radiation, shall assess and, if necessary, measure and/or calculate the levels of exposure to optical radiation to which workers are likely to be exposed so that the measures needed to restrict exposure to the applicable limits can be identified and put into effect. The methodology applied in assessment, measurement and/or calculations shall follow the standards of IEC in respect of laser radiation and the recommendations of CIE and CEN in respect of non-coherent radiation. In exposure situations which are not covered by these standards and recommendations, and until appropriate EU standards or recommendations become available, assessment, measurement and/or calculations shall be carried out using available national or international science-based guidelines. In both exposure situations, the assessment may take account of data provided by the manufacturers of the equipment where it is covered by a relevant Community Directive.

Proposed Amendment

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Justification

See Justification next page.

Reference to existing harmonised standards

③ Article 4, Paragraph 1, point i

Council Common Position	Proposed Amendment
<p>4. Pursuant to Article 6(3) of Directive 89/391/EEC, the employer shall give particular attention, when carrying out the risk assessment, to the following:</p> <p>(...)</p> <p>(i) information provided by the manufacturers of optical radiation sources and associated work equipment in accordance with the relevant Community Directives.</p>	<p>4. Pursuant to Article 6(3) of Directive 89/391/EEC, the employer shall give particular attention, when carrying out the risk assessment, to the following:</p> <p>(a) to (h)... unchanged</p> <p>(i) information such as a reference to the applicable harmonised standards provided by the manufacturers of optical radiation sources and associated work equipment in accordance with the relevant Community Directives.</p>

Justification

All machines, including those that produce incidental optical radiation such as a welding machine, must comply with the essential safety requirements of Directive 98/37/EC (Machinery Directive), which already require the protection of users from optical radiation. Similarly, other electrical professional equipment, such as a professional lighting or a computer screen, must comply with the essential safety requirements of Directive 73/23/EEC (Low Voltage Directive), including the protection of users from optical radiation. In 99% of cases, for both of these directives, manufacturers apply harmonized standards made by CEN, CENELEC and ETSI, when designing their products, a significant proportion of them being in line with international standards (ISO, IEC, CEI...). These standards already take into consideration an assessment of all the risks that may arise for each product family, including optical radiation, thereby avoiding manufacturers to carry out a separate risk assessment for each and every risk listed in the scope of the Machinery or the Low Voltage Directive.

Consequently for many products, there is no need for the manufacturer to provide all the data and parameters specific to optical radiation. The CE marking that demonstrate compliance to the relevant Community Directives or a reference to the applicable standards could facilitate the employer's risk assessment.

Simplification of health surveillance provisions

④ Article 8

Council Common Position

1. Without prejudice to Article 14 of Directive 89/391/EEC, Member States shall adopt provisions to ensure the appropriate health surveillance of workers with reference to the outcome of the risk assessment provided for in Article 4 of this Directive where it indicates a significant risk to their health. Those provisions, including the requirements specified for health records and their availability, shall be introduced in accordance with national law and/or practice.

Proposed Amendment

1. Without prejudice to Article 14 of Directive 89/391/EEC, Member States shall adopt provisions to ensure the appropriate health surveillance of workers with reference to the outcome of the risk assessment provided for in Article 4(1) of this Directive where it indicates a **chronic** risk to their health. Those provisions, including the requirements specified for health records and their availability, shall be introduced in accordance with national law and/or practice.

Justification

The purpose of this duty should be to address the very small number of workers who may be at risk of developing cataracts as a result of exposure to infra-red radiation e.g. steel & foundry workers. Furthermore, health surveillance is unable to identify acute problems and this proposed amendment would help clarify this position for duty holders.

Simplification of health surveillance provisions (continued)

④ Article 8

Council Common Position

Proposed Amendment

2. Member States shall establish arrangements to ensure that, for each worker who undergoes health surveillance in accordance with paragraph 1, individual health records are made and kept up-to-date. Health records shall contain a summary of the results of the health surveillance carried out. They shall be kept in a suitable form so as to permit any consultation at a later date, taking into account any confidentiality.

Copies of the appropriate records shall be supplied to the competent authority on request, taking into account any confidentiality. The individual worker shall, at his request, have access to the health records relating to him personally.

To be deleted

Justification

See justification on previous page.

Simplification of health surveillance provisions (continued)

④ Article 8

Council Common Position

3. Where, as a result of health surveillance, a worker is found to have an identifiable disease or adverse health effect which is considered by a doctor or occupational health-care professional to be the result of exposure to optical radiation at work:

(a) the worker shall be informed by the doctor or other suitably qualified person of the result which relates to him personally. He shall, in particular, receive information and advice regarding any health surveillance which he should undergo following the end of exposure;

(b) the employer shall be informed of any significant findings from the health surveillance, taking into account any medical confidentiality;

(c) the employer shall:

- review the risk assessment carried out pursuant to Article 4,

- review the measures provided for to eliminate or reduce risks pursuant to Article 5,

- take into account the advice of the occupational health-care professional or other suitably qualified person or the competent authority in implementing any measure required to eliminate or reduce risk in accordance with Article 5, including the possibility of assigning the worker to alternative work where there is no risk of exposure exceeding the appropriate ELV, and

- arrange continued health surveillance and provide for a review of the health status of any other worker who has been similarly exposed. In such cases, the competent doctor or occupational health care professional or the competent authority may propose that the exposed persons undergo a medical examination.

Proposed Amendment

To be deleted

Justification

See justification on previous page.

Guide of good practice

⑤ Article 11 bis (new)

Council Common Position

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Proposed Amendment

The Commission shall draw up practical guidelines in a guide of good practice of a non-binding nature. This guide shall address the topics referred to in Articles 3, 4, 5, 6, 7 and 8, the annexes.

The Commission shall first consult the Advisory Committee on Safety, Hygiene and Health Protection at Work in accordance with Council Decision 74/325/EEC(11).

In the context of the application of this Directive, Member States shall take the greatest possible account of the above mentioned guide in drawing up their national policies for the protection of the health and safety of workers

Justification

This is a highly complex area of policy. SMEs and Member States need practical guidance on what they need to do and more important what types of activity are unnecessary.

Reports

⑥ Article 12 (new)

Council Common Position

Every five years, Member States shall provide a report to the Commission on the practical implementation of this Directive, indicating the point of view of the social partners.

Every five years the Commission shall inform the European Parliament, the Council, the European Economic and Social Committee and the Advisory Committee on Safety and Health Protection at Work of the contents of these reports, of its assessment of developments in the field in question and of any action that may be warranted in the light of new scientific knowledge.

Proposed Amendment

Every five years, Member States shall provide a report to the Commission on the practical implementation of this Directive, indicating the point of view of the social partners.

The report shall highlight how this Directive is improving occupational health & safety with a specific reference to reduced illness and injury.

Every five years the Commission shall inform the European Parliament, the Council, the European Economic and Social Committee and the Advisory Committee on Safety and Health Protection at Work of the contents of these reports, of its assessment of developments in the field in question and of any action that may be warranted in the light of new scientific knowledge.

Justification

In line with the Commission's better regulation principles, CEEMET and ORGALIME would welcome a proper evaluation of the impact of the Directive in order to check whether this Directive is meeting its objective of improving workers' health & safety.