

Position Paper

UEAPME¹ position on the proposal for a directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)

I. Introduction

On 14 June 2011 the European Commission adopted a new proposed directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields).

The current proposal aims to replace the previous European directive 2004/40/EC, which had been suspended due to transposition problems.

II. General comments

UEAPME welcomes the consultation efforts to engage social partners in the reflections on the protection of workers from EMF. As a direct consequence we consider the new proposal based on the principles of flexibility and proportionality an improvement compared to the European directive 2004/40/EC. The latter had posed disproportionate and certain inapplicable obligations on employers and notably SMEs to assess and control the risks from worker exposure to electromagnetic fields.

As UEAPME we have emphasised that any workable solution to tackling EMF exposure in the workplace needs to take into account the specificities of SMEs according to the “Think small first”² principle, i.e. in proportion to the size of the enterprise and type of risks posed. In the majority of workplaces the threat of direct or indirect adverse effects of EMF exposure is low. By contrast certain industrial activities or workplaces are more typically affected and require specific provisions.

Some aspects of the new proposal aiming at simplifying risk assessment are steps in the right direction. This concerns the introduction of action and orientation values which are to be directly measurable. It further consists of the annexes addressed to all categories of workplaces or workplace activities, which include examples of a-priori compliant devices, alongside the provision for a practical guide. It should help SME employers to understand their obligations and to check compliance in a more pragmatic way avoiding or limiting financial and administrative burdens and costly external consultancy.

¹ UEAPME subscribes to the European Commission’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

² See EC „Small Business Act for Europe” 2008 and “Revised SBA” 2011. It recognises the central role of SMEs in the European economy and puts in place a comprehensive framework for the EU and Member States.

Despite these improvements, some specific technical aspects will require further clarification and simplification. The combination of orientation, action and exposure limit values is still rather complex and it is not evident how employers are expected to apply this at the workplace. More and better information is necessary to achieve a clear picture. It needs establishing whether and how the new exposure limit values can be measured and calculated. In addition, it will be more costly for SMEs, which unlike larger companies cannot make economies of scale. Furthermore, we expect the limit values of the draft directive to coincide with the latest recommendations of the International Commission on Non-Ionizing Radiation Protection (ICNIRP). If not already carried out, an adaptation will be necessary. Further, the terminology used in some articles of the directive remains ambiguous and more work is required on the annexes due to inconsistencies.

UEAPME supports the principle to cover all sectors of activity, whilst allowing subsidiarity and flexibility in the form of temporary derogations in specific circumstances at national level outlined in Article 3.6.

III. Detailed comments

On General Provisions

Article 1 - Subject-matter and scope

UEAPME agrees with the main aim of a forthcoming initiative on EMF which should be to protect workers from the risks related to exposure of electromagnetic fields at the workplace in the short term only, taking into account the lack of scientific data to extend this to any possible effects of long-term exposure.

Article 2 - Definitions

UEAPME endorses the fact that health effects should be succinctly defined in the directive. By contrast, adverse effects on 'mental and/or general wellbeing' of workers are rather subjective and should therefore not be part of the evaluation.

Article 3 - Exposure limit values, orientation values and action values

The article introduces a modified set of limit and reference values. UEAPME recognises the efforts made to introduce new and less restrictive exposure limit values, which had been one of the main issues with the previous directive.

However, the combination of orientation, action and exposure limit values is still complex. Furthermore, it is not clear how to use these values and how employers are expected to apply this at the workplace. More information is needed to achieve a clear picture. In addition, it needs establishing whether and how the new exposure limit values can be measured and calculated. It will be more costly for SMEs, which unlike larger companies cannot make economies of scale.

Article 3.6 foresees the provision to determine temporary derogations for specific situations at national level, during which there can be a temporary overriding of exposure limit values under controlled circumstances. We consider this type of flexibility will be useful in ensuring adequate compliance with the directive in certain situations. In order to avoid a distortion of competition due to different national exceptions, the following solution could be envisaged: application to grant exceptions under Art. 3 paragraph 6 have to be addressed to the European Commission. If the Commission grants such an exception it should be valid for all Member states.

On Obligations for Employers

Article 4 - Determination of exposure and assessment of risks

UEAPME particularly welcomes simplifying the determination of exposure to EMF and assessment of risks through the inclusion of equipment lists and workplace activities in the annexes of the directive.

Indeed as previously underlined by UEAPME, EMF exposure should be more easily identifiable in the first place by verifying the type of technical devices used and industrial activities performed at a workplace, instead of insisting on measurements, which are always more complicated and pose a high level of uncertainty.

Equally enabling employers to refer to labelling and product information provided by industry and manufacturers will allow more transparency. In this respect we consider that a database at European level could be useful to share information on product emissions and ultimately help create a safe working environment.

However, as noted under Article 3 the lack of information on how the values are to be used and on the calculation of the exposure limit values needs to be improved. Further, in Article 4.4 the assessment, measurement and/or calculations referred to are to be planned and carried out at 'suitable intervals'. UEAPME recommends the obligation of repeated evaluations only in case of major changes, rather than 'in suitable intervals'.

Finally, introducing a written justification by the employer on the nature and extent of the risks related to EMF should contribute to reducing administrative burdens, as it would make a further detailed risk assessment superfluous.

Articles 6 and 7 - Worker information and training and consultation and participation of workers

UEAPME agrees that employers ensure the appropriate training, as well as consultation and participation of workers and/or their representatives in line with the 89/391/EEC directive.

A recent Eurobarometer survey on citizens' perception of EMF suggests there is still a considerable lack of information and communication available on EMF in the public domain, which is exacerbated by the fact that physical agents are invisible. The topic therefore requires more effective awareness-raising actions at European and national level.

Miscellaneous and Final Provisions

Article 8 - Health surveillance

This Article aimed at prevention introduces a new provision for medical surveillance in the lower frequency range. It outlines that 'undesired or unexpected health effects' resulting from exposure in the lower frequency range reported by a worker should be transmitted to the person in charge of the medical surveillance to take action accordingly.

Given that 'undesired or unexpected' effects on health can be potentially caused by a number of factors and not necessarily EMF, this would contrary to simplification create new unnecessary red tape for SMEs and should be deleted.

Article 10 - Technical amendments of the Annexes

According to this provision the European Commission is to obtain the competence to adapt orientation and action values, as well as the corresponding lists of activities, workplaces and work equipment in the annexes II and III. We agree that certain technical amendments may well have to be made consistent with new technological or scientific developments, but the Commission should be obliged to consult the Advisory Committee on Safety and Health at Work beforehand.

Article 13 - Practical guide

UEAPME considers accompanying practical guides essential notably for small firms. The previous guide for the 2004 directive was far from ideal. It will therefore be necessary to involve social partners and professional organisations representing SMEs closely in the development of sector-specific and userfriendly guides to ensure that they achieve the right balance between being simple, efficient, easy to understand and with an appropriate wording. They should equally help to promote best practices in EMF risk assessment in SMEs and micro enterprises.

Moreover, regarding guidance and non-binding measures there is a strong need to promote enhanced cooperation and partnerships between OSH services and SME's organisations, in order to help them to comply with regulations. This should be done at all levels from the national, to regional and local in order to ensure adequate coverage.

Annexes

Annex II and III

Annex II sets out a flexibility and proportionality approach in the form of a new measurement 'zoning' system for the lower frequency range (0Hz to 100 kHz), whilst Annex III addresses the higher range (100 kHz to 300 GHz). They require different actions from employers according to the level of EMF exposure and introduce facilitated risk assessment procedures.

UEAPME considers the proposal for a new "zoning" measuring system useful, but some more technical work is required to remove inconsistencies. According to Annex II point 2 zones need to be indicated if the exposure takes place below the action value. This is in contradiction with Article 5 (3), according to which signalisation is only necessary if the orientation or action values are exceeded. Therefore annex II D2) should be deleted. Concerning point D 4), that is the zone encompassing exposure above the action value, it should be noted that there are two subcategories 2 and 5 which are the same, thus one of which needs deleting.

Moreover, the annex now also contains a non-exhaustive list of non-compliant activities and equipment, in addition to an a-priori compliant one. UEAPME welcomes the novelty to provide concrete examples of activities and equipment, which creates a better understanding of what is at stake. We already expressed a strong support to the Commission proposal in the second social partner consultation³ which explored inserting a non-exhaustive list of non-compliant activities in the annexes.

Both Annex II and III point E oblige the employer to carry out an assessment to determine the type of work restriction for those persons at particular risk with an Active Implantable Medical Device (AIMD). As advice CENELEC guidance EN 50527 is noted.

UEAPME is concerned that in practice it is very difficult for health and safety medical consultants or manufacturers of AIMD to make clear assessments or statements, even if measurement protocols are available. Thus employers lack a basis according to which they can make decisions. It could hinder employers from hiring an employee who has previously informed the employer of carrying an AIMD device, as he or she could be affected adversely by interferences at the workplace.

³ See UEAPME reply to 2nd EC social partner consultation
http://www.ueapme.com/IMG/pdf/100705_UEAPME_reply_2nd_consultation_EMF_final.pdf

Conclusions:

- UEAPME recognises the improvements in the new proposed directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from electromagnetic fields compared to the 2004 directive. The simplification goes in the right direction, but there are still some technical issues requiring further clarification.
- UEAPME welcomes the proportionality and flexibility principles. Proportionality must be applied consistently to protect workers in line with the “Think small first”⁴ principle, i.e. in proportion to the size of the enterprise and type of risks posed, bearing in mind that in the majority of workplaces the threat of direct or indirect adverse effects of EMF exposure is low.
- On scope and definitions UEAPME supports limiting the directive to short-term effects, as opposed to long-term. However, the adverse effects with regard to ‘mental and/or general wellbeing’ of workers are too subjective and should not be included.
- The combination of orientation, action and exposure limit values is still complex and it is not evident how to use these values, which should be simplified.
- We strongly welcome the introduction of work equipment lists in the annexes to avoid measurements and make compliance verifications simpler.
- We support the limited derogations for certain activities covering all workers.
- Medical surveillance should not cover inapplicable ‘undesired or unexpected health effects’ on workers in the lower frequency range.
- For SMEs further guidance and awareness raising should be strongly promoted, as well as enhanced cooperation and partnerships between OSH services and SME’s organisations, in order to assist them with the regulations.

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For further information please contact:

Helen Hoffmann

Adviser for Social Affairs

email: h.hoffmann@ueapme.com

⁴ See EC „Small Business Act for Europe” 2008 and “Revised SBA” 2011. It recognises the central role of SMEs in the European economy and puts in place a comprehensive framework for the EU and Member States.