

**SECOND STAGE OF CONSULTATION OF THE SOCIAL PARTNERS ON THE
PROTECTION OF WORKERS FROM THE RISKS RELATED TO EXPOSURE TO
ELECTROMAGNETIC FIELDS AT WORK**

CEEMET REPLY TO THE SECOND STAGE CONSULTATION

05/07/2010

Summary

CEEMET welcomes the EC's consultation and its willingness to look again at a wide range of issues in the original directive that created serious problems for industry. These need to be fully addressed to result in proportionate and efficient protection. In particular:

- We are in favour of new values that are less restrictive and easier to assess. All values in the Directive should be directly measurable, reducing the cost and uncertainty involved when assessing the exposure values.
- The zoned approach offers a logical way forward. However at present it is unnecessarily complex. The upper limit of zone 1 below 1Hz should be amended and zones 0 and 1 merged.
- We welcome the recognition that not all physical effects amount to health effects and that the Directive needs to be amended accordingly.
- We agree that there must be relative flexibility to exceed the upper limit in circumstances where it is not practicable to meet it and that in such circumstances this must be counterbalanced by appropriate actions to control the risks. This flexibility should be applied equally to all sectors without exception.
- Risk assessment should be required only where the upper limit of zone 1 is likely to be exceeded. Guidance should be produced to help employers identify which equipment is and is not likely to exceed the limit.
- It should be made explicit that the CENELEC standards and ACSH guidance are produced to provide assistance and are not compulsory tools.
- A database of exposure values, together with sectoral guidance should be produced to help member states with implementation and employers with identifying what action they need take. CEEMET is prepared to provide practical support for this work.
- We welcome the recognition that there is limited knowledge and no consensus about what, if any, medical surveillance is appropriate. We agree that a committee should be appointed to investigate this further.

Overview

On the 20th of May 2010, the European Commission decided to launch the second stage consultation with the social partners at EU level as regards the possible amendment of Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields). In the consultation document, the Commission details its intentions regarding the direction that the revision of the Directive should take. Proposed amendments should result in a proposal which will:

- cover all sectors of activity,
- propose a new set of definitions for adverse health effects,
- include a revised system for limit values different from the current Limit Values and Action Values for the range from 0 to 100 kHz,
- propose a more comprehensive mechanism to facilitate measurements and calculations
- and to give guidance on taking measurement uncertainties into account,
- seek to give guidance to ensure simplified but more efficient risk assessments in order to facilitate the evaluation work and also to limit the burden on SMEs,
- introduce due flexibility by proposing a controlled framework for limited derogations,
- propose a rationale for medical surveillance,
- pay due attention to specific cases such as medical applications using magnetic resonance, and
- provide for the introduction of complementary non-binding measures.

We are pleased that the concerns that we have raised for the industry sectors we represent in our reply to the first stage consultation on this issue are reflected in the analysis provided by the European Commission in the second stage consultation document. We acknowledge the extensive work of exchange and consultation over the past months with all stakeholders regarding the technical options for the review. As a result the content of the consultation paper is an important step on the way to a practical adaptation of the EMF directive.

For the Directive to be proportionate to its aim and effective, CEEMET considers that a solution should be found that deals with the problems raised by the Directive for any sector or company potentially affected. Therefore we share the Commission's view that the proposal should cover all sectors of activity; however the requirements and derogations should be applied to all industry sectors, including healthcare, equally. For this reason we believe that an individual sector does not provide the appropriate basis for a dialogue on the issues mentioned in the consultation document.

While we are glad to see all problematic points be addressed, we believe that it will be important to formulate and articulate them together in a clear and coherent text so that the revised Directive is proportionate and efficient in terms of health and safety protection.

To reach that goal, we consider that the envisaged proposal should include the following:

1. DIRECTLY MEASURABLE VALUES

We are glad that the European Commission acknowledges the uncertainties resulting from the nature of the current exposure limit values. In our opinion, this is one of the main problems of the current Directive. This problem lies in the fact that most of the values given in the annex cannot be

measured directly and are overly restrictive. Therefore CEEMET is in favour of the introduction of new exposure values which are less restrictive and directly measurable.

The Commission intends to replace the current system, which comprises one action value and one exposure limit value for each frequency, by a 'multilayer' system.

The current directive is not clear regarding the steps to be taken for the risk assessment ("always measure the values" or "only in worst case scenario") and the subsequent obligations. The multilayer system envisaged by the European Commission could contribute to clarify this situation if it would be formulated in a simple and clear way understandable **not only by experts**. At present it is unnecessarily complex – minor amendment would enable 4 zones to be reduced to 3. If the upper limit of zone 1 were to be amended for exposures below 1Hz, zones 0 and 1 could then be merged. This would greatly assist businesses in determining if they need take no action and should focus their attention on other, more pressing risks.

Further, for this multilayer system to really facilitate the verification of compliance and the identification by the employer of the type of risk assessment he should proceed to and the related obligations he should comply with, it will be crucial that **the limits between the different layers are set in directly measurable values**. In our opinion, alternative solutions for the expression of exposure limit values in the range of 0 to 100 kHz should be considered only if they would present this characteristic.

This applies to the upper limit of Zone 1. For a real simplification, it will be important that these values are directly measurable and that the Directive clearly states that measurement is necessary only if control cannot be demonstrated by other means, for example by following good practice guidance.

In our view, the replacement of the Exposure limit values by the upper limit defined in the BMAS proposal - if it is directly measurable - would also ensure that employers can easily determine the exposure of EMF at the relevant workplaces – if necessary – by a single and simple measurement. This would remove the necessity of employing an expert to carry out complex and expensive calculations where the ELV is approached. It is important to recall that very few experts are able to proceed to the measurements and calculations required to assess the current exposure limit values. It would also make the legislation enforceable in practice; the current calculated ELV means that different experts can reach very different calculations, making it extremely difficult to prove a breach of legislation.

In addition it will be indispensable that the values delineating the different zones are comparable so that a single measurement allows the employer to determine the zone of obligations corresponding to the assessed exposure situation. Further it is important that, when the assessment of a workplace will require measurements, there should be no doubt which type of instrument to use and what procedure to follow, to accomplish an unambiguous and repeatable assessment.

A single measurement would lead to a reduction of time and efforts for companies but there will still be a cost of carrying out measurement. In large organisations, with expertise and resources to call upon, this might not be significant. However the same is not true for medium and particularly small employers. The costs of acquiring expertise and equipment represent a much higher proportion of turnover. This underlines the need for good sectoral guidance and clear statement in the body of the Directive that measurement is only required where the upper limit of zone 1 is likely to be exceeded and compliance cannot be demonstrated by other means, for example by following good practice guidance.

2. RELATIVE FLEXIBILITY

We welcome the fact that the European Commission acknowledges that not all physiological effects that appear above the current ELV are adverse to health and therefore suggests that some flexibility could be introduced as regards processes that cannot always comply with the ELV. For these processes, we agree that a relative flexibility (overriding to the upper limit of zone 2) should be possible that would have to be counterbalanced by appropriate requirements regarding work organisation, training of staff, information of third party exposed etc.

We believe that this relative flexibility should be formulated in a way that it can apply equally to all processes that cannot always comply with the upper limit of zone 2 including MRI processes. Establishing multiple types of derogations would undermine coherence and clarity in the text.

In our opinion, it will be important that the annex where the conditions under which this relative flexibility could be allowed is drafted in cooperation with appropriate stakeholders notably from the relevant industry sectors.

3. GUIDANCE FOR THE RISK ASSESSMENT

At the moment, there is no clear guidance on when a detailed risk assessment is necessary. While the above mentioned clarification in the text combined with a single measurement system will facilitate the implementation of the Directive, CEEMET considers that non-binding measures are a crucial complement to legislation.

Increasing the legislative burden on employers is not a useful way of securing improved compliance. Softer techniques such as sector specific guidance and communication of good practices will provide a framework for compliance, whilst the provisions of proportionate legislation allow for regulatory activity to address non-compliance.

The Directive should be amended so that it clearly states that **assessment is required only if the upper limit of zone 1 is likely to be exceeded**. Clear guidance will be needed to identify situations where this is the case.

We are pleased that the Commission is aware that effective tools have already been put in place in some Member States and by sectoral associations to help employers take account of risks linked to exposure to EMF and that these tools have contributed to a simple but effective risk assessment. Member states should be allowed a good deal of flexibility in the way that they communicate this information and the approaches they take, to fit with their existing regulatory ethos. **It should be made explicit that the ACSH guides and the CENELEC standards are not compulsory tools.**

Further the availability of information on product emissions is crucial. At European level, a database allowing sharing of information would have a multiplier effect, would facilitate the implementation of the Directive in Member States that do not yet have a requirement for a specific EMF risk assessment and would contribute to a level playing field. It should also include existing sectoral guidance for the safe use of equipment emitting EMF.

CEEMET is prepared to provide practical support for this approach, helping to promote and support good management practices.

The combination of these measures should help the majority of companies to understand their obligations in the context of the Directive and be in a position to implement the latter. However, it will not immediately cover all equipment or situations where EMF is produced. In some cases, companies will have to make measurements. Therefore, it is necessary to have realistic and **measurable** values.

4. MEDICAL SURVEILLANCE

As reported by the European Commission, with few exceptions e.g. burns, acute exposure to EMF that occurs in the work environment cannot be detected through routine medical examinations once the exposure is over, even after the limit values have been exceeded tenfold.

Therefore we also consider that article 8 should be revised and formulated in a way that corresponds to the type of short-term effects considered and the state of knowledge in this field.

At present time there is limited knowledge and no consensus regarding what short-term health effect should be looked for. We agree that a committee should be established under the ACSH to determine whether any medical surveillance is appropriate given the current state of knowledge.