



COMMISSION OF THE EUROPEAN COMMUNITIES

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SEC(1999)89 final

95/0235 (SYN)

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

Council common position on the amended proposal for a Council Directive on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (COM(97)123 final – 95/0235 SYN)

1. HISTORY OF THE FILE

Proposal submitted to the Council	:	18.09.1995
Opinion of the Economic and Social Committee	:	28.02.1996
Opinion of the European Parliament delivered	:	20.06.1996
Amended proposal submitted to Council	:	11.04.1997
Common position adopted	:	22.12.1998

2. PURPOSE OF THE COMMISSION'S PROPOSAL

The aims of the proposal are :

- a) to adopt, as provided for in Article 118A of the Treaty, minimum requirements for the safety and health protection of workers potentially at risk from explosive atmospheres ;
- b) to establish specific provisions to improve the safety and health protection of workers potentially at risk from explosive atmospheres in strict compliance with the principles set out in Directive 89/391/EEC ;
- c) to create a suitable framework for explosion protection for industry in general, such as already exists for the mineral-extracting industries (Directives 92/91/EEC and 92/104/EEC).

This proposal supplements Directive 94/9/EC of 23 March 1994 on the approximation of laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres. Equipment and protective systems covered by this directive are divided into categories. For the proper use of these categories, the workplaces in which explosive atmospheres may be present must be classified in terms of zones. One of the purposes of this proposal is to create a standard legal basis for the zoning, based on a risk assessment of the workplaces where the equipment is to be used allowing for the adequate selection of equipment with the suitable level of protection for each zone.

3. COMMENTS ON THE COMMON POSITION

3.1. General observations on the common position

The common position is based on a Presidency text which maintains in general terms the approach of the Commission's proposal but seeks to shorten the text in particular by avoiding repetition of provisions already contained in the Framework Directive and concentrating on those provisions which are essential for the protection of workers potentially at risk from explosive atmospheres.

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Nevertheless, the Commission has placed and maintained the following reservations against the deletions from the amended proposal of provisions considered essential for the establishment of a strong coherent prevention strategy against the risks arising from explosive atmospheres:

- Article 3: the requirement to regularly review the measures to prevent and to protect against explosions at least once a year was considered essential as the concept of "regular review" is imprecise and lies within the discretion of the employer;

- Article 4: the reintroduction of former Article 4(1) on appropriate supervision and on competent workers was judged essential since work in potentially explosive atmospheres represents a specific risk to workers and the provisions of the framework directive are not sufficiently specific in this regard;

- Annex II items 4.11 to 4.13: the Commission could not agree on the deletion of these requirements since Directive 94/9/EC is not applicable to equipment already in use. Without them workers will be exposed to risks related to old equipment for which no community obligation exists, until the replacement of this old equipment takes place.

These provisions originated in an analysis of the causes of major accidents caused by explosive atmospheres, such as the Piper Alpha oil rig explosion and others.

Although the Commission's reservations were initially supported by certain delegations, all delegations subsequently lifted their reservations and the common position was adopted by unanimity.

The resulting text is weaker than the Commission's amended proposal but maintains the overall prevention strategy against the addressed risks, allowing at the same time appropriate use at workplace level of the different categories of work equipment defined in Directive 94/9/EC.

3.2. Outcome of the amendments of the European Parliament

Out of the 14 amendments of the European Parliament the Commission did not accept 4, 5 were accepted in total and the remaining other 5 in part ;

The Council for its part accepted 4 in total, 2 partially and did not accept 8.

Recitals

The Council slightly modified the wording of the recital concerning amendment No 1 without modifying the amendment of the European Parliament.

Article 3

Amendment No 2 has been partially accepted as neither the Commission nor the Council could accept the application concurrently and simultaneously of the three basic principles rendering the text unnecessarily stringent. However the text of this article has been improved, notably in its third indent, since in practice it is not possible to eliminate all risks to workers but only to reduce them in such a way that the workers' health and safety are safeguarded. By including the second indent of former Article 4(2) as well as relevant parts of former point 1.3 of Annex II, part A of the text becomes clearer and more consistent.

Article 4

This article contains requirements which were previously found under points 2.1, 2.3 and 2.4 of Annex II, A of the amended proposal.

Article 5

This article corresponds to Article 4(4) of the amended proposal. Amendment No 5 has been maintained.

Article 6

This article corresponds to Article 5 of the amended proposal.

Article 7

This article contains requirements previously found under Article 4(3). As regards amendment No 4 Council has not accepted the amendment which had been partially accepted by the Commission.

The reference to recital No 10 can not be seen as partial acceptance of this amendment as this recital has not been modified by Council.

Article 8

This article corresponds to Article 9 of the amended proposal. Amendment 6 was neither accepted by the Commission nor Council, amendment 7 was partially accepted by Council and Commission.

Article 9

This article corresponds to Article 10 of the amended proposal.

Article 10

This article corresponds to Article 12 of the amended proposal. Neither Commission nor Council accepted amendment 9.

As regards articles 6, 7 and 8, of the amended proposal Council decided unanimously on their deletion reasoning this be an unnecessary repetition of the requirements of the Framework Directive but it added a particular

reference on information, consultation and participation of workers in recital N° 5.

As regards articles 11 and 12 new of the amended proposal Council decided on their deletion and to have statements to the Council's minutes instead, thus it did not accept amendments No 8 and 14 contrary to the Commission who had partially accepted amendment 8 and totally accepted amendment 14.

Annex I

This annex corresponds to Annex I of the amended proposal. Neither Commission nor Council accepted amendment No 10, in contrary Amendment 11 was accepted in its entirety, as it had been by the Commission.

Annex II

This Annex contains requirements previously found in Annex II of the amended proposal.

As regards "part A" of this Annex it is to be noted that some parts of this Annex were transferred to the body of the Common position.

As regards the remaining parts, Council decided to shorten the Commission's proposal considerably in reducing the previous 4 sections to now 2. The Commission expressed its concern on the weakening of the text and its reservations on the deletion of requirements judged essential laid down in items 4.11 to 4.13 but was confronted with Council's unanimity.

When shortening the requirements of Annex II, part A Council invited in a Council statement the Commission to prepare guidelines containing detailed recommendations. The Commission considers such recommendations less appropriate to match the intended aims of its initiative.

Neither the Commission nor Council accepted amendment No 12 in contrary amendment No 13 being accepted by the Commission was maintained by Council.

As regards part B of Annex II Council decided to concentrate the text into a table without changing its content.

Annexe III

As regards Annex III Council preferred "Ex" instead of Greek letters.

Annexes IV and V

As regards Annexes IV and V Council decided on their deletion as they did not contain any binding requirements.

4. CONCLUSION

Council adopted the common position by unanimity. It accepted only 4 amendments in total out of the 14 amendments submitted by European Parliament. (amendments No 1, 5, 11, 13).

It is to be stressed that these amendments had also been totally accepted by the Commission.

Furthermore Council accepted 2 amendments partially (amendments No 2 and 7) being in line with the Commission.

The remaining 8 amendments (Nos 3, 4, 6, 8, 9, 10, 12 and 14) were not accepted by Council. One of them (amendment No 14) was totally accepted by the Commission and three amendments (Nos 3, 4 and 7) partially.

The Commission regrets that this common position has considerably weakened the Commission's proposal since provisions considered essential for the protection of the health and safety of workers potentially at risk from explosive atmospheres have been removed and it is for this reason that the Commission felt unable to lift its reservations.