

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 274 final

Brussels, 17 May 1982

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning consideration of safety and health at work in applying directives on
the abolition of technical barriers to trade

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At its 704th meeting on 10 June 1981, the Council asked the Commission to present a communication on the guidelines to be followed in order to eliminate technical barriers to trade, in relation with the protection of workers.

The Commission points out that at the 580th Council meeting held on 15 May 1979 and devoted to social affairs, the Danish Delegation, on the subject of directives on the noise levels of certain types of plant and equipment, made a statement on the need to safeguard the safety and health of workers by securing the assurance that Member States be authorized to adopt additional national rules on the use of industrial products covered by harmonization arrangements, whenever the relevant directive fails to provide for this directly and adequately.

A preliminary answer to this was given by the Commission in the form of a working document ⁽¹⁾ from its departments which was communicated by a letter of 21 November 1979 ⁽²⁾. In the working document, to which it expressly refers here, the Commission notes that the harmonization directives :

- have as one of their aims to ensure optimum construction for industrial safety and hence to enhance protection of workers at the place of work;
- are prepared with the participation of the competent departments and in consultation with bodies with responsibility for safety, hygiene and health protection at the place of work, and that furthermore, pursuant to Article 100 of the EEC Treaty, no Member State shall be obliged to accept a directive if it considers that it does not provide adequate protection for its workers, and if protection can only be guaranteed by standards relating to the construction of the product. If necessary, the Member State may implement the safeguard clause;
- only take account of protection of workers as it relates to the actual subject of the directives, viz. the construction of the products and apparatus concerned.

(1) Doc. SEC (79) 1842 of 16 November 1979

"The influence on occupational safety of the approximation of laws with a view to removing technical barriers to trade".

(2) Doc. 10907/79 SCC. 287 ENT 336.

(*) The draft is presented in the form of a working document from DGs III, V and XI and has been approved by the Legal Service.

The Danish Government submitted this document to the scrutiny of its national Council for Working Conditions, after which the Danish delegation submitted a note to the Council at its meeting of 9 June 1980 on employment and social affairs⁽¹⁾. At its meeting on 27 November 1980, the Council agreed to examine what action should be taken on this issue. At its meetings on 10 March, 14 April and 14 May 1981, the Working Party on Social Questions discussed this subject in depth⁽²⁾. Subsequently, the Danish delegation sent a memorandum to the Council⁽³⁾ on this subject.

This memorandum stated that, unlike the provisions of directives concerning the abolition of technical barriers to trade, which were maximum provisions, the Community standards laid down in the Council Directive of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work should be regarded as minimum provisions. The Danish Government proposes that the following recital be inserted in the preamble to any directive on the abolition of technical barriers to trade: "This Directive shall not restrict the right of Member States to apply or introduce administrative or legal provisions on the use of the products covered by the Directive in the interests of worker protection". The Danish Government's concern for worker protection is stated to be more acute since the Commission has submitted to the Committee of Permanent Representatives five proposals for directives on noise emission.

The Commission has examined these observations closely. Generally speaking, it shares the concern expressed for worker protection and understands that a Member State wishes to give its workers the highest possible level of protection. The Commission feels that it is necessary to create a balance, in cases where there are repercussions on work safety, between the industrial aspects and those of worker protection. The Commission considers that the latter aspects are taken into account in its proposals for directives on the harmonization of products, where many conditions of use are considered, such as the tilting of a lift truck or tractor, the failure of a part or component, etc., although it does not claim to provide for all situations, for example, where several different machines are used in the same place. In the instructions for the use of products which the Member States might issue for purposes of worker protection, they would be obliged to ensure free movement of the products. In the event of problems arising in use of a product already covered by a harmonization directive, the matter would have to be re-examined at Community level.

In the future, the Commission intends to step up its efforts to implement, in connection with the abolition of technical barriers, the principle of integrated safety on which the Communities' programme of action on safety and health at the place of work⁽⁴⁾ is based

(1) Doc. 7615/80 SOC. 205.

(2) Docs 5382/81 SOC. 112, 6902/81 SOC. 139.

(3) Letter from the Permanent Representation of Denmark, Doc. 7615/80 SOC. 205.

(4) OJ of the EC No. L 13 (11/7/1978).

and according to which, if reasonable protection of workers is to be ensured, the design of machines cannot be considered in isolation from that of the tasks performed and protection facilities provided, nor from the safety training of workers or information conveyed to them.

To this end, the Commission :

- intends, when preparing draft directives, to give increasing attention to the actual utilization of products;
- will therefore arrange for greater coordination of the work by its departments;
- accordingly requests the Member States to arrange for greater coordination between their own departments;
- will in each case take care to specify the subject and extent of harmonization.

In this connection, the Commission wishes to state that the suggestion to introduce a recital into its harmonization directives is inappropriate because :

- it is contrary to the correct legislation technique, whereby the purpose of the recitals is to explain the reasons for the measures taken in the directives;
- it would not in itself give any additional powers to the Member States.

Any national measures taken will have to be examined case by case in the context of Articles 30 to 36 of the Treaty. In examining them the Commission will attach the greatest importance to the coherence of restrictive measures bearing in mind the protection provided at national level for all workers.

The Commission also intends to step up its efforts to harmonize legislation on worker protection by means other than directives on the abolition of technical barriers and, where necessary, to encourage coordination of the Member States' policies.