Health and safety at work: exposure of workers to electromagnetic fields; transposition of Directive

2012/0003(COD) - 25/01/2012 - Legislative proposal

PURPOSE: to amend Directive 2004/40/EC regarding the exposure of workers to the risks arising from electromagnetic fields.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: in 2006, the medical community informed the Commission of its concerns about implementing this Directive, claiming that the exposure limit values laid down therein would place disproportionate limitations on the use and development of medical magnetic resonance applications (MR), considered today to be a vital tool for the diagnosis and treatment of a number of diseases. Other industrial sectors subsequently expressed their concerns about the impact of the Directive on their activities.

In response to these concerns, the Commission took a number of steps:

- to enable the Commission to conduct an in-depth impact analysis and propose amendments, the deadline for transposition of the Directive was put back from 30 April 2008 to 30 April 2012 by Directive 2008/46/EC;
- the Commission examined the situation thoroughly, analysing the latest scientific studies on the negative impact the exposure limit values set by the Directive might have on the medical use of imaging technologies using magnetic resonance (MR) ;
- after a significant number of consultations of stakeholders and having due regard to the latest scientific recommendations, the Commission adopted, on 14 June 2011, the proposal for a new Directive to amend and replace Directive 2004/40/EC, with a view to guaranteeing a high level of health and safety protection for workers while at the same time enabling medical and other industrial activities using electromagnetic fields to continue and develop;
- once the Commission proposal had been adopted, the European Parliament and the Council immediately started work with a view to amending Directive 2004/40/EC before 30 April 2012. However, because of i) the technical complexity of the subject-matter, requiring long discussions with national experts; ii) the highly divergent views on some key provisions of the proposal, the European Parliament and the Council will be unlikely to finalise the adoption process before 30 April 2012.

Under these circumstances, a new Directive is required to postpone for a second time the deadline for transposition of Directive 2004/40/EC in order to prevent an uncertain legal situation from arising after 30 April 2012

IMPACT ASSESSMENT: given the urgency of the proposal and its limited impact, this proposal is not accompanied by a specific impact assessment.

Doing nothing at this stage would oblige the great majority of Member States which have not yet transposed Directive 2004/40/EC into national law to do so and to enforce it within a very short period of time, i.e. by the current deadline of 30 April 2012, with potentially serious consequences for the continuity of healthcare services using MRI.

Moreover, the legal uncertainty that might arise due to the non-transposition of the Directive could have the following consequences:

- the Commission would in principle have to launch infringement proceedings for non-communication of transposition measures against any Member States which have not transposed the Directive yet;
- Directive 2004/40/EC would start to have direct vertical effect in the national legal order of all Member States, and citizens could take their governments to court for their failure to implement the Directive.

Postponing the date of transposition will not unduly impede the use of MRI or other industrial activities. At the same time, postponement would give sufficient time for the Directive, in particular the exposure limit values, to be updated and improved, by means of a new Directive based on the Commission proposal.

LEGAL BASIS: Article 153 (2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the purpose of this proposal is simply to **postpone the deadline for the transposition of Directive 2004/40/EC until 30 April 2014**.

These extra two years will give sufficient time for the Directive, and particularly the exposure limit values, to be updated and improved, by means of a new Directive proposed by the Commission which is currently being discussed in the Council and the EP. The two-year postponement will also avoid any negative legal consequences in the legal orders of Member States which have not yet transposed the Directive.

BUDGETARY IMPACT: the proposal will have no impact on the EU's budget.