

Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (Seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

SECTION III

MISCELLANEOUS PROVISIONS

Article 10

Health surveillance

1 Without prejudice to Article 14 of Directive 89/391/EEC, Member States shall adopt provisions to ensure the appropriate health surveillance of workers where the results of the assessment and measurement provided for in Article 4(1) of this Directive indicate a risk to their health. Those provisions, including the requirements specified for health records and their availability, shall be introduced in accordance with national law and/or practice.

2 A worker whose exposure exceeds the upper exposure action values shall have the right to have his/her hearing checked by a doctor or by another suitably qualified person under the responsibility of a doctor, in accordance with national law and/or practice. Preventive audiometric testing shall also be available for workers whose exposure exceeds the lower exposure action values, where the assessment and measurement provided for in Article 4(1) indicate a risk to health.

The objectives of these checks are to provide early diagnosis of any loss of hearing due to noise, and to preserve the hearing function.

3 Member States shall establish arrangements to ensure that, for each worker who undergoes surveillance in accordance with paragraphs 1 and 2, individual health records are made and kept up to date. Health records shall contain a summary of the results of the health surveillance carried out. They shall be kept in a suitable form so as to permit any consultation at a later date, taking into account any confidentiality.

Copies of the appropriate records shall be supplied to the competent authority on request. The individual worker shall, at his or her request, have access to the health records relating to him or her personally.

4 Where, as a result of surveillance of the hearing function, a worker is found to have identifiable hearing damage, a doctor, or a specialist if the doctor considers it necessary, shall assess whether the damage is likely to be the result of exposure to noise at work. If this is the case:

- a the worker shall be informed by the doctor or other suitably qualified person of the result which relates to him or her personally;
- b the employer shall:
 - (i) review the risk assessment carried out pursuant to Article 4;
 - (ii) review the measures provided for to eliminate or reduce risks pursuant to Articles 5 and 6;

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- (iii) take into account the advice of the occupational healthcare professional or other suitably qualified person or the competent authority in implementing any measures required to eliminate or reduce risk in accordance with Articles 5 and 6, including the possibility of assigning the worker to alternative work where there is no risk of further exposure; and
- (iv) arrange systematic health surveillance and provide for a review of the health status of any other worker who has been similarly exposed.

Article 11

Derogations

1 In exceptional situations where, because of the nature of the work, the full and proper use of individual hearing protectors would be likely to cause greater risk to health or safety than not using such protectors, Member States may grant derogations from the provisions of Articles 6(1)(a) and (b) and 7.

2 The derogations referred to in paragraph 1 shall be granted by Member States following consultation with both sides of industry and, where appropriate, with the medical authorities responsible, in accordance with national laws and/or practice. Such derogations must be accompanied by conditions which guarantee, taking into account the special circumstances, that the resulting risks are reduced to a minimum and that the workers concerned are subject to increased health surveillance. Such derogations shall be reviewed every four years and withdrawn as soon as the justifying circumstances no longer obtain.

3 Every four years Member States shall forward to the Commission a list of derogations referred to in paragraph 1, indicating the exact reasons and circumstances which made them decide to grant the derogations.

[^{F1}Article 12

Amendments to the Directive

The Commission is empowered to adopt delegated acts in accordance with Article 12a to make strictly technical amendments to this Directive in order to take account of technical harmonisation and standardisation with regard to the design, building, manufacture or construction of work equipment and workplaces, technical progress, changes in harmonised European standards or specifications and new findings concerning noise.

Where, in duly justified and exceptional cases involving imminent, direct and serious risks to workers' and other persons' physical health and safety, imperative grounds of urgency require action in a very short timeframe, the procedure provided for in Article 12b shall apply to delegated acts adopted pursuant to this Article.]

Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

F² Article 12a

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 12 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽¹⁾.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 12 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Textual Amendments

- F2** Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

Article 12b

Urgency procedure

1 Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and the Council shall state the reasons for the use of the urgency procedure.

2 Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 12a(6). In such a case, the Commission shall

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repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.]

Textual Amendments

- F2** Inserted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

^{F3}Article 13

[^{F3}Committee procedure]

Textual Amendments

- F3** Deleted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

Article 14

Code of conduct

In the context of the application of this directive Member States shall draw up in consultation with the social partners, in accordance with national law and practice, a code of conduct providing for practical guidelines to help workers and employers in the music and entertainment sectors to meet their legal obligations as laid down in this Directive.

Article 15

Repeal

Directive 86/188/EEC is hereby repealed with effect from the date set out in the first subparagraph of Article 17(1).

(1) [^{F2}OJ L 123, 12.5.2016, p. 1.]

Textual Amendments

F2 Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019](#) adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).