Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC

CHAPTER III

MISCELLANEOUS PROVISIONS

Article 8

Health surveillance

1 With the objective of the prevention and the early diagnosis of any adverse health effects due to exposure to electromagnetic fields, appropriate health surveillance shall be carried out in accordance with Article 14 of Directive 89/391/EEC. Health records and their availability shall be provided for in accordance with national law and/or practice.

2 In accordance with national law and practice, the results of health surveillance shall be preserved in a suitable form that allows them to be consulted at a later date, subject to compliance with confidentiality requirements. Individual workers shall, at their request, have access to their own personal health records.

If any undesired or unexpected health effect is reported by a worker, or in any event where exposure above the ELVs is detected, the employer shall ensure that appropriate medical examinations or individual health surveillance is provided to the worker(s) concerned, in accordance with national law and practice.

Such examinations or surveillance shall be made available during hours chosen by the worker, and any costs arising shall not be borne by the worker.

Article 9

Penalties

Member States shall provide for adequate penalties applicable in the event of infringements of national legislation adopted pursuant to this Directive. These penalties must be effective, proportionate and dissuasive.

Article 10

Derogations

1 By way of derogation from Article 3 but without prejudice to Article 5(1), the following shall apply:

a exposure may exceed the ELVs if the exposure is related to the installation, testing, use, development, maintenance of or research related to magnetic resonance imaging (MRI)

equipment for patients in the health sector, provided that all the following conditions are met:

(i) the risk assessment carried out in accordance with Article 4 has demonstrated that the ELVs are exceeded;

(ii) given the state of the art, all technical and/or organisational measures have been applied;

(iii) the circumstances duly justify exceeding the ELVs;

(iv) the characteristics of the workplace, work equipment, or work practices have been taken into account; and

(v) the employer demonstrates that workers are still protected against adverse health effects and against safety risks, including by ensuring that the instructions for safe use provided by the manufacturer in accordance with Council Directive 93/42/EEC of 14 June 1993 concerning medical devices[1] are followed;

b Member States may allow for an equivalent or more specific protection system to be implemented for personnel working in operational military installations or involved in military activities, including in joint international military exercises, provided that adverse health effects and safety risks are prevented;

c Member States may allow, in duly justified circumstances and only for as long as they remain duly justified, for the ELVs to be temporarily exceeded in specific sectors or for specific activities outside the scope of points (a) and (b). For the purposes of this point, 'duly justified circumstances' shall mean circumstances in which the following conditions are met:

(i) the risk assessment carried out in accordance with Article 4 has shown that the ELVs are exceeded;

(ii) given the state of the art, all technical and/or organisational measures have been applied;

(iii) the specific characteristics of the workplace, work equipment, or work practices have been taken into account; and

(iv) the employer demonstrates that workers are still protected against adverse health effects and safety risks, including using comparable, more specific and internationally recognised standards and guidelines.

2 Member States shall inform the Commission of any derogation under points (b) and (c) of paragraph 1 and shall state the reasons that justify them in the report referred to in Article 15.

Article 11

Technical amendments of the Annexes

1 The Commission shall be empowered to adopt delegated acts in accordance with Article 12 amending, in a purely technical way, the Annexes, so as to:

a take into account the adoption of regulations and directives in the field of technical harmonisation and standardisation with regard to the design, building, manufacture or construction of work equipment or workplaces;

b take into account technical progress, changes in the most relevant standards or specifications, and new scientific findings concerning electromagnetic fields;

c make adjustments to the ALs where there is new scientific evidence, provided that employers continue to be bound by the existing ELVs set out in Annexes II and III.

2 The Commission shall adopt a delegated act, in accordance with Article 12, to insert into Annex II the ICNIRP guidelines for limiting exposure to electric fields induced by movement of the human body in a static magnetic field and by time-varying magnetic fields below 1 Hz as soon as they are available.

3 Where, in the case of the amendments referred to in paragraphs 1 and 2, imperative grounds of urgency so require, the procedure provided for in Article 13 shall apply to delegated acts adopted pursuant to this Article.

Article 12

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 11 shall be conferred on the Commission for a period of five years from 29 June 2013. 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 powers referred to in Article 11 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 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Article 11 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.

Article 13

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 to the Council shall state the reasons for the use of the urgency procedure which shall relate to the health and protection of workers.

2 Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 12(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

(**1**) OJ L 169, 12.7.1993, p. 1.