Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

COUNCIL DIRECTIVE 92/104/EEC

of 3 December 1992

on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission[(1)], drawn up after consultation with the Safety and Health Commission for the Mining and Other Extractive Industries,

In cooperation with the European Parliament[(2)],

Having regard to the opinion of the Economic and Social Committee[(3)],

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers;

Whereas, pursuant to that Article, such Directives must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

Whereas the improvement of workers' safety, hygiene and health at works is an objective which should not be subordinated to purely economic considerations;

Whereas Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)[(4)] does not apply to the extractive industries;

Whereas compliance with the minimum requirements designed to guarantee a better standard of safety and health for surface and underground mineral-extracting industries is essential to ensure the safety and health of workers;

Whereas surface and underground mineral-extracting industries constitute an area of activity likely to expose workers to particularly high levels of risk;

Whereas this Directive is an individual Directive within the meaning of Article 16 (1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work[(5)]; whereas, therefore, the provisions of

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the said Directive apply in full to surface and underground mineral-extracting industries without prejudice to more stringent and/or specific provisions contained in this Directive;

Whereas the ancillary surface installations of surface and underground mineral-extracting industries which are not essential to the surface and underground mineral-extracting industries as defined in Article 2 (a) of this Directive are subject to the provisions of Directive 89/654/EEC;

Whereas, on 3 November 1992, the Council adopted Directive 92/91/EEC on the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)[6];

Whereas this Directive is a practical contribution towards creating the social dimension of the internal market,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL PROVISIONS

Article 1

Subject

1 This Directive, which is the twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC, lays down minimum requirements for the safety and health protection of workers in the surface and underground mineral- extracting industries defined in Article 2 (a).

2 The provisions of Directive 89/391/EEC shall apply in full to the sphere referred to in paragraph 1, without prejudice to more stringent and/or specific provisions contained in this Directive.

Article 2

Definitions

For the purpose of this Directive:

(a) *surface and underground mineral-extracting industries* shall mean all industries practising:

- — surface or underground extraction, in the strict sense of the word, of minerals, and/or
- — prospecting with a view to such extraction, and/or
- — preparation of extracted materials for sale, excluding the activities of processing the materials extracted,

excluding the mineral-extracting industries through drilling defined in Article 2 (a) of Directive 92/91/EEC;

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(b) *workplace* shall mean the whole area intended to house workstations, relating to the immediate and ancillary activities and installations of the surface or underground mineral-extracting industries, including overburden dumps and other tips and accommodation, where provided, to which workers have access in the context of their work.

SECTION II

EMPLOYERS' OBLIGATIONS

Article 3

General obligations

1 To safeguard the safety and health of workers, the employer shall take the necessary measures to ensure that:

a workplaces are designed, constructed, equipped, commissioned, operated and maintained in such a way that workers can perform the work assigned to them without endangering their safety and/or health and/or those of other workers;

b the operation of workplaces when workers are present takes place under the supervision of a person in charge;

c work involving a special risk is entrusted only to competent staff and carried out in accordance with the instructions given;

d all safety instructions are comprehensible to all the workers concerned;

e appropriate first-aid facilities are provided;

f any relevant safety drills are performed at regular intervals.

2 The employer shall ensure that a document concerning safety and health, hereinafter referred to as 'safety and health document', covering the relevant requirements laid down in Articles 6, 9 and 10 of Directive 89/391/EEC, is drawn up and kept up to date.

The safety and health document shall demonstrate in particular that:

— the risks to which workers at the workplace are exposed have been determined and assessed,

— adequate measures will be taken to attain the aims of this Directive,

— the design, use and maintenance of the workplace and of the equipment are safe.

The safety and health document must be drawn up before work starts and be revised if the workplace has undergone major changes, extensions or conversions.

3 Where workers from several undertakings are present at the same workplace, each employer shall be responsible for all matters under his control.

The employer who, in accordance with national laws and/or practices, is in charge of the workplace, shall coordinate the implementation of all the measures concerning the safety and health of the workers and shall state, in his safety and health document, the aim of that coordination and the measures and procedures for implementing it.

The coordination shall not affect the responsibility of the individual employers as provided for in Directive 89/391/EEC.

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4 The employer shall report any serious and/or fatal occupational accidents and situations of serious danger to the competent authorities as soon as possible.

Article 4

Protection from fire, explosions and health-endangering atmospheres

The employer shall take measures and precautions appropriate to the nature of the operation:

— to avoid, detect and combat the starting and spread of fires and explosions, and

— to prevent the occurrence of explosive and/or health-endangering atmospheres.

Article 5

Escape and rescue facilities

The employer shall provide and maintain appropriate means of escape and rescue in order to ensure that workers have adequate opportunities for leaving the workplaces promptly and safely in the event of danger.

Article 6

Communication, warning and alarm systems

The employer shall take the requisite measures to provide the necessary warning and other communication systems to enable assistance, escape and rescue operations to be launched immediately if the need arises.

Article 7

Keeping workers informed

1 Without prejudice to Article 10 of Directive 89/391/EEC, workers and/or their representatives shall be informed of all measures to be taken concerning safety and health at workplaces, and in particular of those relating to the implementation of Articles 3 to 6.

2 The information must be comprehensible to the workers concerned.

Article 8

Health surveillance

1 To ensure that workers receive health surveillance appropriate to the health and safety risks they incur at work, measures shall be introduced in accordance with national law and/or practices.

2 The measures referred to in paragraph 1 shall be such that each worker shall be entitled to, or shall undergo, health surveillance before being assigned to duties related to the activities referred to in Article 2 and subsequently at regular intervals.

3 Health surveillance may be provided as part of a national health system.

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Article 9

Consultation of workers and workers' participation

Consultation and participation of workers and/or of their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC on the matters covered by this Directive.

Article 10

Minimum requirements for safety and health

1 Workplaces used for the first time after the date on which this Directive is brought into effect as referred to in Article 13 (1) must satisfy the minimum safety and health requirement laid down in the Annex.

2 Workplaces already in use before the date on which this Directive is brought into effect as referred to in Article 13 (1) must satisfy the minimum safety and health requirements laid down in the Annex as soon as possible and at the latest nine years after that date.

3 When workplaces undergo changes, extensions and/or conversions after the date on which this Directive is brought into effect as referred to in Article 13 (1), the employer shall take the measures necessary to ensure that those changes, extensions and/or conversions are in compliance with the corresponding minimum requirements laid down in the Annex.

SECTION III

OTHER PROVISIONS

Article 11

Adjustments to the Annex

Purely technical adjustments to the Annex in line with:

— the adoption of Directive in the field of technical harmonization and standardization concerning surface or underground mineral-extracting industries,

and/or

— technical progress, changes in international regulations or specifications, and new findings concerning the surface or underground mineral-extracting industries,

shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.

Article 12

Mineral-extraction by dredging

Member States shall be entitled not to apply this Directive to mineral-extraction by dredging provided that they ensure the protection of the workers concerned in line with