

Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast) (Text with EEA relevance)

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PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery⁽⁴⁾ codified Directive 89/392/EEC⁽⁵⁾. Now that new substantial amendments are being made to Directive 98/37/EC, it is desirable, in order to clarify matters, that that Directive should be recast.
- (2) The machinery sector is an important part of the engineering industry and is one of the industrial mainstays of the Community economy. The social cost of the large number of accidents caused directly by the use of machinery can be reduced by inherently safe design and construction of machinery and by proper installation and maintenance.
- (3) Member States are responsible for ensuring the health and safety on their territory of persons, in particular of workers and consumers and, where appropriate, of domestic animals and goods, notably in relation to the risks arising out of the use of machinery.
- (4) In order to ensure legal certainty for users, the scope of this Directive and the concepts relating to its application should be defined as precisely as possible.
- (5) The Member States' mandatory provisions governing construction site hoists intended for lifting persons or persons and goods, which are often supplemented by de facto compulsory technical specifications and/or by voluntary standards, do not necessarily lead to different levels of health and safety but, because of their disparities, do nevertheless constitute barriers to trade within the Community. Moreover, the national systems for the conformity assessment and certification of these machines diverge considerably. It is therefore desirable not to exclude from the scope of this Directive construction site hoists intended for lifting persons or persons and goods.

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- (6) It is appropriate to exclude from the scope of this Directive weapons, including firearms, that are subject to Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons⁽⁶⁾; the exclusion of firearms should not apply to portable cartridge-operated fixing and other impact machinery designed for industrial or technical purposes only. It is necessary to provide for transitional arrangements enabling Member States to authorise the placing on the market and putting into service of such machinery manufactured in accordance with national provisions in force upon adoption of this Directive, including those implementing the Convention of 1 July 1969 on the Reciprocal Recognition of Proofmarks on Small Arms. Such transitional arrangements will also enable the European standardisation organisations to draft standards ensuring the safety level based on the state of the art.
- (7) This Directive does not apply to the lifting of persons by means of machines not designed for the lifting of persons. However, this does not affect the right of Member States to take national measures, in accordance with the Treaty, with respect to such machines, with a view to implementing Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)⁽⁷⁾.
- (8) In relation to agricultural and forestry tractors, the provisions of this Directive concerning the risks currently not covered by Directive 2003/37/EC of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units⁽⁸⁾ should no longer apply when such risks are covered by Directive 2003/37/EC.
- (9) Market surveillance is an essential instrument inasmuch as it ensures the proper and uniform application of Directives. It is therefore appropriate to put in place the legal framework within which market surveillance can proceed harmoniously.
- (10) Member States are responsible for ensuring that this Directive is effectively enforced on their territory and that the safety of the machinery concerned is, as far as possible, improved in accordance with its provisions. Member States should ensure their capacity to carry out effective market surveillance, taking account of guidelines developed by the Commission, in order to achieve the proper and uniform application of this Directive.
- (11) In the context of market surveillance, a clear distinction should be established between the disputing of a harmonised standard conferring a presumption of conformity on machinery and the safeguard clause relating to machinery.
- (12) The putting into service of machinery within the meaning of this Directive can relate only to the use of the machinery itself for its intended purpose or for a purpose which can reasonably be foreseen. This does not preclude the laying down of conditions of use external to the machinery, provided that it is not thereby modified in a way not specified in this Directive.
- (13) It is also necessary to provide for an adequate mechanism allowing for the adoption of specific measures at Community level requiring Member States to prohibit or restrict

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the placing on the market of certain types of machinery presenting the same risks to the health and safety of persons either due to shortcomings in the relevant harmonised standard(s) or by virtue of their technical characteristics, or to make such machinery subject to special conditions. In order to ensure the appropriate assessment of the need for such measures, they should be taken by the Commission, assisted by a committee, in the light of consultations with the Member States and other interested parties. Since such measures are not directly applicable to economic operators, Member States should take all necessary measures for their implementation.

- (14) The essential health and safety requirements should be satisfied in order to ensure that machinery is safe; these requirements should be applied with discernment to take account of the state of the art at the time of construction and of technical and economic requirements.
- (15) Where the machinery may be used by a consumer, that is to say, a non-professional operator, the manufacturer should take account of this in the design and construction. The same applies where a machine is normally used to provide a service to a consumer.
- (16) Although the requirements of this Directive do not apply to partly completed machinery in their entirety, it is nevertheless important that the free movement of such machinery be guaranteed by means of a specific procedure.
- (17) For trade fairs, exhibitions and such like, it should be possible to exhibit machinery which does not satisfy the requirements of this Directive. However, interested parties should be properly informed that the machinery does not conform and cannot be purchased in that condition.
- (18) This Directive defines only the essential health and safety requirements of general application, supplemented by a number of more specific requirements for certain categories of machinery. In order to help manufacturers to prove conformity to these essential requirements, and to allow inspection of conformity to the essential requirements, it is desirable to have standards that are harmonised at Community level for the prevention of risks arising out of the design and construction of machinery. These standards are drawn up by private-law bodies and should retain their non-binding status.
- (19) In view of the nature of the risks involved in the use of machinery covered by this Directive, procedures for assessing conformity to the essential health and safety requirements should be established. These procedures should be devised in the light of the extent of the danger inherent in such machinery. Consequently, each category of machinery should have its appropriate procedure in conformity with Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives⁽⁹⁾, taking account of the nature of the verification required for such machinery.
- (20) Manufacturers should retain full responsibility for certifying the conformity of their machinery to the provisions of this Directive. Nevertheless, for certain types of machinery having a higher risk factor, a stricter certification procedure is desirable.

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- (21) The CE marking should be fully recognised as being the only marking which guarantees that machinery conforms to the requirements of this Directive. All other markings which are likely to mislead third parties as to the meaning or the form of the CE marking, or both, should be prohibited.
- (22) In order to ensure the same quality for the CE marking and the manufacturer's mark, it is important that they be affixed according to the same techniques. In order to avoid confusion between any CE markings which might appear on certain components and the CE marking corresponding to the machinery, it is important that the latter marking be affixed alongside the name of the person who has taken responsibility for it, namely the manufacturer or his authorised representative.
- (23) The manufacturer or his authorised representative should also ensure that a risk assessment is carried out for the machinery which he wishes to place on the market. For this purpose, he should determine which are the essential health and safety requirements applicable to his machinery and in respect of which he must take measures.
- (24) It is essential that, before drawing up the EC declaration of conformity, the manufacturer or his authorised representative established in the Community should prepare a technical construction file. However, it is not essential that all documentation should be permanently available in material form, but it must be possible to make it available on request. It need not include detailed plans of subassemblies used for the manufacture of machinery, unless knowledge of such plans is essential in order to ascertain conformity with the essential health and safety requirements.
- (25) The addressees of any decision taken under this Directive should be informed of the reasons for such a decision and of the legal remedies open to them.
- (26) Member States should provide for penalties applicable to infringements of the provisions of this Directive. Those penalties should be effective, proportionate and dissuasive.
- (27) The application of this Directive to a number of machines intended for lifting persons requires a better delimitation of the products covered by this Directive with respect to those covered by Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts⁽¹⁰⁾. A redefinition of the scope of the latter Directive is thus deemed necessary. Directive 95/16/EC should therefore be amended accordingly.
- (28) Since the objective of this Directive, namely, to lay down the essential health and safety requirements in relation to design and manufacture in order to improve the safety of machinery placed on the market, cannot be sufficiently achieved by the Member States and can be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (29) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽¹¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the

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Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

- (30) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹²⁾,

HAS ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 154 E, 29.5.2001, p. 164.](#)
- (2) [OJ C 311, 7.11.2001, p. 1.](#)
- (3) Opinion of the European Parliament of 4 July 2002 ([OJ C 271 E, 12.11.2003, p. 491](#)), Council Common Position of 18 July 2005 ([OJ C 251 E, 11.10.2005, p. 1](#)) and Position of the European Parliament of 15 December 2005 (not yet published in the Official Journal). Council Decision of 25 April 2006.
- (4) [OJ L 207, 23.7.1998, p. 1.](#) Directive as amended by Directive 98/79/EC ([OJ L 331, 7.12.1998, p. 1](#)).
- (5) Council Directive 89/392/EEC of 14 June 1989 on the approximation of the laws of the Member States relating to machinery ([OJ L 183, 29.6.1989, p. 9](#)).
- (6) [OJ L 256, 13.9.1991, p. 51.](#)
- (7) [OJ L 393, 30.12.1989, p. 13.](#) Directive as last amended by Directive 2001/45/EC of the European Parliament and of the Council ([OJ L 195, 19.7.2001, p. 46](#)).
- (8) [OJ L 171, 9.7.2003, p. 1.](#) Directive as last amended by Commission Directive 2005/67/EC ([OJ L 273, 19.10.2005, p. 17](#)).
- (9) [OJ L 220, 30.8.1993, p. 23.](#)
- (10) [OJ L 213, 7.9.1995, p. 1.](#) Directive as amended by Regulation (EC) No 1882/2003 ([OJ L 284, 31.10.2003, p. 1](#)).
- (11) [OJ C 321, 31.12.2003, p. 1.](#)
- (12) [OJ L 184, 17.7.1999, p. 23.](#)