



24.6.2010

NOTICE TO MEMBERS

Subject: Petition 1908/2009 by Rudi Clemens (German), on behalf of the 'Gesunde-Bauarbeit' network, on Germany's failure to enforce the provisions of Council Directive 89/392/EEC on the approximation of the laws of the Member States relating to machinery and Council Directive 91/368/EEC amending Directive 89/392/EEC

1. Summary of petition

The petitioner refers to the numerous fatal industrial accidents which occur in Germany, which he ascribes to the German authorities' failure to enforce Council Directive 89/392/EEC on the approximation of the laws of the Member States relating to machinery and Council Directive 91/368/EEC amending Directive 89/392/EEC. The petitioner points out, in particular, that the provisions of Annex 1 of the Directive concerning essential health and safety requirements relating to the design and construction of machinery and safety components are neither respected by the design companies nor checked by the responsible authorities, and he therefore calls on the European Parliament to take the matter up.

2. Admissibility

Declared admissible on 30 March 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 June 2010.

The Directive referred to by the petitioner on machinery has now been replaced by Directive 2006/42/EC¹. The essential health and safety requirement to which the petitioner refers,

¹ 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) – OJ L 157, 9.6.2006, p. 24.

relating to visibility from the driving position of mobile machinery (including construction machinery), is however unchanged:

"3.2.1. Driving position

Visibility from the driving position must be such that the driver can, in complete safety for himself and the exposed persons, operate the machinery and its tools in their foreseeable conditions of use. Where necessary, appropriate devices must be provided to remedy hazards due to inadequate direct vision."

Application of the essential health and safety requirements of the Machinery Directive are mandatory. However their practical application depends to a large extent on the quality of the European harmonised standards, which provide technical specifications conferring a presumption of conformity with the corresponding essential requirements. The relevant harmonised standards include, in particular, the EN 474 series of standards for earthmoving equipment. For visibility from the driving position, standard EN 474-1 refers to the test method and acceptance criteria set out in the International standard ISO 5006.

In 2003, following several fatal accidents, the UK authorities informed the European Commission and the other Member States about the inadequacy of the specifications of EN 474-1 relating to visibility from the driving position. This issue was followed up by the Member States and the Commission during several meetings of the Machinery Working Group held between 2003 and 2005.

In 2006, after discussions between the European Commission, Technical Committee 151 of CEN and Technical Committee 127 of ISO, the specifications of standard ISO 5006¹ were substantially improved. Clause 5.8.1 of the latest version of EN 474-1² now refers to these improved specifications. The Commission is therefore satisfied that the European harmonised standard now reflects the state of the art with respect to visibility from the driving position.

There may still be problems with construction machinery designed according to previous versions of the European harmonised standard. In that case, complementary protective measures must be taken by the users, in the framework of national regulations on the use of work equipment implementing Directive 2009/104/EC.³

In addition, Directive 92/57/EEC⁴ contains provisions to improve the health and safety of workers on construction sites. It requires, for example, the organisation of the traffic of construction machinery on construction sites and the separation of the traffic of pedestrians

¹ ISO 5006:2006, *Earth-moving machinery — Operator's field of view — Test method and performance criteria*.

² EN 474-1:2006+A1:2009, *Earth-moving machinery - Safety - Part 1: General requirements*.

³ Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 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) (codified version) – OJ L 260, 3.10.2009, p. 5.

⁴ Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile constructions sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) - OJ L 245, 26.8.1992, p. 6.

from that of mobile machinery. It also requires, for sites where more than one contractor is present, the appointment of one or more coordinators, which are to be involved both in the preparation and the execution stages of the project. These coordinator(s) have as their task to help organise the work on the construction site taking into account the companies present on the site and the activities which are, often simultaneously, carried out, with a view to improve the health and safety of workers.

Conclusion

The Commission has not received evidence that the German authorities are failing to enforce the provisions of the Machinery Directive. The problems relating to visibility on construction machinery raised by the petitioner appear to result from deficiencies in the relevant European harmonised standards. These deficiencies have now been remedied by cooperation between the Member States, the Commission and the relevant standardisation bodies.