COUNCIL DIRECTIVE 95/63/EC

of 5 December 1995

amending Directive 89/655/EEC 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)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189c [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, as regards the health and safety of workers;

Whereas, pursuant to the said 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 compliance with the minimum requirements designed to guarantee a better standard of safety and health in the use of work equipment is essential to ensure the safety and health of workers;

Whereas, therefore, Member States must take measures to facilitate implementation of the provisions of this Directive by undertakings, in particular small and medium-sized undertakings; whereas such measures may include training and information activities adapted to the specific requirements of the various sectors of the economy;

Whereas provisions adopted pursuant to Article 118a of the Treaty do not prevent each Member State from establishing and maintaining more stringent protective measures, compatible with this Treaty, governing conditions of work;

Whereas Article 9 (1) o Directive 89/655/EEC [4] provides for the addition to the Annex of the supplementary minimum requirements applicable to work equipment referred to in point 3 of the Annex, in accordance with the procedure provided for in Article 118a of the Treaty;

Whereas this Directive must confine itself to defining the objectives to be achieved and the principles to be respected leaving Member States free to decide how national legislation will be complied with and improved upon;

Whereas the Member States shall, after consultation with both sides of industry, and with due allowance for national legislation and/or practice, establish procedures whereby a level of safety may be attained corresponding to the objectives indicated by Annex II to this Directive;

Whereas this Directive constitutes a practical element in realizing the social dimension of the internal market,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/655/EEC is hereby amended as follows:

1. Article 4 shall be amended as follows:

   (a) in paragraph 1 (a) (ii) and (b), 'in the Annex' shall be replaced by 'in Annex I';

   (b) the following point is inserted in paragraph 1:

[1] OJ No C 104, 12. 4. 1994, p. 4; and OJ No C 246, 22. 9. 1995, p. 3.
[2] OJ No C 397, 31. 12. 1994, p. 13.
[3] Opinion of the European Parliament of 17 February 1995 (OJ No C 56, 6. 3. 1995, p. 175), Council common position of 24 July 1995 (OJ No C 281, 25. 10. 1995, p. 41) and Decision of the European Parliament of 17 November 1995 (OJ No C 323, 4. 12. 1995).

[4] OJ No L 393, 30. 12. 1989, p. 13.

'(c) without prejudice to point (a) (i), and notwithstanding point (a) (ii) and point (b), specific work equipment subject to the requirements of point 3 of Annex I, which, if already provided to workers in the undertaking and/or establishment by 5 December 1998, complies with the minimum requirements laid down in Annex I, no later than four years after that date';

(c) the following paragraph shall be added:

'3. Member States shall, after consultation with both sides of industry, and with due allowance for national legislation and/or practice, establish procedures whereby a level of safety may be attained corresponding to the objectives indicated by the provisions of Annex II.'

2. The following Article shall be inserted:

'*Article 4a*

Inspection of work equipment

1. The employer shall ensure that where the safety of work equipment depends on the installation conditions, it shall be subject to an initial inspection (after installation and before first being put into service) and an inspection after assembly at a new site or in a new location by competent persons within the meaning of national laws and/or practices, to ensure that the work equipment has been installed correctly and is operating properly.

2. The employer shall ensure that work equipment exposed to conditions causing deterioration which is liable to result in dangerous situations is subject to:

— periodic inspections and, where appropriate, testing by competent persons within the meaning of national laws and/or practices,

— special inspections by competent persons within the meaning of national laws and/or practices each time that exceptional circumstances which are liable to jeopardize the safety of the work equipment have occurred, such as modification work, accidents, natural phenomena or prolonged periods of inactivity,

to ensure that health and safety conditions are maintained and that the deterioration can be detected and remedied in good time.

3. The results of inspections must be recorded and kept at the disposal of the authorities concerned. They must be kept for a suitable period of time.

When work equipment is used outside the undertaking it must be accompanied by physical evidence that the last inspection has been carried out.

4. Member States shall determine the conditions under which such inspections are made.';

3. the following Article shall be inserted:

'*Article 5a*

Ergonomics and occupational health

The working posture and position of workers while using work equipment and ergonomic principles must be taken fully into account by the employer when applying minimum health and safety requirements.';

4. the following subparagraph shall be added at the end of Article 6 (2):

'Workers must be made aware of dangers relevant to them, work equipment present in the work area or site, and any changes affecting them, in as much as they affect work equipment situated in their immediate work area or site, even if they do not use such equipment directly.';

5. in Article 8, 'the Annex' is replaced by 'the Annexes';

6. Article 9 shall be amended as follows:

— in the title to the Article, 'of the Annex' shall be replaced by 'of the Annexes',

— in paragraph 1, 'the Annex' where it appears twice in the text shall be replaced by 'Annex I',

— in paragraph 2, 'the Annex' shall be replaced by 'the Annexes';

7. the Annex, which becomes Annex I, shall be amended in conformity with Annex I to this Directive;

8. an Annex II shall be added, the text of which is set out in Annex II to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 5 December 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they have already adopted or which they adopt in the field governed by this Directive.

3. The Commission shall periodically present a report on the implementation of this Directive to the European Parliament, the Council and the Economic and Social Committee.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 5 December 1995.

For the Council

The President

J. A. GRIÑÁN

ANNEX I

The Annex (which becomes Annex I) to Directive 89/655/EEC is amended as follows:

1. the following paragraph shall be added to the general comment:

'The following minimum requirements, in as much as they apply to work equipment in use, do not necessarily call for the same measures as the essential requirements concerning new work equipment.';

2. in point 2.1, the last paragraph is replaced by the following text:

'Control systems must be safe and must be chosen making due allowance for the failures, faults and constraints to be expected in the planned circumstances of use.';

3. Point 3 is replaced by the following text:

'3. **Additional minimum requirements applicable to specific types of work equipment**

3.1. *Minimum requirements for mobile work equipment, whether or not self-propelled*

3.1.1. Work equipment with ride-on workers must be fitted out in such a way as to reduce the risks for workers during the journey.

Those risks must include the risks of contact with or trapping by wheels or tracks.

3.1.2. Where an inadvertent seizure of the drive unit between an item of mobile work equipment and its accessories and/or anything towed might create a specific risk, such work equipment must be equipped or adapted to prevent blockages of the drive units.

Where such seizure cannot be avoided, every possible measure must be taken to avoid any adverse effects on workers.

3.1.3. Where drive shafts for the transmission of energy between mobile items of work equipment can become soiled or damaged by trailing on the ground, facilities must be available for fixing them.

3.1.4. Mobile work equipment with ride-on workers must be designed to restrict, under actual conditions of use, the risks arising from work equipment rollover:

— either by a protection structure to ensure that the equipment does not tilt by more than a quarter turn, or

— a structure giving sufficient clearance around the ride-on workers if the tilting movement can continue beyond a quarter turn, or

— by some other device of equivalent effect.

These protection structures may be an integral part of the work equipment.

These protection structures are not required when the work equipment is stabilized during operation or where the design makes roll over impossible.

Where there is a risk of a ride-on worker being crushed between parts of the work equipment and the ground, should the equipment roll over, a restraining system for the ride-on workers must be installed.

3.1.5. Fork-lift trucks carrying one or more workers must be adapted or equipped to limit the risk of the fork-lift truck overturning, e. g.: