Council Directive of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment (89/686/EEC)

COUNCIL DIRECTIVE

of 21 December 1989

on the approximation of the laws of the Member States relating to personal protective equipment

(89/686/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

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

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

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

Whereas it is necessary to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is guaranteed;

Whereas various Member States have, over recent years, adopted provisions covering numerous items of personal protective equipment with a view in particular to safeguarding public health, improving safety at work and ensuring user protection;

Whereas these national provisions are often very detailed as regards the requirements relating to the design, manufacture, quality level, testing and certification of personal protective equipment with a view to the protection of individuals against injury and illness;

Whereas, in particular, the national provisions relating to safety at work make the use of personal protective equipment compulsory; whereas many requirements oblige employers to make appropriate personal protective equipment available to their staff in the absence or inadequacy of priority public protection measures;

Whereas national provisions relating to personal protective equipment differ significantly from one Member State to another; whereas they may thus constitute a barrier to trade with direct consequences for the creation and operation of the common market;

Whereas it is necessary to harmonize these different national provisions in order to ensure the free movement of these products, without in any way reducing the valid levels of protection already required in the Member States, and to provide for any necessary increase therein;

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Whereas the provisions governing the design and manufacture of personal protective equipment laid down in this Directive which are fundamental, in particular, to attempts to ensure a safer working environment are without prejudice to provisions relating to the use of such equipment and the organization of the health and safety of workers at the workplace;

Whereas this Directive defines only the basic requirements to be satisfied by personal protective equipment; whereas, in order to facilitate proof of conformity with those basic requirements, it is essential that harmonized European standards be available relating, in particular, to the design and manufacture of, and the specifications and test methods applicable to, personal protective equipment, since compliance therewith confers on these products a presumption of conformity with the abovementioned basic requirements; whereas such harmonized European standards are drawn up by private bodies and must retain the status of non-mandatory texts; whereas, to this end, the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (Cenelec) are the competent bodies which have been authorized to adopt harmonized standards in accordance with the general guidelines governing cooperation between the Commission and those two institutions ratified on 13 November 1984; whereas, for the purposes of this Directive, a harmonized standard is a text containing technical specifications (a European standard or a harmonization document) which has been adopted by one or both of the abovementioned bodies at the instigation of the Commission in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations[(4)], as amended by Directive 88/182/EEC[(5)], and pursuant to the abovementioned general guidelines;

Whereas, pending the adoption of harmonized standards, which will be very numerous because of the broad scope of application and the preparation of which within the deadline set for the creation of the internal market will involve a great deal of work, it would be advisable to maintain, on a transitional basis and subject to the requirements of the Treaty, the status quo as regards conformity with existing national standards for personal protective equipment not covered by a harmonized standard at the date of adoption of this Directive;

Whereas, given the general and horizontal nature of the role played by the Standing Committee set up pursuant to Article 5 of Directive 83/189/EEC in Community standardization policy and, more particularly, its part in the preparation of standardization applications and the operation of the existing European standardization agreements, this Standing Committee is especially suited to the task of assisting the Commission in monitoring the conformity of harmonized standards throughout the Community;

Whereas compliance with these technical requirements must be monitored in order to ensure adequate user and third-party protection; whereas existing monitoring procedures may differ appreciably from one Member State to another; whereas, in order to avoid numerous checks which merely impede the free movement of personal protective equipment, provision should be made for the mutual recognition of inspections conducted by the Member States; whereas, in order to facilitate such recognition, it is necessary, in particular, to lay down harmonized Community procedures and to harmonize the criteria to be taken into account in selecting the bodies responsible for examination, monitoring and verification;

Whereas the legislative framework should be improved so that both sides of industry will make an effective and appropriate contribution to the process of standardization,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE, PLACING ON THE MARKET AND FREE MOVEMENT

Article 1

1 This Directive applies to personal protective equipment, hereinafter referred to as 'PPE'.

It lays down the conditions governing its placing on the market and free movement within the Community and the basic safety requirements which PPE must satisfy in order to ensure the health protection and safety of users.

2 For the purposes of this Directive, PPE shall mean any device or appliance designed to be worn or held by an individual for protection against one or more health and safety hazards.

PPE shall also cover:

a a unit constituted by several devices or appliances which have been integrally combined by the manufacturer for the protection of an individual against one or more potentially simultaneous risks;

b a protective device or appliance combined, separably or inseparably, with personal non-protective equipment worn or held by an individual for the execution of a specific activity;

c interchangeable PPE components which are essential to its satisfactory functioning and used exclusively for such equipment.

3 Any system placed on the market in conjunction with PPE for its connection to another external, additional device shall be regarded as an integral part of that equipment even if the system is not intended to be worn or held permanently by the user for the entire period of risk exposure.

4 This Directive does not apply to:

— PPE covered by another directive designed to achieve the same objectives as this Directive with regard to placing on the market, free movement of goods and safety,

— the PPE classes specified in the list of excluded products in Annex I, independently of the reason for exclusion mentioned in the first indent.

Article 2

1 Member States shall take all appropriate measures to ensure that the PPE referred to in Article 1 may be placed on the market and brought into service only if it preserves the health and ensures the safety of users without prejudice to the health or safety of other individuals, domestic animals or goods, when properly maintained and used for its intended purpose.

2 This Directive shall be without prejudice to the right of Member States to lay down — in conformity with the Treaty — any requirements which they consider necessary to ensure user protection, provided that this does not give rise to modifications to PPE which could result in its non-conformity with the provisions of this Directive.

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3 Member States shall not prevent the presentation at trade fairs, exhibitions and the like of PPE which is not in conformity with the provisions of this Directive, provided that an appropriate notice is displayed drawing attention to this fact and the prohibition on its acquisition and/or use for any purpose whatsoever until it has been brought into conformity by the manufacturer or his representative established in the Community.

Article 3

The PPE referred to in Article 1 must satisfy the basic health and safety requirements laid down in Annex II.

Article 4

[F1 1 Member States may not prohibit, restrict or hinder the placing on the market of PPE or PPE components which comply with the provisions of this Directive and which bear the CE marking attesting their conformity to all the provisions of this Directive, including the certification procedures in Chapter II.**]**

2 Member States shall not prohibit, restrict or impede the placing on the market of PPE components which do not bear the **[**F1 CE marking, and which are intended to be incorporated in PPE, provided that they are not essential to its satisfactory functioning.

Textual Amendments

F1 Substituted by Council Directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits).

Article 5

1 Member States shall regard as in conformity with the basic requirements referred to in Article 3 the PPE referred to in Article 8 (3) bearing the CE marking with respect to which the manufacturer is able to produce, on demand, the declaration of conformity referred to in Article 12.

2 Member States shall presume that the PPE referred to in Article 8 (2) satisfies the basic requirements referred to in Article 3 if it bears the CE marking with respect to which the manufacturer is able to produce, on demand, not only the declaration referred to in Article 12 but also the certificate issued by the body of which notification has been given in accordance with Article 9 attesting to their conformity to the relevant national standards, transposing the harmonized standards, assessed at the EC type examination level in accordance with the first indent of Article 10 (4) (a) and (b).

Where a manufacturer has not applied or has only partly applied the harmonized standards or where there are no such standards the certificate issued by the body of which notification has been given must state the conformity to the basic requirements in accordance with the second indent of Article 10 (4) (a) and (b).

F2 3 . . . . . .

4 The Commission shall publish the references of the harmonized standards in the *Official Journal of the European Communities*.

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Member States shall publish the references of the national standards transposing the harmonized standards.

5 Member States shall ensure that by 30 June 1991 appropriate steps are taken to enable both sides of industry to have an influence at national level on the process of formulating the harmonized standards and keeping them under review.

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Where the PPE is subject to other Directives concerning other aspects and which also provide for the affixing of the CE marking, the latter shall indicate that the PPE is also presumed to conform to the provisions of the other Directives.

b However, where one or more of these Directives allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate conformity to the provisions only of those Directives applied by the manufacturer. In this case, particulars of the Directives applied, as published in the *Official Journal of the European Communities*, must be given in the documents, notices or instructions required by the Directives and accompanying such PPE.**]**

Textual Amendments

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F2 Deleted by Council Directive 93/95/EEC of 29 October 1993 amending Directive 89/686/EEC on the approximation of the laws of the Member States relating to personal protective equipment (PPE).

F3 Inserted by Council Directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits).

Article 6

[F4]1 . . . . . .

[[F5]2 The Commission shall be assisted by the Standing Committee, set up by Article 6(2) of Directive 98/37/EC[(6)], hereinafter referred to as 'the Committee'.

It may be apprised, in accordance with the procedure referred to in this paragraph, of any matter to which the implementation and practical application of this Directive give rise.

Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC[(7)] shall apply, having regard to the provisions of Article 8 thereof.

The Committee shall adopt its rules of procedure.**]**