COUNCIL DIRECTIVE

of 26 May 1986

on the approximation of the laws of the Member States relating to falling-object protective structures (FOPS) for certain construction plant

(86/296/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to the opinion of the European Parliament (2),

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

Whereas in some Member States the design, construction and testing of falling-object protective structures for certain categories of construction plant under certain conditions of use are the subject of national provisions requiring these protective structures to comply with special technical criteria and undergo specific tests; whereas this situation is likely to create barriers to intra-Community trade; whereas it is therefore necessary to approximate these provisions;

Whereas Council Directive 84/532/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to common provisions for construction plant and equipment (4) has defined a series of joint procedures — in particular, EEC type-approval, EEC-type examination and EEC self-certification — for the placing on the market and bringing into service of such construction plant; whereas provision should be made for the EEC type-examination procedure, coupled with an EEC inspection procedure, in respect of falling-object protective structures for certain construction plant; whereas, moreover, it is necessary to make provision for this construction plant to be designed with attachment points, so that it can be fitted with the corresponding EEC protective structures;

Whereas this Directive is a separate Directive within the meaning of the second paragraph of Article 3 of Directive 84/532/EEC;

Whereas the laboratory tests, performance criteria and deflection-limiting volume are laid down by ISO international standards; whereas reference should therefore be made to these existing standards;

Whereas technical progress necessitates rapid adaptation of the technical requirements; whereas the procedure laid down in Article 24 of Directive 84/532/EEC should therefore be adopted for such adaptations of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive applies to falling-object protective structures (FOPS) for the construction plant listed under 2.1 in ISO standard 3449, third edition of 15 April 1984, hereinafter referred to as ISO standard 3449/3.

Article 2

1. Member States shall take all necessary steps to ensure that:

(a) falling-object protective structures cannot be placed on the market unless they comply with this Directive and the type of structure which has satisfied EEC type-examination in accordance with Directive 84/532/EEC.

These protective structures shall hereinafter be referred to as EEC protective structures;

(b) the construction plant referred to in Article 1 cannot be placed on the market unless it is designed to be fitted with an EEC protective structure. Plant shall be considered to be designed to be fitted with an EEC protective structure if it is provided with a roll-over protective structure (ROPS) to which the aforesaid EEC protective structure can be fitted.

2. Member States may stipulate that, when used in certain normal conditions where the use of a falling-object protective structure is justified, the construction plant referred to in Article 1 may not be put into service or used unless fitted with an EEC protective structure.

Article 3

1. The approved bodies referred to in Article 9 of Directive 84/532/EEC shall not issue an EEC type-exami-

(1) OJ No C 104, 28. 4. 1984, p. 39.
(2) OJ No C 197, 4. 8. 1980, p. 62.
(3) OJ No C 205, 11. 8. 1980, p. 27.
(4) OJ No L 300, 19. 11. 1984, p. 111.

nation certificate unless the type of EEC protective structure complies with the provisions of Annex I to this Directive.

The EEC type-examination tests may be performed in the manufacturer's laboratory under the supervision of the approved body.

2. All applications for EEC type-examination in respect of an EEC protective structure shall be accompanied by an information document conforming to the model in Annex II to this Directive.

3. For each type of EEC protective structure that has undergone the tests and examinations provided for in Annex I to this Directive, the approved body shall draw up a test report conforming to the model in Annex III to this Directive and shall issue an EEC type-examination certificate conforming to the model in Annex V to this Directive, by way of derogation from Directive 84/532/EEC.

4. By way of derogation from section 4.2 of Annex I to Directive 84/532/EEC, only Member States and the Commission may obtain the test report, part A, referred to in Annex III to this Directive, and, where appropriate, the technical data in part B.

The approved body which has issued the EEC type-examination certificate shall forward the above document upon a duly substantiated request by a Member State or the Commission.

Article 4

1. Each EEC protective structure shall be accompanied by a certificate of conformity in accordance with Article 18 (1) of Directive 84/532/EEC.

2. The manufacturer of the EEC protective structure shall affix to each structure a legible, permanent and indelible EEC conformity mark, a model of which is contained in Annex IV, and shall attach to the structure a label in accordance with section 8 of ISO standard 3449/3.

Article 5

1. When it is proposed to commence production of protective structures for which an EEC type-examination certificate has been issued, the manufacturer or his authorized representative established in the Community shall:

(a) inform the approved body which issued the EEC type-examination certificate of:
   — the place of manufacture, and/or the place of warehousing within the Community,
   — the date of commencement of production and/or import;

(b) allow representatives of the approved body access for the purpose of checking to the said places of manufacture or warehousing and provide all necessary information relevant to such checks;

(c) make available, at the request of the approved body and within a reasonable period, a sample selected by that body for checking purposes.

2. The holder of the EEC mark shall arrange for production to be checked so as to verify on a continuous and adequate basis that the EEC protective structures manufactured conform to the type tested as regards the materials used and the quality of workmanship.

Article 6

1. Each approved body shall, if appropriate in accordance with instructions from the Member State which approved it, carry out spot checks to see whether the EEC protective structures being manufactured conform to the type for which it issued the EEC type-examination certificate.

These checks shall enable the approved body to ascertain whether the manufacturer is in fact carrying out the conformity check referred to in Article 5 (2).

The approved body may also request and itself select a sample for checking purposes. A second test in accordance with Annex I, involving destroying the EEC protective structure and possibly the chassis, shall be performed only if there are reasonable grounds for assuming that the structure does not comply with the performance requirements for the approved type.

2. If the place of manufacture is situated in a Member State other than that of the approved body which granted the EEC type-examination certificate, that body may collaborate with the approved body in the Member State in which the abovementioned checks are to take place.

The same shall apply to warehouses.

3. Each approved body may on its own responsibility delegate the task of performing the checking tests and operations to one or more laboratories.

Article 7

1. If the checks referred to in Article 6 reveal that EEC protective structures do not conform to the type for which the EEC type-examination certificate was granted, or that not all the requirements of this Directive have been fulfilled, the approved body shall take one of the following measures against the holder of the EEC mark:

(a) a warning, with a request that the infringements noted shall cease within a given period;

(b) a warning as referred to in (a), but accompanied by a larger number of checks;

(c) temporary suspension of the EEC type-examination certificate;

(d) withdrawal of the EEC type-examination certificate.

These measures may be taken only by the approved body which granted the EEC type-examination certificate.

2. The first two measures shall be taken where the disparities do not affect the basic design of the EEC protective structures or where the infringements are minor ones and in no way impair safety.

One of the last two measures shall be taken where the disparities or infringements noted are substantial and in all cases where they represent a safety hazard.

3. Temporary suspension or withdrawal of the EEC type-examination certificate shall be notified without delay to the other approved bodies and to the Member States.

Article 8

1. No Member State may, on grounds relating to the requirements laid down in this Directive, refuse, prohibit or restrict the marketing, placing into service or use of EEC protective structures.

2. No Member State may, on grounds relating to the requirements laid down in this Directive, refuse, prohibit or restrict the marketing, placing into service or use of construction plant as defined in Article 1 if it is fitted or designed to be fitted with an appropriate EEC protective structure.

Article 9

1. Any amendments necessary to adapt the Annexes to this Directive to technical progress shall be adopted in accordance with the procedure laid down in Article 24 of Directive 84/532/EEC.

2. The procedure laid down in Article 21 of Directive 84/532/EEC shall not be applicable.

Article 10

The provisions of this Directive shall not affect the Member States' entitlement to lay down, with due observance of the Treaty, the requirements they deem necessary to ensure that workers are protected when using the equipment in question, provided that this does not mean that the equipment is modified in a way not specified in the Directive.

Article 11

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary in order to comply with this Directive within 36 months of its notification [1] and shall forthwith inform the Commission thereof.

They shall bring these provisions into force 48 months after notification of this Directive.

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

Article 12

This Directive is addressed to the Member States.

Done at Brussels, 26 May 1986.

For the Council,

The President

G. BRAKS

[1] This Directive was notified to the Member States on 2 June 1986.

ANNEX I

1. The EEC protective structure must, as regards the laboratory tests and performance requirements, comply with international standard ISO 3449, third edition, 15 April 1984, on the basis of the deflection-limiting volume defined in international standard ISO 3164, second edition, 1 November 1979, as amended by amendment No 1 of 1 December 1980.

2. The following standards are referred to in ISO standard 3449/3:

— ISO standard 3471, second edition, 15 September 1980,

— ISO standard 3164, second edition, 1 November 1979, as amended by amendment No 1 of 1 December 1980,

— ISO standard 6165, 1978 edition,

— ISO standard 898/1, 1978 edition,

— ISO standard 898/2, 1980 edition.