

DIRECTIVES

DIRECTIVE 2009/127/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2009

amending Directive 2006/42/EC with regard to machinery for pesticide application

(Text with EEA relevance)

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,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The use of pesticides is recognised as posing threats both to human health and the environment. In its Communication of 12 July 2006 entitled 'A Thematic Strategy on the Sustainable Use of Pesticides', the Commission adopted a strategy aiming at reducing the risks to human health and the environment resulting from the use of pesticides. Furthermore, the European Parliament and the Council have adopted Directive 2009/128/EC of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides ⁽³⁾ (the 'Framework Directive').
- (2) The design, construction and maintenance of machinery for pesticide application play a significant role in reducing the adverse effects of pesticides on human health and the environment. Regarding pesticide application equipment already in professional use, the Framework Directive introduces requirements for the inspection and maintenance to be carried out on such equipment.
- (3) The Framework Directive applies to pesticides which are plant protection products. It is therefore appropriate to limit the scope of this Directive to machinery for the

application of pesticides that are plant protection products. However, since it is anticipated that the scope of the Framework Directive will be extended to cover biocidal products, the extension of the scope of the environmental protection requirements to machinery for the application of biocidal products should be examined by the Commission by 31 December 2012.

- (4) The requirements for the protection of the health and safety of persons and, where appropriate, domestic animals and property are already covered by Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery ⁽⁴⁾. It is therefore appropriate that essential environmental protection requirements for the design and construction of new machinery for pesticide application are included in the Directive 2006/42/EC, while ensuring that these requirements are consistent with those of the Framework Directive relating to maintenance and inspection.
- (5) For this purpose, it is also necessary to include a reference to the protection of the environment in Directive 2006/42/EC, while limiting this objective to the category of machinery and to the risks subject to specific environmental protection requirements.
- (6) Machinery for pesticide application includes self-propelled, towed, vehicle-mounted, semi-mounted and airborne machinery, as well as stationary machinery intended for pesticide application, both for professional and non-professional use. It also includes powered or manually-operated portable and handheld machinery with a pressure chamber.
- (7) This Directive is limited to the essential requirements with which machinery for pesticide application must comply before being placed on the market and/or put into service, while the European standardisation organisations are responsible for drawing up harmonised standards providing detailed specifications for the various categories of such machinery in order to enable manufacturers to comply with those requirements.

⁽¹⁾ OJ C 182, 4.8.2009, p. 44.

⁽²⁾ Opinion of the European Parliament of 22 April 2009 (not yet published in the Official Journal) and Council Decision of 24 September 2009.

⁽³⁾ OJ L 309, 24.11.2009, p. 71.

⁽⁴⁾ OJ L 157, 9.6.2006, p. 24.

- (8) It is essential that all interested parties, including industry, farmers and environmental organisations, are equally involved in the establishment of such harmonised standards, so as to ensure that they are adopted on the basis of a clear consensus amongst all stakeholders.
- (9) Directive 2006/42/EC should be therefore amended accordingly.
- (10) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (11) Where the available scientific evidence is insufficient to allow an accurate risk assessment, Member States, when taking measures under this Directive, should apply the precautionary principle, which is a principle of Community law outlined, *inter alia*, in the Communication from the Commission of 2 February 2000, while taking due consideration of the other rules and principles contained in Directive 2006/42/EC, such as the free movement of goods and the presumption of conformity,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/42/EC

Directive 2006/42/EC is hereby amended as follows:

1. in the second paragraph of Article 2, the following point shall be added:

‘(m) “essential health and safety requirements” means mandatory provisions relating to the design and construction of the products subject to this Directive to ensure a high level of protection of the health and safety of persons and, where appropriate, of domestic animals and property and, where applicable, of the environment.

The essential health and safety requirements are set out in Annex I. Essential health and safety requirements for the protection of the environment are applicable only to the machinery referred to in section 2.4 of that Annex.’;

2. Article 4(1) shall be replaced by the following:

‘1. Member States shall take all appropriate measures to ensure that machinery may be placed on the market and/or

put into service only if it satisfies the relevant provisions of this Directive and does not endanger the health and safety of persons and, where appropriate, domestic animals and property and, where applicable, the environment, when properly installed and maintained and used for its intended purpose or under reasonably foreseeable conditions.’;

3. in Article 9(3), the first subparagraph shall be replaced by the following:

‘In the cases referred to in paragraph 1, the Commission shall consult the Member States and other interested parties, indicating the measures it intends to take in order to ensure, at Community level, a high level of protection of the health and safety of persons and, where appropriate, of domestic animals and property and, where applicable, of the environment.’;

4. Article 11(1) shall be replaced by the following:

‘1. Where a Member State ascertains that machinery covered by this Directive, bearing the CE marking, accompanied by the EC declaration of conformity and used in accordance with its intended purpose or under reasonably foreseeable conditions, is liable to endanger the health or safety of persons or, where appropriate, domestic animals or property or, where applicable, the environment, it shall take all appropriate measures to withdraw such machinery from the market, to prohibit the placing on the market and/or putting into service of such machinery or to restrict the free movement thereof.’;

5. Annex I shall be amended as follows:

(a) in the General Principles, point 4 shall be replaced by the following:

‘4. This Annex is organised in several parts. The first one is of general scope and applicable to all kinds of machinery. The other parts refer to certain kinds of more specific hazards. Nevertheless, it is essential to examine the whole of this Annex in order to be sure of meeting all the relevant essential requirements. When machinery is being designed, the requirements of the general part and the requirements of one or more of the other parts shall be taken into account, depending on the results of the risk assessment carried out in accordance with point 1 of these General Principles. Essential health and safety requirements for the protection of the environment are applicable only to the machinery referred to in section 2.4.’;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

(b) Chapter 2 shall be amended as follows:

(i) the first paragraph shall be replaced by the following:

Foodstuffs machinery, machinery for cosmetics or pharmaceutical products, hand-held and/or hand-guided machinery, portable fixing and other impact machinery, machinery for working wood and material with similar physical characteristics and machinery for pesticide application must meet all the essential health and safety requirements set out in this chapter (see General Principles, point 4).;

(ii) the following Section shall be added:

2.4. MACHINERY FOR PESTICIDE APPLICATION

2.4.1. *Definition*

“Machinery for pesticide application” means machinery specifically intended for the application of plant protection products within the meaning of Article 2(1) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market (*).

2.4.2. *General*

The manufacturer of machinery for pesticide application or his authorised representative must ensure that an assessment is carried out of the risks of unintended exposure of the environment to pesticides, in accordance with the process of risk assessment and risk reduction referred to in the General Principles, point 1.

Machinery for pesticide application must be designed and constructed taking into account the results of the risk assessment referred to in the first paragraph so that the machinery can be operated, adjusted and maintained without unintended exposure of the environment to pesticides.

Leakage must be prevented at all times.

2.4.3. *Controls and monitoring*

It must be possible to easily and accurately control, monitor and immediately stop the pesticide application from the operating positions.

2.4.4. *Filling and emptying*

The machinery must be designed and constructed to facilitate precise filling with the necessary quantity of pesticide and to ensure easy and complete emptying, while preventing spillage of pesticide and avoiding the contamination of the water source during such operations.

2.4.5. *Application of pesticides*

2.4.5.1. *Application rate*

The machinery must be fitted with means of adjusting the application rate easily, accurately and reliably.

2.4.5.2. *Distribution, deposition and drift of pesticide*

The machinery must be designed and constructed to ensure that pesticide is deposited on target areas, to minimise losses to other areas and to prevent drift of pesticide to the environment. Where appropriate, an even distribution and homogeneous deposition must be ensured.

2.4.5.3. *Tests*

In order to verify that the relevant parts of the machinery comply with the requirements set out in sections 2.4.5.1 and 2.4.5.2 the manufacturer or his authorised representative must, for each type of machinery concerned, perform appropriate tests, or have such tests performed.

2.4.5.4. *Losses during stoppage*

The machinery must be designed and constructed to prevent losses while the pesticide application function is stopped.

2.4.6. *Maintenance*

2.4.6.1. *Cleaning*

The machinery must be designed and constructed to allow its easy and thorough cleaning without contamination of the environment.

2.4.6.2. *Servicing*

The machinery must be designed and constructed to facilitate the changing of worn parts without contamination of the environment.

2.4.7. Inspections

It must be possible to easily connect the necessary measuring instruments to the machinery to check the correct functioning of the machinery.

2.4.8. Marking of nozzles, strainers and filters

Nozzles, strainers and filters must be marked so that their type and size can be clearly identified.

2.4.9. Indication of pesticide in use

Where appropriate, the machinery must be fitted with a specific mounting on which the operator can place the name of the pesticide in use.

2.4.10. Instructions

The instructions must provide the following information:

- (a) precautions to be taken during mixing, loading, application, emptying, cleaning, servicing and transport operations in order to avoid contamination of the environment;
- (b) detailed conditions of use for the different operating environments envisaged, including the corresponding preparation and adjustments required to ensure the deposition of pesticide on target areas while minimising losses to other areas, to prevent drift to the environment and, where appropriate, to ensure an even distribution and homogeneous deposition of pesticide;
- (c) the range of types and sizes of nozzles, strainers and filters that can be used with the machinery;
- (d) the frequency of checks and the criteria and method for the replacement of parts subject to wear that affect the correct functioning of the machinery, such as nozzles, strainers and filters;
- (e) specification of calibration, daily maintenance, winter preparation and other checks necessary to ensure the correct functioning of the machinery;
- (f) types of pesticides that may cause incorrect functioning of the machinery;

- (g) an indication that the operator should keep updated the name of the pesticide in use on the specific mounting referred to in section 2.4.9;
- (h) the connexion and use of any special equipment or accessories, and the necessary precautions to be taken;
- (i) an indication that the machinery may be subject to national requirements for regular inspection by designated bodies, as provided for in Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (**);
- (j) the features of the machinery which must be inspected to ensure its correct functioning;
- (k) instructions for connecting the necessary measuring instruments.

(*) OJ L 309, 24.11.2009, p. 1.
 (**) OJ L 309, 24.11.2009, p. 71.'

Article 2**Transposition**

1. Member States shall adopt and publish the provisions necessary to comply with this Directive by 15 June 2011 at the latest. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 15 December 2011.

When those provisions are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such a 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 text of the provisions of national law which they adopt in the field covered by this Directive.

Article 3**Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 21 October 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM
