

COMMISSION DECISION

of 10 February 2014

on a measure taken by Denmark according to Article 11 of Directive 2006/42/EC of the European Parliament and of the Council prohibiting a type of multi-purpose earthmoving machinery

*(notified under document C(2014) 633)***(Text with EEA relevance)**

(2014/78/EU)

THE EUROPEAN COMMISSION,

functions during activities such as forestry, farming, landscaping, ground care, property maintenance, material handling, digging and construction.

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC ⁽¹⁾, and in particular Article 11 thereof,

Whereas:

(1) In accordance with the procedure set out in Article 11(2) of Directive 2006/42/EC, the Danish authorities notified to the Commission and to the other Member States a measure relating to machinery of the *Avant 600* series manufactured by Avant Tecno Oy, Ylötie 1, FIN-33470 Ylöjärvi, Finland. The machinery bore the CE marking and was accompanied by an EC Declaration of conformity according to Directive 2006/42/EC on machinery, Directive 2004/108/EC of the European Parliament and of the Council ⁽²⁾ on electromagnetic compatibility and Directive 2000/14/EC of the European Parliament and of the Council ⁽³⁾ on noise emission in the environment by equipment for use outdoors.

(2) Machinery of the *Avant 600* series is multi-purpose earthmoving machinery that can be fitted with a wide range of attachments in order to carry out many different

(3) The Danish measure was motivated by the non-conformity of the machinery with the essential health and safety requirement set out in Section 3.4.4 of Annex I to Directive 2006/42/EC, which requires that where, in the case of self-propelled machinery with a ride-on operator, there is a risk due to falling objects or material, the machinery must be designed and constructed in such a way as to take account of this risk and fitted, if its size allows, with an appropriate protective structure.

(4) The Danish authorities indicated that, while several of the intended functions of the machinery exposed the ride-on operator to risks due to falling objects or material, the machinery had been placed on the market without a falling object protective structure (FOPS). The Danish authorities asked the manufacturer to take corrective measures. Since this request was not met, the Danish authorities prohibited the placing on the market of machinery of the *Avant 600* series without a FOPS and ordered the manufacturer to take corrective action with respect to machines already placed on the market.

(5) The Commission wrote to the manufacturer inviting him to communicate his observations on the measure taken by Denmark. In his reply, the manufacturer indicated the *Avant 600* series was equipped with a cab tested by the Notified Body MTT-Vakola No 0504. The cab was always fitted with a roll-over protective structure (ROPS) and could be fitted with a FOPS as an option. When the machinery was sold for use in agriculture, property maintenance, landscaping or for use in stables, for example, where there was no risk of falling objects, no FOPS was fitted. On the other hand, when the machinery was sold for applications where there was a risk of falling objects, such as for example, use in mines, it was always fitted with a FOPS. The manufacturer also stated that he had decided to clarify the instruction manual and sales literature in order to specify in which situations a cab fitted with a FOPS must be used.

⁽¹⁾ OJ L 157, 9.6.2006, p. 24.

⁽²⁾ Directive 2004/108/EC of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC (OJ L 390, 31.12.2004, p. 24).

⁽³⁾ Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors (OJ L 162, 3.7.2000, p. 1).

- (6) Section 1.1.2(a) of Annex I to Directive 2006/42/EC requires machinery to be designed and constructed so that it is fitted for its function and can be operated, adjusted and maintained without putting persons at risk when these operations are carried out under the conditions foreseen but also taking into account any reasonable foreseeable misuse thereof. The aim of measures taken must be to eliminate any risk throughout the foreseeable lifetime of the machinery including the phases of transport, assembly, dismantling, disabling and scrapping. The measures must be taken according to the principles of safety integration set out in Section 1.1.2(b) of Annex I which give priority to integrated protective measures over information for users.
- (7) In the case of multi-purpose earthmoving machinery such as the *Avant 600* series, even if a particular machine is initially supplied for functions or for use in environments not involving a risk due to falling objects or material, it is possible to be used during its foreseeable lifetime for other intended functions or in environments that expose operators to that risk. Consequently, the risk due to falling objects or material must be taken into account in the design and construction of the machine.
- (8) Examination of the evidence provided by the Danish authorities and of the observations communicated by the manufacturer confirms that machinery of the *Avant 600* series without a FOPS does not comply with the essential health and safety requirement set out in Section 3.4.4 of Annex I to Directive 2006/42/EC and

that this non-conformity gives rise to a serious risk of injury to ride-on operators due to falling objects or material,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the Danish authorities prohibiting the placing on the market of machinery of the *Avant 600* series not fitted with a falling object protective structure (FOPS) and requiring the manufacturer to take corrective action with respect to machines already placed on the market is justified.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 February 2014.

For the Commission

Antonio TAJANI

Vice-President
