

DECISIONS

COMMISSION DECISION

of 8 April 2013

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(2013) 1874)

(Text with EEA relevance)

(2013/173/EU)

THE EUROPEAN COMMISSION,

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 type *Multione S630* manufactured by C.S.F. Srl., via Palù 6/8, 36040 Grumolo delle Abbadesse (Vicenza), Italy. The machinery bore the CE marking and was accompanied by an EC Declaration of conformity according to Directive 2006/42/EC on machinery, Commission Directive 2004/108/EC⁽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) The *Multione S630* is multi-purpose earthmoving machinery that can be fitted with a wide range of attachments in order to carry out many different functions during activities such as forestry, agriculture, gardening, landscaping, road maintenance and construction.
- (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 *Multione S630* machines 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 that he considered that it was not necessary to fit a FOPS when a machine was supplied for functions not involving a risk of falling objects or material. However he informed the Commission that, following the measure taken by the Danish authorities, action had been taken to ensure that all machines placed on the market in Denmark were fitted with a FOPS.
- (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.
- (7) In the case of multi-purpose machinery such as the *Multione S630*, even if a machine is initially supplied for functions not involving a risk due to falling objects or material, it is likely to be used during its foreseeable lifetime for other intended functions that expose operators to that risk. Consequently, the risk due to

⁽¹⁾ OJ L 157, 9.6.2006, p. 24.

⁽²⁾ OJ L 337, 13.11.2004, p. 13.

⁽³⁾ OJ L 162, 3.7.2000, p. 1.

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 type *Multione S630* 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 type *Multione*

S630 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, 8 April 2013.

For the Commission

Antonio TAJANI

Vice-President
