

The Machinery Directive: Full Text with Commentary

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Recitals

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The recitals have no independent legal value and do not need to appear in the national legislation transposing the Directive. However, in case of litigation, the courts can take them into consideration to ascertain the Council's intention when drafting certain articles. Readers are therefore advised to read the recitals and to bear them in mind when reading the corpus of the Directive; this will remove certain apparent ambiguities and clarify the meaning of certain words which the Directive uses in a restrictive or unusual sense.

No particular importance should be attached to the order in which they appear, which is the same as in the Directive and does not imply any hierarchy.

Whereas Member States are responsible for ensuring the health and safety on their territory of their people and, where appropriate, of domestic animals and goods and, in particular, of workers notably in relation to the risks arising out of the use of machinery;

The safeguarding of human safety is an obligation and a fundamental prerogative of the Member States. This is confirmed by Article 36 of the EEC Treaty, which authorizes derogations to the principle of freedom of movement.

The Directive is intended to remove the need to invoke Article 36 with regard to the risks which it covers so that the Treaty can apply in full to machinery. The Member States cannot invoke Article 36 to prohibit machinery on grounds covered by the Directive; they can only invoke the fact that a specific requirement is not fully complied with.

Whereas, in the Member States, the legislative systems regarding accident prevention are very different; whereas the relevant compulsory provisions, frequently supplemented by de facto mandatory technical specifications and/or voluntary standards, do not necessarily lead to different levels of health and safety, but nevertheless, owing to their disparities, constitute barriers to trade within the Community; whereas, furthermore, conformity certification and national certification systems for machinery differ considerably; This recital notes that safety levels in the Member States may be similar but that the means used to attain them are very different. Harmonization of the means will not alter the level of safety but will permit the free movement of machinery.

Whereas the maintenance or improvement of the level of safety attained by the Member States constitutes one of the essential aims of this Directive and of the principle of safety as defined by the essential requirements;

Whereas existing national health and safety provisions providing protection against the risks caused by machinery must be approximated to ensure free movement of machinery without lowering existing justified levels of protection in the Member States; whereas the provisions of this Directive concerning the design and construction of machinery, essential for a safer working environment shall be accompanied by specific provisions concerning the prevention of certain risks to which workers can be exposed at work, as well as by provisions based on the organization of safety or workers in the working environment;

These recitals emphasize that the level of safety already attained in a given Member State must not be lowered. Thus the Directive will both harmonize safety measures and bring about an overall improvement.

These recitals remove in advance all claim to legitimacy of any technical barrier linked to one of the essential requirements of the Directive maintained after its entry into force. The objective of a high level of safety is laid down in Article 100a(3) of the Treaty. Finally, the end of the second of the above recitals announces that these machinery design measures are to be supplemented by directives on the use of machinery to ensure the safety of workers.

Whereas the machinery sector is an important part of the engineering industry and is one of the industrial mainstays of the Community economy;
This recital recognizes the economic importance of the machinery sector; too radical disruptions could have adverse socioeconomic effects.
Whereas paragraphs 65 and 68 of the White Paper on the completion of the internal market, approved by the European Council in June 1985, provide for a new approach to legislative harmonization;

This recital reminds the legislator of the priority attached to the preparation and transposition of this Directive. The 'new approach' is to adopt directives which lay down binding essential health and safety requirements and refer to the optional application of harmonized standards as the means of complying with them.

Whereas the social cost of the large number of accidents caused directly by the use of machinery can be reduced by inherently safe design and construction of machinery and by proper installations and maintenance;
This recital emphasizes the importance of integrating safety into the design of machinery.

Machinery whose safety is ensured by means of 'add-ons' or by 'patching up' an old design does not comply with the requirements of the Directive. All machinery currently on the market must have been at least reconsidered and, if necessary, 'redesigned'.

Whereas the field of application of this Directive must be based on a general definition of the term 'machinery' so as to allow the technical development of products; whereas the development of 'complex installations' and the risks they involve are of an equivalent nature and their express inclusion in the Directive is therefore justified;

Whereas specific Directives containing design and construction provisions for certain categories of machinery are now envisaged; whereas the very broad scope of this Directive must be limited in relation to these Directives and also existing Directives where they contain design and construction provisions;
Whereas it is also necessary to deal with safety components which are placed on the market separately and the safety function of which is declared by the manufacturer or his authorized representative established in the community;
These recitals confirm the vast scope of the Directive, the limits of which are discussed in the comments on Article 1.

Whereas Community law, in its present form, provides - by way of derogation from one of the fundamental rules of the Community, namely the free movement of goods - that obstacles to movement within the Community resulting from disparities in national legislation relating to the marketing of products must be accepted in so far as the provisions concerned can be recognized as being necessary to satisfy imperative requirements; whereas, therefore, the harmonization of laws in this case must be limited only to those requirements necessary to

satisfy the imperative and essential health and safety requirements relating to machinery; whereas these requirements must replace the relevant national provisions because they are essential;

This recital reiterates the principle of Article 36 and confirms that the Directive will limit the Member States' right to invoke that article in respect of the hazards referred to in Annex I.

Whereas the essential health and safety requirements must be observed in order to ensure that machinery is safe; whereas these requirements must be applied with discernment to take account of the state of the art at the time of construction and of technical and economic requirements;

This recital introduces the second preliminary observation in Annex I. Although it may be possible to imagine very sophisticated devices which eliminate every risk, this is required only if it does not make the machinery "uneconomic", i.e. if it does not entail an excessive purchase price or excessive operating costs.

Where the interpretation of this is disputed and all means of arbitration have been exhausted, it is for the judge to determine the economically realistic threshold.

Whereas the putting into service of machinery within the meaning of this Directive can relate only to the use of the machinery itself as intended by the manufacturer; whereas this does not preclude the laying-down of conditions of use external to the machinery, provided that it is not thereby modified in a way not specified in this Directive;
The manufacturer's obligations to integrate safety into the design and manufacture of machinery are limited to intended and foreseeable uses, and do not extend to unorthodox uses.

However, the Member States are at liberty to lay down conditions of use of machinery provided these do not entail modifications to the machinery itself; for example, they may lay down an age limit or qualifications for the operator, etc.

Whereas, for trade fairs, exhibitions, etc., it must be possible to exhibit machinery which does not conform to this Directive; whereas, however, interested parties should be properly informed that the machinery does not conform and cannot be purchased in that condition;
This recital introduces Article 2(3).

Whereas, therefore, this Directive defines only the essential health and safety requirements of general application, supplemented by a number of more specific requirements for certain categories of machinery; whereas, in order to help manufacturers to prove conformity to these essential requirements and in order to allow inspection for conformity to the essential requirements, it is desirable to have standards harmonized at European level for the prevention of risks arising out of the design and construction of machinery; whereas, within the meaning of this Directive, a harmonized standard is a technical specification (European standard or harmonization document) adopted by the European Committee for Standardization (CEN) or the European Committee for Electrotechnical Standardization (Cenelec) or both of these bodies, on the basis of a remit from the Commission in accordance with the provisions of 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, as last amended by Directive 88/182/EEC, and on the basis of general guidelines referred to above;

This very important recital defines a 'harmonized' standard as a European standard drawn up on the basis of a remit from the Commission of the European Communities.
For harmonized standards to have full effect, references to them must be published in the Official Journal of the European Communities (see Article 5(1)) and they must be listed in accordance with Article 12 of the Directive.

Whereas the legislative framework needs to be improved in order to ensure an effective and appropriate contribution by employers and employees to the standardization process; whereas such improvement should be completed at the latest by the time this Directive is implemented; This recital, added at the request of the European Parliament, has no direct bearing on the content of the Directive; however, it led the Commission to take certain initiatives to facilitate trade union access to the standardization process.

Whereas, as is currently the practice in Member States, manufacturers should retain the responsibility for certifying the conformity of their machinery to the relevant essential requirements; whereas conformity to harmonized standards creates a presumption of conformity to the relevant essential requirements; whereas it is left to the sole discretion of the manufacturer, where he feels the need, to have his products examined and certified by a third party;

Whereas, for certain types of machinery having a higher risk factor, a stricter certification procedure is desirable; whereas the EC type-examination procedure adopted may result in an EC declaration being given by the manufacturer without any stricter requirement such as a guarantee of quality, EC verification or EC supervision; These recitals justify the certification procedures laid down by the Directive, i.e. a declaration of conformity by the manufacturer, in most cases without the intervention of any third party but, in the case of certain more dangerous types of machinery listed in Annex IV, after EC type-examination by a third party.

Whereas it is essential that, before issuing an EC declaration of conformity, the manufacturer or his authorized representative established in the Community should provide a technical construction file; whereas it is not, however, essential that all documentation be permanently available in a material manner but it must be made available on demand; whereas it need not include detailed plans of the sub-assemblies used in manufacturing the machines, unless knowledge of these is indispensable in order to ascertain conformity with essential safety requirements; In return for the freedom to declare conformity himself, the manufacturer is obliged to compile a technical construction file. In effect this means that he is obliged to examine his machinery himself. The contents of this file are explained in the comments on Article 8 and Annex V.

Whereas it is necessary not only to ensure the free movement and putting into service of machinery bearing the CE marking and having an EC conformity certificate but also to ensure free movement of machinery not bearing the CE marking where it is to be incorporated into other machinery or assembled with other machinery to form a complex installation; This recital justifies Article 4(2) and confirms that 'complex installations' fall within the scope of the Directive.

Article 9(2) discharges the machinery manufacturer of some of his obligations if the machinery in question is intended to be incorporated into a 'complex assembly' for which he is not the prime contractor: it allows such machinery the benefit of free movement, even if all necessary protective devices have not been fitted, provided it cannot function independently in the state in which it is delivered.

Whereas the Member States' responsibility for safety, health and the other aspects covered by the essential requirements on their territory must be recognized in a safeguard clause providing for adequate Community protection procedures;

Whereas the addressees of any decision taken under this Directive must be informed of the reasons for such a decision and the legal remedies open to them;

The first of these recitals introduces the safeguard clause (Article 7), which allows a Member State to limit or prohibit the marketing or use of specific machinery. The second of these recitals prevents arbitrary action by the Member States.

Whereas the measures aimed at the gradual establishment of the internal market must be adopted by 31 December 1992; whereas the internal market consists of an area without internal frontiers within which the free movement of goods, persons, services and capital is guaranteed;

The Machinery Directive falls well within the scope of the Treaty: the second part of this recital is taken almost word for word from Article 8a of the Treaty.

Whereas it is necessary to provide for transitional arrangements enabling Member States to authorize the placing on the market and putting into service of machinery manufactured in accordance with the national rules in force on 31 December 1992;

It would be vain to imagine that on the night of 31 December to 1 January, at the stroke of midnight, the old national regulations will be replaced by the measures transposing the Directive into national law. This recital introduces Article 13, which provides for a gentle transition staggered over two years so that:

- (a) old stock can be sold;
- (b) the notified bodies have time to prepare themselves for their certification tasks;
- (c) manufacturers have time to progressively adapt their products to the requirements of this Directive.

Corpus of the Machinery Directive

Article 1

1. This Directive applies to machinery and lays down the essential health and safety requirements therefor, as defined in Annex I.

It shall also apply to safety components placed on the market separately.

This paragraph establishes the scope of this Directive and sets the legislative basis for Annex I: Essential Health and Safety Requirements relating to the design and construction of machinery and safety components. As noted by Pierre Massimi and Jean-Pierre Van Gheluwe in *Community Legislation on Machinery*, Commission of the European Communities, Brussels, Edition 1993:

When a manufacturer incorporates a safety component into machinery, he takes responsibility for his choice of component. This is not the case when a machinery user buys a safety component to improve the safety of this machinery, as he is not obliged to have particular skills in this field. Safety components sold separately are therefore included in the scope of the Directive.

2. For the purposes of this Directive, 'machinery' means an assembly of linked parts or components, at least one of which moves, with the appropriate actuators, control and power circuits, etc., joined together for a specific application, in particular for the processing, treatment, moving or packaging of a material.

The term 'machinery' also covers an assembly of machines which, in order to achieve the same end, are arranged and controlled so that they function as an integral whole.

'Machinery' also means interchangeable equipment modifying the function of a machine, which is placed on the market for the purpose of being assembled with a machine or a series of different machines or with a tractor by the operator himself in so far as this equipment is not a spare part or a tool.

For the purposes of this Directive, 'safety component' means a component, provided that it is not interchangeable equipment, which the manufacturer or his authorized representative established in the Community places on the market to fulfil a safety function when in use and the failure or malfunctioning of which endangers the safety or health of exposed persons.

The Directive's definition of "machinery" includes the following:

- One of the parts must move from external energy (electricity, battery, fuel, steam, etc.) or stored energy (spring, weight, etc.). Except for lifting equipment, manually operated machinery is excluded.
- Machinery must be for specific application.
- Unfinished machinery is not covered by the Directive.
- Assemblies of machines, robotic machinery, complex installations and automated workshops are covered by the Directive.
- Interchangeable equipment modifying the function of a machine was added with the 1991 amendment. This type of equipment would include a base tractor or diesel engine to which a variety of equipment can be attached. As noted in Community Legislation on Machinery, such equipment is often purchased after the base engine and from a different supplier.

The extension to the Directive's scope was needed "to prevent unscrupulous suppliers from marketing equipment which does not comply with the Directive, under the pretext that the equipment has no independent source of energy and therefore is not covered by the definition given in the first subparagraph of paragraph 2 (no moving parts, the equipment cannot function independently, etc.)." (Community Legislation on Machinery.)

Where a component does not contain movable parts and therefore does not satisfy the definition of "interchangeable equipment modifying the function of a machine," it may not qualify for a CE Mark. Such a component (e.g. a motor) would have to be accompanied by a Declaration of Incorporation so that the end user (e.g. OEM) responsible for placing a CE Mark on his machine will have a Declaration which can be used to verify the conformity of parts for the machine. While a Technical File may not be required for a Declaration of Incorporation, OEM customers may request a file to help achieve CE Marking for their machines. Several motor manufacturers have decided to provide files upon customer requests.

Also, a Declaration of Incorporation will be needed to provide EU customs with a document which indicates product safety conformity in accordance with Council Regulation 339/93. (See Chapter III for a discussion of this point.)

Finally, safety components, other than those subject to EC type-examination, are not listed. It is the manufacturer who declares that a component is a safety component.

3. The following are excluded from the scope of this Directive:

- machinery whose only power source is directly applied manual effort, unless it is a machine used for lifting or lowering loads;
- machinery for medical use used in direct contact with patients;
- special equipment for use in fairgrounds and/or amusement parks;
- steam boilers, tanks and pressure vessels;
- machinery specially designed or put into service for nuclear purposes which, in the event of failure, may result in an emission of radioactivity;
- radioactive sources forming part of a machine;
- firearms;
- storage tanks and pipelines for petrol, diesel fuel, inflammable liquids and dangerous substances;
- means of transport, i.e. vehicles and their trailers intended solely for transporting passengers by air or on road, rail or water networks, as well as means of transport in so far as such means are designed for transporting goods by air, on public road or rail networks or on water. Vehicles used in the mineral extraction industry shall not be excluded;
- seagoing vessels and mobile offshore units together with equipment on board such vessels or units;
- cableways, including funicular railways, for the public or private transportation of persons;
- agricultural and forestry tractors, as defined in Article 1(1) of Council Directive 74/150/EEC of 4 March 1974 on the approximation of the laws of the Member states relating to the type-approval of wheeled agricultural or forestry tractors, as last amended by Directive 88/297/EEC;
- machines specially designed and constructed for military or police purposes;

- lifts which permanently serve specific levels of buildings and constructions, having a car moving between guides which are rigid and inclined at an angle of more than 15 degrees to the horizontal and designed for the transport of:
 - persons
 - persons and goods,
 - goods alone if the car is accessible, that is to say, a person may enter it without difficulty, and fitted with controls situated inside the car or within reach of a person inside;
- means of transport of persons using rack and pinion rail mounted vehicles;