OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 10 March 2005 [1]

I — Introduction

1. The present case concerns two questions referred for a preliminary ruling, by which the Korkein oikeus (Supreme Court) (Finland) seeks from the Court an interpretation of Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery [2] and of Articles 28 EC and 30 EC. The Korkein oikeus seeks in particular to ascertain whether Community law precludes the application of a national provision which requires the importer of machinery manufactured in another Member State to check the safety of that machinery, even though it bears the CE conformity marking, under threat of criminal liability and liability to pay compensation for that importer.

1 — Original language: French.

2 — OJ 1998 L 207, p. 1.

II — Facts and questions referred for a preliminary ruling

2. On 17 November 1998 Mr Pöyry, an employee of Peltitarvike Oy, suffered a serious accident at his workplace while he was using a hydraulic press brake.

3. According to the order, Mr Pöyry's foreman had that day started to change the blades of the hydraulic press brake with the assistance of Mr Pöyry. To that end, the foreman had used the emergency stop button to cut off the current. During this operation, Mr Pöyry had accidentally touched the machine's foot pedal with his foot. Although the machine's electricity supply had been cut off by the emergency stop button, when its foot pedal was touched the machine made a rapid compressing movement causing a serious injury to Mr Pöyry's hands.

4. The machine concerned is an Amada Promecam ITS 2 hydraulic press brake, series number ITS 2 80 25 B 5 0412, manufactured in France by the French company Amada Europe and imported into Finland by the Finnish company Ama Prom, whose

managing director was Mr Yonemoto, which was sold and delivered to Peltitarvike Oy in April 1995. When imported, the machine had borne the CE marking and the certificate issued by the manufacturer ('Certificate of conformity CE relative to working equipments') stated that:

'The undersigned manufacturer Amada Europe [address] certifies that the new below designated equipment: hydraulic press-brake 80.25 type ITS 2 No Series B 50412 complies with the regulations applicable to it:

— European Reference: 89/392/EEC Directive

— European Standards: EN 292-1, EN 292-2, EN 294, EN 394, EN 418, EN 457, EN 60204

The AIF/S, Organisation authorised by the act from the Labour Department on 11/08/1992, has granted a type-tested certificate of conformity CE for the machine of the ITS 2-type under the number 384-090A-0004-11-94 (No. IAF/S), on 08/11/94.'

5. Before the Helsingin käräjäoikeus (Helsinki District Court) (Finland), the Public Prosecutor considered, in his indictment, that the machine was dangerous and contrary to regulations because it had been possible to use it at full speed with the foot pedal, and because its emergency stop equipment had not worked in the manner required. In his view, the instructions for use were too cursory and deficient from the point of view of safe operation, the control panel of the machine was different from the drawing of it in the instructions for use, and the instructions for use were not entirely in Finnish.

6. The Helsingin käräjäoikeus regarded the following facts concerning the characteristics of the machine to be established:

— when the key-operated selection switch was in position 2, the machine could be used at full speed with the foot pedal;

— pressing the machine's emergency stop button cut off only the control voltage, whereby the electrical current supply stayed on and the hydraulic pump stayed running;

— the contacts of the emergency stop button opened as a result of pressing less than a millimetre, but the button then had to be pressed several millimetres more before it locked in the stop position. The emergency stop button was stiff;

— the instructions for use which came with the machine were not entirely in Finnish, the control panel of the machine was different from the drawing in the instructions for use, and the instructions for use were too cursory and deficient as regards the safe use of the machine;

— the machine was regularly used with the foot pedal with open machinery and at high working speed, even though it did not have safety devices for preventing hand injuries other than a two-handed control device which, according to the working methods adopted in Peltitarvike Oy, was not generally used;

— the emergency stop button was also used to stop the machine for the routine change of the tool blades which took place almost daily, for which the emergency stop button was not intended. A safe method would have been to cut off the current or to select a slow working speed by using the key switch on the control panel.

7. According to the Helsingin käräjäoikeus, an importer had to ensure that machines to be sold and used were designed and manufactured in accordance with the rules in force and it was not enough for the machine to bear the CE marking and for the manufacturer to have given a written guarantee of the machine's conformity with requirements. Those elements did not exempt the importer from the duty to observe the safety at work regulations laid down by Article 40 of the työturvallisuuslaki (Finnish Law on safety at work), which lays down an obligation on the importer and seller of a machine to ensure, under threat of criminal liability and liability to pay compensation, that no risk of accident or sickness arises from the machine when used for its intended purpose and that the machine has been designed and manufactured in accordance with the rules and requirements laid down by law.

8. Consequently, the Helsingin käräjäoikeus sentenced Mr Yonemoto to a fine of 30 daily units for the safety at work offence and for negligently causing injury and also ordered Mr Yonemoto to pay compensation to Mr Pöyry.

9. The Helsingin hovioikeus (Court of Appeal, Helsinki) (Finland) upheld the judgment by the Helsingin käräjäoikeus and increased the fine to 50 daily units, whilst reducing slightly the amount of compensation.

10. In his appeal before the Korkein oikeus against the judgment by the Helsingin hovioikeus, Mr Yonemoto disputes that the importer is under an obligation himself to ensure that a machine has been designed and manufactured in accordance with approved standards if the machine has been provided with the CE marking and a declaration of conformity and with instructions for use and maintenance. The manufacturer's CE marking and declaration of conformity were in this case based on a certificate issued by an approved body, according to which the equipment corresponded to the directives and standards in force for the machine in question.

11. In his appeal, Mr Yonemoto also considers that the Finnish authorities or Finnish courts may not, contrary to Article 28 EC, require the importer to have checks made in Finland on a machine type-approved in another Member State and bearing the CE marking. In his view, the importer's obligations are limited solely to making sure that the manufacturer has had the machine EU-type-approved by an approved body, provided the machine with instructions for use and maintenance and the CE marking, and issued a declaration of conformity.

12. In those circumstances, the Korkein oikeus decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) What sort of limits does Community law, having regard in particular to Council Directive 98/37 ... and Articles 28 EC and 30 EC, lay down for the obligations which may be imposed in national law on the importer (or other distributor) of a machine bearing the CE marking in relation to the characteristics of the machine which concern safety

— before the onward sale of the machine and

— afterwards?

(2) Clarification is hoped for in particular as to:

(a) the extent to which and the conditions under which the obligations of action or supervision in relation to

the safety of the machine imposed on the importer (or other distributor) of a machine bearing the CE marking may be regarded as permitted from the point of view of Community law;

(b) whether and in what way the assessment in relation to Community law of the obligations imposed on the importer (or other distributor) depends on what sort of defects relating to the safety of the machine are concerned;

(c) whether, and if so to what extent, the provisions of Article 40 of the työturvallisuuslaki (Law on safety at work) ... conflict with Community law, having regard to the consequences as regards criminal law and the law on compensation, ... which derive from failure to comply with them.'

III — Legal framework

A — *Community law*

13. Directive 98/37 lays down the essential health and safety requirements that machinery must satisfy. Directive 98/37 replaced and consolidated Directive 89/392/EEC. [3]

14. Article 2 of Directive 98/37 provides:

'1. Member States shall take all appropriate measures to ensure that machinery or safety components covered by this Directive may be placed on the market and put into service only if they do not endanger the health or safety of persons and, where appropriate, domestic animals or property, when properly installed and maintained and used for their intended purpose.

2. This Directive shall not affect Member States' entitlement to lay down, in due observance of the Treaty, such requirements as they may deem necessary to ensure that persons and in particular workers are protected when using the machinery or safety components in question, provided that

3 — Council directive of 14 June 1989 on the approximation of the laws of the Member States relating to machinery (OJ 1989 L 183, p. 9), amended by Council Directive 91/368/EEC of 20 June 1991 (OJ 1991 L 198, p. 16), Council Directive 93/44/EEC of 14 June 1993 (OJ 1993 L 175, p. 12) and Council Directive 93/68/EEC of 22 July 1993 (OJ 1993 L 220, p. 19).

this does not mean that the machinery or safety components are modified in a way not specified in the Directive.

...'

15. Under Article 3 of the directive, machinery and safety components covered by the directive must satisfy the essential health and safety requirements set out in Annex I to the directive.

16. Article 4 of Directive 98/37 states:

'1. Member States shall not prohibit, restrict or impede the placing on the market and putting into service in their territory of machinery and safety components which comply with this Directive.

...'

17. Article 5 of the directive provides:

'1. Member States shall regard the following as conforming to all the provisions of this Directive, including the procedures for checking the conformity provided for in Chapter II:

— machinery bearing the CE marking and accompanied by the EC declaration of conformity referred to in Annex II, point A,

— safety components accompanied by the EC declaration of conformity referred to in Annex II, point C.

In the absence of harmonised standards, Member States shall take any steps they deem necessary to bring to the attention of the parties concerned the existing national technical standards and specifications which are regarded as important or relevant to the proper implementation of the essential safety and health requirements in Annex I.

2. Where a national standard transposing a harmonised standard, the reference for which has been published in the *Official Journal of the European Communities*, covers one or more of the essential safety requirements, machinery or safety components constructed in accordance with this standard shall be presumed to comply with the relevant essential requirements.

Member States shall publish the references of national standards transposing harmonised standards.

...'

18. Article 7 of Directive 98/37 provides:

'1. Where a Member State ascertains that:

— machinery bearing the CE marking, or

— safety components accompanied by the EC declaration of conformity,

— used in accordance with their intended purpose are liable to endanger the safety of persons, and, where appropriate, domestic animals or property, it shall take all appropriate measures to withdraw such machinery or safety components from the market, to prohibit the placing on the market, putting into service or use thereof, or to restrict free movement thereof.

Member States shall immediately inform the Commission of any such measure, indicating the reason for its decision ... .

2. The Commission shall enter into consultation with the parties concerned without delay. Where the Commission considers, after this consultation, that the measure is justified, it shall immediately so inform the Member State which took the initiative and the other Member States. Where the Commission considers, after this consultation, that the action is unjustified, it shall immediately so inform the Member State which took the initiative and the manufacturer or his authorised representative established within the Community. Where the decision referred to in paragraph 1 is based on a

shortcoming in the standards, and where the Member State at the origin of the decision maintains its position, the Commission shall immediately inform the committee in order to initiate the procedures referred to in Article 6(1).

3. Where:

— machinery which does not comply bears the CE marking,

— a safety component which does not comply is accompanied by an EC declaration of conformity

— the competent Member State shall take appropriate action against whomsoever has affixed the marking or drawn up the declaration and shall so inform the Commission and other Member States.

...'

19. Article 8 of Directive 98/37 provides that, as a general rule, the manufacturer or his authorised representative established in the Community must assess the conformity of machinery manufactured in the Community. To that end, he must draw up an 'EC' declaration of conformity and affix to the machine the 'CE' marking. He must also draw up the documentation file provided for in Annex V to the directive. For certain types of machinery having a higher risk factor, which are set out in Annex IV to the directive and include press brakes, provision is made for a stricter conformity assessment procedure involving participation by the body notified in accordance with Annex VII to the directive.

20. Point 1.7.3 of Annex I to Directive 98/37 provides that all machinery must be marked legibly and indelibly at least with the name and address of the manufacturer, the 'CE' marking, the designation of series or type, the serial number, if any, and the year of construction. Machinery must also bear full information relevant to its type and essential to its safe use (e.g. maximum speed of certain rotating parts etc.).

21. Under point 1.7.4 of Annex I to Directive 98/37:

— all machinery must be accompanied by instructions including at least certain information;

— the instructions must be drawn up in one of the Community languages by the manufacturer or his authorised representative established in the Community and, on being put into service, all machinery must be accompanied by the original instructions and a translation of the instructions in the language or languages of the country in which the machinery is to be used; this translation must be done either by the manufacturer, by his authorised representative established in the Community or by the person introducing the machinery into the language area in question;

— the instructions must contain the drawings and diagrams necessary for putting into service, maintenance, inspection, checking of correct operation and, where appropriate, repair of the machinery, and all useful instructions in particular with regard to safety;

— any literature describing the machinery must not contradict the instructions as regards safety aspects.

22. Point A of Annex II to Directive 98/37, which concerns the EC declaration of conformity for machinery, states that that declaration must contain certain information, including the name and address of the manufacturer or his authorised representative established in the Community, a description of the machinery, all relevant provisions complied with by the machinery and, where appropriate, the name and address of the notified body and the number of the EC type-examination certificate or of the notified body to which the file has been forwarded in accordance with Article 8 of the directive.

23. Point A of Annex II to the directive further provides that the EC declaration of conformity must be drawn up in the same language as the original instructions, must be either typewritten or handwritten in block capitals and must be accompanied by a translation in one of the official languages of the country in which the machinery is to be used. This translation must be done in accordance with the same conditions as for the translation of the instructions.

24. Annex V to Directive 98/37 defines the content of the documentation file, provided for in Article 8 of the directive, which the manufacturer or his authorised representative must draw up and retain in such a way that it will remain available on his premises for any inspection purposes. However, point 4(a) of that annex provides that the documentation referred to in point 3 need not permanently exist in a material manner, but it must be possible to assemble it and 'make it available within a period of time commensurate with its importance'. Under point 4(c) of the annex, the documentation must be drawn up in one of the official languages of the Community, with the exception of the instructions for the machinery.

B — *National legal framework*

25. As far as the national legal framework is concerned, it is clear from the description given by the referring court that the Finnish Law on safety at work includes provisions that transpose Directive 89/391/EEC. [4]

26. That law also contains provisions which impose obligations on persons other than the employer. The first and second subparagraphs of Article 40 which were applied in the present case read as follows:

'The manufacturer, importer or seller of a machine, tool or other technical device or the person who places such an object on the market or brings it into use must each ensure that:

(1) when the object is placed on the market in the country or delivered for use, it does not give rise to a risk of accident or sickness when used for the intended purpose;

(2) the object is designed, manufactured and if need be checked in accordance with separate provisions of laws or regulations; and

(3) the object is accompanied by the safety devices necessary for its ordinary use and the necessary markings and other declarations of its conformity with requirements.

Appropriate instructions for its installation, use and maintenance must be transmitted with the object. They must also include if need be instructions on cleaning, usual repairs and the rules and actions in usual breakdown situations. Those works must also be taken into account in assessing the need for safety devices.'

27. Failure to comply with those provisions entails consequences in respect of

4 — Council directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p 1).

criminal liability and liability to pay compensation.

IV — Assessment

A — *Preliminary observations*

28. Directive 98/37 is one of the group of directives that take a 'new approach' to the approximation of laws. It lays down essential health and safety requirements relating to the design and construction of machinery and safety components and the details relating to the conformity of machinery with respect to assessment, declaration and marking.

29. According to the seventh recital, Directive 98/37 seeks to ensure free movement on the market of machinery without lowering existing justified levels of protection in the Member States. The directive lays down, with regard to the design and construction of machinery, provisions that are essential for a safer working environment, as well as specific provisions concerning the prevention of certain risks to which workers can be exposed at work and provisions on the organisation of safety of workers in the working environment. It follows from the eighth recital that Directive 98/37 is intended to eliminate obstacles to free movement within the Community resulting from disparities in national legislation relating to the marketing of products.

30. Both aspects are set out in greater detail in Articles 3 and 4 of Directive 98/37. Under Article 3, machinery and safety components covered by the directive must satisfy the essential health and safety requirements set out in Annex I to the directive. Article 4 provides that Member States may not prohibit, restrict or impede the placing on the market and putting into service in their territory of machinery and safety components which comply with the directive.

31. Compliance with the provisions of the directive must be certified before machinery is placed on the market by an EC declaration of conformity and the affixing on the machine of a CE marking. The conformity assessment procedures, which vary according to the type of machinery, are specified in Article 8 of the directive.

32. The conformity assessment is in principle carried out by the manufacturer himself or his authorised representative established

in the Community. Where the machinery is imported from a third country, under Article 8(7) of Directive 98/37 the obligations relating to the conformity declaration and marking fall to any person placing the machinery on the market in the Community. In this case, conformity checks may therefore be the responsibility of the importer of the machinery into the Community. For obvious reasons, such an obligation does not apply to someone who imports machinery into one Member State from another Member State, even though he is classified as an 'importer' under national legislation.

33. Under Article 8(2)(a) of Directive 98/37, it is for the manufacturer, without any third-party involvement, to conduct the assessment of the conformity of machinery manufactured in the Community. He must draw up the file required under Annex V to the directive and ensure that the means he has used to satisfy the essential requirements are indicated in the file and that the file can be made available to the national authorities on request.

34. However, a stricter conformity assessment procedure is laid down for certain types of machinery having a higher risk factor, an exhaustive list of which is set out in Annex IV to Directive 98/37. Furthermore, under Article 8(2)(b) of the directive, the notified body must conduct the EC type-examination on the basis of the example of the machine in accordance with Annex VI to the directive. [5]

35. For cases where the machinery referred to in Annex IV has been manufactured in accordance with harmonised standards relating to all the essential safety requirements under Article 5(2) of Directive 98/37, Article 8(2)(c) of the directive provides for less strict optional procedures.

36. In the case that forms the basis for the main proceedings, the machinery falls within the scope of Annex IV(A)(9) to Directive 98/37, and the conformity assessment procedure involving the notified body therefore applies. When the model of press brake at issue in the main proceedings was placed on the market, harmonised standards laying down technical specifications for this type of machinery did not yet exist. [6] This machinery was therefore required to undergo the EC type-examination. According to the order for reference, the notified body had checked and approved this machinery.

5 — The notified body must be designated by the Member States. It must satisfy the minimum criteria for the notification of bodies set out in Annex VII to Directive 98/37.

6 — The harmonised standard for hydraulic press brakes (EN 12622) was only adopted in September 2001.

37. Under Articles 7 and 10 of Directive 98/37, if it is ascertained that machinery bearing the CE marking is liable to endanger safety, the Member States and the manufacturer or his authorised representative established within the Community have certain obligations with a view to reducing or even eliminating the possible danger.

38. Directive 98/37 has three advantages over 'traditional' directives for harmonising technical standards. It is more flexible, since it allows the best possible safety protection solutions to be adopted, based on new technologies, without any need for prior intervention by the legislator. The directive provides for the establishment, in one fell swoop, of freedom of movement for machinery bearing the CE marking, whilst the Member States may no longer prohibit, restrict or impede the placing on the market or putting into service of such machinery in their territory. Ultimately, provided it is properly applied, the directive offers a high level of health protection.

39. In the light of the above considerations, Directive 98/37 fully harmonises the essential health and safety requirements for machinery. The same holds for the conformity assessment procedure. The national rules governing the essential health or safety requirements for machinery, including rules laying down obligations relating to the conformity assessment, must therefore be compatible with the directive.[7]

40. The proper functioning of the system established by Directive 98/37 presupposes a general obligation of diligence, not only for manufacturers of machinery, whose specific obligations have been laid down in the directive and the annexes thereto, but also for economic operators further down the distribution chain, such as importers, distributors and the end-users of the machinery. They must ensure that operators further up the chain have duly satisfied their obligations under the directive. If they fail to exercise such diligence, the consequences of defects or errors committed further up the chain could have repercussions right up to the final stage of use of the machinery, with all the ensuing risks to employees' health and safety. In this regard, the national legal order may impose certain specific obligations on importers of machinery bearing the CE marking in national territory and on other distributors.

7 — Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 44.

41. In the present case, the referring court raises the question in particular of the extent of the obligations imposed on the importer or the distributor and the degree to which they may be held liable under national legislation for safety defects.

42. In the main proceedings, it is established that, through the measures laid down in Article 10 of Directive 98/37, the French manufacturer intended to satisfy his obligations with respect to marking and conformity. It is also established that, despite the CE marking and the EC declaration of conformity, the machinery did not comply with the provisions of the directive. In these circumstances, having ascertained the danger to the safety of persons, the Republic of Finland should have taken all appropriate measures to withdraw the machinery in question from the market in accordance with Article 7 of the directive.

B — *The obligations to which importers and distributors may be subject under national legislation*

43. If we accept that, in principle, importers or distributors may be subject to certain obligations under Directive 98/37 and if we also recognise that those obligations can be defined and reinforced by penalties under civil and criminal law in national legislation, the extent of those obligations must be inferred, first of all, from the wording and the scheme of the directive and, secondly, from the activities that the importer and the distributor normally perform in the distribution chain.

44. In that regard, it is evident that Directive 98/37, first of all, renders the manufacturer liable for ensuring that the machinery that he produces satisfies essential health and safety requirements and that the procedure for checking compliance with these requirements is observed.

45. It would therefore be contrary to Directive 98/37 to make the importer or the distributor of machinery whose manufacturer has declared that the machinery complies with the requirements of the directive subject to an obligation to check that that product complies with these essential requirements. Indeed, they would not have the technical and specific knowledge to satisfy such an obligation, which the manufacturer, as the constructor, does possess. The fact that importers and distributors are subject to this obligation under national legislation would therefore amount to a serious impediment to the free movement

of machinery in the common market, the elimination of which is the very objective of Directive 98/37.

46. In these circumstances, the Commission was therefore right to refer to the judgment in *Wurmser and Norlaine*, [8] where the Court ruled that the obligation requiring importers to verify the conformity of the imported products with the rules in force, and imposing criminal liability for failure to do so, can be compatible with Articles 28 EC and 30 EC only if the importer is able to satisfy this obligation by producing a certificate issued by the authorities of the Member State of production or other attestations providing a like degree of assurance.

47. This decision by the Court dates from a time when there were no general rules applicable to the products in question at Community level. Since such Community rules do apply in the present case, it would be contrary to the very logic of Community law on the free movement of goods if it were presumed that the importer (or distributor) were subject to further-reaching obligations than those that the Court regarded as compatible with the EC Treaty in a situation where there were not yet any common standards.

48. It follows that, unless Directive 98/37 itself provides otherwise, the obligations laid down by national legislation cannot go further than permitted by the limits defined by the Court in *Wurmser and Norlaine.* [9] Any national provision that places on the importer or the distributor the obligation to check themselves that machinery complies with safety requirements must therefore be regarded as contrary to Community law.

49. Subject to those limits, national legislation may impose certain obligations on importers and distributors, provided they are not incompatible with the role normally fulfilled by these economic operators in the distribution chain.

50. Under Article 2 of Directive 98/37, the Member States are under an obligation to supervise the market. To that end, they may impose on economic operators obligations to cooperate, such as assistance with obtaining information from the manufacturer or his authorised representative in connection with checks that machinery complies with the provisions of the directive. These obligations

8 — Case 25/88 [1989] ECR 1105, paragraphs 18 and 19.

9 — Cited above in footnote 8.

to cooperate may also include notification of the competent authorities of any safety incident involving the machinery supplied by economic operators in so far as they have been informed of such an incident.

51. Moreover, in their professional activities, importers and distributors are also generally required by rules of national civil and commercial law to show due diligence having regard to the legal requirements that are specifically applicable to the products in which they trade. More specifically, as regards machinery that falls within the scope of Directive 98/37, they can be expected to know what information must accompany the product and be provided in the official language(s) of the Member State in question and what signs clearly indicate that the product does not comply or that it no longer complies with the safety requirements that it satisfied when it was placed on the market. Consequently, they may not supply machinery that they know or should know, on the basis of the information available to them and as professional operators, did not comply with the applicable legal requirements.

52. The general obligation of diligence incumbent on the distributor or the importer may also give rise to more specific obligations in relation to certain categories of sensitive products in connection with storage or transportation.

53. I have some reservations with regard to provisions of national law that give rise to liability on the part of the importer or the distributor in cases where they could not rely on the veracity of the declaration of conformity. Provisions with this scope are liable to infringe the twofold limitation that has just been defined above in points 48 and 49, either because they entail the hidden obligation to check that machinery complies with essential requirements or because they extend the manufacturer's liability under Directive 98/37 to links further down the distribution chain. In both cases, impediments to freedom of movement for machinery might arise, in contravention of the main objective of the directive.

54. Lastly, it should be pointed out that, as the internal market stands at present, national legislation can no longer draw distinctions in respect of obligations to cooperate or to show due diligence depending on whether the operator imports machinery from another Member State or whether the operator appears at another level of the distribution chain. In particular where large-scale equipment is concerned, distribution networks no longer coincide with the territorial delimitation of the Member States.

V — Conclusion

55. In the light of the foregoing, I propose that the Court give the following answers to the questions referred for a preliminary ruling by the Korkein oikeus.

(1) The provisions of Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery preclude the application of national provisions under which:

— the importer or the distributor of machinery provided with the CE marking and an EC declaration of conformity must ensure that that machinery satisfies the essential requirements laid down in the directive;

— the importer or the distributor of machinery must comply with the obligations imposed on the manufacturer of the machinery under that directive.

(2) On the other hand, the provisions of Directive 98/37 do not preclude the application of national provisions requiring the importer or the distributor, under threat of criminal liability or liability to pay compensation:

— to ensure that the machinery bears the CE marking;

— to ensure that the conformity assessment procedure has been conducted by the manufacturer or by his authorised representative;

— to obtain the signed EC declaration of conformity and to ensure that it actually relates to the model of machinery in question and contains the required information pertaining to that machinery;

— to ensure that the machinery is accompanied by the EC declaration of conformity.

(3) In cases where, upon import, machinery is not accompanied by the EC declaration of conformity in one of the languages of the country in which the machinery is to be used, the professional diligence that must be exercised by the importer or the distributor means that the person introducing the machinery into the language area in question must comply with that obligation. This also applies, where appropriate, to the instructions.

(4) The provisions of Directive 98/37 further do not preclude in principle the liability of the importer or the distributor where they knew or should have known that the machinery did not comply with the applicable essential requirements, provided that this necessary diligence does not amount to making them subject to an obligation to check themselves that machinery complies with those essential requirements or with other obligations that are imposed on the manufacturer under the directive.