JUDGMENT OF THE COURT (Third Chamber)

21 October 2010 *

In Case C-185/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Rechtbank 's-Gravenhage (Netherlands), made by decision of 23 April 2008, received at the Court on 29 April 2008, in the proceedings

Latchways plc,

Eurosafe Solutions BV

v

Kedge Safety Systems BV,

Consolidated Nederland BV

* Language of the case: Dutch.

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby (Rapporteur), E. Juhász, G. Arestis and T. von Danwitz, Judges,

Advocate General: V. Trstenjak,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 25 February 2010,

after considering the observations submitted on behalf of:

— Latchways plc and Eurosafe Solutions BV, by A. Mak, advocaat,

— Kedge Safety Systems BV and Consolidated Nederland BV, by E. Schelhaas, advocaat,

— the Netherlands Government, by C. Wissels, acting as Agent,

— the Belgian Government, by J.-C. Halleux, acting as Agent,

— the European Commission, by S. Schønberg and G. Zavvos, acting as Agents, and by F. Tuytschaever, advocaat,

after hearing the Opinion of the Advocate General at the sitting on 28 April 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284 p. 1) ('Directive 89/106'), of Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment (OJ 1989 L 399, p. 18), as amended by Regulation No 1882/2003 ('Directive 89/686'), and of Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives (OJ 1993 L 220, p. 23).

2 The reference has been made in proceedings between Latchways plc and Eurosafe Solutions BV ('Latchways' and 'Eurosafe Solutions', respectively) on the one hand, and Kedge Safety Systems BV and Consolidated Nederland BV ('Kedge Safety Systems' and'Consolidated Nederland', respectively) on the other, concerning the issue whether the anchor devices for protection against falls from a height when working on roofs manufactured by Latchways and those manufactured by Kedge Safety Systems are reliable, and whether the CE marking can or must be affixed to those devices.

Legal context

European Union legislation

Directive 89/106

3 Article 1 of Directive 89/106 is worded as follows:

'1. This Directive shall apply to construction products in so far as the essential requirements in respect of construction works under Article 3(1) relate to them.

2. For the purposes of this Directive, "construction product" means any product which is produced for incorporation in a permanent manner in construction works, including both buildings and civil engineering works.

…'

4 Article 2 of Directive 89/106 states:

'1. Member States shall take all necessary measures to ensure that the [construction] products referred to in Article 1, which are intended for use in [construction] works, may be placed on the market only if they are fit for this intended use, that is to say they have such characteristics that the [construction] works in which they are to be incorporated, assembled, applied or installed, can, if properly designed and built, satisfy the essential requirements referred to in Article 3 when and where such works are subject to regulations containing such requirements.

2. (a) When [construction] products are subject to other Directives with regard to other aspects and which also provide for the affixing of the CE conformity marking, referred to in Article 4(2), the latter shall indicate that the [construction] products are also presumed to conform to the provisions of those other Directives.

…'

5 Article 3 of Directive 89/106 is worded as follows:

‘1. The essential requirements applicable to [construction] works which may influence the technical characteristics of a [construction] product are set out in terms of objectives in Annex I. …

…

3. The essential requirements shall be given concrete form in documents (interpretative documents) for the creation of the necessary links between the essential requirements laid down in paragraph 1 and the standardisation mandates, mandates for guidelines for European technical approval or the recognition of other technical specifications within the meaning of Articles 4 and 5.’

6 Article 4 of Directive 89/106 provides:

‘1. Standards and technical approvals shall, for the purposes of this Directive, be referred to as “technical specifications”.

For the purposes of this Directive, harmonised standards shall be the technical specifications adopted by [the European Committee for Standardisation (CEN)], [the European Committee for Electrotechnical Standardisation (CENELEC)] or both, on mandates given by the Commission in conformity with [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 (OJ 1983 L 109, p. 8)] on the basis of an opinion given by the Committee referred to in Article 19 and in accordance with

the general provisions concerning cooperation between the Commission and these two bodies signed on 13 November 1984.

2. Member States shall presume that [construction] products are fit for use if they enable [construction] works in which they are employed, provided the latter are properly designed and built, to satisfy the essential requirements referred to in Article 3 where such products bear the CE marking indicating that they satisfy all the provisions of this Directive, including the conformity assessment procedures laid down in Chapter V and the procedure laid down in Chapter III. The CE marking shall indicate:

(a) that they comply with the relevant national standards transposing the harmonised standards, references to which have been published in the *Official Journal of the European Communities*. Member States shall publish the references of these national standards[;]

(b) that they comply with a European technical approval, delivered according to the procedure of Chapter III,

or

(c) that they comply with the national technical specifications referred to in paragraph 3 inasmuch as harmonised specifications do not exist; a list of these national specifications shall be drawn up according to the procedure in Article 5(2).

…'

7 Article 7 of Directive 89/106 states as follows:

‘1. In order to ensure the quality of harmonised standards for [construction] products, the standards shall be established by the European standards organisations on the basis of mandates given by the Commission …

2. The resulting standards shall be expressed as far as practicable in [construction] product performance terms, having regard to the interpretative documents.

3. Once the standards have been established by the European standards organisations, the Commission shall publish the references of the standards in the“C” series of the *Official Journal of the European Communities*.’

8 Point 4 of Annex I to Directive 89/106 is worded as follows:

‘4. Safety in use

The construction work must be designed and built in such a way that it does not present unacceptable risks of accidents in service or in operation such as slipping, falling, collision, burns, electrocution, injury from explosion.’

Directive 89/686

9 Article 1 of Directive 89/686 provides:

'1. This Directive applies to personal protective equipment, hereinafter referred to as "PPE".

It lays down the conditions governing its placing on the market and free movement within the Community and the basic safety requirements which PPE must satisfy in order to ensure the health protection and safety of users.

2. For the purposes of this Directive, PPE shall mean any device or appliance designed to be worn or held by an individual for protection against one or more health and safety hazards.

PPE shall also cover:

(a) a unit constituted by several devices or appliances which have been integrally combined by the manufacturer for the protection of an individual against one or more potentially simultaneous risks;

(b) a protective device or appliance combined, separably or inseparably, with personal non-protective equipment worn or held by an individual for the execution of a specific activity;

(c) interchangeable PPE components which are essential to its satisfactory functioning and used exclusively for such equipment.

3. Any system placed on the market in conjunction with PPE for its connection to another external, additional device shall be regarded as an integral part of that equipment even if the system is not intended to be worn or held permanently by the user for the entire period of risk exposure.

…'

10 Article 3 of Directive 89/686 states:

'The PPE referred to in Article 1 must satisfy the basic health and safety requirements laid down in Annex II.'

11 Article 4(1) of Directive 89/686 is worded as follows:

'Member States may not prohibit, restrict or hinder the placing on the market of PPE or PPE components which comply with the provisions of this Directive and which bear the CE marking attesting their conformity to all the provisions of this Directive, including the certification procedures in Chapter II.'

12 Point 3.1.2.2 of Annex II to Directive 89/686 provides:

'Prevention of falls from a height

PPE designed to prevent falls from a height or their effects must incorporate a body harness and an attachment system which can be connected to a reliable anchorage point. It must be designed so that under the foreseeable conditions of use the vertical drop of the user is minimised to prevent collision with obstacles and the braking force does not, however, attain the threshold value at which physical injury or the tearing or rupture of any PPE component which might cause the user to fall can be expected to occur.

It must also ensure that after braking the user is maintained in a correct position in which he may await help if necessary.

The manufacturer's notes must specify in particular all relevant information relating to:

— the characteristics required for the reliable anchorage point and the necessary minimum clearance below the user,

— the proper way of putting on the body harness and of connecting the attachment system to the reliable anchorage point.'

Decision 93/465

13 Point I B of the Annex to Decision 93/465 provides:

'The principal guidelines for the affixing and use of the CE marking are the following:

(a) The CE marking symbolises conformity to all the obligations incumbent on manufacturers for the product by virtue of the [European Union] directives providing for its affixing.

…

(b) The CE marking affixed to industrial products symbolises the fact that the natural or legal person having affixed or been responsible for the affixing of the said marking has verified that the product conforms to all the [European Union] total harmonisation provisions which apply to it and has been the subject of the appropriate conformity evaluation procedures.

…

(e) Any industrial product covered by the technical harmonisation directives based on the principles of the global approach must bear the CE marking, save where the specific directives provide otherwise; such exceptions constitute derogations not from the marking requirement but from the administrative procedures for

conformity evaluation, which may in certain cases be considered too cumbersome. Appropriate grounds must accordingly be given for any exception to or derogation from the marking requirement.

The CE marking is the only marking which certifies that the industrial products conform to the directives based on the principles of the global approach.

Member States must refrain from introducing into their national regulations any reference to a conformity marking other than the CE marking in connection with conformity to all the provisions contained in the directives on CE marking.

…

(i) The affixing for any other marking liable to deceive third parties as to the meaning and form of the CE marking must be prohibited.

…

(l) Member States must take all provisions of national law necessary to exclude any possibility of confusion and to prevent abuse of the CE marking.

"Without prejudice to the provisions in the directive concerned relating to the application of the safeguard clause, where a Member State establishes that the CE marking has been affixed unduly, the manufacturer, his agent or, exceptionally,

where the specific directives so provide, the person responsible for placing the product in question on the [European Union] market is obliged to make the product comply and to end the infringement under conditions imposed by the Member State. Where non-compliance continues, the Member State must take all appropriate measures to restrict or prohibit the placing on the market of the product in question or to ensure that it is withdrawn from the market in accordance with the procedures laid down in the safeguard clauses'".

The EN 795 standard and publication of the references thereof in the Official Journal of the European Communities

14 The EN 795 standard ('EN 795'), entitled 'Protection against falls from a height – Anchor devices – Requirements and testing', was prepared under a mandate given to CEN by the Commission and the European Free Trade Association. Points 4.2 and 4.3.1.1 of EN 795 set out the technical requirements to be satisfied by Class A 1 anchor devices and are intended to support the requirements set out at point 3.1.2.2 of Annex II to Directive 89/686.

15 Point 3.13 of EN 795 is worded as follows:

'3.13 Classes

3.13.1 Class A

3.13.1.1 Class A 1

Class A 1 comprises structural anchors designed to be secured to vertical, horizontal and inclined surfaces – e.g. walls, columns, lintels.

…'

16 By Commission Communication 2000/C 40/05 in the framework of the implementation of Directive 89/686, amended by Directives 93/68/EEC, 93/95/EEC and 96/58/EC (OJ 2000 C 40, p. 7), the title and reference of EN 795 were published in the *Official Journal of the European Communities* together with a warning that '[t]his publication does not concern the equipment described in classes A (structural anchors) … in respect of which there shall be no presumption of conformity with the provisions of Directive 89/686/EEC'.

National legislation

17 Directive 89/106 was transposed in the Netherlands by the Construction Decree (Bouwbesluit) of 16 December 1991 (*Staatsblad* 1991, No 680), which has been replaced since 1 January 2003 by the Construction Decree of 2003 (Bouwbesluit 2003, *Staatsblad* 2002, No 410), subsequently amended several times.

18 Directive 89/686 was transposed in the Netherlands by the Law on Commodities Decree on Personal Protective Equipment (Warenwetbesluit persoonlijke beschermingsmiddelen, *Staatsblad* 1992, No 396), enacted by the Netherlands law governing, inter alia, the quality and safety of goods, and subsequently amended several times.

19 EN 795 was implemented in the Netherlands by the NEN 795 standard.

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 Latchways, a competitor of Kedge Safety Systems, produces and markets Mansafe, an anchor device which is secured to a roof by means of screws applied to the roof construction under the roof cladding. Latchways affixes the CE marking to the device under EN 795.

21 Kedge Safety Systems produces and markets Kedge Safety, an anchor device which is secured to a roof by the attachment of a rosette component to the bituminous roof cladding. It claims that the device complies with EN 795.

22 In 2004 and 2005, Consolidated Nederland, a purchaser of Kedge Safety, twice had that device tested by an approved body empowered to certify PPE under the harmonised standards. On both occasions, the approved body found that Kedge Safety complied in certain respects with EN 795 in relation to Class A 1 devices, but explicitly stated that the tests carried out did not support a CE marking or a declaration of conformity with Directive 89/686.

23 In 2005, Latchways had Kedge Safety tested by two other approved bodies. Both came to the conclusion that Kedge Safety had, in part, failed the test laid down by EN 795 in so far as it became detached in particular heat conditions when a static force of 5.68 kN was applied, whereas point 4.3.1.1 of EN 795 stipulates a force of at least 10 kN.

24 In interlocutory proceedings, Latchways and Eurosafe Solutions, the Netherlands distributor of Mansafe, obtained an injunction from the Rechtbank Doordrecht (District Court, Dordrecht) prohibiting Kedge Safety Systems from stating that its anchor device complies with EN 795 except when used on new roofs and on days which are not sunny, and requiring Kedge Safety Systems to inform its customers accordingly.

25 In the main proceedings, Latchways and Eurosafe Solutions seek an injunction prohibiting the marketing of Kedge Safety without a CE marking on the ground that it is a product covered by Directive 89/686. Alternatively, they seek an injunction prohibiting Kedge Safety Systems and Consolidated Nederland from marketing Kedge Safety for use on any roofing, from claiming that Kedge Safety complies with EN 795 and from stating that the product is reliable.

26 By way of counterclaim, Kedge Safety Systems and Consolidated Nederland seek an injunction prohibiting Latchways and Eurosafe Solutions from affixing the CE marking to Mansafe, from referring to EN 795 and from continuing to market that product. In support of their claims, Kedge Safety Systems and Consolidated Nederland contend that Classes A, C and D of EN 795 are covered by Directive 89/106 and that, therefore, Latchways and Eurosafe Solutions cannot claim a declaration of conformity in respect of Mansafe under Directive 89/686.

27 The Rechtbank 's-Gravenhage (District Court, The Hague) had certain doubts in respect of the directives applicable to the devices at issue, the procedures for using the CE marking and the nature of EN 795. Consequently, by interlocutory judgment of 18 July 2007, it invited the parties to the main proceedings to comment on the questions which it was proposing to refer to the Court of Justice.

28 Having taken note of the observations of the parties to the main proceedings, the Rechtbank 's-Gravenhage decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Do Class A 1 anchor devices within the meaning of European standard EN 795 (which are intended to remain in position permanently) fall exclusively within the scope of Directive 89/106…?

2. If the answer to Question 1 is in the negative, do these anchor devices – possibly, in that case, as an item of personal protective equipment – fall within the scope of Directive 89/686…?

3. If the answers to Questions 1 and 2 are in the negative, is it necessary, in the light of Annex II to Directive 89/686…, in particular point 3.1.2.2 thereof, to assess whether [PPE] that is covered by that directive by itself fulfils the basic requirements of that directive, or is it necessary also to consider whether the anchor device to which the [PPE] concerned is connected is safe in the foreseeable conditions of use, as defined in Annex II?

4. Does Community law and, in particular, [Decision] 93/465… allow for the option of applying a CE marking to an anchor device as referred to in Question 1 as evidence of compliance with Directive 89/686… and/or Directive 89/106…?

5. If the answer to Question 4 is either wholly or partly in the affirmative, what procedure(s) should be followed in determining compliance in respect of Directive 89/686… and/or Directive 89/106…?

6. Is European standard EN 795 to be regarded – in respect of anchor devices as referred to in Question 1 – as [European Union] law to be interpreted by the Court of Justice …?

7. If the answer to Question 6 is in the affirmative, is European standard EN 795 to be interpreted as meaning that the anchor device referred to in Question 1 must be tested (by a Notified Body) under foreseeable conditions of use (such as external temperatures, weather conditions, ageing of the anchor device itself and/or of the materials by which it is attached, or the roof construction)?

8. If the answer to Question 7 is in the affirmative, must the tests be carried out in accordance with user restrictions (referred to in the instructions for use)?'

Consideration of the questions referred

29 As a preliminary point, it must be oberved that the first, second and third questions concern the applicability of Directives 89/106 and 89/686 to Class A 1 anchor devices as defined in EN 795. The answer to those questions necessarily means that the Court must interpret that standard, the legal nature and interpretation of which are covered

by the sixth, seventh and eighth questions. Consequently, it is necessary to rule, first of all, on the latter questions.

The sixth, seventh and eighth questions concerning the legal nature of EN 795

30 By its sixth, seventh and eighth questions, the national court asks, in essence, whether the provisions and requirements of EN 795 in relation to Class A 1 anchor devices are covered by European Union law and, accordingly, are capable of being interpreted by the Court of Justice; in the event of an affirmative answer, it asks the Court to interpret them.

31 In that regard, it must be borne in mind that, in the context of the approximation of laws, regulations and administrative provisions of the Member States relating to products, giving rise, inter alia, to Directives 89/106 and 89/686, the institutions of the European Union are to adopt directives defining the basic requirements to be satisfied by the products which fall within their scope. The Commission goes on to give a mandate to European standards organisations, in accordance with the procedure laid down by Directive 83/189, to draw up technical specifications specifying the basic requirements set out in those directives. Once the standards have been established by those organisations, the Commission publishes the references of those standards in the *Official Journal of the European Union.* Such publication has the effect of conferring on products which are covered by a technical harmonisation directive, and which satisfy the technical requirements defined in the harmonised standards relating to those products, the benefit of a presumption of conformity with the basic requirements of the directive concerned.

32 In the present case, it is apparent from EN 795 that that standard was prepared under a mandate given by the Commission to CEN under point 3.1.2.2 of Annex II

to Directive 89/686. Subsequently, the references of that standard were published in the *Official Journal of the European Communities* in Communication 2000/C 40/05. However, the latter expressly states that that publication does not concern the equipment described, inter alia, in Class A 1 of EN 795, in respect of which there is no presumption of conformity with the provisions of Directive 89/686.

33 Consequently, as the Advocate General noted at point 123 of her Opinion, the provisions of EN 795 relating to Class A 1 anchor devices cannot be regarded as harmonised technical specifications. On that basis, and in so far as it relates to Class A 1 anchor devices, EN 795 must be regarded as a technical standard laid down by a private standards organisation and unconnected to Directive 89/686.

34 It has consistently been held that the jurisdiction of the Court to give preliminary rulings is confined to considering provisions of European Union law only (see, to that effect, order of 16 January 2008 in Case C-361/07 *Polier*, paragraph 9 and the case-law cited).

35 Since it is established at paragraphs 32 and 33 of the present judgment that the provisions at issue do not constitute provisions of European Union law, it must be concluded, without there being any need to consider the legal nature of the harmonised standards, that the Court cannot interpret the provisions of EN 795 relating to Class A 1 anchor devices.

36 Consequently, the answer to the sixth question is that the provisions of EN 795 relating to Class A 1 anchor devices are not covered by Directive 89/686; they do not, therefore, fall within the framework of European Union law and, accordingly, it is not within the jurisdiction of the Court of Justice to interpret them.

37 Having regard to the answer given to the sixth question, there is no need to answer the seventh or eighth questions.

The first, second and third questions concerning the applicability of Directives 89/106 and 89/686 to the devices at issue in the main proceedings

38 By its first, second and third questions, the national court asks, in essence, whether the Class A 1 anchor devices defined in EN 795 are covered by Directive 89/106 or Directive 89/686.

39 Since the Court of Justice has no jurisdiction to interpret the provisions and requirements of EN 795 relating to those devices, it is appropriate to consider the anchor devices at issue in the main proceedings, namely Mansafe and Kedge Safety.

40 These devices appear to be a structural anchoring system that is secured to the roof of a construction to which a PPE device is to be attached. As is apparent from the order for reference, those anchor devices are intended to remain permanently secured to the construction after their installation and can, therefore, be used repeatedly, as confirmed by the parties concerned at the hearing.

41 As regards, initially, the applicability to those devices of Directive 89/686, Article 1 thereof defines the scope of that directive by defining, in Article 1(2) and (3), PPE.

42 A systematic reading of those paragraphs shows that classification as PPE presupposes that such a product is, or at least can be, worn or held by its user for the entire period of his exposure to risk. It must, therefore, be a movable product. It is common ground that anchor devices such as those at issue in the main proceedings are secured, when in use, to a construction work. Therefore, they are not intended to be worn or held by their user within the meaning of Directive 89/686.

43 It must also be noted that the function of those devices precludes their classification as '[attachment] systems' within the meaning of Article 1(3) of Directive 89/686 and thus from being regarded as an integral part of PPE. Such devices do not in any way serve to connect PPE to'another external … device'within the meaning of Article 1 or to a'reliable anchorage point'within the meaning of point 3.1.2.2 of Annex II to Directive 89/686. On the contrary, they are intended to be an'external device'to which PPE is to be attached.

44 Consequently, in the light of their nature and function, it must be concluded that anchor devices such as those at issue in the main proceedings are not covered by Directive 89/686.

45 That finding is unaffected by the requirement set out at point 3.1.2.2 of Annex II to Directive 89/686, according to which the PPE manufacturer's notes must specify all relevant information relating to the characteristics required of the reliable anchorage point to which the PPE has to be connected.

46 It is apparent from Article 3 of Directive 89/686 that the sole purpose of Annex II thereto as a whole and point 3.1.2.2 of that Annex in particular is to define the basic health and safety requirements applicable to PPE. The obligation imposed on the manufacturer to specify the characteristics required of the reliable anchorage

point to which PPE has to be connected cannot, therefore, extend the scope of that directive beyond the limits defined in Article 1 thereof.

47 Having regard to the foregoing considerations, the answer to the second question is that anchor devices, such as those at issue in the main proceedings, which are not intended to be held or worn by their user are not covered by Directive 89/686 either in themselves or on account of the fact that they are intended to be connected to PPE.

48 In view of the answer to the second question, there is no need to answer the third question.

49 As regards, next, the applicability of Directive 89/106 to anchor devices such as Mansafe and Kedge Safety, it is apparent from Article 1(1) of that directive that it applies to construction products in so far as the essential requirements in respect of construction works under Article 3(1) of that directive relate to them. For the purposes of identifying the essential requirements applicable to such works which may influence the characteristics of a construction product, Article 1 refers to Annex I to Directive 89/106 which covers, in particular, safety in use of construction works.

50 To that effect, the applicability of Directive 89/106 to a specific product requires two conditions to be met, one relating to the nature of the product and the other to its function.

51 As regards, in the first place, the nature of products subject to Directive 89/106, Article 1(2) thereof provides that 'construction product' means any product which is produced for incorporation in a permanent manner in construction works.

52 It must be observed at the outset that Directive 89/106 does not define 'incorporation in a permanent manner'. None the less, having regard to the ordinary meaning of those words and to the purpose of that directive, which is to ensure that construction works satisfy the essential requirements laid down by that directive, it should be borne in mind that construction products must cover products which are part of a construction work, the dismantling of which reduces the performance of that work and the dismantling or replacement of which is a construction operation.

53 Having regard to the characteristics of the anchor devices at issue in the main proceedings, as described at paragraph 40 of the present judgment, it is to be noted that such devices are secured to roofs in such a way that they are part of the construction work in conformity with the description of 'construction product' within the meaning of Article 1(2) of Directive 89/106.

54 As regards, in the second place, the function of products falling within the scope of Directive 89/106, according to point 4 of Annex I to that directive construction products must enable construction works to be erected that are fit for use, particularly in regard to safety in use, and that are required to be designed and built in such a way that they do not present unacceptable risks of accidents in service or in operation such as slipping, falling, collision, burns, electrocution, injury from explosion.

55 In the present case, it is common ground that anchor devices such as those at issue in the main proceedings are intended to ensure the safety of individuals working on roofs, by preventing falls from a height from occurring in the use of the roof or in its functioning (operation), inter alia, for the purposes of cleaning and repair of the construction work.

56 Consequently, it must be concluded that such devices ensure the safety in use or in the functioning (operation) of the roof of a construction work as referred to at point 4 of Annex I to Directive 89/106.

57 That conclusion is not called into question by the fact that, in its Dutch-language version, point 4 of Annex I to Directive 89/106 does not cover activities carried out on/to the exterior of construction works or, therefore, activities carried out on roofs. According to settled case-law, the need for a uniform interpretation of European Union acts makes it impossible in case of doubt for the text of a provision to be considered in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (see, to that effect, Case C-375/07 *Heuschen & Schrouff Oriëntal Foods Trading* [2008] ECR I-8691, paragraph 46 and the case-law cited). The other language versions, such as the German, English and French versions, do not in any way distinguish between activities carried out internally or externally on a construction work.

58 Furthermore, it cannot be inferred from any provision of Directive 89/106 that a restrictive interpretation of the scope of that directive is appropriate and should result in devices such as those at issue in the main proceedings being excluded. On the contrary, having regard to the objectives of that directive, it is critical for the safety in use of construction works, particularly by individuals working on a roof, that they should, when using the roof, be able to rely on the anchor devices which are secured to the construction work and which are intended to remain there permanently and which,

once they have been secured, are part of that work and thus a construction product within the meaning of Directive 89/106.

59 Having regard to the foregoing considerations, the answer to the first question is that anchor devices, such as those at issue in the main proceedings, which are part of the construction work to which they are secured in order to ensure the safety in use or in the functioning (operation) of the roof of that work are covered by Directive 89/106.

The fourth and fifth questions concerning the interpretation of Decision 93/465

60 By its fourth question, the national court seeks, in essence, to determine whether Decision 93/465 allows for the option of affixing the CE marking to a product which does not fall within the scope of the directive under which it is affixed but which satisfies the technical requirements defined by that directive, and, if so, what procedure(s) should be followed in that regard.

61 It must be noted that a combined reading of points I B(a), (b) and (e) of the Annex to Decision 93/465 confirms that the CE marking is the only instrument which certifies, on the one hand, that a product conforms to the essential requirements laid down by the technical harmonisation directive(s) which apply to that product and, on the other hand, that that product has been the subject of the appropriate procedures for the evaluation of its conformity to those directives.

62 Furthermore, points I B(i) and (l) of the Annex to Decision 93/465 stress the need to prevent any possibility of confusion and abuse of the CE marking, in particular by making the Member States responsible for ending any undue affixing of that marking.

63 In those circumstances, the CE marking is to be affixed only to products to which its affixing is provided for by the relevant specific harmonisation legislation of the European Union, and is not to be affixed to any other product. Any other assessment would have the effect of giving rise to a likelihood of confusion as to the meaning of that marking. It is, moreover, in order to guard against the risks associated with such confusion that Article 30(2) of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ 2008 L 218, p. 30), applicable with effect from 1 January 2010, states that the CE marking is to be affixed only to products to which its affixing is provided for by the relevant specific harmonisation legislation of the European Union, and is not to be affixed to any other product.

64 Consequently, the answer to the fourth question is that Decision 93/465 precludes the option of affixing the CE marking to a product that does not fall within the scope of the directive under which it is affixed, even if that product satisfies the technical requirements defined by that directive.

65 In the light of the answer to the fourth question, there is no need to consider the fifth question.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **The provisions of EN 795 relating to Class A 1 anchor devices are not covered by Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003; they do not, therefore, fall within the framework of European Union law and, accordingly, it is not within the jurisdiction of the Court of Justice to interpret them.**

2. **Anchor devices, such as those at issue in the main proceedings, which are not intended to be held or worn by their user are not covered by Directive 89/686, as amended by Regulation No 1882/2003, either in themselves or on account of the fact that they are intended to be connected to personal protective equipment.**

3. **Anchor devices, such as those at issue in the main proceedings, which are part of the construction work to which they are secured in order to ensure the safety in use or in the functioning (operation) of the roof of that work are covered by Council Directive 89/106/EEC of 21 December 1988 on the**

approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Regulation No 1882/2003.

4. Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives, precludes the option of affixing the CE marking to a product that does not fall within the scope of the directive under which it is affixed, even if that product satisfies the technical requirements defined by that directive.

[Signatures]