JUDGMENT OF THE COURT (First Chamber)

8 September 2005 *

In Case C-40/04,

REFERENCE for a preliminary ruling under Article 234 EC, by the Korkein oikeus (Finland), by decision of 30 January 2004, received at the Court on 3 February 2004, in the criminal proceedings against

Syuichi Yonemoto

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues (Rapporteur), E. Juhász and M. Ilešič, Judges,

Advocate General: L.A. Geelhoed,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 13 January 2005,

* Language of the case: Finnish.

after considering the observations submitted on behalf of:

— Mr Yonemoto, by P. Jäntti, asianajaja,

— the Virallinen syyttäjä (Public Prosecutor), by J. Kivistö, public prosecutor attached to the Helsinki District Court,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the French Government, by G. de Bergues and R. Loosli-Surrans, acting as Agents,

— the Commission of the European Communities, by B. Schima and P. Aalto, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2005,

gives the following

Judgment

1 This request for a preliminary ruling concerns the 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 (OJ 1998 L 207, p. 1), and of Articles 28 EC and 30 EC.

2 The reference has been made in the criminal proceedings brought against Mr Yonemoto, in his capacity as representative of the importer of a machine which caused an accident at work resulting in serious injuries to a user of that machine.

The legal framework

Community law

3 Directive 98/37 lays down the essential health and safety requirements that machinery must satisfy. It replaces and codifies Council Directive 89/392/EEC of 14 June 1989 on the approximation of the laws of the Member States relating to machinery (OJ 1989 L 183, p. 9), frequently amended.

4 Article 2(1) and (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 ... 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 this does not mean that the machinery or safety components are modified in a way not specified in the Directive.'

5 Article 3 of the Directive provides:

'Machinery and safety components covered by this Directive shall satisfy the essential health and safety requirements set out in Annex I.'

6 Article 4(1) of that directive states:

'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.'

7 Article 5(1) and (2) of the Directive provides as follows:

'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.

...'

8 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 ..., 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 ...

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 whom so ever has affixed the marking or drawn up the declaration and shall so inform the Commission and other Member States.

...'

9 Article 8 of that directive provides:

'1. The manufacturer or his authorised representative established in the Community must, in order to certify that machinery and safety components are in conformity with this Directive, draw up for all machinery or safety components manufactured an EC declaration of conformity based on the model given in Annex II, point A or C as appropriate.

In addition, for machinery alone, the manufacturer or his authorised representatives established in the Community must affix to the machine the CE marking.

2. Before placing on the market, the manufacturer, or his authorised representatives established in the Community, shall:

...

(b) if the machinery is referred to in Annex IV and its manufacturer does not comply, or only partly complies, with the standards referred to in Article 5(2) or if there are no such standards, submit an example of the machinery for the EC type-examination referred to in Annex VI;

...

4. ...

Where paragraph 2(b) appl[ies], ... the EC declaration of conformity shall state conformity with the example that underwent EC type-examination.

...'

10 Annex I, section 1.7.3 provides that all machinery must be marked legibly and indelibly with minimum particulars, i.e. 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. According to that section, machinery must also bear full information relevant to its type and essential to its safe use (e.g. speed of rotation).

11 Annex I, section 1.7.4(a) to (d) of that directive provides:

'(a) All machinery must be accompanied by instructions ... .

(b) The instructions must be drawn up in one of the Community languages by the manufacturer or his authorised representative established in the Community. On being put into service, all machinery must be accompanied by a translation of the instructions in the language or languages of the country in which the machinery is to be used and by the instructions in the original language. This translation must be done either by the manufacturer or his authorised representative established in the Community or by the person introducing the machinery into the language area in question. ...

(c) 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.

(d) Any literature describing the machinery must not contradict the instructions as regards safety aspects. ...'

12 Annex II(A) to Directive 98/37 states:

'The EC declaration of conformity must contain the following particulars:

— name and address of the manufacturer or his authorised representative established in the Community ...,

— description of the machinery ...,

— all relevant provisions complied with by the machinery,

— where appropriate, name and address of the notified body and number of the EC type-examination certificate,

...

— where appropriate, a reference to the harmonised standards,

— where appropriate, the national technical standards and specifications used,

— identification of the person empowered to sign on behalf of the manufacturer or his authorised representatives.'

13 As provided in footnote 1 in Annex II(A) to that directive:

'[The EC declaration of conformity] must be drawn up in the same language as the original instructions ... and must be either typewritten or handwritten in block capitals. It 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.'

National legislation

14 Article 40 of the Law on safety at work (työturvallisuuslaki), in the version in force at the material time, reads 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 or delivered for use in the country, 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 sent 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 tasks must also be taken into account in assessing the need for safety devices.'

15 Pursuant to the Finnish Penal Code, a breach of those provisions, whether committed intentionally or negligently, is punishable under criminal law as a breach of safety at work, death caused by negligence, injury caused by negligence, death caused by gross negligence or injury caused by gross negligence.

16 Besides those criminal penalties, failure to comply with the obligations laid down in Article 40 of the Law on safety at work entails a liability to compensate for the damage caused, pursuant to the Law on compensation for damage (vahingonkorvauslaki).

The main proceedings and the questions referred for a preliminary ruling

17 The company Ama-Prom Oy, whose managing director is Mr Yonemoto, imports machinery, including hydraulic press brakes. In 1995 Ama-Prom Oy imported into Finland a hydraulic press brake manufactured in France by the French company Amada Europe and sold it to the Finnish company Peltitarvike Oy.

18 When imported the machine had borne the CE marking. The manufacturer produced a declaration of conformity in respect of that machine which reads as follows:

'The undersigned manufacturer AMADA EUROPE [address] certifies that the new below designated equipment: hydraulic press-brake 80.25 type ITS2 n° Series B50412 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, Organism 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 ITS2 type under the number 384-090A-0004-11-94 (n° AIF/S), on 8/11/1994.'

19 None the less, the Helsingin käräjäoikeus (Helsinki District Court) found the following facts concerning the machine:

— 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 consequence 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 and therefore the machine could not be used safely;

— 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 the two-handed control device which, according to the methods of work adopted in Peltitarvike Oy, was not generally used;

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

20 On 17 November 1998 Mr Raine Pöyry, an employee of Peltitarvike Oy, suffered a serious accident at his workplace while he was helping the foreman, Mr Urpo Pursiainen, to change the blades of the hydraulic press brake in question in the main proceedings. To change the blades, Mr Pursiainen had used the emergency stop button to cut off the current to the press brake. During that operation Mr Pöyry had accidentally touched the machine's foot pedal with his foot. Although the machine's current supply had been cut off by the emergency stop button, when its foot pedal was touched the machine made a rapid compressing movement, severing Mr Pöyry's eight fingers which were caught between the blades.

21 The käräjäoikeus, before which the matter was brought, sentenced Mr Yonemoto to a fine of 30 daily units for infringement of Article 40 of the Law on safety at work and negligently causing injury and ordered him to pay Mr Pöyry compensation, the total amount of which was EUR 26 953.80. That court also sentenced the representative of Peltitarvike Oy and Mr Pursiainen for being in breach of that law and for negligently causing injury, and also ordered them to pay Mr Pöyry compensation.

22 On appeal, Mr Yonemoto's sentence was upheld by the Helsingin hovioikeus (Court of Appeal of Helsinki). That court sentenced Mr Yonemoto to a fine of 50 daily units and ordered him to pay a total amount of EUR 21 908.16 by way of compensation.

23 The käräjäoikeus and the hovioikeus considered that Mr Yonemoto as representative of the importer of the machine was partly liable for the defects which contributed to Mr Pöyry's accident. According to those courts, an importer must ensure that machines supplied and used are designed and manufactured in accordance with the rules in force. To fulfil that obligation entirely, it was not enough that the CE marking was on the imported machine and that the manufacturer of the machine had given a written guarantee of the machine's conformity with the requirements in force.

24 Mr Yonemoto lodged an appeal on a point of law before the Korkein oikeus (Supreme Court) in which he claims that the criminal charges should be dismissed and that he should be released from the liability to pay compensation. In the alternative, he submits that the penalty and the amount of compensation which he was ordered to pay should be reduced.

25 Mr Yonemoto disputes the view that the importer is under an obligation himself to ensure that the 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. Mr Yonemoto considers that that the Finnish authorities or Finnish court may not, without infringing Article 28 EC, require the importer to have checks made in Finland of a machine type-approved in another EU State and bearing the CE marking. The importer's obligation is limited to making sure that the manufacturer of the machine has had the type of machine in question approved in accordance with Community norms by an approved body, provided the machine with instructions for use and maintenance and the CE marking, and issued a declaration of conformity for the machine.

26 Since it was not certain whether a Member State may impose on importers of machines such broad obligations as those under Article 40 of the Law on safety at work, the Korkein oikeus decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) What sort of limits does Community law, having regard in particular to ... 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 Law on safety at work mentioned [in paragraph 14 of this judgment] 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 [set out in full in the order for reference and summarised in paragraphs 15 and 16 of this judgment].'

The questions referred for a preliminary ruling

Preliminary observations

27 As a preliminary point, it should be borne in mind that, in the context of a reference for a preliminary ruling, it is not for the Court to determine whether provisions of national law are compatible with Community law.

28 The national court is essentially asking the Court to specify, first, the obligations imposed by Directive 98/37 and Articles 28 EC and 30 EC on importers of

machinery manufactured in one Member State and imported into another Member State and, second, the penalties which a Member State may impose on account of failure to comply with those obligations. It is appropriate first to examine the obligations of importers.

The obligations of importers

29 It should be noted that the examination of this question relates only to the situation of importers in a Member State of machinery manufactured in another Member State. According to the scheme of Directive 98/37, that situation should be distinguished from that of an importer in the European Community of a machine manufactured outside the Community. This judgment does not aim to examine the latter situation.

30 As regards the temporal application of Directive 98/37, it is apparent from the 1st and 25th recitals, Article 14 and Annex VIII(B) to that directive that it codifies Directive 89/392, frequently amended, and that it does not adversely affect the obligations of Member States concerning the deadlines for transposition and application of that directive and the directives amending it. Even if the obligations referred to in the main proceedings result from Directive 89/392 or from one of the directives amending it, the second subparagraph of Article 14 of Directive 98/37 requires references to the repealed directives to be construed as references to the corresponding provisions of Directive 98/37.

31 Pursuant to its second, sixth, seventh and ninth recitals, Directive 98/37 aims to ensure free movement of machinery in the internal market and to satisfy the

imperative and essential health and safety requirements relating to that machinery by replacing national certification systems and conformity certification with a harmonised system. For that purpose, in particular in Article 3 and in Annex I, that directive lists the essential health and safety requirements that machinery and safety components manufactured in the Member States must satisfy. Under Article 4 of that directive, Member States may not restrict the placing on the market of machinery which complies with those essential requirements.

32 According to Article 5 of Directive 98/37, machinery bearing the CE marking and accompanied by the EC declaration of conformity is deemed to comply with that directive.

33 Article 8(1) of that directive obliges the manufacturer or his authorised representative established in the Community to affix to the machine the CE marking and to draw up the EC declaration of conformity.

34 It is apparent from the 20th recital of Directive 98/37 that, as a general rule, manufacturers retain sole responsibility for certifying the conformity of their machinery to the essential health and safety requirements laid down by that directive.

35 None the less, according to the 21st recital of that directive, for certain types of machinery having a higher risk factor, a stricter certification procedure is desirable. That is the case with hydraulic press brakes such as the one in question in the main proceedings.

36 Article 8(2)(b) of Directive 98/37 provides that, '[b]efore placing on the market, the manufacturer ... shall ..., if the machinery is referred to in Annex IV and [is manufactured] ... [in the absence of harmonised standards], submit an example of the machinery for the EC type-examination referred to in Annex VI'.

37 Hydraulic press brakes are covered by Annex IV(A)(9) of Directive 98/37. According to the information provided to the Court, the harmonised standard relating to hydraulic press brakes, namely EN 12622, was adopted only in September 2001, that is after the date of the accident which gave rise to the main proceedings. It follows that machinery such as that in question in the main proceedings should be subject to the EC type-examination provided for in Annex VI to that directive.

38 Pursuant to point 1 of Annex VI, the EC type-examination is carried out by a third party body called the 'notified body', which ascertains and certifies that the example of the machine concerned satisfies the provisions of Directive 98/37.

39 According to point 2 of that annex, the manufacturer is required to lodge the application for EC type-examination by submitting to the notified body a technical construction file and a machine representative of the production planned. After that body has issued an EC type-examination certificate, the manufacturer is bound, under the second paragraph of Article 8(4) of Directive 98/37 and the fourth indent of Annex II(A) to that directive, to refer to that certification in the EC declaration of conformity which it draws up for each machine of that type and to certify in that declaration that the machine concerned complies with the example that underwent EC type-examination.

40 It is apparent from the order for reference that the machine which gave rise to the main proceedings bore the CE marking and that the manufacturer, Amada Europe,

produced an EC declaration of conformity in respect of that machine which refers to an EC type-examination certificate issued by a body called 'AIF/S'.

41 It is also apparent from that order that the machine was dangerous in several respects, even though it bore a CE marking and was accompanied by an EC declaration of conformity. The main question which arises is that of whether, under Directive 98/37, the importer of that machine is liable for the consequences of that situation.

42 Whether conformity is established by the manufacturer acting alone, or with the participation of a notified body pursuant to Annex VI to Directive 98/37, that directive requires the manufacturer to draw up an EC declaration of conformity and to affix the CE marking to the relevant machine.

43 Furthermore, Article 7(3) of that directive provides that where machinery which does not comply bears the CE marking, the competent Member State is to take appropriate action 'against whom so ever has affixed the marking', namely the manufacturer.

44 It would be inconsistent with the scheme of that directive and in particular Article 7 (3) thereof to increase the number of persons who could be held responsible for the conformity of machinery.

45 The essential objective of Directive 98/37 is to simplify the rules relating to the conformity of machinery so as to ensure as far as possible its free movement within

the internal market. That objective would be impeded if operators downstream from the manufacturer, in particular importers of machinery from one Member State to another Member State, could also be held responsible for the conformity of that machinery.

46 Directive 98/37 thus precludes the application of national provisions requiring the importer in a Member State of a machine manufactured in another Member State, bearing the CE marking and accompanied by an EC declaration of conformity to ensure that that machinery meets the essential health and safety requirements laid down by that directive.

47 The fact remains however that, pursuant to Directive 98/37, certain obligations may be imposed on importers in a Member State of machines manufactured in another Member State.

48 In that respect, the Directive provides in Annex I, section 1.7.4(b) that, on being put into service, all machinery must be accompanied by a translation of the instructions in the language or languages of the country in which the machinery is to be used and by the instructions in the original language, done either by the manufacturer or by the person introducing the machinery into the language area in question. Equally, according to footnote 1 in Annex II(A) to that directive, the EC declaration of conformity must be accompanied by a translation in one of the official languages of the country in which the machinery is to be used and must be done in accordance with the same conditions as for the translation of the instructions. It follows that the legislation of a Member State may, in accordance with Directive 98/37, require the importer of a machine to translate the instructions into the language or languages of that State and to translate the EC declaration of conformity into the language or one of the languages of that State.

49 Moreover, given the position of importers in the distribution chain, it must be considered as compatible with Directive 98/37 that Member States require importers to verify that the relevant machinery bears the CE marking and the other markings provided for in Annex I, section 1.7.3, to that directive, which contain information essential to the safe use of that machine, such as its rotation speed.

50 Article 2(1) of Directive 98/37 requires Member States to take all appropriate measures to ensure that machinery covered by that directive may be placed on the market only if it does not endanger health or safety.

51 In the context of the obligation to supervise the market which is incumbent on Member States, Article 2(2) of that directive provides that that obligation must 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 are protected when using the machinery in question.

52 It follows that Member Stares may require importers to cooperate concerning supervision of the market, such as requiring them to pass on information. In the event of an accident such as that giving rise to the main proceedings, a Member State may require the importer to provide all relevant information to ensure that similar accidents do not re-occur, in particular by cooperating with the competent authorities of that Member State for the purpose of adopting measures which those authorities might be prompted to take pursuant to Article 7 of Directive 98/37, such as the withdrawal of the machinery concerned from the market.

53 Such obligations to cooperate must not however amount to an obligation on the importer to verify himself that the machine complies with the essential requirements laid down by Directive 98/37, since such an obligation would be contrary to its scheme.

54 Those obligations must in any case be defined with due respect for the Treaty. Consequently, they must remain within the limits laid down in Articles 28 EC and 30 EC.

55 In particular, it should be borne in mind that Member States may adopt, notwithstanding the prohibition on quantitative restrictions on imports, laid down in Article 28 EC, measures justified on one of the grounds of public interest listed in Article 30 EC or by one of the overriding requirements referred to in the case-law of the Court, such as protection of health, provided in particular that those measures are appropriate for securing the attainment of the objective pursued and do not go beyond what is necessary in order to attain it (see, to that effect, Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 64 and case-law cited). Those limits also apply to obligations of cooperation that a Member State may impose on importers of machines manufactured in another Member State.

The system of penalties

56 Second, it is appropriate to examine the question of civil and criminal penalties that national law may enact, pursuant to Community law, in the event that the obligations arising from Directive 98/37 are infringed.

57 Directive 98/37 does not impose any specific obligations on the Member States as regards the system of penalties. That does not mean, however, that national provisions which impose criminal penalties for infringements of legislation implementing that directive are incompatible with the latter (see, to that effect Joined cases C-58/95, C-75/95, C-112/95, C-119/95, C-123/95, C-135/95, C-140/95, C-141/95, C-154/95 and C-157/95 *Gallotti and Others* [1996] ECR I-1435, paragraph 14 and case-law cited).

58 The Member States are required, within the bounds of the freedom left to them by the third paragraph of Article 249 EC, to choose the most appropriate forms and methods to ensure the effectiveness of directives (*Gallotti*, paragraph 14).

59 Moreover, where a directive does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 10 EC requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law. While the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and deterrent (*Gallotti*, paragraph 14).

60 It follows that a Member State is entitled to impose criminal penalties for failure to comply with legislation intended to implement Directive 98/37 if it considers that to be the most appropriate way of ensuring its effectiveness, provided that the penalties laid down are analogous to those applicable to infringements of national law of a similar nature and importance and are effective, proportionate and deterrent (see, to that effect, *Gallotti*, paragraph 15).

61 In the light of all the above considerations, the questions referred should be answered as follows:

(1) Directive 98/37 precludes the application of national provisions which require the importer in a Member State of a machine manufactured in another Member State, bearing the CE marking and accompanied by an EC declaration of conformity, to ensure that that machinery meets the essential health and safety requirements laid down by that directive.

(2) That directive does not preclude the application of national provisions which require the importer in a Member State of a machine manufactured in another Member State to:

— ensure, before the machinery is delivered to the user, that it bears the CE marking and is accompanied by the EC declaration of conformity translated into the language or one of the languages of the Member State into which the machinery is imported, and instructions translated into the language or languages of that State;

— provide, after the machinery has been delivered to the user, all appropriate information and cooperation to the national inspection authorities if it transpires that that machinery poses risks to safety or health, provided that such requirements do not amount to making the importer subject to the obligation to verify himself that the machinery complies with the essential health and safety requirements laid down by that directive.

(3) Article 10 EC and the third paragraph of Article 249 EC must be interpreted as not precluding a Member State from imposing criminal penalties to ensure compliance with the obligations laid down by Directive 98/37, provided that those penalties are analogous to those applicable to infringements of national law of a similar nature and importance and are, in any event, effective, proportionate and deterrent.

Costs

62 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 (First Chamber) hereby rules:

1. **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 precludes the application of national provisions which require the importer in a Member State of machinery manufactured in another Member State, bearing the CE marking and accompanied by an EC declaration of conformity, to ensure that that machinery meets the essential health and safety requirements laid down by that directive.**

2. **That directive does not preclude the application of national provisions which require the importer in a Member State of a machine manufactured in another Member State to:**

   — **ensure, before the machinery is delivered to the user, that it bears the CE marking and is accompanied by the EC declaration of conformity translated into the language or one of the languages of the Member State into which the machinery is imported, and instructions translated into the language or languages of that State;**

   — **provide, after the machinery has been delivered to the user, all appropriate information and cooperation to the national inspection authorities if it transpires that that machinery poses risks to safety or health, provided that such requirements do not amount to making the importer subject to the obligation to verify himself that the machinery complies with the essential health and safety requirements laid down by that directive.**

3. **Article 10 EC and the third paragraph of Article 249 EC must be interpreted as not precluding a Member State from imposing criminal penalties to ensure compliance with the obligations laid down by Directive 98/37, provided that those penalties are analogous to those applicable to infringements of national law of a similar nature and importance and are, in any event, effective, proportionate and deterrent.**

[Signatures]