



Machinery Directive 2006/42/EC

Orgalime Proposal for the European Commission Guidelines

Art 2 h) to l)

What is unclear in the directive 2006/42/EC and has to be clarified?

‘Placing on the market’.

Orgalime Proposal for the European Commission Guidelines:

→ § 72: In the last para, for clarity’s sake, a reference should be added to § 39.

→ § 74: The legal and contractual forms of placing on the market

Placing on the market is defined as making machinery available with a view to distribution or use. Making machinery available implies that the machinery is transferred from the manufacturer to another person such as a distributor or a user. However there is no restriction as to the legal or contractual form of this transfer.

In many cases, placing on the market involves a transfer of the ownership of the machinery from the manufacturer to the distributor or user in exchange for payment (for example, sale or hire-purchase).

In other cases, placing on the market may take other contractual forms (such as, for example, lease or rental). In such cases, the right to distribute or use the machinery is granted in exchange for payment without transfer of ownership. The Machinery Directive applies to such machinery when it is first subject to a lease or rental contract in the Community. The Machinery Directive does not apply when used machinery that was first placed on the market according to the Machinery Directive is subject to subsequent lease or rental contracts in the Community, although the machinery must be maintained in a safe condition (following the maintenance instructions and the Directive 89/655) – ([see Article 15](#)).

Machinery is also considered to be placed on the market if it is made available with a view to distribution or use free of charge (for example, as a gift or a loan).

Disclaimer: The content of this fiche represents European industries’ position on the subject. This position has been coordinated and agreed by European industrial associations collaborating on Orgalime’s platform. This is therefore not an official European Commission guidance document.

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.9 million people in the EU and in 2007 accounted for some €1,813 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

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→ **& 75:** Orgalime proposal to include at the end of the first paragraph the following sentence: "the buyer should be the person responsible".

Regarding the 4th paragraph and the mention to "such an auction", Orgalime prefers it to be discussed at the Editorial Group if this term refers only to an auction made inside the community or also to an auction in a free zone.

→ **§ 79:** Orgalime proposal regarding the sentence in the first para "...but one of them must take the responsibility for the conformity of the machinery or Partly Completed Machinery (PCM) with the Directive."

→ **§ 81:** The first paragraph should be clarified: "The provision set out in the second sentence of the definition of 'manufacturer' is intended to deal with the situation that arises for certain machinery imported into the community. If a machinery manufacturer established outside the community takes the decision to place his/her products on the market in the community, he/she is able to fulfil his/her obligations under the Machinery Directive himself/herself or mandate an authorised representative to perform all or part of these obligations on his/her behalf – (see § 83: Article 2 (i)).

On the other hand, the decision to import machinery into the community may be taken solely by an importer, distributor or user. In some cases (needs clarification), the machinery may be ordered from an intermediary such as an export company. In other cases, a person may purchase the machinery outside the community and bring it into the community himself/herself or purchase the machinery in a free zone with a view to its distribution or use in the community. In such cases (whole final sentence should be deleted and replaced by the following): "If the manufacturer is not a party in the decision to bring the machinery into the community, then the real manufacturer may ignore that his/her product is being placed on the market in the community and the importer has to comply with the Directive."

→ **§ 83:** In the first para, it is stated that the nomination of an authorised representative is a solution available to manufacturers established outside the community. This is of course true but also the manufacturers inside the community may apply this solution as there is no restriction mentioned in the Directive. The same is valid for § 84.

→ **§ 86:** Explanation of the status of ISO standard references in harmonised EN standards. It is the following: "Furthermore, harmonised standards provide a good indication of the state of the art that must be taken into account when applying the essential health and safety requirements set out in Annex I – [see comments on General Principle 3 of Annex I](#). Also, if a standard or part of a standard is referred to by a normative reference in a harmonised European standard then it becomes part of that harmonised standard and provides a presumption of conformity in accordance with its normative reference".

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