COMMISSION IMPLEMENTING DECISION (EU) 2018/1960

of 10 December 2018

on a safeguard measure taken by Sweden pursuant to Directive 2006/42/EC of the European Parliament and of the Council, to prohibit the placing on the market a type of pinsetter machine and a supplementary kit to be used together with that type of pinsetter machine, manufactured by Brunswick Bowling & Billiards, and to withdraw those machines already placed on the market

(notified under document C(2018) 8253)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC ([1]), and in particular the second subparagraph of Article 11(3) thereof,

Whereas:

(1) On 18 December 2013, Sweden informed the Commission of its decision of 30 August 2013 to take a safeguard measure to prohibit the placing on the market of a pinsetter machine Brunswick GSX (the 'pinsetter machine') and its supplementary kit of parts 'Advanced Guards' (the 'supplementary kit') and to withdraw such machinery from the market. Both products were manufactured by Brunswick Bowling & Billiards (the 'manufacturer').

(2) As to the withdrawal, Sweden offered the manufacturer the possibility either to correct the defects relating the operator's working environment, to take back the pinsetter machine and the supplementary kit and replace them with another technically faultless products of the same or equivalent kind, or take back the pinsetter and the supplementary kit and compensate the owner for it.

(3) The reasons invoked by Sweden behind that safeguard measure were the failure of the pinsetter machine and the supplementary kit to satisfy certain essential health and safety requirements ('EHSRs') set out in Annex I of Directive 2006/42/EC and the incorrect application of some of the harmonised standards.

(4) After receiving the notification of the safeguard measure from Sweden, the Commission entered into consultation with the parties concerned in order to hear their views. The Commission sent a letter to the manufacturer on 11 April 2014 and the manufacturer provided its observations on 24 June 2014. The Commission met the manufacturer on 24 September 2014 and 24 May 2016. The manufacturer sent additional explanation to the Commission on 6 December 2016. The Commission had also several information exchanges with the Swedish authorities, the Swedish Work Environment Agency (exchange of e-mails, discussions in the Machinery Working Group meetings and the Machinery Market Surveillance Group).

(5) Sweden stated that before taking the safeguard measure, its authorities had been in contact with the manufacturer several times to explain them the deficiencies of the pinsetter machines and supplementary kits to be fixed in order to comply with Directive 2006/42/EC. However, given that after several years of discussion only half of the deficiencies were resolved, Sweden considered necessary to trigger the safeguard clause mechanism. Regarding the measures adopted, the Swedish authorities explained that they respected the principle of proportionality, laid down in Article 18 of Regulation (EC) No 765/2008 of the European Parliament and of the Council ([2]). Based on that principle, considering the severity of the risks and the costs of the withdrawal, some of the actions required to address the deficiencies for the new pinsetter machines and supplementary kits, were not required in the case of the withdrawal of the existing pinsetter machines and supplementary kit. Namely, those concerning the fitting of three separate lights that indicate different modes in the control panel, the enlargement of the access points between the machines also used as work platforms and the overview of the danger zone.

([1]) OJ L 157, 9.6.2006, p. 24.

([2]) 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 L 218, 13.8.2008, p. 30).

(6) In 2015, Sweden informed the Commission that the manufacturer addressed the deficiencies set out in the safeguard measure regarding the pinsetter machine and the supplementary kit only in the bowling centre in Gustavsberg.

(7) Apart from these consultations, the Commission conducted an independent study [1] (the 'study') to assess whether or not the pinsetter machine and the supplementary kit complied with the EHSR set out in Annex I to Directive 2006/42/EC at the time when Sweden took the safeguard measure. In order to elaborate the study, the independent experts inspected the pinsetter machine with the supplementary kit installed in Gustavsberg and met the Swedish authorities and the Vice-President of Capital Marketing & Engineering of the manufacturer.

(8) The parties concerned were consulted on the Commission's study. The manufacturer's comments do not put the conclusions of the study into question because they refer to the compliance of the pinsetter machine and the supplementary kit installed in Gustavsberg after Sweden notified the safeguard measure to the Commission.

(9) As for the EHSRs invoked by Sweden, the EHSR 1.2.2 on control devices and 1.7.1 on information and warnings on the machinery, require that control devices are visible, placed in a way as to be safely operated and that the information and warnings on them are expressed in the Union language determined by the Member State in which the machinery is placed.

In this regard, Sweden indicated that one of the buttons on the control panel of the machine was not marked and the text on the control panel was in English although the official language of the Member State in which the machinery is placed is Swedish. Furthermore, three separate lights indicated different modes. The colors of these three lights were placed differently on different machines and could therefore be misunderstood. The emergency stop sign was mounted upside down.

The manufacturer stated that with respect to the lights on the control panels, there could be minor confusion.

Regarding the clear visibility and marking of the control devices, the manufacturer admitted some mismatches between the actual machines, the labels and the manuals.

Furthermore, the manufacturer stated that the labels, having no impact to safety functions, did not have to be necessarily translated.

Furthermore, the EHSR 1.2.2 requires also that control devices must be designed to prevent its operation if there is someone in the danger zone.

According to Sweden, the machine could be restarted even though the operator did not have an overview of the danger zone, which entailed the risk of someone being inside the risk area.

The manufacturer disagreed with Sweden on the operator's poor visibility from the control zone due to the absence of reported safety incidents and other Member States' conclusions that 'the visibility, while perhaps not perfect, was indeed adequate given that the operator practiced reasonable and expected care while when starting the machines'.

However, the Commission considers that relying on the expected care of the operator when starting the machine does not address the risk because the remaining lack of overview of the danger zone prevents the operator from checking if there is someone in the danger zone.

Thus, considering the above arguments and taking into account the study confirming those arguments, it can be concluded that the EHSRs set out in Section 1.2.2 and 1.7.1 of Annex I to Directive 2006/42/EC have not been fulfilled as regards the pinsetter machine and the supplementary kit.

(10) The EHSR 1.1.6 on ergonomics, 1.6.1 on machinery maintenance and 1.6.2 on access to operating positions and servicing points, require a design and construction of the machine that ease the operator's work, allowing him to work in a comfortable and safe way, outside danger zones.

[1] Conformance report 'Compliance of pinsetters with the Machinery Directive', 8 May 2017.

In this respect, Sweden highlighted that the access points and work platforms of the pinsetter machines at stake would not respect these EHSRs because the access route that doubles as a work platform between those machines was measured to be only 190 mm. In some cases, the operators were requested to balance on narrow metal edges. This work environment entailed an unnecessary risk of falling into the machine. In addition, the access route between these machines ended abruptly by the front where there is a risk of falling approximately from 1 000 mm.

In its EC declaration of conformity, the manufacturer referred to the harmonised standard EN ISO 14122-2:2001 but did not provide in the technical file a link between the references of the harmonised standards and the respective EHSR as required by Annex VII to Directive 2006/42/EC. Despite this deficiency on the side of the manufacturer, Sweden identified the EHSR that the reference to that harmonised standard could have covered. Specifically, Sweden identified that the reference to the harmonised standard concerned the EHSR set out in Sections 1.1.6, 1.6.1 and 1.6.2 of Annex I to Directive 2006/42/EC.

Harmonised standard EN ISO 14122-2:2001 lays down safety technical requirements for permanent means of access to machinery and specifically for machinery working platforms and walkways. Sweden stated that whilst the standard in question requires a 500 mm of width, the pinsetter machine walkway at stake was 190 mm wide.

In this respect, the manufacturer stated that the narrow walkway of 190 mm was considered a safe and appropriate width bearing in mind the intended and expected use, the frequency of access and the state of the art for the ball return area even though it did not fully apply EN ISO 14122-2:2001. Therefore, although the manufacturer had referred to that standard in the declaration of conformity, it did not apply it.

Regarding the risk of falling associated with access in front of the pinsetter machine, the manufacturer estimated that the alternative platform for an easier access on and off to the front platform, requested by Sweden, was not necessary because the front access to the pinsetter machine is very infrequent considering the design of existing machines in the world, where access is provided primarily from the back.

The Commission considers that the risk of injury when accessing the pinsetter machines (by falling or lacking balance) due to the narrow walkway between the machines or to an abrupt end of the front of the machine of 1 000 mm cannot be neglected by arguing an infrequent access or the impossibility to do better.

Thus, on the basis of the above arguments and taking into account the study confirming those arguments, it can be concluded that the EHSR set out in Sections 1.1.6, 1.6.1 and 1.6.2 of Annex I to Directive 2006/42/EC have not been fulfilled as regards the pinsetter machine.

(11) As regards the EHSR set out in Sections 1.3.8 and 1.4 of Annex I to Directive 2006/42/EC, Sweden indicated that the screens between the pinsetter machines must be high enough to prevent workers to be in contact with dangerous, moving parts of adjacent machines, which are in operation. The screen must cover the entire side of the machine i.e. right up to the front of the machine cage. However, the fence of the pinsetter that was mounted between the machines was only 500 mm high at some workstations and was completely missing at other places where people were working. This entailed a risk of falling down into the adjoining machine. Therefore, that structure would not comply with the EHSR 1.3.8 on the choice of protection against risks arising from moving parts.

In its EC declaration of conformity, the manufacturer referred to the harmonised standard EN ISO 13857:2008 but did not provide in the technical file a link between the references of the harmonised standards and the respective EHSR as required by Annex VII to Directive 2006/42/EC. Despite this deficiency on the side of the manufacturer, Sweden identified the EHSR that the reference to that harmonised standard could have covered. Specifically, Sweden identified that the reference to the harmonised standard concerned the EHSR set out in Sections 1.3.8 of Annex I to Directive 2006/42/EC.

Harmonised standard EN ISO 13857:2008 lays down technical requirements on machinery safety distances to prevent hazard zones being reached by upper and lower limbs. Sweden refers to this standard to reinforce its justification on the manufacturer's lack of compliance with EHSRs 1.3.8.

Despite the standard being referred to in the declaration of conformity, the manufacturer did not rely on the standard to prove the conformity of the product with the Directive when providing explanations to the Swedish authorities. Instead, the manufacturer specified that the 500 mm fence mounted between the machines was designed to provide maximum protection while still accommodating the height requirements of common ceiling heights throughout Europe. A higher guard would provide a measure of incremental safety but this incremental safety would be diminished if ceiling obstructions prevented installation of the guards or if the guards were incorrectly modified to accommodate ceiling obstructions.

The Commission considers that to keep the fence of the pinsetter, mounted between the machines, at 500 mm high due to ceiling obstructions, does not explain why at some workstations the fences were completely missing and it does not tackle the risk of falling down into the adjoining machine.

Thus, on the basis of the above arguments and taking into account the study confirming those arguments it can be concluded that the EHSRs set out in Section 1.3.8 of Annex I to Directive 2006/42/EC have not been fulfilled as regards the pinsetter machine and the supplementary kit.

Furthermore, as regards the pinsetter machine Sweden explained that the machine cage contained small doors that could be opened but did not have a locking mechanism that stops the machine when the doors were opened.

In its EC declaration of conformity, the manufacturer referred to the harmonised standard EN 953:1998 but did not provide in the technical file a link between the references of the harmonised standards and the respective EHSR as required by Annex VII to Directive 2006/42/EC. Despite this deficiency on the side of the manufacturer, Sweden identified the EHSR that the reference to that harmonised standard could have covered. Specifically, Sweden identified that the reference to the harmonised standard concerned the EHSR set out in Sections 1.3.8 and 1.4 of Annex I to Directive 2006/42/EC.

Harmonised standard EN 953:1997+A1:2009 lays down safety technical requirements on machinery guards and the general requirements for the design and construction of fixed and movable guards. Sweden refers to this standard to reinforce its justification on the manufacturer's lack of compliance with EHSRs 1.3.8 and 1.4.

In this regard, the manufacturer explained that the fact that the machine cage contained a second smaller door into each cell with no interlock that stopped the machine was not contrary to Directive 2006/42/EC because the rear division guards required very infrequent access and fixed guards provided enough safety in this case. The manufacturer indicated that based on this justification and on EN 953, a fixed guard was selected. It did not address the absence of the interlocking mechanism.

The Commission considers that the risk arising from moving parts was not addressed because the locking mechanism did not stop the machine when the worker approached it.

Thus, on the basis of the above arguments and taking into account the study confirming those arguments, it can be concluded that the EHSR set out in Sections 1.3.8 and 1.4 of Annex I to Directive 2006/42/EC have not been fulfilled as regards the pinsetter machine.

Sweden also indicated that the protective cap over the ball return mechanism did not meet the ESHR on fixed guards set out in Section 1.4.2.1 of Annex I to Directive 2006/42/EC as it was not fixed in any way and it did not meet the requirements for interlocking guards set out in Section 1.4.2.2 of Annex I to Directive 2006/42/EC since there was no interlocking mechanism.

Sweden referred also in this case to EN 953:1997+A1:2009 to reinforce its justification on the manufacturer's lack of compliance with EHSRs 1.4.2.1 and 1.4.2.2.

However, the manufacturer stated that the access into the ball return cover was required far less frequently than once per shift and limited its explanations to a statement that a fixed guard was recommended by the standards. In its view, there was no need to take the actions required by Sweden.

The Commission considers that the risk arising from moving parts was not addressed in the protective cap over the ball return mechanism because, in addition to the absence of interlocking mechanisms, the fixed guards were not fixed.

Thus, on the basis of the above arguments and taking into account the study confirming those arguments, it can be concluded that the EHSR set out in Sections 1.4.2.1 and 1.4.2.2 of Annex I to Directive 2006/42/EC have not been fulfilled as regards the pinsetter machine.

(12) As regards the EHSR set out in Sections 1.7.4, 1.7.4.1 and 1.7.4.2, regarding the requirements on instructions, Sweden informed that a posted picture on the pinsetter machine and the supplementary kit was supposed to show where the guards were located, but it did not correspond to where they were actually located on the machine. As for the user instructions, Sweden said that there were no instructions for use corresponding to the machines delivered and which should cover the various operations to be performed.

Regarding the absence of operating and instructions manual, the manufacturer stated that translated manuals were supplied with the machines so it could be possible that the manuals were misplaced at the inspected bowling centre. Labels having no impact on safety functions were not translated. Furthermore, the machine labels and manuals observed by the inspectors may not have matched the machine due to manufacturer's accommodation of specific demands from regional inspectors and the time constraints to adapt to those demands.

The Commission considers, on the basis of the above arguments and taking into account the study confirming those arguments, that the EHSR set out in Sections 1.7.4, 1.7.4.1 and 1.7.4.2 Annex I to Directive 2006/42/EC have not been fulfilled as regards the pinsetter machine and the supplementary kit.

(13) EHSR set out in Section 1.1.2 of Annex I to Directive 2006/42/EC regarding principles of safety integration requires that machinery must be designed and constructed to prevent putting persons at risk when operating the machinery under the conditions foreseen but also taking into account any reasonably foreseeable misuse.

Sweden indicated that the mounting brackets used for the safety interlocks were fastened with standard screws, which are easy to remove with standard tools, contrary to the principle of safety integration. This entails a risk of foreseeable misuse to defeat the mounting brackets instead using the interlocked doors.

The manufacturer stated that the reason was that the interlocked doors provide reasonable access that reduces the operator's motivation to defeat the interlocks when making extensive maintenance. Standard screws would reduce the risk of permanent damage to the guarding system or permanent removal of the guards.

Furthermore, Sweden explained that the fixed guards were mounted with quick-release fasteners, which entailed a risk that someone would open the fixed guard and use it for access instead of using the interlocked door. Sweden added that where the risk assessment shows that there should be a fixed guard, it must not be designed in such a way that it is an attractive option to access the machine by opening the fixed guard rather than by using the locked gate.

The manufacturer justified the use of quick-release fasteners to diminish the workers' motivation to defeat the fixed guards.

In its EC declaration of conformity, the manufacturer referred to the harmonised standard EN 1088:1995 +A1:2007 but did not provide in the technical file a link between the reference of the harmonised standard and the respective EHSR as required by Annex VII to Directive 2006/42/EC. Despite this deficiency, Sweden linked the reference of that harmonised standard with the EHSR set out in Section 1.1.2 of Annex I to Directive 2006/42/EC.

Harmonised standard EN 1088+A2:2008 lays down safety technical requirements on machinery interlocking devices associated with guards and the principles for design and selection. Sweden refers to this standard to reinforce its justification on the manufacturer's lack of compliance with EHSRs 1.1.2. The manufacturer indicated that Section 5.7.1 Note 4 of the standard states that avoiding 'defeat in a reasonably foreseeable manner' needs to take into account the characteristics of the specific application and therefore based on the risk assessment. According to the manufacturer, the interlocked doors provide reasonable access that reduces the operator's motivation to defeat the interlocks.

The Commission considers that the mounting brackets and the fixed guards could be easily removed with standard tools, which entailed a reasonably foreseeable misuse of accessing the machine by bypassing the locked gates.

Thus, on the basis of the above arguments and taking into account the study confirming those arguments, it can be concluded that the EHSR set out in Section 1.1.2 of Annex I to Directive 2006/42/EC on principles of safety integration has not been fulfilled as regards the pinsetter machine and the supplementary kit.

(14) Examination of the justification provided by Sweden with respect to the safeguard measure, the independent study confirming the conclusions made by Sweden and the observations communicated by the manufacturer, confirm that the pinsetter machine did not comply with the ESHRs set out in Sections 1.1.2, 1.1.6, 1.2.2, 1.3.8, 1.4, 1.6.1, 1.6.2, 1.7.1, 1.7.4, 1.7.4.1, 1.7.4.2 of Annex I to Directive 2006/42/EC and the supplementary kit did not comply with the ESHRs set out in Sections 1.1.2, 1.2.2, 1.3.8, 1.4, 1.7.1, 1.7.4, 1.7.4.1 and 1.7.4.2 at the time that Sweden notified the measures to the Commission in December 2013. Those deficiencies are liable to compromise the health and safety of persons. Therefore, the safeguard measures taken by Sweden should be considered as justified,

HAS ADOPTED THIS DECISION:

Article 1

The measures taken by Sweden, prohibiting the placing on the market of the Brunswick GSX pinsetter machine and its supplementary kit of parts 'Advanced Guards' and requiring the manufacturer to withdraw the machines already placed on the market, are justified.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 December 2018.

For the Commission
Elżbieta BIEŃKOWSKA
Member of the Commission