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11 July 2005

Dear Stakeholders

**MACHINERY DIRECTIVE 98/37/EC – REPORT TO BRITISH INDUSTRY OF
WORKING GROUP HELD ON 7-8 JUNE 2005**

I am pleased to attach a report of the latest Working Group meeting that was held recently. The UK was represented by myself and Peter Baxter-Ludlow from DTI together with Phil Papard from HSE and support for certain specialist items from Phil's colleague Gil Male.

When I posted our report of the last but one WG meeting in October 2004 I mentioned in my covering letter that some small amendments would be made to the UK domestic regulations arising from the Machinery Directive. I can now confirm that these amendments came into force on 1st May 2005 and that the reference number of the relevant Statutory Instrument is '2005 no. 831'. Copies can be purchased for a modest fee from the Stationery Office.

I have also taken the opportunity of updating you through these letters about progress on the third, and fundamental, revision to the Machinery Directive itself which has been negotiated in Brussels over the last several years (you will see some references at various points in our report, which is essentially about the administration of the *existing* directive, to the 'new directive'). Political agreement in the Council of Ministers on a base text in English was secured in September 2004 and since then that text has been prepared in all of the official languages of the EU for transmission to the European Parliament for its Second Reading. It is now expected that the various texts will have been finalised and approved by the Council for transmission as a 'common position' by the middle of this month although Parliamentary business managers have indicated that they do not wish to

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receive it until September. It is impossible to say at this stage exactly how 2nd Reading will proceed after that – a period of 3 months with the optional extension of a further month is allowed – but, as the Presidency of the Council during most, if not all, of the period in question, the UK government will be working especially closely with all of the other players involved to secure adoption of the new directive as soon as can be arranged.

In the meantime, all best wishes from the team here for an enjoyable summer break.

Yours sincerely,



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REPORT TO BRITISH INDUSTRY OF A MEETING OF THE MACHINERY DIRECTIVE WORKING GROUP HELD IN BRUSSELS ON 7 & 8 JUNE 2005

SUMMARY

A very busy agenda with over 40 referenced papers. The Chair reminded delegates of the time limits for the submission of papers - a number missed this - which requires Member States ('M/S') to submit to the Commission papers 4 clear weeks before the date of the Working Group ('WG') meeting. Points of particular interest, perhaps, were the agreement between CEN and CENELEC to look at the issue of overlapping standards (item 3 3(n) *et al.*) the vote against publications of the standard on fixed ladders (item 8), the consensus across the meeting that a relatively speedy resolution to the issues Sweden had raised with standard EN 280 on MEWPs was required (item 9) and the promise of a Commission legal opinion on the review of type examinations certificates (item 15). On EN 280 the Technical Committee (TC) in CEN has been given a year to devise a solution.

If you require a copy of any of the documents referred to in this report please send an email to graham.payne@dti.gsi.gov.uk

DETAIL

Item 2: Minutes of the meeting held on 8 - 9 February 2005 (doc 2005.15)

There were some minor editorial comments but the minutes were agreed.

Item 3: Matters Arising as listed in summary table - with relevant references in parentheses - at end of Doc 2005.15

3 (3 a)) Safeguard Clause on EN 12525 - Agricultural machinery, Front Loaders (doc 2004.41)

CEN has produced a new document in line with French observations - especially on automatic de-activation to prevent falls - which will now be sent for formal vote. France confirmed this and therefore withdrew its formal objection leaving the Commission to conclude that this was a successful illustration of the informal 'suspended safeguard clause mechanism'.

3 (3 d)) Industrial Truck Pedals

Criticism was expressed that Standard 21281 was not harmonised. Various delegations commented on different aspects of the standard, its supporting standards, e.g. 60014 -1, the need to justify deviations between type B and type C standards, and the need for accident data from TC 150. CEN were urged to resolve this issue quickly.

3 (3 e)) Visibility from earth moving machinery

The UK continued to be satisfied with progress on DIS ISO 5006 and would pursue the matter further directly with standards makers rather than in this WG.

3 (3 g)) Stability of industrial trucks

Within the next month TC 151 will be convening a special meeting to discuss the findings of three papers and after this these papers will be forwarded to the Commission. Paper 1 has been produced by the University of Hamburg and 'Fraser Nash' and deals with improvements regarding speed. Paper 2 has been produced by INOREST in France and deals with type characteristics of safety. Paper 3 deals with load indicators and is for discussion with CEN. Work on the safe use of machines is to be added to the user guide along with the requirements for

training. TC 151 is also undertaking long-term research on providing data to assist in the revising of the design for these machines. An update was requested at the next (October 2005) WG meeting.

3 (3 h)) Vibration by concrete breakers (Docs 2005.12, 16 & 39)

There was a further detailed and somewhat confused discussion between CEN, CENELEC the Commission and various delegations about the respective merits of developing test codes against testing by independent authorities and other cross-cutting issues. Both CEN and CENELEC pointed to the need to develop a test code to establish indicative values but reflected that it was a tall order.

All of this prompted the Commission to repeat the impatience it had expressed at the previous meeting especially when, in its view, there were already satisfactory IRNS measures available for use. It also feared that the Machinery Directive ('MD'), as administered by DG Enterprise, would be discredited were this void to persist and that other parts of the Commission with responsibility for the workplace and safety, e.g. DG SANCO, would intervene.

On a slightly more positive note the UK wished to separate the test codes issue from that of whether there were indicative measures. On the latter the situation for non-electrical products was broadly tolerable but there was definitely a need for more research on the electrical side. On a similar note Germany wished to see the more critical products being targeted.

3 (3 i)) Safeguard Action on EN 693 - Hydraulic Presses

Still little progress with CEN saying they wanted a "form of words" from the UK delegate on the CEN WG - UK will check this is in hand. With Commission agreement this issue has been carried forward to next WG meeting.

3 (3 k)) Aircraft Lifting Devices for servicing of aeroplanes (Doc 2004.37)

Now that the issue of whether these devices were in the scope of the MD had been settled there did not seem much purpose in retaining the issue on the WG agenda. The remaining issues were ones of implementation that arose from the potential for these devices to be re-assembled in various combinations and locations and seemed to belong more in the ambit of, eg, the Machex committee.

3 (3 n)) Validity of the EN 50144 series of standards and overlapping scopes of standards and 3 (6) policy on publication of standards (Doc 2005.10)

Procedures were being put in place between CEN and CENELEC (though the latter considered them minor) to reduce the potential for overlaps. M/S were reminded that overlaps could have legal consequences but that it was permissible for a standard to cover more than one Directive. The wording in Article 1.5 on the borderline between the Low Voltage Directive (LVD) and MD was rather vague and this tended to mean that either the market or the manufacturer was left to decide which standard applied (but users should be informed). The Commission requested that CEN and CENELEC formalise, if appropriate, an arrangement to produce together a list of all overlapping standards e.g. washing machines (see item 12 below), hedge-cutters etc, and work through them, via reference to the WG, to remove any ambiguities.

3 (3 o)) Policy on publication of machinery standards

The policy of 'hierarchisation', i.e. of dividing standards into 3 types, A, B and C, was re-affirmed (although CENELEC does not use this system) but the Commission is still looking for a form of words to describe satisfactorily the rather subtle status of 'B' standards which can grant a 'presumption of conformity' in certain circumstances. The Commission reminded CEN that the

type should be stated on the lists of standards sent out by the standards bodies as the Commission are not in a position to assess them in this respect.

3 (3 p)) Question on EN 1459: Variable Reach trucks and normative reference to prEN ISO 13564

The progress anticipated at the last WG had not entirely materialised due mainly to problems with trucks over 10 tons. The UK regretted the absence of new versions of these vision acceptance ISO standards, numbered 13564 and 5006, and expressed concern that ISO support may be withdrawn if they are not resolved quickly. France referred to work being undertaken by one of its technical centres the results for which were still awaited and suggested deferring discussion to the next WG meeting. This was accepted by the Commission.

3 (3 s)) Consistency of language in Annex 1 3.4.3: Rollover protective structures (Doc 2005.25)

The confusion about a potential discrepancy between the English and German language texts of the directive, and the deviation of both or either of these from the relevant standard EN ISO 6165, had been resolved by referring to the term in the original French text '*niveleuses*' which confirmed that 'graders' was the correct term for the purposes of English.

3 (3 4c)) Approval of Notified Bodies (NB's) Recommendations for Use (RfUs) (Doc 2005.07 & 08)

The position is as follows: 00.113 to be made available electronically, 01.034 no update, 01.045 no response from the Vertical Group, 03.036 withdrawn by VG, 03.090 - could Sweden accept another form of words? 03.112, the question posed needs to be more specific; and 11.031 had been revised. All others were still ongoing.

Item 4: Report of the Co-Ordination of NB's (Docs 2005.21, 22 & 29)

The discussion of outstanding RfUs led to some expression of regret on the part of the Commission that its 1999 Guide on the directive, which was recognised to be deficient in certain respects, had not received the comprehensive overhaul it required. Attention would soon have to turn to issuing guidance on the new MD currently being negotiated (assuming that it was eventually adopted). A UK suggestion that the present Guide could be updated piecemeal, provided such updates were clearly marked up for the reader, was welcomed (and will be acted upon presumably subject to the point above that interpretation of the new MD should soon have an impact on resources here).

Item 5: CEN/CENELEC - Progress Report on Standardisation (Doc 2005.26 & 28)

CEN reported that it had finalised 200 standards in the last 12 months and that 100 are ready for publication in the OJEU.

For CENELEC the situation as of 3 March 2005, was that there were 59 prepared for publication and two more due shortly. Additionally two were awaiting amendment but these required translator input. Last CENELEC OJEU publication was April 2004.

The Commission repeated some of the reservations it had expressed at the previous meeting about the quality of information received from CEN and reminded that all the necessary information had to be in the requisite format when submitting standards for publication otherwise delays will occur.

Item 6: Formal objection from Germany against EN 13000: Cranes - Mobile cranes (Docs 2005.09, 19, 33 & 34)

This objection concerns the alleged failure of the standard to keep up with the 'state of the art' and was first raised in 2003. The Commission queried when it might expect to receive a new version. CEN commented that before a WG could endorse it, it would have to be referred back to the 98/34 Committee and then to the Technical Board for adoption as a technical solution. On being pressed by the Commission, CEN agreed to provide a revised text by 30 June 2006 for EU implementation by 30 June 2007.

Item 7: Formal objection against EN 13683: Garden shredders (Docs 2005.14 & 38)

No agreement had been reached on whether this standard should be published, and if so, whether it should come with a 'health warning'. The view against doing so, given the potential seriousness of its flaws, which was expressed by many at the previous WG, was repeated. The German Standards Authority is to meet to formulate a revised standard that would then be submitted to CEN for their consideration. CEN accepted this proposal.

Item 8: Formal objection against EN 14122 - 4: Fixed ladders (Docs 2005.18 & 18a)

This standard originated in ISO and therefore places less stress than other EN standards on distinguishing 'design' from 'use'. It is in four parts of which 1 - 3 have already been published. Part 4 deals with fixed ladders. Following representations from France, the 98/34 Committee are contesting this B type standard under clause 6 of that directive. This is because it provides for two types of protection against the risk of potential users of fixed ladders falling from a height: a safety hoop or mobile fall arresters mounted on a rigid belay support. Because fall arresters require the use of personal protective equipment (PPE), and operator action, it makes the user vulnerable; whereas safety hoops, being permanent devices, whilst not preventing falls, do not require action by the user and are therefore thought to be "safer". The UK pointed out the limited safety improvements made by hoops.

Although there was support from some states for the use of PPE, others argued that there was no universally correct solution for safety. The Chair reminded delegates that, if published, the standard would give manufacturers the right to claim conformity and, against this background, a vote was called. The majority of member states voted against publication.

Item 9: Initial proceedings with a view to a formal objection against EN 280: MEWPS (Docs 2005.05, 35 & 40)

A fatality in Sweden prompted an objection to this standard. Sweden explained that the standard only requires the use of gravity locks, and because these are awkward and not user friendly, it prompts some users to put themselves at risk by disabling the guards. Sweden had raised their concerns with CEN more than a year ago but CEN were not minded to change the standard, nor is the need for changing it supported by the 98/34 Committee.

In spite of confirmation from IPAF/FEM, a relevant trade association, that the practices that had caused the Swedish reservation were occurring, the view expressed by the UK and others that there should not be too hasty a reaction prevailed. The UK acknowledged that there were definite problems over access to baskets but warned that the risks associated with the alternative on the market, 'trapezium gates', were, if anything, less understood. IPAF argued further that there was not much evidence of major accidents and that educating users in the safe use of these machines, which their organisations were actively engaged in, was the paramount issue.

The Commission shared the view of Sweden (in that the standard was defective) because that they believed not enough regard had been had to foreseeable misuse and had written to CEN on 17 March 2005 voicing their concern. In conclusion, however, there was agreement that TC 98 should be given more time to develop a solution but that this time should be closely controlled. An overall target of a year for this was set and progress will be chased up at all intervening WG meetings.

Item 10: Court Cases (Docs 2004.11, 18 & 26)

The first case, papers 2004.11/18, concerned a prosecution by the Finnish authorities in relation to a car lift where it has not been constructed according to the harmonised standard SFS-EN 1493. Following written observations by three M/Ss a public hearing took place on 19 April 2005. The opinion of Commission Legal Services is that Art. 28 of the EU treaty, the interpretation of which is crucial to the case, does not apply in this instance. The Advocate General's (AG) opinion is expected within the first half of 2006.

At the previous WG it was noted that the AG opinion on the second Finnish case regarding the obligations of importers should be delivered shortly and this duly occurred on 10 March. The opinion concurred with that of the Commission to the effect that the responsibilities of importers/distributors are not as extensive as those of an 'original' manufacturer. They relate to the checking of the 'Declaration of Conformity' but cannot extend to re-performance of the conformity assessment procedure. Formal judgment is expected later this year (c.90% of judgements uphold the original AG opinion).

Item 11: Question on lifting cradles for access to buildings concerning their classification in the Directive (Doc 2005.01)

The UK has come across a case where some cradles that have integral winding equipment, such that they simply hang on attachment points on a suspension gantry and are fed with a suitable electric power feed, have been CE marked and supplied with a Certificate of Incorporation. The gantry in this particular case is powered and would in principle come within the scope of the machinery directive but was installed prior to the Directive coming into force. The cradles in question are of a series manufacture and have been type tested by a notified body in France. They could be fitted in principle to fixed steel gantries, with no moving parts, installed in the building to give access to otherwise inaccessible areas, in which case the gantry itself would not be a machine. The UK was seeking views on the status of the cradles and gantries under the MD.

The consensus view of the M/Ss was that such a cradle is a machine for the purposes of the MD - i.e. is not just 'partly completed machinery', falls within Annex IV and is covered by a harmonised standard. On gantries, those that are unpowered and either stationary or can only be moved with manual effort and have no lifting function fall outside the MD but those that are powered or have a lifting function must comply.

Item 12: Application of CEN and CENELEC standards to washing machines used in the light commercial market (Doc 2005.02)

The UK highlighted an unusual case of certain products migrating, contrary to the normal direction, from consumer into commercial use. The products in question were top loaded washing machines, manufactured to a CENELEC standard, with a lid that, although interlocked, is not fitted with guard locking, that were being sold into the light commercial market (care homes, pubs etc).

The products illustrated the existing problems with the interface between the LVD and the MD and also focussed attention on how the new MD, if adopted, would be interpreted given its exclusion for 'household appliances'.

In terms of the existing MD the UK considered these machines to come within its scope as the risk is not 'mainly electrical' and that EN 10472 was the appropriate harmonised standard (which required 'guard locking'). The problem it perceived was the existence of the alternative CENELEC standard EN 60335 - 2, harmonised under the LVD, which had a conflicting solution to the same risk.

In CEN's opinion the decision about what directive applied should not affect the underlying situation and CEN and CENELEC, under pressure from M/S and the Commission, agreed to look into the base standards and report back.

Item 13: Standards for forestry and agriculture machinery (Docs 2005.03 & 17)

Italy expressed general dissatisfaction with the development of standards in this specialised area. The standards do not tend to cover all the hazards they pose and are lagging behind 'state of the art' developments in design. These sentiments were echoed by France and Germany who see ISO making most of the running here which means that MD aspects can get neglected.

In response CEN argued that it was better to have standards even if they are not perfect in all respects. Most of these standards are being revised under the Vienna Agreement where CEN is resisting hard against growing pressure to dilute them. But when changes are made due regard should be given to their relationship with the MD.

Italy formally requested that this item be remitted to the next WG meeting for an update. The Commission agreed to this.

Item 14: Resolution relating to information to users regarding operator training and machine maintenance and use (Doc 2005.04)

France referred the WG to a resolution passed by AFNOR (the French standards making body) on a rather general New Approach ('NA') related matter concerning the distinction the NA draws between 'placing on the market' of products and their subsequent 'use'. This can cause confusion amongst global standards makers where the overall safety of machines is seen to be a combination of a manufacturer's and a user's responsibility.

When asked about the intention of the document France wondered whether the two crucial bullet points and their preamble in the resolution might be worked up into some form of EU document, thus?:

"AFNOR strategic Committee 11 (occupational safety and health) considers that, when it is necessary for the user to be given detailed information regarding the training of operators and the maintenance and use of machines, the following rules should apply:

- at European level, such information must, as a matter of priority, be incorporated into the 'operating instructions' section of the harmonised standard in accordance with the 'machinery' directive
- at international level, if the operating instructions' solution is not acceptable, such information can be included in a separate standard or technical report. In this case the international standard or technical report shall be transposed into the collection of French standards".

The tone of the document was generally supported although, given the relevance of the issue beyond the machinery sector, the Commission wondered whether a submission to the 98/34 Committee might be more appropriate.

Item 15: Limiting the period of validity of EC - type examination certificates (Doc 2005.06)

There are two basic issues to consider here. Firstly whether the existing MD equips NBs to review these certificates after a set period of time and withdraw them if the manufacturer in question is not keeping up with the 'state of the art' (it is worth noting that the text of the new directive explicitly allows for this). Secondly, if the answer to the first issue is affirmative, what would be the ideal time period (the new directive would establish a 5 year validity).

The UK's own analysis of and legal advice on the situation has left it at 'first base' - i.e. that NBs are not so equipped - although it seems to be relatively isolated in reaching this conclusion. In that light the UK requested the Commission to refer the issue to its own legal advisers and report back. It then emerged that the issue had already arisen under the ATEX directive and the administrator for that directive assured the WG that the situation there could be read directly across to the MD and that the Legal advice would be referred to the WG when it became available.

On the second issue a 5 year period seemed reasonable to most delegations which was a difficult conclusion to avoid given that this appeared in the common position text of the new directive.

Item 16: Standards dealing with both the Construction Products Directive (CPD) and the MD (Doc 2005.11)

General discussion. Agreed CPD/MD overlap was very different from that with LVD as the CPD is not NA and deals with matters other than Health and Safety. Thus a Standard should cover both Directives if appropriate. The meeting was asked to give examples of possible equipment where there could be conflicts - the UK, supported by some other M/S, suggested industrial motorised doors - the UK had an experience with a fatal accident where a person was pulled into the "rolled up" part of the door and extra protection was needed where the CPD was more concerned with fire and smoke control. It was accepted that this would be used as an example.

Item 17: Moving ramps in ski areas (Doc 2005.13)

Sweden presented a paper on these moving ski ramps (similar to moving walkways) - all agreed these are under the MD and supported that a Standard should be produced. CEN will take this forward with a view to getting a mandate for this work.

Item 18: Q/A are metallic containers lifting accessories? (Doc 2005.23)

Italy presented this paper - UK agreed these were just containers and not lifting accessories, pointing out that if the thesis of the paper were to be rejected the logical conclusion would presumably be that pallets could be brought into the MD's scope! Sweden disagreed but a tour de table supported Italy and that these containers, not being lifting accessories, should not be CE marked.

It then appeared that the difference between Sweden and the UK was due to Sweden, and some others, thinking that the "lugs" on top of the legs were used to suspend the container, where the UK considered them to be lifted by a FLT, the "lugs" being locating lugs for when two or more such containers are stacked on top of each other. The UK pointed out that, if this were the case, to use these lugs for lifting was dangerous, especially if a high load, as they may not have been designed for this loading. This did not change the view that they are not lifting accessories, whether designed to be lifted by suspension or by FLT.

Item 19. Implications of globalisation on standardisation (Doc 2005.27)

France presented a thinkpiece - perhaps a bit too abstract for this rather practical meeting - about the effects which the five year review of European standards in the machinery field under the Vienna agreement might have on these standards. The tone was pessimistic - the effects would be overwhelmingly detrimental, the paper argued, unless there was vigilance. The danger was that EN standards referred to ISO might then be returned to Europe having been shorn, potentially, in pursuit of consensus, of the 'specifically European approach to health and safety' that the paper valued. A particular danger was the prospect of standards being returned that incorporated 'new' options that did not meet the essential requirements of the MD and which would confuse the issue of presumption of conformity (the Commission made it clear that such standards should not be notified to it but there is no doubt scope for some to get through the net).

The ensuing debate, whilst not especially conclusive or focused, seemed to endorse the main thrust of the paper. Officials from the standardization unit in DG Enterprise would be tabling it for discussion at their own 98/34 Committee meeting the following week. The WG will no doubt be informed of the outcome of its discussion at its next meeting.

Item 20: AFNOR appeal against EN ISO 4254-1 agricultural machinery (Doc 2005.24)

Not discussed in any detail, similar situation to paper presented under item 13. CEN will report back at next meeting.

Item 21: Question on jacks supplied with motor vehicles (Doc 2005.37)

Question on the status of these, agreed they are just a tool and not a vehicle maintenance lift and thus are not Annex IV. The UK pointed out they are not designed for working under, and that axle stands or other chocks should be used if work under is to be carried out.

Item 22: Q/A on the scope of MD relating to sunbeds (Doc 2005.30)

The UK presented the paper and said they just wanted some agreement on where these devices should be placed.

The Commission reported that they had approached colleagues working on medical devices, but they confirmed sunbeds did not come under this Directive. CENELEC reported that the Standards on sunbeds were mandated under the LVD and the meeting agreed that we would consider sunbeds as coming under the LVD and not the MD.

The UK pointed out that if the new MD were adopted in its present format, the non-domestic types would be covered.

Item 23: Q/A on commercial “espresso type” coffee machines (Doc 2005.31)

The UK presented the paper and said they just wanted some agreement on where these devices should be placed, and explained that due to the size of the boiler these devices did not come under the Pressure Equipment Directive (‘PED’). The meeting agreed that the PED did not apply for these smaller items. The Commission could find no CENELEC Standards on these items, but CENELEC reported there were in fact two standards in place under TC 61 but they were not listed as coffee machines, but under “hot drinks” (hence the problem in locating them!). In view of their being mandated under the LVD it was agreed that they did not come under the existing MD, just the LVD. Again the UK pointed out that the situation would change when/if the new MD were adopted as the items in question were not ‘domestic’ and so would not therefore fall into one of the excluded categories.

Item 24: Planned formal objection against EN 848 - 3: 1999 (Doc 2005.32)

Time constraints meant that this paper was simply laid on the table and not discussed in any detail - it is likely to come up again at the next meeting.

PB-L/MD/PP (July 2005)