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Dear Stakeholders

**MACHINERY DIRECTIVE 98/37/EC – REPORT TO BRITISH INDUSTRY OF ARTICLE 6.2
WORKING GROUP HELD ON 8-9 FEBRUARY 2005**

I am pleased to attach a report of the latest Article 6.2 Committee meeting that was held recently.

When I posted our report of the October Art 6.2 Committee I also mentioned in my covering letter that some small amendments would be made to the UK domestic regulations arising from the Machinery Directive in respect of certain, relatively minor, details. We have not been able to bring this task to its completion as yet, owing to other pressures of work, but they should be ready soon.

I also mentioned the revision to the Machinery Directive itself. The translations of the 'political agreement' text from September of last year are currently undergoing scrutiny by jurists-linguists and should complete this process during the spring after which they will be referred for 'second reading' to the European Parliament. When I report to you on the proceedings of the next Art. 6.2 Committee, provisionally scheduled for June, I should be able to provide an update.

Finally Roger Kemp, as most of you know, has now retired and I am pleased to say that Peter Baxter-Ludlow, lately of our Business Support Directorate, assumed Roger's old position on 22 February. I am sure you will welcome him to our team here and hope that many of you will get to meet Peter in due course.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Dodds', is written over a light blue horizontal line.

MIKE DODDS

Assistant Director: Engineering Directives (Machinery, Lifts, PE and SPV Directives)

REPORT TO BRITISH INDUSTRY OF A MEETING OF THE ARTICLE 6.2 MEETING HELD IN BRUSSELS ON 8-9 FEBRUARY 2005

SUMMARY

Headline was the formal establishment of the Art. 6.2 (Machinery) Committee followed immediately by its adoption of its first substantive 'opinion' (on 'variable reach' trucks). Otherwise this was a routine, one-day affair that did not get much further than re-visiting the matters arising from the previous meeting, often with inconclusive results (see DTI report of October meeting). 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 (8TH FEBRUARY)

Item 2: Minutes of the meeting held on 11-12 October 2004 (doc 2004.53)

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 2004.53

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

France reported continuing improvement on this issue but the case was not closed as yet. They await developments at the next standardisation Committee. The case was being handled by the Employment Ministry (who attend these meetings) in conjunction with the Agricultural Ministry, with the latter in particular wishing to see front load attachments being limited to those with "check valve" or similar devices to prevent failure in event of hydraulic leak etc

3(3 b)) Rules of Procedure

Taken on 9th Feb. – see below

3(3 d)) PrEN – 13683 Garden shredders (doc. 2005.14)

Germany has launched a formal complaint against the standard that is being developed for garden shredders on the basis that the 120 mm opening that it would allow is too large. The appropriate CEN consultant was not available to comment in detail on the progress of the standard but the Commission confirmed that its Annex ZA (the part of the standard that states its relationship with the relevant directive(s)) was not yet ready and would probably not be so for at least another year. The Commission tried to provide an insight into why the standard makers might have taken the position they had thus far – it was, as ever, a difficult question of reconciling safety with a

recognition of the 'state of the art' - but the German criticisms still found favour with the French and UK delegations. The latter argued that although standards could be published where there are reservations about relatively peripheral matters, the size of the opening, which was at issue here, was the main safety aspect of this product.

3(3 e)) Industrial Truck Pedals

It was reported that the CEN enquiry on the EN ISO standard, which is to replace the EN one (see report of October meeting), had been positive. In the circumstances there was little else that could be done on this front except to continue to monitor developments and to repeat to CEN/ISO the reservations, it seems, that most member states and stakeholders represented in this group had with the direction in which the standard was moving presently.

3(3 g)) Visibility from earth moving machinery

The UK recognised that progress was being made as represented by the version of the DIS ISO 5006 it had recently seen (dated 24th Jan.) but could not confirm its position until it had studied it in detail and acquired the views of its experts. This case is therefore ongoing.

3(3 h)) Agricultural spraying booms

The UK was pleased to acknowledge to the meeting that a satisfactory compromise had been reached in CEN on this issue.

3(3 l)) Stability of industrial trucks

CEN Tech. Committee 150 had begun some research on this issue with input from those countries, e.g. France and the UK, that had expressed concerns in the past. Although the UK welcomed this it considered progress to have been very slow and wanted to see CEN speed up its activity. This sparked a question from the Commission about the release of standards that contained caveats which was pursued in more detail below under 'item 6'.

3(3 m)) Vibration by concrete breakers (doc. 2005.12)

CENELEC had convened a meeting, as it had been requested to do at the October Art. 6.2 meeting, under its consultant Mr Hoyland on 17 January. Mr Hoyland introduced his note of that meeting (doc. 2005.12) and declared himself to have been pleased overall with the progress made. In particular four 'resolutions' had been agreed and Mr Hoyland focussed especially on the first of these in his presentation (all four are laid out with context in the referenced document).

This first resolution was itself comprised of three elements as follows

- indicative vibration emission information should, in principle, be incorporated into standards in an informative annex

- the annex should be qualified to make it clear that whilst the information is intended to indicate the state of the art it is only intended to be enforced in situations of gross deviation from the values given

- the qualification in this second indent is necessary because of the variability of measurement and the general uncertainty associated with indicative values, which may need to be different for particular tools.

The UK, which had participated directly in the 17 Jan. meeting, was resigned to this rather hesitant conclusion as the best available in the circumstances but wanted to see more hard evidence being produced of emission values through more thorough and expert testing of electrical equipment.

This slightly critical note was developed further by the Commission who declared its impatience, in fairly strong terms, about the time it had taken to try to address the considerable uncertainty in this area and implored CEN/CENELEC to bring forward, e.g. better measurement codes, as soon as possible. Sweden also raised the issue of 'whole body vibration'.

3(3 n)) Safeguard Action on EN 693 – Hydraulic Presses

The UK broadly accepted the view expressed by CEN that its reservations were being dealt with appropriately but was still unhappy with the slow speed with which the issues were being taken forward. There were serious practical problems that had to be dealt with such as what constitutes 'large' and 'small' machines in this context. The Commission reminded CEN that the standard appeared not to allow two handed controls as the sole safety measure, but due to the layout of the standard, this was not clear. This was the issue that CEN was asked to address and they will report back to the next meeting.

3(3 o)) Automatic Dough Dividers (doc 2004.42)

The draft standard is now ready to go for formal vote and is therefore with one of the CEN consultants, Mr Vandergaer, for assessment and he expects this to be positive. Past French concerns about the safety distances from the hopper to the dangerous moving parts seemed to have been satisfactorily addressed.

3(4 a)) Aircraft Lifting Devices for servicing of aeroplanes (doc. 2004.37)

An English translation of some correspondence on this issue involving the responsible German Ministry for the Machinery directive, the BMWA (Economy and Work), in which they had declared to a notified body that these devices are in the scope of Annex IV of the directive (specifically para. 15) had now been provided. The committee upheld this interpretation without any dissenting opinions being expressed although the UK pointed out that the picture may be complicated further by the possibility of (some of) these devices also falling within the scope of other New Approach directives.

The question had arisen in a practical sense because of an incident at Frankfurt airport and, now that this point of principle had been established, it

was agreed that discussion of the incident itself, and its ramifications, was more appropriate for the ADCO and so it will be pursued further in that forum.

3(5) Validity of EN 50144 series of standards and overlapping scopes of standards and 3(6) policy on publication of standards

No substantive progress on these issues and so they will all be carried forward to the next meeting.

3(8) Variable Reach trucks: EN 1459 and normative reference to prEN ISO 13564

The enquiry on the ISO standard closed in July of last year with both UK and US disapproving although the UK reported that there had since been progress that should lead an immediate resolution of these difficulties at the next meeting of the standards TC.

3(11) Loading control of variable reach trucks (doc. 2004.16)

The main thrust of the French paper – that Annex 1 4.2.1.4 ought to apply to variable reach trucks would be discussed on the following day with a view to adopting a formal Art 6.2 Committee opinion on the matter (see below)

3(12) Court cases

See agenda item 8 below

3(15) Consistency of language in Annex 1 3.4.3 (re. Rollover protective structure)

The Commission's pledge to examine 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 not been followed through as yet.

Item 4: Report of the Co-Ordination of Notified Bodies (NB's) (Docs 2004.36 and 2004.37

The experience of the last meeting of the NB's group on 9th Dec. when (only) 25 NBs were represented meant that more thought may be needed on how to get more of them to participate but there was not a detailed discussion of this issue on this occasion (unlike in October). The Commission stressed, though, that this figure was not necessarily so significant as in many member states, such as the UK, the relevant information was disseminated to all of them and they all had an input into the process through national shadow groups.

Endorsement of NB's Recommendations for use (RFUs) - (Doc 2005.07)

The base document contained a list of 50 RFUs that had been endorsed since the last meeting and a further list with comments on those that were awaiting the oral procedure. Once again discussion at this meeting was rendered difficult by the fact that, with very few exceptions, only Sweden had tabled any comments and so the list was reviewed *en bloc*. There were specific comments on CNB/M/11.031 and 08.014. On the former the routine typo that

Sweden had pointed out was accepted, on the latter France's request for the draft RFU to be withdrawn was upheld.

Item 5: CEN/CENELEC – Progress Report on Standardisation

A statement from the CEN representative to the effect that that there were, in his view, approximately one hundred CEN standards that were ready for publication in the Official Journal (OJ) but that none had been published in the last nine months led to a robust exchange of views with the Commission. The Commission confirmed that it had last published a list of standards in the OJ in mid-April just before the language requirements were expanded with the accession of the new member states in May 2004. Since then it had received three lists of standards for publication but had found these to be unusable in the form in which they had been transmitted as they were riddled with errors of various sorts – spelling, cross-referencing, format etc. This was contrasted with the Commission's experience of the equivalent lists it had received from CENELEC. It was conceded that CENELEC had far fewer standards to process in this area but, even so, it considered CEN's performance here to fall short of its requirements.

Item 6: Formal objection from Germany against EN 13000: Cranes-Mobile cranes (doc 2005.09)

A document from Germany objecting to this standard was generally supported by the meeting. France commented that there had been accidents involving mobile cranes built to this standard on its territory where the sort of problems over load requirements that the paper pointed to seemed to be relevant. The UK was also broadly supportive, highlighting in particular para. 4 of the paper that brought out the weaknesses of EN 13000 in respect of the additional functions of mobile cranes in certain operating modes, e.g. de-rigging and rigging, where Annex 1 section 1.2.5 (on 'Mode Selection') came into play as well as the general ESRs relating to mobile cranes in Annex 1 section 4. The Netherlands remarked that although they supported Germany in principle they had some reservations about reconciling the position of the paper with developments in the state of the art.

The Commission then asked the question which it believed was begged by the German paper, i.e. when, if at all, is it proper to publish a standard with a warning where one knows it to be deficient? There was a definite dilemma here. On the one hand it was desirable for there to be a standard available to industry, on the other hand one wanted to keep the pressure on the standards makers to develop a fully comprehensive standard as quickly as possible. It was, however, the unanimous conclusion of the member states present was that in these circumstances it was appropriate to publish *with a warning*.

Item 8: Court Cases (Doc 2004.11, 2004.18, 2004.26)

The first referenced document is a letter of some time ago to the Commission from the European Trade Union Technical Bureau for Health and Safety recognising that the first case arising from market surveillance activity under the Machinery Directive is currently before the European Court of Justice (NB:

the member state/EU judicial processes are typically conducted on relatively long timescales).

The case concerns 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 (Doc. 2004.18 is simply a reproduction of C 35/2-3 in the OJ of 7th February 2004). Since then a further such case has reached the ECJ- also involving the Finnish authorities which seems to address more generic issues on the obligations of importers (Doc. 2004.26 is simply a reproduction of C 85/15-16 in the OJ of 3rd April 2004).

As both cases are *sub judice* the Commission could not state its position publicly but the Advocate General's opinion is awaited as early as this month (i.e. March) in the case of the latter. It is possible that public hearings could result in both or either cases.

DETAIL (MORNING OF 9TH FEBRUARY)

Formal establishment of the Art. 6.2 Committee

The Working Group on Machinery, that has existed now for several years, has usually, and loosely, been referred to as the 'Art. 6.2 Committee'. It is important to understand, however, that this Working Group had never, to date, gone through the process laid down in Article 6 to establish itself formally as the Art 6.2 committee and thus to be able to take the 'measures' foreseen by that article. It has now done this by adopting a set of rules of procedure. The draft rules of procedure tabled by the Commission were adopted unanimously without amendment (in effect they followed the precedent laid down for other equivalent New Approach committees by a generic decision on 'comitology' and so the scope for departing from them was actually very limited).

The Committee could therefore proceed to adopt a formal 'opinion' (as foreseen by the 4th para. of article 6 in the Machinery directive 98/37). The rules of procedure would allow for this to be undertaken by a simple majority of the member states (i.e. no weighted votes or qualified majorities) but, in the event, the first opinion, the substance of which is described below, was adopted unanimously.

Formal opinion on variable reach trucks

This opinion concerned the declaration in the minutes of the Council meeting of 14 June 1991* which, in turn, concerned the scope of application of the essential safety requirement in Annex 1 4.2.1.4 on 'loading control'. The declaration refers to 'certain machinery, including industrial trucks', possibly not being able to meet this requirement in its entirety, but does not further define what precisely is meant by 'certain machinery' in that context. The opinion that has now been adopted makes clear that 'variable reach trucks', as opposed to industrial mast lifting trucks, for example, do not fall into the bracket of 'certain machinery' for the purposes of the declaration.

This formal 'opinion' was inspired partly by the French paper (doc. 2004.51) that was discussed at the October meeting. However it only picked up the essential point in that paper that EHSR 4.2.1.4 should apply to 'variable reach trucks', which is now enshrined in the 'opinion'. It did not pick up on the rest of the contents of the paper – i.e. about the detailed development of the standards etc. in that area and there were comments at the meeting to the effect that these matters really belonged in the standards making fora, not in Art. 6.2. *(Comment: It is likely, nonetheless, that the matters in the French paper that are not covered by this formal 'opinion' are likely to be raised at future Art 6.2 working group meetings. It is likely too that other items relating to industrial trucks, including progress with visibility standards and the ergonomics of some types of combined direction and movement foot controls, are likely to be on the agendas).*

The Administrative Co-Operation Meeting (ADCO), involving member States only, then proceeded for the rest of the day.

NEXT MEETING

This has been provisionally arranged for 8-9 June

MD March 2005

*The Council of Ministers that adopted the first revision to the Machinery Directive in 1991 (91/368/EEC) following its initial adoption in 1989 (89/392/EEC)