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Dear Stakeholders,

**MACHINERY DIRECTIVE 98/37/EC -
REPORT TO BRITISH INDUSTRY OF THE MACHINERY DIRECTIVE
WORKING GROUP HELD ON 8 JUNE 2006**

I am pleased to attach a report on the recently held meeting of Machinery Directive Working Group. At this meeting Mike Dodds and Peter Baxter-Ludlow represented the DTI; and Christine Snaith and Phil Papard the HSE.

This was the first meeting of the Working Group since October 2005 and consequently there was a very full agenda. Unfortunately not all agenda items were discussed so the Commission is considering, in respect of these and future agenda items, whether some of the papers submitted could in future be dealt with by correspondence only thus freeing up more time on the day for discussion on key issues.

Since I last wrote to you we have had an internal reorganisation and are now known as:

DTI
Office of Science and Innovation
Sustainable Development and Regulation Directorate
Engineering Directives Team

Individual contact details, ie phone, fax, email and address details remain unchanged.

This reorganisation has provided us with an opportunity to update our website, so I have attached the hyperlink to DTI's new Integrated Product Standards

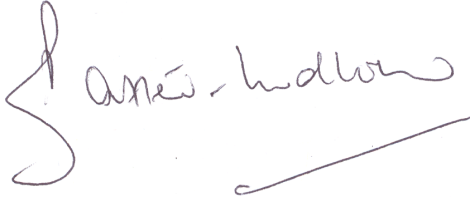
Continuation 2

Guidance for Machinery. It is:

<http://www.dti.gov.uk/innovation/strd/eccdirect/ipsq/index.html>

Finally, should you no longer wish to receive these reports I would be grateful if you would notify my colleague Jan Boorman of this by email, address <mailto:jan.boorman@dti.gsi.gov.uk> and we will remove your details from our general stakeholder database.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Baxter-Ludlow'. The signature is written in a cursive style with a long horizontal flourish extending to the right.

Peter Baxter-Ludlow
Policy Advisor
Engineering Directives Team
SDRD

REPORT TO BRITISH INDUSTRY OF A MEETING OF THE MACHINERY DIRECTIVE WORKING GROUP HELD IN BRUSSELS ON 8 JUNE 2006

SUMMARY

For a one day meeting this was an over full agenda. Taking account of the significant number of follow up questions from the last meeting (the first three agenda items took until 15:00 to deal with) it was recognised that not all items would be discussed. But priority would be given to the three formal objections from **France**. The **Chair**, **Martin Eiffel**, informed the WG that he was in the process of taking up a new post within DG Enterprise dealing with environmental issues, and that until a successor had been appointed, **Ian Fraser** would be holding the fort.

An announcement was also made that the new Machinery Directive would be officially published on the day after the meeting, 9 June, and this led into a revealing discussion about how the new directive would take over from the old one as well as on the strategy for preparing guidance and other related matters.

DETAIL

Item 2: Minutes of the meeting held 11 & 12 October 2005 (Doc 2006 - 21)

With one minor editorial amendment raised by **France** on item 3 (17) they were approved.

Item 3: Matters arising - see summary of questions on the reverse of the agenda

3 (3d) Industrial truck pedals

CEN reported no action to revise the standard. The **UK** pointed out there was confusion as to what type of pedal was being considered. Agreed that **ETUI-REHS** and the **UK** would sort out details of the issue for the **TC** to consider (this action on the UK has been completed; the query referred to a design with a single pedal moved/tilted sideways for movement forward and back).

3 (3g) Stability of industrial trucks (Doc 2006 - 26)

A 2 year research programme is to be undertaken by the University of Hamburg with initial findings due early 2008. **France** was unhappy that the standards (EN 1726 - 1 and 1459) do not reflect the 'State of the Art', and was highly critical that they had made proposals a long time ago and nothing had happened. Issue stems from 1998 and we can't, said **France**, just keep waiting whilst accidents continue to happen. The **COM** agreed that if there are systems in use to reduce the risks then these would seem to represent the 'State of the Art'. **CEN** said that most systems in use are related to electrical truck problems and that foreseeable misuse had not been taken into account. **Italy** welcomed the work being done but wanted a solution quickly. The **UK** were very unhappy with the continued delay and made the point that by 2008 a decade would have passed since the problem first arose and that by then a solution was imperative.

3 (3h) Vibrations by concrete breakers

Single axis measurements are being phased out in the test codes in favour of tri-axial measurements, and publication of these codes is awaited. Researchers are dependent upon receiving information from manufacturers on the level of residual vibration risk, including a noise emissions study in **Germany**, but manufacturers are not willing to provide data. Ways need to be found to encourage them to be more cooperative said the **COM**, otherwise more formal ways may have to be considered. There might be a solution by the time the WG next meets, **Germany** will report back to the WG.

3 (3i) UK formal objection against EN 693 - hydraulic presses (Docs 2006 - 01 & 22)

UK and **France** in agreement on this issue. **UK** gave a resume of the case - the main issue, it believed, was protecting workers, other than the operator, who might have access to the danger zone by providing collective protection measures and restricting the reliance on two handed controls alone, i.e. without other collective devices, to operating areas of 600 mm or less. Given that the **COM** had asked **CEN** to investigate, the **UK** had suspended its planned safeguard action whilst hoping for a compromise solution. **France** stated that two-handed controls were not 'State of the Art' for larger presses because they don't protect all operators in the work area and standard makers need to accept this. **TC 143** had set up an ad hoc group to consider further and it was their view that 1200 mm was an acceptable working area. This had the support of **CEN** but was objected to by the **UK** who believed that this sort of operative area was much too wide for sole two-handed control protection. However, the **UK** might be prepared to accept a compromise of about 650 mm. But, in the absence of any agreement, the **UK** wants the

issue referred back to the sub-group for further consideration of the safety issues and the expert ergonomic view it had commissioned. The **UK** believed that not enough attention had been given to controlling the danger through the sort of 'collective protection' measures that it had experience of in its home territory. **CEN** pointed out that the French member of the relevant TC had been supportive of the ad hoc group's decision. **France** commented that that may have been so, but the solution proposed does not have the support of the French Ministry. The **Chair** of the WG produced a paper, WG 2006 - 27, which the **COM** apologised for uploading to Circa less than two days before the meeting, and said that a distinction had to be made between 'small' and 'large' presses. The **COM** enquired about the costs of light curtains but the **CEN** consultant wasn't able to give any precise information although he was convinced that for smaller presses they would be material to the overall cost of the product. **CEN** acknowledged there was no easy way of reconciling the issue. It was the view of **Spain, Germany, Switzerland** and **Sweden** that accidents with two-handed controls were caused by machines being wrongly set up, not operator error. The **UK** doesn't support this view. **CEN** argued that recognition had to be given to what operatives were content with. **Sweden** said that if no compromise could be agreed there was a need to look at other machines where two-handed use was allowed and the risks are no less. In the light of the discussion the **UK** will have to review its position, i.e. whether to proceed with its proposed safeguard action. **France** plan to limit the use where the 'State of the Art' is lacking due to there being many options available on the market that afford better protection to operatives. **Denmark** thought two-handed controls acceptable but suggested the use of light curtain or laser guards. And in either case **Denmark** thought the responsibility for resolving the issue rested with **CEN** and the **TC**. The **CEN consultant** was sceptical about integrating laser solutions into presses that have a variety of applications but thought there might be scope for a compromise amendment to the standard that distinguished broadly between 'small' and 'large machines'.

In the break for lunch the **HSE** discussed the problem with the **TC 143 Chair**, Dr Knapp. It has been agreed that they will meet shortly in an attempt to resolve the issue.

3 (3n) Overlapping scope of standards

No finalised list yet because analysis of it was still being undertaken. The **COM** had produced its own list and would be uploading this to Circa before the next meeting. **Orgalime** asked about time scales but **CEN** were non-committal saying it might be possible to produce something by the time the WG next met. **Spain** said that the overlap list should include EN 954 and EN 62 - 61 relating to the safety of PES systems. However, the **COM** stated that EN 954 does not cover these systems but as EN 62 - 61 covers other types of control systems, an overlap did exist. **Spain** agreed but said that EN 954 covered more systems. **Sweden** commented that this was a "B" standard; the real issue was overlapping "C" standards.

3 (3o) Policy on the publication of Machinery standards

Standards that were published in the OJ should be categorised by CEN as "A, B or C". **CEN** very unhappy about having to do this given that they're presently trying to resolve other issues, eg overlapping standards. **France** had concerns re: standards being published when they should not be, eg EN 12372. Others were published which are the subject of an objection, eg EN 13355; and one hadn't been published and should have been, i.e. EN 1726. The **COM** acknowledged that the Dec 05 list contained errors as some standards had been published in error. The problem was that they could not be withdrawn unless **CEN** agreed to do so, which they wouldn't, so the only way to effect withdrawal of such standards was to initiate safeguard actions citing the wrongly published standards. The French view was that this was nonsense - a view that seemed to have almost unanimous support. The **COM** suggested that **France** write formally to the **COM** at a high level along the lines that rectifying simple errors required simple solutions.

3 3(p) EN 1459 - reference to prEN ISO 13564 (Doc 2006 - 03)

UK asked that the normative reference to EN ISO/DIS 13564 be removed from EN 1459:1998 as it was outdated and thus did not meet EHSR 3.2.1. Telehandlers were removed from the standard because agreement was proving difficult as they didn't fit well and would hold up agreement on other industrial trucks. But it was planned to produce a new Pt 2 to this standard specifically for this item of equipment. **France** said more work on this standard was necessary to get it acceptable. **CEN** said work on this had been dropped and it would take six months to consult on the normative reference to the 1996 ISO/DIS and it could only be dropped if consultees agreed. The **WG 1 Chair** said he'd had attended a meeting with EU manufacturers in Paris two days before this WG and it had been agreed by all there that the reference to 1996 could now be withdrawn. The **COM** asked that work on this matter be done as soon as possible.

3 (9) EN 280 - Mobile elevated work platforms

Work item created by **CEN**. **WG** in favour of ergonomic access in the standards revision - the reference to sliding bar access gates not needing interlocking to be removed. But **Sweden** not yet convinced of this and will consider further.

3 (12) CEN and CENELEC standards for washing machines

The **TC 61 Chair** said the final position to revise the standard was due to be taken next week. Guard locking is necessary and some machines would be removed from the standard to prevent overlap between the CEN and CENELEC Standards.

At this point the **COM** made reference to the need to revise the existing guide. The **COM** wants to form an editorial group with a small number of **M/S**. Work to commence on this in the Autumn of this year (for more details see item 4 below).

3 (13) Standards for forestry and agricultural machinery.

CEN confirmed that **TC 143** is to revise three standards, EN 745, EN 14017 and EN 709 under the Vienna agreement. Re: EN 745, **CEN** enquiry by October 2006 - formal vote February 2008. The revision of EN 14017 will be in the 4254 series of standards. **CEN** enquiry October 2006 - formal vote February 2008. And EN 709, an amendment has already been decided upon, **CEN** enquiry December 2006 - formal vote April 2008.

An agricultural submission on tractor operative safety and, in particular, that the new directive contained a reference to EN 907:1997 (dealing with the protection of operatives from spraying hazards and chemicals) had recently received by the **COM** and on examination was found to be wholly inadequate. Worse, this standard is currently being revised, but the revision takes no account of its deficiencies. Because it confers a presumption of conformity, erroneously, the **COM** are considering initiating action against it. There will be further discussion on this at the next WG meeting. **Italy** are undertaking work in this area and will in due course provide the **COM** with their findings. **France** likewise doing similar work on this taking the risk into account and working on some standards that incorporate the acceptance of filters.

3 (15) Limitation of the validity of EC-type examination certificates

The **COM** are to write to the **Machinery Notified Bodies (NB-M)** on this and report back at the next meeting as there are limitations on these certificates that have yet to be resolved.

3 (16) Standards dealing with both the CPD and MD

As no **M/S** had identified any of these there was no discussion of this issue. **CEN** suggested taking up matters with those in its organisation concerned with CPD affairs.

3 (17) Moving ramps in ski areas

The **TC 242 Chair** confirmed work on this standard had started in November 2005. Further meetings were planned for June and October 06. The mandate for this work had been given under the Cableways Directive in error when, in reality, moving ramps, properly named travelators, are 'machines'. Changes to reflect the correct position would need to be made to the mandate and the **COM** will inform **CEN** of this. **CEN**, however, replied that, in any case, they were also considering the ramps under the MD.

3 (18) Q/A: Are metallic containers lifting accessories? (Doc 2006 - 13)

There was a widespread welcome for this initiative from **Sweden** even though the table they had compiled analysing whether a wide range of containers were 'lifting accessories' in the sense of the MD was not quite final, i.e. some items are yet to be classified as in/out of the MD. Certain **M/S** had reservations on some items, eg **Germany** on item 20 and **Poland** on items 5, 6, 8 & 9. The **COM** said this item would be resolved by written correspondence. **M/S** were invited to write to the **COM** by 31 July after which they would produce a definitive list which would then be published on Circa (*n.b.: and subsequently uploaded to the DTI/SDRD website - contacts would be alerted to this action by email*).

3 (19) Implications of globalisation of standardisation (Doc 2006 - 04) & 3 (20) AFNOR appeal against 4254 -1 agricultural machinery

Taken together under substantive agenda item 10 below.

8 Formal objection against EN 843 - 3:1999

With the **COM** for adoption: outcome due shortly.

10 Question on manually driven work platforms (Doc 2006 - 08)

The manufacturer had written to the **COM** stating they had consulted specialists and had decided their product was a machine. The **COM** suggested the WG accept this view and no further action was required. A previous question on similar lines had been posed by **Italy** but never formally answered. These machines, in the **COM's** view, are in the scope of the MD even if they only lift tools. **Sweden** suggested that the WG not set a policy on this and that we simply accept the manufacturer's actions. The **COM** concurred with this view.

9 Court cases

C 40/04. The **COM** is to issue to all **M/S** and market surveillance authorities a letter asking them to confirm if the Yonemoto judgement is in accordance with their existing national legislation.

C470/03. This case deals with the liability of a particular Member State and the actions of its officials. The inspector involved with this case had made a number of public comments including his personal opinions on the outcomes of market surveillance activities. No safeguard action was taken and the official was moved to other work. As a consequence the company is suing the State involved for the comments made by its official because of the resulting loss of sales. The opinion of the **Advocate General (AG)** on the interpretation of the directive stressed the importance of Annex 1 paragraph 1.1.2 and the principle that only if the risk cannot be eliminated should residual risk and user action be used. However, and in this respect the **AG's** view differs from that held by the **COM** and other **M/S**, there is a distinction on the one hand between comments made by officials which are refuted by the authorities and those, on the other, which are not. This is because it could be inferred that in not refuting comments the authorities were endorsing them, contrary to Article 4.1. Should this view prevail the company could then sue for further damages. The full text of the opinion can be found on the Commission legal website www.curia.europa.eu.

11 Equipment for lifting persons with machinery designed for lifting tools

The **COM** have redrafted this document to include in it the term "assembled with machinery", together with a definition of what the term means but not in time for this meeting. A revised paper, WG 2005 - 46 Rev 1, is to be circulated to **M/S** who have until 31 July in which to respond.

13 Formal objection against EN 14502 -1

In the course of being adopted following input by the **98/34 Committee**.

14 Concerns on prEN 14017:2005 agricultural and forestry machines - solid fertilisers distributors - safety

Work on a new standard started this year with the committee chair based in **Italy**. **CEN** enquiry to be completed by December 2006 - formal vote February 2008. **Italy** content with this but pointed out that the less safe solution must be deleted as it is not acceptable to have two alternatives in a standard one of which is less safe than the other.

Item 4: Adoption of the revised Machinery Directive

The new directive is to be published under the number 2006/42/EC on 9 June. It will come into force on 29 June 2006. It must be transposed into **M/S** national legislation by 29 June 2008 and be applied from 29 December 2009. The dispensation on portable cartridge-operated impact machinery, ie "Hilti" type guns, applies until 29 June 2011.

The **COM** want to set up two small editorial boards, one to review the existing guidance and the second to produce new guidance in respect of the new directive. Participation in them by **M/S** would be on a voluntary basis (**UK** will be volunteering) and **Orgalime** offered to coordinate industry's input. The body of guidance for the new directive would be shorter and because it will be a live document on the internet, it will be possible to update it more easily. The former group would start work this Autumn, and the latter early in 2007. It is the **COM's** intention that the new guide be available in its completed form by transposition day, i.e. 29 June 2008. The **UK** warned on the basis of some recent contact it had had with representatives of industry that it was not necessarily well understood in the field that there would be no transitional period for the new directive, i.e. that on 29 December 2009 the national regulations implementing the new directive would take over immediately from the regulations implementing the old directive. The **COM** confirmed this factual point and reminded the meeting of the reason for this arrangement which had been accepted by **M/S** when they were negotiating the directive, namely that a transitional period is not necessary in this instance because the essential requirements of the revised directive advance, in all respects, the 'State of the Art' from the existing directive. Thus manufacturers, in transferring their production from the old to the new regimes, will automatically continue to conform to the existing directive. The 18 month period up to 29/12/09 was described by the **COM** as an 'adaptation period' when the law to be applied is available for all interested parties to consult but is not in force, i.e. it is not running in parallel, as it were, as an option alongside the present law.

The **COM** did however acknowledge the need for advice on certain transitional matters to which this generalisation did not apply. One example is products such as builders' hoists, which are new to the scope of the directive; another is the newly established limitation to the validity of Certificates of Conformity - i.e. when is the five-year rule supposed to run from?

Italy asked, not unreasonably, about the relevance to all of this of the New Approach Review (NAR) on which the **COM** is expected to deliver a formal proposal, probably for a EU Regulation rather than a EU Directive, to **M/S** and the **European Parliament** in the autumn of this year. The **COM** replied that the intention at present was for the Regulation or Directive not to modify existing directives directly, but to re-visit some of the basic definitions and procedures of the New Approach (NA). The changes planned under the NAR have already been, and will continue to be, aired at the 'Senior Officials' Group' ('SOGs') that oversees work on all of the NA directives and these discussions will then pass to the **M/S** in a Council of Ministers' WG once the proposal was formalised.

Spain asked about products in the supply chain, i.e. machines produced under the existing directive but not "available" until after the new one is in force. The **UK** pointed out that it would only be a problem if in the interim the 'State of the Art' had moved on and the existing machines were no longer safe. The **COM** acknowledged the issue but regarded it as a short-term problem, not one that would be unduly problematical.

On the issue of tractors the **COM** stated that when the Tractors Committee was certain the new Tractors Directive covered all of the risks currently covered by the MDs they would consult with **DG Enterprise** on an amendment to remove Tractors from the MDs. Text of the Tractors Directive to be put on MD Circa website. When asked whether there would be a list of EN standards published that met the requirements of the new MD pre 2010 to help industry prepare, eg on builder's hoists, the **COM** said 'no'. But they would look to publish a list (not in the OJ) of the standards to use *prior* to publication in the OJ shortly before the new directive comes into force.

Item 5: Environmental requirements for pesticide application equipment (no document)

Within the **COM**, **DG Environment** had contacted **DG Enterprise** for advice on a draft framework directive on the use of pesticides - the part dealing with design of sprayers (big issue are the pesticides) not the sprayer. Art 6 in their draft relates to the placing on the market of spray equipment and potentially overlaps with the MD. In the opinion of **DG Enterprise** the presented text is very incomplete, not well written, is formulated in a summary way (only broad ideas), includes third party authorisation, compulsory standards, no mandate to make standards and was drafted without any consultation. Altogether very poor and not very NA! **DG Enterprise** had stressed NA methodology to a receptive **DG Enterprise** and suggested a NA solution. Their initial thinking was to have a parallel directive but they have reflected on this and now plan to add it to the MD. This approach has been given the green light and industry seems generally supportive of the proposal. The **COM** therefore asked for views from the WG.

There were no dissenting **M/S**. However **France** commented that if these environmental aspects are accepted, we need to be consistent, i.e. we may have pressure put on us to adopt similar aspects at other levels. **DG Enterprise** has re-written their EHSR annex making them more "essential", i.e. goal setting, with details stated in the standards. If accepted by **DG Environment** the three existing standards already appear to meet these EHSRs so a reference to them in the OJ to give a presumption of conformity for a modified MD could be made straight away. An amended new MD would only cover the design and supply aspects of sprayers, of course, not the user elements, i.e. examination, maintenance etc.

Item 8: Formal objection against EN 12215 and EN 13355 - Paint booths and combined paint booths (Doc 2006 - 10 & 11)

France's objection is that these booths restrict the flow of air to such a very low level that it exposes the operatives to harmful substances, such as the "sensitisers" in paint containing isocyanides, and thus makes their working environment unsafe. Within certain bounds air velocity speeds are the subject of **M/S** own legislation therefore **France** would like to see uniformly higher air velocity speeds. This would mirror the findings of existing studies. It is not in accordance with the directive for the responsibility for dealing with this hazard to fall to users: it should be the manufacturers. **Germany** disputes the French findings. In their view simply altering the air velocity doesn't solve the problem: it merely creates other problems, eg spraying and drying times, costs etc - need for personal protective equipment ('PPE'). The **UK** said that controlling the airflow was insufficient; it had to be in conjunction with correct PPE usage. The **UK** also queried whether the current 'State of the Art' in booth design could adequately control the exposure. If 'yes', then the French position was correct. **France** stated that technical solutions are possible in that booths can be constructed to reduce excess costs and believe they have scientific evidence to support this contention. **CEN** stated that when this standard was being discussed there was only one dissenting voice, **Switzerland**. **France** said they had not objected because at the time they were not aware of the problems. **Sweden** asked whether **France** used suits as well as PPE along with higher flow booths and in response **France** said that an integrated approach was needed - better booths, PPE and training. **Poland** commented that the integration of PPE was essential. The **COM** asked that all parties send them their papers.

They would then consider calling an all-party meeting, possibly referring the papers to an independent external specialist consultant for a report, or both. This topic would be considered further at a future WG meeting.

Item 9: Formal objection against EN 12312 - 9 Containment pallet loaders for aircraft (Doc 2006 - 12)

France's objection was based on the fact that the risks had been identified but no technical solutions found to prevent falling, therefore **CEN** should be mandated to find a solution. The **TC 274 Chair** said this standard was a multiple one containing twenty equipment-specific parts, most of which had been revised and 09 was recognised as a priority. The **TC Chair** asked for more time believing the **TC** were near finding a solution. However, **France** pointed out the relationship to Annex IV saying that it was not in conformity as it afforded inferior protection to users. The **COM** supported the French view. It was the view of the WG that the **COM** should draft an opinion by July 06 on the French objection that will include a mandate to **CEN** to propose a solution after which it will be remitted to the **98/34 Committee** and also to **NB-M** as third party intervention is necessary.

Item 10: Formal objection against EN 4254 - 1 Agricultural machinery - General requirements (Doc 2006 - 05)

France's objection is that the precedent standard, EN 1553, confers better protection at the PTO coupling point for the operator than its ISO replacement. To date the French authorities have experienced 23 fatalities and fear more because the replacement standard confers a lower level of safety than the 'State of the Art', and the technical solutions proposed by the replacement standard create a contradiction with the EHSRs of the MD. Comments on the paper from **M/S** are to be sent to the **COM** by 31 July.

This was the last paper to be considered because of time: the meeting closed at 18:30. All remaining papers, i.e. items 6, 7 and 11 onwards will be carried forward to the next meeting. In the meantime the **COM** will examine these to see if any could be dealt with by correspondence (it will be adopting a policy of trying to clear as many items as possible which are left over from WGs by this means for all future meetings).

PB-L/MD/PP

**Sustainable Development and Regulation Directorate
Office of Science and Innovation, DTI**

HSE

July 06