

Machinery Directive Stakeholders

18 April 2008

Dear Stakeholders,

MACHINERY DIRECTIVE 98/37/EC

**UK REPORT TO BRITISH INDUSTRY OF THE MACHINERY DIRECTIVE WORKING GROUP HELD
ON 12 & 13 MARCH 2008**

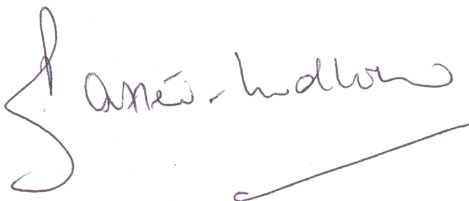
I am pleased to attach a report of the recently held meeting of the Machinery Directive Working Group (MDWG). At this meeting Phil Papard and Peter Baxter-Ludlow represented the HSE and the Department for Business, Enterprise and Regulatory Reform (BERR) respectively.

There were fewer new papers than normal for this meeting which was useful in that it allowed time for due consideration to be given to all the matters arising from the previous meeting. The practical consequence of this is that there were no papers carried forward to the next MDWG which is scheduled for early June.

This meeting provided the Commission with an opportunity to update Member States on the pending pesticide application equipment amendment to the new directive, 2006/42/EC, as well as hearing from all Member States on where they were with transposing the new directive into their respective national legislation - see items ten and eleven respectively of this report.

Finally, you will wish to note that BERR's formal response to its Public Consultation on transposing the new directive into UK legislation is to be issued shortly. Stakeholders will receive an email alert once this document has been uploaded to the machinery page of our directorate's website.

As part of our continuing commitment to stakeholder engagement should you wish to comment on issues as they are represented in this report, ie format, length etc please do so as BERR very much welcomes your feedback.



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**REPORT TO BRITISH INDUSTRY OF A MEETING OF THE MACHINERY DIRECTIVE
WORKING GROUP
BRUSSELS 12 - 13 MARCH 2008**

Principal Abbreviations **ACEM**: European Motorcycle Manufacturers Association; **COM**: European Commission; **CECE**: Committee for European Construction Equipment; **EB**: the Editorial Board (responsible for producing the new MD guidance); **EHSRs**: Essential health and safety requirements; **IA**: Impact assessment; **MD**: Machinery directive ('new MD' is 2006/42/EC); **MS**: Member state/s (depending upon context); **NBs**: Notified bodies; **NB-M**: Notified Body Forum; **OJ**: the Official Journal (of the European Union); **RfUs**: Recommendations for use (propagated by NB-M); **UAP**: Unique adoption procedure; and **WG**: Working group.

SUMMARY

A routine meeting with not many lodged papers as the previous meeting had only been held in December 07.

On the question of **RfUs**, see item 3 (3.11), the **COM** reminded **MS** that it was the agreed intention of the WG to set up a small sub-group to deal with the backlog of these.

There was an update on the proposed pesticide amendment, see item 10, and a *tour de table* where all **MS** were asked to update the **COM** on where they were on implementing the new MD with particular reference to the accreditation of NBs and the effect on their market surveillance activity.

More generally the **COM** apologised that some papers had not been uploaded to CIRCA. A number of **MS** made the point that presenting papers at the meeting did not allow time for proper consideration of them especially if the subject matter was very technical, eg item 3 (13) point 2.

DETAIL

Phil Papard of the **HSE** and **Peter Baxter-Ludlow** of **BERR** represented the **UK**. Speakers, countries, organisations and names are emboldened. New background papers are cited at the appropriate agenda item - please contact **BERR** if you wish to receive copies of these.

Item 1: Welcome and approval of the agenda

The **COM** made known there had been a personnel change within the unit; **Maria Spilopoulou**, had left and a new deputy head had been appointed. His name is **J Calvo Basaràn** and he introduced himself briefly at the meeting.

One old document at item 3 (4) - matters arising - had been wrongly numbered: it should have been WG 2007.56, not WG 2007.66. Similarly there were two WG 2008.10 documents (one, the Romanian paper should have been WG 2008.11). Three matters arising, items 3 (3p), 3 (5) and 3 (13) and one substantive item, item 7, would be taken early as some experts were only attending the meeting for the first day.

Before considering item 2 the **COM** canvassed **MS** views on whether the minutes of the Machinery WG should be published on EUROPA as is the case with the lift ones. **Spain** thought this could be problematical if an item was part of a continuing saga as third parties

might not understand the context of previous discussions on a topic, ie unaware of the whole picture. However, **MS** were content with this proposal. The **COM** also stated they would soon make available a special document, compiled with the assistance of the **ETUI-REHS**, that contained all minutes of this WG back to 1997 which would make searching for particular topics more efficient and user-friendly.

For ease of reference the matters arising and substantive items are shown in order that they appear on the agenda, which was approved.

Item 2: Approval of the minutes of the 18 & 19 December 07 meeting (Doc WG 2007.75)

There were three amendments:

Sweden: item 3 (d); final sentence in para 1 should have ended "...before sent for public enquiry." not "... formal vote."

Mr Gargantini: Item 4 (page 9 of the minutes); reference to 2007.66 should have been 2007.56 similarly with the **UK** reference four speakers later.

Spain: item 12 (page 14 of the minutes); third paragraph, eighth sentence beginning "**CEN** and **CEN** consultants..." should have read "**CEN** management and **CEN** consultants..."

The **COM** also confirmed it had provided written comments on tyre compressors, stairlifts and balancers, items 10, 16 and 17 respectively.

Item 3: Matters arising from the previous meeting (as detailed in the annex)

Romania had submitted document WG 2008.11 covering a number of items taken under matters arising.

3 (3b) **UK** formal objection against EN 693 - hydraulic presses

The **UK** explained that a further meeting had been held involving all parties and that a compromise had been agreed, subject to a formal vote. **CEN** said they were waiting on formal notification of the outcome. Pending the outcome of the vote the **UK** will continue to suspend its safeguard action, but it has been updated in light of the agreement and will be submitted if the compromise is rejected again.

3 (3c) Policy on publication of Machinery standards

The **COM** stated this was still outstanding. **Austria** thought that as MD standards were designated A, B and C it would be helpful if they were listed like this in the OJ. In principle the **COM** agreed but pointed out that **CEN** and **CENELEC** did not distinguish these by type when sending their lists in for publication. As such any arrangement to change this procedure would need their approval. If agreed it would initially be a time-consuming exercise [for them], but thereafter it would be straightforward. They also announced a new tool which would help with publishing standards. **CEN** asked for more information about this. The **COM** replied that this new tool was currently in testing mode but it was a database to hold references to harmonized standards in a format that would not require changing for OJ publication. This should make for easier and more efficient handling of them.

3 (3f) Period of validity of EC-type examination certificates

No action has yet been taken by the **COM** on this. But they reminded **MS** that **NBs** cannot issue new certificates until the legislation has been enacted in their respective countries.

3 (3h) Formal objections against EN 12215 and EN 13355 - Paint booths and combined paint booths

As (3f) above as the **COM** were behind on actioning formal complaints.

3 (3i) Formal objection against 12312 - 9: Container pallet loaders for aircraft

The **COM** had formulated a view which had been sent to the **98/34 Committee**. If **MS** had any comments on this subject they should make these known to their representative on this committee.

3 (3k) Formal objection against EN ISO 4254 -1: Agricultural machinery: General requirements

A decision has been drafted by the **COM** but was awaiting translation. **Germany** stated that a **KAN** report had been drawn up and this will be distributed at the next meeting. This will not be uploaded to CIRCA as it's accessible via their website.

3 (3l) Formal objection against EN 1459: Powered industrial trucks

The **COM** confirmed that a formal decision on this was still to be prepared.

3 (3m) Test codes for pneumatic hand-tools

The **UK** stated that this was progressing in the **CEN** WG and therefore action on it was in abeyance. They will report back on it at the next meeting.

3 (3o) Refuse collection vehicles (Docs WG 2006.15 Rev 1 and WG 2008.06)

France stated that this was an issue about meaning. The standard needed revising because it was necessary to correctly understand the term 'waste collection truck.' But with 'compression equipment' they asked "what was meant by manual?" Some loading systems assisted the manual feed so it was not clear if the whole system was still automatic or manual. Using the directive terminology here would be helpful. In their view only 'true' compaction systems are Annex IV. The **COM** agreed the need for a uniform interpretation, and whilst the **CEN** paper did not fully resolve the issue, it seemed to support the French view. **Orgalime** acknowledged that the issue centred on the compression mechanism which the **CEN** paper needed to address. When asked whether any **MS** disagreed with this [the French view] no **MS** dissented. But the real issue, the **COM** said, was whether such machines are Annex IV which they would have to be if they were manually loaded. **Austria** asked whether the standard dealt with the risk and, if not, how to deal with it. **Sweden** thought the paper was too general. They suggested information in the form of a table showing which machines were in, and which were out, of Annex IV. **France** countered by saying machine construction had moved on so there was a need for a common understanding of what was necessary to ensure uniformity of enforcement activity. The **COM** concurred with this view and asked **Sweden** to formulate a proposal for the next meeting that would differentiate more clearly the differences between the different types of machine.

3 (3p) Off-road vehicles

ACEM stated that their website was now accessible and that they had started to populate it with bikes that met the definition of competitive racing. This would be an-online tool to aid market surveillance authorities. **TC 354's** next meeting was scheduled for this week. They expected to have produced a draft standard by the middle of 2008. **WG 2** was looking at ATVs and **WG3** at go-karts with the latter having found overlaps in the standards covering fairground equipment. **Austria** said competition bikes should not be offered to the general public: they were for closed circuit use and should not be available to everyone. The **COM** said the EB had yet to discuss the text that **ACEM** had produced as a 'stop gap' measure. **Belgium** agreed with **Austria** saying that as there were many vehicles on the market there was an urgent need for a precise definition of competition. This would involve closer working with national authorities. The **COM** made it clear that selling to just one group of people was against the concept of free trade. Competitive racing is outside the scope of the directive so enforcement of it is down to individual **MS**. The definition of competition is one for the **COM** to determine, not **ACEM**. **ACEM** made the distinction that bikes on its website were those that were regularly used for racing, not every racing bike. **Denmark**, surprised by **COM** view on sales, said that could "exclusively intended for competition" mean that if sold to the general public it could be said that they were being sold exclusively for racing? **Belgium** challenged the **COM** saying if such bikes were on the market they must they be on the **ACEM** database to qualify for competitive status otherwise they could not be directive-exempt. It was unacceptable not to have a specific means of identification otherwise each **MS** would go off and do their own thing which was even less acceptable. **Austria** agreed with **Belgium** saying that these bikes needed to be restricted and not for general sale as, for instance, some were used by the military. Use of these machines raises issues of safety as you cannot guarantee the competence of the user. The **COM** again stressed that there was no community framework that allowed placing sale conditions on this type of product. Clear information about them in the guidance document was the way forward, eg bikes that are approved and licensed by the racing authorities are outside the scope of the directive. **Austria** asked about the **COM** document mentioned at a previous meeting. The **COM** said this only related to 98/37 but the draft new guidelines for 2006/42 would incorporate this document.

3 (3q) EN 13524 Highway maintenance machines and EN 690 Manure spreaders

On EN 13524 **CEN** confirmed that the Italian concerns had been discussed and that the standard was under revision. On EN 690 the standard was under technical consideration until 22 April 08. This item was remitted to the next meeting for a further update.

3 (3r) Channel baling presses

Germany confirmed that it was still under **DIN** consideration and that their proposal was likely to involve input of information that had been provided by **France** and the **UK**, but the proposal itself was some way away.

3 (3s) Trucks for narrow aisles

Germany confirmed that this had not been sorted out. It had been rejected by **CEN** so why bother re-submitting it? The **COM** urged **Germany** to re-formulate their proposal and send it back to **CEN** for their reconsideration which they agreed to do.

3 (3t) Formal objection against EN 474 - 4 & 5: Earth moving machinery (Doc WG 2008.02) & Item 6 Material handling excavators with an elevated cab (Docs WG 2007.63 and WG 2007.66)

The **COM** confirmed that parts 1-3 & 6-7 of this standard were published in the OJ on 6 November 07. Parts 4 & 5 were not published due to the pending safeguard action. Reference was made to Annex 1 para 4.1.2.6 in that there was no requirement for safety check valves. On quick hitches the need to amend the requirements of Annex B had been realised by **TC 151 WG1** and an ad-hoc group was to be set up to elaborate a proposal. On elevated cabs it would be necessary to consider changing the wording in Annex D. The main problem is the safety check valve issue re: the dipper arm. **CEN** seem to accept there is a risk of hydraulic failure and had compared ropes and hoses, ie similar factors of safety, and both subject to faults in maintenance. **CECE** stressed the need for realism: there was a need to gauge what is an acceptable risk. There was an absence of accident data to support **France's** objection. As such it was their organisation's view that safety check valves were not needed on the dipper arm cylinder(s) but they were supportive of further research. **France** stated that the relevant standard covered very different risks especially for small machines. With operatives being closer to machines there was a risk and operator safety should never be compromised. As such there may be a need for different devices on different machines. They also stated that in **France** such devices are fitted to machines supplied into the **UK**. The **UK** stated that we saw no need for check valves on the dipper arm of excavators when they were used for general construction work including associated object lifting, eg pipes, but if an excavator was used in a similar way to a loader crane, as we saw outside a previous meeting when a pallet of tiles was being lifted into a building under construction, the situation was different. **Italy** had a similar view to the **UK** saying that in their view the standard should deal with normal and planned use and not exceptional lifting use as this was for **MS** to determine under 89/655. They also asked whether there had been any opinion from **NB-M** to which the **COM** replied in the negative but they will seek one in time for the next meeting. **Sweden** agreed with **Italy** saying that the fitting of a check valve was not enough; use needed to be addressed too. If part IV of Annex I applied, it all had to apply as a standard that allows alternative use would merely confuse. **Denmark** said that in their country such machines were not allowed to lift loads "if not check valved" and the standard should deal with this as all uses should be covered. The **UK** countered by reminding **MS** that the 'State of the Art' carried an economic element and that we should not spend vast sums of money countering a minor risk: a balance had to be struck. On quick hitches the **UK** has initiated a safeguard action but hopes that a UAP can be used to resolve the problem in which the case the **UK** would reconsider its position. On elevated cabs it is the **UK** view that it is only the cab element of the machine that is covered by Annex IV not the whole machine. In summing up the debate the **COM** said it would draft, in respect of EN 474, a decision for the next meeting which was unlikely to be 'wholly acceptable to all.' On the quick hitch issue it urged **CEN** to resolve the issue as soon as possible and not go through the normal revision procedure. And on elevated cabs it was confirmed that it is only the lifting mechanism that needs to be considered under Annex IV.

3 (3u) Formal objection against EN 500 - 4: Mobile Road Construction Machinery

The **COM** confirmed it had not yet drafted its opinion. A **CEN** consultant made a presentation on the French concerns which covered (1) stability to prevent rollover, (2) dynamic effects, (3) high risk with drum widths on 1m width, (4) no details of braking system requirements; and (5) the lack of a requirement for unexpected start up (particularly for machines with no cab). **TC 151** has agreed to adopt a simple amendment procedure for numbers 2 - 4 (accepting the issues raised by the safeguard action) but needed to go through the technical amendment procedure for stability and start up. Commenting on the **CEN** presentation the **COM** said that new stability tests were not being proposed. What **TC 151** would be doing was to modify the instructions. **France** commented that they were pleased to see some work had been scheduled on this but as the document was not provided in advance it was difficult to comment

because they had not had the opportunity to discuss it with their experts. It would also appear that the loss of control had not been taken into account. There was nothing on incline testing or on the duration of use. They also repeated their view on unexpected start up, ie they had not changed their minds - however, if covered in another way this was acceptable - but for now their view, as originally expressed, remains unchanged. The issue would be considered further at the next meeting.

3 (3v) Warning for EN 1726 -1 and 1459 (industrial trucks)

The **COM** is unsure as to what procedure to adopt because they have identified another problem. Namely, would the change in wording give a presumption of conformity to a manufacturer who modified their product in the light of the revised wording procedure? They are to give further consideration to this issue.

3 (3w) Comments EN 843 - 3:2007

TC 142 confirmed receipt of the German papers and that an amendment to part 3 was under consideration which would be sent to the secretariat for UAP action. Unsafe tools would be covered in the next revision of the standard. This issue would be reviewed at the next meeting.

3 (3x) Formal objection against EN 1870 - 17 Circular sawing machines

TC 142 confirmed that action was being taken in parallel with 3 (3w) above and it would fully cover the French objections.

3 (3y) Lifting accessories (Doc WG 2006.13 Rev 2)

This paper is about to be uploaded to CIRCA. Entitled 'Guidance document on lifting accessories' it has a short preamble and confirms compliance to both directives.

3 (7) French concerns on EN 14910 - Powered lawn trimmers

France asked that this item be withdrawn from the agenda. It will be re-submitted if they receive new information.

3 (9) French comments on EN ISO 11161 - Integrated manufacturing systems (Docs WG 2007.39 and WG 2008.09)

At the previous meeting the **COM** reminded **MS** that they sought their comments on this. **Germany** said they partly agreed with the French paper saying that some aspects of this B type standard should actually be in a C type one. They welcomed improvements in it but not at the expense of deferring OJ publication. The **COM** queried the reference to Annex D - was this a French or standard error? to which the reply was the standard. **France** thanked **Germany** for their comments. They want to encourage dialogue on the issue rather than pursue the safeguard route. On Annex D where the observation process is allowed, ie mode 3, the directive is supportive of this, but if this is not an engineering solution then it needs to be applied so that the risk to users is no greater. They are against a type B standard if it adopts this type of compliance. The **COM** believes that if a standard gives rise to different interpretations it could be corrected by a corrigendum. **Sweden** said the 'integrator' could be one of several players, eg installer, manufacturer etc, and in placing on the market came somewhere between using and supplying giving rise to serious interpretation issues. The **COM** stated in their view 'integrator' means manufacturer. If the user puts it together they become the manufacturer. It would be more helpful if the terminology more closely reflected the directive text. **Mr Ulright** (**CEN** consultant) acknowledged there were errors in the text that need correcting. It had been

suggested that an explanatory note be issued, but as the standard had not been published this could not be done so they will look at alternative ways of effecting the same intention, see working group paper WG 2007.58. Further discussion on this issue would be taken at the next meeting.

4 Adaptation of CENELEC standards to 2006/42/EC (Doc WG 2008.08 Rev 1) & Powered gates, door, and windows (Doc WG 2007.56)

On standards **Austria** thought there was a point of conflict here in applying Annex 1 para 1.7.3 to large series production. **TC 61F** were meeting on 13 March and would be considering this. The **COM** asked to be kept informed of developments.

On powered gates **Sweden** thought care was needed with definitions saying that kits were machines in their own right. **CENELEC** suggested that if the term was misunderstood perhaps we should call them 'drive units'. They suggested drive unit + control + transmission component = kit. **Spain** too said that they had problems with the terminology and we should be careful not to confuse definitions relating to 2006/42. So 'drive systems' are always 'partly completed machinery' under the new MD. This would mean DIY kits would require the householder to CE mark the installed doors. The **COM** thought this impossible to enforce as 'others' would be responsible for the declaration of conformity. Kits should be CE marked under the new MD so applying this logic we will need to use different wording when talking about drives, controls and operating kits so they supported **Sweden's** view for a clearer definition.

5 Revision of EN 1570 - Lifting tables (Doc WG 2008.03)

Mr Piggott, Convenor of **TC98 WG2**, spoke to a power point presentation clarifying what was in, and what was out, of this standard. The main changes relate to changes in the new MD, ie demarcation is now on speed not the type of carrier. The **COM** asked whether the pictures in the presentation were real or simulated and was told they were real. **France** commented that the paper received was not the one being spoken to. They had noted improvements but needed to be satisfied about dealing with the crushing risk. They also noted the overlap with other standards particularly those dealing with the carriage of people and serving fixed landings. Furthermore they felt the need to amend the scope, ie definition. Additionally lifting tables must take account of the materials they are transporting. The **UK** pointed out that there may be some confusion with the directive use of the words "serving fixed landings" as some machines only serve fixed landings, eg platform lifts and that others, like the lifting tables, serve any height but also fixed landings, eg to load and unload the table. **Sweden** said there had been problems in this area for some years and they had sought to influence their national authorities about it. The way forward, **Mr Piggott** suggested, was to meet with the Chairs of **TCs 10** and **98** at an ad-hoc meeting to resolve the issues of scope. The **COM** supported this intention saying there was a need to ensure such machines were covered by harmonised standards with clear border lines. The revised document, revision 1, is to be uploaded to CIRCA.

8 Semi-automatic quick hitches for excavators and Attachments of interchangeable work platforms on telehandlers

Dealt with under item 3 (3t).

9 Lifting function of a vehicle chassis

The **COM** confirmed that consultation with automotive colleagues was still to be held. The item was remitted to the next meeting.

11 Procedure for endorsement for RfUs

To date no **MS** had offered up their services. The **COM** encouraged **MS** to nominate themselves saying it would consider this issue again before the meeting closed. There was, however, no further discussion of this topic the inference being that the issue would be pursued again at the next meeting.

13 Formal objections to EN 13001 - 2 and EN 14985 (Doc WG 2008.05)

On EN 13001 - 2 **Germany's** expert gave a presentation giving some technical aspects concerning what the driver can select re: the operating speed - but this will now be limited due to the design of the crane. **WG 2** was going to modify the standard to solve this but it was decided that this change to the published standard was not an editorial change, but a substantial change and would need to go 'through the system'. The solution is to take the driver out of the loop but, although agreed as a solution, it has yet to be decided how to proceed, eg should it be a warning in the OJ? No objection from **MS** to the change but it was agreed a warning was needed as it will not be a quick change to the standard. **CEN** agreed it needs to be published as an amendment. As to publication in the OJ, the **UK** asked that if it was agreed by all, ie **CEN**, **WG2**, this **WG** and the **COM**, does it still need to go through the full **98/34 Committee** procedure and the **COM** confirmed that this was the case.

On EN 14985 accidents had occurred using this type of machinery due to instability of dock type cranes. **Germany** gave a presentation which included details of a second case that happened (also in **Germany**) two weeks ago caused by the wind and the operator trying to operate it too quickly. Fortunately no one was injured as it was early morning. In the standard it says that safety is due both to the design of the crane and the operation of it by the driver. For a product standard the emphasis was all wrong for it places more importance on the driver's action than on good engineering design, which was neither normal/acceptable. Additionally, part of standard asks for the use of interlocking gates but then goes on to say other access routes must have warning notices instructing people to take care. This does not fit with Annex 1 para 1.1.2. For personal protective equipment (PPE) there seems to be a different access standard for drivers than for maintenance and inspection staff. The German view is that all should have a similar standard of safety. Also there is a problem with lowering loads in emergency, eg power failure. Another issue is with respect of EN 13849 -1: reference where only category 1 equipment is required for control systems. It was accepted that this now needs to be performance level C but the problem is proving how to get to this level. It says it must be equipped with additional independent systems where back-up protection cannot be automatically reset. The difference between the SIL and the performance level system was explained with the aid of diagrams. The presenter went through the system of identifying S (indicating the severity of the injury); F (indicating the frequency of the exposure to the hazard) and P (indicating the possibility of avoiding the hazard) levels to get to a performance level showing how you could choose S2, F2 and P2 getting a needed performance level of e) and not c) but even if we accept the frequency risk of only being F1 you still get to a needed performance level of d) and not c). Other problems with the standard were identified including stopping devices as no category has been defined and several ways to tackle were being considered. There is also a reference to EN 60204 -32 but as these only related to some clauses in it, it was unclear how other clauses related to this standard, if at all. The presenter agreed there are problems and that corrections to it are needed. **CEN** accept this but asked for written comments from **Germany** in order to consider and discuss again. It was agreed that the presentations would be circulated as WG papers. **France** raised two issues a) there seems to be a fault in the design of the standard, ie placing more reliance on the users and access than we would expect under the MD thus manifesting a fault with the standard, and b) the WG were warned of this thus they supported the German objection. The **UK** agreed with **France** saying it also raised issues of access. In respect of maintenance personnel having permanent access

for occasional inspections/repair to more remote parts may not be needed as access could be provided by MEWPs or lowering the crane etc. But in particular the **UK** had concerns with the way the performance level has been identified. This is a very critical issue for an increasingly wide variety of machines and the choice of performance level must be carried out correctly. **MS** agreed the choice here was not clear. The **COM** agreed with the **UK** on occasional access to some remote parts where routine maintenance is not needed; this had been discussed and agreed previously for “self erect” tower cranes. The **COM** requested written comments on each point in **Germany’s** presentation within two months, ie by 12 May 2008.

20 Electric brakes on small saw benches - risk due to removal of plug.

The **COM** asked whether this was foreseeable misuse. Unfortunately there was no representative of **NB-M** present so the issue was remitted to the next meeting.

At this point in the proceedings **Germany** gave an update on item 3 (3k). The **KAN** report on standardisation of agricultural equipment, and how it could be effected, would be published on their website. This was a possible topic for a future meeting.

Item 4: Report on Coordination of Notified Bodies and Recommendations for Use (Doc WG 2008.10)

On the written RfUs the **COM** reminded **MS** that they have until 4 June to make any representations. **Austria** commented that these address fundamental issues, ie module H. Such issues would be better considered at EB meetings in the context of the guide. The **NB-M** does not have the necessary competence in this field; their role is to deal with organisational issues. Whilst supporting **Austria** the **COM** welcomed this **NB-M** initiative but said it was ‘the WG’s call.’ But it did raise a number of issues on which **MS** views would be welcomed. **Denmark** thought that in the ATEX area there was a standard on how to deal with such issues but **Germany** intervened saying that this standard dealt with a different module, not module H in the new MD. However, **Denmark** countered by saying that if there was no standard there should be one because companies need to know what is required of them. **France** pointed out that under the ‘New Approach Review’ a taskforce had been set up to look at modules and the list of standards that apply to them. The **COM** said that ISO 9001 could be used by manufacturers but some guidance to NBs was necessary. **France** had noticed that Annex 10 in the new MD was not the exactly the same as in module H so we need to study the options. In the context of machinery **Denmark** were not convinced that manufacturers understood ISO 9001. To close the discussion the **COM** said that further consideration of these would be necessary.

Item 5: Report on standardisation

The **COM** informed **MS** that this document would be uploaded to CIRCA post meeting. The regular presenter of this item was unavoidably absent due to illness. However a **CEN** colleague stated that as of the 3 March there were some 558 new work items to update in respect of 2006/42. These were categories into three groups: a) deemed minor - type 1 amendments (including Annex Z) - 291; b) real technical amendments - 170; and c) full revision - 97. Additionally 130 adoption procedures will have been launched by the end of this month but 202 were overdue having missed the initial target to start the adoption period. The **COM** made known that **CEN** had asked for additional support to meet the standards’ deadline and this had been supported. **Austria** asked both the **COM** and **CEN** to give an overview on solutions to Annex ZB. In reply the **COM** said they had stressed to **CEN** the importance of technical information. There saw three options: a) they cover all EHSRs, b) nearly all listing by exception; and c) some detailed by standards’ requirements.

CENELEC reported that a standard on wind turbines had been produced by **TC 88**. This had been rejected by the **CEN** consultant as it was not in line with the directive so a new one is under preparation but as this was likely to take about a year to complete they are keen to receive input and help from **MS** on it. They went on to say that the comment made yesterday that the **CEN** consultant had been in conflict with **TC 61F** (over the production of dedicated standards) was not a conflict, merely a case of different interpretations. One standard was out for vote, and by the end of this month it was expected that this would have risen to seven. There are a further eight standards that are likely to take up to two years to complete because they are **IEC** related. On the issue of these delays, **CENELEC** thought there should be an **EB** view as a simple solution might be to state the requirement and then leave it to manufacturers/**MS** to interpret this recognising that this could result in different solutions being adopted across the **EU**. The **COM** said there was an issue with Annex 1 para 1.7.3 relating to the word “..mark..” particularly when used with the “...designation of machinery” for there is a distinction to be made between series and type, eg saw A type A, saw A type B. Where products are mass produced, and the marking is an integral part of the product, difficulties could arise if it had to show all recognised EU languages. **Spain** queried standard 50308 (wind turbines) saying that, along with standards in the 61400 series, there were overlaps that could create confusion to manufacturers. The **COM** replied saying that the latter series of standards had never been submitted by **CENELEC** for publication as harmonised ones. **Belgium** argued that standards should be universal: we should therefore stop developing new ones that contained cross references to others as it only created confusion. The **COM** disagreed pointing out that it made sense to refer to them as this could be helpful to users but concurred in so far that where international standards had been quoted obtaining copies of them was more difficult. **CENELEC** supported the **COM** saying such references were generally to other **European Standards Organisations’** standards, not international ones. They added that they had examined a number of **ISO** standards and none had met the **EHSR** requirements of the MD so it was easier to write new standards than modify existing ones. **Spain** supported **Belgium** re: the confusion caused by standards and the **COM** acknowledged this citing, as an example, a series of standards dealing with the regulatory matters on the procurement of electrical generating equipment which made no reference at all to the MD. **France** stated its 2003 report on market surveillance had concluded there were problems where standards overlapped. In concluding the debate on this issue they suggested it was, perhaps, now time to revisit their report.

Additional non agenda item

Before taking the next substantive agenda item, the **COM** introduced the **ETUI-RUHS** saying it had produced a comparison of the differences between the directives and gave the floor to them to explain what this had involved. **Mr Boy** of the **ETUI-RUHS** introduced their website and in particular a document on a line-by-line comparison of Annex 1 in 98/37/EC and 2006/42/EC with shows in different colours what has changed, what has been left out etc, and may be very useful for further work. This work will be used with **KAN** to produce a book on the new MD and this will be presented at the guidance conference in Munich in May. There are also other links on the website that may be of use, eg the Australian site has some very useful information on accidents involving machine design. **Mr Boy** concluded by offering their report to the **EB** as an example of collaborative working and inviting them to take this document into account when formulating their own guidance. The **COM** welcomed this initiative but **Spain** was critical of it saying that it was a duplication of effort, and that any use of it would require close scrutiny to ensure consistency of approach.

Item 6: Material handling excavators with an elevating cab (Docs WG 2007.63 and Doc WG 2007.66)

See item 3 (3t).

Item 7: Vertical turning machines (Doc WG 2008.01)

Finland resumed their paper explaining that the machine in question had two modes of operation, Asian and European - the former password protected as its use entailed a higher degree of risk - however, the "password" was given in the machine instruction booklet. Unfortunately the machine had been used in the wrong mode resulting in a very serious accident that was now before the Finnish courts. It was their view that the manufacturer should have prevented this potential for dual use. Consequently, it would be helpful to their court to have a WG view on the appropriateness of this machine being placed, as it had been, on the Finnish market. **CEN** stated that the relevant WG chair was unaware of such a mode and thought it unacceptable. The **UK** supported **Finland's** view that it was not acceptable being contrary to the requirements of Annex 1 para 1.1.2. The **COM** asked whether there were any dissenting opinions. There being none the position taken by **Finland** was endorsed.

Item 8: Front Loaders (Doc WG 2008.04)

The **UK** said the paper was mainly for information, but they welcomed input from other **MS** as we were already working with our domestic users who had experienced similar problems. The issue was with front loaders operating through the tractors' on-board hydraulic system where the controls were being programmed to work without using the 'hold to run' facility so this use was extended to the loader controls, thus not meeting the EHSR requirements for safe operation of the loader. **Italy** acknowledged the **UK's** work saying it too had identified a similar problem. It had also identified a second problem, namely there was no auto-levelling system on the loader bucket which meant that if the arm was raised the bucket can tip causing a load to fall back on top of the cab and injure the operator. The **COM** recognised the importance of action taken to date which would hopefully lead to solutions that could be fed into standards' work. They thought the issue was more an ADCO, ie market surveillance, one and suggested that this item be remitted to that meeting which both countries agreed to.

Item 9: Tractor mounted diggers (Doc WG 2008.07)

The **COM** introduced this item as it follows a safeguard action from the **UK**. The problem is this: the digger on "unlocked" 3 point linkage can be pushed up and, if a cab is fitted, a crushing risk can exist. This is a particular problem if the controls work in such a way that the upward movement cannot be stopped if the person is pushed against the controls. **Italy** gave a comprehensive presentation explaining the problem stating that they too had experienced a fatal accident for the problem affects a number of machine types - there are attachments that can "lock" the 3 point linkage that were not integrated with the machine. The **UK** pointed out the critical problems of confidentiality where a fatal accident was still being investigated. The Italian authorities, **UNACOMA**, have sought input from their members which will feed into their work to develop solutions to the problem which can then, in turn, be presented to **CEN** to form the basis of an EN standard. **Austria** asked for more information on this work as a matter of urgency. The **UK** confirmed it would upload to CIRCA the information it had on these machines to widen **MS** knowledge of the issue. **France** asked if Article 9 procedure, of the new MD, could be used to take action on this class of product to which the **COM** replied affirmatively but they have yet to set up a procedure or the necessary regulatory committee to effect this. **Luxembourg** asked about the need to pass on photographs and information. The **UK** explained that under the 'New Approach Review' a database to exchange information will be set up, but that ICSMS can already facilitate this requirement and should form the core of the new system.

Item 10: State of play on the draft proposal for an amendment to Directive 2006/42/EC on pesticide application equipment

The **COM** began by thanking **MS** for their written comments. They will be drawing up a table of these prior to them drafting a formal proposal. However they struggled with the IA as they have no real experiences of producing such a document particularly given that a) an IA was done for the 'Thematic Strategy' which now covers the same type of equipment that is to be included in the new MD, and b) an executive decision within the **COM** has already been taken that this equipment will be covered by the new MD thereby rendering the whole IA somewhat unnecessary. They are currently, with **CEMA**, preparing a questionnaire to determine the administrative costs associated with implementing these prospective amendments to the new directive. The **COM** reported that a separate IA may not now be needed. **MS** were generally supportive of amending 2006/42 but the **COM** understood their main concern, ie the wording of the amending proposal needs to be waterproof in that it does not inadvertently extend the scope of what is intended. Regard will be had as to whether such equipment should be added to Annex IV. Recital 3 is to be amended to support the specific intention of only covering pesticide application equipment. Reference to this additional equipment will be added to section 2 of Annex 1. They believe it will take at least another couple of months before their proposal is issued to **MS** for their consideration. At the point it is accepted the **COM** will issue a mandate to **CEN** to ensure that any new standards that are necessary are in place by 29 December 2009. What is/is not covered by the new MD was the subject of a **CEMA** paper which the **COM** have since adopted uploading it to CIRCA with the reference WG 2008.15. The **UK** asked whether aerial sprayers, ie those fitted to helicopters or aircraft, were 'machines' as some might operate only through pressure with no moving parts. The **COM** will check on this and report back. **CEN** reported they were working on two prENs, 15695, as there was a need to protect operatives from hazardous substances. **France** supported the **UK** re: aerial sprayers and went on to ask when the table of comments would be made available because if action was required on it this could fall under the imminent French presidency of the EU Council of Ministers. The **COM** said they need to finalise the Annex 1 comments, establish the IA position - whether they have a 'green light' to proceed with the existing one or not - obtain internal clearance and then seek to get it adopted by the wider **COM** institutions. **Sweden** asked by what date all this action would be complete to which the reply was by the end of June 08. **Austria** asked about the ECO Design Directive repeating again their view that this was a better home for this type of equipment. The **COM** replied that this had previously been considered but had been disregarded as this directive dealt solely with items that are mass produced. From an industry-friendly perspective it was better, in their view, for all the requirements to be in a single directive, ie the MD, than to be covered piece-meal by a number of them. **Belgium** asked about the links to the PPE Directive and whether a group was to be set up to examine the issues. **Denmark** queried whether guidance would be issued on what types of equipment could be recorded on CIRCA and the **COM** confirmed this. The **Netherlands**, supported by **France** and **Belgium**, have concerns about the wording of any proposal being too prescriptive believing it needs to be more generic. The **COM** said they would have regard to their concerns when framing their proposal. The **UK** asked about the amendment to Recital 3 and noted that the latter part is very generic and not pesticide-specific, was this intended as it would seem to allow other products to be introduced? The **COM** said yes. This was a specific decision taken at **COM** level so that if subsequently other products needed to be introduced there would not be a need to change the recital, eg new environmental proposals could be brought forward at some future point. The decision to limit the type of equipment to be added to 2006/42 had been a political one and that they, **DG Enterprise**, were working within this parameter. They will give further consideration to the comments made by **MS** and would respond formally in due course.

Item 11: Progress on national implementation of Directive 2006/42/EC - problems encountered

The **COM** opened the discussion by reminding **MS** that they needed to submit copies of their implementation Regulations to them by the due date. These would be audited for directive compliance especially in the areas of market surveillance and the appointment of NBs. The **COM** stressed that if a **MS** was likely to miss the implementation date it was important that they made this known to them at an early stage, with reasons, as this would help them to determine whether to initiate infraction proceedings. Two translation problems have been noted. One, the term “portable cartridge-operated fixing and other impact machinery” translates in some languages into only fixing machinery, not fixing and impact machinery - an example of this could be found in the French text. Secondly, where NBs are applying the full quality assessment module, the intention is to look at one example from each category of machine, but in the German text it seems that a technical file is needed for every individual machine. **Denmark** asked about Annex 2.2 which applies to all machines and para 2.2.2 which covers impact machinery, was this correct? The **COM** replied in the affirmative because the whole section is headed ‘portable tools’ so any individual paragraphs in it are just a sub-set of the heading. Despite being aware that some **MS** would like a German version of the guidance they were not proposing to provide this. If individual **MS** wanted to effect this they were free to do so, but it was the English version that would be the definitive version. **Slovenia** asked about translation funding and the **COM** said it would examine whether such was possible.

Individual MS reports:

Austria: Sent in expert’s opinion now and hope to have everything in place by June. Accreditation for their NBs re: Quality Assessment is underway hence they would like the RfU documents issued as a guide. They have a practical problem as some companies want to issue Declarations of Conformity against the new MD but cannot. They also need the guide soon in German which they, ie **Germany** and **Austria**, may translate which they hope the **COM** will help with by providing some funding assistance.

Belgium: Text finalised and subject to two Royal Decrees (machines and lifts). A NB conference study day is being organised post 29/6.

Bulgaria: Draft ordinance ready for Ministerial approval. Expect all action to have been completed by June date.

Cyprus: All in order. Their Regulations will shortly be sent to Parliament for approval and should be in place by the end of June.

Czech Republic: It will be a single Act and final discussions are being held with their lawyers and Government Counsel. They have experienced some problems with terminology but expect it to be in place by the end of June.

Denmark: Have drafted the MD requirements and revised their lift legislation which is out for public consultation. They debated on how best to make known information on dangerous products and decided to incorporate a reference to them in their legislation that such information could be found on their official website. No changes on market surveillance but NBs will need to be reaccredited.

France: Transposition will take account of the current and new directive, ie new legislation will simplify some existing requirements on strengthening enforcement activity, banning dangerous products; and improving user access to standards. Due to the reform of public administration, eg reductions in state resources and personnel levels, not much progress has been made with

the text, and this could have implications for their market surveillance action. They are also revising their general labour code. Taken as a package it could mean they miss the adoption day.

Finland: The transposition exercised is almost finished and translation into Swedish, the 2nd official language in Finland, is well in hand. The application of Article 24 will necessitate changes to their law. No market surveillance changes are envisaged but notification procedures for NBs are to be changed. They have also experienced problems with their impact assessment because their industry made no comment on it.

Germany: They have drafted new separate legislation on both machinery and lifts which has been subject of public hearings. It still requires Upper House and Laender approval but anticipate this being given by May. They would also like the guidance text in German.

Italy: Technical work completed, but the new Government will determine how it proceeds. Problems were experienced, particularly relating to Annex 10, and its effect on small companies as this is a major business change for them. No market surveillances changes but will be examining the scope of their NBs. They expect to meet the June deadline.

Lithuania: Transposition has been completed and their new Regulations (machinery and lifts) have been signed by their Minister but they have yet to send them to the **COM**. Two NBs have been accredited.

Luxembourg: Transposition Regulations are being considered by their Chamber of Deputies and industry. They have no NBs but will be introducing a new law for NB accreditation. They are also effecting a total overhaul of their market surveillance procedures.

The **Netherlands:** Revised text completed last December, and since no public enquiry was necessary it has been sent to their Advisory Body of Parliament. They anticipate meeting the implementation date. On market surveillance two Ministerial groups have been set up to examine the new requirements and NBs will need to reapply for re-designation.

Norway: Draft document issued 13 March with a three month period for responses. Ministerial action will follow mid June but they anticipate meeting the deadline. They have experienced some problems with the terminology. Market surveillance activity will be a priority for them as they have established a new organisation to coordinate this activity across a number of directives. There are no NB changes.

Poland: Being prepared by their Economics Ministry and once completed it will be uploaded to their Website of Ministries for comment. Not expecting any problems regarding market surveillance but have issues with Annex 10 and NBs which require further consideration.

Portugal: Consultation period ended and new Regulations submitted to two Ministers (machinery and lifts separately) for approval so do not expect to miss implementation date. They have doubts as to whether NBs need to be reappointed.

The **COM** interjected saying that a new field is to be added to NANDO requiring confirmation of NB compliance to the new MD.

Romania: Draft ready but awaiting technical expert input to Annex 1. They anticipate presenting this to their Government for approval on 28 May.

Slovakia: Public enquiry (machinery) completed, but had some issues pertaining to lifts so this public enquiry has been extended until April. They are planning to publish their legislation in May. They thanked the **UK** for providing them with information on our IA, but had received no

comments from their industry on their own. Two NBs will apply for Annex 10 approval and outside of some procedural changes market surveillance activity will continue as now.

Spain: Biggest problem was the processes they had to go through but they now have a draft Royal Decree which has been sent for comment to their Council of Ministers. Once approved it will then be referred to their Council of State for endorsement at which point it will be published with a reference as required by Article 26 of the directive. They will also be amending their national legislation on lifts. Their NBs are aware of the issues, eg Annex 10. Q & As are to be translated into Spanish for uploading to their website. They have held an Information Day for Industry and plan to hold more of these later this year.

Sweden: A draft of the legislation has been subject to public consultation and this now requires Parliamentary approval before it can be published. This is scheduled for 15 June so they will need to move quickly to meet the June deadline. No real change in the areas of NBs or market surveillance.

Switzerland: Text already received by the **COM** but not from a Government source as the legislation has yet to be approved by their Parliament though the final version will mirror very closely that already held by them. They experienced problems in transposing Articles 8 & 9 in terms of their practical application. No problems are anticipated with regard to market surveillance and their NBs will need to reapply. They would also like to see a document explaining the corrections to the text to compare whether these are the same as the ones they have identified.

The **United Kingdom:** Our public consultation began last September, included a mandatory impact assessment, and ended in December 07. We are now analysing the responses and are obliged to formally publish our responses to them - this is scheduled for April. We will be making some minor amendments to the draft text in the light of consultees' responses. We anticipate that the revised text will go to Parliament in May and be subject to the Negative Resolution Procedure. This means that the draft Regulations will automatically become law twenty one days after being received by Parliament unless a significant number of MPs object. No changes in actual market surveillance activity are envisaged and our NBs have been informed that they will need to apply to our national accreditation body for extensions of scope as per Annexes IV and X.

In winding up the discussion the **COM** said that national measures can correct translations errors. They were aware of the need for a corrigendum and apologised that this had not been done - they would try and do this soon. Where **MS** had websites dealing with any aspect of the new legislation they asked that details of these be forwarded to them. In response to a **Belgium** request for a further explanation of the problems with the German text the **COM** provided this. As a minimum **Austria** requested that the minutes of this meeting contain a *de facto corrigendum* covering the translations issues already identified. The **UK** asked about progress on the Tractors Directive. The **COM** replied that the latest information from their **Automotive Unit** was that they were on course to complete all work before the new MD came into force so the exemption in Article 2 e) first indent would no longer apply. There were, however, two issues still to be resolved namely a) ROPS for passengers and b) operator protection from hazardous substances. A mandate had been given to **CEN** covering these two issues and a standard was close to adoption. An amendment to Article 2 may take some time but this should not be seen as problematic to those in the industry. In conclusion the **COM** thought that even though a NB might not be seeking an extension of scope it may still be necessary for them to be re-notified. But this would be the subject of further discussions at a future meeting.

Item 12: AOB

Apart from the **COM** stating the dates of the next two WG meetings (5 - 6 June and the 19 - 20 Nov), the date of the ADCO to be held in Norway (15 -16 October), confirming the dates for the Slovenian ADCO (scheduled for 19 & 20 June); and asking EB members to confirm their availability for an end of May meeting there were no other AOB items.

PBL/PP

**Sustainable Development & Regulation Directorate
Department for Business, Enterprise and Regulatory Reform (BERR)**

Health and Safety Executive

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