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Dear Stakeholders,

**MACHINERY DIRECTIVE 98/37/EC – REPORT TO BRITISH INDUSTRY OF
THE ARTICLE 6.2 WORKING GROUP HELD ON 11 - 12 October 2005**

I am pleased to attach a report on the recently held meeting of Article 6.2 Working Group. Peter Baxter-Ludlow and Phil Papard represented the UK from the DTI and HSE respectively.

This report also covers a couple of additional items not on the agenda that may be of particular interest to you, namely the revision of the Guide to the Machinery Directive and an update on the progress of the 3rd Amendment to the Machinery Directive. You can see these under items 3(3.12) and 3(3.21) of the body of the report respectively.

As part of our continuing commitment to involve stakeholders in matters of mutual interest, should you wish to comment on issues of presentation, ie format, length etc, please do so as we very much welcome your feedback.

A handwritten signature in blue ink, which appears to read "Peter Baxter-Ludlow". The signature is written in a cursive style and is positioned above a horizontal line.

Peter Baxter-Ludlow
Policy Advisor, Mechanical Engineering Directives
Standard and Technical Regulations Directorate

REPORT TO BRITISH INDUSTRY OF A MEETING OF THE MACHINERY DIRECTIVE WORKING GROUP HELD IN BRUSSELS ON 11 & 12 OCTOBER 2005

SUMMARY

Issues which may be of particular interest relate to the stability of industrial trucks (item 3 (3.g)); overlapping standards, (item 3 (3n)); the suggestion by the Commission (COM) that the update and intranet version of the "guide" be produced only in English 3 (3.12 paragraph 2)); the ECJ court cases raised by the Trade Union Bureau (item 9); and an agreed resolution on equipment for lifting persons (item 11).

If required, Graham, at graham.payne@dti.gsi.gov.uk can provide copies of documents referred to in this report.

DETAIL

Item 2: Minutes of the meeting held on 11 & 12 October 2005 (Doc 2005.41)

Some minor editorial amendments were made and in respect of the German objection to EN 13683 CEN commented that TC 144 were expecting a new text from the German authorities before discussions on the revision can take place.

Item 3: Matters Arising - see summary of questions attached to the agenda

3 (3d) Industrial truck pedals

There was continued criticism that this standard, EN ISO 21281, was not harmonised. Despite this CEN stated that they have no plans to amend it. CEN suggested that if another standard mentioned EN ISO 21281, then it should be treated as if it were harmonised. Member States (M/S) did not readily accept this proposal. As such, the COM requested a further update for the next meeting though CEN made clear they did not see this as being necessary.

3 (3g) Stability of industrial trucks - (Doc WG 2005.54)

CEN presented their promised paper. Concern was expressed that this paper included a reference to information on solutions that could be regarded as commercially sensitive. As such it would not be possible to include such information in a standard. CEN replied that although this is true the standard could still deal with the outcome to be achieved. There was concern that the work had not progressed quickly enough and the Working Group (WG) was still looking at research, when some companies had advanced the safety technology and that the matter should be referred back to TC 150 for their further consideration. France stated that on the question of restraint there would be no early solution. A view was expressed that CEN needed to be more 'on the ball' and receptive to advances in the 'state of the art' - the existing mandate to improve the Standard is 8 years old - as there were now machines on the market that surpassed the requirements of this standard. The COM advanced the view that as manufacturers have devised innovative solutions to combat instability problems does this standard need to stay in the OJEU?

3 (3h) Vibrations by concrete breakers - (Docs WG 2005.16 & 39)

A meeting has been arranged with the manufacturers on the 13 December to coordinate the receipt of data and its measurement. This measurement will now be tri-axle and the old single-axle test dropped. CENELEC have proposed amendments to the standard to give indicate emissions values and to modify the test codes. Whatever measurements are used must be the same for both CEN and CENELEC and they agreed to cooperate.

3 (3i) UK formal objection against EN 693 - Hydraulic presses

TC 143 had discussed but could not agree the UK proposal. A Spanish Notified Body (NB) member of this TC had proposed a solution based on bed width and this is being considered by the UK. It was anticipated that this would take a few weeks for the UK to consider the compromise but a solution was likely. The COM asked the UK to ensure that the solution was not ambiguous.

3 (3n) Overlapping scope of standards - (Doc WG 2005. 57)

It was suggested that the two responsible bodies should conduct a review of key words, eg industrial, domestic, to clarify what they mean (to each of them) and to apply their agreed solutions to those standards where overlaps exist, eg washing machines, food blenders etc so that, long term, only one standard would apply to a particular product. Future product standards should conform to a single definition. To aid this process, the COM requested a

list of all overlapping standards so that progress on resolving differences could be monitored. The responsible bodies drew a distinction between those that did and did not pose problems and only agreed to provide the COM with a list of the latter. The COM believes that part of the problem can be attributed to ambiguous and poorly defined scope. CEN and CENELEC also have different safety philosophies (domestic and industrial respectively) but M/S challenged if this was acceptable. To help overcome the problem, M/S suggested there needs to be a step-by-step revision based on the recognised variances; EN 1974 and EN 19334 - 4 were quoted as examples where the focus was on electrical characteristics. Under the new MD it should be clearer whether the LVD applies.

3 (3o) Policy on publication of machinery standards - (Doc WG 2005. 28)

The COM stated that they had received no comments on this paper. M/S were given an extension of time to 31 October in which to comment. If no comments were received the COM will accept that M/S have endorsed their definitions of A, B and C standards.

3 (3p) Question on EN 1459 variable reach trucks and normative reference to prEN ISO 13564

Work on this issue is still on-going. It is anticipated that all committees will report back on this in Jan `06. The COM therefore agreed to defer this issue to the next meeting.

3 (3. 4) Approval of Recommendations for Use - (Doc WG 2005.45 -1 and Circa lists)

Taken as main agenda item 4.

3 (3.9) Initial proceedings with a view to a formal objection against EN 280, Mobile Elevating Work Platforms - (Docs WG 2005.05, 35, 40, 42 & 56)

TC 98 has agreed to revise clauses 9 - 11 inclusive relating to ergonomic access, and the access opening is to be specified. The reference to slide bars and swing gates is to be deleted. Sweden confirmed that if this were done they would withdraw their safety guard action.

3 (3.12) Application of CEN and CENELEC standards to washing machines used in light commercial market - (Doc WG 2005.02)

The CEN standard was referred back to the consultant, and it has been suggested that the wording could be improved. A decision on this has been referred to TC 61 WG and the consultant will attend. The issue is to be considered at the next meeting.

At this point in the proceedings the COM commented upon the revision of the Machinery Directive Guide, and the problems this was posing them. They have repeatedly stated at recent Article 6.2 meetings their intention to effect this as there will still be quite a lengthy transitional period during which the existing Directive will remain in force even after the adoption, should this happen, of the new amended MD. The problem, basically, is one of logistics, ie with translating COM documents into 5 main languages. The COM proposed that the online guide would only be produced in English. M/S would be free to translate it into their own language, but such translations must closely follow the English text and a "form of words" must be printed saying that the authoritative version is the English one. The COM hold the copyright but provided M/S informed them beforehand, permission would be granted. There was a general acceptance that this was necessary but with some dissent and so the COM will review their proposal. In the meantime the COM would try to issue updates and amendments as and when time permitted.

3 (3.13) Standards for forestry and agricultural machinery - (Docs WG 2005.03, 17 & 56)

EN 14017 is currently under vote at the ISO. EN 745 & 704 are currently under revision, led by ISO. TC 144 accepted at their 3 October 2005 meeting to revise EN 709. Discussion on all four standards is planned for their plenary meeting on 21 November 2005. Notwithstanding this, Italy have given notice that they may take safeguard action against EN 14017 because they are not convinced that a report submitted by them to CEN has been taken on board. The reasoning for this is that forestry is the area where most accidents take place. Therefore safety considerations must be at the heart of the standards pertaining to such equipment. In due course CEN would report to TC 144 and any standards' revision would conform to the Vienna Agreement. It was also confirmed that EN 4254-1 is under review.

3 (3.15) Importance and reasons to limit the period of EC type examination certificates - (Doc WG 2005.06)

This item was not discussed at the last meeting of NB. However, in a status quo situation, there is no requirement in the current Directive to insist on an automatic review so any review of these is a matter for M/S but some foresaw problems with trying to enforce this without a legal basis. However, there was nothing in the present

Directive to stop a NB giving an approval of a limit "life" period. However even when a 5 year period is used, if the 'state of the art' has changed a review should occur even though the deadline had not passed, but the COM agreed there was no legal requirement for the NB to instigate this. This desired requirement is a Horizontal issue and so it was thought that the pending review of the New Approach Directives might consider this issue. Belgium would prefer to see ten year certificates in line with the technical file retention, but this was not supported.

3 (3.16) Standards dealing with both the CPD and MD -(Doc WG 2005.11)

CEN were not able to provide any information on this overlap at the meeting - this would be provided for the next meeting. There was some debate on those goods that are incorporated into a building but not permanently, such as air-conditioning plant and if such equipment was covered by the CPD. The COM said they would consider on a case-by-case basis and this may lead to a generic opinion in due course.

3 (3.17) Moving ramps in ski areas - (Doc WG 2005.13)

This issue is under discussion in TC 242 using EN 115 as the base standard, even though this is a cableway standard. But provided it is clear that these moving ramps come under the MD and not the Cableways Directive this should not be a problem. The COM view was that it would be best to have a standard, but action must be taken now to deal with dangers using the MD EHSRs to find a solution.

3 (3.18) Q/A: Are metallic containers lifting accessories? - (Doc WG 2005. 66)

Because there is increasing confusion on what is/is not a lifting accessory, Sweden sought further clarification, citing WG 2005.23 the paper submitted by Italy at the last meeting, from other M/S.

On 4 August the COM put a paper, 451/96, on Circa dealing with "...part of the load". M/S felt that it would have been more helpful to have agreed the basic principles before doing so. It was realised there was a difference in the French and English versions of the MD in the definition of lifting accessory. As the French was the base language it was clear the English version should have had two commas added, so it should read - "...placed between the machinery and the load, or on the load, in order to attach it ..." this makes it clear that the lifting accessory must be used to "attach" the load in all cases. Following comments from a number of M/S the COM were requested to produce an interpretation of the existing MD text which would better facilitate discussion on whether something is/is not a lifting device.

3 (3.19) Implications of globalisation of standardisation - (Docs WG 2005. 27, 44, 63 & 64)

France gave a resume of its paper; our previous report explains this in detail. In a nutshell the meeting agreed that "harmonised" standards giving a presumption of conformity should not have options in them that have different risk levels. This is because it creates uncertainty when a standard is quoted in the Dec of Conformity both to users and the authorities, and does not allow for a level playing field in the market. They believe that CEN/CENELEC should be mandated to reconcile differences before they are presented for publication in the OJEU. The COM did not want to hinder globalisation and getting 'A' Standards accepted as ISO standards was a major step forward. The TUTB pointed out that if we had a EU version of the ISO standard, eg allowing only one option, there could be a problem if the same numbers were used as this could mislead.

3 (3.20) AFNOR appeal against EN ISO 4254 - 1 agricultural machinery - (Doc WG 2005.24)

Currently undergoing Unique Acceptance Procedure. The outcome is expected by 1 November 2005. Dependant upon this a decision would then be required as to how/what to publish if CEN adopted. If it still allowed different options a reference in the OJEU would not be given. If the outcome is not acceptable it was agreed that it was useful for France to lodge a further safeguard action.

3 (3.21) Planned formal objection against EN 843-3:1999 - (Doc WG 2005.32)

Taken as main agenda item 8.

Update on 3rd amendment of MD

The COM then gave an impromptu update on where we were with the MD now that the Common Position text had been formally remitted back to the European Parliament (EP) for their consideration.

The Common Position text was formally lodged with the EP on the 5 September. They have 3 months + an additional month (if required) before they need to vote on it. The Rapporteur has tabled 12 amendments. Further amendments are expected - the Internal Market Committee meets on 24 October and will be putting forward their

amendments by 25 October. Additional amendments are expected from individual MEPs/their respective EP groups. UKRep (acting on behalf of the UK Presidency) will be having informal talks with the Rapporteur on 26 October updating him on the views of M/S following the Council WG meeting on 19 October. The Committee vote is expected on 21 November, and it is hoped that the EP's plenary meeting in mid December 2005, or soon thereafter, should see the adoption of the amended directive.

Item 4: Report of the Co-ordination of NB's (Doc 2005.45-1)

At the last collective meeting of NB's only forty two were represented out of a total of one hundred and ninety. They considered thirty two RFUs and approved twenty. At this meeting there was a suggestion that RFUs be treated differently (by breaking the link to HGs) but this was resisted because the response process wouldn't be transparent, there would be no agreed response between the two groups and they couldn't therefore appear on the Circa website or be referred to the WG for endorsement.

Criticism was expressed at the time it takes for RFUs to be publically available via EUROPA. It was pointed out that this could not occur until the WG had endorsed them. The UK asked for RFU submissions to the WG to be available to social partners prior to the meeting so comments could be received. The COM agreed that it was possible to give access to trade associations and other organisations with an interest to the Circa website but not for individual companies as it was important to keep numbers under control. The suggestion that many were caught in the trap of late action was refuted by the NB's because in their experience the greater majority of these are passed without comment and published quickly. The COM suggested that if M/S/stakeholders had doubts about the stage a RFU had reached they should be pro-active and follow this up with CEN directly, eg by phone. Consideration is also being given to how RFUs are recorded by VGs. France and Italy will drop out of the three representatives of the Art 6.2 WG on the HC after completing their period, Germany would continue and Sweden and Poland will formally consider if they can take up the vacant posts.

RFUs

00.113 - User instructions must be in hard copy, but supplementary instructions, eg maintenance instructions and technical file could be contained on a CD ROM; new RFU awaited; **01.034** - RFU withdrawn; **01.045** - referred back to CEN due to continuing Swedish objection; **01.047**- RFU withdrawn; **01.056** - it has been interpreted that the reference to 1.5mm is an attempt to override the standard. As such it's not acceptable. New version awaited; **01.057** - Unresolved, consultant's explanation awaited; **03.059** - not consider with regard to Annex IV A9, therefore for re-drafting; **03.090** - remitted back to the VG for further discussion at their 2 November meeting. For resubmitting to WG; **03.112** - accepted; **03.162** - to be discussed again by the VG and remitted back to the WG at a later date; **04.041** - to be discussed again by the HG discussion on 21 November and remitted back to the WG at a later date; **04.048** - UK pointed out this RFU has wider implication wider than Annex IV. The answer given was not acceptable to Sweden and the UK agreed with this view. Revised by the VG but not yet discussed by the HG, but it was agreed this was a horizontal issue wider than Annex IV and it was agreed Sweden and UK to collaborate to produce a re-draft of the para 5.1.3 of the COM Guide and this should eliminate the need for this RFU; **04.056** - established that information is missing to complete enquiry. To be followed up by the VG 4 convener; **06.021** - RFU withdrawn; **06.034** - RFU still being revised; **09.206** - to be discussed in the HG on 21 November; **09.207** - no further information, still unresolved; **09.305** - no further information as it still being considered by TC 98; **11.031** - endorsed; and **12.014** - on hold pending responses from interested parties.

Item 5: CEN/CENELEC Progress report on standardisation - (Doc WG 2005.65)

CEN now have 100 standards awaiting publication. The UK and other M/S voiced their concern at the continuing delay in getting these published. The methodology of getting these published is seen as flawed, and many regard the procedures as being in crisis. A prime example of this is [ex] EN 292 and EN 12100. The COM laid the blame squarely at CEN's door (again) for this saying that whilst they had recently received a list for publication that was acceptable in terms of translations and major errors, a significant number had Annex ZAs not in conformity. The UK suggested the COM could publish if CEN agreed to rectify the Annex ZAs and would not submit any more that were incorrect. Following discussion the COM agreed to publish a list of all those with correct Annex ZAs and omit the 67 wrong ones - CEN said they could sort the Annex ZA issue quickly and if so a complete list could be published. Action left with CEN and the COM to take forward.

CENELEC have no new standards awaiting publication. Their main work at present is focussed on revising standards.

Items 6 & 7: Formal objection against EN 13683:2003 - (Docs WG 2005.14, 38, 47 & 48) & Formal objection against EN 14122 - 4: 2003 - (Docs WG 2005. 18, 49 & 50)

The meeting agreed that docs 49 & 50 should be referred to the 98/34 Committee for their approval.

Item 8: Formal objection against EN 843 - 3: 1999 - (Doc WG 2005.32)

Germany regards this standard as defective in that it was a contributing factor in a fatal accident in Germany similar in nature to one in Sweden some years previously. The new standard was not considered by Sweden to be fully developed and did not meet the EHSRs. There was also a need to improve the test codes. The standard on tools, EN 1747 - 1 & 2 needs to be in conformity. It was stated that EN 12417 imposed a similar level of safety as EN 843. However, Sweden believes the fundamental issue is the strength and placement of the curtain. Until action was taken on these they would object to the new standard. The UK, supported by other M/S, considered that withdrawing the old standard before the new one had been accepted left manufacturers in a void and it was agreed it was more appropriate to issue a warning and to withdraw the presumption of conformity from the relevant EHSR only. The COM agreed to take further written comments after which the issue of a warning, etc would be referred to the 98/34 Committee.

Item 9: ECJ court cases - (Docs WG 2004.11, 18 & 26)

DG Enterprise's legal officer reminded M/S of the Court of Justice website: www.curia.eu.int

In the first case, 2004.11/18, the Advocate General's opinion is expected on 17 December, details of which can be found on the aforementioned website.

In the second case, 2004.26, the judgement was given on 8 September. This judgement only applies to original manufacturers based in the EU & EEA. Before delivery distributors, ie suppliers, have to ensure the provisions of Annex 1 1.7.4 of the MD are complied with and the machine is CE marked and has a Dec of Conformity - there is no requirement to check against all the EHSRs. After delivery they have a duty to cooperate with the market surveillance authorities. The UK raised the issue of "patent defect," ie is it reasonable to assume that if the distributor was aware that the CE marked machinery was defective and did nothing; they were in breach? The COM thought that where infringements are proved, M/Ss are free to choose the appropriate penalty including criminal ones if necessary, for instance, because of a lack of due diligence. The ruling has implications for the Finish authorities re: conformity procedures, and for the New Approach Review.

Item 10: Question on manually driven work platforms - (Doc WG 2005. 36)

If manually operated (in this case by pulling up behind the ladder climber), and not load lifting, it's outside of the MD. However some M/S disagreed saying that this did lift a load, the platform and the individual's tools, therefore it was in scope. The COM stated that they had deliberated on similar cases in the past. For consistency they would consult past WG papers so as to avoid giving contradictory advice. A decision on this issue was deferred to the next meeting.

Item 11: Equipment for lifting persons with machines designed for lifting goods - (Docs WG 2005 43, 46 & 59)

The issue centre around whether non-integrated equipment should be CE marked or not and the UK submission of PM28 to the 98/34 committee and the COM response. The UK is of the view it should not be. In order to clarify the position the COM formally responded with their own paper basing their view on whether something was/was not assembled with the machinery. If it was it must be fully integrated (have its own controls) and meet all the EHSR and be CE marked etc. If not, it shouldn't be. Use of the later equipment is "exceptional" (89/655 applies). With some minor reservations (what does integrated really mean, especially due to translation problems?) there was significant support for the COM opinion and hence PM28. Applying this new principle to the five Finnish examples in their paper would result in a no, yes, yes, no, for M/S action outcome. The COM agreed to redraft their decision using the word assembled rather than "integrated" but would add a definition of assembled which would make reference to "integrated".

Item 12: Position paper from ATEX: Machinery containing an explosive atmosphere, which has no interface to an outside explosive atmosphere - (Doc WG 2005. 51)

The zonal concept as it applies to the ATEX Directive is not applicable to the inside of machines with no access. M/S were receptive to the paper but it has only limited application because the users would be outside (as opposed to being inside) such a machine and therefore not exposed to any explosive hazard. If M/S wanted to comment further they could do direct to the COM.

Item 13: Planned formal objection against EN 14502 -1 - (Doc WG 2005.52)

Established that this paper had been lost in transit. As M/S had had no time in which to give it proper consideration discussion on it would be for the next meeting. However, very informal responses from some M/S were that they, ie Cranes - Equipment for the lifting of persons - Suspended baskets, were not in scope of the MD.

Item 14: Concerns on prEN 140217:2005 agricultural and forestry machinery, solid fertilisers distributors: safety - (Doc WG 2005. 53)

This standard is for discussion at the TC 144 meeting in November. Discussion on it was deferred to the next meeting so that their response could be considered.

Item 15: ATVs - (Doc WG 2005.55)

There was agreement amongst M/S that the MD applies to these because they are machines and are in scope of the MD unless they:

- a) meet the construction and design legislation of M/S for public road use, eg as is generally the case in Spain - note in the UK and some other M/S limited road use is allowed for vehicles not licensed for road use such as travel between parts of a farm; such travel on a road does not exclude the ATV from the MD
- b) are designed and supplied for racing.

Item 16: Goods lifts - (Doc WG 2005. 58)

Accepted by M/S that this apparatus is a lift under the LD. Making changes by just "tampering" with the car by removing doors, etc does not convert a "lift" into a machine subject to the MD.

Items 17 - 19 (Docs WG 2005.60 - 62 inclusive) + three tabled on the second day, (Docs WG 2005. 67 - 69 inclusive) relating to Flat stops covered by EN 418, robotic lawn mowers and ride-on lawn mowers were not discussed due to time. They have been carried forward to the next meeting.

The COM were unable to give proposed dates for next year's meetings other than to say it was planned to hold them in late Jan/early Feb, May and October. But following a request from one M/S the October meeting may, date-wise, be later than this year's meeting.