09 January 2009

Machinery Directive Stakeholders

Dear Stakeholders

UK REPORT TO BRITISH INDUSTRY OF THE MACHINERY DIRECTIVE WORKING GROUP HELD ON 19-20 NOVEMBER 2008

I attach a report of the latest meeting of the Machinery Directive Working Group. I am sorry for the delay in getting this to you but I would mention, by way of mitigation, that official level negotiations began in earnest just after this November meeting, on the ‘pesticide equipment’ amendment to the directive (see WG reports passim) and have taken up a lot of the resource that we currently have available in the machinery team. If, incidentally, anyone wishes to contact me I would be pleased to give an account of the progress so far of those negotiations.

In the event 2008 only saw two meetings of this Working Group and the one we are reporting on here took place over 8 months after the previous one. We therefore have not reported to you in this sort of format for some time and so I ought to mention on the domestic front that in the intervening period the UK made its transposing regulations for the new Machinery directive. I realise that this will be old news for many of you but for anyone who may have missed it the Statutory Instrument is 2008 No. 1597, ‘The Supply of Machinery (Safety) Regulations 2008’, ISBN ref. 978-0-11-081892-4, available from the Stationery Office (customer.services@tso.co.uk).

May I finally extend my very best wishes to you all for 2009, the very end of which will, of course, see the coming into force of the new Machinery directive.

MIKE DODDS
ASSISTANT DIRECTOR
SINGLE MARKET DIRECTIVES (Machinery, PED, ATEX, Lifts, PPE)
ENVIRONMENTAL AND TECHNICAL REGULATION DIRECTORATE
Principal Abbreviations/Glossary

**COM**: European Commission; **CEN**: European Standardisation Committee; **EHSRs**: Essential health and safety requirements; **MS**: Member state/s (depending upon context); **NB-M**: Notified Body Forum; **OJ**: the Official Journal (of the European Union); **RfUs**: Recommendations for use (propagated by NB-M); and **WG**: Working group.

**SUMMARY**

Mike Dodds of BERR and Phil Papard of the HSE and represented the UK. References to speakers are in bold

Largely devoted to routine business, e.g. various stages of objections to standards referenced under the existing directive with many new ones emerging given the passage of time since the previous WG, but with greater emphasis now on interpreting key issues arising from the new directive (henceforth 2006/42). Probably the most important one of these to be encountered so far is ‘fitness for purpose’ (Item 13). Beginning to look too at the new opportunities, e.g. for dealing with an unsafe product type through the Committee procedures, that 2006/42 opens up (item 3(9)).

Also the WG was informed about two sources of amendments to 2006/42 that are already well underway. These are, respectively, the rather esoteric issue of ‘comitology’ (Item 20) and the pesticides amendment (Item 21). Substantive discussion of these amendments, however, is not for this WG and takes place elsewhere.

**DETAIL**

**Item 1: Introduction**

The COM announced a change at Head of Unit level to replace Mr Montoya. This is Alexandra Jour-Schroeder who introduced herself briefly at the meeting.

**Item 3: Matters arising from the previous meeting (as detailed in the annex – now numbered as there are so many that COM ran out of letters of the alphabet!)**

3(3.1) **UK formal objection against EN 693 - hydraulic presses**

Technical amendment, as agreed with the UK authorities, is currently in the CEN system - no details disclosed – that should bring a close to this case before the next meeting.

3 (3.2) **Policy on publication of Machinery standards**

COM’s policy paper still not finalised.
3 (3.3) Period of validity of EC-type examination certificates

As for ‘3(2)’ above

3 (3.4) Formal objections against EN 12215 and EN 13355 - Paint booths and
combined paint booths

COM has drafted its decision and sent under written procedure to 98/34
Committee - some comments received there, final "decision" paper is now
undergoing translation into all EU official languages.

3 (3.5) Formal objection against 12312 - 9: Container pallet loaders for aircraft

COM Decision has been approved by 98/34 Committee, still in adoption
procedure

3 (3.6) Formal objection against EN ISO 4254 -1: Agricultural machinery:
General requirements

Draft COM decision submitted to 98/34, as for 3(4) above. Already progress
in amending the standard but, as a joint ISO standard, this is not an entirely
straightforward affair.

3 (3.7) Formal objection against EN 1459: Powered industrial trucks

COM well underway in compiling a formal objection so delegations should be
on the look-out for it but did not expect it to prove unduly controversial.

3 (3.8) Test codes for pneumatic hand-tools

The UK reported satisfactory progress in adopting tri-axial testing in the codes
but not finished yet. Hoped to close off this item with written report for next
meeting.

3 (3.9) Refuse collection vehicles

This still has some way to run and, with delegations instructed to consult
experts at home and firm up positions, will no doubt be picked up in more
detail at future WGs. New document from Swe revealed them still to be
agonising over when such vehicles were in Annex IV or not and their latest
investigations had, if anything, only served to confuse further. Issues revolves
around interpretation of 'manually loaded' and what guidelines in terms of
conditions on the ground and what is 'reasonably foreseeable' might be
applied.

3 (3.11) EN 13524 Highway maintenance machines and EN 690 Manure
spreaders

Re. 13524 CEN progress report on development of new standard. Looking
for new criteria for revision of 'stone guard test' (i.e. to define when needed)
involving the original protagonist, Italy. No first draft yet.

Re. 690: Slow progress acknowledged by CEN.
3 (3.12) Channel baling presses

Tri-partite discussions were reported (i.e. Germany, France, UK) which are making progress but had not resulted in an agreed input to CEN yet.

3 (3.14) Formal objection against EN 474 - 4 & 5: Earth moving machinery

COM still preparing a decision for 98/34 Committee which will be a delicate job given the divergences of opinion expressed at previous WG (on 'check valves' etc.). COM offered to open up discussion for new inputs only. None of these but Fr took the opportunity thus presented to repeat their reasons for launching the action in the first place.

3 (3.15) Formal objection against EN 500 - 4: Mobile Road Construction Machinery (compactors)

A bit more consensual than 3(14) above so drawing up the decision will probably not be quite as tricky but not ready yet. Fr seemed to be raising new concerns and was asked to submit these in writing.

3 (3.16) Warning for EN 1726 -1 and 1459 : industrial trucks

No progress on the issue identified last time, namely, would the change in wording give a presumption of conformity to a manufacturer who modified their product in the light of the revised procedure? May need an internal COM paper to 98/34 Committee seeking clarification.

3 (3.17) Comments EN 848 – woodworking machines

Some work has been done in Germany etc - CEN drafts have been submitted to the CEN consultants but no reply yet. CEN consultant reported there were a number of problems – would not discuss here but offered to discuss with anyone as needed. Germany pointed out that their work had been prompted by a fatal accident and was confident that progress is being made towards a technical solution (better flexible guards offering more protection against ejection of parts) and were keen to push forward towards publication. COM agreed it was urgent and asked CEN and the CEN Consultant to proceed accordingly.

3 (3.18) Formal objection against EN 1870 - 17 Circular sawing machines

No progress to report.


CEN reported that all the objections from France had been accepted and modifications have been made in the Draft ISO standard which is now submitted with enquiry stage to begin in Jan 09. France had no comments but will study this draft amendment very closely – COM asked all MS to do likewise.
3(3.24) Revision of EN 1570 - Lifting tables (Doc WG 2008.03)

CEN reported on ad-hoc meeting of TC 98 in Paris where it had been agreed to split the standard so it is made clearer what is covered and to prevent confusion on overlap with platform lift standards etc. Fr confirmed there had been such a meeting (in effect of the two TCs, i.e. 98 and 10) to solve the overlap issue and are now very hopeful of a successful conclusion. COM said in view of these developments the item will not be taken forward – but clearly MS can follow the progress and if needed can always raise it again. COM asked CEN to confirm this situation briefly in writing.

3 (3.26) Interchangeable work platforms on telehandlers

No feedback from CEN TC150/98 to general disappointment. An RfU may be needed to temporarily fill in a definite gap here concerning the specification for the safety pins that need to be fitted.

3 (3.27): Lifting function built into a vehicle chassis

COM still needs to consult vehicle legislation colleagues

3 (3.29): Formal objection to EN 13001-2 (strength calculations for cranes et al.)

Vote to be launched in Jan. following good progress in developing the standard, Germany to check in particular that amendments to ‘table 3’ are to its satisfaction

3 (3.30): EN 14985, instability of dock type slewing jib cranes

Meeting invited to express any dissent from German objection expressed at last WG. Fr. re-affirmed support for German position – overall EN 14985 was not satisfactory and needs complete overhaul even if some of the German points were not entirely accepted.

In the absence of any dissenting voices COM confirmed that references in OJ will now be withdrawn

3(9): Digger attachments for tractors (interchangeable equip)

UK justification of safeguard action was confirmed not least by a subsequent accident being reported from Italy. This will inspire a further work item from It. Already manufacturers there are developing anti-rotating devices to counter this problem.

UK pointed out more generic problem about overriding of controls where operators become trapped against them. This has been exposed by this problem but also with MEWPs etc.. UK looking seriously at instigating a B type standard and may offer a paper.

The seriousness of the situation prompted Dk to ask whether, in principle, this situation would be covered by the ‘withdrawal from the market’ provision in Art. 9 of 2006/42. COM responded in the affirmative but, in practical terms,
that provision is not available until the Committee it depends upon for its authorisation in Art. 22 of 2006/42 is constituted. However that should not prevent MS acting in 'the spirit of 2006/42' immediately and targeting these machines.

On further probing on the legal point COM expressed uncertainty on whether it can act before Dec '09 to constitute the Committee but it could at least prepare draft procedures for it so that they are ready to act as soon as they can.

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. UK subsequently volunteered with Richard Wilson of HSE acting as chairman and planned to hold the first meeting in Brussels, COM agreed to provide a room. During the following two days, France, Germany and Sweden agreed to join the WG.

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

Last NB-M in June, concentrated on finalising RfUs. Deadline for commenting on currently open RfUs extended to end of Feb. Mr Jockers to stand down as Chair at next NB-M in Dec. to be replaced by Guy Jacques.

One draft RfU came in for particular attention, a Q&A piece on Annex X (Full Quality Assurance). Authors stressed they had taken trouble to ensure consistency with other sectors where QA was already available (e.g. PED) and that experience from those sectors was also reflected. Comments from delegations focussed on 'unannounced visits' as a key area to get right. Still out for written comments.

Item 5: Notifications (i.e. of Conformity assessment bodies) under 2006/42

In an item largely geared towards the national administrations, Norma McGovern, a Commission administrator of the NANDO database, confirmed that it was now available to receive notifications from MS arising from their transposing measures for the directive (e.g. in the case of the UK, from Reg 16 of SI 2008 No 1597) and answered other questions which arose largely from the general perceptions delegations held that NANDO was not as 'user friendly' as it might be.

Item 6: Report on standardisation

CEN presented its report on standardisation, main work is the updating across the board for 2006/42 via the various requirements. One key issue was again a delay in giving contracts to the CEN consultants – this resulted in some leaving and the need to recruit new staff, including a noise consultant – but this has now been sorted.
CENELEC followed suit pointing particularly to the work of TC 88 WG 4 on Wind Turbine standards and MS who have issues etc, should contact this group.

COM went through the new consolidated list of harmonised standards in the OJ and reported use of a new database to make the process much easier by saving double handling and entry of information, so when it works it will allow CEN/CENELEC to submit in electronic format and COM will only have to check, make any minor corrections and then publish.

COM will publish a new list under 98/37/EC as some new Standards need to be given presumption of conformity now. In the summer the first list of 2006/42/EC agreed standards, then late in 2009 (Nov?) a further list under 2006/42/EC will be published and this final list for 2009 will be as complete as possible.

Item 7: Formal objection to EN 474-1:2006: Quick hitches

UK went through the paper that they presented last June and pointed out that they had very good cooperation with Industry and standards makers but due to the fatal accidents in the UK and the need to have legal certainty here the UK had felt obliged to introduce the formal safeguard action (COM is in process of drafting a decision for the 98/34/EC).

CEN confirmed that work was in progress on this issue and agreed with the COM that only the semi-automatic types would be removed from the presumption of conformity as the other types should not be so restricted.

Item 8: Formal objection to EN ISO 11681-1: Chain saws for forestry purposes

German expert gave detailed presentation on this paper— the main issue is using the throttle lock to keep the saw running at higher than tick-over with no hands on the two throttle switches to the extent that the saw can be used to cut wood. CEN — Wolf Diehl from Stihl — gave a presentation and agreed better understanding is needed — went though the methods of starting and the need for a throttle lock out for this type of two-stroke. Problems with the chokes on some very cheap saws also emerged in discussion.

COM asked all Member States to consider preparing their formal responses to this German safeguard action.

Item 9: Formal objection to EN 12151 – Machinery and plant for preparation of concrete and mortar

Fr presented two papers, the main points being that a number of EHSR’s are not covered by the standard including storage and handling, electrical risks (isolators), poor coverage of mechanical risk (lack of interlocking); engulfment in materials; falls from height; stability requirements (e.g. for portable plants etc); poor ergonomics vis a vis visibility and access. Conclusions of the papers are that EN 12151 does not reflect the state of the art, should not give a presumption of conformity and that CEN should be mandated to amend a.s.a.p. UK fully supported France adding dust, (inhalation and skin contact), to the list of problems not properly addressed.
No immediate answers from CEN who requested more time for the TC to consider. COM agreed to let CEN to come back at next meeting when the group would decide on the safeguard action.

**Item 10: Formal objection to EN 12649 – Concrete compactors**

Strong support, including from the UK, emerged for this German paper on the alleged failure of EN 12649 to deal with the hazards that can result from petrol-driven power trowels without catalytic converters from the build up of carbon monoxide when used in enclosed areas. The objection will therefore proceed immediately to the next stage.

**Item 11: Safety of Agricultural Machinery**

Germany presented a general and wide ranging paper announcing a study by their tripartite workplace standards organisation (KAN – Kommission Arbeitsschutz und Normung) into the overall state of standardisation in that sector, particularly focussing on the match between risks it identifies that are not adequately covered and the availability of technical solutions.

**Item 12: Gas and Steam turbines**

The Italian Mechanical and Engineering Manufacturer’s Association (ANIMA) had tabled a paper querying, inter al., the status of gas and steam turbines and electric generators under 2006/42. The conclusion was that the former would be ‘partly completed machinery’ whilst the latter were ‘machinery’. The UK supported this view of the turbines but not (necessarily) on the generators (unless they are complete except for the drive).

This led the way for subsequent interventions to generally deconstruct the view that the sort of generic analysis attempted by the paper was feasible here and that ‘case by case’ analysis was probably necessary depending on the complexity of the generators, e.g. whether they are combined etc..

COM concluded that modern installations tend to transcend the simplicity of this document with drive systems and generation systems that are interlinked in complex ways. Any further development of the ANIMA paper would therefore need to be more sophisticated in this respect than the present version.

**Item 13: ‘Fitness for Purpose (Interpreting EHSR 4.1.3)**

Several papers had been deposited on the apparent ‘across the board’ requirement for static and dynamic testing that the middle paragraph of the ‘Fitness for purpose’ heading in Annex 1 (ref. 4.1.3) seemed to impose on all lifting machinery. Whilst the text of the directive was clear here – reflected by a tour de table where a firm majority of delegations (including the UK, however reluctantly) said that ‘all’ meant ‘all’ – this legal requirement did seem to be out of kilter with long established practice for certain types of lifting machinery, including many telehandlers for example, where QA was applied in the manufacturing process. These practices furthermore were backed up by harmonised standards and to be required to depart from them would
impose significant and, on the face of it, unnecessary, burdens on industry with no identified improvement in safety.

No immediate conclusion about what to do emerged, most especially for the purposes of what the Guide to 2006/42 should say on this point which is the context in which the issue had originally cropped up. If a suitable amendment of the text in the immediate future is ruled out as a practical possibility – as seems to be the case – attention could switch to the status of the standards that uphold the possibility of non mandatory and universal testing of these types of machinery and whether these come to be challenged by parties seeking to uphold the strict rule of law.

**Item 14: Mobile Offshore Units**

**Norway** presented a paper on this exclusion. The gist was that, since the 1990’s especially, the trend in offshore oil production fields is towards floating production units that could well fall out of the directive as ‘MoUs’ but to the Norwegians, who as members of the EEA implement the directive and participate in the WG, this did not seem appropriate for these ‘modern’ MoUs that operated more or less indistinguishably from the sort of fixed units that were covered.

**COM** was generally sympathetic to this view and recognised that advances in technology had undermined, if not completely broken down the fixed/mobile distinction. The **UK** agreed too. The floating processing installations although transportable, are not mobile in the true sense of the word as they will be fixed in location for a number of years and can be captured in the directive by careful wording of the Guidance. However, this could not be stretched to the smaller, but significant, number of mobile drilling rigs that move from site to site to carry out development drilling, that intuitively needed to be covered too, but would probably have to be regarded as MoUs and thus outside the directive.

The latter could only be covered by amendment of the directive and this is the direction that the COM seems to want to head in although no immediate plans could be made not least, for example, because quite complicated liaison would have to be carried out with the International Maritime Organisation. The issue is therefore likely to figure regularly on future WG agendas.

**Item 15: Woodchippers**

**Belgium** presented a paper on apparent inadequacies with EN13683 (publication in OJ presently withheld) exposed by a recent serious accident in the Netherlands. **UK** reported similar problems with confusion between standards and are keen to exchange information with Belgium.

**CEN** could only provide limited information on the revoked standard; it appears that work is going slowly. **COM** asked **CEN** to report back to the next meeting on progress also **EDMF** (garden manufactures trade assn) will also provide input for the next WG.
Item 16: Cranes: Access, scopes of standards

Fr gave a presentation on access in respect of cranes based largely on major inspection programmes undertaken in 2006 and 2007. Types of issues found included
- Long ladders with no rest platforms
- Vertical ladders
- Emergency quick evacuation in case of driver illness (e.g. heart attack)
- Need to clarify the scope of the various types of crane, as there is some confusion between them

Work is underway in TC 147 but we hope this work will inform the debate and will encourage work to move quickly. Finland reported similar problems. UK reported that this is a similar problem to ones they had encountered with wind turbines where the manufactures had planned, as an interim measure, to use the tower crane standard as a guide.

Item 17: Personal water propellers

Fr presented a paper analysing whether these devices (used by divers etc.) were in the scope of 2006/42. The ‘means of transport’ exclusion was identified as relevant, given that they seemed to meet the basic definition of ‘machinery’, and the WG consensus seemed to be – contrary to the position taken by the paper - that they are not such means as the primary object was recreation and therefore are covered in principle (subject to COM checking within its services its working assumption that the Recreational Craft directive does not come into play).

Item 18: Self propelled aircraft steps

A Fr paper returned to concerns they have previously expressed about these types of steps based largely on two fatal accidents that had occurred on their territory in 2005. Implication of this in terms of the directive is that they want to have a new standard for these mobile steps – e.g. to introduce new protective devices to allow the driver to detect human presence, restrict access when in mobile mode, and to improve the communications and lighting aspects - but have been frustrated so far. The French received general support for what they were trying to achieve and reported that they plan to host a meeting in Paris to discuss how to take the matter forward. Germany agreed to take part and COM encouraged others to participate in this area and promised further discussion.

Item 19: The 2006/42 Guide

The latest ‘work in progress’ for this guide, the section covering Arts 3 and 4 of the new directive (2006/42/EC), had been tabled but there was no substantive discussion of its content.

COM acknowledged the scale of the task for the guide as a whole that was still to be completed before 2006/42 comes into force but was satisfied overall with progress made by the drafting Group on the basis of its own assessment that they were probably ‘about halfway there’.
Item 20: Art. 22 Committee of 2006/42

COM advised the WG about certain changes that are afoot in the provisions within directives about ‘Regulatory Committees’. These concern the scrutiny of the work of these Committees by the European Parliament (Art. 22 of 2006/42 is such a Committee) and is likely for the new machinery directive to result in a small amendment to the Article that outlines the specific measures that the Committee can take (Art.8 where the words ‘implementation and’ in 8(2) are set to be deleted). This will be by means of an Omnibus regulation the details of which are currently being negotiated (hence the usage of the word ‘likely’ above).

Item 21: Amendment to 2006/42 concerning pesticides

COM and the Presidency of the EU Council of Ministers at the time (Fr) gave details on the immediate timetable for processing this amendment through the EU system, including initial consideration of it by MS officials in Council Working Groups in the course of December. See covering letter.

MD
Environment & Technical Regulations Directorate
Department for Business, Enterprise and Regulatory Reform (BERR)

PP
Health and Safety Executive

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