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Dear Machinery Stakeholders

MACHINERY DIRECTIVE WORKING GROUP (MDWG) HELD ON 7- 8 DECEMBER 2009

I attach a report on the latest meeting of the MDWG held a month ago in Brussels. It follows a different format from previous ones in at least a couple of respects. Firstly the account of business carried forward from last time is relegated to the very end of the report so that greater prominence is given to the emerging issues. Secondly I have tried to arrange these new issues under a series of broad headings to try to achieve a greater level of coherence overall.

Since this meeting, of course, the revised Machinery Directive (2006/42/EC) has come into force. You will see that the report begins with an item on the European Commission's Guide to the new directive. The original aim was for this to be ready *in its entirety* by the key date of 29 December 2009. In the event, and despite huge efforts from many parties, this did not prove possible. However a 1st (incomplete) Edition has now been published on the 'Europa' web-site, as many of you will, I am sure, already be aware, covering up to and including the end of Annex II. As such it should already form a powerful body of reference for the directive's various stakeholders given that the main interpretative issues of a *sectoral* nature occur in that part of the directive. Moreover we do not expect to be waiting much longer for the entire task to be completed.

The other main item of business was probably the resolution of an issue, very much hanging over from the July MDWG, of a further extension to the presumption of conformity for EN954. The Commission has now decided, based largely on the soundings it received at this MDWG, that a two year extension for EN954 is appropriate and has since taken the necessary steps to effect this. The body of the report has more details on this and much else concerning the new directive.

Environmental and Technical Regulation Directorate Bay 1105, 1 Victoria Street, London, SW1H 0ET
<http://www.bis.gov.uk/>

Direct Line +44 (0)20 7215 1339 | Fax +44 (0)207 215 3013
Enquiries +44 (0)20 7215 5000 | Email Mike.Dodds@bis.gsi.gov.uk

With all best wishes to you for 2010 from the team here.

**MIKE DODDS
ASSISTANT DIRECTOR
SINGLE MARKET DIRECTIVES (Machinery, PED, ATEX, Lifts, PPE, Noise of Outdoor
Machinery)
ENVIRONMENTAL AND TECHNICAL REGULATION DIRECTORATE**

REPORT OF A MEETING OF THE MACHINERY DIRECTIVE WORKING GROUP BRUSSELS 7-8 DECEMBER 2009

Ian Fraser chaired for the Commission. Mike Dodds of Department for Business, Innovation and Skills and Phil Papard of the Health and Safety Executive represented the UK. For a glossary of acronyms see end of report.

REGULATORY ISSUES

Publication of Commission Guide to Revised Machinery Directive (2006/42/EC)

The first part of the Guide, covering up to and including the end of Annex II, has now been published on the COM web-site as the 1st edition. COM aims to publish the 2nd edition, covering the whole of the directive, in the Spring of 2010, and will include any corrections or additions to the 1st edition text that emerge. This 2nd edition will have been put to the formal Machinery Committee, set up under Art. 22 of the directive, for its endorsement. A subsequent 3rd edition should then follow by the end of 2010 covering the additional ESRs introduced by the newly adopted amending directive (2009/127/EC) on pesticide application equipment (see below). Further editions may be issued thereafter to reflect emerging interpretations.

STANDARDISATION ISSUES

Update from CEN on overall state of standardisation

The CEN representative (Gerhard Steiger) updated the overall state of play with the adaptation of standards for the coming into force of 2006/42/EC – headline figures were, out of a total population of 584 standards, 94% (92) ready for Unique Approval Procedure/Final Vote, 89% (78%) UAP/FV actually launched or closed, and 75% (53) published (July figs shown in brackets).

COM confirmed that the first list of stds had been published in the OJ during Sept, and that the next one will follow before the end of Dec. (there were, in the event, two publications, the main list on the 18th and an addendum on the 29th). COM expressed overall contentment with this state of affairs for the new directive and reported on behalf of CENELEC that they were doing some new stds to cope with the movement of certain products from the Low Voltage Directive to 2006/42/ECMD. It was also noted that a lower percentage of CENELEC stds had been adapted as yet and CENELEC will be requested to attend, and to prepare a report on the state of play, for the next WG.

Transition from EN 954-1 to EN 13849-1 (both stds entitled 'Safety-related parts of control systems')

COM re-opened debate on the conclusion it had drawn at the July WG, but subsequently withdrawn, that it should arrange with CEN for a further extension to the presumption of conformity for EN 954 beyond the end of 2009 when it was due to lapse in favour of EN 13849 – it had suggested 3 years to be added to the 3 years that had already been allowed.

Germany argued against an extension in principle on the basis that users had had plenty of time to adapt to the new standard. Austria was similarly worried about setting awkward precedents.

By contrast Orgalime argued that with the arrival of the new std EN 13849 came a completely new approach to the subject area and that 3 years was always too short, largely on account of the relevant 'mean time to failure' data only having been available for a short time (and in some cases its not being available even now). Stressed keenness to move to the new standard – they have plenty of training packages in place - but certain sub-sectors, machine tools notably, through no fault of their own, were not in a position to use 13849.

Waters were further muddled by a presentation from CECIMO that seemed to be casting doubt on the overall value and suitability of 13849. Backed up to an extent by NB-M Chairman who reported that whilst EN 13849 worked well in, to cite a couple of examples, the nuclear and railway signalling areas it was not (yet) readily understood elsewhere.

Against this background of uncertainty an eventual decision by the WG to agree an extension in principle was never in doubt. COM called for a vote from m/states, EEA states and applicant states. 24 present in all

resulting in vote of 17 in favour, 6 against, 1 abstention. COM will now proceed quickly to ask for a further extension, precise length of this it is yet to determine (in the event the stds list addendum of 29th December extended EN 954's listing for two years).

Pesticides amendment

Following adoption of the amending directive (see above re. COM guidance), COM has prepared draft mandate to send to CEN for the development of supporting standards. This is presently available for m/states' comments through the Standardisation Committee procedure.

Reference to CE marking in harmonised stds

A paper from Sweden queried the practice, apparent in certain harmonised stds, of making CE marking a part of fulfilling the std in question. There was general agreement that this was not proper practice. CEN clarified that its generic Guide 414 is the proper place to address this sort of issue and committed to tidy up references to it in its forthcoming revision.

Pressure equipment incorporated into machinery

A paper from Sweden noted the exclusion in the PE Directive for relatively low hazard PE classified as 'Category 1' (or under) that was integrated into 'machinery' and considered that the present non listing of PE standards under the MD was an omission. UK noted in turn that the logic for this exclusion was that the risks for such PE were covered by the MD (or ATEX, Lifts directive etc.) so this may not be considered necessary. However COM accepted the thrust of the Swedish paper and a need to look into the issue.

Rotary and flail mowers

Italy presented a rather technical paper on deficiencies they alleged with the testing method, in the context of the control of ejectiles, referenced by a new std for these products, prEN ISO 4254-12 (currently undergoing formal vote). The reference is to ISO 17101, as opposed to EN 745, the latter insisting on protective device. Affects the ejection of stones from horizontal flail mowers especially.

Appears to be a consensus that a new test method is required but is not available yet, hence a generally sympathetic reception for the paper, prompting COM to conclude that a delay to listing in the OJ was probably called for whilst the new testing method was developed. CEN not able to react on the day but will report i.d.c..

CENELEC standards for 2006/42

Sweden presented a paper highlighting some confusion about the drafting of stds in the crucial territory where 2006/42/EC and the LVD now met and could sometimes overlap. COM reported, in turn, on discussions this had prompted them to have with CENELEC TC61 which had highlighted the need for more clarity here. TC61 had not appreciated fully that pt 1 of the stds should apply both to LVD and to 2006/42/EC products whilst the subsequent parts applied to *one or other* of the directives. TC61 had now taken this message on board.

COM concluded with a general observation that it felt was in danger of being overlooked with the new interface between the two directives namely that their respective scopes are settled by the manufacturer's intention of where the product is to be used and not the way in which it might come to be used by certain customers (which may also be inappropriate and, in a work context, breach the Use of Work Equipment Directive).

Publication of EN 4254

France drew attention in a rather intense paper to a formal objection it had launched in 2005-06 against an ISO std which insisted on rotating protective devices. That problem had been addressed and was sorted, but once they lifted their objection, France had assumed the solution would be extended to the other parts of the std.

COM checked the list and noted that pts 5-7 of 4254 were included and have decided not to publish them for the time being on account of the French paper. Chimed with German experience too. Will seek clarification from CEN about status of parts of the std already published.

CONFORMITY ASSESSMENT ISSUES

Homelifts

UK presented a paper attempting to establish the case that 'through the floor lifts', otherwise known as 'homelifts', were both in the scope of the new directive and could, *in principle*, meet all of its requirements. These products were very familiar, and increasingly so, on its own market and also, it suspected, elsewhere in the EU/EEA. It highlighted 3 ESRs that might be thought problematic, namely clauses 4.1.2.8.3, 4.1.2.8.5 and 6.2 of Annex 1. Its argument was that the 'state of the art' principle in the set of 'General Principles' should mean that alternative, equally effective means of addressing these risks could be allowed so that such 'homelifts' could be installed in small dwellings at least.

The general reaction from delegations expressing a view was of agreement conditional upon the risk assessment, and that the lifts were for disabled people in their own home. For example Denmark acknowledged that the space available for a lift can necessitate these sorts of designs and that whilst the 'access to the zone' requirement may rule out such a solution in a public space it could be countenanced ("seems to be acceptable") in certain private dwellings. Spain supported this position although Netherlands was more sceptical, having a domestic manufacturer whose approach is to fully enclose the car as was Austria where such designs had only been authorised in exceptional circs.

Given some lack of clarity and the need, at the margins, for an element of judgement and discretion to reconcile these products with the ESRs there was general support for developing technical documents to help manufacturers and notified bodies. Most obviously in the short term VG9 in the NB-M could usefully work on an RfU (although the NB-M Chairman warned that he was aware of some NBs that were sceptical about the whole concept of 'homelifts' so the necessary consensus may prove elusive).

France thought a standard should be developed and in particular 81-41 should be relevant and could be extended, notwithstanding the ongoing appeal against it that it was facing from the German national standardisation authority. There was general support for this approach so CEN TC10 is to be asked to consider the position of 'homelifts' here.

European notified bodies update and recommendations for use

NB-M Chair reported on the horizontal meeting that had taken place in the previous month. Two prime issues – how quickly industry was moving to update its certification for 2006/42/EC and, as also raised at several recent WGs, what the take-up was like for Annex X, (FQA). On the latter, no changes were noted to previous trends, SME indifference, for the large part, and nothing too spectacular to report either moving up the scale, the exception being where manufacturers already used it, e.g. under the Pressure Equipment Directive, and so 'teething problems' were unlikely. On the former generally sedate progress. On RfUs the Chairman of the sub-group, HSE's Richard Wilson was still trying to deal with the RfUs stuck in the *limbo* of the 'oral procedure', especially on the woodworking machines. Also 01.063 was still problematic on 'reach distances' and the assistance of the German occupational health institute (KAN) had been sought whilst others are going OK.

Mr Wilson also stressed the role of m/state authorities in acting as the ultimate back-up in the process (which is, itself, being reviewed by the sub-group). There are presently 14 drafts on circa, he reminded us. COM supported this point and also confirmed that only problems they could not resolve at that level or that invoked fundamental issues of interpretation should be referred to the WG. The sub-group's work continues early in the New Year.

SCOPE ISSUES

Long link chains

UK explained an issue arising from its theatre industry involving a type of 'long-link' chain known as 'Special Theatrical Alloy Chains'. The issue was whether such chains, used for securing lighting etc., would be considered as 'lifting accessories' in terms of the definition at Art. 2(d), and thus be ruled inadmissible by

ESR 4.1.2.5(b). The agreed conclusion supported the UK view that the chains, as used in theatres, themselves form part of the load being lifted and therefore do not fall under the definition of 'lifting accessories' and so were not in the scope of the Machinery Directive – i.e. they could continue to be used in this way..

Electric bicycles

COM tabled a paper on the status of 'electric bicycles', prompted by a trade association question and, evidently, a boom market at present. Emerging consensus, which delegations were invited to confirm to the COM in writing before the year end, was that the bicycles were in scope since the only exclusion in 2006/42/EC of possible relevance to them only extends to products covered by the type approval directive 2002/24/EC from which these products are themselves excluded.

The reluctance of some delegations to commit to the view that the products were in scope seemed to stem from a (not entirely logical) fear that the industry in general had been in ignorance of this so far and that, most especially, the standardisation framework was not yet in line (emissions and vibrations were the two main hazards that required attention).

On the assumption that the COM's soundings confirm coverage by the MD (UK has already submitted its view that they are) then the necessary steps will be taken to disseminate the message and set in motion the necessary work at stds level. This should be possible by amending the existing bicycle std (EN1594?) which can, in the first instance, be used as a reference point for enforcement work.

Rim guards

A paper from the CEN consultant asking whether rim guards, used in tyre fitting and inflating on split rim wheels, could be considered as 'safety components' was quickly dismissed with a negative conclusion on the basis that they are not intended to be part of a machine.

Air handling units (AHUs)

A question raised by the UK about the status of these units, prompted by a recent question and an accident on its territory, unearthed a surprising level of interest and common experience. AHUs are less clinical to categorise than 'Air-conditioning Units' – the latter being bought off the shelf as branded integrated products and plainly in the scope -but are custom built for particular buildings, typically not having their own integral sources of heating.

The conclusion of the UK paper that AHUs were in the scope because of the moving parts and the facility to operate as soon as they were connected to power and the building services (hot and chilled water supply) was widely accepted. As an aside COM would look into the relationship with the Construction Products Directive with relevant colleagues. Some delegations commented on the (subsidiary) issue of enforcement, i.e. that identifying the 'manufacturer' of these AHUs was not always straightforward.

Precise meaning of 'other impact machinery' in Annex IV, item 18

France had encountered problems in interpreting this concept as the French language text was not entirely clear as to whether the 'cartridge operated' applied to both this and the 'fixing' machinery. COM confirmed that the 'cartridge operated' was limited to explosive cartridges and extended to both 'fixing' and 'impact' (i.e. did not include 'gas operated', even if they were fitted with a gas 'cartridge').

MATTERS ARISING FROM THE PREVIOUS MEETING

Generally not much progress to report largely due to COM not being able to make a priority of writing up formal objections. Recognise that they now need to get on with these tasks as other distractions recede. Items of interest can be picked out of the following.

Formal objections against EN 12215 and EN 13355 - Paint booths and combined paint booths France reported that WG is looking at air speed, UK and Germany had responded positively, meeting scheduled for Spring in Paris; **Formal objection against EN ISO 4254 -1: Agricultural machinery - General**

requirements: New std has been published but a new work item is being propagated for its immediate revision; **Formal objection against EN 1459: Powered industrial trucks (variable reach):** No further progress - to be carried forward; **Refuse collection vehicles:** doc explaining the various types of loading mechanisms and how they relate to Annex IV has now disappeared in error from the web-site, along with other machinery guidance docs (since restored). This doc is still valid but will be updated, circulated for comment and then re-published; **EN 13524 Highway maintenance machines and EN 690 Manure spreaders:** On former further meeting of TC 151 has taken place. Conclusions of testing not emerged yet but next meet is in Jan. On latter paper was tabled detailing work of TC so far although provisional as yet as may be affected by impending amendment of Tractors directive. Italy also explained that ill health had prevented attendance of their delegate and expressed disappointment that this should result in a resolution pinpointing this fact; **Channel baling presses:** CEN reported that scope was discussed for their work and had now begun on 3 separate strands within the whole (in line with standing French request for waste presses to be recognised explicitly) **Formal objection against EN 474 - 4 & 5 - Earth moving machinery** COM decision still pending - to be carried forward; **Formal objection against EN 500 - 4: Mobile Road Construction Machinery (compactors)** COM decision still pending. **Warning for EN 1726 -1 and 1459: industrial trucks:**

On wording of the warning possible that it could be transcended by the move to 2006/42. Issue is now whether warning still required because mandate is fulfilled for new directive although 9 month extension allowed to take several comments from CEN consultant into account. Some confusion evident about status of trucks already on the market/in use and their relationship with these stds - Trades Union representative continued to express concern and a specific agenda point will be scheduled for next meeting; **EN 848 – woodworking machines:** COM believed problem sorted out here although tech development is needed/possible in future re. control of ejectiles. Germany in agreement generally but has some industry comments it will pass on; **Interchangeable work platforms on telehandlers EN 2800:** On agenda of next NB-M VG9 in April (re production of an RfU, previously identified as more urgent). CEN working on a 3rd amendment of the std plus total revision i.d.c.UK reported fatal accidents in the case of a foreseeable misuse (digging stakes in agric sector with attachments coming off) so wants to see CEN consider this aspect too; **Lifting function of a vehicle chassis:** COM is still waiting, as was the case in July, for a reaction from vehicle legislation colleagues on whether the equipment would fall under their legislation (having previously ruled out the MD). To be carried forward **EN 14985, instability of dock type slewing jib cranes:** COM decision still pending - to be carried forward. France expressed concern, especially about lack of reaction from CEN. As far as they were aware TC 147 was content with their submissions (and those from Germany). CEN not sighted but promised to clarify next time **Small saw benches:** No news from NB-M but will discuss view at the VG's April meeting **Digger attachments for tractors (interchangeable equipment):** Work is progressing based on Italian draft **EN 474, Quick hitches:** ISO co-op meeting next week which will look at amendment of Ann. 4 **EN ISO 11681, Chain saws:** COM conscious that they need to get on with this decision as they do not have grounds for withdrawing ref as yet. **EN 12151, Machinery for preparation of concrete:** COM commitment from last WG to prepare a formal objection still pending. Fr will be putting fwd proposals based on its own research including beyond asphalt into cold processes. **EN 12649, Concrete compactors:** No progress. To be carried forward. N.B. It is in the 2006/42 list although WG has given past steer that an objection should be prepared. **Gas and steam turbines, coverage:** Section 35 of the draft Guide now reflects consensus of past WGs. Thus COM has addressed situation in the latest draft of its Guide of a manufacturer of an assembly without a drive system who could not specify (not unreasonably) how the machine would be used. However COM acknowledges that a reply is still required to wider issues raised by original It. paper 2008-32. **Water propellers:** Will continue to try to get more views and info from the specialist industry who seem to be a bit 'passive' about the whole affair. To be carried forward **Airplane steps:** Reply received from the industry in Aug. tech reqs of aircraft need to be considered. Ger think that it's now ripe for referral back to the std authorities and on a wide remit. **EN 1010 platen presses:** Onus remains on COM here to draft its decision although CEN has not communicated ref for publication. CEN confirmed that it is being revised to take account of original UK reservations **Safety of woodchippers, EN 13683:** TC144 WG7 has worked on this, met successfully and a draft should follow before end of the year. **Guarding for removable mechanical transmission devices:** COM will try to draft a conclusion based on WG discussions which will not consider them as patches subject to MD but as 'work equipment'. **Lifting platforms users – impaired mobility, EN 81-41:** CEN decision still pending and WG will not return to the substance until outcome of appeal is known. However, in view of close continuing interest in the issues CEN will make information available to WG members about how the case is proceeding (e.g. the TC 10 draft resolution) before the next WG. **Nuclear exclusions:** Interpretations from last time have been integrated into the Guide **Interpreting the '3 metre' criterion (annex iv, item 17):** COM confirmed conclusion from last WG that responsibility of manufacturer is (limited) to establishing the *likelihood* of the equipment being installed where a fall of > 3 metres is possible and determining the conformity assessment route accordingly. **Telescopic personnel cage:** Sp re-iterated scepticism expressed last time about its coverage by the MD (and, by extension, Ann. IV pt. 17). COM repeated core point that it doesn't have its own lifting mechanism. Fr does not seem opposed to this interpretation outright, having previously argued, on balance, for its

inclusion but pointed out the consequences of such a position. UK said it was potentially a wide problem given how common this equipment was across ports, building sites etc.. COM intends to draft conclusion that this equipment falls under the Use of Work Equipment Directive (Ann. 2) **Industrial trucks PrEN ISO 3691**: COM's first inclination was to have no substantive discussion but just to invite TC 150 to compile a report for the next meeting. This followed information from CEN that the CEN consultant was now content that the set of stds had been made clearer and had taken on board the appropriate ISO elements. Frustrated, though, by France, already a bit indignant about the non appearance of minutes from the previous WG which were also supposed to carry a document from them on this subject. Slightly confused discussion followed with France claiming that the new set of stds represented a backward step, if anything, e.g. on stability, loading, access to driving seat etc... This was backed up to a certain extent by Germany who pointed to a number of compromises that had been made (always inevitable with stds though) with the overall verdict that they *were* good enough to be listed but that more work was needed from CEN to address shortcomings. The confusion came from CEN then claiming that the TC meeting just last week had fully addressed the French concerns on stability (and presumably elsewhere too). Given the scope for talking at cross purposes the Commission then succeeded, finally, in guillotining discussion at that point for next time. TC 150 invited to compile report for next meeting **Lifts/machines carrying persons serving fixed landings**: UK reported that an RfU will be prepared on the lifts turbines aspects **Power operated doors**: COM contacted by CENELEC TC 61 who wish to report on this and will be ready to do so at next meeting. **Refuse collection vehicles**: Nothing to report **Orgalime letter concerning status of machinery in stock**: A letter has now gone out to Orgalime, inspired by a meeting of the enforcement authorities, clarifying the concept of placing on the market.

GLOSSARY OF ABBREVIATIONS/TERMS

COM: European Commission; **CECE**: European Manufacturers' Association; **CECIMO**: Comité Européen de Coopération des Industries de la Machine-Outil. (The European Association of the Machine Tool Industries); **CEN**: European Standardisation Committee (**TC**: CEN Technical Committee); **ESRS** Essential Safety Requirements (i.e. Annex 1 of the directives) **EU/EEA**: European Union/European Economic Area **LVD**: Low Voltage Directive **MD**: Machinery Directive (generally) but 98/37/EC for specific references to former Machinery directive and 2006/42/EC for specific references to the revised Machinery directive respectively; **ISO**: International standards Organisation; **NBs**: Notified bodies; **NB-M**: Notified Body Forum; **OJ**: the Official Journal (of the European Union); **Orgalime**: European Engineering Industries Association **RfUs**: Recommendations for use (propagated by NB-M); and **WG**: Working Group.

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Environmental & Technical Regulation Directorate
Department for Business, Innovation and Skills (BIS)

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Health and Safety Executive

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