

Overhauling the Machinery Directive

The thrust of the present Directive: the New Approach

Directive 89/392/EEC adopted by the European Council in 1989 under article 100A of the then Treaty (now article 95 of the Amsterdam Treaty) set the conditions in which machinery is allowed to move - and be placed on the market - freely in Europe. What it did was to set design requirements which manufacturers must satisfy to protect users' health and safety, means of proving that equipment complies with those requirements, and a set of rules which Member States must follow to stop dangerous equipment from being placed on, or order it to be withdrawn from, the market.

The Commission has given CEN and CENELEC - the European standards bodies - mandates under this Directive as amended to frame harmonized technical standards. These are voluntary guidelines, but if complied with, they confer on manufacturers or their representatives a presumption of conformity with the health and safety requirements set by the Directive. Apart from the special machinery listed in an annex, manufacturers of almost any type of machinery can certify that their products conform to the essential requirements without having them certified by a third party.

This Directive is a lever of public intervention in equipment engineering design, an area often regarded as the sovereign preserve of business and design engineers. It is commonly argued that government should have no say in technical choices. The trade union movement, as the voice of work equipment users, believes that protection of workers - and by extension, final users - cannot be left to the mercies of the market alone. Public intervention in this area is essential. The debates around the adoption of Directives at different stages of the Community legislative procedure are vital forums for users/workers to demand that protection from physical and psychological harm should be designed into equipment. The debate is also moved on through the interpretation and filling out of the essential health and safety requirements by the European standards institutions under mandates from the public authorities.

Hence the TUTB's involvement in technical standardization work. But under-resourcing means that the working groups which draft the standards tend to comprise only experts and manufacturers. The main effect of this imbalance is to sideline the specific, detailed knowledge of users and prevention practitioners, or take it into account only through manufacturers or inspection bodies (notified bodies under the New Approach Directives), i.e., where their economic interests are taken into account.

Technical standards

To date, the Commission has mandated 727 standards under the Machinery Directive; 364 of them have already been adopted by CEN's national members and 99 are being prepared. The other standards are going through procedures. When the Directive was passed, it made no provision for controlling whether standards complied with the essential requirements; it was an entirely self-policing system. Pressure from the Member States led the Commission to ask CEN to appoint specialized consultants to audit the draft standards for compliance with the essential requirements. Some Member States have challenged specific standards or draft standards for certain types of machinery¹.

The manufacturers' liaison group, Orgalime, has repeatedly called for work to be speeded up and strict time limits set on the European standards institutions. But this has been parried by those who want standardization to reflect a real consensus between the parties involved, especially for guidelines which the public authorities invest with a presumption of conformity with the law!

Directive under attack

The Directive has been in force since 1 January 1993. Allowing for the transitional periods, it has been fully applicable to all types of machinery since 1995. Passed in response to industry demands as a good way of underwriting

¹ See France invokes safeguard clause against a European standard, *Newsletter* N° 5, February 1997, pp. 13-16; The United Kingdom's safeguard clause on EN 708 - Agricultural machinery, *Newsletter* N° 10, December 1998, pp. 6-7.

the free market, the Directive has since been attacked by industry over its scope, its overlap with other Directives, and the paperwork it entails. Since the Molitor Group's report (published in 1995) called for the definition of "machinery" to be clarified, for the market in used machinery to be protected, for simpler manufacturer's risk assessments, and generally speaking, cuts in the cost of compliance², industry has been consistently calling for the Directive to be trimmed back. Replying to the Molitor report, the Commission announced proposals for a complete overhaul of the Directive for the end of 1997.

The context of the revision

The revised draft was prepared in the Machinery Committee set up by the Directive and chaired by the Commission. All Member States are represented in it, and industry, the TUTB, the coordination body of notified bodies and CEN machinery consultants are invited to attend its meetings. A series of versions were discussed, and the tripartite Luxembourg Advisory Committee was consulted on the most recent (ref. EN-III/4101/97 rev.3). At the start of 1999, the Commission asked the different delegations to send in their formal views on the document. The TUTB responded with a number of remarks and detailed comments. The Commission representative said the Commissioners would adopt a proposal before year-end. However, the mass resignation of the Commission could upset that timetable.

The contents of and debate around the draft must be seen not just in the light of the Molitor Group proposals, but also the safeguard clauses invoked by some Member States, and especially the questions put to the Commission by different national delegations and industry about the interpretation of the Directive. Since being set up, the Machinery Committee has already discussed and answered around 150 questions. But these consensus views have not been published at Community level and have no legal authority. The individual Member States have ultimate responsibility for implementing the Directive, so the replies can never be more than guidance. Only a Commission proposal to the Council following the procedure laid down in the Treaty can give the replies official force.

Changes in the markets and technologies of machinery and equipment may also colour the approach to the contents of the draft and manufacturers' reactions. So, in the Panorama

of European Industry 1997, the chapter on "machinery and equipment", written by Orgalime, calls attention to the fact that machinery manufacture closely mirrors changing technologies, incorporating mechanical engineering, microelectronics, optics and sensor technologies, and new materials. The old-style standalone machine also seems to have lost its central place in the product range, and has now given way to integrated systems with computer technology built-in. But to run these systems, users are increasingly making use of services ancillary to the products. From ten to fifteen percent of machinery manufacturers' sales turnover is now service-related. Another major consideration is the decline of standardized production in Europe and increasing specialization by manufacturers with a large-scale international division of labour in which small firms are key players. Of the 142,000 companies in the sector, 122,000 employ twenty workers or less and their core business is spare parts manufacture and repair. Significantly, the report considers that twenty employees is the bottom limit for the production of complex machinery.

The aim of the revision

■ Complex machinery

The current focus of debate on the Commission draft is on setting design rules for complex machinery.

■ Scope

The radically changed scope covers - as it does now - "single" machines, interchangeable equipment, and safety components (set in a list), but excludes assemblies of machines. It includes lifting accessories, mechanical transmission systems, guards for mechanical driveshafts and now for the first time, "quasi-machinery", defined as almost a machine which is incapable itself of performing a specific application but is intended to be incorporated into a machine or assembly of machines. A series of obligations are imposed on manufacturers of "quasi-machinery". In particular, they must draw up a declaration indicating, among other things, the essential safety requirements which the person responsible for the final product must take into account, a reference to the contracts with the customer, and a warning that the product may not be put into service "as is", etc.

Fuller and more detailed definitions are also given of "machinery" and "safety components", which are now listed.

■ Putting into conformity

² See Molitor Group: deregulation assault on health and safety, *Newsletter* n°1, October 95, pp. 2-3.

The procedure for putting machinery into conformity is generally the same as in the existing Directive except for dangerous machinery, where it has finally been recognized that a third party organization must always certify whether it is fully or only partially compliant with the harmonized standards. Manufacturers must now choose between having the technical file and compliance with the harmonized standards verified by the third party, or applying for examination of the file and verification of the conformity of a type of machinery to the technical file.

■ The essential requirements

The essential requirements listed in annexes to the draft Directive are organized differently, but some aspects have been expanded and filled out, like ergonomics and instructions for users, both aspects which the standards developers have found it hard to flesh out under the existing standardization programme. Clarifying the essential requirements in this way should help the standards body in the planned revision of standards.

The TUTB's view

The draft was the focus of considerable comment, especially from manufacturers and a large number of Member States, but also from the TUTB. In a letter to the relevant Commission departments, we stressed that workers' interests dictated that the Directive should address a series of aims: exhaustive health and safety requirements guaranteeing a high level of protection and taking account of scientific and technological developments. It is also fundamental that products put into service in all Member States should comply with the Directive's requirements.

Because of the failings in interpretation and application, and especially the inbuilt imbalance between the interests represented in standardization working groups which draft specific ('C') standards, we fully support improvements to the existing Directive.

Because of this, we reject the Molitor Group's suggestion that the scope should be limited to ready-to-use machinery, which flies in the face of current technological developments. Also, while admitting the merits of the Commission's desire to set rules for all those involved in product manufacture, and to rope in the growing use of subcontracting, we consider it essential that criminal liability should clearly lie on the person actually

responsible for placing on the market, while fully endorsing the obligation on component suppliers and the final assembler to exchange technical information in order to ensure an overall design.

We believe that the concept of "quasi-machine" may muddy the division of responsibilities between the firm which places the product on the market and sells it, and the firms involved all along the line in manufacturing it. The result will be to further tie the public market supervision authorities' hands. The draft as it stands more resembles an attempt to address the industry's development into a network of manufacturers than to meet the challenges it is creating for the national authorities' duty of market supervision. The market in "quasi-machinery" would be unsupervised. Given that market supervision is already too often a non-starter in the Member States, this proposal seems to have its head in the clouds!

The draft requires Member States to exchange information. This is a first step towards working out common rules on market supervision, but appears to be meeting opposition from the Member States, who are focussing on national differences and disregarding their common responsibilities to ensure the conformity of machinery with the Directive's requirements in a "single" market. That shows the need to clarify the responsibility of the final person responsible for supplying machinery to users.

On the overlap with the Low Voltage Directive - a crucial issue given that most machinery is electrically-powered - the differences in treatment and requirements between the two sectors still remain. The essential requirements of the 1973 Low Voltage Directive - a handful of lines - have never been reviewed, despite a rising number of complaints over the years, particularly regarding hand-held equipment. This limitation of the essential requirements effectively gives the standards developers carte blanche in technical choices! The Machinery Directive's essential safety requirements are much more detailed. Not by any stretch of the imagination can the two Directives be regarded as equivalent in terms of requirements. So it must be clearly stated that where a product falls under both Directives, the most stringent requirements must apply.

The views of manufacturers and governments

Orgalime and many Member States' criticisms have focussed on the concept of "quasi-machinery". The manufacturers' liaison group argues that not only will the new obligation increase paperwork, but will also make market supervision impossible. It does not want public interference in the private relations between manufacturers of final products and "quasi-machinery".

But the essential criticism of Orgalime and many other players is that Member States' recognition of the presumption of conformity of all "quasi-machinery", and the differential treatment of manufacturers through the additional constraint placed on the national authorities, put the proposal at odds with the Directive's aims of ensuring free movement and high safety standards.

Two key issues

Our focus is on two issues. Firstly, the role of the social partners in the standardization process. The sentence included after the European Parliament debate in 1989 clearly showed its limitations. It confers democratic legitimacy on the standardization process, but to date, has not guaranteed them an effective influence. A European debate on this obligation is urgently needed, and the future Directive must require the Member States to report at regular intervals to the Commission on what they are doing to give effect to this requirement. Giving users a recognized place in the standards development process could be an area for discussion between designers and users and in some ways be a facet of worker participation in risk assessment: not just identifying, but also controlling, them.

The second issue is the contents of the essential requirements: "technical progress" still remains the benchmark for too many risks. But the concept is not defined, and is left to the manufacturer's, and in some instances to the standards body's, judgement. This is counter to users' interests because manufacturers have no obligation to collect information on users' experiences nor to supply that reference material to the authorities. ■

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The European Commission's DG III updated its two key publications on the Machinery Directive in 1999:

- *Machinery. Useful facts in relation to Directive 98/37/EC*, European Commission, DG III, Industry, CO-20-99-866-EN-C, 1999;
- *Community legislation on machinery. Comments on Directive 98/37/EC*, European Commission, DG III, Industry, CO-01-96-279-EN-C, 1999.