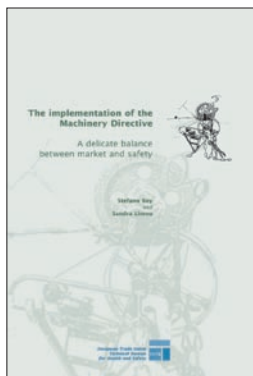


The revision of the Machinery Directive – Part I

For a detailed analysis of the Machinery Directive:



The implementation of the Machinery Directive
A delicate balance between market and safety

Stefano Boy and Sandra Limou

Also available in French
2003, 15.5 x 24 cm, 140 pages

To order:
<http://hesa.etui-rehs.org > Publications>

Introduction

The ETUI-REHS has been closely monitoring the revision of the Machinery Directive, the five-year review of which has demonstrated the difficulties of striking a balance between market needs and protecting machinery operators' health and safety. The revision has also raised fundamental questions about what progress technology has achieved towards safer equipment since the Machinery Directive came fully into force. We take the view that progress in safety through design cannot be achieved without an iterative mechanism where the work environment's reactions to manufacturers' chosen design solutions are brought back to source and used to devise safer equipment. This argument will be developed in a two-part article: the first part looks at the main steps of the revision and sets the background for the second, which will focus on selected changes to the existing text of the consolidated Directive 98/37/EC. This second part will be published in the next *HESA Newsletter*.

The revision process

Now that the European Commission has endorsed¹ the amendments proposed by the European Parliament in the second reading of the Common Position adopted by the Council, the new Machinery Directive will be checked by staff legal linguists and soon thereafter adopted by the Council.

Work on overhauling the Machinery Directive started five years ago, in January 2001, when the European Commission transmitted to the Council and European Parliament a revision proposal² largely intended to simplify implementation of the legislation in line with the conclusions of the 1994 Molitor Report³. A month later, the President of Parliament referred the proposal to the Committee on Legal Affairs and the Internal Market as the lead committee, and to the Employment and Social Affairs, Environment, the Public Health and Consumer Policy, and the Industry, External Trade, Research and Energy Committees for their opinions (the latter finally deciding to forego giving an opinion).

Reactions to the Commission proposal varied. The Environment, Public Health and Consumer Policy Committee's opinion welcomed the Commission's intention to give more importance to CE marking, and called attention to the need to deal with equipment used in fairgrounds and amusement parks, either by bringing it within the scope of the "new" Machinery Directive, or by another directive. It also proposed asking Member States to report machinery-related accidents, and requiring manufacturers to submit an annual report to the Member States on

machinery safety faults. The Economic and Social Committee echoed the concerns on fairground and amusement park equipment, was critical of the Commission's timing in revising the directive so relatively soon after it came into force, and felt the Commission proposal was unlikely to achieve the desired simplification. The Employment and Social Affairs Committee's opinion struck the same general tone.

In its reaction⁴ to the Commission proposal, the ETUI-REHS welcomed the emphasis given to such essential concepts as CE marking, cooperation between national competent authorities, risk assessment, non-professional operators' needs, foreseeable abnormal situations, and instructions, as well as the aim of clarifying provisions concerning quasi-machinery. The introduction of Full Quality Assurance as a possible alternative to EC type-examination of Annex IV machinery was a stumbling block, however, as we do not believe that product quality necessarily implies the highest safety and health standards.

In its first reading – on July 2002 – Parliament made sixty-eight amendments. The Commission's amended proposal presented at the beginning of 2003 accepted part or all of nearly half of these, which were aimed at clarifying the scope of the directive, improving the definition of machinery, simplifying the application of CE marking, presenting a better representation of the lifecycle of machinery, and improving the provisions on the designation of notified bodies. Among the amendments accepted was the possibility of self-certifying Annex IV machinery constructed on the basis of harmonised standards covering all applicable Essential Health and Safety Requirements. Forty amendments in all were rejected, most considered by the Commission as being either outside the scope of the Machinery Directive or adding nothing to the initial proposal. A number of amendments which were not accepted by the Commission nevertheless raised interesting issues: how to draw lessons from the safety level of old machinery, the need to revisit some aspects of the New Approach⁵, and the need to establish European databases on the fulfilment of health and safety requirements for machinery, among others. With this last amendment – included as Recital No. 27 in EP legislative resolution P5_TA(2002)0362 – Parliament also meant to help machinery purchasers make better choices among equipment on the market. The Recital went so far as to ask the Commission to authorise CEN to establish and maintain such machinery databases.

The Council reached a political agreement on the Commission's amended proposal in September 2004. Prior to that, the ETUI-REHS had occasion to put its views in a letter addressed to the Chair of the

¹ COM(2006) 58 final – 2001/0004 (COD).

² COM(2000) 899 final – 2001/0004 (COD).

³ See: "Revision of the Machinery Directive", *TUTB Newsletter*, No. 17, June 2001, p. 5-11. Downloadable from: <http://hesa.etui-rehs.org > Newsletter>.

⁴ See: "Revision of the Machinery Directive", *op. cit.*

⁵ The introduction of a system of categories of risk and monitoring in connection with market surveillance, the possibility of addressing safety aspects of existing installations.

European Council Working Group for the Machinery Directive. We stressed the urgent need to set a new framework for pooling expertise on machinery safety on the basis of data, tools and procedures. Opening up the “machinery system” to a wider involvement of people and organisations would achieve several objectives: the revision of Annex IV; the improvement of harmonised standards; a better chance for purchasers to make sound decisions when buying equipment; the possibility of avoiding safeguard clauses; closer contact between designers and users to dispel designers’ misconceptions about users and their intentions, and the working environment. The ETUI-REHS’ reactions to the text of the Council’s political agreement were elaborated on in the *TUTB Newsletter*⁶.

In July 2005 – after three years of debate in the Council’s preparatory bodies – the Council reached a common position on the Commission’s amended proposal, which broadly reflected the Commission’s own reactions to the EP’s 1st reading. The Commission welcomed the common position, which introduced a number of improvements to the initial proposal, and attached two interesting declarations to the common position addressing the revision of the New Approach – one on CE marking, the other on the presumption of conformity conferred by harmonised standards. Here, the Commission pledged to provide potential users of relevant standards with clear information about the relationship between its clauses and the Machinery Directive’s essential health and safety requirements. The Commission went on to say that it intended to implement such information requirements for all New Approach Directives. It is interesting to note on this, that during the negotiations in Council some Member States suggested adding a legislative requirement on the transparency of the relationship between standards specifications and the Annex I Essential Health and Safety Requirements (the so-called Annex Z in C-type standards).

The 2nd reading in the European Parliament – whose opinion was delivered on 15 December 2005 – resulted in 9 amendments, chief among them further clarification of CE marking, putting electric motors outside the scope of the directive, the need to improve market surveillance, dropping “scraping” as a manufacturer’s responsibility, emphasizing the confidentiality of information processed and exchanged by stakeholders, and the requirement to review technical files when assessing the Full Quality Assurance operated by manufacturers.

The parliamentary committee work addressed other sensitive issues. On the safeguard clause, some MEPs wanted a procedure to ensure that:

- measures taken against one dangerous machine were applied horizontally across all machinery of the same type presenting the same dangerous design features;

- when the Commission confirmed the non-conformity of a machine, measures taken by one Member State would automatically apply in all Member States. The thinking behind this was to prevent machinery banned in one Member State from circulating freely in Member States where restrictive measures had not yet been taken.

For Annex IV machinery, some MEPs wanted the Full Quality Assurance option for dangerous machinery not or only partly manufactured on the basis of harmonised standards dropped unless notified bodies were able on request to assess a model of the machine, plus the documentation of the quality system behind its design and construction. Others were more flexible, wanting to give notified bodies full discretion to decide whether an Annex IV machine under full quality assurance would be submitted to the EC-type examination. What lay behind this was the alleged lack of clarity of Annex X in describing the role played by notified bodies in the full quality assurance assessment and monitoring, two matters where Annex X was thought by some to be too unspecific. Another amendment on the General Principles of Annex I called for manufacturers to have to take into account not only the state of the art, but also economic proportionality, when designing and constructing machinery.

Some preliminary considerations

A full quality assurance procedure, the need for a European machinery database, the presumption of conformity conferred by harmonised standards, and the aim of helping machinery purchasers are just some of many issues addressed in the revision process. These will be considered in more detail in the second part of this article, along with other sensitive issues: the implications of the Annex I changes on standardisation, how the Commission means to manage the specific measures to deal with potentially dangerous machines, how to revise the list of particularly hazardous machinery (Annex IV), partly completed machinery, and how the Commission means to implement Article 21 on the dissemination of information on implementation of the Machinery Directive.

All these matters will be examined to see whether the objectives and expectations of the revision have been delivered. What the Commission says will be looked at against the initial proposal’s aim of clarifying the definition of various concepts and certain other aspects, and better ensuring the uniform application of the Machinery Directive, as well as the expectations of those who viewed the revision process as a unique opportunity to take account of the experience gained in the practical application of the amended Directive 89/392/EEC. ■

Stefano Boy, researcher, ETUI-REHS
sboy@etui-rehs.org

⁶ See: “New Machinery Directive soon on track?”, *TUTB Newsletter*, No. 26, December 2004, p. 14-16. Downloadable from <http://hesa.etui-rehs.org> > Newsletter.