



Market surveillance in the machinery area

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The Machinery Directive (MD) is a key item of legislation under the “New Legislative Framework” (what was called the “New Approach”). The MD has one of the widest scopes and covers a very large percentage of both consumer and industrial products. These products can present a great variety of associated health and safety risks as reflected in the extensive essential health and safety requirements (EHSRs) in Annex I of the Directive and the massive number of products standards that have been developed, with a number of products still lacking harmonised standards, such as quad bikes (ATVs); mini-motos, bending machines and horse trainers.

As well as having an extensive scope the Directive also covers one of the largest and most important industrial sectors in the EU that permeate almost all factories; warehouses, building sites, retail outlets and households. If market surveillance of this Directive becomes ineffective it would cast doubt on the effectiveness of the whole approach in the EU.

To address the many potential risks due to poor design and to maintain EU industry competitiveness, there needs to be excellent Standards that fully meet all the relevant EHSRs of the Machinery Directive. These Standards should also make market surveillance easier as compliance testing against the Standard is relatively straight forward.

However, at present the situation regarding standards is very patchy. There are only a small number of harmonised Standards that are found to be seriously wrong due to not adopting known and better solutions to reduce risk (ie State of the Art solutions). Such Standards are discussed at the Machinery Working Group and in recent years they are more likely to be subject to formal safeguard actions, such as UK safeguard actions concerning parts of EN 474-1 (Earthmoving Equipment, section on semi-automatic quick hitches) and EN 693 (hydraulic presses, issue of collective safeguarding if using two handed controls).

What is more worrying is the larger number of Standards that although not directly wrong, lack details on possible solutions so some risks (such as driver lack of visibility and ergonomic access for cleaning) leaving the designer to decide on particular solutions to address an EHSR following their own risk assessment. This means that although the harmonised standard may carry a presumption of conformity it is not always possible for the enforcing authority just to check for compliance against the Standard as the appropriateness of the risk assessment and subsequent risk reduction measures have to be examined – a process that is the same as looking at how an EHSR is addressed by the designer and hence more time consuming. This is an issue that cannot be quickly addressed, but the UK and other member states will, through the Machinery Working Group and ADCO (**A**dministration and **C**ooperation group), seek to monitor and encourage the development of better and more comprehensive Standards.

Unfortunately even if we had perfect legislation and Standards it would not be enough; human nature means there is always non-compliance either through ignorance, misunderstand-

ing, or by the deliberate intention not to comply. For the New Approach system to work there needs to be effective market surveillance to ensure compliance to the EHSRs of both EU and imported goods. If all relevant EU authorities had unlimited resources, market surveillance would be straight forward, although it would have the danger of being over zealous and so inappropriately harming EU industry – a sensible balance based on risk would still be needed.

However, having unlimited funding is not the case and in most member states there is a tightening of resources allocated to authorities for market surveillance and standards work. Authorities across the EU have an increasing duty to be more prudent with tax payers' money and to ensure it is used and targeted to address the higher risks and so get the best effect and value for money.

The challenge for the authorities that enforce the Machinery Directive over the next few years will be how to increase their effectiveness at a time of falling resources. This is likely to be aggravated if the present problems caused to the world economy by the “credit crunch” results in less resources being put in to safe machinery and standards development by industry.

The New Legislative Framework, the modernisation of the New Approach for marketing of products was adopted finally in Council on 23rd June 2008, and its Regulation will apply on 1 January 2010. Among other matters this will require Member States:

- To have effective market surveillance infrastructures and programmes
- To have effective controls at the EU borders to address non-compliant imports
- To establish appropriate communication and coordination mechanisms between their market surveillance authorities
- By 1 January 2010, to draw up a market surveillance programme, communicate it to the other Member States, the Commission and make it available to the public
- To ensure that market surveillance authorities exercise their powers in accordance with the principle of proportionality
- To ensure that products which present a serious risk are recalled, withdrawn or stopped being made available on their market and that the Commission is informed without delay (ie an extension of the Rapex type approach to all products under the “new approach”).

The consequences of: the increased pressure on resources; and the requirement for more effective market surveillance means that Member States need to work smarter and more efficiently. However, this new legislation also addresses some of the tools that will be needed to help achieve this aim. These include:

- Giving the Commission the legal possibility to help fund cooperation between member states eg through the ADCO groups
- The establishment of a cross EU database and information system(s), with the aim of speeding up information exchange of defective products and to coordinate and improve EU market surveillance activity between Member States
- Development of EU training programmes and exchanges of national officials
- Programmes for the exchange of experience, information and best practice between Member States
- Encouragement of common projects, information campaigns, joint visit programmes and the consequent sharing of resources between Member States.

In the Machinery Directive area it is clear that the existing ADCO group can have a central role to play in:

- The development of cross-border projects to proportionately target non-compliant machinery
- Exchange of action taken on seriously defective machinery
- Exchange of, and development of, expertise between Member States

- Collaboration and cooperation between Member States in dealing with investigations that need to involve actors in a number of States

Up to now the main activities of the Machinery ADCO has been in the exchange of information on particular high risk investigations and in seeking information and help at meetings – this has worked well. However, only a small number of cross-border projects have taken place, for example concerning bowling alley “pin spotters” (machines that clear and replace the pins). Unlike some other ADCOs we are yet to agree any market surveillance joint programmes, but this is an area the ADCO will be looking at in the next few months. A model that we are likely to look at is the excellent work done in the Nordic countries where joint projects have been agreed and carried for a number of years. I expect that over the next year the Machinery ADCO will agree a number of projects to target machinery that carries a particular risk, for example due to a significant accident/investigation history.

Not all Member States will take part in each project, as markets vary (no point targeting snowmobiles in Malta, or olive picking machinery in the UK). The advantage is that by pooling resources we can have a significant cross EU market surveillance approach that addresses cross-EU products that is not possible by a single Member State, unless carried out over a long time period. This should mean it is also fairer to industry (action on competitors at similar times) and also machinery banned in one Member State should be less likely to be moved to others, as industry should know the targeting and requirements have been agreed across the entire EU.

Projects have not been agreed. Possible areas for consideration could include:

- Agricultural machinery
- Construction machinery imported from outside the EU
- Cranes and access machinery
- Garden machinery
- Power tools

For projects and market surveillance activity to be both properly targeted and to avoid duplication of work the Machinery ADCO must have good intelligence. This is where the need for a cross-EU information exchange system and database as envisaged by RAMS (Regulation (EC) 765/2008), is essential. The requirements include:

- Quick and in-time information on defective products and measures taken by other market inspection bodies
- A data base covering all investigated product distributed throughout Europe including up-to-date information on product investigation and testing with access only to enforcing authorities (secure area)
- Evaluation tools to compare existing outcomes of testing/examination to help ensure a uniform approach
- Means to interrogate the data base and collate and present data in a easy to understand format (graphs etc), eg from project work
- Efficient co-operation with Customs authorities
- Means to inform Employers, workers and public about unsafe products

Eleven Member States (including the UK) plus Switzerland are already using ICSMS (Information and Communication System for Market Surveillance). This system was originally developed by Germany, Sweden and Belgium as an EU project but has now been developed into a comprehensive secure “modular” system that can already deliver almost all of the above requirements. Critically it is being developed to cover the missing requirements (eg general access to public safety alerts) and to be capable of interchanging information with other systems such as RAPEX and a Member States’ internal data-base system (this link is currently being developed for Estonia). The aim is for single key entry, and then for data transfer to other systems – retyping data as currently can happen is not only wasteful in time, but can introduce errors. A very useful feature of ICSMS is the ability to see pictures of the

products concerned and to link to test/engineers reports held in Word or PDF format together with the test engineers contact details – this facilitates cooperation and can stop duplication of expensive testing.

The system is owned by the member states involved and is currently being set up in Brussels as a non-profit making international organisation under Belgium law owned by its members (i.e. the Member States involved).

In my view as ICSMS has already used EU money to be developed to an advanced stage it is the best candidate to be further developed to meet the information exchange requirements for the effective working of the New Legislative Framework. One area it does not cover is the exchange of best practice and help on market surveillance techniques and the development of expertise. However, the EMARS (**E**nhanced **M**arket **S**urveillance through best practice) system developed in the consumer sector by PROSAFE (PROduct SAFETY – organisation similar to an ADCO for the general domestic products) is at an advanced stage of being developed to address these issues and ICSMS and PROSAFE have agreed to cooperate so both systems can complement each other and so meet the database, information and access to help requirements of the New Legislative Framework. The public areas of ICSMS can be accessed via: www.icsms.org and EMARS via www.emars.eu

One of the key requirements of the New Legislative Framework is better border control, ICSMS can help exchange information with customs (eg Customs codes are supported) and in the future the ADCO group can have a role in helping such cooperation with project work. But although conventional market surveillance at the border itself is possible for imports of complete and small bulk items it is not appropriate for much larger industrial plant and for some consumer items such as home lifts, as these will be imported in separate packages/shipments and then assembled on site. It is only when it is assembled that the machinery can be properly assessed for compliance. The ADCO group can address this problem by facilitating project work with cooperation both between member states and information (eg using ICSMS) from customs authorities on where such products are being supplied, so they can be sampled and examined on site.

This paper only gives an outline of the: pressures on market surveillance authorities; the need for better Standards; and the way the ADCO group with the help of a comprehensive database and information system (such as ICSMS) can meet the demands of New Legislative Framework and the 21st Century.

The author is happy to discuss and expand on any aspect of this paper via E-mail.

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