



COMMISSION OF THE EUROPEAN COMMUNITIES

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2001/0004 (COD)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on machinery and amending Directive 95/16/EC**

(presented by the Commission pursuant to Article 250 (2)  
of the EC-Treaty)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on machinery and amending Directive 95/16/EC**

**(Text with EEA relevance)**

**1. BACKGROUND**

Transmission of the proposal to the Council and the European Parliament [COM(2000) 899 - 2001/0004 (COD)] in accordance with article 95 of the Treaty 26 January 2001

Opinion of the European Economic and Social Committee 12 September 2001

Opinion of the European Parliament - first reading 4 July 2002.

**2. OBJECTIVE OF THE PROPOSAL**

The aim of the initial proposal was to ensure the free movement of the products within the scope by guaranteeing a high level of protection in the areas of health, safety and consumer protection. The products within the scope are essentially machinery and products used in conjunction with such machinery.

In line with the conclusions of the 1994 Molitor report the objective of the initial proposal was to provide a better definition of various concepts, to clarify certain aspects and to better ensure its uniform application. To this end, the explanations of the conformity assessment and market surveillance procedures were improved, avoiding divergent interpretations of these procedures.

The initial proposal for a revision to the Directive was prepared on the basis of proposals drawn up by up a high-level group of independent experts from various backgrounds. It also took account of the experience gained in the practical application of the amended Directive 89/392/EEC<sup>1</sup>.

The main elements of the initial proposal were as follows:

- Better definition of the scope of the directive, clarification of the borderline with other directives, in particular the Low Voltage and the Lifts Directives, and a clearer description of the concept of “Partly Completed Machinery”.

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<sup>1</sup> Council Directive 89/392/EEC of 14 June 1989 on the approximation of the laws of the Member States relating to machinery/\* Codified version CF 398L0037 \*/ Official Journal L 183 , 29/06/1989 P. 0009 - 0032 Finnish special edition: Chapter 13 Volume 19 P. 0023 Swedish special edition: Chapter 13 Volume 19 P. 0023 CONSLEG - 89L0392 - 30/08/1993 - 78 P.

- Strengthening of the provisions relating to market surveillance and to the notification of conformity assessment bodies.
- Introduction of a full quality assurance procedure for certain categories of machinery.

In its amended proposal, the Commission has incorporated many of the suggestions from the European Parliament, with an aim to further improve the Directive.

Due to divergences between the language versions of the Wieland report, a number of amendments have changed in the adopted text compared to the Wieland report, on which the Commission based its statements in the plenary session of the European Parliament. As a result of these divergences amendments 23, 47, 59 and 63 are accepted in part as outlined in the following chapters.

### **3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT**

#### **3.1. Amendments accepted in full by the Commission (2, 3, 16, 18, 42, 66, 69, 72, 74, 75, 76)**

The Commission can accept in full amendments 2 and 3, which introduce useful recitals clarifying the scope of the Directive.

The Commission can accept in full amendment 16, on Article 3 paragraph 2, proposing to delete Article 3 paragraph 2. This paragraph is no longer necessary, since the revised version of the General Product Safety Directive 2001/95/EC<sup>2</sup>, clearly establishes the borderline with this Directive.

The Commission can accept in full amendment 18, on Article 6, paragraph 1, which simplifies the text.

The Commission can accept in full amendment 42, on Annex I, point 1.1.2, point (a), subparagraph 2, which introduces a clearer representation of the different phases in the lifecycle of a product.

The Commission can accept in full amendment 66, on Annex I, point 4.3.1, paragraph 2, which is an editorial improvement.

The Commission can accept in full amendment 69, on Annex I, point 6.4, which improves the text.

The Commission can accept in full amendment 72, on Annex I, point 8.2, which improves the safety level for construction site hoists.

The Commission can accept in full amendment 74, on annex II, Section A, point 1, which is an improvement to the text.

The Commission can accept in full amendment 75, on Annex II, Section A, points 4 and 5, which is an improved drafting compared to the proposal.

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<sup>2</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (Text with EEA relevance) Official Journal L 011 , 15/01/2002 P. 0004 - 0017

The Commission can accept in full amendment 76, on Annex III, paragraph 4, which simplifies the application of the CE marking.

### **3.2. Amendments accepted in principle by the Commission (22, 30, 41, 51, 62, 64)**

The Commission can accept in principle amendment 22, on Article 12, paragraph 1, subject to the following rewording:

*"Following risk analysis carried out in the light of the principles of safety integration (Annex I, point 1.1.2), the manufacturer or his authorised representative shall apply one of the procedures for the assessment of conformity described in paragraphs 2 to 5."*

The Commission can accept in principle the contents of amendment 30, on Article 17 b (new) or rather Article 14 as in the Commission's proposal, which introduces substantial improvements for the designation of notified bodies, provided that the article is kept in its original place as Article 14 and subject to the following rewording:

*"Article 14*

*Notified bodies*

*1. Member States shall notify the Commission and the other Member States of the bodies which they have appointed to carry out the assessment of conformity for placing on the market referred to in Article 12(4) and (5), together with the specific tasks which these bodies have been appointed to carry out and the identification numbers assigned to them beforehand by the Commission. Member States shall notify the Commission and other Member States of any subsequent amendment.*

*2. The Member States shall ensure that the notified bodies are monitored regularly to check that they comply at all times with the criteria set out in Annex XII. The notified body shall provide all relevant information on request, including budgetary documents, to enable the Member State to ensure that the requirements of the Annex XII are met.*

*3. Member States shall apply the criteria referred to in Annex XII in assessing the bodies to be notified and the bodies already notified.*

*4. The Commission shall publish in the Official Journal of the European Communities, for information, a list of the notified bodies and their identification numbers and the tasks for which they have been notified. The Commission shall ensure that this list is kept up to date.*

*5. Bodies meeting the assessment criteria laid down in the relevant harmonized standards, the references of which shall be published in the Official Journal of the European Communities pursuant to this Directive, shall be presumed to fulfil the relevant criteria.*

*6. If a notified body finds that relevant requirements of this Directive have not been met or are no longer met by the manufacturer or that a certificate should not have been issued, it shall, taking account of the principle of proportionality, suspend or withdraw the certificate issued or place*

*restrictions on it unless compliance with such requirements is ensured by the implementation of appropriate corrective measures by the manufacturer. In the case of suspension or withdrawal of the certificate or of any restriction placed on it, or in cases where intervention by the competent authority may prove necessary, the notified body shall inform the competent authority pursuant to Article 4 thereof. The Member State shall inform the other Member States and the Commission without delay.*

*7. The Commission shall provide for the organization of an exchange of experience between: (a) the authorities responsible for appointment, notification and surveillance in the Member States, and (b) the notified bodies, in order to coordinate the uniform application of this Directive.*

*8. A Member State which has notified a body must immediately withdraw its notification if it finds:*

*(a) that the body no longer meets the criteria referred to in Annex XII, or  
(b) that the body seriously fails to fulfil its responsibilities.*

*It shall immediately inform the Commission and the other Member States accordingly."*

Amendment 41, on Annex I, point 1.1.1, can be accepted in principle, given the need to introduce 'hazard', by the Commission subject to the following rewording:

*"For the purpose of this Annex:*

*1. 'hazard' means the possible occurrence of an injury to a person or damage to a person's health;*

*2. 'risk' means a combination of the probability and the degree of an injury or damage to health that can arise in a hazardous situation;*

*3. 'danger zone' means any zone within and/or around machinery in which an exposed person is subject to a risk to his health or safety;*

*4. 'hazardous situation' means a combination of circumstances specifically in association with which a risk may materialise;*

*5. 'exposed person' means any person wholly or partially in a danger zone;*

*6. 'operator' means the person or persons given the task of installing, operating, adjusting, maintaining, cleaning, repairing or moving machinery;*

*7. 'guard' means a part of a machine used specifically to provide protection by means of a physical barrier;*

*8. 'protective device' means a device (other than a guard) which eliminates a potential danger or reduces the risk to an acceptable level, alone or in conjunction with a guard.*

The Commission can accept amendment 51, on Annex I, point 1.6.1, paragraph 2, in principle subject to the following rewording:

*"The safety requirements set out in Council Directive 73/23/EEC on the harmonization of the laws of the Member States relating to electrical equipment (1) designed for use within certain voltage limits must apply to machinery. The conformity assessment of the machinery with regard to the electrical hazards must be governed solely by the provisions of the present Directive."*

*(1) (OJ L 77, 26.3.1973, p.29). Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1)*

The Commission can accept amendment 62, on Annex I, point 4.1.2.2, paragraphs 6 and 7, in principle subject to the following rewording:

*"The static and dynamic tests may, in the case of series production, be made on technically comparable machinery representing intended production*

*In the case of single unit production, the static and dynamic tests must be performed on all machinery ready to be put into service.*

*As a general rule, the tests will be performed at the nominal speeds provided for. Should the control circuit of the machinery allow for a number of simultaneous movements, the tests must be carried out under the least favorable conditions, i.e. as a general rule, by combining the movements concerned."*

The Commission can accept amendment 64, on Annex I, point 4.2.2, Introduction, in principle subject to the following rewording:

*"Machinery with a maximum working load of more than 1 000 kilograms or an overturning moment of more than 40 000 Nm must be fitted with devices to warn the driver and prevent dangerous movements in the event of:"*

**3.3. Amendments accepted in part by the Commission (14, 15, 17 and 82, 23, 27, 45 and 36, 47, 49, 56, 57, 59, 61 and 38, 63, 80)**

Amendment 14, on Article 1, introduces numerous simplifications and improvements to Article 1 on the scope of the Directive. The Commission can therefore accept amendment 14 in part subject to the following rewording:

*"1. This Directive applies to the following products as defined in Article 2:*

- (a) machinery;*
- (b) interchangeable equipment;*
- (c) safety components;*
- (d) lifting accessories;*
- (e) removable mechanical transmission devices;*
- (f) partly completed machinery.*

*2. The following are excluded from the scope of this Directive:*

- (a) components, including safety components, or equipment, including interchangeable equipment, intended to be used as spare parts to replace identical components or equipment supplied by the manufacturer of the*

*original machinery or by a third party in accordance with the manufacturer's instructions;*

*(b) specific equipment for use in fairgrounds and amusement parks;*

*(c) machinery specially designed or put into service for nuclear purposes which, in the event of failure, may result in an emission of radioactivity;*

*(d) firearms;*

*(e) the following means of transport:*

*- agricultural and forestry tractor covered by Directive 74/150/EEC (1);*

*- motor vehicles and their trailers covered by Directive 70/156/EEC(2);*

*- vehicles covered by Directive 92/61/EEC(3);*

*- motor vehicles exclusively intended for competition;*

*and means of transport by air, on water and on rail networks.*

*Machinery mounted on these means of transport is not excluded.*

*(1) Official Journal L 084 , 28/03/1974 P. 0010 - 0024 Finnish special edition: Chapter 13 Volume 3 P. 0227 Greek special edition ....: Chapter 13 Volume 2 P. 0209 Swedish special edition: Chapter 13 Volume 3 P. 0227 Spanish special edition: Chapter 13 Volume 3 P. 0183 Portuguese special edition Chapter 13 Volume 3 P. 0183.*

*(2) Official Journal L 042 , 23/02/1970 P. 0001 - 0015 Finnish special edition: Chapter 13 Volume 1 P. 0120 Danish special edition: Series I Chapter 1970(I) P. 0082 Swedish special edition: Chapter 13 Volume 1 P. 0120 English special edition: Series I Chapter 1970(I) P. 0096 Greek special edition ....: Chapter 13 Volume 1 P. 0046 Spanish special edition: Chapter 13 Volume 1 P. 0174 Portuguese special edition Chapter 13 Volume 1 P. 0174*

*(3) Official Journal L 225 , 10/08/1992 P. 0072 - 0100 Finnish special edition: Chapter 13 Volume 23 P. 0154 Swedish special edition: Chapter 13 Volume 23 P. 0154*

*(f) seagoing vessels and mobile offshore units and machinery installed on board such units;*

*(g) machines specially designed and constructed for military or police purposes;*

*(h) mine winding gear;*

*(i) machinery intended to move performers during artistic performances;*

*(j) electrical and electronic products falling into the following areas, in so far as they are covered by Council Directive 73/23/EEC(1) of 19 February 1973 on the electrical equipment designed for use within certain voltage limits:*

*(i) household appliances,*

*(ii) audio and video equipment,*

*(iii) information technology equipment,*

*(iv) office machinery and equipment,*

*(v) circuit breakers and switches,*

*(k) the following types of high-voltage electrical equipment:*

*(i) switch gear and control gear,*

*(ii) transformers;*

*(l) motors of all types;*

*(m) industrial sites taken as a whole;*

*(n) medical devices”*

*(1) Official Journal L 077 , 26/03/1973 P. 0029 - 0033 Finnish special edition: Chapter 13 Volume 2 P. 0167 Greek special edition ....: Chapter 13 Volume 2 P. 0058 Swedish special edition: Chapter 13 Volume 2 P. 0167 Spanish special edition: Chapter 13 Volume 2 P. 0182 Portuguese special edition Chapter 13 Volume 2 P. 0182.*

The Commission can accept amendment 15, on Article 2, paragraphs 1 and 2, introduction and points (a) to (k), in part subject to the following rewording:

*"For the purposes of this Directive, "machinery" means the products defined in points (a) to (h).*

*The following definitions shall apply:*

*(a) "machinery stricto sensu":*

- (i) an assembly, fitted with or intended to be fitted with a drive system other than directly applied manual or animal effort, consisting of linked parts or components, at least one of which moves, and which are joined together for a specific application,*
- (ii) machinery referred to in (i), missing only the components to connect it on site or to sources of energy and motion,*
- (iii) machinery referred to in (i), ready to be installed and able to function as it stands only if mounted on a vehicle or installed in a building or a structure,*
- (iv) lifting apparatus whose only power source is directly applied manual effort;*

*(b) "assembly of machinery" means an assembly of machinery and/or of partly completed machinery which, in order to achieve the same end, are arranged and controlled so that they function as an integral whole;*

*(c) "interchangeable equipment" means a device which, after the placing into service of machinery or of a tractor, is assembled with that machinery or tractor by the operator himself in order to change its function or attribute a new function in so far as this equipment is not a spare part or a tool;*

*(d) "safety component" means a component included in the list below*

*- which serves to fulfil a safety function and*

*- which is independently placed on the market and*

*- for which the failure and/or malfunction endangers the safety of persons in the danger zone of the machinery and*

*- which is not necessary in order for the machinery to function, or for which normal components may be substituted in order for the machinery to function:*

- (i) components referred to in points 19 and 20 of Annex IV,*
- (ii) safety logic units for an emergency stop or movable guard control circuit,*
- (iii) solenoid valves controlling dangerous movements of machinery,*
- (iv) smoke and dust extraction systems for machinery,*
- (v) guards and protection devices and their locking mechanisms for machinery,*

- (vi) *control devices for calling lifting appliances and anti-fall devices for hoists,*
  - (vii) *devices for preventing lifting appliances from colliding,*
  - (viii) *safety belts and seat harnesses,*
  - (ix) *non-return valves for installation on hydraulic circuits,*
  - (x) *guards for removable mechanical transmission devices;*
- (e) *"lifting accessory" means a component or equipment not attached to the lifting machinery, allowing the load to be held, which is placed between the machinery and the load or on the load itself, or which is intended to constitute an integral part of the load and which is independently placed on the market; slings and their components are also regarded as lifting accessories;*
- (f) *"removable mechanical transmission device" means a removable component for transmitting power between a self-propelled machine or a tractor and another machine by joining them at the first fixed bearing. At least one of these two machines must be mobile;*
- (g) *"guard for a removable mechanical transmission device" means a device protecting persons exposed from the risk of being dragged along by a removable transmission mechanical device;*
- (h) *"portable cartridge-operated device" means a portable device intended for industrial and technical use making use of an explosive charge in the form of a cartridge, whereby energy is transmitted from the cartridge to the projectile via an intermediary component and not by direct action, for the purposes of:*
- (i) *fixing a metal part in a material, or*
  - (ii) *slaughtering animals, or*
  - (iii) *marking an object by cold engraving, or*
  - (iv) *crimping cables;*
- (i) *"partly completed machinery" means an assembly, fitted or intended to be fitted with a drive system, of linked parts or mechanical components which are almost a machine but which cannot themselves perform a specific application. Partly completed machinery is intended to be incorporated into or assembled with one or more machines or other partly completed machinery, thereby forming a single machine to which this Directive applies;*
- (j) *"placing on the market" means making available for the first time in the Community machinery intended for an end user, whether for reward or free of charge;*
- (k) *"manufacturer" means any natural or legal person who designs or manufactures machinery covered by this Directive, with a view to placing it on the market, under his own name or trademark. The manufacturer may also be:*
- (i) *any natural or legal person who designs or manufactures a machine covered by this Directive, or who has such a machine designed or manufactured, for his own use,*
  - (ii) *any natural or legal person who, when a machine covered by this Directive is placed on the market or put into service, is responsible for its conformity to this Directive;"*

The Commission can accept amendments 17 and 82, on Article 5, in part subject to the rewording below:

*"1. Before placing a machine on the market and/or putting it into service, the manufacturer or his authorised representative must:*

- (a) ensure that it satisfies the essential health and safety requirements set out in Annex I;*
- (b) carry out the appropriate conformity assessment procedure under Article 12;*
- (c) draw up the EC declaration of conformity in accordance with Section A of Annex II and attach it with the machine;*
- (d) affix the CE marking in accordance with Article 16, and*
- (e) provide, in particular, the necessary information, such as instructions.*

*2. Before placing partly completed machinery on the market, the manufacturer or his authorised representative must ensure that the procedures referred to in Article 13 have been completed.*

*3. For the purposes of the procedure referred to in Article 12, the manufacturer or his authorised representative must have, or have access to, the necessary means of ensuring that the machine satisfies the essential health and safety requirements set out in Annex I.*

*4. Where machinery is also the subject of other Community Directives relating to other aspects and providing for the affixing of the CE marking, the latter shall indicate that the machinery also conforms to the provisions of those other Directives.*

*However, where one or more of those Directives allow the manufacturer or his authorised representative to choose, during a transitional period, the system to be applied, the CE marking shall indicate conformity only to the provisions of those Directives applied by the manufacturer or his authorised representative.*

*Particulars of the Directives applied, as published in the Official Journal of the European Communities, must be given on the EC declaration of conformity which accompanies the machine."*

The suggested text originating from amendment 82, regarding the responsible person for placing machinery on the market, is not accepted since the definition of manufacturer covers this. Furthermore, Article 5 outlines the obligations of the manufacturer and not whom to consider to be a manufacturer.

The Commission can accept in part amendment 23, on Article 12 paragraph 4, introduction and point (-a) (new), subject to the following rewording:

*"4. Where the risk analysis does not enable the conclusion to be drawn that the Directive has no relevance and the machinery is referred to in Annex IV and manufactured in accordance with the harmonised standards referred to in Article 7(2) and provided that those standards cover all of the relevant risks, the manufacturer or his authorised representative shall, in order to certify its conformity with the provisions of this Directive, apply one of the following procedures:*

- (a) the procedure for assessment of conformity with internal checks on the manufacture provided for in Annex VII;"*

The Commission can accept amendment 27, on Article 16, paragraph 3, in part subject to the following rewording:

*"3. The affixing on machinery of markings, signs or inscriptions which are likely to mislead third parties as to the meaning or form of the CE marking shall be prohibited.*

*Any other marking may be affixed to the machinery provided that the visibility, legibility and meaning of the CE marking is not thereby impaired."*

The Commission can accept amendments 45 and 36, on Annex I, point 1.2.1, in part subject to the following rewording:

*"Control systems must be designed and constructed so that they are safe and reliable. Above all they must be designed and constructed in such a way that:*

- the rigors of normal use and external factors,*
- human error during operation, and*
- defects and failure of control systems,*

*do not lead to hazardous situations."*

The part originating from amendment 36, replacing "hazardous situation" with "hazard situation" throughout the Directive cannot be accepted, since the Commission is of the opinion that the term "hazardous situation" is adequate.

The Commission can accept amendment 47, on Annex I, point 1.3.1 paragraphs 1 and 2, in part subject to the following rewording:

*"Machinery and its components and fittings must be so designed and constructed that they are stable enough for use without risk of overturning, falling or unexpected movement.*

*For the purposes of this paragraph, use includes transportation, assembly, dismantling, scrapping and any other action involving the machinery."*

The Commission can accept amendment 49, on Annex I, point 1.4.2.1, in part subject to the following rewording:

*"They must be fixed by systems that can be opened only with tools. Their fixing systems must remain attached to the guards or to the machine when removed."*

The Commission can accept amendment 56, on Annex I, point 1.9, in part subject to the following rewording:

*"All machinery must be marked legibly and indelibly with the following minimum particulars:*

- the name and address of the manufacturer and, where applicable, his authorised representative (1),*

- where applicable, the name and address of the natural or legal person who assumes responsibility for its conformity to this Directive,
- designation of the machinery,
- CE marking,
- designation of series or type,
- serial number, if any,
- the year of construction (2).

*Furthermore, machinery designed and constructed for use in a potentially explosive atmosphere must be marked accordingly.*

*Machinery must also bear full information relevant to its type and essential to its safe use.*

*Where a machine part must be handled during use with lifting equipment, its mass must be indicated legibly, indelibly and unambiguously."*

*(1) Business name and full address; where the marking is established by the authorised representative, the business name and address of the manufacturer must also be shown.*

*(2) The year of construction is the date with which the end of the manufacturing process must coincide stricto sensu. The EC declaration of conformity must be established on that date. It is therefore formally prohibited to pre-date or post-date the machinery when affixing the CE marking.*

The Commission can accept amendment 57, on Annex I, points 1.10 and 1.10.1, points (a) and (b), in part subject to the following rewording:

#### *"1.10. Instructions*

*Every machine must be accompanied by instructions in the official Community language(s) which may be determined by the Member State in which it is placed on the market and/or put into service.*

*The instructions accompanying the machine must be either "Original instructions" or a "Translation of the original instructions", in which case the translation must be accompanied by the original instructions.*

*The instructions must be drafted in accordance with the principles set out below.*

##### *1.10.1. General principles on the drafting of instructions*

*(a) The contents of the instructions must be limited to the machine in question and cover not only the normal use of the machinery but also uses which may reasonably be expected of it.*

*(b) The manufacturer must draft the instructions in an official Community language. The words "Original instructions" should appear on the language version(s) verified by the manufacturer. If the manufacturer verify versions of*

*the instructions in other official Community languages, these versions should also bear the words "Original instructions".*

The Commission can accept in part amendment 59, on Annex I, point 2.2.2, paragraph 4, subject to the following rewording:

*" If and in so far as no applicable and generally recognised rules for testing exist, the manufacturer must state the measuring procedure used and the conditions under which the measurement was carried out."*

The Commission can accept amendment 61 and 38, on Annex I, point 4.1.1, points (b) to (h) in part subject to the following rewording:

*"(b) 'Sliding device': an accessory, not forming part of lifting apparatus, which can be used to make a connection, with or without lifting devices, between a load suspension device and a load.*

*(c) 'Separate lifting accessory': a lifting accessory which helps to make up or use a sliding device.*

*(d) 'Guided load': load where the total movement is made along rigid or flexible guides, whose position is determined by fixed points.*

*(e) 'Working coefficient': the arithmetic ratio between the load guaranteed by the manufacturer or his authorized representative up to which a piece of lifting machinery or equipment or an accessory is able to hold it and the maximum working load marked on the machinery, equipment or accessory or respectively.*

*(f) 'Test coefficient': means the arithmetic ratio between the load used to carry out the static or dynamic tests on a piece of lifting machinery or equipment or an accessory and the maximum working load marked on the piece of machinery or equipment or accessory.*

*(g) 'Static test': the test during which the machinery or the lifting accessory is first inspected and subjected to a force corresponding to the maximum working load multiplied by the appropriate static test coefficient and then re-inspected once the said load has been released to ensure no damage has occurred.*

*(h) 'Dynamic test': the test during which the machinery or lifting accessory is operated in all its possible configurations at maximum working load multiplied by the appropriate dynamic test coefficient with account being taken of the dynamic behaviour of the machinery in order to check that the machinery or the lifting accessory is functioning properly.*

*(i) 'Nominal load': the load on which the design of lifting apparatus for a given purpose and a given configuration is based;*

The part originating from amendment 38, replacing "maximum working load" with "nominal load" throughout the Directive cannot be accepted, since the Commission is of the opinion that the term "maximum working load" is a well established and well understood concept already used in the current Machinery Directive.

The Commission can accept in part amendment 63, on Annex I, point 4.2.1, subject to the following rewording:

*Hold-to-run control devices must be used to control the movements of the machinery or its equipment. Where there is no risk of the load or the machinery colliding, the said devices may be replaced by actuators authorising*

*automatic stops at preselected levels without the operator holding a hold-to-run control device.*

The Commission can accept amendment 80 in part subject to the following rewording:

*"(2a) The body must participate in the coordination aimed at the uniform application of this Directive, in accordance with Article 14."*

**3.5. Amendments not accepted by the Commission (1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 19, 20, 24, 25, 26, 28, 29, 31, 32, 33 and 37, 34, 35, 40, 44, 48, 50, 55, 58, 60, 65, 67, 70, 71, 73, 77, 78, 79, 83)**

The Commission cannot accept amendment 1, on recitals, which adds environmental performance to the recital, since this is outside the scope of the Machinery Directive.

The Commission cannot accept amendment 4, on recitals, which introduces special considerations to machinery without or with a very small risk. The Directive aims to provide free circulation for all kinds of machinery, also for products without risks and with very small risks. However, according to the proposal lighter requirements apply to these products.

The Commission cannot accept amendment 5, on recitals, which urges the Commission to take measures in the field of equipment used in fairgrounds and amusement parks, since it is not adequate to have such a consideration in the recitals. The Commission is however aware of the legislative gap in this area of the Community legislation.

The Commission cannot accept amendments 6, 7, 8 and 11, on the recitals on CE marking and other voluntary marking, since this approach would be too restrictive. Furthermore, the Commission is considering measures that would address this issue at a horizontal level ensuring a common application for all New Approach Directives.

The Commission cannot accept amendments 9, 20 and 32, on comitology. Delegation to the Commission is necessary for the areas that are identified in its original proposal. Furthermore, they are in contradiction with the Council Decision 1999/468/EC of 28 June 1999<sup>3</sup>, laying down the procedures for the exercise of implementing powers conferred on the Commission.

The Commission cannot accept amendment 10, on recitals, where the Commission is called upon to investigate if a separate Directive for high-voltage equipment should be developed. Such a consideration is not adequate in the recitals.

The Commission cannot accept amendment 12, introducing a recital on old machinery, since it is outside the scope of the Directive, which covers machinery placed on the market and/or put into service for the first time.

The Commission cannot accept amendment 13, on recitals, which urges the European Union to ensure that codified versions of legal acts are published, since it is outside the scope of the Machinery Directive. Furthermore the Commission often provides consolidated versions on its website.

The Commission cannot accept amendment 19, on Article 7, paragraph 2, on harmonised standards for machinery, since it does not clearly improve the text.

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<sup>3</sup> Official Journal L 184 , 17/07/1999 P. 0023 - 0026

The Commission cannot accept amendment 24, on Article 12, paragraph 5, introduction, on conformity assessment, since there is no clear improvement of the text.

The Commission cannot accept amendment 25, on deleting Article 13 on procedures for partly completed machinery. The Commission considers it important to provide clarity by keeping all dispositions relating to partly completed machinery in a separate article.

The Commission cannot accept amendment 26, which deletes Article 14 on notified bodies and reinstates it as Article 17b, since moving this Article does not add any value to the text.

The Commission cannot accept amendments 28 and 29, on a new Article 17a on market surveillance replacing Article 4, since they deviate from the well-established structure of most New Approach Directives.

The Commission cannot accept amendment 31, on Article 18, which alters the Article on confidentiality, since there is no clear added value from the changes.

The Commission cannot accept amendments 33 and 37, on Article 24, point 1, on Article 1, paragraphs 2 and 3 of the Lifts Directive 95/16/EC<sup>4</sup>, since they do not bring any clear improvements to the text.

The Commission cannot accept amendment 34, on Article 26 a (new), introducing a new Article demanding that the Commission takes certain measures related to the general evaluation of the New Approach concept. This is clearly outside the scope of the Machinery Directive as such and has no place in this Directive. However, the Commission is currently preparing a Communication on the New Approach concept that addresses many of the concerns of the Parliament.

The Commission cannot accept amendment 35, on Article 27, on the entry into force of the future Directive, since it is not in line with the provisions of the Treaty in this area.

The Commission cannot accept amendment 40, on Annex I, Preliminary Observations, point 3, since it does not add any value to the text.

The Commission cannot accept amendment 44, on Annex I, point 1.1.6, paragraph 2, on the handling and transportation of machinery, since the proposed drafting does not add any value and furthermore is against the common drafting principle used in Annex I, whereby requirements are attributed to the machine and not as a requirement on the manufacturer.

The Commission cannot accept amendment 48, on Annex I, point 1.4.1, indent 5, where the requirement that guards and protection devices should "be unable to remain in place without their fixings" is deleted. It is important that this specific requirement applies to all guards and protection devices.

The Commission cannot accept amendment 50, on Annex I, point 1.5.2, paragraphs 3 and 4, on the requirements on seats in machinery, since there is no clear added value.

The Commission cannot accept amendment 55, on Annex I, point 1.7.2, paragraph 2, on the unhindered movement of exposed persons adding the words "where at all possible", since this

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<sup>4</sup> Official Journal L 213 , 07/09/1995 P. 0001 - 0031

principle is already laid down in general terms in the third preliminary observation of Annex I.

The Commission cannot accept amendment 58, on Annex I, points 1.10.2, on the content of the instructions manual, since it does not clearly improve the text.

The Commission cannot accept amendment 60, on annex I, point 3.6.3.1, on the requirements related to vibrations, since it does not improve the text.

The Commission cannot accept amendment 65, on Annex I, points 4.2.4, on lifting, since it does not clearly improve the text and aims to correct a linguistic difficulty.

The Commission cannot accept amendment 67, on Annex I, point 6.2, paragraphs 2 and 3, on the design of controls for lifting or moving people, since it does not improve the text. It is important to require hold-to-run type controls. For the part on design in order to "be easy to use for disabled users" it is already covered in Annex I, point 7.2.

The Commission cannot accept amendment 70, on Annex I, points 7.2 to 7.4, on lifting machinery intended for persons with reduced mobility, since there is no good reason for providing a lower safety level for machinery used in domestic environment.

The Commission cannot accept amendment 71, on Annex I, point 8.1, paragraph 1, and amendment 73, on annex I, point 8.5, paragraph 1, both on construction site hoists, since they do not improve the text and do not fit with the description of construction site hoist as "intended for lifting persons and persons and goods".

The Commission cannot accept amendment 77, on annex VI, point 2, on the availability of the technical file, since it is not adding any value to the text.

The Commission cannot accept amendment 78, on Annex IX, point 9, subparagraph 4, and amendment 79, on Annex X, point 9, subparagraph 4, on series manufacture of identical machines, since they do not clearly improve the text.

The Commission cannot accept amendment 83, on recitals, on the establishment of databases on the fulfilment of health and safety requirements for machinery, since it is outside the scope of the Directive.

#### **4. CONCLUSION**

In accordance with Article 250(2) of the EC Treaty, the Commission amends its proposal as presented above.