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NOTE

From:	ES Delegation
To:	Working Party on Technical Harmonisation (Machinery)
Subject:	Machinery Regulation - ES comments on FR Presidency compromise of 09.02.2022 - Chapters VI-IX and Annexes III-X

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on machinery

COMMENTS FROM SPAIN ON THE PRESIDENCY COMPROMISE PROPOSAL FOR CHAPTERS VI-IX AND ANNEXES III-X (DOC. WK 1923/2022 INIT)

Presidency compromise	Drafting Suggestions	Comments
<u>ARTICLES</u>		
<i>Article 41</i> <i>Procedure at national level for dealing with machinery products presenting a risk</i> [...] 8. Member States shall ensure that appropriate restrictive measures, such as withdrawal of the machinery product from the market, are taken in respect of the machinery-concerned product <u>subject to this Regulation</u> concerned without delay.	<i>Article 41</i> <i>Procedure at national level for dealing with machinery products presenting a risk</i> [...] 8. <u>When no objections have been raised within the abovementioned time period,</u> Member States shall ensure that appropriate restrictive measures, such as withdrawal of the machinery product from the market, are taken in respect of the machinery-concerned product <u>subject to this Regulation</u> concerned without delay.	We propose this wording to make it clearer when this paragraph applies, differentiating it from article 42 (2). Although the proposed wording departs slightly from the wording used in the NLF, it is not meant to go against it, but only to add more clarity.

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<i>Article 42</i> <i>Union safeguard procedure</i> 1. Where, on completion of the procedure set out in Article 41(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall adopt an implementing act in the form of a decision determining whether the national measure is justified or not.	<i>Article 42</i> <i>Union safeguard procedure</i> 1. Where, on completion of the procedure set out in Article 41(3) and (4), (6) and (7) objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall adopt an implementing act in the form of a decision determining whether the national measure is justified or not.	The procedure is set out not only in paragraph (4) but also in paragraphs 6 and 7. It is in fact in these last two paragraphs where the objections referred to in this article are dealt with.
<u>ANNEX III</u>		
1.3.7 Risks related to moving parts and psychological stress	1.3.7 Risks related to moving parts and psychological stress	This requirement is based on and tailored towards humanoid robots. However, they

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[...] The machinery or related product product with fully or partially evolving behaviour or logic that is designed to operate with varying levels of autonomy shall be adapted to respond to people adequately and appropriately (verbally through words or nonverbally through gestures, facial expressions or body movement) and to communicate its planned actions (what it is going to do and why) to operators in a comprehensible manner.	[...] The machinery or related product product with fully or partially evolving behaviour or logic that is designed to operate with varying levels of autonomy shall be adapted to respond to people adequately and appropriately (verbally through words or nonverbally through gestures, facial expressions or body movement) and to communicate its planned actions (what it is going to do and why) to operators in a comprehensible manner.	would also apply to many other types of products, including those that do not respond verbally, are incapable of executing gestures and neither have a face nor body. We thus suggest removing the specifications regarding the type of expected response. Alternatively, the scope of this provision could also explicitly be restricted to humanoid robots.
3.2.4 Supervisory control function Where relevant, autonomous mobile machinery machinery or related product shall have a supervisory control function specific to the autonomous mode. This function shall allow the operator supervisor to remotely receive information from the machine. The supervisory control function shall only allow actions to stop and to start remotely the machine. It shall be designed and constructed to allow those actions only when the driver supervisor can see directly or indirectly the machine's movement and	3.2.4 Supervisory control function Where relevant, autonomous mobile machinery machinery or related product shall have a supervisory control function specific to the autonomous mode. This function shall allow the operator supervisor to remotely receive information from the machine. The supervisory control function shall only allow actions to stop and to start remotely the machine. It shall be designed and constructed to allow those actions only when the driver supervisor can see directly or indirectly the machine's movement and	As it is currently drafted, the supervisory function would have to be restricted to allowing operators to start or stop the machinery. However, there are numerous other actions that could be required to be executed by the supervisor for safety reasons (e.g., slow down, return to base, etc.). Therefore, this restriction should be deleted. Furthermore, it does not seem logical to restrict these actions to situations where the operator can see the machinery's entire surroundings. It is unclear how the

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working area and the protective devices are operational. The information the driver supervisor receives from the machine when the supervisory control function is active shall enable the driver supervisor to have a complete and accurate view of the operation, movement and safe positioning of the machine in its travel and working area. This information shall alert the driver supervisor of the occurrence of unforeseen or dangerous situations present or impending, which require driver supervisor intervention. If the supervisory control function is not active, the machinery shall not be able to operate.	working area and the protective devices are operational. The information the driver supervisor receives from the machine when the supervisory control function is active shall enable the driver supervisor to have a complete and accurate view of the operation, movement and safe positioning of the machine in its travel and working area. This information shall alert the driver supervisor of the occurrence of unforeseen or dangerous situations present or impending, which require driver supervisor intervention. If the supervisory control function is not active, the machinery shall not be able to operate.	supervisory function and/or the autonomous mobile machinery shall be able to assess whether the supervisor has sufficient visibility in a given operational situation. And the visibility requirement would also apply to triggering an emergency stop, e.g., in case of a failure of protective devices. As currently drafted, the provision would prohibit the supervisor from interfering in such situations if they do not have full visibility, eventually leading to increased safety risks. As a result, we consider the visibility requirement should be deleted as well.
<u>ANNEX IV</u>		
A. TECHNICAL DOCUMENTATION FOR MACHINERY <u>AND RELATED PRODUCTS</u>		
(b) the documentation on risk assessment <u>demonstrating the procedure followed carried out, including:</u>	(b) the documentation on risk assessment <u>demonstrating the procedure followed carried out, including:</u>	Although we welcome this modification as a clear improvement, we still think that requirements that are more stringent should be included to make sure that the

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(i) a list of the essential health and safety requirements which apply that are applicable to the machinery or related product, (ii) the description of the protective measures implemented to eliminate identified hazards or to reduce risks and, when appropriate, the indication of the residual risks associated with the machinery or related product,	(i) a list of the essential health and safety requirements which apply that are applicable to the machinery or related product, (ii) the description of the protective measures implemented to eliminate identified hazards or to reduce risks and, when appropriate, the indication of the residual risks associated with the machinery or related product meet each applicable essential health and safety requirement.	manufacturer goes through every applicable EHSR and specifies the means used to meet each of them. Furthermore, these requirements should apply in all cases, not only where harmonised standards or common specifications have not been used. Technical documentations provided in market surveillance activities are often very incomplete, with general references to standards as basis for the compliance with all the applicable EHSR
(l) where appropriate, the declaration of incorporation for partly completed machinery <u>or related product</u> set out in Annex V and the relevant assembly instructions for such machinery;	(l) where appropriate, the declaration of incorporation for partly completed machinery <u>incorporated into or assembled with the machinery</u> <u>or related product</u> set out in Annex V and the relevant assembly instructions for such machinery;	For clarity purposes, it should be specified that it refers to PCM that has been incorporated into or assembled with the machinery

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B. RELEVANT TECHNICAL DOCUMENTATION FOR PARTLY COMPLETED MACHINERY		
(f) where harmonised standards have not been applied or have been only partially applied, description of the other <u>common</u> technical specifications that have been applied in order to satisfy <u>meet each</u> the applicable essential health and safety requirements;	(f) where harmonised standards <u>or common specifications</u> have not been applied or have been only partially applied, description of the other <u>common</u> technical specifications that have been applied in order to satisfy <u>meet each</u> the applicable essential health and safety requirements;	Alignment with point (g) of part A
<u>ANNEX V</u>		
3. The address where the <u>For lifting machinery machine product, which</u> is permanently installed only for <u>lifting machinery</u> or related producing machinery product installed in a building or a structure, <u>the address of the installation, where known</u> :	3. The address where the <u>For lifting machinery machine product, which</u> is permanently installed only for <u>lifting machinery</u> or related producing machinery product installed in a building or a structure, <u>the address of the installation, where known</u> :	The expression ‘where known’ is not precise enough and might lead to lack of compliance by manufacturers, who do not have any incentive to know the address of installation of the lifting machinery. Some Member States have opposed to this point 3, arguing that the manufacturer of lifting machinery is only responsible for its

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		design and construction, but not for its installation. We think this is a very relevant issue, that must be clarified and cannot be left open to interpretation once the new regulation is approved. Obviously, if the installation of lifting machinery meant to be permanently installed in a building or structure is not covered by the Machinery Regulation, the new point 3 of Annex V makes no sense. Nevertheless, we support its inclusion, based on the EHSR 4.1.3, the Machinery Directive Guide, and the discussions held within the Expert Group of the Machinery Directive. As documented in our previous paper WK 1382 2022 INIT, the proper installation and testing of this machinery is the responsibility of the manufacturer. Otherwise, it would not be possible for the manufacturer to comply with EHSR 4.1.3. It must be taken into account that this type of lifting machinery (as it is the case of lifts) are normally not assembled in the manufacturer's premises, but on site. Therefore, the actions carried out on site go beyond the mere installation of the machinery, involving its assembly, which could be even

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		considered as the construction phase of the machinery.