ADVISORY COMMITTEE FOR ROOFSAFETY

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BS EN 795 and the 89/686/EEC Directive

BCSA·BSIF,HSG·EPIC·FASET·HSE·MCRMA·NARM·NFRC·RIDBA·RTA·SPRA·WAHSA

Background

1. The aim of this paper is to provide information in regard to the current issues surrounding the relationship between BS EN 795 and the European PPE Directive 89/686/EEC.

2. This document was originally prepared by Mr D Riches[1] for, and produced as, a BSIF Height Safety Group (HSG) Bulletin in November 2011.

[1]: The sentiments/opinions expressed in the report (i.e. paragraphs 5 -37) are those of the author not the ACR

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4. Background to the Rev1 2013 update: Following the recent revision of EN 795 Personal fall protection equipment — Anchor devices the ACR are due to review Magenta books 1 & 2. Unfortunately the recent revision of EN 795 has not been harmonised due to objections from some Member States. The paper below provides an overview of the on going situation. Additionally an annexe is now enclosed that provides a detailed paper from the ESF[2] of a possible way forward to resolve the current debate. It must be stressed that this has, so far, been a long protracted negotiation that is unlikely to be resolved in the near future.

[2] :European Safety Federation

Introduction

5. BS EN 795 was first published in 1997 under a mandate to support the European PPE Directive 89/686/EEC in order to facilitate the CE marking of fall protection anchor products.

6. The project to write the standard was ambitious because of the diverse range of fall protection anchor products to be covered and it presented challenges from the start. It resulted in the need to classify products into five groups, namely:

   - Class A: Single anchors,

   (e.g. eyebolts)

   - Class B: Temporary transportable anchors,

   (e.g. tripods, girder clamps)

   - Class C: Horizontal lifelines, both permanently and temporarily installed
   - Class D: Horizontal rails
   - Class E: Deadweight anchors

7. Before it was even published the standard became controversial and the European Commission expressed a view, which was published in guidance documents, that classes A, C and D did not come under the scope of the 89/686/EC Directive. The Commission did try and amend EN 795 to reflect this view, but this approach was resisted.

8. In the UK, the Dept for Business, Innovation and Skills (BIS), who are responsible for the S.I. 1144 PPE Regulations, (the UK implementation of Directive 89/686/EEC), maintained that all five classes of anchors within BS EN 795 were within the scope of 89/686/EEC and that as such they would require CE marking and appropriate Category III compliance obtained through independent third party certification by a Notified Body.

9. This position was maintained by BIS, because despite the European Commission's position, no instruction

was ever sent to EU member states to advise how they should proceed regarding fall protection anchor products in the market.

Netherlands Court Case

10. In April 2010 a test case took place in the Netherlands to decide whether BS EN 795 Class A products should or should not be classified as PPE. The decision of the court was that Class A products should not be PPE and that they should come within the scope of the Construction Products Directive 89/106/EEC.

Change of Position in UK

11. In March 2011 a British Safety Industry Federation (BSIF) Test and Certification Association meeting took place at which BIS was present.

12. At that meeting it was decided that:

    - Notified Bodies would no longer carry out CE marking assessment on new BS EN 795 products within classes A, C and D
    - Existing CE approval certificates for products within classes A, C and D would be maintained by the Notified Bodies, unless specific instructions were received from BIS to remove approvals.

13. The net result of this is that new products within BS EN 795 Classes A, C and D are not currently being type tested, approval certificates are not being produced and products are not being CE marked. This situation is similar in France, Germany and in most parts of Europe.

14. This makes it extremely difficult for manufacturers and suppliers of this type of equipment to demonstrate to customers that they have done everything required of them.

15. Also, where fall protection systems are being used, it is not unusual for the property duty holders and installers to require CE marking on the equipment, including the anchors.

16. In addition, installers are deeply concerned about the validity of their safety declarations and associated insurance arrangements when CE marks are not available on all components. There is little understanding that the mess is of the EU's making and that there is a lack of will to resolve the problem.

The Continued Need for Product Testing

17. Although the UK Notified Bodies within the BSIF Test and Certification Association have decided to no longer award CE approvals for products within classes A, C and D of BS EN 795, this does not necessarily mean that the PPE Regulations no longer apply to these products, and this is something that needs to be clarified by BIS.

18. In the absence of applicable European legislation however, UK legislation is still in force, and consequently products within classes A, C and D are still subject to the need for testing. For example, in the Health and Safety at Work Act (1974), Section 6, there are duties for product designers, manufacturers, importers, suppliers and installers. This covers such matters as the need for research in order to produce safe products, testing and examination, instructions for use and installation.

19. Also, although the test methods in BS EN 795 under classes A, C and D may no longer be used in order to gain the CE mark, they still can be used in order to test products, where the test methods are relevant and adequate in regard to the application of the product concerned.

20. The reader's attention is also drawn to other more comprehensive standards such as ISO 14567, which covers requirements for Class A, B and E, and ISO 16024, which covers requirements for Class C.

The Continued Need for Regular Examination and Test

21. Again, in the absence of applicable legislation such as the PPE Regulations, other UK legislation is still in force, and consequently products within classes A, C and D are still subject to the need for ongoing regular maintenance, examination and testing, once installed.

22. For example there are requirements to this effect in PUWER, WAHR and LOLER[3], (the latter being particularly applicable to anchor devices used for rope access purposes).

[3]: Provision and use of work equipment regulations, Work at height regulations, Lifting operations and lifting equipment regulations

23. In regard to applicable standards, it may be argued that as BS EN 795 Class A, C and D products are no longer classed as PPE, then standards such as BS EN 365, (requirements for instructions for use, maintenance, periodic examination, repair, marking and packaging), no longer apply.

24. However, BS EN 795 does cross refer to BS EN 365 in regard to the information that the manufacturer has to supply as part of the product package, and of course BS EN 365 gives sound advice in regard to the need for regular examination.

25. For example, it emphasises the need for regular examination because the safety of the user depends upon the continued efficiency and durability of the equipment, and that the examinations are only to be conducted by competent personnel and carried out strictly in accordance with examination procedures.

26. Perhaps more applicable is the list of specific requirements contained within BS 7883[4]. This standard contains best practice in regard to the regular inspection and examination of fall-arrest anchor products.

[4] Code of practice for the design, selection, installation, use and maintenance of anchor devices conforming to BS EN 795. The current (2005) edition of this standard is under revision

Alternative Route for CE-Certification of Products

27. It has been proposed that manufacturers could seek to CE mark BS EN 795 Class A, C and D products via the 89/106/EEC Construction Products Directive. However a number of matters would have to be worked through before this could occur, and given the sluggish bureaucratic nature of the EU, this could take years.

28. As part of the current EN 795 revision process, it seems likely that it will be split into two parts or two separate standards. The requirements for Classes, A, C and D will be put into one standard and will be harmonised under the Construction Products Directive (89/106/EEC), whereas requirements for Classes, B and E will remain

harmonised under 89/686/EEC. The way this will be done remains unclear and there appears to be little in the way of leadership in the respective organisations.

29. Even if this is achieved, the Construction Products Directive allows for a variety of testing and examination schemes depending upon the type of product under assessment. It would be essential therefore for interested parties to agree to a scheme that would be at least as onerous to that under the PPE Directive, i.e. third party independent test and certification.

Other Product Certification Schemes

30. It should be noted that BIS is supportive of what the BSIF and its HSG are seeking to do and there may be mechanisms for a way forward in the UK, albeit that this does not create the platform for BS EN 795 products within Classes A, C and D to be CE marked.

31. One way forward could be to utilise the BSI's Kitemark or the DiN GS mark - both certification and product marking schemes that were used by fall protection manufacturers prior to the adoption of the suite of European fall protection standards in 1995. In that time BS 5845 was the standard used for fall protection anchor products.

32. Another way forward could be for BSIF to introduce their own product mark and certification scheme for fall protection anchor products falling within Class A, C and D of BS EN 795. This is currently under discussion.

September 2013 Rev1 Update

33. EN 795: 2012 has subsequently been published. It introduces a number of different test regimes. The scope now excludes multi-user applications due to objections from the European Commission. Multi-user requirements and test methods have therefore been placed in to a Technical Specification TS16415. This document does not have the same standing as a European Standard.

34. Neither document has been harmonised in the European Journal, mainly due to the French Government's objection that Classes A, C and D are not PPE. The Dutch Government believe that none of the 5 classes are PPE. As a result no Notified Body is using the 2012 edition for CE-marking work. This, combined with the fact that no Notified Body will CE mark Class A, C and D products using EN 795: 1997 either, means that there remains no CE-certification scheme for these products. Proposals and guidance has been offered in terms of using alternative CE-marking Directives such as the Construction Products or Machinery Directives in order to gain product certification, but companies who have tried these routes have been notably unsuccessful.

35. No resolution to these issues is expected in the near future and the general feeling in the market place is that the CE mark is starting to lose its value.

36. BIS has written to BSIF in response to queries raised by members concerned about the inability to gain product certification. BIS have indicated that there would be no legal action taken against manufacturers who do not have CE certification on new Class A, C and D products placed on the market, as they

recognise this can no longer be achieved.

37. HSE have indicated that these products should nevertheless have undergone a demonstrable testing regime [Health and Safety at Work Act (1974), Section 6], and that particularly product markings and instructions should use EN 795 and EN 365 as a benchmark.

June 2015 Rev2 Update

Many seem confused with regards to testing to EN 795 1996 and 2012 as well as the requirement to CE marking generally. ***The following summary points may assist readers:-***

38. At present due to various European Member State objections to the harmonisation of EN795: 2012, there is no requirement/ability to CE Mark the following;

    - Class A Anchor Devices
    - Class C Post and Cable Fall Prevention Systems
    - Class D Post and track Fall Prevention Systems

39. These products were originally classified under the PPE Directive (89/686/ECC) but these product classes were withdrawn from the PPE Directive shortly after the Netherlands Court Case in April 2010.

40. CE Marking of removable items such as cable shuttles or travellers is still required under the PPE Directive (89/686/ECC) as these items are considered to be PPE just like harnesses and lanyards.

41. EN795: 1996 is the original harmonised standard listed in the European Journal and continues to have full legal validity until all the objections with EN795:2012 by various European Member States have been resolved and addressed.

42. Many manufacturers' products have been awarded a CE certificate against EN 795: 1996 The certificates remain in the market place and still have full legal validity even though it is no longer possible for new certificates to be gained or issued since the Netherlands Court Case.

43. CE Marking of Fall Prevention Systems is not required under the Construction Products Regulations 2013 as Roof Safety Products (such as EN 795 class A, C & D) are currently not covered by EN 1090:2009+A1:2011.

44. Understanding that products are fit for purpose is essential and testing is an important part of demonstrating this. For products covered by the following classes of EN:795 1996

    - Class A Anchor Devices
    - Class C Post and Cable Fall Prevention Systems
    - Class D Post and track Fall Prevention Systems

January 2016 Rev3 Update

45. EN 795: 2012 has just been published in the Official Journal (December 2015) of the EU harmonising types B and E. These types of equipment are required to be CE approved with the provisions of the PPE Directive 89/686/EEC.

46. Please note the official warning under EN 795:2012 which now states clearly that Types A, C and D are not considered to be PPE: Accordingly, in respect of this equipment, there shall be

no presumption of conformity with the provisions of Directive 89/686/EEC as they are not considered to be PPE.

47. At this time any manufacturer who currently holds a test report/CE certificate for class A, C, and D that has been tested to EN 795 1996 before 2010 are still valid, (providing that the Notified Body that issued the certificate originally has not cancelled it), despite the fact that current Type A, C and D products can no longer be CE-certified under the PPE Directive89/686/EEC .

48. Testing products to Type A, C or D to EN795 2012 and/or CEN/TC 16415 is the minimum testing requirements for fall-arrest products.

49. Users should look for the following

- Systems produced prior to the Netherlands Court Case (April 2010) should be CE marked to the appropriate class. This will represent testing prior to that date.
- Systems produced after the Netherlands Court Case should still be tested to EN:795 1996 and a test report should be available to confirm the results. The use of an independent 3rd party for testing such as a Notified Test Body is preferable.

Appendix 1 ESF proposal

	ESF proposal concerning the formal objection against EN 795:2012 (Personal fall protection equipment – anchor devices)
	Date : 17.09.2013

To : EU Commission, DG Enterprise and Industry, Mr. L. Girao, head of unit F5 (Engineering Industries)
CC: EU Commission, DG Enterprise and Industry, Mr. M. Thierbach, policy officer
Members of the PPE expert group

Introduction :

Following the formal objection from the French authorities to EN standard EN 795:2012, ESF has formulated the position of its members in a position paper dated 08/04/2013 (and circulated to the members of the PPE expert group with reference PPE-13-1-9).

ESF also participated in the meeting organised at the EU Commission on the 26th of June in an attempt to reach an understanding between different stakeholders on this important issue.

As unfortunately, no consensus could be reached at this meeting, the ESF members have taken the liberty to prepare a proposal in order to finally get to a solution for this issue that is already on the agenda for over 10 years.

As long as no clear decision is taken on this matter, on the one hand the uncertainty (and in some cases the unsafe situations) for users of fall protection equipment continues and on the other hand manufacturers and suppliers continue to face disharmonisation in the market.

If the decision of the EU Commission would be to agree with the formal objection, CEN would in our view not be able to solve the issue without having a clear decision on what is considered as PPE and what is not PPE. Indeed, without this clear decision a new mandate to CEN would be similar to the one given years ago. In that case, we have the impression that the experts working on the standard EN 795 will be unable to draft a revision of the standard.

We also would like to remind the readers of the proposal of the fact that similar equipment is in some countries considered as PPE while in others not as PPE. This has in impact on the CE marking of these products as in some countries Market Surveillance authorities demand the marking based on the PPE Directive 89/686, while in others the same marking is forbidden when it is based on the PPE Directive. Certainly in the case that the decision of the EU Commission is the acceptance (even partial) of the formal objection, a number of existing EC Type Examination Certificates will have to be withdrawn, with more uncertainty in the market as a consequence.

Basis for the proposal :

Basis for the proposal in the PPE Directive :

In the definition for PPE in the Directive 89/686, article 1 point 3 reads :

> 3. Any system placed on the market in conjunction with PPE for its connection to another external, additional device shall be regarded as an integral part of that equipment even if the system is not intended to be worn or held permanently by the user for the entire period of risk exposure.

In the guidelines on the PPE Directive, the following example is given with this paragraph :

> An air line linking respiratory equipment to a compressor is such an example.

In this case, the compressor is not a PPE, the air line connecting the compressor with the breathing device is part of the PPE.

In our understanding, anything that is fixed in a building or a machine or a ship or any other device is to be compared with the compressor in the above example and is thus not a PPE. Anything connecting these fixed parts and the equipment worn by the individual person is part of the PPE.

Basis for the proposal in other relevant documents :

In the Construction Products Regulation 305/2011, the definition of a ‘construction product’ is given in article 2 (this definition has been revised in the Regulation compared to the old Construction Products Directive 89/106, where incorporation in a permanent manner was not foreseen) :

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'construction product' means any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof and the performance of which has an effect on the performance of the construction works with respect to the basic requirements for construction works;

2. 'kit' means a construction product placed on the market by a single manufacturer as a set of at least two separate components that need to be put together to be incorporated in the construction works;

3. 'construction works' means buildings and civil engineering works;

In the ruling of the European Court of Justice the following observation is made in this respect :

52 It must be observed at the outset that Directive 89/106 does not define 'incorporation in a permanent manner'. None the less, having regard to the ordinary meaning of those words and to the purpose of that directive, which is to ensure that construction works satisfy the essential requirements laid down by that directive, it should be borne in mind that construction products must cover products which are part of a construction work, the dismantling of which reduces the performance of that work and the dismantling or replacement of which is a construction operation.

Proposal :

Using the above as basis for the proposal making sure that not only construction works/products are taken into account but also other structures such as machines, trains, boats, trucks, ..., a conclusion can be formulated :

Any part of the fall protection system that is an integral part of the structure to which it is attached is not a PPE. Being an integral part means that the dismantling of the part from the structure has an impact on the integrity of the structure. Any other part of the fall protection system is to be regarded as PPE, in line with article 1 point 3 of the PPE Directive 89/686, even if this part is not designed to be held or worn by the user.
For this purpose, a structure is any type of building, machine, train, truck, boat, natural element or any similar to which a fall protection system can be connected.

This means that any part of the system that is glued or cemented or welded into or on a building, a machine, a boat, a train, a truck and so on is not a PPE, but anything that is attached to the structure that can be taken away without damaging the structure is part of the PPE. The notion of the user taking these parts with him/her when leaving the workplace is not relevant, also in similarity with the example given in the guidelines to the PPE Directive.

Conclusion :

We are convinced that the above proposal is in line with the definition of PPE in the PPE Directive and also in line with the ruling of the European Court of Justice in case C-535/07.

ESF is also convinced that with the above proposal a long lasting discussion on this issue can finally be resolved, at the same time preventing possible similar discussions in the future for other types of personal fall protection systems.

Henk Vanhoutte
Secretary General on behalf of the ESF members

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http://www.roofworkadvice.info

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