



Revision of the Machinery Directive 2006/42/EC

Position Paper

CECE additional comments for the revision of the of Directive 2006/42/EC on machinery

EXECUTIVE SUMMARY

- CECE provides comments on the different topics currently being discussed in the framework of the revision of the Machinery Directive.
- The document includes main messages from our members on topics such as new technologies (for example “Artificial Intelligence”), Partly Completed Machinery (PCM), harmonised standards and format and availability of instructions.
- We provide a table where you may find in the second column proposals from Member States and other stakeholders and in the third column our comments.



Background

During the last meeting of the Machinery Working Group meeting of 9 and 10 November, the European Commission (EC) invited stakeholders to provide feedback to their presentation containing proposals for the revision of the Machinery Directive.

In the position paper below, CECE provides additional recommendations on the proposals that have been discussed during the meeting. The points below were sent as a letter to the EC on 08 December 2020.

Recommendations:

References to new technologies: we would like to remind the European Commission that any reference to a specific technology in the text of the future machinery legislation should be avoided. The main intention is to maintain future machinery legislation as technology neutral and future-proof in terms of innovation.

Responsibilities: many of the proposals seem to create a transfer of responsibilities from end users to the economic operators involved in the placing on the market of products and, particularly on OEM (Original Equipment Manufacturer). We stress the importance of balancing the rights and duties of each economic operator and end user without creating disproportionate burdens along the responsibility chain. For example, on slide 12, according to the proposal the OEM would need to take into account all “unintended external influences” including cyberattacks and tampering.

For reference - Slide 12:

New technologies – Annex I

1.2. CONTROL SYSTEMS

1.2.1. Safety and reliability of control systems

Control systems must be designed and constructed in such a way as to prevent hazardous situations from arising. Above all, they must be designed and constructed in such a way that:

*— they can withstand the intended operating stresses and **intended and unintended** external influences, **including those coming from malicious third parties leading to a hazardous situation,***

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Machine learning: Any “one size fits all” solution for AI is disproportionate and unjustified. We would like to remind the European Commission that machine learning and AI in the field of construction

equipment constitutes what is known as “narrow AI”, whereby a machine function can only evolve within the boundaries set by the designer / manufacturer.

Moreover, the use of new technologies, such as AI, does not justify their inclusion in the list of machinery under Annex IV, even in cases where the AI is used for safety-related functions. For example, a predictive maintenance, a supplementary safety device supporting a conventional safety function, such as a pedestrian detection system or a performance enhancing system that helps the operator to fill an excavator bucket more efficiently.

Empowerment of implementing acts & standardisation: this process would jeopardize the current principles of development of harmonized standards, which are: a consensus-based text, a balanced representation of stakeholders and transparency, ensured with the public enquiry. Besides, while harmonized standards are voluntary in their application, the status of implementing acts is still not clear (voluntary or not). In case the EC and Member States fully believe that this is the way forward, we reiterate that both conditions in the EC presentation are cumulative. The procedure should be determined before the new legislation is published and the involvement of stakeholders should be mandatory.

For reference – slide 41:

Presumption of conformity of machinery

The Commission shall be empowered to adopt implementing acts establishing technical specifications that meet the essential health and safety requirements of this Regulation where the following conditions have been fulfilled:

(a) no reference to harmonised standards is published in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012; or

(b) the Commission has requested one or more European standardisation organisations to draft a harmonised standard and there are undue delays in the standardisation procedure or the request has not been accepted by any European standardisation organisations; or

...

Machinery which is in conformity with the technical specifications or parts thereof shall be presumed to be in conformity with the essential health and safety requirements of this Regulation in so far as those technical or parts thereof cover those requirements.

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Internal checks & Annex IV: CECE members place on the market highly complex mobile machinery, such as hydraulic excavators and dump trucks. However, they see no evidence that the safety level is compromised by the use of self-assessment. Stakeholders have been applying this approach without any specific concern for more than 30 years. The removal of this possibility would have a significant impact on costs for the manufacturers and the users. Additionally, CECE has no evidence of the added value provided by 3rd party certification. The public is well aware of the evident failure of 3rd party in the certification of the engine emission compliance in the automotive industry. We also have deep experience in the field of Notified Body involvement under the Outdoor Noise Directive with no evidence of better product being placed on the Market. Therefore, we wish to see further evidence from Member States or Notified Bodies that mandatory third-party certification would ensure the placing on the market of safer construction equipment machines.

Redefinition of Partly Completed Machinery (PCM): Our members believe there is an added value in keeping the definition of “specific application” as the presence of this term in the PCM definition gives a clear and complementary link to the definition of Machinery in Article 2(a). Furthermore, there is a large consensus that specific application refers to an intended use of a machine as defined by the

manufacturer at the design stage and that this notion corresponds to the final use (or end use) of a machine. A PCM only brings a function to machinery (or to an assembly of machinery) and does not have any final use.

For example, during the lifetime of assemblies of machinery (e.g. aggregate processing- or asphalt mixing plants) it is necessary to sell to customers some new equipment for many different reasons (e.g. screening equipment, crushing equipment or a belt conveyor). When such new equipment is placed on the market without any machine control system because this control is part of the assembly of machines as a whole, the current interpretation is that they have to be considered as PCM, because they cannot in itself perform a specific application.

PCM & interchangeable equipment: in the sentence in the EC presentation “any device installed after the machinery on which it is assembled has been put into service is not deemed partly completed machinery”. If “device” means “interchangeable equipment”, this sentence is already part of the definition of “interchangeable equipment”.

If “device” means “any type of equipment”, this sentence is in contradiction with current practices, because a lot of equipment installed on a used machine/assembly of machines are considered today as PCM. For example, screening/crushing equipment and belt conveyors installed in used aggregate processing plants.

For reference – slide 36

Definitions

Partly completed machinery

*'Partly completed machinery' means an assembly which is almost machinery but ~~which cannot in itself perform a specific application which is only intended to be incorporated into or assembled with other machinery or other partly completed machinery or equipment, thereby forming machinery to which this Regulation applies,~~ **other than an assembly that only lacks the upload or modification of a software. Any device installed after the machinery on which it is assembled has been put into service is not deemed partly completed machinery.***

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Machinery for “own use”: There should not be an exclusion of “own use” in the context of a modification of a machine. We fear that an exclusion would create different levels of protection for the same machinery depending on the user. From this assumption, there is no need to add a definition in the Machinery Directive, considering that the practice on the market is deemed to be clear to all.

Machinery lifetime: CECE disagrees with two aspects related to machinery lifetime on slides 43 and 50:

- Slide 50: CECE disagrees with including the information about the lifetime of the machine. This addition could have an unintended consequence in increasing the number of machineries being discarded when reaching their so-called lifetime while they are still fit for use. Besides that, there are currently no methods to provide an estimate of the life limit of construction equip-

ment. Even for a machine properly used and maintained the range of application of construction machinery is too broad to have a reliable and accurate prediction method of the lifetime.

- Slide 43: A manufacturer is responsible to describe the necessary test procedures to maintain the machine, adapted to the level of knowledge of the operator. More specialized maintenance must be performed by qualified persons. It would represent a disproportionate burden to oblige OEMs to provide test equipment for the users. Also, for users with multiple machines a single set of test equipment might be sufficient.

For reference – slides 50 and 43

EHSR 1.7 Information

1.7.4.2. Contents of the instructions

1. Each instruction manual must contain, where applicable, at least the following information:

...

(y) the intended life limit of the machinery and/or of its components which have impact for the safety aspects;

EHSR

1.1.2. Principles of safety integration

*Machinery must be supplied with all the special equipment and accessories, **test procedures and/or test equipment**, essential to enable it to be adjusted, maintained and used safely.*

Hazardous substances: Hazardous substances, materials and emissions typically used on or coming from construction machinery are already sufficiently regulated by the REACH regulation, the Regulation on F-Gases and the Engine Emissions Regulation.