The Machinery Directive

FIEC voices its support for legislation to ensure safety for construction equipment operators

The Machinery Directive concerns machinery and certain parts of machinery. Its main intent is to ensure a common safety level in machinery placed on the market or put in service in all EU Member States and to ensure freedom of movement within the EU.

On 21 April 2021, the European Commission proposed to revise this Directive and turn it into a Regulation. The main aims of this revision are to align the new legislative act with EU harmonised legislation on product health and safety; tackle the challenges that may arise from technical progress in digitalisation; and solve divergences in interpretations.

DAVID AND GOLIATH

The preparatory work of this proposal started two years earlier and FIEC has been involved at a very early stage, namely through its active participation in the European Commission's experts' group on machinery. And a little bit like David and Goliath, it appeared that manufacturers were extremely vocal on this issue – for obvious and good reasons – while the voice of the users seemed to be somewhat neglected.

Consequently, the current hot debates revolve a lot around the approach towards new technologies and in particular the level of risk coming from Artificial Intelligence; the procedure for assessing the conformity of machinery considered as high-risk (Annex I – formerly Annex IV of the Machinery Directive), which will automatically require a third-party assessment (by a notified body) and the new proposed approach to standards-setting, where the European Commission would play a central role.

On the other hand, there is broad support for the conversion of the Directive into a Regulation, which will facilitate uniform application across all European Union Member States; as well as to the alignment of the draft Regulation with the New Legislative Framework (NLF) as it provides coherence with other Internal Market and product safety legislative acts and improves horizontal transparency.

However, as the end goal of this piece of legislation is to ensure a high level of safety for the operators (ie construction operators), it is of the utmost importance to also take into consideration their needs and those of the contractors they are working for.

THE TECH EFFECT

In short, FIEC welcomes the revision of the Machinery Directive (into a Regulation), which takes into account the recent technological developments. The new aspects such as hazardous substances and cybersecurity are particularly welcome.

Regarding the new proposed definition of "substantial modification", we fear that this concept will create multiple interpretations and a high increase of modifications made by the users which will require third-party assessment. Indeed, the end user of the machine, even though it is not explicitly named in the draft regulation, is also affected by the consequences of a substantial modification. As specified in Article 15, any operator making such a modification becomes the manufacturer with all the requirements of Article 10.

Therefore, FIEC advocates that only a change of specific application shall be considered as a substantial modification. The digital modification or update of safety devices and the installation of safety devices which lead to an increase of the safety level of the machine shall not be considered as substantial modifications and shall not require a new third-party assessment.

LEVELS OF RISK

For machinery embedding Artificial Intelligence (AI) systems ensuring safety functions, the proposed new Regulation says that the machinery shall have additional CE marking. It will be necessary to clarify what will be the process for the end user. Moreover, the European Commission proposes to classify such machinery as high-risk by default. This seems to be disproportionate, considering the current experience and the fact that it might be a break to further innovation in this field.

Ideally, Annex I on high-risk machinery products should be fully rewritten and present three categories of products, depending on their level of risk: low, medium, high. Then, three different conformity assessment procedures should apply according to the level of risk: internal production control, full quality assurance or EU-type examination.

Moreover, in the framework of the safety and reliability of control systems, it should be noted that storing all data for five years is a real economic and organizational challenge for the end-user during the lifetime of the machinery. Therefore, question is how to ensure that market surveillance and national authorities will be able to check, in all situations, the traceability of machinery safety. Preferably, it should be the responsibility of manufacturers or software providers to store these data.

DIGITAL DEVICES

Last but not least, concerning instructions and their contents, clarifications are required regarding the EU declaration of conformity (in particular for digital devices) and the timetable for the application of the new provision must be specified and clearly defined. At least, it is crucial to ensure in practice the availability of the key documents of the machinery during all its lifetime and all successive uses in different construction sites.

As we are writing this article, stakeholders are still in the process of submitting amendments' proposals to the European Parliament. The vote within the relevant Committee (Internal Market and Consumers) is foreseen by mid-March. The vote in Plenary session has not been scheduled yet. We will come back to this issue again in this column. ce

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