

EGMF position paper

Proposal for a Machinery Products Regulation

16 July 2021

EGMF is the European federation representing major **manufacturers of garden, landscaping, forestry and turf maintenance equipment**. The garden and outdoor power equipment industry represents a very wide variety of equipment, with the physical size of products ranging from small hand-held machinery to large ride-on products, and its user base comprises both consumers and professionals. **The entire portfolio of EGMF equipment falls within the scope of the Machinery Directive.**

The **Machinery Directive** is undoubtedly a **core internal market legislation** that has been successfully applied by manufacturers of garden machinery and outdoor power equipment since 2006. This piece of legislation provides our industry with the **necessarily stability in the EU legislative framework** for more than a decade.

The European Commission's proposal revising the Machinery Directive suggests **updates for a coherent internal market framework** and includes **new elements to enhance digitalisation of instructions, which EGMF supports**. The Commission also proposes to address new challenges from emerging technologies and to adapt existing requirements, which EGMF has some **concerns about** since they will have significant consequences for our industry. This is particularly true for the **proposed conformity assessment procedure for high-risk machines** which will be required to undergo third-party certification. However, EGMF is not aware of any evidence indicating that products that are self-certified pose any greater risk than those certified by third parties.

The timely placing on the market of new products is essential because **the market for outdoor power equipment is seasonal**. Over two-thirds of sales occur in the first part of the year, with spring shaping the business outlook. The seasonal aspect impacts the development process because new equipment, which must be tested in real operating conditions, can only be tested during certain seasons. The introduction of new products in the manufacturers' portfolio is closely interlinked with the seasonal feature, in order to follow the cyclic sales pattern. In other words, any delays in product launches, which could be caused by the obligation of third-party intervention for machinery in Annex I, or inadequate transitional provisions, could have damaging consequences.

EGMF calls on decision makers to **shape a balanced legislation** providing an appropriate framework to **address emerging technologies and guarantee a high degree of safety for all machinery used by European citizens, while enhancing innovation** – an essential element for the EU competitiveness and sustainable growth agenda.

In the light of this objective, EGMF asks decision makers to:

- Support provisions on digital documentation to achieve a green, modern and future-proof regulation
- Extend the transition period to 54 months and eliminate the retrospective application in Article 50



- Ensure consistency with future regulation on Artificial Intelligence, particularly in terms of definition of Artificial Intelligence systems
- Reinstate the option of self-assessment for machines in Annex I – as currently allowed under the Machinery Directive – rather than impose third-party certification only
- Clarify the scope of a ‘safety function’
- Clarify and improve new provisions related to human-machine interface, autonomous mobile machinery, cybersecurity aspects (protection against corruption), hazardous materials and substances and vibrations.

I. POSITIVE ASPECTS

1. Digital documentation is essential to achieve a green, modern and future-proof regulation

EGMF fully supports the provisions related to digital documentation (instructions and declaration of conformity).

These provisions support the efforts of manufacturers to move towards a paperless European industry. Embracing the available technologies to supply information to both authorities and users is essential to modernise the legislation.

Firstly, regarding instructions, EGMF has been one of the main promoters of digital instructions over the last few years: we are pleased that instructions can be provided by digital means and only if the purchaser insists on receiving the paper format would the manufacturer need to provide it free of charge following a request at the time of purchase. This provision will generate important benefits, such as further efficiency, better communication with end-users, improved usability (e.g. digital search function), reduced burdens, and lower environmental footprint.

Secondly, EGMF supports the intention to allow a digital Declaration of Conformity. It is our understanding that the intention is also to allow digital formats for the Declaration of Incorporation.

2. Consistency and a realistic timeline are key for a successful implementation

EGMF fully supports the conversion of the Machinery Directive into a Regulation and its alignment with the New Legislative Framework.

It goes without saying that, to ensure a consistent legal framework for the marketing of machinery products, these changes in the future legislation are absolutely necessary. Besides a uniform implementation in the EU, these changes will provide better clarity for all economic operators, including manufacturers.

With regard to the transitional period, EGMF believes the proposed wording goes beyond the principle usually adopted by EU legislation whereby it is not applied retrospectively to products that were legitimately placed on the market before the date of application of the new legislation.



The proposed wording would require any stocks of products that were placed on the market in accordance with 2006/42/EC, but still in the distribution chain, to be re-worked or destroyed as they would be prevented from being made available. This would have big financial implications for manufacturers and have negative environmental consequences, counter to circular economy and sustainability objectives.

EGMF therefore calls for the elimination of this retrospective application in Article 50, by permitting the indefinite making available of such machinery.

As regards the implementation period, EGMF would like to stress that 30 months are insufficient to adapt all the harmonised standards to the new Machinery Products Regulation and allow manufacturers to implement the product specification changes. A minimum of 54 months is required, bearing in mind the following considerations:

- Most harmonised standards for EGMF are handled at international level via ISO and IEC, which will further add to the complexity of readaptation of the portfolio of harmonised standards to meet the requirements of the future Regulation. One also must consider the complexity of implementing new requirements related to new technologies, such as cybersecurity, AI systems etc.
- In view of the change in compliance procedures, where mandatory third-party involvement is proposed, additional time would be required for manufacturers to have the final compliance confirmation.

Additionally, the current proposal allows for no period of parallel application of the legislations, meaning that on one day machines can only be placed on the market in accordance with the existing Directive, then on the next they can only be placed on the market in accordance with the new Regulation. This would be severely logistically challenging.

Therefore, EGMF requests that, for a period of 54 months after the new Regulation comes into force, manufacturers shall be permitted to place products on the market that comply with the existing Machinery Directive.

II. NEW DEVELOPMENTS OF CONCERN

1. Clarity must be ensured around Artificial Intelligence (AI) in the proposal

In general, EGMF agrees with the definition of Artificial Intelligence (AI) systems in the Machinery Products Regulation being by means of reference to the definition of AI system that is given in the AI Act. However, further clarity needs to be provided regarding the term 'machine learning'. In addition, the definition of AI systems as proposed in the AI Act is too broad in relation to the machinery sector.

EGMF calls for ensuring coherence with the future Artificial Intelligence (AI) Regulation throughout the legislative process and readapting the definition of AI systems specifically for the machinery sector.



2. High-risk machinery: new conformity requirements should be withdrawn since they do not result in additional safety benefits

EGMF is particularly concerned about the obligation of mandatory third-party certification for all high-risk machinery, as laid down in Articles 5 and 21.2, without the possibility to use internal checks even when all relevant harmonised standards have been applied.

The new requirement would have a major negative impact on industry, including SMEs, in terms of an increase in administrative burden, as well as logistics and costs due to additional testing at Notified Bodies' locations.

As specified in the beginning of this paper, the obligation of exclusive third-party certification for machines in Annex I is also detrimental bearing in mind the fact that the market for lawn and garden equipment is seasonal.

Moreover, the statement used by the European Commission in the impact assessment report, suggesting that third-party certification minimises the need for intervention of market surveillance authorities is contradictory to the principles included in the Market Surveillance Regulation. Third-party certification cannot be used to replace market surveillance activities.

EGMF strongly believes that the obligatory third-party conformity assessment has no effect on safety, since there is no convincing evidence of accidents linked to self-certification, nor any data that third-party certification increases safety, compared to self-certification (module A).

Therefore, we request that the option of self-assessment is reinstated in the Machinery Products Regulation for machines in Annex I, as long as all relevant harmonised standards are applied.

Furthermore, the term 'safety function' is combined in the proposal with the term 'machinery' (item 25.) listed in Annex I. Any function of the whole machine could therefore be potentially considered as a 'safety function'. This is too broad an interpretation compared to the current Machinery Directive Guide, where the 'safety function' is defined under the definition of the 'safety component'.

The classification of items 24 (software ensuring safety functions including AI systems) and 25 (machinery embedding AI systems ensuring safety functions) as high-risk machinery products (Annex I) raise concerns about the way that equipment embedding AI systems would be classified. By definition, a "safety component" (Article 3 (3)) is placed separately on the market and is not part of a machine when placed on the market. However, items 24. and 25. can be defined as a part of the machine, which brings further confusion to the scope in Annex I.

We fear that these items 24 and 25 being added in Annex I may also lead to a loose interpretation that all machines embedding any components with AI, even if not used for a machine safety function, are classified as high-risk machinery products and therefore subject to third-party certification. More concretely, because of the lack of legal clarity, a machinery product that has embedded AI which does not perform a safety function (for example a robotic mower incorporating object detection), that was previously able to be self-assessed by making use of a harmonised standard, will have to be third-party certified in the future, which would be highly disproportionate.

EGMF suggests the inclusion of a clarification on the scope of a 'safety function', for example via a recital to the Regulation. We would also recommend that a clarification on this concept should be provided in the Machinery Products Regulation Guidelines.



3. Requirements on digital technologies

- **Human-machine interface: provisions must be clarified**

EGMF considers that the provisions in Annex III, 1.1.6 (e) related to human-machine interface are sufficient, while the new requirements in Annex III 1.1.6. (f), and 1.3.7 (Risks related to moving parts and psychological stress) are too specific, have an ambiguous scope, and are considered unnecessary. Some machines, already available to consumers, do not have the need for operator presence, and this requirement will not add any safety to the machine. Communicating the planned actions of the machine, which can easily be interpreted as meaning each and every state of the machine, is unjustifiably going beyond the today's requirements.

Finally, Annex III, 1.3.7 is redundant with 1.1.6 (f) and has a limited relevance with the overall section 1.3 on protection against mechanical risks. We therefore suggest the two provisions are reviewed in order to clarify the requirement.

EGMF suggests readaptation of the provisions on human-machine interface to cover only machines designed to collaborate with humans.

- **Autonomous mobile machinery**

EGMF is concerned that the requirement in Annex III, 3.2.4, according to which all autonomous mobile machinery must have a supervisory control function, fundamentally contradicts the principle of autonomous machinery, which are defined and designed to accomplish an assigned task without human intervention.

Various machinery with an autonomous function has been available for two decades and has been proven to work safely without human interaction. Indeed, many people purchase such equipment precisely because it does not require their involvement while it is in operation.

The need for such a control function greatly depends on the machine category and its intended uses. The safety standards for these types of products, specifically in the lawn and garden sector, already require equipment to incorporate various sensors to detect people, animals, or other objects and to also detect if the machine is being lifted or tilted. Signals from these sensors then require the machine to take evasive action or to stop. Furthermore, the requirement to provide the supervisor with a complete and accurate view of the working area is disproportionate as other sensors than those providing a "view" can provide confirmation of it being safe to start the machine.

EGMF therefore recommends that this requirement should be adapted to specifically indicate when such a control function is necessary in view of the relevant safety reasons and allow the technical solutions to be elaborated in product specific standards.

- **Cybersecurity with an impact on safety**

In general, EGMF supports protective measures against corruptions and connections to machinery. However, at the level of the machine, the manufacturer cannot manage legitimate or illegitimate



interventions done on the machine without creating a real challenge for the serviceability of the machine.

Section 1.1.9. in Annex III introduces new requirements on corruption and legitimate/illegitimate interventions that are unclear. EGMF is of the opinion that these requirements should apply to autonomous mobile machines only and should be limited to corruption of components that are safety relevant and ensure robust connections to a supervisory station if present. Therefore, EGMF proposes to delete paragraphs with requirements diverging from the sound EHSRs mentioned above.

Moreover, the traceability requirements (tracing log of data and recording of data) in sections 1.2.1 (f) & (g) are unclear.

We understand that the intention of subsection (f) is to require that manufacturers store the versions of software installed, including all software updates.

In (g), it is assumed that the intention is that this requirement is limited to machinery incorporating AI systems ensuring safety functions and that such machinery should record all data that the machine generates itself during the decision-making criteria or process made by the AI systems from the safety functions, rather than a record of each decision made in response to signals from sensors/receivers from the whole machine.

To prevent misunderstandings, EGMF proposes to reword 1.2.1 (f) & (g) according to our understanding explained above.

4. Adaptations to current requirements

- **Release of hazardous materials and substances: provision to be clarified**

In relation to section 2.2.1. (e) in Annex III, EGMF believes the Regulation should clarify in a definition what the hazardous materials and substances are that are referred to in 2.2.1 and 1.7.4.2 and what flow rate is required to be declared in section 1.7.4.2.

EGMF assumes this generally means substances generated from the material being processed, for instance dust, fragments of stone, etc. or from cooling liquids that are used during the operation of the machine that are hazardous to human health by inhalation, ingestion, contact with the skin, eyes and mucous membranes and penetration through the skin as described in section 1.5.13. In our understanding of the proposed text, lawn and garden machinery that have specific functions such cutting, raking, or blowing vegetation are not included in this requirement, since none of these emit materials are hazardous to health in the above ways.

Moreover, adding the required additional substance capturing device will create new/additional risks, and will limit the intended use of machinery.

EGMF requests that for clarification, a reference to 1.5.13 should be added to 2.2.1 (e).

Associated with this requirement is the proposed requirement in section 1.7.4.2(w) to provide information on the characteristics of separately supplied emission mitigation devices. EGMF proposes



that this information requirement should only be applicable to machinery intended to generate hazardous substances from the materials likely to be processed.

It is not clear what flow rate is required to be declared for capturing, filtration or discharge devices that are not integral with the machinery product. The amount of material processed is highly dependent on the type of material, size of cutting device used, the speed of the cutting device, the speed of the feed rate of the material or machine and the state of wear of the cutting device. The external capturing, filtration or discharge devices has no influence over these factors, it can provide only a flow of air through a collection duct.

EGMF therefore calls for this item to be deleted. Instead, a new clause should be added indicating that, where the use of external devices is not feasible, information on the use of appropriate personal protective equipment (PPE) should be provided in the instructions.

- **New requirements on vibrations will create inconsistency**

The requirements on vibrations in section 3.6.3.1, Annex III would create confusion with the Directive on workers protection from physical agents (vibrations), Directive 2002/44/EC, since the changes proposed would result in these two directives not being aligned anymore.

The physical agents (vibration) Directive 2002/44/EC has no requirements for exposure values below 2.5 m/s^2 , as for vibration values measured below 2.5 m/s^2 the uncertainty in many cases will be higher than the declared/measured value, which does not make any sense for the user.

EGMF recommends that the text of section 2.2.1.1, Annex I of the current Machinery Directive should be reinstated.

The Directive on physical agents additionally does not include any exposure value requirements for shock events. These declared values would be of no use for workplace risk assessments of hand / arm vibrations.

EGMF requests that this requirement (in sections 2.2.1.1. and 3.6.3.1.) should be deleted.



For further information, please contact: EGMF Secretariat, secretariat@egmf.org



The European Garden Machinery Industry Federation – EGMF – has been the voice of the entire garden machinery industry in Europe since 1977. With 30 European corporate members and 7 National Associations representing manufacturers of garden, landscaping, forestry and turf maintenance equipment, we are the most powerful network in this sector in Europe. www.egmf.org

