

EVALUATION ROADMAP ON NEW LEGISLATIVE FRAMEWORK

Feedback from the work equipment sector

Background

The New Legislative Framework (NLF) for EU product legislation consisted of Decision No 768/2008/EC and Regulation (EC) No 765/2008 aims to improve the Internal Market for goods by improving market surveillance and boosting the quality of conformity assessment of products. NLF ensures the compliance of products with the applicable legislation at the time they are placed on the market.

Taking into account that products are increasingly digital and being frequently updated or upgraded after they have been put into service, that they may also incorporate artificial intelligence and that remanufacturing of products is an ever-growing business where the objectives of promoting the circular economy and ensuring product safety need to be adequately tackled, the question of adapting the NLF to the current economic reality and the evolution of the digital environment arises. In particular, the assessment should focus on whether the NLF is fit to address the way products may evolve during their lifetime to support the take-up of smart connected or remanufactured products while ensuring product safety.

Feedback from the work equipment sector

In the machinery sector, “*modifications*”¹ on a product already put into service and all types of operations intending to extend the life of a used product (e.g. remanufacturing) are operations that have been carried out in the field for a long time and a practice which is well known, whatever the reasons of the modification (retrofitting action to improve safety or performance, increase in productivity, extension of an assembly of machinery, addition of a new function, etc.).

This usual practice on used machinery is guided by two considerations:

1 Existence of a clear boundary between two legal frameworks from which the respective responsibilities of the user and the manufacturer are well established

Indeed, whatever the operations occurring on a machinery after its putting into service, users (i.e. employers) must still consider those modifications in the framework of the user’s legislations².

Those legislations contain a set of obligations for employers, such as: to provide the workers with conforming machines for use in the workplace, obligation to make a general risk assessment, obligation to take into account the development of technology, obligation to remain in conformity with the regulations applicable to the machine at the time it was put into service.

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¹ any change made on a used machinery which is not foreseen by the original equipment manufacturer (OEM) at the design stage

² Directive-89/391/EEC related to safety and health at work and Directive 2009/104/EEC of use of work equipment

2 The maintenance of the original safety level for modified/remanufactured machinery

A modified or remanufactured machinery is still considered as a product already placed on the Union market and the existence of the user's legislation, obliging the user to maintain the product in its original state of conformity, ensures from a legal perspective that any operation occurring on a used machinery will not affect the product safety during its lifetime.

As far as software updates are concerned, they are part of operation life, maintenance etc and as such are foreseen by the OEM at the design stage already.

In addition, a machinery incorporating artificial intelligence (known as "narrow IA") will only evolve within the boundaries set by the designer / manufacturer. In other terms, such machinery cannot change its behaviour and go beyond the "safety envelop" designed by the OEM. Therefore, we cannot subscribe to the idea that the incorporation of AI into a machinery at the design stage would lead to a modification¹.

Conclusion: the maintenance of the original safety level for smart connected products or remanufactured products during their lifetime is not compromised by the digital technologies: the existence of a clear boundary between NLF and social legislations combined with a clear division of responsibilities between economic operators are guarantees for safe modified products, whether due to new technologies take-up or circular economy objectives