

## Position for an EU legal framework for the approval of Non Road Mobile Machinery

VdTÜV e.V. (Association of Technical Inspection Agencies) and DEKRA e.V. welcome a deepening of the Single Market Strategy in the area of approval procedures for non road mobile machinery. In order to facilitate the free road circulation of non road mobile machinery and to achieve an appropriate harmonized level of safety, national-level approvals could in future, under certain conditions, be mutually recognised by the authorities of the EU Member States.

EU Regulation 2018/858 for type-approval procedures and market surveillance of vehicles defines **mobile machinery** as *any self-propelled vehicle designed and constructed specifically to perform work and that, because of its construction characteristics, is not suitable for carrying passengers or for transporting goods, and that is not machinery mounted on a motor vehicle chassis*. These include, among others, working machines and equipment for agriculture and forestry, working machines for earthwork and road construction.

In principle, mobile machinery are moved both off-road and on-road. In consequence, the **requirements of road safety** are relevant and must be taken into account. According to the data on road accidents provided by the German Federal Statistical Office, drivers of comparable agricultural towed machinery were involved in approximately 2,000 accidents involving personal injury (fatalities as well as light and serious injuries) in 2018.<sup>1</sup> In its working programme, the European Commission has stated the commitment to "Vision Zero" which means the reduction of the number of road deaths to zero. Consequently, improving road safety must remain the ultimate benchmark when regulating this type of vehicle.

An EU-wide accepted approval process must be efficient and ensure that all self-propelled mobile machinery placed on the market meet the legal and normative requirements. In the view of VdTÜV and DEKRA, the creation of a European legal framework for self-propelled mobile machinery should be based on the harmonized type approval regulations, in particular in accordance with **Regulation (EU) 167/2013** on the approval and market surveillance of agricultural and forestry vehicles.

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<sup>1</sup> DeStatis Road accidents 2018, S. 87: [https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Verkehrsunfaelle/Publikationen/Downloads-Verkehrsunfaelle/verkehrsunfaelle-jahr-2080700187004.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Verkehrsunfaelle/Publikationen/Downloads-Verkehrsunfaelle/verkehrsunfaelle-jahr-2080700187004.pdf?__blob=publicationFile)

➤ **Subsidiarity principle**

Although it is the responsibility of the Member States to ensure the implementation of legislation in their territory, it is essential for the maintenance of a level playing field throughout the EU to ensure a harmonized and coordinated approach on the basis of commonly applicable criteria uniformly applied by the Member States. To this end, the approval requirements for self-propelled mobile machinery should be interpreted, implemented and enforced in a harmonized manner. This would provide Member States with an appropriate set of tools for post market controls and for effective and joint remedies against the emergence of non-compliant and unsafe products on the market.

However, with regard to the determination of road safety requirements for self-propelled mobile machinery, EU Member States must also be given a 'free hand' to be able to establish national regulations above the minimum requirements set out in a European regulation. This is the only way to account for different traffic conditions in Europe (e.g. traffic density, vehicle collective, climatic conditions) and therefore the increased safety requirements, such as a separate assessment obligation or approval regulations in individual Member States. Road traffic regulations, in contrast to product requirements (e.g. in the case of the Machinery Directive (2006/42/EC)), are intended to ensure the safety of the public, i.e. all road users.

➤ **Approval Procedure**

For all machines travelling on public roads, the same requirements should be applied as for motor vehicles in accordance with the EU type-approval directive/regulation both with regard to approval and regulatory aspects, and should thus be subject to the assessment of compliance with the requirements by an independent and neutral technical service. Similarly, in accordance with Article 20 of EU Regulation 2016/1628 on the requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines, the European legislature has decided to mandatorily integrate an independent and neutral technical service for the type-approval test for mobile machinery and equipment. Many other assemblies and systems of mobile machinery must also be inspected by a neutral third party in order to prevent misuse, ensure safety and protect consumers (e.g. noise emission, field of vision, speed, axle loads, installation of LTE, coupling devices etc.). Confirmation of the positive result of these independent tests are provided by the relevant national competent authority. The granting of vehicle type-approval shall entitle the manufacturer to issue certificates of conformity for an unlimited number of compliant vehicles during the period of validity of the approval. At the same

time, the manufacturer also has far-reaching obligations: On the one hand, he assumes responsibility for all aspects of the approval procedure vis-à-vis the approval authority. On the other hand, the manufacturer is obliged to ensure the conformity of production of the vehicles.

By revising the legal framework of the European type approval procedure, the EU Commission established an agile, stable, transparent and sustainable procedure that can be applied to a large number of EU vehicle classes. In addition, it also opens up hybrid procedures that refer back to the processes for obtaining a type approval and to the recognized principles of the common legal framework for the marketing of products (Decision 768/2008/EC on the New Approach).

➤ **Type Approval for small series**

By analogy with Article 37 of Regulation (EU) 167/2013, a mobile machinery with a fixed annual maximum number of type approvals could be subject to the procedure for small series vehicles. In this case, corresponding type-approval requirements from Annexes I and II are envisaged. Small-series type-approval is a full EU type-approval, i.e. it must be recognized by all Member States. In any case, when the manufacturer applies for a type approval, the so-called initial assessment must be included in the application. The subject of the assessment is essentially the quality management of the manufacturer. The manufacturer must have taken suitable precautions and laid down test specifications in writing to ensure that production complies with the approval. The assessment is normally carried out by the national type-approval authority itself or, on its behalf, by a third party. Alternatively, a declaration of conformity from another EU member state or a proper certification according to EN ISO 9001:2015 can be submitted.

➤ **In-house technical services of the manufacturer**

According to Article 60 of Regulation (EU) 167/2013, technical services may also be designated as accredited in-house bodies of the manufacturer. This special case opens up a certain degree of flexibility in the type-approval procedure, which can be taken into account when assessing mobile machinery. Such a Category A<sup>2</sup> technical service may provide its services, the scope of which is defined in Annex VII to Regulation (EU) 2018/858, exclusively to the manufacturer to which the entity belongs. In addition, Article 60 contains requirements for the impartiality and

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<sup>2</sup> Technical Service category A: tests referred to in this Regulation and in the regulatory acts listed in Annex II that technical services carry out in their own facilities; see art. 68 Reg- (EU) 2018/858

delimitability of the technical service within the manufacturing company. Formal accreditation of a national accreditation body is mandatory.

➤ **No self-certification by industry**

In order to safeguard their independence and to avoid conflicts of interest and associated adverse effects on the level of quality and safety, manufacturers, technical services as well as licensing and supervisory authorities should only exercise their original role in the approval process. Such a clear definition of tasks strengthens the necessary confidence in the overall system and ensures fair, clear and transparent competition in Europe.

Self-certifications by the industry as well as mere documentary checks without the involvement of technical services of category A-D concerning minimum requirements for road safety and compliance (in particular noise, field of vision, coupling devices, installation of lighting technology, etc.) must be rejected. The manufacturer's declaration of compliance with all relevant requirements cannot be the basis for an EU-wide approval of mobile machinery. A corresponding cost-benefit analysis commissioned by the EU Commission has also shown that the industry would not achieve any cost advantages by a possible extension of the self-certification procedures.<sup>3</sup>

➤ **Requirements from the Machinery Directive 2006/42/EC**

The Machinery Directive (2006/42/EU) essentially serves the free movement of goods in the European Single Market. The Directive clarifies that it is the responsibility of the EU Member States to ensure the health and safety on their territory of persons, in particular of workers and consumers and, where appropriate, of domestic animals and goods, notably in relation to the risks arising out of the use of machinery:

*The essential health and safety requirements should be satisfied in order to ensure that machinery is safe; these requirements should be applied with discernment to take account of the state of the art at the time of construction and of technical and economic requirements. (Recital 14)*

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<sup>3</sup> The costs and benefits study is available in the following link: <https://op.europa.eu/en/publication-detail/-/publication/c0d598e2-17d8-11ea-8c1f-01aa75ed71a1/language-en>

Furthermore, the Machinery Directive deliberately only defines the essential health and safety requirements of general application, supplemented by a number of more specific requirements for certain categories of machinery. In order to help manufacturers prove conformity these essential requirements and to allow inspection of conformity to the essential requirements, it is desirable to have standards that are harmonized at EU level for the prevention of risks arising out of the design and construction of machinery. These standards are drawn up by private-law bodies and should explicitly retain their non-binding status. An approval procedure for mobile machinery on the basis of standards of private-law bodies, which only includes a self-certification procedure by the manufacturers of these machines, is insufficient.

For a correspondingly internationally recognised approval procedure, a number of standards regulating the technical requirements have already been adopted in the "World Forum for Harmonisation and Regulations for Vehicles" (WP.29) of the United Nations Economic Commission for Europe (UN/ECE). At the latest since the entry into force of the General Safety Regulation - GSR - the application of the catalogue of UN/ECE regulations in the EU is mandatory for the automotive sector. This catalogue specifies which UN/ECE regulations are to be applied for which vehicle classes in which amendment status. Consequently, a European type approval framework for mobile machinery must be based on the UN/ECE regulations with regard to technical requirements. An assessment on the basis of standards under private law as well as under UN/ECE regulations would possibly result in "double testing", which must be avoided. Harmonized standards of private law character can at most be used as a basis for corresponding UN/ECE regulations of the same subject matter.

➤ **Coherence with the “New Approach” (NLF) and requirements of Regulation (EU) 2019/1020 on market surveillance and product conformity**

The recognised principles of the common framework for the marketing of products (Decision 768/2008/EC) should be consistently referred to for the legal configuration of a European approval procedure<sup>4</sup>. This approach (the “New Approach”/NLF) has proven itself in several product sectors for decades and ensures the necessary conformity and safety of products in the European Single Market. According to this, manufacturers of products with high risk potential must involve independent third parties to market their products. A European approval procedure involving independent, neutral technical services for self-propelled mobile and towed machinery,

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<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0082:0128:en:PDF>

which represent complex special purpose vehicles with a high hazardous potential, must be legislatively regulated according to the principles of the “New Approach”.

The requirements on the independence, objectivity and impartiality of notified bodies (in this context: technical services) are laid down in detail in Decision 768/2008/EC on a common framework for the marketing of products<sup>5</sup>. Full compliance with the above criteria is ensured by the designation procedure of the national type-approval authority or proof of accreditation by the state, and is monitored on an ongoing basis. In all product sectors covered by the scope of the decision<sup>6</sup>, the manufacturer must directly commission a notified body selected by the manufacturer. This is logical, because ultimately the manufacturer bears the full responsibility for product conformity. This coherent regulatory framework is transparent, functional and innovation-friendly.

The Market Surveillance Regulation should be seen as a complement to the Product Safety Directive 2001/95/EC. The regulation is intended to give the market surveillance authorities the possibility to take specific measures. According to Article 2 of the Market Surveillance Regulation (EU) 2019/1020, all provisions on market surveillance apply to the extent that there are no specific provisions in the harmonization legislation of the EU Single Market that pursue the same objective. Special provisions for mobile machinery must accordingly be defined and introduced with a European approval procedure.

#### ➤ **Holistic requirements for an approval procedure**

Even mobile machines are becoming increasingly complex due to the integration of automated and connected systems in vehicle construction. Future type-approval procedures will have to meet these new road safety requirements. VdTUV and DEKRA advocate a concept for independent safety and security certification of automated vehicles which should be less construction-specific and more responsive to the evolutionary character of vehicles. This will have to involve a change towards a combination of virtual and real tests. Simulations, tests on proving grounds and field experiences will be necessary for the further development, evaluation and approval of automated driving functions. A modern type-approval procedure for mobile machinery must also be open to the fact that the vehicles will be constantly updated during their life cycle in order to guarantee system safety and to maintain the constantly advancing connection of the vehicles with each other and with the existing infrastructure.

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<sup>5</sup> See Decision 768/2008/EC, Annex I, Chapter R4, Article R17

<sup>6</sup> For an overview, see <http://www.newapproach.org/Directives/DirectiveList.asp>