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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

on the approval and market surveillance of non-road mobile machinery circulating on public roads and amending Regulation (EU) 2019/1020

{COM(2023) 178 final} - {SEC(2023) 145 final} - {SWD(2023) 65 final} -
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1. Can the EU act? What is the legal basis and competence of the EUs' intended action?

1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?

Article 114 TFEU, under which the EU may adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the single market.

1.2 Is the nature of EU competence under this Treaty article shared or supporting?

For product safety legislation for the single market, the EU has shared competence with the Member States (Article 4 of the Treaty on the Functioning of the EU (TFEU)).

*Subsidiarity does not apply to policy areas where the EU has **exclusive** competence, as defined in Article 3 of the TFEU*[1]*. The specific legal basis determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU*[2] *sets out the areas where competence is shared between the EU and the Member States. Article 6 TFEU*[3] *sets out the areas for which the EU has competence only to support action taken by the Member States.*

2. Subsidiarity principle: Why should the EU act?

2.1 Does the proposal fulfil the procedural requirements of Protocol No 2[4]:

- Has there been a wide consultation before proposing the act?
- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at EU level?

The consultation activities carried out include an inception impact assessment that ran over a four-week period, a 12-week public consultation in 23 languages on the Commission's central public consultation webpage, a targeted consultation with Member States in 23 languages on the Commission's central public consultation webpage, several workshops and regular consultations with interested parties at EU level.

In particular, the following groups were consulted:

- the EU road-approval authorities and their technical services dealing with vehicle type approval;
- the Machinery Expert Group;
- other interested stakeholders: representatives from the non-road mobile machinery industry, user associations, etc.

The explanatory memorandum and the impact assessment (Chapter 3) contain a section on the principle of subsidiarity.
In addition, Chapter 9 of the impact assessment report proposes several indicators to monitor and evaluate implementation of the regulation.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN
[3] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The aim of this initiative is to harmonise the current situation of 27 different regulatory regimes in the Member States and improve the functioning of the single market.
The different regulatory regimes in the Member States have created discrepancies in the single market, they are an economic and administrative burden and create barriers to the free circulation of self-propelled non-road mobile machinery.
Harmonising the safety rules for the road approval of non-road mobile machinery can be done only at EU level. It is expected to reduce the administrative burden and provide a high degree of safety on the public roads.
Regulatory action at EU level laying down EU-wide technical safety requirements for the road approval of non-road mobile machinery, and allowing market enforcement at the national level, ensures a coherent implementation of the technical safety requirements for non-road mobile machinery. As a result, it will increase the level of safety and enable the free movement of non-road mobile machinery within the EU.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

Currently, technical requirements and approval procedures for road approval of non-road mobile machinery are decided at Member State level. This legislation often differs between Member States, which means that manufacturers selling on several markets are obliged to tailor their production to comply with the rules in the target national markets and they must also have their vehicles tested in every Member State, which is time consuming and costly. Different national rules consequently hinder trade and undermine the establishment and functioning of the single market.
It is therefore important to take an EU-level approach to approving this machinery. This initiative contributes to a more complete single market for non-road mobile machinery and to a high and uniform level of safety across Europe when non-road machinery circulates on public roads. It is therefore in line with the subsidiarity principle set out in Article 5 TEU.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The EU non-road mobile machinery sector is a significant producer and strong exporter of non-road mobile machinery globally. 42% of the annual production value is exported to non-EU countries and 54% is traded intra-EU. Only 4% of production is sold in the EU country of production. Therefore, non-road mobile machinery producers are extremely reliant on road approval in other countries.
In addition, one of the problems identified is the difficulties that end users and rental companies face in using machinery across intra-EU borders. For example, rural contractors and construction companies that provide services in multiple EU countries (such as harvesting crops or renting construction equipment) are not always able to use non-road mobile machinery across different borders. This generates further costs to adapt their non-road mobile machinery to different sets of requirements.

(b) Would national action or the absence of EU-level action conflict with core objectives of the Treaty[5] or significantly damage the interests of other Member States?

[5] https://europa.eu/european-union/about-eu/eu-in-brief_en

National action or the absence of EU level action would maintain, if not widen, the existing gap in the single market.
All other vehicle types have harmonised road approval requirements at EU level (categories M: vehicles carrying passengers; N: vehicles carrying goods; O: Trailers; L: 2- and 3-wheel vehicles and quadricycles; T: wheeled agricultural and forestry tractors; C: tracked agricultural and forestry tractors; R: agricultural trailers; S: agricultural interchangeable towed equipment).
Other aspects of non-road mobile machinery are also harmonised, such as product safety[6], pollutant emissions[7], noise emissions[8] and electromagnetic disturbances generated by these machines[9].

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Member States will be responsible for enforcing the new regulation, following common market surveillance rules. Without common requirements for the road approval of non-road mobile machinery, the current gap in the single market would continue or even widen, since requirements in different EU countries could diverge further still.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

The production of non-road mobile machinery in the EU is highly concentrated in a few EU countries. Almost 80% of the production is in just six EU countries: Germany (37%), Italy (11%), France (10%) and Finland, Sweden and Austria (7% each).

Non-road mobile machinery in the EU is produced by both large and small manufacturers. Like in other segments of the machinery industry, a few large companies control large shares of the market, while SMEs tend to be more specialised in niche markets. An estimation of size distribution indicates that SMEs account for 98% of all companies registered. Nevertheless, large companies contribute 82% of the sector's revenue and 70% of employment[10].

The EU non-road mobile machinery sector is a significant producer and strong exporter of non-road mobile machinery globally. Out of the annual production value, 42% exported to non-EU countries and 54% is traded intra-EU, hence only 4% is sold in the EU country of production[11]. Thus, non-road mobile machinery producers are extremely reliant on road approval in other countries.

Users of mobile machinery are widely spread across the EU.

[6] Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, OJ L 157, 9.6.2006, p. 24-86.
[7] Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, OJ L 252, 16.9.2016, p. 53-117.
[8] Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors, OJ L 162, 3.7.2000, p. 1-78.
[9] Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility, OJ L 96, 29.3.2014, p. 79-106.
[10] ESTAT 2018: Annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2), C283 and C289 [SBS_SC_SCA_R2__custom_1485219].
[11] Eurostat 2019 data: Sold production, exports, and imports by PRODCOM list (NACE Rev. 2) - annual data [DS-066341].

(e) Is the problem widespread across the EU or limited to a few Member States?
As explained above, the production of non-road mobile machinery in the EU is highly concentrated in a few EU countries but users of mobile machinery are widely spread across the EU. In addition, a harmonised set of requirements ensuring a higher level of road safety while non-road machinery is circulating on public roads will benefit all EU countries alike.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
Member State authorities will have to implement the new regulation for an EU type-approval system for non-road mobile machinery. However, the authorities do not view this is as a problem or significant burden since they already have type-approval systems in place for categories M, N, O, T, C, R and S as explained earlier, and therefore they can make substantial synergies. Member State authorities will be able to keep the current national approval systems in parallel with the EU type-approval regulation. National systems will grant approval applying only to the territory of that Member State.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
During the consultation process, road-approval authorities across Member States expressed support for an EU type-approval system for non-road mobile machinery. Such road-approval authorities operate at national level.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at EU level by reason of scale or effects of that action (EU added value)?
Only regulatory action at EU level laying down EU-wide technical safety requirements for the road approval of non-road mobile machinery and enabling market enforcement at national level can ensure that the technical safety requirements for non-road mobile machinery are implemented coherently.
(a) Are there clear benefits from EU-level action?
A costs and benefits study carried out by the Commission in 2019 indicated that, by setting uniform requirements at EU level, the non-road mobile machinery sector could save 18% to 22% of their compliance costs, which translates into €672 million to €873 million over 10 years.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the single market be improved?
There are economies of scale at the manufacturer's level because with one single approval they will be able to sell their machinery in all EU countries.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
A homogenous policy approach will allow the free movement of non-road mobile machinery within the EU and an easier use of non-road mobile machinery in cross-border operations, and will contribute to a higher level of safety when non-road machinery circulates on public roads.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and

benefits of acting at national, regional and local levels)?

The benefits of EU-level action outweigh by far the loss of competence of Member State authorities. Overall, Member State authorities support the idea of an EU regulation for the road approval of non-road mobile machinery as it is already used for all other on-road vehicle types.

(e) Will it improve legal clarity for those having to implement the legislation?

A co-decision act will list all the vehicle features covered when non-road mobile machinery circulates on public roads.
Delegated acts will be adopted to prescribe in detail the technical and administrative requirements and the conformity assessment procedures to be followed by manufacturers. Manufacturers will present for each vehicle feature, depending on how critical it is to road safety, different types of documentation, such as a third-party test report, a manufacturer's test report, manufacturer's drawings and schematics (assessed by a third party or directly by the authorities), a manufacturer's certificate, and type-approval certificates. The type-approval authority would check all documentation for the entire machine.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The policy options considered are set out in the bullet points below.

- Option 0 - Baseline: 'no action'.
- Option 1 - EU approval of the entire mobile machine granted by Member State authorities (old approach). This policy option follows the principles of the EU legislation on vehicles, where the technical specifications to comply with the general requirements are integrated in the legislation.
  - 1.a) Type approval: for most components, systems and separate technical units the road approval would involve a third party.
  - 1.b) Simplified type approval: for components, systems and separate technical units that are more critical for road safety, the conformity assessment would involve a third party (independent authorised body). For components, systems and separate technical units that are less critical for road safety, the conformity assessment would be based on reports or self-certification by the manufacturer.
- Option 2 - CE marking of the entire mobile machine granted by the manufacturer (new approach). This policy option follows the principles of the new EU legislation on the non-road use of mobile machinery (e.g. the Machinery Directive) where only the essential safety requirements are embedded in the law, not the detailed technical specifications.

In principle, all options can be implemented by issuing either a directive or a regulation.

The following aspects of the legislation were also assessed:

(i) making it mandatory (replacing the current 27 national rules), or optional (an alternative to the current 27 national rules);
(ii) including (or not) towed equipment in the scope; and
(iii) limiting (or not) the scope to non-road mobile machinery with a maximum design speed not exceeding 40 Km/h.

The type-approval system where technical specifications are detailed in the legislation is the widely accepted and trusted framework for road safety in Europe. It should be simplified to be proportionate and take account of the characteristics of non-road mobile machinery (low circulation frequency). In the case of individual approvals (marketed only in one country) or small series, manufacturers can either opt to apply the new legislation or keep applying for national approval. However, manufacturers who opt to follow national rules will not benefit from the free movement provisions of the new regulation.

The rules would only cover self-propelled machinery since the vast majority of towed equipment can already be currently type-approved under other vehicle categories. The machinery in scope would have a maximum design speed limit set at 40 km/h to prevent misuse of the new framework by manufacturers of faster vehicles at the expense of road safety, most of which could already be type-approved under current vehicle categories. Maximum noise emission limits for road circulation will be set.

Lastly, since the technical requirements will be highly detailed and will leave practically no room for discretion by the Member States when transposing them, a regulation is preferred. Therefore, the preferred policy option is 1.b (simplified type approval) – optional – covering self-propelled machinery only (not towed), with a maximum design speed limit of 40 km/h, and in the form of a regulation.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

There is a wide consensus among stakeholders that Option 1b is the most effective, efficient and coherent. It is the most proportionate option as it keeps compliance costs under reasonable limits. It is the most coherent option as it mirrors the existing simplified type-approval legislation for comparable vehicle categories R (agricultural trailers) and S (agricultural interchangeable towed equipment).

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the EU can do better?

The initiative is limited to aspects that Member States cannot achieve satisfactorily on their own, and where only the EU can do better. Only an EU-level road approval system can facilitate free circulation in all EU Member States.
The option of mutual recognition for the sector was discarded at an early stage in the process. The external study carried out in 2016 analysed the option of mutual recognition for the sector. Mutual recognition would require trust in the requirements of other Member States and a degree of conversion rather than divergence between EU countries. With the current diverging rules, Member States with more stringent requirements were very unlikely to recognise and accept on their market non-road mobile machinery complying with less strict requirements. Moreover, if the Member States were to agree on and put in place a mutual recognition system, companies could try to obtain approval in Member States with less stringent requirements (or 'shop around' for certificates at preferred authorities), which would be undesirable in terms of the sound functioning of the system[12].

(b) Is the form of EU action (choice of instrument) justified, as simple as possible, and

[12] 'Study on the EU harmonisation of the requirements for the road circulation of mobile machinery'. Page 68. ECORYS, 2016. Available at: https://ec.europa.eu/growth/content/final-report-eu-harmonisation-requirements-road-circulation-mobile-machinery-0_en.

coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The new legal framework will set out the technical requirements to be complied with when granting EU type approval. Both the enacting terms and their annexes will be highly detailed and leave practically no room for discretion of Member States when transposing them. In addition, the requirements are highly technical, detailed, and subject to regular adaptations to technical progress. Regulations are used for all type approval of vehicles, including Regulation 167/2013 covering tractors, agricultural trailers and agricultural tower equipment (categories 'R' and 'S'). Consequently, a regulation is preferred.
(c) Does the proposed EU action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit EU-level action to minimum standards or use a less stringent policy instrument or approach?)
The new legal framework will set out the technical requirements to be complied with when granting EU type-approval, but the enforcement and market surveillance will be under the responsibility of Member State authorities. Member States will not be able to prohibit, restrict or impede the placing on the market, the registration or entry into service of non-road mobile machinery that comply with the Regulation.
(d) Does the initiative create financial or administrative costs for the EU, national governments, regional or local authorities, businesses or citizens? Are these costs commensurate with the objective to be achieved?
Administrative costs for the non-road mobile machinery sector are estimated at 4% of the total compliance (direct and indirect) cost. The initiative reduces the burden significantly for the sector, which will be able to save €846 million over 10 years. By applying the 4% to this amount, the sector is estimated to achieve a savings of €3.4 million/year in administrative costs. Some administrative costs will be borne by Member State authorities, but thanks to synergies with existing type-approval systems for other vehicles, they do not consider the costs significant.
(e) While respecting EU law, have special circumstances applying in individual Member States been taken into account?
No special circumstances applying to any individual Member State were identified in preparation of this initiative.