

CEMA supports new legislation on UK type-approvals after Brexit

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CEMA, the European agricultural machinery association, welcomes the new proposal for a regulation on EU type-approvals obtained from the UK type-approval authority (COM(2018)397). It is of great importance for the agricultural machinery industry that manufacturers can continue to produce and supply agricultural vehicles after the withdrawal of the UK from the EU. Therefore, the regulation is supported and to further improve it CEMA suggests some amendments that are needed to smoothen the transition and provide legal certainty to agricultural machinery manufacturers.

Swift adoption needed for sufficient lead-time and legal certainty

One of the most important aspects of this regulation is that it should enter into force as soon as possible. This is not only important for agricultural vehicles such as tractors and towed machinery that were EU type-approved by the UK type-approval organisation, but also for all agricultural vehicles components (such as engines and mechanical couplings) that are frequently type-approved in the UK. If the entry into force of the regulation is too close to the withdrawal date this can severely hit the production process and disrupt complex supply chains. For example, the EU type-approval of a tractor with only UK type-approved engines will cease to be valid after the withdrawal date in case of 'hard Brexit'. This legislation would first require the new type-approval of the engine and only afterwards enable the EU type-approval of the tractor to be renewed. This is a time consuming process that requires sufficient lead time for the full procedure. CEMA considers that a minimum lead time of 9 months would be feasible, but unfortunately even a swift adoption would give much less in case of 'hard Brexit'. This is why a ratified agreement is anyhow of outmost importance for the agricultural machinery sector, particularly considering the implementation of Stage V engine emission requirements in the coming years.

Allow for smooth transition for tractor production with UK type-approved components

Many tractors have components such as engines that have an Union type-approval given by the UK type-approval authority. Considering the supply chain of the tractor manufacturers and the relatively short lead time, many of these components will be still in the supply chain on 30 March 2019. In absence of a ratified agreement, if it is not possible to obtain a 'converted' Union type-approval for these components, these cannot be used anymore for the production of tractors for the EU market, even though they are technically identical to those under a converted component

approval. Taking into account the current uncertainty about the situation after 30 March 2019 it is important to ensure the possibility to obtain a Union type-approval for these components already in the supply chain. Additionally, for components already –and legally- placed on the market and in the supply chain on the basis of the UK approval, the placing on the market, registration and entry into service of the vehicles fitted with these components should be allowed even after the day Union law ceases to apply to the UK.

Therefore, CEMA suggest an amendment to allow a smooth transition for tractor production with UK type-approved components.

Clear identification of when conversion to Union type-approval is required

A number of exemptions such as replacement engines or transition engines are foreseen by existing EU legislation and applicable also to agricultural machinery and tractors. When new requirements become applicable for the placing on the market, these type-approvals become invalid, but engines and machines may be placed on the market as part of an exemption set out in relevant EU legislation. A valid type-approval is therefore not always necessary for the purpose of placing on the market under these strict provisions. To avoid problems with respect to interpretation and application, legal certainty is fundamental. It is therefore necessary to ensure that the proposed regulation sets out clearly the cases when a conversion to a Union type-approval is required, and when it is not required because of specific exemptions, especially when that approval already became invalid before Union law ceased to apply in and to the UK. For the same reason, and for all kind of vehicles, the conversion should not be required for End-of-Series Vehicles, granting their continued placing on the market and/or registration.

CEMA proposes a new recital and a new article to deal with this crucial issue.

Only repetition of tests when serious concerns are demonstrated

One of the essential aspects is the acceptance of test reports from UK technical services by EU type-approval authorities. CEMA supports this provision in article 5 of the draft legislation. However, paragraph 3 indicates that the Union type-approval authority may request the repetition of these tests. CEMA is convinced that the repetition of these tests shall only be allowed if there are serious concerns and supporting evidence regarding the reliability of the test reports from the UK technical service. Regulation 167/2013 includes in chapter XVI specific obligations on both Member States and designated Technical Services side to safeguard that compliance testing and reporting can be performed with “the highest degree of professional integrity and the requisite technical competence in the specific field ...”.

Through the process of granting EU type approvals, the UK have demonstrated that the tests and their reporting were done under consideration of the requirements set forth in Chapter XVI of Reg. 167/2013. It is therefore unnecessary to repeat these tests unless it is demonstrated that there are serious concerns and justified grounds. This avoided repetition of tests saves precious time and reduces the burden on manufacturers. The unneeded repetition of tests could on the contrary generate significant cost, unlevel the playing field, undermine the production and placing

on the Union market of affected products and create artificial barriers to trade. Therefore, CEMA proposes amendments to article 5 (3).

Recognition of markings of engines already in the supply chain

The non-road mobile machinery and agricultural tractor engine emission regulations require that the engine is marked with the type-approval number at the time of production, which may be months or years prior to placing on the market. Consequently, where a new Union approval is obtained, even if the manufacturer immediately starts marking all new production with the new type-approval number, there will be a substantial amount of stock already produced and shipped for installation in the non-road mobile machinery, that will be marked with the prior UK approval number rather than the new Union approval number. It is impractical to locate and re-label already produced stock and consequently the prior UK approval number should be recognised as equivalent to the new Union approval number. The proposed amendment to Article 5(4) is intended to provide such recognition.

Obligations after the placing on the market of a product

Art. 6 notes that Type Approval Authority (TAA) obligations do not end with the certification procedure and continue after the placing on the market of the product. They include RMI (Repair & Maintenance Information), in service conformity and recalls. Art. 6 appears to indicate that, while doing the conversion of affected approvals, manufacturers have also the duty to find a Union Approval Authority available to take over the obligations of former UK Authority with regard to approvals already invalid and granted by UK as of January 2008. The principles behind art. 6 are understood and agreed by the agricultural machinery industry. However, it is necessary to clarify the requirements & obligations related to art. 6, both for manufacturers and TAA. Therefore CEMA proposes an amendment also to article 6.

Level playing field expected

CEMA strongly believes that the quality of the future EU-UK relationship will be shaped by the ability of both parties to trust each other and quickly find agreement on technical files like type-approval. CEMA therefore fully expects that the UK government will swiftly put forward and drive through a proposal ensuring reciprocity and a level-playing field. Under no circumstances should technical files with legal implications such as type-approval be taken hostage of political negotiations.

Conclusion

CEMA supports this new regulation as it is of major importance for the agricultural machinery industry. For its success, the entry into force should be as soon as possible and allowing for a sufficient lead time before the UK withdrawal date. Still, CEMA has some relevant proposals for improvement regarding.

1. Clear identification of when conversion to Union type-approval is required and when not, particularly ensuring the continued placing on the market in the case of approvals already invalid (e.g. End-of-Series, exemptions & transitional provisions).
2. A transitional solution for products under Reg. (EU) 167/2013 and related EU regulations fitted with approved components (e.g. under Regulation (EU) 2016/1628) already in the supply chain.
3. Recognition of current and old (UK) “e11” markings of products already in the supply chain.
4. Avoiding unnecessary re-testing during the ‘conversion’ process.
5. Clarifications of art. 6 on the obligations after product placing on the market.

CEMA calls on the European Parliament and Council to make these amendments without delaying the process.

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***CEMA** is the European association representing the agricultural machinery industry. In the agricultural machinery sector, there are some 4,500 manufacturers, that generated a turnover of around €26 billion in 2014. 135,000 people work in this sector and a further 12, 000 people work in distribution and maintenance. The companies are mainly small and medium-sized manufacturers. The sector covers around 450 different machine types. www.cema-agri.org*