

Paris-la-Défense, the 5th of November 2018

POSITION PAPER

« SUBSTANTIAL MODIFICATION » OF MACHINERY

Purpose of this document

This document sets out CISMA position about the term « substantial modification » as it is used in the **MDG**⁽¹⁾. Indeed, as this term is not defined in **MDG**, there is a room for interpretation of this notion meanwhile MDG is intended to give clear explanations on how to understand and implement the **MD**⁽²⁾. This document identifies the related concerns and issues with this notion and gives CISMA view on how to best deal with this term, taking into consideration :

- relevant European legal acts i.e. **MD** and the User's legislations (**UWED**⁽³⁾ and **framework Directive 89/391/EEC**)
- source of this term that was already bounded in a **previous version of MDG**⁽⁴⁾
- practices of our members considering refurbishment, retrofitting and remanufacturing operations

CISMA concerns about the term « substantial modification » in MDG

- While this term is crucial to make a clear boundary between two legal acts (MD and UWED), there is **no European harmonised definition of this term**
- Without a clear definition of this term, it may be interpreted in different ways, while the purpose and added value of MDG is to give a clear explanation.
- **Any vague text proposal of this notion would create the risk to assimilate a modification to a substantial modification** with at least the following consequences:
 - Creation of a **legal issue between MD and UWED**, having in mind that the term « *modification* » is a legal term used in UWED
 - Application of MD to machinery in service would result also in a **loss of credibility for CE marking** as it was already highlighted in a **previous version of MDG**⁽⁴⁾
 - **retrofitting/remanufacturing operations made by OEM** on machinery in service or second-hand machinery could be considered as substantial ones and finally **not be possible anymore**, because of the cost related to the full application of MD in force at the date of the modification

⁽¹⁾ Machinery Directive Guidelines ⁽²⁾ Machinery Directive ⁽³⁾ Use of Work Equipment Directive

⁽⁴⁾ Annex « legal status of second-hand and reconditioned machinery » in EU COM guidelines titled « Comments on Directives 98/37/EC »



CISMA position

We don't support any vague text proposal that would increase uncertainties about the interpretation of the term « substantial modification » and would create confusion between two legal acts (User's legislation and MD).

We would like to underline the fact that the term « *substantial modification* » in current version of MDG doesn't come from anywhere. It relates to a specific case which has already been investigated in the past (with the support of some jurists), in a previous version of **MDG**⁽⁴⁾. Indeed, some boundaries had already been drawn to describe the limits of the specific case related to « *rebuilt machinery* ». The terminology in MDG has changed from « *rebuilt machinery* » to « *substantial modification* », but the spirit is the same.

We are used to discuss this matter in our association since a long time and according to our feedback from the field, such « *rebuilding* » operations shall not be confused with refurbishing, retrofitting or remanufacturing operations because those last ones don't imply the compliance to MD in force at the date of the change made on the machinery in service (e.g. no new CE marking even for the purpose of remanufacturing operations).

On the contrary, we consider that a « *substantial modification* » is an exceptional case related to a real « *transformation* » of a machinery in service. By the way, this term « *transformation* » is also used in current version of MDG, as a synonymous of « *substantial modification* »

For all above reasons, we believe that the use of the term « transformation » would be more self-explanatory than the term « substantial modification ». Moreover, this would avoid any confusion with modifications which are operations covered by the User's legislation (i.e. UWED).

We warmly welcome the initiative of the European Commission to develop an explanatory text of this notion in MDG and we fully subscribe with the idea that a combination of a design change with a change of the specific application would reflect well the spirit of the term « transformation ».

CISMA (French Association of equipment manufacturers of construction, infrastructure, steel and handling equipment industries) gathers 200 companies that employ about 32 000 people in France. Exporting 54% of their sales amounts to ca. 8,8 billion euros. Main actions of CISMA consist in promoting the sector and providing members with economics and statistical figures. The association is also active in influencing the regulatory and technical environment at French and European level within CECE (Committee for European Construction Equipment) and FEM (European Materials handling Federation).