



What do you risk
when you use, buy or sell
a non-compliant
construction machine?

Introduction



Construction equipment made available on the EU market must comply with the relevant EU-legislation and meet all valid safety and environmental requirements. Machinery which does not fulfill these requirements is non-compliant and is not allowed to be placed on the EU/ market.

The sale, use and purchase of non-compliant construction equipment in the territory of the EU remains a major problem for the European construction equipment industry. It is also a serious problem for those dealers and construction companies which are caught when using, selling or buying such equipment. This document outlines the consequences in terms of reputation, business and concrete liabilities that companies may have to face when acting illegally. This paper may be used as a mere indication and provides you with a guideline for the analysis of risks and requirements you might run into if non-compliant machinery is produced, sold or used on the European market. It is not intended to be exhaustive, nor an exact interpretation of the existing legal requirements.

CECE as the recognized organisation representing and promoting European construction equipment manufacturers and related industries, calls upon all dealers and construction companies & federations to work together in order to rid the EU of non-compliant construction equipment.

As a European economic operator, you need to be aware that selling, importing or using a machine (whether new or used) that is not compliant and which was not correctly CE-marked when placed on the market may induce significant risks. This applies to all machines regardless of brands, except to used machines which were placed on the market before the first machinery directive 89/392/EEC entered into force in 1993. For such old machinery, the previous national rules may be applicable.

Consequences for sellers of non-compliant equipment:



- ⚠️ **Insurance coverage (either insurance of the machine or of the financial lease) will not be valid or at least reduced** in most cases: Insurance contracts mention that the machine has to comply with the European regulation in force. If the non-compliance of a machine is not disclosed to the insurance company, such behaviour may be seen as a breach of contract and therefore, may lead to the invalidity of the insurance contract and to indemnity.
- ⚠️ In case of accidents, the accident insurance may take regress to the fallible seller. That means, that an accident insurance may have to compensate an operator for personal injury he suffered, but due to the fact that non-compliant machinery was causing the damage, the accident insurance may take regress to the seller of the non-compliant machinery.
- ⚠️ You may be **exposed to retaliations from other dealers and/or manufacturers for unfair competition**, putting so far your business at risk. You might also **lose reputation** in case these violations become public.
- ⚠️ Your customer will have strong arguments to **refrain from finalizing the payment for the machine or even to refuse any payment**. Furthermore, the customer may claim for damages.
- ⚠️ In case the machine violates **health and safety regulation or environmental legislation**, the placing on the market of a non-compliant machine may lead to penalties, all the more when accidents happen. This may include **monetary fines** and/or **imprisonment** as determined by national laws.



Examples of measures and consequences:

- ⚠ The illegal machine shall be recalled or replaced, but fines can also be applied, for example: up to 20 000 € in Belgium, up to 5000 £ in the UK. Contravening these regulations constitutes an offence under both the UK manslaughter act and the Consumer Protection Act 1987, leading to up to a three-month prison sentence and an unlimited fine.
- ⚠ In case of an accident, a damaged person may claim for damages under the title of product liability according to Directive 85/374/EEC. If the damage is caused by a non-compliant machine, the manufacturer (or the importer) is at a very high risk that a court will esteem a non-compliant machine as defective and therefore, holds the manufacturer responsible for the damage.
- ⚠ Producing a declaration of conformity or CE marking for a non-compliant machine equals to the **falsification of a document**. When you sell a machine with a falsified declaration of conformity you are committing an offense.
- ⚠ **Warranty contractually** provided by the seller or importer of machinery cease in most cases as soon as a compliant machinery is modified to become non-compliant or when a non-compliant machine is not foreseen to be used in the EU but nevertheless imported.



Consequences for buyers and end-users of non-compliant equipment:



- ⚠ **Import and resale** of non-compliant machinery is **illegal within the EU**, because it can neither bear a legally valid CE-marking nor have a valid declaration of conformity.
- ⚠ As a user, would you operate a non-compliant machine, in case you are not sure if the brakes or the structure of the cabin are compliant?
- ⚠ Employers are obliged to provide safe work equipment to their employees. Employers using non-compliant machines are exposed to **liability under the national legislation transposing the EU-legislation concerning safety and health of workers at work**. National authorities have the right to impose sanctions on employers infringing their obligation to provide safe and compliant equipment to their employees. Such sanctions may be monetary penalties or even imprisonment (see for example the German law on labour protection („Arbeitsschutzgesetz“) and the law on occupational safety („Betriebssicherheitsverordnung“)).
- ⚠ Equipment insurance coverage may be invalid.
- ⚠ You may be excluded from **public tenders**.
- ⚠ You will **lose reputation** as a contractor whenever these violations become public.
- ⚠ You may face **additional costs** due to the higher consumption of energy and raw materials.
- ⚠ In case of accidents or of controls from the authorities, the machine may be blocked and withdrawn from the worksite, therefore causing a **delay in the work and financial losses**.
- ⚠ The non-compliant machine may not be compatible with standard spare parts and/or accessories available in the EU.
- ⚠ The manufacturer can deny **warranty** and decide not to supply **spare parts** when the imported machines are not produced with the intention to be used in the EU. The product may be not supported by the manufacturer due to the non-availability of Product Support Programs and/or correct spare parts/replacements.



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