



CONEBI's feedback to Proposal for a new Machinery Regulation

CONEBI, the Confederation of the European Bicycle Industry, representing the EU Bicycle, Pedal Assist E-Bike, Parts and Accessories Industries, would like to express its views on the proposal for a new EU Machinery Regulation. CONEBI has been a member of the Machinery Working Group for the past years as well as a member of the respective expert group since its first meeting in March 2021.

The EU Machinery Directive is of high importance to the EU Bicycle Industry as it **legislates the essential health and safety requirements relating to the design and construction of electrically power assisted cycles (EPACs)**. The fact that EPACs are within the scope of the Machinery Directive was officially acknowledged in the first Edition of the Guide to Application of the Machinery Directive 2006/42/EC of December 2009. Additionally, the widely-accepted standard EN15194:2017 – the first version of which had already been developed more than a decade ago by the Bicycle Industry and was published in 2009 – is harmonized under the Machinery Directive.

EPACs are therefore a well-established product with a proven track record. They are also described as *“cycles with pedal assistance which are equipped with an auxiliary electric motor having a maximum continuous rated power of less than or equal to 250 W, where the output of the motor is cut off when the cyclist stops pedalling and is otherwise progressively reduced and finally cut off before the vehicle speed reaches 25 km/h”*. In Annex I you can find an overview of an EPAC as well as its major parts and applicable legislation. Because of their similar characteristics to pedal cycles, EPACs are viewed by the European and national legislators as conventional bicycles and not as motor vehicles. Therefore EPACs do not fall within the scope of Regulation (EU) No 168/2013¹.

EPACs are playing an increasingly important role in the Bicycle Industry with more than 4.5 million e-bikes sold in 2020, representing about 20% of bicycles sold across Europe and reaching up to 50% in some countries. The opportunities for bicycles and EPACs were also highlighted in the European Commission's Sustainable and Smart Mobility Strategy that was published in December 2020. Thus, it is important that a robust and efficient legislative framework for the technical requirements of EPACs is in place at the EU level.

The EU Bicycle Industry has positive experiences with EPACs being regulated under the EU Machinery Directive with the harmonized standard EN15194:2017. Thanks to this framework the industry has consistently ensured that safe and sustainable products have been placed on the EU internal market.

Moreover, the harmonization of this standard ensures legal certainty. For this reason, additional standards are currently being developed within CEN TC 333 with a clear intention to be harmonised with

¹ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles

the Machinery Directive, for example FprEN 17404 for EPAC mountain bikes as well as an EN standard for carrier cycles (commonly known as cargo bikes).

Therefore, CONEBI was surprised to see that the **European Commission wishes to exclude EPACs from the scope of the new Machinery Regulation**, particularly because discussions in previous meetings of the Machinery Working Group focused on only excluding the road circulation risks from the scope of the Regulation and not the vehicle itself. It is unclear why the EU Commission decided to exclude EPACs from the scope at short notice and what this decision was based on.

Moreover, if **road circulation risks** are the key consideration, CONEBI would welcome clarity on exactly what the EU Commission means by “road circulation risks”. If this refers to technical aspects such as braking, lighting and steering systems, then these aspects are already fully taken into consideration in the harmonized standard EN15194:2017. For road circulation risks regarding lighting, the harmonized standard already refers to national requirements, because lighting regulations are mandated at the national level. If “road circulation risks” refers to the use of the vehicle on the road, CONEBI fully agrees that this should not be part of a technical legislation such as the new Machinery Regulation.

Completely excluding EPACs from the scope of the new Machinery Regulation will create uncertainty for the industry and for the ongoing standardization work that aims to put safe products on the market. CONEBI acknowledges that the Machinery Directive was not designed for EPACs or other road vehicles but would like to stress that at this point there is no other more specific legislation under which EPACs may fall.

When asked about the potential future legislative framework for EPACs during the Machinery Expert Group meeting in March 2021, the European Commission officials pointed towards the General Product Safety Directive (GPSD) or dedicated personal mobility devices (PMD) legislation as alternatives. However, CONEBI believes that currently neither of these options is better suited for EPACs than the Machinery Regulation.

The **GPSD** is a so-called safety net legislation and covers all products for which no other, more specific legislation exists. Moreover, the GPSD is not a CE marking Directive. Therefore, placing EPACs under the scope of the GPSD would not at all solve the problems explained in the European Commission’s impact assessment, namely to address the risks related to the circulation on the road.

In addition, this would also permit manufacturers to place a product on the market based on requirements that are not specifically targeted to the product. This could make it easier for EPACs that provide less safety to be placed on the internal market. Last but not least, the GPSD is also currently being revised, adding further uncertainty.

The other alternative, a **dedicated legislative framework for PMDs**, where the risks related to the vehicle’s circulation on the road could also be addressed, is not yet in place. It is unknown when the European Commission will present a proposal and therefore also by when such legislation may enter into force. Thus, at present this option is not yet a viable one and as such cannot be counted upon as a legally certain, feasible alternative to the Machinery Regulation for the immediate future.

For any potential future PMD legislation CONEBI would like to point out that it is important that such a technical framework differentiates between various types of PMDs. In particular, it should separate electric assist EPACs from purely electrically driven vehicles such as e-steps (e-scooters), hoverboards, mono wheels etc. The separate EPAC category has been clearly defined in Europe for more than 20 years.²

² see Article 1.1.(h) of [Directive 2002/24/EC](#)

It is also important that any future PMD legislative framework allows manufacturers to self-certify their products based on harmonized standards dedicated to the different types of PMDs, as is currently the case for EPACs with the Machinery Directive.

Therefore, CONEBI calls on the European Commission to clarify the scope of the new Machinery Regulation, in particular Art. 2.2(e), to state that EPACs can stay within the scope of the new Machinery Regulation until a more EU specific framework based on harmonized standards is in place. This could, for example, be something similar to the framework for PMDs described above, and the bicycle industry is open to discuss this in further detail with EU legislators as a long-term solution. Meanwhile, adapting the scope of the new Machinery Regulation will ensure a safe harbour for EPACs.

Looking at the wording of the scope exclusions, CONEBI would also like to highlight a lack of legal clarity. While the intention of the Commission seems to be to exclude systems, components, separate technical units, parts, and equipment designed and constructed for vehicles, which have as their only objective the transport of goods or persons, the wording in Art. 2.2(e) does not reflect that. Art. 2.2(e) states that *'machinery mounted on those vehicles'* falls within the scope of the Machinery Regulation, and therefore legal uncertainty is introduced for partly completed machinery i.e. for drive units of EPACs. Therefore CONEBI requests that the wording be clarified, so that both EPACs and their partly completed machinery (i.e. drive units) are either included or excluded from the scope.

Last but not least, looking at the work that went into preparing the proposal for a new regulation, a wide variety of aspects were taken into consideration and opportunities were given to stakeholders to comment on these. However, the decision to exclude transport vehicles from the scope seems to have occurred very close to the publication date and was stated for the first time publicly during the Machinery Expert Group on March 23rd 2021. Neither the inception impact assessment nor the impact assessment show due diligence in regards to the intention to exclude transport vehicles from the scope. In addition, CONEBI would like to highlight that the exclusion of vehicles from the Machinery Regulation was also not mentioned in the EU Sustainable and Smart Mobility Strategy published in December 2020. This raises concerns about the transparency of the decision-making process and in turn has made it impossible for the Bicycle Industry to assess the impact, give considered feedback and flag important technical aspects at an earlier stage.

In the **inception impact assessment** of January 2019 a lack of legal clarity in the scope and definitions was mentioned. However, only reference to 'partly completed machinery' and the Low Voltage Directive was made, whereas vehicles were not mentioned at all. The same occurred in the **public consultation** that took place in the summer of 2019 and in which CONEBI participated.

The **impact assessment** that was published alongside the proposal does not analyse the exclusion of vehicles in detail either, and a relevant cost benefit analysis is missing. Furthermore, the impact assessment states that according to the SME test, no specific business sectors were identified as being particularly or disproportionately affected by the policy options. CONEBI would like to question this statement; the European Bicycle Industry consists of over 1000 SMEs which are now faced with major uncertainty about how product legislation will apply to EPACs in the future, and whether compliance with the specifically designed standard EN15194:2017 will still be sufficient. Moreover, we would like to point out that at no stage of conducting the impact assessment was CONEBI approached to contribute with its feedback, despite being a member of the European Commission's Machinery Working/Expert Group.

Above all, the European Bicycle Industry wants to ensure legal certainty for the producers of EPACs and that safe products continue to be placed on the market. In addition, we should not forget the important contributions cycling as a healthy, environmentally friendly, accessible, inclusive and resilient transport

mode can make to achieving the EU's goals of sustainable mobility. Until a more specific framework based on well-established, harmonized standards is in place we therefore deem it best to keep EPACs within the scope of the new Machinery Regulation. To allow for a smooth transition, once a specific framework is in place, the industry would require a transition period of several years to ensure continued harmonization of relevant standards.

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Annex I: Overview of an EPAC and its main parts

