Position Paper of the VDW (German Machine Tool Builders' Association) on the EU Cyber Resilience Act (CRA)

Application of the CRA to Existing Machinery / Assessment of Substantial Modifications

Maintenance and retrofitting of machinery in the field are fundamental to the survival of the mechanical engineering industry in Europe – Correct application of Art. 22 of the CRA is essential!

The mechanical engineering sector, including the machine tools industry, represents what sets European manufacturers apart globally: robust, durable machines that operate reliably for decades and can be flexibly modernized. It is precisely this capacity for sustainable further development that clearly distinguishes us from many non-European suppliers, whose products are often designed for short-term usage cycles. This European promise of quality is a key reason why operators are prepared to invest in high-performance systems, thereby safeguarding Europe's industrial strength. Digitalization has been driving our industry forward for years, and we expressly support the Cyber Resilience Act (CRA). At the same time, we caution against a misinterpretation of the legal consequences of a 'substantial modification'. This could lead to operators more frequently purchasing brand-new machines from non-EU countries instead of modernizing existing European plant safely and efficiently. This would not only weaken the competitiveness of our industry but also undermine the European principle of longevity and sustainability.

If the modification of a product by the original manufacturer meets the criteria of the definition of a 'substantial modification', the legal consequences under Article 22 of the CRA do not apply, as the original manufacturer is exempt from the aforementioned legal consequences under these provisions. It is of utmost importance that this literal provision of the CRA is interpreted correctly!

A direct comparison of the provisions of Article 22 of the CRA with those of Article 18 of the EU Regulation Machinery makes it clear that, under the CRA, the original manufacturer is exempt from the legal consequences of a substantial modification by virtue of the following wording.

> ***Article 22 (CRA) [1]***
> ***Other cases in which obligations of manufacturers apply***
>
> *1. A natural or legal person,* ***other than the manufacturer****, the importer or the distributor, that carries out a substantial modification of a product with digital elements […] shall be considered to be a manufacturer for the purposes of this Regulation.*
>
> ***Article 18 (EU Regulation Machinery) [2]***
> ***Other cases in which obligations of manufacturers apply***
>
> *A natural or legal person that carries out a substantial modification of machinery or a related product shall be considered to be a manufacturer for the purposes of this Regulation […]*

Unlike under the EU Regulation Machinery, under the provisions of the CRA, **the manufacturer is obliged, during the support period, to continue the conformity assessment procedure** in order to be able to develop and implement the support measures.

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The purpose of these provisions is to maintain the product's resilience and, thereby, the CRA's protection objectives throughout its entire expected service life and, consequently, throughout the support period. Accordingly, a modification carried out by the original manufacturer has no negative impact whatsoever on the fulfilment of the CRA's protection objectives. This analysis shows that the exclusion of the original manufacturer from the legal consequences of a substantial modification under Article 22 was a deliberate choice.

Furthermore, the CRA's criteria for substantial modification under Article 3(30) do not follow the risk-based approach of the Blue Guide, as adopted, for example, in Article 3(16) of the EU Regulation Machinery. Rather, Article 3(30) of the CRA focuses on conformity with the essential requirements of Annex I, Part I, and on a change to the intended purpose. Previous legal practice regarding the application of the criteria for substantial modification is not appropriate under the provisions of the CRA.

If the above-mentioned exception relating to the original manufacturer were not applied, this would mean that products which also fall within the scope of other CE marking regulations would have to undergo the conformity assessment procedures set out in those regulations. When carrying out these conformity assessment procedures, the product would have to be brought up to the state of the art in order to meet the essential requirements of all other applicable CE marking regulations. In the case of machinery, this concerns all protective measures which must comply with the state of the art in order to meet the essential health and safety requirements of Annex III to the EU Regulation Machinery. In the case of regulations concerning the environmental requirements of products, such as those under RoHS or REACH, it is often the case that CE marking is no longer possible, or that the product cannot be placed on the market again, as the requirements cannot be met.

In view of the far-reaching consequences for manufacturers, the provisions of Article 22 concerning legal consequences must be carefully analyzed in order to take account of the legislator's objectives for this provision. Excluding the original manufacturer from the legal consequences of substantial modifications does not result in any disadvantages, as the CRA's protection objectives are achieved, in particular through the obligation to continue the conformity assessment procedure during the support period. The obligations during the support period create a substitute that is equivalent to the legal consequences arising from a substantial change.

Germany, Frankfurt am Main, July 2026

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[1] REGULATION (EU) 2024/2847
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R2847

[2] REGULATION (EU) 2023/1230
https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32023R1230

About the VDW (German Machine Tool Builders' Association)

The German Machine Tools Builders Association (Verein Deutscher Werkzeugmaschinenfabriken e.V., VDW) is the voice of the German machine tool industry. Its members manufacture machine tools for metalworking. The association represents around 100, mostly medium-sized, industrial companies that produce around €15 billion worth of machines and services annually in Germany. The industry operates worldwide, exporting more than 70 percent of its products and producing another €4 billion of machines abroad. Its main competitors in terms of production and exports are China, Japan, the United States, Italy, Switzerland, South Korea, and Taiwan. The machines are purchased and operated by companies in the manufacturing sector that process metal. The client sectors include the mechanical engineering industry, the automotive industry and its suppliers, and the aerospace, medical technology, electrical and electronics industries. Customers include industrial companies of all sizes, as well as contract manufacturers and craft metalworking businesses.

Machine tools (MTs) are at the heart of all industrial production. All kinds of machines, systems, and products require machine tools – either for the entire manufacturing process, or to produce individual parts. The industry's core competence lies in building machines that can process steel, iron, and non-ferrous materials at high productivity, reliability and quality levels, and with maximum precision. Since the introduction of the first computer-aided control systems (CNC controls) in the 1970s, digitalization has been of supreme importance to the industry. Today, metalworking is characterized by digitalized processes and value chains.