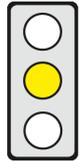


KEY ISSUES

Objective of the Regulation: EU regulations on the type-approval of motor vehicles will be implemented more effectively and the market surveillance of motor vehicles already in service will be improved.

Affected parties: Manufacturers, importers, distributors and users of motor vehicles, testing centres



Pro: (1) Compliance verification by the Commission may help to improve detection of infringements of the type-approval regulations EU wide.

(2) The ability to test vehicles which have already been registered increases the likelihood that vehicles currently in service will comply with the type-approval requirements.

Contra: (1) Market surveillance increases costs. It is therefore necessary to ensure that application of the Regulation does not give rise to any inefficient duplication of structures.

(2) Government-set national fees for type approval obstruct competition between the testing centres.

CONTENT

Title

Proposal COM(2016) 31 of 27 January 2016 for a **Regulation** of the European Parliament and of the Council on the **approval and market surveillance of motor vehicles** and their trailers, and of systems, components and separate technical units intended for such vehicles

Brief Summary

► Context and objectives

- Motor vehicles and their trailers ("vehicles", Art. 3 No. 3, 10, 11) require an "EU-type-approval" before they are permitted to be sold for the first time ("placing on the market", Art. 3 No. 15) and used in road transport ("entry into service", Art. 3 No. 17).
- EU type-approval (Art. 3 No. 22) will facilitate the free movement of vehicles EU wide and ensure transport safety as well as protection for health and the environment (Recitals 6 and 7).
 - It certifies that a type of motor vehicle (Art. 2 (1)–(3), Art. 3 No. 35, Art. 4, Annex II Part B) complies with EU-wide applicable type-approval requirements (Art. 5 (1) in conjunction with Annex IV).
 - It is issued by national approval authorities (Art. 3 No. 12) and is valid EU-wide (Art. 6 (3)).
 - Testing centres ("technical services", Art. 3 No. 36; e.g. TÜV, DEKRA), appointed by the approval authorities, test whether the technical requirements have been met (Art. 28 (1)).
- The Regulation applies to manufacturers, importers and distributors ("economic operators", Art. 3 No. 18).
- The currently applicable Type-approval Directive (2007/46/EC) will be replaced by this Directive in order to
 - implement EU legislation more uniformly and effectively,
 - make the testing centres independent of the vehicle manufacturers,
 - improve the market surveillance of vehicles which are already in service and
 - extend the Commission's supervision rights and powers of intervention.

► EU type approval procedure

- The manufacturers must provide the approval authority with the vehicles (Art. 28 (2)) and all data (Art. 22 (1), Annexes I and III) which are necessary for testing.
- The approval authority grants an EU type-approval where (Art. 24 (2), (3); Annexes V, XVII)
 - the vehicle type complies with all type-approval requirements and
 - the manufacturer has taken the "necessary measures" to ensure that the manufactured vehicles are in conformity with the approved vehicle type (Art. 29 (1), Annex X).
- The approval authority will not grant EU type-approval where a type of vehicle presents a "serious risk" to road safety, health or the environment (Art. 24 (5)).
- An EU type-approval is valid for 5 years (Art. 33 (1)).

► Testing centres ("technical services")

- Testing centres require approval ("designation") by the authority responsible for type-approval in the Member State of the establishment (Art. 3 (12), Art. 71 (1)).
- Prior to the designation, an assessment is carried out
 - in accordance with an assessment check-list (Art. 77 (1) in conjunction with Annex V Appendix 2);
 - on-site by an "assessment team" made up of representatives from approval authorities from at least two further Member States and the Commission (Art. 77 (1)–(3)).

- The designation is limited to a maximum of 5 years (Art. 77 (11)).
- Testing centres must be independent and "not involved" in the development or manufacture of a vehicle which they assess (Art. 73 (2)).
- The approval authority must "continuously" monitor the testing centres (Art. 80 (1)).
- Where an approval authority finds that a testing centre is failing to comply with the requirements,
 - it will restrict, suspend or withdraw the designation (Art. 79 (1)) and
 - may suspend or withdraw certificates which have been "unduly" issued (Art. 79 (3)).
- ▶ **Placing vehicles on the market and their entry into service**
 - Manufacturers are responsible for ensuring that
 - the vehicles that they manufacture, place on the market or enter into service have been manufactured and approved in accordance with the type-approval requirements (Art. 11 (1)) and
 - production of the vehicles conforms to the approved vehicle type (Art. 11 (5)).
 - When it comes to placing vehicles on the market and entering them into service, Member States may only
 - permit this where the vehicles comply with the type-approval requirements (Art. 6 (2));
 - prohibit or restrict this where vehicles present a "serious risk" to road safety, health or the environment (Art. 6 (3), Art. 52).
- ▶ **Market surveillance**
 - National market surveillance authorities must ensure that vehicles that are placed on the market conform to the type-approval requirements and do not present a risk to road safety, health or the environment (Art. 3 No. 2 and No. 13).
 - For this purpose they perform regular "documentary" checks and real-drive and laboratory tests on the vehicles (Art. 8 (1)).
 - In order to carry out the tests, they can enter the premises of economic operators, peruse documents and seize necessary samples of vehicles (Art. 6 (4) and (5); Art. 15 et seq. Market Surveillance Regulation (EC) No. 765/2008).
 - The Commission can "verify" whether "vehicles already made available on the market" conform to the type-approval requirements (Art. 9 (1)).
 - For this purpose, the Commission can carry out its own compliance verification inspections both on "new vehicles" and, subject to the agreement of the vehicle registration holder, on already "registered vehicles".
 - In order for the Commission to be able to carry out compliance verification inspections (Art. 9 (3) and (4))
 - Member States must provide the Commission with all type-approval data and
 - manufacturers must make public the data which is needed for the compliance verification inspection.
 - Where a vehicle does not comply with the type-approval requirements, the Commission can oblige the affected economic operator to bring the affected vehicles into compliance with those requirements, withdraw them from the market or recall them (Art. 9 (5)).
 - Where a vehicle does not conform to the approved type, is not in conformity with the Regulation or was approved on the basis of incorrect data, the approval authorities, market surveillance authorities or the Commission may (Art. 53 (1))
 - prohibit it from being placed on the market or put into service,
 - withdraw the vehicle from the market or recall it or
 - withdraw EU type-approval.
 - Member States must establish sanctions for infringements of the Regulation (Art. 89).
 - Where, during a compliance verification inspection, the Commission finds infringements of the Regulation, it can impose a fine of up to € 30,000 per non-compliant vehicle. The Commission may not impose a fine in addition to one already imposed by a Member State for the same infringement. (Art. 90 (1))
- ▶ **"Serious risk" to safety and the environment**
 - Where a market surveillance authority believes that a vehicle poses a serious risk to safety or health, it informs the competent approval authority without delay (Art. 49 (1)).
 - Where the approval authority establishes that the vehicle does not comply with the type-approval requirements, the economic operator concerned must take corrective measures (Art. 49 (2)).
 - If it fails to do so, the approval authority must (Art. 49 (5))
 - prohibit the vehicle from being placed on the market or put into service and/or
 - withdraw the vehicle from the market or recall it.
 - Where a Member State establishes that a vehicle, whilst complying with all type-approval requirements nevertheless poses a serious risk to transport safety, health or the environment, the affected economic operator must (Art. 52 (1))
 - ensure that the vehicle ceases to pose a risk, or
 - withdraw the vehicle from the market or recall it.

► Fees

- Member States must establish fees to cover the costs (Art. 30 (1) and (3))
 - of their type-approval and market surveillance activities and
 - the compliance verification inspections by the Commission.
- Fees are levied (Art. 30 (2))
 - on manufacturers who apply for an EU type-approval;
 - not by testing centres but directly by the Member States.

Main Changes to the Status Quo

- Until now, type-approval remained valid until production ceased. Now it is only valid for 5 years.
- New is the fact that manufacturers must make vehicles available for inspection.
- New is the fact that an approval authority may suspend or withdraw type-approvals where the testing centre fails to comply with the requirements.
- New is the fact that the Commission can carry out "compliance verification inspections".
- New is the fact that approval authorities, market surveillance authorities and the Commission can prohibit vehicles from being placed on the market or put into service take vehicles off the market or recall them and withdraw type-approval.
- New is the fact that Member States have to establish cost-covering fees.
- New is the fact that manufacturers have to bear the cost of market surveillance.

Statement on Subsidiarity by the Commission

Since an EU type-approval, granted by a national approval authority, applies EU wide, weaknesses in the application and enforcement of EU type-approval regulations by Member States could have a negative impact on the whole of the EU. EU action is necessary in order to ensure effective and "harmonised" application and enforcement of the EU type-approval provisions in the whole of the EU. (p. 5)

Policy Context

The Commission announced a revision of the Type-approval Directive (2007/46/EC) as early as 2013, aimed particularly at improving its implementation [see SWD(2013) 466]. Following the revelation in 2015, that Volkswagen AG manipulated emissions results, the Commission feels its plans are justified.

Legislative Procedure

27 January 2016 Adoption by the Commission

Open Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Internal Market, Industry, Entrepreneurship and SMEs
Committees of the European Parliament:	Internal Market and Consumer Protection (leading), Rapporteur Daniel Dalton (ECR Group, UK);
Federal Ministries:	Transport (leading)
Committees of the German Bundestag:	Transport (leading); EU-Affairs, Environment; Economic Affairs
Decision-making mode in the Council:	Qualified majority (rejection with 93 of 352 votes; Germany: 29 votes)

Formalities

Legislative competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

EU legislation on type-approval for vehicles is necessary, firstly, to ensure that vehicles comply in particular with EU requirements on safety and the environment. Secondly, they are essential to ensure that vehicles can be traded freely in the internal market. The planned market surveillance may ensure that vehicles in the road transport sector do in fact comply with the relevant requirements.

The proposal, that testing centres should not be "involved" in the development of the vehicle that they are testing, does make testing centres more independent of manufacturers but as an absolute ban it is unrealistic and may hamper innovation. Currently, testing centres are often involved in the development process early on

in order to ensure vehicle compliance at the manufacturing stage. This should continue to be possible in the future.

The **compliance verification checks carried out by the Commission** on "vehicles already made available on the market" **may help to improve detection of infringements of the type-approval regulations EU wide** because Member States may have differing levels of willingness to carry out market surveillance.

The additional ability to test vehicles which have already been registered increases the likelihood that vehicles comply with the type-approval requirements not only under "laboratory conditions" but also **when they are in actual use.**

Impact on Efficiency and Individual Freedom of Choice

On the one hand, **market surveillance**, both by national authorities and by the Commission, helps to uncover infringements of the rules. On the other hand, it **significantly increases costs**. At the same time the efficiency of the many new possibilities for testing and surveillance is doubtful. The Commission's proposal represents a maximum level of testing. Due to the costs to which it gives rise, however, this is not necessarily the optimum level. **It is therefore necessary to ensure that, when applying the Regulation, there is no superfluous and inefficient duplication of structures** at the level of the Member States and the EU.

Government-set national fees for type-approval activities can help to make testing more thorough because this allows testing centres to be independent of manufacturers and mitigates the conflict of interests between thorough testing and winning contracts. Such fees, however, **hamper competition between testing centres**. This results in the threat of rising vehicle prices because manufacturers will try to pass the higher testing costs on to the customer.

It is very unusual, both in other sectors in the EU and in other countries, such as the USA, for market surveillance costs to be borne wholesale by the respective suppliers. The Commission should therefore make it clear that manufacturers do not have to make their vehicles available to the testing authorities free of charge since this involves high costs whose total amount cannot be calculated.

The manufacturer's obligation to take on all the costs of market surveillance will lead to higher vehicle prices because they will pass on the costs to the consumer.

Impact on Growth and Employment

Higher costs for vehicle manufacturers tend to have a negative impact on growth and employment.

Impact on Europe as a Business Location

The proposal has a neutral impact on Europe as a business location because the measures also apply to vehicles imported from third countries.

Legal Assessment

Legislative Competency

Unproblematic. The EU is permitted to adopt regulations in order to remove barriers to the free movement of vehicles within the internal market (Art. 114 AEUV).

Subsidiarity

In view of the fact that EU type-approval is issued by the Member States and is valid EU wide, EU action is justified so that EU legislation can be applied and enforced uniformly and effectively.

Proportionality with respect to Member States

In order to apply and enforce EU type-approval legislation uniformly and effectively, it is proportionate to change from a Directive, which allows Member States scope for discretion on implementation, to a directly applicable Regulation.

Compatibility with EU Law in other respects

It would be disproportionate if – as the proposal suggests – the Commission were able to prohibit vehicles from being placed on the market or put into service, take vehicles off the market or recall them and withdraw type-approval in the case of every type of infringement. It should therefore be made clear that this will only be possible for infringements with relevance for safety or environmental protection.

Impact on German Law

The proposed Regulation, which makes implementation acts by the Member States superfluous, replaces the corresponding provisions of the German ordinance of 21 April 2009 to reform the law on granting EC type-approval for vehicles and their trailers as well as for systems, components and separate technical units intended for such vehicles.

Conclusion

Compliance verification by the Commission may help to improve detection of infringements of the type-approval regulations EU wide. The ability to test vehicles which have already been registered increases the likelihood that vehicles currently in service will comply with the type-approval requirements. Market surveillance increases costs. It is therefore necessary to ensure that application of the Regulation does not give rise to the inefficient duplication of structures. Government-set national fees for type approvals obstruct competition between testing centres.