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#### **NOTE**

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From:	Presidency
To:	Council
No. prev. doc.:	8646/17 ENT 109 MI 361 CODEC 684
No. Cion doc.:	5712/16 ENT 20 MI 45 CODEC 103
Subject:	Proposal for a Regulation of the European Parliament and 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 (First reading) - General approach

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#### **I. INTRODUCTION**

1. On 28 January 2016, the Commission transmitted the above-mentioned proposal for a Regulation to the European Parliament and to the Council.

2. The objective of this Regulation is to revise the legal framework for the type-approval of motor-vehicles and their trailers, which is set out in the Framework Directive 2007/46/EC of the European Parliament and of the Council. The revision needs to be seen against the background of new technologies available on the market and in the context of recent events concerning the irregularities of car emission data. The Commission proposal also addresses the flaws discovered in a "fitness check" of the current legislation, which the Commission carried out in 2013. Consequently, the proposal also tries to do away with possible differences in the interpretation and application of the legal provisions by national type-approval authorities and technical services.

The revision of the current legal framework has a strong link to the Real Driving Emissions (RDE) regulatory package, as the package also addresses, inter alia, the problem of car emission irregularities.

3. The proposed Regulation maintains the objective of Directive 2007/46/EC, namely to facilitate the free movement of motor vehicles and trailers in the internal market and applying the principle of mutual recognition, by laying down harmonised type-approval requirements. The aim is to achieve an adequate level of safety and environmental performance of motor vehicles and to address the main shortcomings identified in the existing type-approval system. Therefore, most elements from Directive 2007/46/EC are carried over in the proposed Regulation. Substantial changes have been introduced in the following areas:
- Strengthening of the quality of testing that allows a car to be placed on the market through the reinforcement of provisions concerning technical services;
  - Introduction of an effective market surveillance system to control the conformity of cars already available on the market, with the possibility for Member States and the Commission to carry out spot-checks on vehicles in order to detect non-compliance at an early stage;

- Reinforcement of the type-approval system with greater European oversight in the type-approval process, in particular through the establishment of a Forum for the exchange of information on enforcement, made up of representatives of national approval and market surveillance authorities.
4. The European Economic and Social Committee issued its opinion on 25 May 2016.
  5. In the European Parliament the main responsible committee is the Committee on the Internal Market and Consumer Protection (IMCO). Rapporteur is Mr Daniel Dalton (ECR-UK). IMCO voted its report on 9 February 2017. This vote was confirmed at the European Parliament Plenary Meeting of 4 April 2017.

## **II. WORK CONDUCTED WITHIN THE COUNCIL**

6. The examination of the proposal by the Working Party on Technical Harmonisation (Motor Vehicles) started in February 2016. 25 meetings of this Working Party were held on this proposal during the Dutch, Slovak and Maltese Presidencies.
7. The impact assessment accompanying this proposal was examined in detail on 9 and 21 March 2016, especially focusing on aspects for which delegations requested further clarifications. On the basis of answers to the checklist certain specific issues were also identified which required particular attention and an in-depth discussion.
8. At the Competitiveness Council on 28 November 2016, the Presidency presented an information note under "Other Business". This was followed by a political discussion and the presentation of a Progress Report at the Competitiveness Council on 20 February 2017.

9. There is general support of the Member States for the overall objectives of the proposal, i.e. to improve the framework governing the free movement of motor vehicles in the internal market by tackling weaknesses of the existing type-approval legal framework. All delegations agree that it is necessary to improve the harmonised implementation of the rules across the EU so as to reduce the possible differences in their interpretation and application by national type-approval authorities and technical services. They also generally consider that more effective market surveillance rules should apply to better detect non-compliance at an early stage.
10. In the course of discussions at working party level and based on the political exchange held at Council level, the Presidency compromise proposal has evolved considerably in the light of the concerns raised by Member States. Overall, the Working Party has examined the text with a view to clarifying and streamlining the proposed framework. A number of technical provisions have been amended and complemented where necessary, while several delegated acts proposed by the Commission have been turned into implementing acts.
11. The outcome of the European Parliament Plenary on 4 April 2017 was examined by the Working Party for the first time during its meeting on 27 April 2017. While several amendments may be acceptable as such or in spirit, the Working Party decided that more time was needed to carry out an in-depth examination of the EP amendments.
12. The Presidency compromise text as set out in document 8647/17 was discussed at the Permanent Representatives Committee (COREPER) meeting on 12 May 2017. From this examination it emerged that a majority of delegations can now accept the Presidency compromise, including a revised version of Article 90 on administrative fines. Against this background, the Chair concluded that the compromise would be submitted to the Competitiveness Council on 29 May 2017, with a view to reaching a general approach.

The revised Presidency compromise text as it stands following the COREPER on 12 May 2017, is set out in document 9272/17.

### III. MAIN POLITICAL ISSUES

13. The Presidency compromise text reflects the continuous efforts of the Presidency and Member States to find the right balance between the different interests and objectives. Hence, the Presidency considers this compromise text as a solid basis for reaching a general approach at the forthcoming Competitiveness Council on 29 May 2017. The Presidency compromise addresses the main concerns raised by Member States by modifying the Commission's proposal as follows:

**a) Market surveillance rules (Article 8 and Recitals 23, 23a, 23b, 23c and 24)**

The Presidency compromise proposal on Article 8 strikes a balance between a strengthening of the market surveillance rules through the imposition of a minimum number of checks on vehicles each year, on the one hand, and the preservation of sufficient flexibility for smaller Member States which keep the possibility to request other Member States to carry out the required tests on their behalf, on the other hand.

**b) Compliance verification through the Commission (Article 9)**

The Presidency compromise proposal provides for the purpose of compliance verification that the Commission maintains the possibility to organise and carry out its own tests and inspections of vehicles, systems, components and separate technical units made available on the market, in order to react immediately to irregularities, if necessary. Hence, the Presidency text increases the level of independence in the compliance verification.

**c) Forum for Exchange of Information on Enforcement (Article 10 and recital 19)**

The Commission proposal provides for the creation of a Forum for Exchange of Information on Enforcement. The Presidency text builds on the Commission proposal, sets out that the Forum should have an advisory role and specifies further the list of tasks to be carried out by the Forum.

**d) National fee structure for type approvals and market surveillance rules (Article 30)**

The Commission proposal includes an obligation for Member States to establish a national fee structure to cover the costs for their type-approval and market surveillance activities. The Presidency compromise removes this obligation and clarifies further that there is an obligation for Member States to finance market surveillance activities but that the choice of means to be used to that purpose should be left to Member States.

**e) Validity of the type-approval certificate (Article 33, paragraph 1)**

The Commission proposes to limit the validity of the type-approval certificate to 5 years. A very large majority of delegations question the added-value of such a limitation and insist on maintaining the existing regime with no limitation of the validity. Against this background, the respective provision was removed from the Presidency compromise text.

**f) Peer-evaluation of type approval authorities (Article 71) and assessment of technical services (Article 77 and recital 18)**

The Commission proposal introduces the concept of peer-evaluations of type-approval authorities. Given the fact that Member States were divided between those that see it as a contribution to an increased uniform enforcement of the rules and those that reject it on grounds of unjustified administrative burden, the Presidency text strikes a delicate balance. It provides, therefore, that the type-approval authorities shall not be subject to peer-evaluation when they designate all their technical services on the basis of accreditation to internationally recognised standards.

As far as technical services are concerned, the Presidency text proposes the involvement of the national accreditation bodies in the assessment of the technical services and the establishment of joint assessment teams. It offers a balanced approach by making this joint assessment compulsory only in relevant circumstances while allowing some exemptions for technical services carrying out national individual vehicle approvals and those only checking the correct installation of components on categories O<sub>1</sub> and O<sub>2</sub>.

**g) Administrative fines (Article 90 and Recital 42)**

The Commission proposal introduces administrative fines which the Commission may impose upon economic operators for infringing the Regulation as regards the non-compliance of vehicles, systems, components and separate technical units. Following the position taken by Member States at the Permanent Representatives Committee (COREPER) meeting on 12 May 2017, the Presidency has submitted a revised compromise on Article 90 which provides that the Commission may impose administrative fines in the cases where the Commission takes action to establish a corrective or restrictive measure at EU level. The revised text also clarifies that administrative fines cannot be imposed by the Commission if a Member State has already penalised or acquitted the economic operator for the same infringement. Finally, it includes an empowerment for implementing acts to lay down the necessary procedures as well as the principles for calculation and collection of fines, as requested by several delegations.

#### IV. CONCLUSION

14. The Presidency considers that the text, as set out in document 9272/17, represents a balanced and fair compromise between the views expressed by delegations. The Council is invited to agree on a general approach on this basis at the Competitiveness Council on 29 May 2017.
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