



Council of the
European Union

Brussels, 22 June 2022
(OR. en)

10559/22

ENT 87
MI 505
COMPET 530
IND 250
TRANS 432
DELECT 101

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	21 June 2022
To:	General Secretariat of the Council
No. Cion doc.:	C(2022) 3823 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 20.6.2022 amending Annexes I, II, IV and V to Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the technical requirements for vehicles produced in unlimited series, vehicles produced in small series, fully automated vehicles produced in small series and special purpose vehicles, and as regards software update

Delegations will find attached document C(2022) 3823 final.

Encl.: C(2022) 3823 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 20.6.2022

amending Annexes I, II, IV and V to Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the technical requirements for vehicles produced in unlimited series, vehicles produced in small series, fully automated vehicles produced in small series and special purpose vehicles, and as regards software update

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

This Regulation aims to set out the technical requirements to be applied for the purpose of EU type-approval of vehicles produced in small series and of special purpose vehicles with regard to the systems introduced by Regulation (EU) 2019/2144 of the European Parliament and of the Council and the delegated acts and implementing acts adopted pursuant to it.

In accordance with Article 41(5), the Commission is empowered to adopt delegated acts amending Appendix 1 of Part I to Annex II to set out the technical requirements for vehicle categories M, N and O and amending point 1 of Part A of Annex V accordingly as regards the quantitative annual limits.

In addition, recital (35) of Regulation (EU) 2019/2144 also calls on the Commission, when laying down the requirements for vehicles produced in small quantities to give appropriate consideration to vehicles or classes of vehicles where those requirements are incompatible with the use or design of such vehicles, or where the additional burden imposed by them is disproportionate.

Annex I to Regulation (EU) 2018/858 is amended to introduce two new categories of trailers and one additional type of bodywork to take account of technical progress and regulatory development¹. It is necessary, for the purpose of CO₂ certification, to distinguish trailers and semi-trailers from link trailers used in EMS combinations.

The table in Annex II, Part I to Regulation (EU) 2018/858, containing the list of regulatory acts for EU type-approval of vehicles produced in unlimited series, is brought up-to-date to take into account technological and regulatory developments by introducing and updating the references to Regulation (EU) 2019/2144 and the delegated acts and implementing acts adopted pursuant to it. In addition, the layout of the table is aligned to the format of the table in Annex II to Regulation (EU) 2019/2144 in view to provide legal clarity and simplification.

Annex II, Part I, Appendix 1 to Regulation (EU) 2018/858, containing the requirements for EU type-approval of vehicles produced in small series is amended and complemented to take into account Regulation (EU) 2019/2144 and the delegated acts and implementing acts adopted pursuant to it. In addition, the requirements for the EU whole vehicle type-approval of fully automated vehicles produced in small series are set out in a new Table 2 to that Appendix.

In order to allow for a progressive but quick introduction of autonomous driving technologies in line with the application dates of Regulation (EU) 2019/2144, as first stage, harmonised requirements are provided for the EU whole vehicle type approval of fully automated vehicles produced in small series. As next stage, the Commission will continue the work to further develop and adopt the necessary requirements for the EU whole vehicle type approval of fully automated vehicles produced in unlimited series (target date: July 2024). Member States' authorities may continue to apply alternative approval schemes (national small series and individual vehicle approvals) subject to the requirements under Articles 42 and 45 of Regulation (EU) 2018/858.

¹ Commission Implementing Regulation (EU) 2022/ ... implementing Regulation (EC) No 595/2009 of the European Parliament and of the Council as regards the performance of heavy-duty trailers with regard to their influence on the CO₂ emissions, fuel consumption, energy consumption and zero emission driving range of motor vehicles and amending Implementing Regulation (EU) 2020/683.

Subject to the provisions of Article 6(5) of Regulation 2018/858, this Regulation is without prejudice to the right of Member States to regulate the safety of operation of fully automated vehicles in traffic and the safety of operation of those vehicles in local transport services. To all aspects not covered by the harmonised requirements, national or local rules of the Member States apply.

The requirements for EU type-approval of special purpose vehicles in the tables in Annex II, Part III, Appendices 1 to 6 to Regulation (EU) 2018/858 are amended and complemented to take into account Regulation (EU) 2019/2144 and the delegated acts and implementing acts adopted pursuant to it.

The table in Annex II, Part II to Regulation (EU) 2018/858, containing the list of the UN Regulations recognised as an alternative to the Directives or Regulations referred to in Part I, is also updated.

Annex IV to Regulation (EU) 2018/858 contains requirements relating to the conformity of production. In accordance with Article 31(8), the Commission is empowered to adopt delegated acts in accordance with Article 82, amending Annex IV to take account of technological and regulatory developments. As software update should be considered as a part of the production process, Annex IV should be amended so as to provide for procedures and arrangements that manufacturers should be required to implement to ensure the conformity and security of software update.

Annexes I, II, IV and V to Regulation (EU) 2018/858 are therefore amended in accordance with the Annexes to this Regulation.

This Regulation also provides transitional period of 2 years for the application of the requirements for new vehicle types (7 July 2024) and additional 2 years for all new vehicles produced in small series and special purpose vehicles (7 July 2026).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In the preparation of this act, the Commission carried out appropriate consultations with Member State experts and stakeholders.

The draft delegated regulation was discussed with the Member States and stakeholders at the meetings of the Motor Vehicle Working Group held on 11 February, 21 April, 30 June and 7 October 2021.

The draft delegated regulation was in addition discussed at the meetings of the Member States Expert Group on Motor Vehicles on 18 November 2021, 15 December 2021 and 14 March 2022. After each meeting the Member States provided feedback and suggestions for revisions, which were taken into account. The final draft was endorsed by the Member States at the Member States Expert Group on Motor Vehicles meeting on 4 May 2022.

In accordance with the Better Regulation rules, the draft delegated act was published on the Better Regulation portal for a four-week feedback period between 22 March 2022 and 19 April 2022. In total, 18 stakeholders provided feedback. The Commission carefully considered and took note of all the comments received.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis of this delegated act is Articles 4(2), 5(3), 31(8) and 41(5) of Regulation (EU) 2018/858.

COMMISSION DELEGATED REGULATION (EU) .../...

of 20.6.2022

amending Annexes I, II, IV and V to Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the technical requirements for vehicles produced in unlimited series, vehicles produced in small series, fully automated vehicles produced in small series and special purpose vehicles, and as regards software update

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC², and in particular Article 4(2), Article 5(3), Article 31(8) and Article 41(5) thereof,

Whereas:

- (1) For the purpose of CO₂ certification, as provided in Commission Implementing Regulation (EU) 2022/ ... implementing Regulation (EC) No 595/2009 of the European Parliament and of the Council as regards the performance of heavy-duty trailers with regard to their influence on the CO₂ emissions, fuel consumption, energy consumption and zero emission driving range of motor vehicles³, it is necessary to distinguish trailers and semi-trailers from link trailers used in European Modular System (EMS) combinations. In order to take into account technical progress and regulatory developments, new types of bodywork should be added to the list of vehicles of category O as set out in Annex I, Part C, point 5, to Regulation (EU) 2018/858.
- (2) The table set out in Annex II, Part I, to Regulation (EU) 2018/858 contains the list of requirements for EU type-approval of vehicles produced in unlimited series, with a list of corresponding regulatory acts. It is necessary to take into account technological and regulatory developments by updating some of the references in that table setting out the requirements for vehicles, systems, components and separate technical units. In particular, reference to Regulation (EU) 2019/2144 of the European Parliament and of the Council⁴ should be introduced. Furthermore, for reasons of legal clarity and

² OJ L 151, 14.6.2018, p. 1

³ [OP please insert reference to OJ when published].

⁴ Regulation (EU) 2019/2144 of the European Parliament and of the Council of 27 November 2019 on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/858 of the European Parliament and of the Council and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009 of the European Parliament and of the Council and Commission Regulations (EC) No 631/2009, (EU) No 406/2010, (EU) No 672/2010, (EU) No 1003/2010, (EU) No 1005/2010, (EU) No 1008/2010, (EU) No 1009/2010, (EU) No 19/2011, (EU) No 109/2011, (EU) No 458/2011, (EU) No

simplification, it is appropriate to align the layout of that table to the one contained in Annex II to that Regulation.

- (3) The table set out in Annex II, Part I, Appendix 1, to Regulation (EU) 2018/858 contains the list of regulatory acts for EU type-approval of vehicles produced in small series pursuant to Article 41 of that Regulation. It is necessary to set out the technical requirements for the EU type-approval of such vehicles with respect to the systems provided for in Regulation (EU) 2019/2144 and in the delegated acts and implementing acts adopted pursuant to that Regulation. It is also necessary to set out the requirements that should apply to the EU whole-vehicle type approval of fully automated vehicles produced in small series to allow for a progressive but quick introduction of the technology in line with the application dates set out in Regulation (EU) 2019/2144. As next stage, the Commission will continue the work to further develop and adopt by July 2024 the necessary requirements for the EU whole vehicle type approval of fully automated vehicles produced in unlimited series.
- (4) The tables set out in Annex II, Part III, Appendices 1 to 6, to Regulation (EU) 2018/858 contain the specific requirements for EU type-approval of special purpose vehicles. Those requirements should be amended to take into account Regulation (EU) 2019/2144 and the delegated acts and implementing acts adopted pursuant to that Regulation.
- (5) When setting out the requirements for vehicles produced in small series or special purpose vehicles, it is necessary to take into account the cases where the requirements provided for vehicles produced in large series are incompatible with the use or design of such vehicles, or where the additional burden imposed by them is disproportionate. For this reason, sufficient lead time should be provided to manufacturers of vehicles produced in small series and of special purpose vehicles to implement the requirements laid down in this Regulation. In addition, those requirements should first apply from 7 July 2024 to new types of vehicles and from 7 July 2026 for all new vehicles.
- (6) In accordance with Annex I to Regulation (EU) 2019/2144, some of the UN Regulations listed in the table set out in Annex II, Part II, to Regulation (EU) 2018/858 should apply for the purposes of EU type-approval. Therefore, it is no longer necessary to recognise such UN Regulations as an alternative to the regulatory acts listed in Part I of that Annex and, consequently, they should be removed from that table.
- (7) On the basis of Council Decision (EU) 2020/848 of 16 June 2020⁵, the position taken on behalf of the European Union in the relevant Committees of the United Nations Economic Commission for Europe was in favour of UN Regulation No 156 – Uniform provisions concerning the approval of vehicles with regards to software update and software update management system [2021/388]⁶, with the view to apply it for the purposes of EU type-approval. It is necessary to add UN Regulation No 156 to the list of regulatory acts setting out the requirements for the EU whole-vehicle type-approval. As Annex IV to Regulation (EU) 2018/858 contains the requirements relating to arrangements to ensure conformity of production, it is appropriate to introduce a reference to UN Regulation No 156 in that Annex, as part of the procedures and

65/2012, (EU) No 130/2012, (EU) No 347/2012, (EU) No 351/2012, (EU) No 1230/2012 and (EU) 2015/166 (OJ L 325, 16.12.2019, p. 1).

⁵ OJ L 196, 19.6.2020, p. 5.

⁶ OJ L 82, 9.3.2021, p. 60

arrangements that manufacturers are to put in place to ensure the conformity and security of software update.

- (8) With technology development, motor vehicles are becoming increasingly complex using more electronic systems that require regular software update. Since such software update may affect the functioning of other approved systems and functionalities in the vehicles concerned, the manufacturers should establish a software update management system as part of their conformity of production process. Sufficient time should be provided to manufacturers to integrate such systems into the whole-vehicle type-approval and in particular in respect to new complete and new completed vehicles respectively.
- (9) For the purpose of the EU whole-vehicle type-approval of fully automated vehicles of categories M₂, M₃, N₂ and N₃, it is necessary to set out in Annex V to Regulation (EU) 2018/858 the quantitative annual limits that should apply to those vehicles.
- (10) Annexes I, II, IV and V to Regulation (EU) 2018/858 should therefore be amended in accordance with the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) 2018/858

Regulation (EU) 2018/858 is amended as follows:

- (1) Annex I is amended in accordance with Annex I to this Regulation;
- (2) Annex II is amended in accordance with Annex II to this Regulation;
- (3) Annex IV is amended in accordance with Annex III to this Regulation;
- (4) Annex V is amended in accordance with Annex IV to this Regulation.

Article 2
Transitional provisions

1. With effect from 6 July 2022, national authorities shall refuse to grant EU whole-vehicle type-approval or national type-approval to any new type of vehicles, where the manufacturer executes software updates that affect type approved characteristics of those vehicles after their registration, if such vehicles do not comply with Regulation (EU) 2018/858, as amended by Annex II to this Regulation with regard to software update.
2. With effect from 6 July 2022, national authorities shall not refuse to grant extension to EU whole-vehicle type-approval or national type-approval of vehicles, where the manufacturer executes software updates that affect type approved characteristics of those vehicles after their registration, if such vehicles comply with Regulation (EU) 2018/858, as amended by Annex II to this Regulation with regard to software update.
3. With effect from 7 July 2024, national authorities shall consider, on grounds relating to software update, certificates of conformity in respect to new vehicles to be no longer valid for the purposes of Article 48 of Regulation (EU) 2018/858, and shall prohibit the registration, placing on the market or entry into service of vehicles, where the manufacturer executes software updates that affect type approved characteristics of those vehicles after their registration, if such vehicles do not

comply with Regulation (EU) 2018/858, as amended by Annex II to this Regulation with regard to software update.

4. With effect from 7 July 2024, national authorities shall refuse, on grounds relating to software update, to grant EU whole-vehicle type-approval or national type-approval to any new type of vehicles, if those vehicles do not comply with Regulation (EU) 2018/858, as amended by Annex II to this Regulation with regard to software update.
5. With effect from 7 July 2024, national authorities shall refuse to grant EU whole-vehicle type-approval for vehicles produced in small series or special purpose vehicles, if those vehicles do not comply with Regulation (EU) 2018/858, as amended by Annex II, point (2), table 1, and point (4) to this Regulation.
6. With effect from 7 July 2026, national authorities shall consider certificates of conformity in respect to new vehicles produced in small series or special purpose vehicles to be no longer valid for the purposes of Article 48 of Regulation (EU) 2018/858, and shall prohibit the registration, placing on the market and entry into service of such vehicles, if those vehicles do not comply with Regulation (EU) 2018/858, as amended by Annex II, point (2), table 1, and point (4) to this Regulation.
7. With effect from 7 July 2026, national authorities shall consider, on grounds relating to software update, certificates of conformity in respect to new complete vehicles to be no longer valid for the purposes of Article 48 of Regulation (EU) 2018/858, and shall prohibit the placing on the market, registration and entry into service of such vehicles, if they do not comply with Regulation (EU) 2018/858, as amended by Annex II to this Regulation with regard to software update.
8. With effect from 7 July 2029, national authorities shall consider, on grounds relating to software update, certificates of conformity in respect to new completed vehicles to be no longer valid for the purposes of Article 48 of Regulation (EU) 2018/858, and shall prohibit the registration, placing on the market and entry into service of such vehicles, if they do not comply with Regulation (EU) 2018/858, as amended by Annex II to this Regulation with regard to software update.

Article 3

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20.6.2022

For the Commission
The President
Ursula VON DER LEYEN