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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 5.10.2023 supplementing Regulation (EU) 2019/631 of the European Parliament and of the Council by setting out the guiding principles and criteria for defining the procedures for the verification of the CO ₂ emissions and fuel consumption values of passenger cars and light commercial vehicles in-service (in-service verification)

Delegations will find attached document C(2023) 6627 final.

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

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supplementing Regulation (EU) 2019/631 of the European Parliament and of the Council by setting out the guiding principles and criteria for defining the procedures for the verification of the CO₂ emissions and fuel consumption values of passenger cars and light commercial vehicles in-service (in-service verification)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2019/631 sets CO₂ emission performance standards for new passenger cars and light commercial vehicles.

According to Article 13(2) of that Regulation, the type-approval authorities shall verify for those vehicle families for which they are responsible for the type-approval, on the basis of appropriate and representative vehicle samples, that the CO₂ emission and fuel consumption values recorded in the certificates of conformity correspond to the CO₂ emissions from, and fuel consumption of, vehicles in-service. Type-approval authorities shall also verify the presence of any strategies on board or relating to the sampled vehicles that artificially improve the vehicle's performance in the tests performed for the purpose of type-approval.

According to Article 13(4) of Regulation (EU) 2019/631, the Commission is empowered to adopt a delegated act to set out the guiding principles and criteria for defining the procedures for performing these in-service verifications.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Member States' authorities, vehicle manufacturers, automotive suppliers and NGOs have been consulted on this draft Delegated Regulation in their capacity as members of the Commission Expert Group for policy development and implementation of CO₂ from Road Vehicles in October 2021, March and November 2022 and March 2023. The comments submitted have been duly considered and taken into account, as appropriate.

In addition, stakeholders' comments on the draft Delegated Regulation were collected in the context of the Better Regulation feedback mechanism during the period between 18 July 2023 and 15 August 2023. Six comments were received via the online platform 'Have your Say'¹. The comments received through the portal were either of a general nature or were not relevant to the scope of the present draft delegated act. Such comments were therefore not taken into account in the context of the present delegated act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation establishes the guiding principles and criteria for defining the procedures for the in-service verification of the CO₂ emissions from passenger cars and light commercial vehicles.

Article 3 determines conditions for the vehicle families to be selected for in-service verification.

Article 4 sets the guiding principles for the performance of in-service verification tests. The testing procedures are based on those for emission type-approval as laid down in UN Regulation No 154, complemented with dedicated tests to identify the presence of artificial strategies.

Article 5 ensures appropriate documentation and reporting by the granting type-approval authority on the in-service verification tests performed and the resulting conclusions.

Article 6 establishes the mechanism for funding of the in-service verifications.

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13583-Light-duty-vehicles-CO2-emissions-guiding-principles-and-criteria-for-in-service-verification_en

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

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO₂ emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011², and in particular Article 13(4), second subparagraph thereof,

Whereas:

- (1) Regulation (EU) 2019/631 provides for verification of the CO₂ emissions and fuel consumption of passenger cars and light commercial vehicles in-service ('in-service verification').
- (2) All vehicle manufacturers should be subject to in-service verification, except for those manufacturers placing a limited number of vehicles on the market, in order to avoid excessive testing burden, while not significantly affecting the overall CO₂ emission performance.
- (3) The CO₂ emission and fuel consumption values recorded in the certificates of conformity should be verified using the road-load and chassis dynamometer test procedures set out in UN Regulation No 154³, but in order to verify the presence of strategies that artificially improve the vehicle's performance in the type-approval tests additional, dedicated tests should also be carried out.
- (4) In order to reduce the possibility of a conflict of interests, the in-service verification tests should be performed by a technical service that was not involved in the tests for type-approval of the vehicles concerned. Chassis dynamometer tests should be performed at the technical service's own facility and not by witness testing at a manufacturer's facility.
- (5) In order to allow the granting type-approval authority to come to a conclusion for the entire vehicle family concerned, on the basis of the test results for the vehicles sampled, an appropriate statistical evaluation method should be established.

² OJ L 111, 25.4.2019, p. 13.

³ UN Regulation No 154 – Uniform provisions concerning the approval of light duty passenger and commercial vehicles with regards to criteria emissions, emissions of carbon dioxide and fuel consumption and/or the measurement of electric energy consumption and electric range (WLTP), OJ L 290, 10.11.2022, p. 1.

- (6) Manufacturers should ensure that the CO₂ emission and fuel consumption values recorded in the certificates of conformity correspond to the CO₂ emissions from, and fuel consumption of, vehicles in-service, to be verified by the granting type-approval authority. In order for these in-service verification activities to be adequately funded, the granting type-approval authority should charge proportionate fees to the manufacturers.
- (7) In order to reduce testing burden and costs, where possible and appropriate, the same vehicles or tests should be used for both in-service verification of CO₂ emissions and in-service conformity checks of pollutant emissions,

HAS ADOPTED THIS REGULATION:

Article 1
Subject and scope

1. This Regulation sets out the guiding principles and criteria for defining the procedures for verifying that the CO₂ emission and fuel consumption values recorded in the certificates of conformity correspond to the CO₂ emissions from and the fuel consumption of vehicles in-service. It also sets out the procedures for verifying the presence of any strategies on board or relating to the vehicles that artificially improve the vehicle's performance in the tests performed for the purpose of type-approval ('in-service verification').
2. This Regulation does not apply to the following:
 - (a) vehicles which are exempt from measurement of CO₂ emissions;
 - (b) manufacturers which, together with all of their connected undertakings, have been responsible for fewer than 1 000 new passenger cars or for fewer than 1 000 new light commercial vehicles registered in the Union in the calendar year two years before the calendar year in which in-service verification families are selected in accordance with Article 3(1).

Article 2
Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EU) 2017/1151⁴, and Article 3 of Regulation (EU) 2019/631 shall apply.

The following definitions shall also apply:

- (1) 'granting type-approval authority' means the type-approval authority that granted the emission type-approval in accordance with Regulation (EC) No 715/2007⁵, or where applicable, in accordance with Regulation (EC) No 595/2009⁶;

⁴ Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Commission Regulation (EC) No 692/2008, OJ L 175, 7.7.2017, p. 1.

⁵ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles

- (2) ‘in-service verification family’ means all M1 or N1 vehicles, for which one type-approval authority granted the emission type-approval in accordance with Regulation (EC) No 715/2007 or, where applicable, Regulation (EC) No 595/2009 on the basis of the same Type 1 test as set out in Annex XXI to Regulation (EU) 2017/1151 for ‘vehicle high’ or ‘vehicle low’;
- (3) ‘road load family’ means road load family or road load matrix family as defined in paragraphs 6.3.3. and 6.3.4. of UN Regulation No 154; in case of N1 vehicles type-approved according to Regulation (EC) No 595/2009, a road load family consists of all vehicles of the in-service verification family concerned;
- (4) ‘artificial strategies’ means strategies on board or relating to the sampled vehicles that artificially improve the vehicle's performance in the tests performed for the purpose of type-approval.

Article 3

Selection of in-service verification families

Each granting type-approval authority shall annually select a sample of in-service verification families for which it has issued emissions type-approvals. The selection shall include at least one in-service verification family per manufacturer for which the granting type-approval authority has issued emissions type-approvals in the three calendar years preceding the in-service verification.

Article 4

In-service verification tests

1. For each in-service verification family selected in accordance with Article 3, the granting type-approval authority shall, for the purpose of the tests referred to in paragraph 2, select vehicles in-service which are in a state representative of a vehicle properly maintained and used and have characteristics covered by those recorded in the certificate of conformity.
2. The granting type-approval authority shall verify that the specific CO₂ emission and fuel consumption values recorded in the certificates of conformity of vehicles selected in accordance with paragraph 1 correspond to the CO₂ emissions from, and fuel consumption of, vehicles in-service and whether artificial strategies are present, by means of any of the following tests:
 - (a) for a number of vehicles determined on the basis of a statistical evaluation method: chassis dynamometer tests in accordance with Annex B6 and Annex B8 of UN Regulation No 154;
 - (b) for a number of vehicles determined on the basis of a statistical evaluation method and belonging to one road load family: road-load tests in accordance with Annex B4 of UN Regulation No 154;

(Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 171, 29.6.2007, p. 1.

⁶ Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC, OJ L 188, 18.7.2009, p. 1.

- (c) for an adequate number of vehicles: dedicated tests using virtual or physical testing methods.
3. The granting type-approval authority shall entrust the tests referred to in paragraph 2 to a technical service that did not perform, for the in-service verification family concerned, the Type 1 test as set out in Annex XXI to Regulation (EU) 2017/1151 for the purpose of emission type-approval in accordance with Regulation (EC) No 715/2007 or, where applicable, Regulation (EC) No 595/2009.
 4. The granting type-approval authority shall evaluate the test results of the individual test vehicles and establish whether the CO₂ emissions and fuel consumption values of vehicles in-service are higher than the specific emissions of CO₂ and fuel consumption values recorded in the certificates of conformity, taking into account the statistical evaluation of the tests referred to in paragraph 2(a) and (b), and whether artificial strategies are present.
 5. Each manufacturer shall on request provide the granting type-approval authority and any entity performing in-service verification tests with all information, documentation and technical specifications or support that is needed for adequately performing the in-service verification.

Article 5

Documentation, duty to inform and conclusion of the granting type-approval authority

1. The granting type-approval authority shall ensure that the tests performed in accordance with Article 4 are documented, and that the test reports are made available to the Commission, to the manufacturer of the vehicles concerned and, on request, to other type-approval authorities, market surveillance authorities and third parties complying with the requirements of Commission Implementing Regulation (EU) 2022/163⁷.
2. The granting type-approval authority shall, within 10 months after starting a test, come to a conclusion on whether or not the in-service verification has identified a lack of correspondence between the CO₂ emission and fuel consumption values of the in-service vehicles and the values recorded in the certificates of conformity, or the presence of artificial strategies.
3. A conclusion by the granting type-approval authority in accordance with paragraph 2 shall apply to all vehicles of the in-service verification family concerned or, where based on road load test results, to all vehicles of the road load family concerned, that have first entered into service in the Union.

Article 6

Funding of the in-service verifications

The granting type-approval authority shall ensure that sufficient resources are available to cover the costs for the in-service verification. Those costs shall be recovered by fees that can be levied on the manufacturer by the granting type-approval authority. The fees shall cover the steps of the in-service verification needed in order for the granting type-approval authority to come to a conclusion as referred to in Article 5(2).

⁷ Commission Implementing Regulation (EU) 2022/163 of 7 February 2022 laying down the rules on the application of Regulation (EU) 2018/858 of the European Parliament and of the Council as regards functional requirements for market surveillance of vehicles, systems, components and separate technical units, OJ L 27, 8.2.2022, p. 1.

Article 7
Entry into force

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, 5.10.2023

For the Commission
The President
Ursula VON DER LEYEN