



Council of the
European Union

Brussels, 6 May 2022
(OR. en)

8830/22

ENT 65
MI 362
COMPET 301
IND 149
TRANS 267
DELECT 77

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 5 May 2022

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: C(2022) 2804 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 5.5.2022 supplementing Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the procedure for the imposition of administrative fines and the methods for their calculation and collection

Delegations will find attached document C(2022) 2804 final.

Encl.: C(2022) 2804 final



Brussels, 5.5.2022
C(2022) 2804 final

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

of 5.5.2022

supplementing Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the procedure for the imposition of administrative fines and the methods for their calculation and collection

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Commission is empowered in accordance with Regulation (EU) 2018/858 to lay down the procedure and methods for the calculation and collection of the administrative fines that can be imposed upon the economic operators concerned for non-compliance of a vehicle, system, component or separate technical unit.

Member States are no longer solely responsible for penalising economic operators who infringe the law. On the basis of the tests and inspections it has carried out in accordance with Article 9 of Regulation (EU) 2018/858, the Commission can establish that a corrective or restrictive measure is necessary at Union level. After consulting the Member States concerned and the relevant economic operators, it will decide whether or not to impose corrective or restrictive measures at Union level in accordance with Article 53 of Regulation (EU) 2018/858. In support of said measures, it may impose administrative fines upon the economic operators concerned for non-compliance of the vehicle, system, component or separate technical unit in question with the requirements of Regulation (EU) 2018/858.

As set out in Article 85(1) of Regulation (EU) 2018/858, the administrative fines shall be effective, proportionate and dissuasive. On the basis of Article 85(1) of Regulation (EU) 2018/858, the Commission is empowered in accordance with 85(2) of that Regulation to lay down the procedure and methods for the calculation and collection of administrative fines.

This Delegated Regulation lays down the detailed requirements to take into account when determining the amount of an administrative fine: for instance, the potential gain for and economic advantage to the economic operator concerned, the implications for health, safety, the environment etc. It also includes procedural provisions, such as the right to good administration, in particular an economic operator's right to be heard and to have access to their file, while respecting the legitimate interests of confidentiality and commercial secrets. To facilitate the payment of administrative fines, there are also provisions setting out the method for their collection.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In preparing this act, the Commission carried out appropriate consultations with Member State experts and industry stakeholders. A draft version of the text was presented to Member States during expert group meetings, and their comments taken into account.

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 27 January 2022 and 24 February 2022. In total, 3 stakeholders provided feedback. The Commission carefully considered and took note of all the comments received.

The comments focused mainly on the methods for the calculation of the administrative fines. The relevant comments were taken on board during this process.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis of this delegated act is Article 85(2) of 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/EC.

The procedural rules on the right to be heard, on confidentiality and commercial secrecy are set out in Articles 1 and 2.

Article 3 lays down the method that the Commission shall apply for calculating the amount of administrative fines.

Article 4 specifies that to collect administrative fines, the Commission shall issue a debit note addressed to the economic operator in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.

COMMISSION DELEGATED REGULATION (EU) .../... of 5.5.2022 supplementing Regulation (EU) 2018/858 of the European Parliament and of the Council as regards the procedure for the imposition of administrative fines and the methods for their calculation and collection

(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/EC¹, and in particular Article 85(2) thereof,

Whereas:

- (1) The decision to impose an administrative fine upon an economic operator in support of corrective and restrictive measures in accordance with Article 85 of Regulation (EU) 2018/858 should be taken by the Commission as a result of the consultations of the Member States concerned and the relevant economic operator or operators under Article 53(6) of Regulation (EU) 2018/858 and should be reflected in the decision to impose corrective and restrictive measures.
- (2) It is necessary to lay down certain procedural steps when the Commission intends to impose administrative fines in support of corrective and restrictive measures, building on the procedure set out in Article 53(6) of Regulation (EU) 2018/858. It is notably important to guarantee the right to be heard and the right to have access to the file by granting the economic operator access to relevant information and the right to submit its observations along with the evidence necessary to support such observations in relation to the intended imposition of an administrative fine. In addition, it is necessary to set out rules to ensure appropriate protection of data which economic operators consider confidential.
- (3) It is necessary to lay down a method for the calculation of administrative fines according to the gravity of non-compliance. This method should be known in advance by the economic operators. Administrative fines should be dissuasive in deterring economic operators from infringing the requirements of Regulation (EU) 2018/858 and proportionate to the seriousness of the infringement. Since the administrative fines are to be imposed per non-compliant vehicle, system, component or separate technical unit, the criteria for calculating the fine should be considered accordingly. The calculation of administrative fines should take into consideration any undue economic advantage obtained through the sale or distribution of a non-compliant vehicle that might distort competition vis-à-vis other economic operators that abide by the rules. Any losses suffered by consumers, including the altering of the performance of the vehicle, that result from non-compliance should also be considered in assessing the seriousness of the infringement since such non-compliance may undermine the protection of health and safety of consumers sought by that Regulation. In addition,

¹ OJ L 151, 14.6.2018, p. 1.

the amount of the administrative fines should be proportionate to the number of non-compliant vehicles registered in the Union, or the number of non-compliant systems, components or separate technical units made available on the Union market.

- (4) Due account should be taken of the seriousness and the effects of the infringement, as well as of any aggravating and mitigating factors, in the calculation of administrative fines, which should be perceived as deterring, proportionate and offsetting the benefits of non-compliance. Aggravating factors should include the impact on safety, health and the environment since ensuring a high level of safety, health and environmental protection are determined as an objective of Regulation (EU) 2018/858. Setting a robust penalty scheme at Union level that acts as deterrent through sanctions to non-compliance that negatively affects the safety of the vehicle's occupants and other road users and the protection of human health and the environment should contribute towards achieving those objectives. The degree of cooperation of the economic operator including corrective actions taken by the economic operator are to be considered as mitigating elements when calculating the administrative fine.
- (5) In order to facilitate the payment of administrative fines, it is necessary to lay down a method for their collection. The collection of those fines should be done in accordance with the rules for the recovery of fines, other penalties or sanctions imposed by Union institutions, laid down in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council²,

HAS ADOPTED THIS REGULATION:

Article 1 **Procedure**

1. Before imposing an administrative fine pursuant to Article 85(1) in conjunction with Article 53 of Regulation (EU) 2018/858 upon an economic operator, the Commission shall notify the economic operator and the Member States concerned in writing of its intention to impose an administrative fine, and state the reasons for intending to do so.
2. The economic operator and the Member States concerned shall be given a period of no less than 30 days following the notification pursuant to paragraph 1 to provide their observations to the Commission in writing. Without prejudice to paragraph 4, written observations received after the expiry of that period shall not be taken into account.
3. The economic operator and the Member States concerned may, in their written observations to the Commission, attach any evidence to support their observations.
4. Following the written observations by the economic operator and the Member States concerned, the Commission may by reasoned request require further information within a time limit to be set out in the request of no less than 15 days.

² Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 18.7.2018, p. 1).

5. In exceptional cases, where the Commission requires further information, it may invite the economic operator and the Member States concerned to express their position orally in a meeting after the completion of the written part of procedure under paragraphs 1 to 4.

Article 2

Confidentiality

1. Economic operators who submit information in accordance with Article 1 shall identify any information submitted by them which they consider to be confidential, giving reasons, and, where necessary, provide a separate non-confidential version of the document containing that information by the date set by the Commission.
2. Where the economic operator has not identified any information as confidential, the Commission may assume that the information submitted does not contain confidential information.
3. Nothing in this Article shall prevent the Commission from using the information submitted to prove non-compliance.

Article 3

Method for calculating administrative fines

1. For the purpose of calculating the amount of administrative fines the Commission shall estimate the following amounts:
 - (a) the economic advantage or other advantage obtained by the economic operator as a result of the non-compliance;
 - (b) where possible, the losses to consumers as a result of the non-compliance.

The advantages and losses thus assessed shall form the basis for the calculation of administrative fines. Where an advantage for the economic operator also constitutes a loss to consumers, it shall only be taken into account once.

On the basis of the amounts referred to in points (a) and (b), the administrative fines shall be calculated having regard to the number of non-compliant vehicles registered in the Union market or the number of relevant non-compliant systems, components or separate technical units made available on the Union market.
2. When calculating the amount of administrative fines, the Commission shall take into account any aggravating or mitigating factors and other factors.
3. The aggravating factors referred to in paragraph 2 shall include the following elements:
 - (a) the impact on the health and safety of persons or the negative impact on the environment due to the lowering of performance requirements of a vehicle;
 - (b) the degree of negligence or intent of the economic operator including any attempt by the economic operator to hide or conceal relevant information for the establishment of non-compliance;
 - (c) any unjustified refusal by the economic operator to provide information or evidence requested by the Commission.
4. The mitigating factors referred to in paragraph 2 shall include the following elements:

- (a) the efforts and co-operation of the economic operator in the detection of non-compliance;
 - (b) any self-initiated corrective actions taken by the economic operator including their promptness;
 - (c) any other reasonable and relevant mitigating factor demonstrated with appropriate evidence by the economic operator.
5. The other factors referred to in paragraph 2 shall include the repetition, the frequency or the duration of the non-compliance, and other sanctions imposed at Union or national level for non-compliance with EU type-approval rules during the 10 years preceding the establishment of the non-compliance.
6. The final administrative fine expressed in EUR shall be set at a level that ensures its effectiveness, proportionality and dissuasiveness.

Article 4

Methods for collecting administrative fines

1. The administrative fines must be paid within 3 months from the date on which the debtor has been notified of the Commission decision, counting from the date of receipt of the notification letter. These fines are collected in accordance with Articles 107 and 108 of Regulation (EU, Euratom) 2018/1046. Additional time for payment can be granted in accordance with Article 104 of that Regulation.

Article 5

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, 5.5.2022

For the Commission

The President

Ursula VON DER LEYEN