

No national fee structures for the type-approval of motor vehicles

A fundamental change of system in respect to the contractual relationship between technical services and manufacturers has been proposed in the EU Draft Proposal for a Regulation¹ on the approval and market surveillance of motor vehicles and justified as follows:

“The independence of technical services vis-à-vis manufacturers should, inter alia, be ensured by avoiding direct or indirect payments by the manufacturers for the type-approval inspections and tests they have carried out.”²

VdTÜV (Association of Technical Inspection Agencies) and DEKRA e.V. consider national fee structures and, where applicable, a modified contractual relationship to be neither proportionate, nor necessary in order to ensure the independence of the technical services. There is no logical relationship between the software manipulation of individual vehicle manufacturers and the independence of the technical services.

Justification:

1. The introduction of national fee structures for the performance of the activities of the technical services within the framework of the type-approval procedure is contrary to the consistent application of the common framework for the marketing of products (Decision 768/2008/EC³). This is the main pillar for an innovation-friendly, efficient and modern product regulation in the European Single Market. In accordance with this, manufacturers of products with a significant risk potential must involve independent third parties in the marketing of their products. These bodies demonstrate both their competence as well as their independence⁴ by means of sovereign accreditation and within the scope of the designation, by national public authorities. Manufacturers across Europe can therefore commission the technical service of their choosing. This is consistent, as, ultimately, it is the manufacturer who bears full responsibility for the conformity of the product.
2. Contrary to the requirements of the Better Regulation “Toolbox”⁵, no study (competitive proofing study) to examine the effects upon the efficiency and competitiveness of the technical services in the Single Market as well as the international environment has been carried out in respect of the proposal to introduce national fee structures, which is alien to the system. This study needed to have been undertaken since the criteria established by the EU Commission it-

¹ cf. Article 30 of the draft regulation COM 2016/0014
(<http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-31-EN-2-1.PDF>)

² cf. Recital 17 of the draft regulation COM 2016/0014

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0082:0128:en:PDF>

⁴ The requirements in respect of independence, objectivity and impartiality of notified bodies (in this context: technical services) are set out in detail in Decision 768/2008/EC Annex I, Chapter R4, Article R17.

⁵ http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf, p. 111 et seq.

self for the “quality or the originality” of the provision of services are lastingly affected by the fee structure proposal, given that both the choice of the service provider as well as the price structure for the provision of services have up to now been set in a private, autonomous manner between the traders of the technical service and manufacturer.⁶ Such a severe restriction of the market operators – which the introduction of a national fee structure entails – would have required a thorough analysis.

The legislator interfering in the free setting of the prices of the technical services by means of fixed fee rates will also foreseeably lead to adverse effects upon the further development of the provision of services (testing equipment and facilities as well as the qualifications of personnel) and will harm the continuous adaptation to technological progress. It will thereby lead to a decline in innovative strength as a whole, as, in the event of fixed fee structures, there will barely be any incentive for technical services to undertake the necessary investments in order to actively support technological progress (“technical development and innovation”⁷).

The fee proposal thereby lacks the standards of care pursuant to the EU Commission’s Better Regulation Guidelines and so must be deleted from the area of type-approval.

3. Furthermore, it is highly probable that the introduction of fee structures would lead to type-approval tests of individual vehicle components under UNECE regulations being relocated – to a far greater extent than to date – to countries outside of the EU/third countries. This is due to the fact that technical services and manufacturers would continue to have the possibility of performing the necessary tests there without government restrictions (fee structures). Under the 1958 UNECE Agreement, test results of technical services must be mutually recognised by the type-approval authorities of the signatory countries. The aforementioned development will lead to the European type-approval procedure being in effect circumvented, and so weakened in an international context as well as its overall effect.

⁶ The quality or the originality of a sector’s supply of goods or services (innovative competitiveness) – technological development and innovation (of products and/or processes) are of primary importance for both the cost of inputs and the value of outputs

⁷ View footnote 6