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Joint Position on the proposed EU Regulation concerning the approval and market surveillance of motor vehicles (COM 2016/0014)¹

The Association of Technical Inspection Agencies (VdTÜV) and DEKRA e.V. welcome the proposed regulation of the European Commission regarding the revision of the approval of motor-vehicles, published on 27 January 2016. The proposed regulation is intended to strengthen and consistently develop the applicable European legal framework further. The future type-approval procedure must be efficient and ensure that all vehicles placed on the market fulfil the legal and normative requirements.

To improve road safety and environmental protection in Europe, the instruments and procedures enshrined in the regulation for the placing of vehicles on the market must be effective, transparent and clearly defined, and also be applied across the EU. On this basis, VdTÜV and DEKRA place the following demands on the proposed regulation:

- **Commissioning procedure and national fee structure**

The recognised principles of the common regulatory framework for the marketing of products (Decision No 768/2008/EC²) should be used consistently in the legal structuring of the European type-approval procedure. This regulatory approach (known as the “New Approach”/NLF) has proven itself for decades in diverse product sectors and, when implemented, provides the necessary conformity and safety of products in the European Single Market. The NLF requires that manufacturers of products with a high risk potential involve independent third parties in marketing their products. Type-approval by technical services must also be strictly regulated in accordance with these principles.

In a departure from the existing system, the proposed regulation provides for the introduction of national fee structures for type-approval³. In future, uniform national price levels for type-approval shall be created and direct payments from manufacturers to the technical services shall be

¹ http://eur-lex.europa.eu/resource.html?uri=cellar:587dob4f-c5aa-11e5-a4b5-01aa75ed71a1.0004.02/DOC_1&format=PDF

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0082:0128:en:PDF>

³ See Article 30

avoided⁴. According to the Commission, the independence of the technical services shall thereby be safeguarded. This approach, which is alien to the system, must however be rejected.

According to its wording, the draft regulation also leaves open whether the introduction of national fee structures shall also have an influence on the nature of the contractual relationship (authority – technical service or manufacturer – technical service). The long-established choosing and commissioning of a technical service by the manufacturer could be implicitly questioned. This approach, alien to the system, must also be rejected.

Decision No 768/2008/EC on a common framework for the marketing of products set out in detail the requirements for the independence, objectivity and impartiality of notified bodies (in this context: technical services)⁵. Full compliance with the aforementioned criteria shall be ensured and continuously monitored by the designation procedure of the national type-approval authority or by providing evidence of accreditation from the state. In all product sectors falling within the scope of application of the decision⁶, the manufacturer directly commissions a notified body of their choosing. This is logical because, ultimately, it is the manufacturer who bears full responsibility for the conformity of the product. Moreover, the decision does not provide any fee structures for testing activities performed by independent bodies. This coherent regulatory framework is transparent, functional and conducive to innovation. There are no apparent specific reasons, justifiable on the basis of proportionality, why this must be deviated from in the approval of the vehicle type. National fee structures and a potentially altered contractual relationship are not the appropriate means to safeguard the independence of the technical services. Rather, the rights and obligations of the technical services, as well as the obligations of manufacturers, should be further sharpened by the consistent adoption in the proposed regulation of the reference provisions from the decision. In addition, a sharpening of the regulatory supervisory duties and their uniform implementation across the EU will improve the current system.

- **Access to vehicle software and data over the entire life cycle of the vehicle**

The future access of the technical service, as provided for in the regulation proposal, to the vehicle's software and the corresponding algorithm is necessary for the type-approval procedure to be correctly and duly carried out⁷. It is only by this data being disclosed that independent third parties are able to investigate and thereby ascertain that vehicles are fulfilling the legal requirements, not just when they are brought on to the market, but also over their entire life cycle.

⁴ See Recital 17

⁵ See Decision No 768/2008/EC, Annex I, Chapter R4, Article R17

⁶ For an overview cf. <http://www.newapproach.org/Directives/DirectiveList.asp>

⁷ See Article 23, Clause 4

The right to demand from the manufacturer additional information and data which is required for, or which facilitates, the performing of type-approval should not only be granted to the approval authorities, but also to the technical service.

The obligation incumbent on the manufacturer to provide comprehensive vehicle and system data must be enshrined in the text of the regulation for both the type-approval as well as for the later periodical technical inspection (PTI). This data, including updates, is of essential importance in both procedures for the testing of safety-related systems (driver assistance systems, sensors, etc.) as well as the independent reviewing of safety and engine control electronics.

Furthermore, the regulation must set out requirements for the construction of the vehicle, so that it is possible to test safety-related components at a later time within the course of the PTI by means of a visual examination and performance test without the disassembly of vehicle parts.

- **A uniform, high standard across the EU for the designating and monitoring of the technical services**

Before a technical service is designated, the draft regulation provides for the assessment of a technical service by the respective type-approval authorities using an “assessment check-list” with uniform minimum requirements⁸. In addition, the individual member states can however establish additional national requirements for the designation of technical services. This will lead across the EU to non-uniform competency requirements upon the technical services and so runs contrary to the target of sweeping legal harmonisation. The requirements on the technical services should instead be consistently and comprehensively regulated across the EU to fully realise a well-functioning European Single Market, in order to, for one thing, achieve an equal as well as high safety and quality level, but also to eliminate distortions in competition.

- **Testing conducted by technical services**

Only technical services which have personnel with the appropriate professional and technical competence and which perform testing independently in their own facilities (category of activity A) or in the facilities of the manufacturer or a third party (category of activity B) should be used in carrying out type-approval.

Given the lack of direct access for the technical service to the testing process and the testing facilities, the type-approval activities incumbent on the manufacturer under the proposed

⁸ See Article 77, Clause 1 in conjunction with Annex V, Appendix 2

regulation, which are monitored solely by a technical service (category of activity B), cannot remove all doubt regarding the full mastery of the testing duties to be performed.

Should tests be carried out at other facilities, the active technical service must ensure that facilities and processes fully comply with the relevant regulations underlying category of activity A.

The technical services should therefore in future have testing “in their own hands”.

- **Strict separation of responsibilities in the type-approval process**

To protect independence and to avoid conflicts of interests as well as the adverse effects on quality and safety standards, manufacturers, technical services as well as approval and supervisory authorities should only perform their original roll in the future type-approval process. This rules out that approval and supervisory authorities act as a technical service. Such a clear division of duties enhances the necessary confidence in the entire system and ensures fair, clear and transparent competition conditions in Europe.

- **Clear specifications for samples through market surveillance**

In the proposed regulation, the market surveillance authorities are obligated to test the vehicles on the market “on an adequate scale [...] on the basis of statistically relevant samples”.⁹ The concrete scope of market surveillance activities and the frequency of checks should, however, no longer be left solely to the discretion of the respective EU member states in the future. The terms contained in the current draft regulation of “an adequate scale” and “statistically relevant samples” are far too vague and, as a result of the associated room for manoeuvre in terms of interpretation and implementation, ultimately lead to unacceptable discrepancies in market surveillance practice within the EU. Mandatory size specifications on the number of samples should be included in the draft regulation.¹⁰

- **Reduced use of delegated and implementing acts**

In 33 of its total of 97 articles, the draft regulation contains enabling provisions for delegated acts and implementing acts. All regulations which are essential for the type-approval process, particularly those of a non-technical nature with qualitative and systematic relevance, should however already be adopted in the regulation itself. The number of delegated acts and implementing acts and the substantive regulatory scope provided for needs to be kept to a

⁹ See Article 8, Clause 1, Sentence 2

¹⁰ Section 26 Paragraph 1 of the Product Safety Act in German law (*Produktsicherheitsgesetz*) provides for “0.5 samples per 1,000 inhabitants and per year” and so demonstrates that explicit clarifications in respect to the number of samples are possible in legislative texts.

minimum in terms of the legal certainty required and the internal coherence of the system as well as the viability of investments.

- **Coordination of the technical services**

The draft regulation should be supplemented to include that the Commission has to ensure appropriate coordination and cooperation between the technical services.¹¹

It is crucial to the functioning of the type-approval procedure that the technical services apply it in a uniform manner. That can be achieved in particular by appropriate coordination and cooperation between the technical services.

- **Removal of scope for interpretation**

Unclear formulations and a significant scope for interpretation in the draft regulation should, in line with a uniform implementation of the law across Europe, be eliminated as much as possible. The terminology in the draft regulation must be utilised in a coherent and uniform way. In particular, in shaping the type-approval procedure by clarifying the requirements, the potential for further optimisation should be exhausted and international standards should be taken into account.

The aforementioned proposed amendments make a significant contribution to raising the efficiency of the type-approval procedure and of the market surveillance and so increase road safety and environmental protection in Europe. This will also strengthen the functioning of the Single Market for vehicles and the competitiveness of the automobile industry in Europe.

VdTÜV and DEKRA will provide their expertise constructively in further legislative procedures in order to achieve a sustainable set of rules.

¹¹ See 768/2008/EC, Annex I, Chapter R4, Article R 30 as well as equivalent provisions in sectoral legislation, e.g. Article 36 of the Lifts Directive (2014/33/EU)