

PROPOSED NEW TYPE-APPROVAL SYSTEM FOR MOTOR VEHICLES IN THE EUROPEAN UNION

ICCT POLICY UPDATES

SUMMARIZE
REGULATORY
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DEVELOPMENTS
RELATED TO CLEAN
TRANSPORTATION
WORLDWIDE.

- » Draft regulation would overhaul the legal framework for ensuring that vehicles meet all environmental and other regulatory requirements
- » Focus is on market surveillance, better enforcement practices, and more opportunities for vehicle recalls
- » Would not create a European-wide type-approval authority, but the European Commission would take on an oversight role

On 27 January 2016, the European Commission (EC) put forward a proposal that, if approved by the European Parliament and the Council of the European Union, would make fundamental and far-reaching changes to the current motor vehicle type-approval framework defined by Directive 2007/46/EC. The EC had already begun a review of the European type-approval scheme when the Volkswagen scandal broke, but that scandal and subsequent events, by highlighting the severity of the problem of excess pollutant emissions, accelerated the pace and broadened the scope of the review.¹

The proposal includes a number of provisions that would reinforce the independence and quality of vehicle tests performed by third parties and enhance the ability of member states to perform market surveillance and enforcement. It does not call for creation of a central European type-approval authority, but would give the EC an oversight role, as well as the ability to initiate recalls and impose financial penalties on noncompliant vehicle manufacturers and technical services. In the global context, this proposal is relevant for vehicle markets that adopt the EU regulatory requirements.

WHAT IS IT?

The proposal is in the form of a draft regulation which, if adopted, would repeal and replace the existing Framework Directive (Directive 2007/46/EC). This signals the EC's desire to urgently address shortcomings in the current type-approval scheme made

¹ The full text of the proposal and accompanying documents can be downloaded from <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1453996101816&uri=COM:2016:31:FIN>. A separate impact assessment of the proposal is available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1453996334099&uri=SWD:2016:9:FIN>.

apparent by the recent emissions cheating revelations, especially those related to the effectiveness and consistency of enforcement mechanisms across different EU member states.

HOW WOULD IT AFFECT VEHICLE TYPE APPROVALS IN EUROPE?

The proposal maintains the basic architecture of the European type-approval system. For example, each member state will retain its own type-approval authority, and the principle of mutual recognition of type-approval certificates issued by the different national authorities will still apply. But it introduces market surveillance and enforcement provisions (*i.e.*, compliance verification tests and inspection of vehicles already in service) to complement type-approval requirements. The proposal also changes the relationships between manufacturers, type-approval authorities, and technical services, alters their roles in the type-approval system, improves the legal instruments for enforcement, and grants greater oversight powers to the EC.

MARKET SURVEILLANCE

The current EU type-approval scheme overwhelmingly relies on tests performed at the vehicle pre-production stage. The proposal introduces market surveillance provisions that would allow EU member states and the EC to perform tests on vehicles already on the market.

MEMBER STATE ENFORCEMENT

Member states will be able to take measures (including ordering vehicle recalls and revoking type-approval certificates) against non-compliant vehicles sold in their national markets, instead of having to wait for the type-approval authority of the country that issued the vehicles' type-approval certificate to take action. This is one of the strongest of the proposed provisions.

The proposal also includes a provision granting type-approval authorities and technical services access to vehicle software, a step intended to safeguard against the use of defeat devices such as those employed by Volkswagen.²

CHANGES TO THE RELATIONSHIPS AMONG THE ACTORS

Under the current type-approval system, member states designate technical services— independent third-party organizations such as TÜV Nord in Germany, or IDIADA in Spain—to perform testing and inspection tasks for which they are paid directly by car manufacturers. The proposal will break direct financial links between technical services and manufacturers to eliminate that opportunity for conflicts of interest to arise and to reinforce the independence of testing, establishing a type-approval fee structure to cover the costs of all type-approval tests and inspections carried out by the technical services, as well as the administrative costs for issuing the type-approval and the costs of carrying out tests and inspections related to market surveillance activities. Technical

2 For background on defeat devices under the current regulation, see "Defeat devices under the U.S. and EU passenger vehicle emissions testing regulations," <http://theicct.org/briefing-defeat-devices-us-eu-vehicle-emissions-regulations>.

services would also have both the right and the duty to carry out unannounced factory inspections under the proposed regulation.

The proposal also establishes more stringent performance criteria for the technical services, requiring that they be regularly and independently audited to obtain and maintain their designation. National type-approval authorities will be subject to a peer review every two years by two other national type-approval authorities, to ensure that the rules are implemented and enforced rigorously across the EU. Penalties are not harmonized and will still be determined by each member state, but the proposal includes a list of infringements that should be covered (notably falsifying test results at type approval and refusing to provide access to information).

OVERSIGHT ROLE FOR THE EUROPEAN COMMISSION

The overhauled type-approval framework would not create a new, central authority to directly regulate vehicle emissions certification throughout the European Union in the way the Environmental Protection Agency does in the United States, as some reform advocates have called for. Instead, the proposal would create an advisory body, the Forum for Exchange of Information on Enforcement, to coordinate the network of national authorities responsible for type-approval and market surveillance and promote best practices and exchange of information among them. The forum would also organize joint audits of technical services and peer reviews of type-approval authorities, and harmonize penalties and joint inspection programs.

Under the proposed regulation, the EC would have the power to restrict, suspend or withdraw the designation of non-compliant technical services. The EC would be able to carry out its own verification testing through its Joint Research Centre and, if needed, initiate and monitor vehicle recalls. The proposal would also allow the EC to impose administrative fines (of up to 30,000 EUR per noncompliant vehicle) on vehicle manufacturers, but only in cases where a penalty has not been previously issued by a member state.

NEXT STEPS

The draft regulation would strengthen the EU type-approval system in significant ways. The market surveillance provisions are especially important in that regard. However, a number of key policy elements are barely outlined in the current text and will need to be developed in the future. These include provisions regarding financial penalties and remedial measures in case of noncompliance, as well as those related to transparency and public access to type-approval information.

Notably, the proposal does not address inexact language in the current regulatory text related to the defeat device provisions, Access to software and algorithms is not sufficient to make determinations on whether and how to evaluate and approve or reject claims of exception to the vehicle emissions control defeat device prohibition. What is necessary is a thorough reporting and approval system for the use of all alternative emissions control calibrations, with a requirement to disclose the presence of any element of design that changes the operation of the vehicle emission control system during operation based on parameters such as temperature, vehicle speed, engine speed, transmission gear, and so on, and which places the burden on

manufacturers to prove to qualified, independent experts at a detailed technical level, prior to type approval, that this alternative calibration is necessary and that no viable alternative solutions exist.

The draft text goes next to the European Parliament and the European Council, which must adopt the final version of the regulation for it to enter into effect. Unlike the legislative act it replaces (Directive 2007/46/EC), which set out a goal for all member states to achieve but left implementation up to the individual states, the proposed regulation would be a binding legislative act that must be applied in its entirety across the EU.