



June 2016

AK Position Paper

Regulation on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (COM(2016)14)

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.4 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.4 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
President

Werner Muhm
Director

The AK's position in detail

The present proposal for an EU regulation regulates the vehicle type approval test and the market surveillance of motor vehicles for the carriage of passengers (M1, M2 and M3) and goods (N1, N2 and N3) as well as trailers for the carriage of passengers and goods (O1, O2 and O3) in the entire internal market. Due to a massive lack of enforcement in the compliance of emission limits, changes regarding the distribution of tasks between Member States and the Commission are proposed. These primarily include stricter requirements for the test procedure for the vehicle type approval test in the Member States, stronger rights for the Commission to intervene when the Member States fail in the type approval procedure and the introduction of a more effective market surveillance of registered vehicles in the internal market.

In general, the Federal Chamber of Labour (Bundesarbeitskammer, BAK) as legal representative of about 3.4 million employees and consumers in Austria welcomes the proposal for the regulation as a useful step to eliminate weaknesses. The growing discrepancy between the EU requirements regarding fuel consumption and exhaust emission values and real life values must clearly be rejected in order to regain the faith of the consumers. From a preventive point of view cheating exhaust emission tests in the European car industry needs to be prevented in the future due to inestimable consequential damages. Therefore the cornerstones listed in the following need to be ensured for the

up-coming legislative process in the Council and the European Parliament.

Stronger competences for EU market surveillance

The emissions scandal of a car manufacturer has clearly shown the deficits in supervision of public authorities compared to the US. The present proposal is not changing this to a sufficient extent. The type approval of a vehicle thus still lies with an authority of a Member State, which determines the other 27 Member States due to the internal market regulations, and market surveillance with ex-post control of already registered vehicles should basically also lie with this authority. New proposals are solely the "Compliance verification by the Commission and enforcement co-ordination with Member States" (Art. 9) for checking especially reasoned cases as well as the "Forum of Exchange of Information on Enforcement" (Art. 10) on an EU-level.

BAK presumes that a market surveillance regarding the conformity of manufacturer specifications for motor vehicles was none existent in most Member States anyway. Therefore – just like in the US – one agency or organisational unit of the EU Commission (e.g. Joint Research Center) should exclusively be set up for market surveillance with ex-post controls regarding the conformity of already registered motor vehicles instead of creating a costly dual structure on Member State and EU level. Art. 9 of the proposal should be changed in this respect.

If the proposed control procedure should stay unchanged in the proposal then the regulation shall have at least quantitative requirements for the supervisory work of the national authorities. The referral to checks with “statistically relevant samples” (Art. 8) deem not to be expedient on the basis of authorities acting in isolation in an internal market.

Ensure independence of type approval procedure

The economic dependence on the automotive industry of many national type approval authorities and technical testing institutes shall be eliminated. Many proposed measures in the proposal (especially unbundling of type approval authorities and technical testing institutes and/or financing of type approval authorities independent of direct levies of the car manufacturers) are thus to be welcomed. BAK also supports the proposal that testing institutes are paid for executed type approval checks and tests based on public fees and not by car manufacturers. In the definition of the technical testing institutes in Art. 73 it shall be ensured that they are neither directly nor indirectly under the control of a car manufacturer or parts supplier of the automotive industry.

Concrete and quantitative testing requirements for authorities regarding newly approved and already registered motor vehicles

BAK is of the opinion that clear and coherent regulations are needed which shall be coordinated on an EU-level. The “Forum for Exchange of Information on Enforcement” provided for in the proposal cannot fully meet these requirements in order to terminate the

“shopping” of manufacturers regarding type approval testing in certain EU Member States and to regain the faith of consumers.

One of the competences of this forum should also be the definition of quantitative checks of passenger cars which have been released for type approval (pre-market checks) or are already for sale (ex-post-checks) (Art. 10). BAK requests that at least 15 percent of all newly approved passenger cars or 150 conformity tests of passenger cars already in use shall be tested. Considering the approx. 12 million registrations of new passenger cars in the internal market per year this control requirement seems to be justified and can be shared by 28 Member States as long as the control load is efficiently and effectively distributed.

Levying of fees for covering the costs of type test approvals and market surveillance

BAK welcomes in general the proposed approach in Art. 30 to introduce fee financing of covering the costs of type approvals including pre-market checks and tests as well as market surveillance regarding the conformity of already sold vehicles. Sufficient financing of market surveillance beyond the pressure of public budget requirements is vital for achieving the goal of this regulation.

Levying a fee only “on manufacturers who have applied for type approval in the Member State concerned” (compare Art. 30.4) for market surveillance of already registered vehicles is not conclusive, since some Member States do not have type approval tests for vehicles. In our point of view, market surveil-

lance regarding conformity should be based on the number of registrations of a Member State.

Strict requirements for “Defeat Devices”

The already existing general prohibition of defeat devices in Art. 5 of EU Regulation 715/2007 shall be stated much clearer. The exception of the use of defeat devices for the protection of the engine in the case of an accident and for safe use of the vehicle shall be stated much clearer and unambiguously. In case of infringement, Art. 89.2 should state offences which result in dissuasive penalties for the manufacturer. Furthermore, BAK lacks regulations in the proposal of how to proceed if vehicles have already been registered which are fitted with fraudulent software for the manipulation of emissions.

Market surveillance of manufacturers’ data based on real life operation

Exhaust gas measurements in normal road use (RDE testing) should be obligatory within the framework of type approval, production survey and market surveillance. The technical annexes to this proposal for a regulation shall be changed accordingly.

Ensure consumer interests

BAK requires to provide access for recognised consumer protection associations to the Forum for the Exchange of Information on Enforcement pursuant to Art. 10. Furthermore Art. 9 should provide for a complaints office for recognized consumer associations.

Setting up of a database with real life passenger car emission values

BAK requires – as an addition to the measures stated in the proposal – the setting up of a database which collects EU-wide real life fuel consumption values of passenger cars at representative fleet operators (e.g. taxi companies, car rental companies, etc.). This should serve as a corrective to official passenger car test cycles which possibly never reflect real life or can be interpreted one-sidedly by the manufacturers or can serve as indicators for market surveillance regarding conformity of already registered passenger cars. A uniform data format for this database should ensure its usability and data comparability for the interested public in all European states.

Other requirements

Art. 6.3 should state clearer that HDVs which are type approved in one Member State but whose dimensions, maximum mass and axle weight deviate from Directive 96/53/EC can certainly be prohibited from entry into service in another Member State.

Art. 72.4 provides for taking out a liability insurance for technical services. With regards to the far-reaching consequences of testing activities and the sanctions stated in Articles 89 and 90 in the case of infringement it should be taken care of that the amount of the coverage of the liability insurance is sufficient.

Should you have any further questions
please do not hesitate to contact

Franz Greil

T: +43 (0) 1 501 65 2262
franz.greil@akwien.at

and

Gudrun Kainz

(in our Brussels Office)
T +32 (0) 2 230 62 54
gudrun.kainz@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Straße 20-22
1040 Vienna, Austria
T +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation of Austria to the EU
Avenue de Cortenbergh 30
1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73