

Position paper

EU type approval

1. Summary:

On 27 January 2016 the Commission published its paper 2016/0014 (COD) containing its proposal for a regulation. The proposal is intended to improve the type approval procedure with regard to the following points which have proved controversial in the past:

- standardization of the interpretation of the provisions by the type approval authorities,
- more stringent and uniform processes for cases of non conformity.

In order to secure these aims, the Commission is planning to introduce the following points in the type approval process or to design them more stringently:

- market surveillance by the member states and the Commission,
- the introduction of national scales of fees for the purpose of imposing national fees for the type approval of passenger cars. The proceeds are to finance the type approval procedures and, in addition, market surveillance,
- the establishment of a procedure in cases of non-conformity or of differing interpretations,
- the validity of type approvals is in future to be limited to a maximum of five years.

German industry gives its express support to the objective of improving the type approval system along the lines of the Commission's objectives as outlined above. However, in the process consideration should be given to the following points:

- a transparent and balanced system should be devised for the implementation and funding of the market surveillance;
- the funding of market surveillance should not be linked to national type testing charges. Since the extent of type checking is limited, the member states would have to raise these charges to an exorbitant level;
- the introduction of national fee scales is to be rejected since among other factors these run counter to the consistent application of the common legal framework for the marketing of products (decision 768/2008/EC) and would in no way contribute to an improvement in the European type approval system;

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- the testing procedures in the type approval procedure must be practicable and be subject to uniform interpretations;
- measures in cases of non-conformity should be appropriate – a distinction should be drawn between safety-critical and formal divergences;
- appropriate and EU-wide harmonized procedures should be established for end-of-series vehicles as well as for step-by-step manufactured vehicles;
- the highest permitted quantity for small series in vehicle class N2 should be raised for vehicles with alternative propulsion systems or adapted to vehicle class N1;
- *according to the Commission, after a five-year term at the latest a new type must be homologated. This is quite unacceptable. Instead of the five-year validity, a review of complete vehicle type approvals should be implemented by another type approval authority.*

2. Current state

Market surveillance

German industry supports the introduction of market surveillance. However, what is important is the efficiency of the respective measures thereby introduced. It should be ensured that only the selected market surveillance authority (MSA) approaches the OEM.

The BDI therefore demands:

- In order to guarantee “fees fairness” in the European Union, a transparent and appropriate procedure should be developed that takes account of the situation in the individual member states as well as industry's financial planning capability. For reasons of equal treatment the market surveillance should not be financed through the type approval fund. That would give an inappropriate advantage for components which are type-approved outside the EU on the basis of UNECE regulations. In other branches of industry the cost of market surveillance is borne by the authorities.
- Type approval is the task of a sovereign authority. That is why every vehicle or component that is the object of the market surveillance should be purchased or hired in the market by the market surveillance authorities at their own expense so that independence and representativeness can be guaranteed. That is also the way this matter is handled in the USA and in South Korea.

No national fee scales for the work of the technical services as part of the type approval of vehicles

As a reaction to the exhaust emissions problem with diesel vehicles, the EU proposal for a regulation on revising vehicle type approval provides for a fundamental change of system with regard to the contractual basis between technical services and manufacturers. The justification for this runs as follows:

“The independence of the technical services vis-à-vis the manufacturers should amongst other things also be secured by avoiding any indirect or direct payments by the manufacturers for the type approval controls and checks.”

For various reasons, some of which are listed below, the German business community considers national fee structures and a possibly changed contractual basis for neither proportionate nor necessary for improving the system of European type approval for vehicles.

1. The introduction of national fee scales for the exercise of the activities of technical services within the framework of the type approval procedures contradicts the consistent application of the common legal framework for the marketing of products (decision 768/2008/EC). This is the main pillar for innovation-friendly, efficient and modern product regulation in the European single market. In accordance with this, the manufacturers of products with a high risk potential must integrate independent third parties into the marketing of their products. These bodies prove in equal measure their competence and independence by means of sovereign accreditation as well as within the framework of nomination through national authorities. That is why the manufacturers can commission a technical service of their choice throughout the whole of Europe. This is consistent because ultimately the manufacturer bears complete responsibility for product conformity.
2. Contrary to the requirements of the *Better Regulations Guidelines*, the proposal for the introduction of national fee scales, in itself alien to the system, was not accompanied by any study (competitive proofing study) within the framework of impact assessment which investigates the effect on the efficiency and competitiveness of the technical services in the single market as well as in the international environment. This study ought to have taken place because the criteria laid down by the EU Commission itself relating to the *“quality or the originality“* of the service provision are substantially affected by the fee scale proposal. This comes about because up to now both the choice of the service provider and the price fixing for the service performed has been decided autonomously and privately between the economic agents, the technical service and the manufacturer. Such a grave restriction of the market participants which the introduction of a fee scale entails would have required a fundamental analysis.

Improvement in the system of EU type approval

German industry supports the introduction of provisions for the effective market surveillance of automobiles in the European type approval regulations. The provisions must be drawn up more clearly and precisely in order to ensure a qualitatively high-standard and safe type approval system. The independence of the technical services and of the type approval authorities should be further strengthened. National fee scales and a possibly changed contractual basis are, however, not suitable means for guaranteeing the independence of the technical services. From our point of

view (as already envisaged in the draft) the current system can be improved by readjusting the rights and obligations of the technical services as well as an EU-wide uniform application of the oversight obligations of the authorities.

German industry supports an event-warranted disclosure by the manufacturer to the type approval authority of the software concepts for the real driving emissions (RDE) and the checking of the software. In this case the individual provisions must contain a detailed description of the testing procedure to be applied and its extent and with proper consideration of know-how protection.

Moreover, it is important that type approvals issued on the basis of legitimate testing should also remain valid if the respective technical service should lose its authorization.

Repair and maintenance information (RMI)

In principle it is to be welcomed that under the proposal of the EU Commission the existing provisions for repair and maintenance information are also to be adopted unaltered in the type approval regulation. Yet, it must be recorded that the transfer of requirements does in fact mean that changes have been initiated. The requirements for light (Euro6) and heavy vehicles (Euro6) are different. This must be taken into consideration and corrected.

Procedure in the case of non-conformity:

The Commission's proposal aims at the introduction of very restrictive measures in cases of non-conformity, e.g. an automatic sales ban for importers. In planning such measures the following elements should be taken into consideration:

- the authorizing authority should continue to be the central body for the recording and processing of non-conformities.
- a distinction must here be drawn between serious risks for safety and the environment and other non-conformities.
- systems of sanctions must be appropriate, which should also include listening to and permitting the participation of those affected. Only in the case of demonstrably serious risks are direct measures justified. If a non-conformity is unequivocally established, the authorities can decide on what would be an appropriate manner to proceed.
- on account of the fact that importers are above all represented in the country with merely a sales organisation (no production, mostly no R&D departments, either) and thus do not have the know-how to decide what non-conformity does in fact involve risk, then here too the obligation must be introduced to consult the manufacturer. Decisions should then be made in the same way as described for the previous point.
- especially in the case of non-conformities which, for example, are based on erroneously occurring documentation mistakes, an immediate sales ban would be totally disproportionate.

Against the background of procedures which, up until now, have varied widely across the EU, German industry welcomes the introduction of harmonised provisions for placing end-of-series vehicles on the market.

However, the proposed transitional period of 12 months from the time of the new provision coming into effect is unnecessarily short and contains avoidable commercial risks for the dealers since after this period they are not even allowed to put individual vehicles on the market.

German industry therefore supports the date of production being entered into the CoC documentation. This date is an absolutely certain indicator of what provisions the vehicle had to comply with at the point in time of production and whether it consequently qualifies for approval within the meaning of the end-of-series regulations.

Maximum permissible quantity for small series

German industry would welcome an increase or an equalization of the maximum permitted small series quantities for alternative vehicles in the vehicle classes N1 and N2. As the Commission's proposal rightly emphasizes, manufacturers of small series vehicles should be granted suitable flexibility by means of alternative type approval models. Yet, here it must also not be disregarded that this also applies to vehicles with alternative means of propulsion. Owing to the heavy battery, electric vehicles have a higher total weight than conventional vehicles. In the case of vehicles with a permitted total weight of 3.5 tonnes (N1), this leads to the electric versions exceeding this weight limit despite having the same load capacity. Consequently, they are then assigned to the N2 category. In order to permit maximum flexibility here, the starting conditions must be devised to be the same and the maximum permitted small series quantities for vehicles with alternative propulsion in category N2 be adapted accordingly.

EU individual authorization and EU authorization of small series

German industry supports the proposal by the Commission to harmonize EU-wide the approval of individual vehicles and of small series. What is important here is that this does not take place merely for passenger vehicles and light commercial vehicles but also for heavy commercial vehicles.

Expiry of the validity of type approval

German industry supports this proposal for overall vehicle authorization if the process is implemented simply and unbureaucratically. A more effective alternative involving less administrative complexity is described below. *However, according to the Commission it is planned that in every case a new type is to be homologated after five years at the latest. That is not practicable and cannot be supported.*

In the case of the approval of component parts or systems the administrative burden would be extremely high as a result of the large number of approvals

alone (one vehicle approval can contain around 40 to 400 individual authorizations). In addition, in order to avoid the interruption of production, it should be possible upon application by the manufacturer to bring forward the reassessment and extension of the vehicle approval to a point before the five-year term has expired.

It must also be borne in mind that replacement parts are needed for a long time after the end of series production. They must correspondingly meet the requirements of the type approval for a vehicle before the end of the series. A limitation of the validity of type approvals for spare parts would therefore not make sense.

A more simple and less bureaucratic process could be implemented by the introduction of a review after 5 years by a different type approval authority than the original one. When conformity is established, the original approval should be valid without change for another five years. This variant of a peer review is also provided for in the draft for the review of the approval authorities amongst themselves and would do justice to the goals aimed at by the Commission:

- standardization of the interpretation of the rules by the type approval authorities;
- more stringent and uniform processes for cases of non-conformity.

At the same time the administrative effort would be reduced and the risk of a gap in time between the expiry of the validity and the renewal of the approval would be eliminated.