

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2022/163

of 7 February 2022

laying down rules on the application of Regulation (EU) 2018/858 of the European Parliament and of the Council as regards functional requirements for market surveillance of vehicles, systems, components and separate technical units

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC ⁽¹⁾, and in particular Articles 8(15), 9(5) and 13(10) thereof,

Whereas:

- (1) Pursuant to Article 8(15) of Regulation (EU) 2018/858, the Commission is empowered to lay down common criteria for establishing the adequate scale of the compliance verification checks of vehicles, systems, components and separate technical units to be carried out by the market surveillance authorities under Article 8(1) of that Regulation. The Commission is also empowered to lay down common criteria for the format of the overview of planned market surveillance checks that the Member States are to provide to the Forum for Exchange of Information on Enforcement ('the Forum') under Article 8(6) of Regulation (EU) 2018/858. In addition, the Commission is empowered to lay down common criteria for the format of the report on the findings of compliance verification checks that the Member States are to submit to the Forum under Article 8(7) of that Regulation.
- (2) In order to ensure a robust compliance enforcement mechanism and to provide market surveillance authorities with uniform requirements for the selection of vehicles, systems, components and separate technical units for tests, the criteria for establishing the adequate scale of compliance verification checks should be set out. Since compliance verification checks cannot be applied in the same way due to differences in each Member State regarding the number of vehicles, registered vehicles or the number of complaints, it is important that those criteria cover different elements that can be used in accordance with the specificities of a given Member State. Those criteria should include for each Member State the frequency of documentary checks, the number of vehicles registered and the number of tests performed.
- (3) In order to facilitate the annual planning of market surveillance checks by Member States and to ensure that their findings following any compliance verification checks are reported in a uniform way, it is necessary to lay down common criteria for the format to be used by the Member States when submitting to the Forum the comprehensive overview of their planned market surveillance checks referred to in Article 8(6) of Regulation (EU) 2018/858 and the report on the findings of their compliance verification checks referred to in Article 8(7) of that Regulation. The

⁽¹⁾ OJ L 151, 14.6.2018, p. 1.

format of the overview of planned market surveillance checks should include information on the vehicles, systems, components and separate technical units tested, the relevant regulatory acts checked and the planning of the tests. The format of the report on the findings on compliance verification checks should include information on the risk assessment principles put in place and analyses of the activities carried out.

- (4) Pursuant to Article 9(5) of Regulation (EU) 2018/858, it is necessary to specify the data that the manufacturers are to make available to the Commission free of charge for the purpose of compliance verification.
- (5) Pursuant to the second subparagraph of Article 13(10) of Regulation (EU) 2018/858, it is necessary to specify the data that manufacturers are to make available to third parties free of charge under the first subparagraph of that paragraph for the purpose of testing by such third parties for possible non-compliance.
- (6) Pursuant to the second subparagraph of Article 13(10) of Regulation (EU) 2018/858, it is necessary to specify the requirements to be met by third parties to demonstrate their legitimate interest in the fields of public safety or environmental protection and their recourse to adequate testing facilities and to guarantee that their organisation and operation is fully impartial and independent.
- (7) In order to ensure that third parties are capable of carrying out compliance verifications in line with the requirements set out in the regulatory acts listed in Annex II to Regulation (EU) 2018/858, their test reports should comply with the format laid down in Commission Implementing Regulation (EU) 2020/683 ⁽²⁾ and fulfil requirements with regard to the competence and the quality of the testing facilities.
- (8) The measures to be taken under the provisions of Articles 8(15), 9(5) and 13(10) of Regulation (EU) 2018/858 concern the compliance verification of vehicles, systems, components and separate technical units. Those measures are substantively linked by their subject matter and the context in which they are to apply. It is therefore appropriate to adopt this Regulation on the basis of all three provisions in order to achieve consistent compliance verification.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee – Motor Vehicles (TCMV),

HAS ADOPTED THIS REGULATION:

Article 1

Criteria for establishing the adequate scale of the compliance verification checks

The adequate scale of the compliance verification checks of vehicles, systems, components and separate technical units performed by the market surveillance authorities shall be established based on the following criteria:

- (a) the frequency of documentary checks on vehicles, systems, components and separate technical units carried out on vehicles registered in the relevant Member State in the preceding year;
- (b) the number of tests per year taking into account the requirements set out in Article 8(2) and (3) of Regulation (EU) 2018/858;
- (c) a hazard ranking of the regulatory acts listed in Annex II to Regulation (EU) 2018/858, based on the risk and the likelihood of the hazard occurring;
- (d) the number of new vehicles registered in the relevant Member State in the preceding year, by make and commercial name;
- (e) the substantiated complaints per make and commercial name of vehicles in the previous three years;

⁽²⁾ Commission Implementing Regulation (EU) 2020/683 of 15 April 2020 implementing Regulation (EU) 2018/858 of the European Parliament and of the Council with regards to the administrative requirements for the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 163, 26.5.2020, p. 1).

- (f) information exchanged in the Forum in the previous three years;
- (g) testing results published by third parties in the previous three years, that meet the requirements laid down in Article 6;
- (h) the percentage of tests allocated to the number of vehicles registered and the percentage of tests allocated to random sampling.

Article 2

Format of the overview of planned market surveillance checks

The overview of planned market surveillance checks referred to in Article 8(6) of Regulation (EU) 2018/858 shall be submitted to the Forum in the format set out in Annex I to this Regulation.

Article 3

Format of the report of the findings following compliance verification checks

The report of the findings following compliance verification checks referred to in Article 8(7) of Regulation (EU) 2018/858 shall be submitted to the Forum in the format set out in Annex II to this Regulation.

Article 4

Data to be made available by manufacturers to the Commission for the purpose of compliance verification

The data to be made available by manufacturers to the Commission in order to enable it to carry out the tests and inspections under Article 9 of Regulation (EU) 2018/858 shall include the following:

- (a) the parameters and settings that are necessary to accurately replicate the test conditions that applied at the time of the type-approval testing, including all test reports referred to in Article 30 of Regulation (EU) 2018/858 and the information relevant to perform the tests and checks required pursuant to that Regulation (EU) 2018/858 and the regulatory acts listed in Annex II to that Regulation;
- (b) extended documentation packages required under the regulatory acts listed in Annex II to Regulation (EU) 2018/858, including information on auxiliary emission strategies (AES) in accordance with Commission Regulation (EU) 2017/1151, Annex I, Appendix 3a ⁽³⁾;
- (c) the package on testing transparency required for testing vehicles for emissions described in Regulation (EU) 2017/1151, Annex II, point 5.9;
- (d) a copy of the certificate of conformity of each vehicle to be tested;
- (e) all other relevant technical information needed to perform tests.

Article 5

Data to be made available by manufacturers to third parties for the purpose of testing for possible non-compliance

The data to be made available by manufacturers to third parties under Article 13(10) of Regulation (EU) 2018/858 shall include the following:

- (a) the parameters and settings that are necessary to accurately replicate the test conditions that applied at the time of the type-approval testing, including all test reports referred to in Article 30 of Regulation (EU) 2018/858 and the information relevant to perform the tests and checks required pursuant to that Regulation (EU) 2018/858 and the regulatory acts listed in Annex II to that Regulation;

⁽³⁾ Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Commission Regulation (EC) No 692/2008 (OJ L 175, 7.7.2017, p. 1).

- (b) extended documentation packages required under the regulatory acts listed in Annex II to Regulation (EU) 2018/858, including information on AES in accordance with Regulation (EU) 2017/1151, Annex I, Appendix 3a and Commission Regulation (EU) No 582/2011, Annex I, Appendix 11 ⁽⁴⁾;
- (c) the package on testing transparency required for testing vehicles for emissions described in Regulation (EU) 2017/1151, Annex II, point 5.9;
- (d) a copy of the certificate of conformity of each vehicle to be tested;
- (e) all other relevant technical information needed to perform tests.

Article 6

Requirements for third parties to demonstrate their legitimate interest and their recourse to adequate testing facilities

1. For the purposes of demonstrating their legitimate interests in the fields of public safety or environmental protection pursuant to Article 13(10) of Regulation (EU) 2018/858, third parties shall fulfil the following requirements:

- (a) they are a natural or legal person established under the law of a Member State;
- (b) they shall be non-governmental and non-profit-making;
- (c) they shall not be involved in aspects of the type-approval or in the process of the design, manufacturing, supply or maintenance of a vehicle, system, component or separate technical unit;
- (d) they shall provide a declaration stating that they observe confidentiality in the context of the protection of commercial secrets and the preservation of personal data and that their personnel observe professional secrecy with regard to all information provided by the manufacturers, including the EU type-approval certificate and its attachments and the data made available in accordance with Article 5;
- (e) they shall demonstrate that they have recourse to adequate testing facilities in accordance with the requirements of paragraph 2 of this Article.

2. For the purposes of demonstrating that third parties have recourse to adequate testing facilities for the purposes of compliance checks and tests, these facilities shall fulfil the following requirements:

- (a) they are not involved in the process of the design, manufacturing, supply or maintenance of the vehicle, system, component or separate technical unit that they assess, test or inspect;
- (b) they are accredited in accordance with the requirements set out in standard EN ISO/IEC 17025:2017 on the general requirements for the competence of testing and calibration laboratories and the scope of that accreditation covers the tests it carries out under the regulatory acts listed in Annex II to Regulation (EU) 2018/858;
- (c) they are accredited in accordance with the requirements set out in standard EN ISO/IEC 17020:2012 on general criteria for the operation of various types of bodies performing inspection or alternatively the purpose of the accreditation according to EN ISO/IEC 17025:2017 is extended to cover the inspection procedure;
- (d) they shall provide a declaration stating that they observe confidentiality in the context of the protection of commercial secrets and the preservation of personal data and that their personnel observe professional secrecy with regard to all information provided by the manufacturers, including the EU type-approval certificate and its attachments and the data made available in accordance with Article 5.

⁽⁴⁾ Commission Regulation (EU) No 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No 595/2009 of the European Parliament and of the Council with respect to emissions from heavy duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council (OJ L 167, 25.6.2011, p. 1).

*Article 7***Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 February 2022.

For the Commission
The President
Ursula VON DER LEYEN

Format of the comprehensive overview of planned market surveillance checks

(To be completed by the Member State and submitted to the Forum no later than 1 March)

Member State:

Name of market surveillance authority:

Person of contact within the authority (name, email and telephone number):

Period covered DD.MM.YYYY – DD.MM.YYYY

Member State ⁽¹⁾ :	Make ⁽²⁾ :	Commercial name ⁽³⁾ :	Variant/version ⁽⁴⁾	Category of vehicle ⁽⁵⁾ or system, component and separate technical unit:	Regulatory act(s) ⁽⁶⁾	Subject(s) ⁽⁷⁾	Documentary checks/laboratory tests/on-road tests:	Planned starting period:	Remarks:

⁽¹⁾ The distinguishing number of the Member State that has issued the type-approval as provided in the table of Regulation (EU) 2020/683, Annex IV, point 2.1.

⁽²⁾ Trade name of the manufacturer set out in point 0.1 of the EU whole vehicle type-approval certificate.

⁽³⁾ The commercial name set out in point 0.2.1 of the EU whole vehicle type-approval certificate.

⁽⁴⁾ Where applicable.

⁽⁵⁾ Category of vehicle (e.g. M1, N1).

⁽⁶⁾ Applicable regulatory acts listed in Annex II to Regulation (EU) 2018/858.

⁽⁷⁾ Subject of the applicable regulatory acts listed in Annex II to Regulation (EU) 2018/858.

ANNEX II

Format of the report of the findings on compliance verification checks

(to be completed by the Member State and submitted to the Forum by 30 September of the year following the end of the 2-year period concerned)

1. Information:

Member State:
Name of market surveillance authority:
Period covered: DD.MM.YYYY – DD.MM.YYYY

2. General: (market surveillance organisation and infrastructure)

- Responsible ministry for this sector;
- Name and contact details of the competent Market Surveillance Authority (their address; including their electronic address (email), and their areas of responsibility);
- Number of automotive market surveillance staff;
- Test resources (own or external laboratory);
- Clarification how is ensured the market surveillance authorities carry out their duties independently and impartially.
- ...

3. Member States explanation of their established risk assessment principles:

- a brief explanation of the risk assessment principles established;
- an overview of the criteria used for the risk assessment;
- explanation on effective coordination of activities between national authorities;
- ...

4. Overview activities carried out during the previous planning period:

- Total number of carried out market surveillance checks per year;
- Number of identified non-compliances per year and per type of vehicle;
- Specific information with regards to the identified non-compliances per year (applicable legislation/subject) and identified trends in non-compliances;
- Number of open corrective and restrictive measures with regards to identified non-compliances per year;
- Number and amount of money of penalties imposed by the Member States per year and per legislation;
- ...

5. Findings/analyses:

- Strengths & Weaknesses (internal – micro level) of Market Surveillance Authority;
- Opportunities & Threats (external – meso and macro level) based on findings and non-compliances through market surveillance checks;
- Lessons learned (internal – micro level);
- Lessons learned (external – meso and macro level);

6. Measures and actions:

- Internal (micro level) measures and actions planned for the next 2 years;
- External (meso and macro level) measures and actions planned for the next 2 years;
- ...

7. Remarks:
