



EUROPEAN  
COMMISSION

Brussels, **XXX**  
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**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of **XXX****

**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**

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.*

**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

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**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<sup>1</sup> 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, 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

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<sup>1</sup> OJ L 151. 14.6.2018, p.1

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 format of the overview of planned market surveillance checks should include information on the vehicles systems, components, 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, the Commission is 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, the Commission is to specify the data that manufacturers are to make available to third parties free of charge under the first subparagraph of that Article 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, the Commission is also 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<sup>2</sup> 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;

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<sup>2</sup> 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)

- (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;
- (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 5;
- (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 to the Commission for the purpose of compliance verification*

The data to be made available to the Commission under Article 9(5) of Regulation (EU) 2018/858 shall include the following:

- (a) all test reports referred to in Article 30, including parameters and settings data, of the tests and checks required pursuant to 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 auxiliary emission strategies (AES);
- (c) a copy of the certificate of conformity of each vehicle to be tested.

#### *Article 5*

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

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

- (a) a copy of the EU type-approval certificate and its attachments referred to in Article 28(1) of Regulation (EU) 2018/858;
- (b) all test reports referred to in Article 30, including parameters and settings data, of the tests and checks required pursuant to Regulation (EU) 2018/858 and the regulatory acts listed in Annex II to that Regulation;
- (c) extended documentation packages required under the regulatory acts listed in Annex II to Regulation (EU) 2018/858, including AES;
- (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*

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

- (a) they are established under the law of a Member State;
- (b) they are accredited in accordance with the requirements set out in standard EN ISO/IEC 17020:2012 where they perform the checks themselves;
- (c) the test facilities 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;
- (d) the test facilities 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;
- (e) their personnel observes 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;
- (f) they do not disclose commercial secrets and personal data contained in the documents and data submitted by the manufacturer;
- (g) their verification checks and/or tests verify compliance with the regulatory acts listed in Annex II to Regulation (EU) 2018/858;
- (h) their test reports are established in the format set out in Annex VII to Implementing Regulation (EU) 2020/683;
- (i) all vehicles, systems, components or separate technical units checked are in conformity with the approved type of that vehicle, system, component or technical unit.

#### *Article 7*

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,

*For the Commission  
The President  
Ursula von der Leyen*

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