

The Consumer Voice in Europe

## CAR TESTING AND MARKET SURVEILLANCE

Recommendations for the Trilogue negotiations on the reform to EU type approval and market surveillance legislation



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## Why it matters to consumers

Consumers should have full confidence that a car they buy is in full compliance with the law and meets the performance claims of manufacturers. Today, consumers do not have this confidence, as exemplified by the Dieselgate scandal. Part of the problem concerns existing EU rules surrounding the testing of a car before it is on sale and how the market is monitored. It is essential that EU regulations are strengthened by way of ensuring greater oversight, more realistic testing, that conflicts of interest are eliminated and that car makers are made liable for any damage faced by consumers. The ongoing reform to EU type approval and market surveillance legislation is a huge opportunity to put these measures in place and help restore consumer trust in the automotive sector.

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## Background

In January 2016, the European Commission issued a proposal to reform existing EU rules surrounding the type approval and market surveillance of passenger cars. BEUC welcomed this proposal as it provides a unique opportunity to strengthen vehicle testing and ensure that consumers are provided with more realistic information about the performance of their cars. The European Parliament adopted its position on the proposal in April 2017 followed by the EU Council in May 2017. Now, the trilogue process has begun between the three EU institutions and in order to achieve a final EU text, it will require compromises between the three institutions.

Below are BEUC's key recommendations for compromises with regard to the reform of EU legislation on type approval and market surveillance of passenger cars. To read BEUC's full position please [see here](#).

## Recommendations

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### 1. National market surveillance targets – Article 8

Being that very few Member States have conducted market surveillance activities on cars in the past, it is essential that binding minimum quantifiable targets are established. The Parliament proposed a target of testing a number of cars that would represent 20% of new vehicle types placed on the market in each Member State per year. The Council proposed a target for each Member State to conduct one test for every 50,000 newly registered vehicles in each Member State.

Although it is positive that both institutions have proposed quantifiable minimum targets and in turn strengthened the Commission Proposal, there is a difference between them in terms of ambition. The Council's position firstly breaks down the actual number of tests to a much greater degree of detail than the Parliament's position (i.e. by issue - such as emissions or safety tests - and by method - such as laboratory tests or static testing). The position also demands that each test method is used an equal number of times. Although there is some logic in this approach, it could mean that the actual average number of tests per annum is very small for specific tests (such as a real world emissions test).

The Council's proposal is also less ambitious than the Parliament as it will mean that in some Member States there will be very few, if any cars tested per annum. The Parliament's position on the other hand would ensure that all Member States conduct a minimum number of tests each year. For example, based on new car registrations in 2016 (ACEA, [2017](#)), under the Council's position there would be 11 Member States who would have to perform on average one or less market surveillance tests per year. If the target was set at one car in 15,000 registered vehicles, then it would be likely that each Member State would have to conduct at least one test per annum<sup>1</sup>. This would ensure minimum requirements per Member State on a yearly basis.

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<sup>1</sup> Latvia had the smallest number of new vehicle registrations in 2016 among all Member States, at just over 16,000 (ACEA, [2017](#)).

Finally, some Member State do not have adequate capacity or resources to conduct market surveillance tests. If this is the case, they should be able to outsource the work to the Joint Research Centre or an independent technical service (different to the technical service who carried out the original type approval).

The Council, Parliament and Commission should agree that the market surveillance target is the **same or equivalent to the 20% new models target** proposed by the Parliament, or that Member States check **at least one car per every 15,000 new registered vehicles** in each Member State.

## 2. EU market surveillance responsibilities – Article 9

It is essential that in addition to national level market surveillance activities, initiatives are also undertaken at the EU level. The intention here should be to eliminate any potential conflicts of interest that might exist at the national level between Member States and car manufacturers. Furthermore, having EU level oversight should also better ensure against market failures/distortion as it should result in a more uniform implementation of EU rules. All the three institutions support this element. However, the Parliament and Commission's position would be the most effective as it explicitly states that registered cars (e.g. cars that have been bought and are in-use) could be tested by the Commission for market surveillance purposes.

The Council has deleted this provision. It is extremely important to agree on this allowance in order to ensure that cars being tested are not just those provided by car makers or taken from car showrooms. It is also important that vehicles which are in-use and have varying mileages are being tested so as to ensure a fully representative sample of the market (Adequate compensation should be provided to car owners when their vehicles have been acquired for this purpose).

The Council should agree with the Parliament and Commission and allow the explicit option for the Commission to test cars that are registered and in-use.

## 3. EU level fines - Article 90, Recital 40b (new)

It is essential that EU level fines can be handed out to car makers where market surveillance activities at the EU level prove wrong doing and non-compliance. Having such a penalty system acts as a deterrent against cheating and adds value to such market surveillance activities. Today, Member States have failed to put in place adequate sanctions (see [EUobserver](#), 2017) and therefor having a penalty system operating at the EU level will mean greater consistency and better implementation of the single market. Ultimately, it shouldn't matter in which country a company contravenes EU regulations, the penalties should be the same.

The proposals made by the Commission, Parliament and Council all allow for EU level fines of up to 30,000 Euros per non-compliant car. However, the Council's position puts in place unreasonable barriers that could prevent the Commission from ever launching or finalising legal proceedings. For instance, the Council has proposed the additional text under Article 90, paragraph 1, sub-paragraph 3, as follows:

*The Commission may not bring, start afresh or continue proceedings under this Article against economic operators on the grounds of infringements of this Regulation for which the concerned economic operators have been penalised or declared not liable in accordance with Article 89 by an earlier decision that can no longer be challenged.*

The text is unclear and could act as a disincentive to the Commission in launching legal proceedings for the following reasons: Firstly, if an economic operator has been declared not liable through legal proceedings at the national level for a particular offence, this should not prevent the Commission from launching its own proceedings. The principle here should be that if the Commission has a strong evidence base for making a claim - even if the same claim has made at the national level - then it should not be prevented from taking the necessary legal action. Secondly, if the Commission is in the process of legal proceedings, and at the national level proceedings then begin and finish before the Commission's own proceedings, this would mean for a costly and inefficient approach to holding car makers to account.

Recital '40b new' (from the Parliament) also states that administrative fines levied by the Commission could be used for '*market surveillance measures and for measures to support persons negatively affected by infringements of this Regulation or other such activities to the benefit of affected consumers and, where appropriate, environmental protection.*' This proposal should also be supported because of the inherent problems of consumers in Europe attaining compensation when affected by non-compliance and resulting damages.

The Council should retract its excessive proposal concerning EU level fines, as detailed under Article 90, paragraph 1, sub-paragraph 3. The Council and Commission should agree with the proposal for administrative fines to be used, at least in part, for compensating consumers negatively affected by non-compliance.

#### 4. Fees for covering costs of vehicle testing – Article 30

Today, many car manufacturers pay directly a private or public organisation (technical service) to oversee type approval tests. This payment poses a **direct conflict of interest** because of the revenue that technical services receive for their work. It is possible that the technical service will be inclined to interpret EU type approval rules in such a way that the outcome is more in the interest of their clients, the car makers (i.e. wanting impressive fuel consumption performance figures) rather than end consumers (i.e. wanting *realistic* fuel consumption performance).

However, the conflict of interest concerning a financial benefit received by the technical service is further aggravated for two reasons:

- 1) Competitive sector:** In Europe, there is substantial competition between technical services both on a national and EU basis (TNO, [2012](#)). This in turn means that a technical service could potentially be incentivized to interpret EU rules in such a way that is less strict than other competitor technical services. This in turn means the technical service will stand a better chance of attracting repeat business. And as there are no EU rules on unlimited repeat business, the conflict of interest is made all the more clear.
- 2) Subjective interpretation of rules:** Interpreting EU rules for specific type approval tests can involve a high level of subjectivity (particularly in emissions

testing). This means that a technical service could again be more inclined to interpret the rules in the car maker's interest, rather than in the consumer interest.

Ultimately, the conflict of interest that arises from allowing a direct payment between car maker and technical service means that type approval tests are potentially being undertaken with the car maker's interests being put before those of consumers needing reliable performance information.

The Commission and the Parliament's position both support the principle of not allowing direct payments between car makers and technical services. The Council has proposed to delete this provision. The Council should retract its proposal.

### 5. Transparency - Articles 6, 7, 8, 9 10, 10a, 65 & 80

A concern about vehicle testing is the existing lack of transparency with the type approval process across Europe. **Without transparency it is difficult if not impossible for watchdogs, including consumer organisations, to properly test products and raise alarm bells** with authorities where there is non-conformity. In particular with vehicle testing, it is difficult to access the following information (non-exhaustive list):

- The number of type approval tests conducted per year within each Member State;
- The vehicle types that are tested within each Member State;
- Knowing which authorities and technical services have overseen the type approval tests for each vehicle type;
- Knowing how many and which vehicle groups have had a type approval rejected and the reasons for these failings;
- Accessing the results from vehicle tests (i.e. cost down data) for the use in third party compliance checks.

Ensuring greater transparency here would assist independent organisations and consumer associations in conducting research in the area of type approval. It also allows for greater accountability. The ongoing emissions scandal has shown how difficult it is to understand where type approval for specific vehicles has been conducted which, in turn, has made it difficult for consumer organisations to hold decision makers to account.

It is essential that Member States are required to report fully (and to the public) on their activities regarding type approval and market surveillance on a regular basis. Furthermore, it will be important to agree on having an online type approval database that is easy to use; that testing information (i.e. cost down data) is made available to third parties; that an online tool is developed for complaints and third party test results; and that consumer organisations are involved in the activities of the proposed Forum as observers. The Council, Parliament and Commission should agree on the all the above mentioned elements.

### 6. Liability – Article 89

Car makers should be liable for any damage inflicted on the consumer resulting from non-conformity with type approval. This is extremely important so that consumers are compensated if they have not received the product promised to them by a manufacturer. The existing problems faced by consumers in this area is best exemplified by the [VW scandal](#), in that consumers are still yet to receive any compensation in the EU (this is

despite the fact that US consumers are set to receive several thousand dollars in compensation because of their damages). Furthermore there are several reports and evidence that the recall carried out by VW on affected cars has led to damaging effects on the performance, fuel consumption and emissions of the cars<sup>2</sup>.

The Parliament proposed to strengthen the Commission's proposal by making it crystal clear that car makers should be liable for any damages faced by the consumer as a result of non-compliance or following a recall. The Council and Commission should support this proposal.

## 7. Real world fuel consumption/CO2 testing – Article 91

In 2001, the average real world fuel consumption of all cars in Europe was 8% worse than the official figures declared by car manufacturers. Today that figure is approximately 40%, which means consumers are spending more on fuel than otherwise expected (See the box beside this text).

The Commission proposed to have explicit text that states type approval fuel consumption figures should be representative of the real world. This was supported by the Parliament. This principle is important because in order to ensure that it is met, it would require a real world test being developed to measure representativeness. This is in line with the findings of the Commission's own [Scientific Advisory Mechanism](#). It found that the gap between official and real world fuel consumption needs further measures than just relying on the new test method, the WLTP. However, the Council proposed to delete this proposal.

It is essential therefore that the Council changes its position and agrees with the stance of the Commission and Parliament.

### The Great Fuel Consumption Scam

BEUC members have discovered that motorists are spending far more on fuel costs than otherwise expected: The UK consumer organisation [Which?](#) tested 200 cars in 2015 and found that drivers are spending £133 (€185) more a year on fuel than otherwise expected; The Austrian group [AK Wien](#) found that for the top 30 selling cars in the country, owners were paying almost €300 more; Slovenian consumer organisation [ZPS](#) found that drivers in the country are collectively spending an additional 100 million euros per year; and due to the problem, the Italian consumer group [Altroconsumo](#) is requesting compensation of between €239 and €502 in court for the owners of a Fiat Panda and a VW Golf. Finally, the research group [ICCT](#) also says that on average across the EU, the divergence translates into increased fuel costs of €450 per year.

The Council, Parliament and Commission should agree on the principle that type approval fuel consumption figures must be representative of the real world.

<sup>2</sup> See BEUC members [Altroconsumo](#)'s test results that show an increase in emissions; See the [Autocar test results](#) which show an increase in fuel consumption and [anecdotal evidence](#) showing a range of detrimental performance impacts – It has also been reported in the media that [unofficial results from JRC tests](#) show worse emissions performance of 'fixed' cars).



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