

04 March 2021 / 10 March 2021

Ref: Forum request from the ad-hoc Forum meeting of 14th January 2021 in response to the EC Court of Justice judgement Case C-693/18 and subsequent letter to TCMV members on the NOx related remedial measures in the Member States.

Copy to: Mr Gwenole Cozigou, Director General for Internal Market, Industry, Entrepreneurship and SMEs

Dear ,

To provide and support a consistent approach for the provision of the information required by the Commission and also by Director Cozigou in his letter to the TCMV; the emission Granting Type Approval Authorities have come together to review the information required and discuss how best to provide it.

During this review a number of difficulties and different understandings and legal positions have come to light for which guidance from the Commission is needed. These difficulties are as follows:

1. As the provision of AES/BES documents was not a type-approval requirement until (EU) 2016/646 entered into force (16.05.2016), it is not possible for the type-approval authorities to review AES strategies that applied to Euro 5 and Euro 6b vehicles.
2. There is very little capacity to provide this information (30th March 2021). Considering that other ECJ rulings on similar issues are pending, awaiting the outcome of these additional rulings will facilitate a full and comprehensive review of all applicable approvals.
3. Due to Covid-19 pandemic and subsequent restrictions, only documentary reviews will be possible. This is a further limiting factor into what information type-approval authorities can supply. For all Euro 5 and Euro 6 approvals granted prior to (EU) 2016/646 coming into effect, the type-approval process did not require this information.
4. Evaluation of AES/DD potentially affected by this ruling, by 30 March 2021.
 - a. Only possible for post (EU) 2016/646 approvals. Even then there is not much time and human resources to do this while additionally meeting the usual ongoing approval demand.
 - b. Input from manufacturers and technical services will be needed.
 - c. Resources of TAA are limited and can only be used for the tasks laid down in the legal framework.
 - d. Do not see the benefit to review thousands of approvals. Many Member States have already reviewed vehicles in national surveillance programmes and took action.
 - e. Market surveillance is a better tool to use for Euro 5 up to Euro 6b approved vehicles, as has already been demonstrated by the national surveillance programmes which resulted in several recalls being initiated.
 - f. Too much work to look at everything, a balance between past and present experiences and competencies should be applied to any review.
 - g. Should be able to rely on past recalls and approvals issued subsequently.
 - h. No problems with Euro 6d and Euro 6d TEMP approvals.
 - i. Clear and concise description from the Commission on what is to be reviewed is essential.
 - j. Impossible to carry out a full review.

5. How to incorporate differences between the ECJ Ruling and COM presentation:
 - a. Recital 139: This is not part of the ECJ Ruling.
 - b. "Fourth Question referred": Recital 139: This is not part of the ECJ Ruling.
 - c. "Which Defeat Device would be illegal": -7°C and + 35°C.
In the Commission notice concerning the Guidance on the evaluation of Auxiliary Emissions Strategies, EGR modulation at temperatures above -4°C is recommended.
 - d. Thermal windows are not part of the ECJ Ruling.
6. Is the ECJ Ruling within COM's presentation the complete ruling?
 - a. The ECJ Ruling is concerning the use of defeat device software which may have been justified by the manufacturer on the basis of clogging, aging, fouling etc, but this is not clearly stated in what information we have at the moment.
 - b. From the link to the Advocate General's opinion there were four questions put to the Court for a ruling:
 - i. Interpretation of the concept of "design"
 - ii. Interpretation of the concept of "emission control system"
 - iii. Interpretation of the concept of "defeat device"
 - iv. Interpretation of the exceptions provided for in Article 5


Did the Court accept the proposed solutions to these questions provided by the Advocate General?
7. What changes this ruling and pending rulings will have on future assessment of AES strategies?
 - a. Update of Commission Guidance Note.
 - b. How to ensure a consistent approach.

The Commission's guidance, and further discussions and exchange of opinions are vital, to determine the extent of the review that is necessary; balanced against what resources and information is available to the Type Approval Authorities.

To provide a consistent approach perhaps a "special" Forum meeting can be organised, to find a common understanding and approach to the implications of the court ruling, and the necessity, legal basis and range of a possible review.

Yours sincerely.

Representatives of the type-approval authorities and members of the EC Forum group:

 – KBA
– France
– Italy
– RDW
– STA
– Czech Republic
– Spain
– SNCH
– NSAI