DISCUSSION NOTE

Subject: Complementary elements in the forthcoming legislative proposal to review the type-approval framework for motor vehicles

1. IMPACT OF THE VW CASE ON THE TYPE APPROVAL REVISION PROCESS:

The VW case makes it clear that the automotive sector needs a reinforced type-approval system. The weakest aspect of the present type-approval are as follows:

1) The core element of the type-approval system is the mutual trust between Member States in terms of stringent enforcement of the type-approval requirements. The current system entails the risk that the weaker links (i.e. the Member States with the least stringent approach) are exploited by means of "approval shopping" and prevent a level-playing field in the enforcement. The current draft proposals already include a number of measures to limit this. The following approaches, and the possibility of combining them, should also be explored:
   - centralised peer review mechanism based on joint audits of technical services by teams consisting of auditors of several Member States and the Commission;
   - establishment of team of independent EU inspectors (as for fisheries and nuclear power plants); and
   - creation of an EU centralised supervisory body.

In view of the urgent need for action with real effects in the short term, as well as potential for creating undue administrative burden, the creation of an EU centralised supervisory body is not recommended.

2) Another core element is that the cost for the type-approval inspections and tests carried out by the technical services is paid by the manufacturer applying for type-approval. It presents a risk as far as the independence of these technical services is concerned. The draft proposals include provisions aimed at strengthening the independence criteria for technical services, but there may be a need to reflect on a possible change to the system where the remuneration for technical services is not paid directly by the manufacturers. This could be done via Member States authorities organising an intermediary stage at national level so that “Chinese walls” are established between the individual payment and the individual examination. The stricter performance criteria for technical services have also to be implemented and verified by the designating Member States. Here there may be room for further and substantial change, to ensure a truly independent assessment and designation of technical services. Complementary to the draft proposals submitted to ISC, we should propose that designation of technical services is limited in time, and that the designating Member States have to jointly perform audits on technical services to verify their performance before a designation is granted or renewed. The Commission
should have the right to participate in these audits and a decisive power on the designation of technical services. This approach should also be implemented to cover all technical services already designated under the current framework. Further complementary measures to increase the reliability of the functioning of technical services could consist of requiring periodical audits in-between the start and end date of the designation.

3) One missing link in the EU type-approval legislation is a proper complementary market surveillance system. The draft proposals submitted in ISC provide for the introduction of such system, based on what has been done already for the type-approval legislation for motor-cycles and tractors. Further improvements to this system should be considered, by strengthening the market surveillance obligations for Member States. For this purpose the Commission should be mandated to establish the minimum thresholds for the number of vehicles to be tested ex-post, and to establish the methodology for targeting the vehicles and for carrying out inspections and tests on these vehicles. In addition, we should envisage the possibility for the Commission to carry out such post market inspections (with the involvement of the JRC) and the need for additional resources to organise and carry out these tasks.

4) Last but not least, our enforcement system should be further strengthened. Member States (others than the one that granted the approval) should have an explicit right/obligation to take safeguard measures (e.g. refuse to register) in case a vehicle is found to be substantially non-compliant, with the obligation to notify the safeguard measures to the Commission and decisive power for the Commission in case of disputes. This decisive power should include the right for the Commission to order EU wide recalls and safeguard measures.
Annex 1

WHAT IS ALREADY IN THE ISC PROPOSALS TO ENSURE A BETTER IMPLEMENTATION AND ENFORCEMENT OF THE TYPE-APPROVAL SYSTEM?

1.1. From Directive to Regulation:

The shift from Directive to Regulation will bring the benefit of a uniform direct application for the first time, transposition into national laws will no longer be needed and cannot result in diverging laws or delays or justify different interpretation.

1.2. Measures to avoid "type-approval shopping"

To prevent manufacturers from "shopping around" for the easiest/most lenient type-approval route, the following obligations, rights and limitations will be reinforced:

1.2.1. for a single type of vehicle, system, component and separate technical unit only one EU type approval may be issued (the same type cannot be covered by different approvals at the same time).

1.2.2. information exchanged between type-approval authorities of Member States in relation to EU type-approvals granted, amended, refused and withdrawn to be made available to the Commission upon request.

1.2.3. EU dispute settlement for non-compliance: In case Member States do not agree on the compliance of a product, COM may shall be notified and take a decision applying in the whole EU (see § 4.3)

1.2.4. Stricter criteria for technical services (see § 3.2), conformity of production (see § 3.3) and for the validity and extension of type-approvals (see § 3.4 below).

Note: Vehicle manufacturers will still be legally free to choose with which type approval authority to apply for a type approval (and therefore the associated technical services). Type approval authorities will remain public entities but competition for business will continue (in particular amongst technical services). The complementary measures should therefore be geared towards minimising the associated risks in terms of independence.

1.3. Technical services:

In order to improve the reliability and performance of technical services, the following new provisions have been proposed:

1.3.1. Introduction of a mandatory performance criteria for technical services, addressing their independence (also for subsidiaries & subcontractors), and including operational, reporting and information obligations.

1.3.2. MS will have to notify the Commission if designation of their technical services changes, and to restrict, suspend or withdraw the designation of their technical services if necessary.

1.3.3. Investigation power for the Commission to challenge competence of technical services.
1.4. **Conformity of Production (CoP):**

The reliability of the type-approval procedure has to be improved by ensuring full conformity of vehicle production through product controls by the enforcement authorities. The ISC proposals contain reinforced provisions in particular in relation to:

1.4.1. **the assessment of the manufacturers’ quality management systems for production,**

1.4.2. **product related controls through regular inspection and testing,** and

1.4.3. **the surveillance of the production stage by the competent authorities**

1.5. **Limitation of validity & extension of type-approvals:**

With a view to ensure that vehicle types continue to comply with the type-approval requirements, the ISC proposals clarify and strengthen the following principles:

1.5.1. **Limitation of the period of validity of type approvals in time.** After expiry of the validity period (5 years), the type-approval has to be verified on its continued validity to ensure that all requirements applicable to the type concerned are, and will continue to be, fulfilled.

1.5.2. **Cessation of validity (before the expiry of the validity period) when new requirements for the type concerned enter into force and the existing type cannot comply with these requirements without changing its design characteristics.**

1.5.3. **When changes in the particulars of an approved type are of such an extent that an amendment to an existing type-approval cannot be justified, a new type approval has to be issued.**

1.5.4. **When new requirements have entered into force for the type concerned, an existing type-approval can only be extended if the type complies with these new requirements.**

1.6. **Stronger penalty provisions:**

The ISC proposals provide for strengthening the current penalty provisions, by specifying explicitly that the type of infringements that are subject to penalties shall at least cover:

1.6.1. **Making false declarations during approval procedures and procedures leading to a recall,**

1.6.2. **Falsifying test results for type-approval,**

1.6.3. **Withholding data or technical specifications that could lead to the recall of vehicles or to the refusal or withdrawal of type-approvals,**

1.6.4. **Use of defeat devices,**

1.6.5. **Economic operators placing automotive products on the market without being approved or falsifying documents or approval markings with that intention**
Annex 2

WHAT DO THE ISC PROPOSALS CONTAIN WITH REGARD TO MARKET SURVEILLANCE?

The goal is to ensure an efficient framework for post-market remedial against non-compliant and unsafe products. This will be ensured by the following measures:

1.1. Obligations for Member States:

1.1.1. Obligation for Member States to organise and carry out market surveillance and controls of vehicles and automotive products entering the market, in accordance with the requirements of Regulation (EC) No 765/2008.

1.1.2. Obligation to withdraw non-compliant products from the market or prohibit or restrict their market access, and to inform the public, other Member States and the Commission.

1.1.3. Establish clear rules to enable enforcement authorities to effectively remedy any market failure caused by the presence of non-compliant products on the market. This will be done by specifying the responsibilities of different national authorities involved in the enforcement of the legislation and establishing clear procedures for information exchange and co-operation between them.

1.2. Obligations for manufacturers and other economic operators

1.2.1. Obligation for manufactures (established outside the EU) to appoint an authorised representative within the EU for market surveillance purposes.

1.2.2. Obligation for manufacturers and other economic operators in the supply chain to co-operate with market surveillance authorities.

1.2.3. Obligations for manufacturers to provide on/with the product the information to enable the identification and to trace the origin of non-compliant products encountered on the market and to identify who are the economic operators in the supply chain to be held accountable for the non-compliance.

1.2.4. The respective responsibilities of the economic operators in the supply chain (manufacturers, importers, distributors) will be defined, in particular with regard to the evidence of compliance of the automotive products they are placing on the market.

1.3. Enhanced safeguard measures and recall procedures

1.3.1. Introduction of a 2 step safeguard procedure (national level + Union level) on the basis of Regulation (EC) No 765/2008. The Union level safeguard procedure provides for a clear role for the Commission, including a decisive power in case of disputes between Member States or if national measures are considered insufficient.

1.3.2. If other Member States or the Commission consider that recall remedies are not sufficient or timely enough, the recalling Member State has to take all protective measures. If no such measures are taken, or not satisfactory for other MS and Commission, Commission to take a decision and Member States have to implement it.