NOTE IN REPLY TO AN INTER-SERVICE CONSULTATION

Subject: Draft proposal for a "Regulation of the European Parliament and of the Council on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles"

Reference Cisnet: ENTR 3486964

The SG gives a negative opinion for the following reasons:

- Despite the absence of a compelling time constraint, the Inter-service Consultation was launched in the last days of the previous mandate. This means it has not been subject to the necessary scrutiny by Commissioner Bienkowska and relevant Vice-Presidents, including the First Vice-President for Better Regulation, Interinstitutional Relations, Rule of Law and the Charter of Fundamental Rights. This is particularly unfortunate given the better regulation history of the file and the weaknesses identified in the IAB Opinion;

- The Impact Assessment has not been improved sufficiently to address the two main weaknesses identified by the Impact Assessment Board, i.e. the absence of sufficient evidence to back up the problem definition and shortcomings in the impact analysis. The Board's positive opinion was clearly conditional upon significant improvements in that respect and we do not consider that the revised version of the document meets the requirements of the Board.

You will find a number of more specific comments and suggestions of my services in the annex to this note as well as in the enclosed track change document.

Annexes

Contact:
Annex – Specific Comments:

Impact Assessment Report

While some parts of the IA report have been improved by taking into account the recommendations of the IA Board, the two main weaknesses identified in its opinion have not been tackled in a satisfactory manner:

- **Problem**: The causes of the problem are still not clearly identified and should be better backed up with all available evidence. In areas where the report now clearly acknowledges that there is no evidence available, it should be clearly explained why action is still warranted.

- **Impact analysis**: While the limitations of the quantitative analysis are now pointed out, the qualitative analysis should be further developed and the analysis underpinned with evidence, including by bringing back relevant elements in the main report which are now in the Annex. Given the shortcomings of the quantitative analysis, the executive summary sheet should also be reviewed, as it now mainly builds its argumentation around these results.

Further areas for improvement in the report are:

- The main report should include the most important and relevant results of the competitiveness proofing and likely impacts on SMEs. Based on this analysis, it should be made clear which impacts are significant and which are marginal on different categories of stakeholders (cf. need to better substantiate the conclusion in the executive summary that such impacts are not significant).

- The subsidiarity analysis is very brief. It should be reinforced, as the main justification put forward (i.e. MS depend to a large extent on the effectiveness of the enforcement policy of the neighbours), is weakened by explanations in the problem definition that it is unlikely that the presence of non-compliant and unsafe automotive products could be attributed to enforcement failures by MS. More concrete explanations/evidence on the cross-border dimension of the problem should also be provided (e.g. obstacles to cross border trade).

- The report should take into account the recommendation of the IAB to better assess the proportionality of some of the proposed measures and the impact on third countries.

- The report should better define the content of the options and how they would work in practice, e.g. explaining what would be the role of national authorities and how the exchange of information between the authorities would be ensured. The report should also explain why no options were put forward regarding certain issues raised by stakeholders, such as the concept of new vehicle type and the conditions for granting extensions to type-approvals.

- A robust and complete baseline scenario should be developed, explaining what would happen in the case of no further EU action.
• A short introduction to the general political and regulatory context should be included in the main report, rather than only in Annex 4. A summary of the key features of the sector should be included in the main report rather than only in the newly introduced Annex 7.

Delegated and Implementing Provisions

• In Article 47(2) it is foreseen that "In order to ensure the uniform application of paragraph 1, the Commission may adopt delegated acts to update Annex XIII listing such parts or equipment on the basis of available information, and in particular information communicated by the Member States, regarding: (...)". The formulation "in order to ensure uniform application" is typically linked to implementing acts.

• In Article 71 on implementing acts it is stated that "For the purposes of achieving the objectives of this Regulation and in order to lay down uniform conditions for the implementation of this Regulation, the Commission shall, in accordance with the examination procedure referred to in Article 70(2) adopt implementing acts laying down the following implementing measures: (...)". Reference should be to Article 72(2) and in we should not include lists of empowerments in the Committee Article since the empowerments are contained in the relevant Articles themselves.

• The relevant provisions also state that "Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply." As a matter of general policy, the Commission does not support such "no opinion" clauses and should not propose them itself.

• Article 75 on implementation and dispute settlement needs to be reconsidered. If the provision is intended as an empowerment for implementing decisions according to the examination procedure, the scope of the empowerment has to be set out more clearly. In addition, the Article sets out in its paragraph 3 additional pre-consultations which seem to make the conferral conditional upon consultation which is not acceptable from an institutional point of view.

• We note throughout the document a rather unusual way of referring to delegated and implementing provisions (e.g. Recital 11 "tests and inspections provided for in this Regulation and in the delegated and implementing acts adopted pursuant to this Regulation"), which should be reviewed in terms of legal drafting.

Other comments

• Given the fact that evaluations of type-approval rules, including a full Fitness Check, have been performed in the preparations to this initiative, the Recitals of the draft Regulation should adequately refer to these better regulation exercises. More specifically, the Recitals should explain how the findings of the Fitness Check led to precisely the draft initiative now proposed by the Commission. For the time being such explanations are merely provided in the Explanatory Memorandum.

• Neither the Recitals to the draft proposal nor the Explanatory Memorandum explain the relationship between EU-type approval procedures (Chapter IV) and the national
type approvals for small series and individual approvals (chapters X and XI). This should be complemented.

- Chapter III only comprises one article which poses the question whether an own chapter for this provision is needed.

- The draft Regulation should include an adequate evaluation clause, following up the considerations in chapter 8 of the Impact Assessment Report.