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for Transport

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Dear Bill,

5712/16: 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

I am writing to provide you with an update on this negotiation and with further detail on some of the proposed measures.

I am pleased to report that the negotiation in the Council Working Group has proceeded well under the Maltese Presidency and their intention is to reach a General Approach on this file at the Competitiveness Council on 29 May. We believe this may be achievable, subject to the progress made in the next Working Group on 26 and 27 April. I am seeking a scrutiny waiver for this file as it will not be possible for your Committee to consider a further update before the Council.

The European Parliament recently voted to agree a number of amendments to the proposal, which in general are more radical and more stringent for manufacturers than the amendments made in Council Working Group. We will be assessing these carefully ahead of the trilogue discussions and will then be able to provide you with an update on our views.

I am generally content with the indicative outcomes from the Working Group negotiations as we have managed to retain the key measures of the proposal, against the early reluctance we saw from a range of delegations. We have also been successful in removing the few provisions which we considered to be our red lines. Here is a summary of the key areas.

Market Surveillance

We have been very supportive of the proposals to introduce a market surveillance requirement, and had previously agreed to this in the equivalent frameworks for motorcycles and agricultural and forestry vehicles. At a late stage of the negotiation a minimum level has been proposed which would require Member States to conduct 1 test for every 50,000 vehicles registered in the previous year. Based on the 2016 figures this would require the UK to conduct 54 tests. This is approximately in line with what the UK's new Market Surveillance Unit is doing under its current programme of emissions testing. We were initially reluctant to agree to a minimum level as it also specifies categories that these tests should be selected from and we wanted to retain full flexibility. However as some Member States were concerned about their ability to conduct this testing, without a legislative requirement to do so, we are persuaded that this is an appropriate method to increase the testing that will take place across the EU. We will continue to work with the Presidency to refine the requirements.

We have also been supportive of the Commission undertaking their own testing and are pleased that this has remained a part of the proposal, despite some opposition. The original proposal was for this testing to be funded by a levy on type approvals within Member States – via a national fee structure (Article 30). This was not acceptable to us and many other Member States and we are pleased to have successfully secured its removal. This testing will now be funded from the Commission's existing budget.

Our own market surveillance unit is likely to consist of around 3 dedicated staff with additional senior oversight. They will oversee the various testing programmes which will be conducted by the VCA or contracted out to third parties. Our recent market surveillance testing has required us to seek type approval data from other EU authorities and so we have pressed for an addition to the text to require that this must be provided without undue delay, which has now been included.

Peer Review

We have strongly supported the proposed system of peer review, both of type approval authorities (Article 71) and by including other Member States in the assessments required for the designation of a technical service by a

Member State (Article 77). However there has been substantial opposition to both of these systems and so we have seen changes to both of them throughout the negotiation. The current proposal for type approval authorities is for them to be subject to peer-evaluation in respect of any activity which they carry out related to the assessment and monitoring of technical services. If all of their designated technical services have been accredited by a national accreditation body then they are exempt from this requirement. Whilst we have pressed to retain the wider scope of the original proposal we believe that this will still be a useful improvement on the current system. Similarly technical services will either be subject to evaluation by a joint assessment team - consisting of the Member State intending to designate the technical service, representatives from at least two other Member States and the Commission – or must be accredited by the national accreditation service. The joint assessment was originally proposed to be repeated every five years but this is now covered by the peer evaluation of the type approval authorities' assessment of the operations of their designated technical services.

Forum

We have been very supportive of the introduction of an advisory forum to promote good practice, exchange information and develop working methods and tools. This has been widely supported within the discussions and the changes to the proposal have mostly been to set out in more detail the topics that the Forum should discuss. We are content with this development and expect this to be a sensible system for sharing knowledge and expertise across type approval authorities which should improve the consistency of testing and approvals.

Time Limits on Type Approvals

We were unsure about the suitability of the 5-year time limit on the range of systems and components that form part of a vehicle (Article 33). This was amended early in the negotiation to cover only the whole-vehicle type approval and we successfully pushed for the timeframes to be extended to fit in with natural product cycles. We had also been concerned about the impact on final-stage manufacturers and so had pressed for the time limit to only apply to the approval of the base vehicle. However, the time limit has been a controversial requirement as the views were mixed on whether it would be effective and it has now been removed from the proposal as a concession. We see some merit in ensuring that new regulations are brought in in a timely way, which is the intention behind this proposal. If the time-limit requirement remains out of the final Regulation then it will need to be considered in negotiations on future proposals on new environmental and safety standards.

Impact on VCA

There was previously an inconsistency between Articles 71 and 72 regarding the separation of technical services and type approval authorities. This has been clarified within the last draft version of the document and it is now clear that a Member State may continue to designate an approval authority as a technical service.

Separation of design and testing services

Technical services in the UK have expressed concern that the requirement for them '*not be involved in the process of design.....of the vehicle*' is a risk to their business model. It has been suggested that, if required to choose, they would continue their work with manufacturers in the run up to testing, rather than remain as a designated technical service, which could impact on the availability of technical services for manufacturers. While I understand the intention behind this aspect of the proposal, I am therefore sceptical that this change will contribute to the proposal's overall aims. However, for now it remains in the draft and I believe its removal is unlikely. This will mean that a manufacturer will need their vehicle to be tested by a different technical service to any that have been involved in the design process.

End of Series

The Commission want to use this opportunity to simplify the EU-wide procedures for end-of-series vehicles, which are those produced just before a change of standard. The proposal made the system automatic rather than permission based. We supported simplification of the system but resisted removal of the control that we have around the number of these vehicles that can be sold in the UK market. We have succeeded in retaining control but it was not possible to simultaneously simplify the procedures.

Renewal and Maintenance

The proposals for the provision of Renewal and Maintenance Information mirror the current procedures. However this is an area where the European Parliament have proposed several amendments which are of concern to industry. We intend to follow this closely during the trilogue discussions to seek a suitable and proportionate outcome.

Safeguard Procedures

An important improvement over the current system is the introduction of the process for Member States to challenge approvals where doubt is cast on their compliance or safety, and introduce restrictive measures in the short term until an EU-wide decision is taken on the compliance or safety of a product. The Commission will be the arbiter in any cases of dispute between

Member States, with the final decision agreed via an Implementing Act. This has been refined during the Working Group discussions but remains broadly as originally proposed.

Administrative Fines

The Commission are seeking a power to fine non-compliant manufacturers where Member States have not taken action. We see this as an area where responsibility falls to Member States. However as the proposal is clear that the Commission could only act where a Member State has failed to act then we have not pressed for its removal at this stage. This is contentious with many Member States though and so may still be removed from the draft text.

The outcome of the negotiation will have a continuing effect in the UK after we exit the EU as the vehicles approved and manufactured in accordance with these requirements are likely to continue to be the majority of UK new registrations for many years. It is therefore important that we continue to seek the best outcome for the immediate and longer term, in the remaining negotiations. Additionally, the UK is currently very influential in the vehicle standards work of the United Nations Economic Commission for Europe (UNECE) and we fully expect this to continue. Regarding the adoption of standards, the recently revised voting arrangements for the 1958 Agreement increase the ability of non-EU governments to influence international regulations in this area.

I am writing in similar terms to Lord Boswell, Chairman of the European Union Committee, and am copying this letter to Eve Samson, Clerk to your Committee, Chris Johnson, Clerk to the Lords Committee, Arnold Ridout, Legal Adviser to your Committee, Les Saunders, Department for Exiting the European Union and Margaret Browne, departmental scrutiny coordinator.

Yours,

Andrew

ANDREW JONES