

MINUTES  
42ND TCMV MEETING

EUROPEAN COMMISSION  
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Sustainable growth and EU 2020  
Sustainable mobility and automotive industry TECHNICAL COMMITTEE - MOTOR  
VEHICLES (TCMV)

Brussels, 27 November 2014  
ENTR/B4 - CM -

MINUTES OF THE  
42ND MEETING OF THE 'TECHNICAL COMMITTEE - MOTOR  
VEHICLES' (TCMV) MEETING

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HELD IN BRUSSELS  
ON  
15 OCTOBER 2014

1. Approval of the draft agenda;

The agenda was approved.

2. Updating of the TCMV members' list;

The participants were asked to send any changes to the secretariat.

3. Approval of the draft minutes from the 41st meeting held on the 1 July 2014;

The minutes were approved.

4. Exchange of views and information on the preparation of the 164th WP29 meeting:

a) Exchange of views on some of the items on draft agenda ECE-TRANS-WP.29-1111<sup>(1)</sup> as well as agenda point 8.5 'Accident Emergency Call Systems' ;

The Commission gave a presentation on the mobile network communication aspect of AECS and the issues it raises. Three possible ways to address these issues were described. Italy, the Netherlands, France and Spain agreed that Option 2 "Separate UN Regulations" would not be a satisfactory solution.

The Commission services drew the attention TCMV members on a number of important discussions that will take place in the November 2014 session of WP.29.

With regard to the ongoing review of the 1958 Agreement, the only outstanding political issue is the request by non-EU countries to raise the 2/3 majority voting threshold for adopting new UN Regulations and amendments to existing UN Regulations. A preliminary draft of an informal document relating to this request which will be jointly submitted by Japan, Australia, Russian Federation, Malaysia and probably other countries was presented. This request has to be assessed in the context of making the 1958 Agreement more attractive for 3<sup>rd</sup> countries, which has been identified as one of the main objectives in the CARS 2020 Action Plan.

The representative of the UK acknowledged this may be a politically sensitive issue for the UK Government and would require more commitment from the interested 3<sup>rd</sup> countries to join the 1958 Agreement. This would also enable to better assess the possible benefits for the EU automotive industry in terms of easier market access in these countries.

The representative of France raised the concern that the increased majority voting threshold could entail risks of not achieving the required quorum for the vote in WP.29. He also subscribed the UK request for more commitment from interested 3<sup>rd</sup> countries. However, France is for the time being positively considering the issue.

The representative of Germany asked for more time to consider this serious issue and asked about the Commission services' intentions about developing a EU-coordinated position on this issue.

The representative of Romania referred to the reservation Romania already made on the issue in the context of the CARS 2020 discussions and subscribed to the comments raised by the United Kingdom and France.

The representative of Sweden expressed his hesitance about the request to raise the 2/3 majority voting role as well as the possibility of proxy voting. He expressed his concern about the possible risks that in the context of IWVTA 3<sup>rd</sup> countries may issue "light" approvals and that their approval authorities and technical services may not have a sufficient level of competence.

The representative of Italy expressed his reservation on the issue, whilst indicating that an increase to ¾ instead of 4/5 could be considered as well in the negotiations.

The Chairman explained, in reply to the German request that the Commission services are endeavouring an approach in which the EU can provide a coherent signal to avoid the impression that EU Member States and the Commission may have divergent views on the issue. In reply to the concern by Sweden, he explained that the development of IWVTA is subsidiary to the revision of the 1958 Agreement and therefore this concern cannot be addressed in the context of the request to raise the 2/3 majority voting rule.

- b) Information from the Commission on the position to be taken by the European Union within the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for amendments to Regulation Nos 4, 6, 11, 13, 13H, 19, 25, 34, 37, 43, 44, 48, 49, 53, 70, 96, 98, 104, 105, 106, 107, 112, 113, 121, 128, on the new Global Technical Regulation on tyres and on the new Global Technical Regulation on Amendment 3 to gtr No. 4 with regard to the Worldwide Heavy-Duty Certification procedure;

It has been agreed to delete "Amendment 3 to UN GTR No. 4 with regard to the Worldwide Heavy-Duty Certification Procedure" from the Mega Decision and to postpone the vote on this item until the next WP.29 meeting of March 2015. This is done at the request of USA and Canada in order to allow these countries to carry out additional testing and checks before proceeding to vote. There was a consensus on the need to take out the reference to the supplement 9 to the 04 series of amendments to UN Regulation No. 49, document ECE/TRANS/WP.29/2014/74 and informal document WP29-164-03 as the text required re-discussion in GRPE. As regards the Annex to the mega decision, delegations found a typing mistake in the reference to UN Regulation No. 34 (WP.29-164-06, instead of -05). After correction the document will be sent to the Council where it will be presented and discussed in the working group on 20 Oct 14. EC adoption is anticipated on 23 Oct 14. Coreper will take place on 31 Oct 14 and Council adoption is anticipated for 07 Nov 14.

- c) Information from the Commission on the position to be taken by the European Union within the relevant Committees of the United Nations Economic Commission for Europe as regards the proposal for a new UN Regulation on Pole Side Impact, the 01 series of amendments on the new UN regulation on Pole Side Impact and the proposal for a new Regulation on hydrogen and fuel cell vehicles.

The Commission Representative provided a brief overview of the two proposals. The draft new regulation on Hydrogen (Fuel Cell Vehicle) Safety is based on GTR No 13 that has been adopted by WP.29 previously after a positive vote from the EU. The draft new regulation on Pole Side Impact is based on GTR No 14 on which the EU also voted positively. Given the positive votes on the GTR and the fact that the draft UN regulations are based on the GTRs, it is recommended that they are also accepted. The new hydrogen regulation will apply in addition to the EU regulation on hydrogen safety based on equivalence, providing a choice for vehicle manufacturers. The issue of Pole Side Impact is not yet regulated on EU level and will not apply in the context of vehicle type-approval before it is incorporated through a separate legislative

initiative (i.e. ordinary procedure, including impact assessment). It was however noted that the draft Council Decision authorises a positive vote for both the original series as well as an amendment thereto, the 01 series. This package allows Contracting Parties to immediately apply the provisions without having to take into account relaxed rules for very narrow cars (i.e. Japanese Kei cars) as allowed in the original series. The German delegate noted that the 01 series should be applied in the EU immediately, once implemented. The Italian delegate raised the issue that Contracting Parties to the 1958 Agreement should be prudent when mandating compliance in their territories, namely by allowing an appropriate transitional provision. The Commission Representative noted that this issue is relevant for all new UN regulations with new provisions. The chairman finally confirmed that he will seek Member State consensus in the preparatory meeting held in advance of the WP.29 session in Geneva, as to make a general declaration and appeal to the other Contracting Parties at the time of the vote.

5. Information on the state of play of the draft proposal for amendments to the UNECE Regulation 83 in the area of on-board diagnostics (OBD);

The Commission gave an overview of the outcome of the work of the OBD Expert Group. The Group, under the supervision of the Commission, prepared 2 documents amending 06 and 07 series of amendments to the UNECE Regulation 83, which will be submitted to the UNECE to be discussed during the January session.

The objective of the documents was to align the text of the Regulation to the technical progress which has taken place over last years (especially related to the introduction of hybrid vehicles) and to clarify points which could cause problems for vehicle manufacturers due to an unambiguity of some provisions.

The participants were informed that changes were introduced, among others, to the communication standards, definition of the driving cycle, procedure of erasing healed fault codes and treatment of electrical failures.

The two documents will be presented and discussed in GRPE in January. The OBD Expert Group might meet still this year to discuss remaining open points (IUPR for hybrid vehicles and partial monitoring of diesel after treatment).

6. Exchange of views and discussion on the 1<sup>st</sup> draft proposal for the 'Replacement pollution control devices';

The Commission delivered a presentation summarising principles of the new act defining aging procedure for replacement pollution control after treatment equipment. The participants were requested to provide comments to the draft regulation (circulated before the meeting) by mid of November. Following the comments, inter service consultation will be launched. The new regulation is planned to be adopted in the beginning of 2015.

7. State of play by Commission services on preparation of a proposal on 'Real Driving Emissions';

- Member States welcomed the presentation and the discussion on the draft proposal on the real driving emission procedure presented by the services of the European Commission.
- The services of the European Commission outlined the background, rationale and key assumptions lying behind the proposal as well as a timeframe for the adoption of the first and second stages of the RDE procedure.
- The European Commission Representative reiterated the intention to maintain introductory dates, which have been indicated in the CARS 2020 Communication, namely, 2014 for the initiation of the monitoring phase and Euro 6c dates for the application of the procedure with not-to-exceed limits.
- The Member States were informed that the intention of the services of the European Commission is to launch inter-service consultation still October and organise a vote on the final version of the procedure during next TCMV meeting on 25 November.
- The European Commission services indicated that the proposal for the second stage of the RDE procedure, definition of the not-to-exceed limits will be discussed in the first quarter of 2015 and is planned to be put under vote in the second quarter of 2015. The third regulatory package essentially defining the procedures and requirements for particle number (PN) RDE test procedures should be put for vote end of 2015 or early 2016.
- The European Commission services presented the work of the RDE-LDV Expert Group and the Expert Task forces responsible for discussing and drafting of the proposal. Member States took note that the RDE-LDV Expert Group and respective Task Forces will continue their activities in order to complete their objectives within necessary timing.
- Main points of the RDE draft proposal were explained to the Member States. The representative of the Commission presented an overview of Annex III A which will contain the all the provisions related to the new testing procedure including, for example, testing requirements and boundary conditions, and outlined the content of the appendixes. In addition a concept of a pre-assumed conformity of vehicles was introduced and explained in relation to the new procedure.

#### Comments from Member States

- The European Commission service listened carefully to the comments of the Member States in relation to the several aspects of the draft proposal.
- Italian representative underlined that curbing NOx emissions is an important task and shared the need of an implementation of the new procedure. Referring to setting not-to-exceed limits, he suggested a 2 step approach with moderate limits in 2017 and more stringent 3 years after. In addition, he questioned the approach of the pre-assumed compliance (and what follows a possibility to revoke granted type-approval) and expressed a lack of support for the inclusion of the RDE procedure for the in-service conformity check. Moreover, he requested verification of boundary conditions, namely low temperature limit and maximum speed.
- Spanish delegate welcomed the Commission proposal as a fundamental tool to improve air quality in Europe. He indicated that from 2017 only those vehicle types which have been type-approved according to the new procedure should be covered by new requirements and all new vehicles could be a subject to the RDE procedure only

after 2020. In addition, he requested less stringent limit for temperature in the first step, lower maximum speed and expressed his support to use during the monitoring phase the two evaluation tools (EMROAD and CLEAR), in order to determine the correlation between both two methods, which should serve as a basis for the decision to use just one for the compulsory phase (2017)

- UK representative supported the Commission proposal and called for its implementation as soon as it is reasonably possible. Still, in his opinion, the boundary conditions should be re-discussed.
- Dutch delegate expressed his happiness with the draft proposal and shared the opinion of an application of new procedure to vehicles type-approved after 2017.
- French representative welcomed the Commission proposal and requested a clarification why a certificate of conformity should be modified. In addition he supported the opinion of reconsidering the speed limit and expressed a legal concern about the concept of pre-assumed compliance.
- Swedish delegate welcomed the proposal as an important step to improve air quality in Europe. He supported the low temperature limit and inquired about an impact assessment of the introduction of the new procedure.
- Danish representative called for a swift introduction of the new procedure and expressed his dissatisfaction with a delay between the identification of the problem and the introduction of corrective measures.
- Bulgarian representative expressed concerns about the concept of pre-assumed compliance.
- German representative emphasized the importance of RDE to reduce emissions from vehicles and to achieve compliance with EU air quality limits as soon as possible. Germany welcomed the proposal and expressed his support for a 2 step approach starting with a monitoring phase for RDE in September 2015 and application of NTE limits from September 2017/18 on. Germany also welcomed that RDE requirements should be finalized in 2 packages starting with the 1<sup>st</sup> package on measurement procedures still in 2014 to ensure early application of RDE while also providing industry with sufficient lead time. Regarding the further development of the RDE package, Germany emphasized that the control of PN emissions of PIDI is of particular importance. Germany requested the Commission to further continue the work closely together with Member States and experts. In addition, he expressed his preference for a high maximum speed and testing of vehicles also at minus temperatures.

#### Next steps

- The European Commission services shared the concerns of several Member States regarding boundary conditions including temperature range and maximum speed, the concept of pre-assumed compliance and way how the new procedure should be applied and agreed to re-discuss this issue with Member States in order to find a common approach which will be satisfactory for all the parties.
- It was agreed that the Commission services will continue to work on the Comitology proposal for RDE test procedures in the framework of the RDE-LDV Expert Group and

dedicated Task Forces, groups where Member States actively participate. Next RDE-LDV meeting is planned to take place on the 13 November.

- All the comments presented by the Member States today and those agreed in the Expert Group will be taken into consideration and will be reflected in the next draft which is intended to be submitted for the inter-service consultation.

- A final draft of the proposal should be circulated in mid-November and put under vote end of November.

- In parallel, a discussion will be initiated on the application of the not-to-exceed limits on selected pollutants. The proposal will be first presented in TCMV at the beginning of 2015 and is planned for adoption by the Committee in the first semester of 2015 in a second regulatory act. In the third regulatory act in 2015, RDE test procedures and not-to-exceed limits for PN emissions will be established.

#### 8. Exchange of views on a draft proposal regarding the Commission Regulation amending Commission Regulation (EU) No 347/2012 with regard to AEBS;

The Commission services presented the draft proposal and explained the background for it. The representative of France flagged a typing error in footnote 5 to the Table in Appendix 2, as well as the need to ensure full coherence with the provisions of UN Regulation 131 in terms of the warning modes that can be provided. The Commission took note of the need of these corrections and announced that a revised draft proposal will be submitted at the next TCMV meeting for a favourable opinion.

#### AOB

- **MAC : State of play by Commission services**

The Chair provided an update on the Application of Directive 2006/40/EC on mobile air conditioning (MAC).

On 11 February 2014 the Commission shared with the Members a detailed information note regarding the enforcement of Directive 2006/40/EC on mobile air conditioning in the Member States. On that occasion the Commission informed about the opening of the infringement procedure against Germany via the sending of the letter of formal notice on 27 January 2014. In this letter, the Commission took the view that Germany had failed to fulfil its obligations under Directive 2006/40/EC on mobile air conditioning and the Framework Directive 2007/46/EC, in particular on three points that were described in detail and are available in the minutes of the referred TCMV meeting.

At the same meeting the Commission also informed that, following several requests for information to the Member States, it concluded that there seemed to exist some situations that could have common aspects to the German situation as regards the extension of type-approvals. In order to collect all the relevant information, the Commission sent EU PILOT letters to the UK, Belgium and Luxembourg in January 2014.

##### 1. Information on the infringement procedure against Germany

Following the opening of the infringement procedure, Germany replied to the Commission on 26 March providing its observations on the detailed technical and legal analysis that the Commission.

Following the detailed analysis of the reply by Germany, on 25 September 2014 the Commission sent a reasoned opinion to Germany which included the reply to the arguments by Germany and informed that, according to Art. 258 of the Treaty, the Commission considered that Germany had failed to fulfil its obligations under Directive 2006/40/EC and Framework Directive 2007/46/EC, in particular:

(A) By allowing, between 1 January 2013 and 26 June 2013, Daimler AG to manufacture and put on the market 133 713 vehicles in which an air-conditioning system with R134a refrigerant was installed in contravention of the relevant type approval, which was given for the use of refrigerant 1234yf. According to the Commission, by this action (or lack of action) Germany violated Article 5(4) of Directive 2006/40/EC and Articles 4(3) and 12 of Directive 2007/46/EC, as well as Article 4(1) in conjunction with Articles 5, 6(6) and 18 of the same Directive;

(B) By approving, on 17 May 2013, an application from Daimler AG to extend the type approval for the (old) CNG B-class (approval number e1\*2001/116\*0470\*02) by adding further variants to this type for the (new) B, A and CLA classes, thus accepting the request for an extension of the existing vehicle type 245G to cover vehicles which had been previously given another type-approval (a similar procedure was followed for the SL and S classes). According to the Commission, by this action Germany violated Article 5(4) of Directive 2006/40/EC and Article 4(1) in conjunction with Articles 13 and 14 and point 1 of Part B of Annex II to Directive 2007/46/EC;

(C) By failing to take all necessary measures for the implementation of the penalties required by Article 46 of Directive 2007/46/EC, Germany has violated this provision.

The Commission has therefore invited Germany to take the necessary measures to comply with the Reasoned Opinion within two months of its receipt.

##### 2. Information on the EU PILOT procedures with other Member States:

The Commission also informed the Members on 11 February that it had requested detailed information, via a EU Pilot letter, regarding the situation in the three Member States that had informed the Commission of similar practices of extension of type approvals by their respective type-approval authorities.

Following this request for information:

(1) Luxembourg informed the Commission that the extension requested by one manufacturer was never used by this manufacturer and therefore no vehicles were placed in the EU market under such extension. The Commission closed the EU Pilot in April 2014.

(2) Belgium, in its reply to the Pilot letter, informed about two types of vehicles that were being produced in accordance to extensions of previous type-approvals (issued before the date of application of the MAC Directive to new types of vehicles), and had been initially produced and sold with a new type-approval

subject to the MAC Directive. The Belgian authorities considered that a clarification of the principles of 'new vehicle types' and the 'extension of type-approvals' in the Framework Directive 2007/46/EC was necessary, as the current provisions are not sufficiently clear. Nevertheless, and given that the Commission concluded on 7 March 2014 that there is no evidence of a serious risk in the use of refrigerant HFO 1234yf in MAC systems under normal and foreseeable conditions of use, the Belgian authorities informed that they contacted the manufacturer to provide the changeover schedule for the relevant vehicles to the initial type-approval, by October 2015.

On the first subject, the Commission informed Belgium that the application of the concept of new vehicle type and of the rules on extension of type-approvals to the present case is sufficiently clear, as explained on several occasions.

Regarding the measures taken by the Belgian authorities, the Commission noted the remedial measures with the aim to correct the present situation and closed the procedure in June 2014.

(3) The United Kingdom, in its reply to the Pilot letter, informed that, regarding one of the models of the manufacturer, the extension was granted to a vehicle that was similar to the previous approval and so by agreement with the manufacturer the earlier approvals were surrendered as the products were not to be placed on the market. In the case of other model, the manufacturer had existing type-approvals and the UK authorities issued an extension to include a 7 seat variant of the original approval. Also in this case the authorities of the United Kingdom understood that the variant with 7 seats was similar to the previous type but, unlike the 1st case explained, vehicles had already entered the marketplace and so by agreement the manufacturer decided to retain the separate approval. The UK considered this consistent with EU Law - in particular Article 6(6) of the Framework Directive.

The UK also informed that, having reanalysed the procedure, it maintained that the extension was correctly granted. The reasons for this were that the amendment to the Framework Directive by Commission Regulation 678/2011 applies only to new types and not to existing types and that it is not for a type approval authority to interpret an applicant's motives for seeking any particular type approval and each application must be taken in good faith at the time it is received.

Nonetheless, the UK informed that it has requested the manufacturer to establish a timetable for changing the relevant products to the new fluid. The manufacturer informed that the changeover plan of the manufacturer was that around 50 per cent of their existing model types would be manufactured using the new fluid by the summer of 2015, and the same would be done for the rest well before 1 January 2017.

The Commission replied that the application of the concept of new vehicle type and of the rules on extension of type-approvals to the present case is sufficiently clear, as explained on several occasions.

Regarding the measures taken by the UK authorities, the Commission noted the remedial measures with the aim to correct the present situation and closed the procedure in September 2014.

### 3: Conclusions

The Chair informed that the Commission has, on 25 September, invited Germany to take the necessary measures to comply with the Reasoned Opinion within the two following months. The detailed information provided in this correspondence is confidential, as is in general the infringement procedure.

As referred in February, the Commission considers that, in this process, the element that is of key relevance to all the Member States and which is the main purpose of this information note is that the Commission cannot accept the extension of type-approvals if these constitute a deliberate attempt to circumvent the application of EU law, Directive 2006/40/EC in this case.

The Commission considers that these extensions are not allowed by Directive 2007/46/EC, when they have as sole purpose avoiding the application of EU legislation and disrespect Article 6(6) and Part B of Annex II to Directive 2007/46/EC.

Furthermore, pursuant the principle of sincere cooperation (Art. 4 (3) TEU), in case of doubt about the interpretation of EU legislation the Member States should submit the relevant interpretation questions to the Commission for consideration, possibly with the proposals for a suitable resolution of the situation, as confirmed by existing jurisprudence.

For memory, 1 January 2017 is the date for the entry into force of the 3rd phase of the MAC Directive, and from that date on all new vehicles will need to comply and the national authorities will need to take the adequate measures if this is not the case.

There were no comments from the Member States.

- **Information on car regulation aspects of EU/Japan and EU/US round of negotiations (information on test case on functional equivalence).**

The Commission representative gave an update of the negotiations of the automotive chapters in the context of the EU/US and EU/Japan negotiations.

Concerning the negotiations with the US, she informed that the discussions focus on 4 areas: equivalence of existing regulations; harmonisation of future regulations; improvement of cooperation under the 1998 Agreement; cooperation on research activities. Concerning equivalence, at the last round the Commission tabled a paper on a test case on seat belt anchorages. The US side considers further exchange of information on accident databases in the US and the EU (including those of MS) as a precondition for any equivalence exercise. Concerning improvement of cooperation under the 1998 Agreement, the Commission referred to a possible US-EU-Japan joint paper. The US should prepare a draft of such paper based on contributions received by the three sides. Once such draft is available, it will be shared with MS.

Concerning the negotiations with Japan, the Commission representative recalled that these build upon the good bilateral cooperation and that the main objective is that Japan accede to as many as UNECE regulations as possible, including with respect to motorcycles and commercial vehicles. Other NTBs issues, in area not covered by UNECE regulations, are also addressed in the discussions.