II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2018/258

of 21 February 2018

amending Implementing Regulation (EU) No 725/2011 for the purpose of adjusting it to the change in the regulatory test procedure and simplifying the administrative procedures for application and certification

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO_2 emissions from light-duty vehicles ([1]), and in particular Article 12(2) thereof,

Whereas:

(1) The Worldwide Harmonized Light Vehicle Test Procedure (WLTP) set out in Commission Regulation (EU) 2017/1151 ([2]) was adopted by the Commission on 1 June 2017. The WLTP replaces the New European Driving Cycle (NEDC) set out in Annex XII to Commission Regulation (EC) No 692/2008 ([3]). From 2021, compliance with the CO_2 emissions targets set out in Regulation (EC) No 443/2009 are to be verified on the basis of CO_2 emissions determined in accordance with the WLTP procedure. From that date, also CO_2 eco-innovation savings should be determined by reference to the WLTP.

(2) To reflect the change in the regulatory test procedure and taking into account the procedure to correlate the WLTP CO_2 values into the corresponding NEDC CO_2 values, set out in Commission Implementing Regulation (EU) 2017/1153 ([4]), it is necessary to amend Commission Implementing Regulation (EU) No 725/2011 ([5]).

(3) To ensure a smooth transition from the NEDC to the WLTP, it should be possible to submit an application for the approval of an innovative technology as an eco-innovation by reference to the NEDC until 31 December 2019, and to the WLTP from the entry into force of this Regulation.

([1]) OJ L 140, 5.6.2009, p. 1.

([2]) Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Commission Regulation (EC) No 692/2008 (OJ L 175, 7.7.2017, p. 1).

([3]) Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 199, 28.7.2008, p. 1).

([4]) Commission Implementing Regulation (EU) 2017/1153 of 2 June 2017 setting out a methodology for determining the correlation parameters necessary for reflecting the change in the regulatory test procedure and amending Regulation (EU) No 1014/2010 (OJ L 175, 7.7 2017, p. 679).

([5]) Commission Implementing Regulation (EU) No 725/2011 of 26 July 2011 establishing a procedure for the approval and certification of innovative technologies for reducing CO_2 emissions from passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council (OJ L 194, 26.7.2011, p. 19).

(4) While the Commission has granted more than twenty approvals of eco-innovations, the deployment by manufacturers of those technologies in the European Union vehicle fleet has until 2017 been quite limited. In order to promote a more extensive deployment of those technologies and obtain the highest potential for reducing CO_2 emissions from passenger cars, the approval and certification process should be simplified.

(5) Lowering the savings threshold to 0,5 g CO_2/km is likely to promote a wider deployment of innovative technologies capable of reducing CO_2 emissions. However, in order to ensure that those CO_2 savings are actually achieved, it is essential that they are determined very accurately. It is therefore necessary to assess and quantify the uncertainty that is linked to the methods used for demonstrating the savings and to take that uncertainty into account when the CO_2 savings are certified by the approval authority. It is appropriate to align the change of the savings threshold with the introduction of the WLTP, and as a consequence the new threshold should apply for the purpose of applications made by reference to the WLTP.

(6) For the purpose of demonstrating the CO_2 savings, component testing should be possible in those cases where the savings are not vehicle dependent in order to improve the accuracy and simplify the determination of the CO_2 savings.

(7) In order to simplify the certification of CO_2 savings, it should be possible for the applicant to propose, in addition to a detailed testing methodology for determining the savings, a simplified evaluation method or pre-defined CO_2 savings in the application for the approval of an innovative technology as an eco-innovation. Where such simplified methods or pre-defined CO_2 savings are used, the savings certified by approval authorities should be determined in a conservative way reflecting the lowest level of savings demonstrated.

(8) A technology that has already for some time been widely available on the market cannot be considered innovative within the meaning of Article 12 of Regulation (EC) No 443/2009 and should not be eligible as an eco-innovation. In order to create the right incentives, it is therefore appropriate to replace the 2009 reference year by a dynamic reference year as a baseline for determining the innovativeness of a technology. The new dynamic reference year should apply for applications submitted from 1 January 2020.

(9) Where the Commission finds, based on the experience gained from assessing a number of innovative technologies with the same characteristics, that it has been satisfactorily and conclusively demonstrated that such technologies meet the eligibility criteria referred to in Article 12 of Regulation (EC) No 443/2009, or in the case an innovative technology is not dependent on manufacturer specific vehicle parameters, it should be possible to approve the innovative technology as an eco-innovation by a decision which provides all manufacturers with the possibility to certify CO_2 savings by reference to that decision provided that the conditions of the decision are met.

(10) Some innovative technologies require strong statistical evidence to support the assumptions given in the application for the approval of an innovative technology as an eco-innovation and the parameters proposed in the testing methodology. In order to have the widest possible data sets, it should be possible for a group of manufacturers or suppliers to apply together. Where that is the case, the group should have the possibility to submit an application including several verification reports, where that is necessary for confidentiality or competition reasons.

(11) For the purpose of ensuring that the certified CO_2 savings that are used by manufacturers for target compliance purposes are correct, the Commission should be in a position to react swiftly and notify manufacturers where it detects or is informed of any deviations or inconsistences in the testing methodology or the innovative technology which could affect the level of the certified savings.

(12) Experience shows that it may be necessary to adjust the testing methodologies set out in the decisions approving an eco-innovation, inter alia, to take into account technical developments, or to extend the scope of the approval decision to a wider range of vehicles. It should therefore be possible for both the original applicant and for the Commission to initiate an amendment of those decisions.

(13) Implementing Regulation (EU) No 725/2011 should therefore be amended accordingly.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 725/2011 is amended as follows:

(1) Article 2 is amended as follows:

(a) in paragraph 2, the first sentence is replaced by the following:

'An application for the approval of an innovative technology as an eco-innovation may be made under this Regulation in respect of a technology, provided that the following conditions are met:';

(b) in paragraph 2, point (a) is replaced by the following:

'(a) it had been fitted in 3 % or less of all new passenger cars registered in 2009 for applications submitted until 31 December 2019, or in 3 % or less of all new passenger cars registered in the year n-4, n being the year of application, for applications submitted from 1 January 2020;';

(c) the following paragraph 3 is added:

'3. An application for the approval of an innovative technology as an eco-innovation may be made by reference to the standard test procedure in accordance with the following:

(a) to the New European Driving Cycle referred to in Annex XII to Regulation (EC) No 692/2008 until 31 December 2019;

(b) to the Worldwide Harmonised Light Vehicle Test Procedure (WLTP) referred to in Commission Regulation (EU) 2017/1151 (*) from 14 March 2018.

(*) Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Commission Regulation (EC) No 692/2008 (OJ L 175, 7.7.2017, p. 1).';

(2) Article 3 is amended as follows:

(i) point (c) is replaced by the following:

'(c) "applicant" means the manufacturer or supplier, or a group of manufacturers or suppliers, submitting an application for the approval of an innovative technology as an eco-innovation;';

(ii) the following point (f) is added:

'(f) "requester" means a manufacturer or supplier or a group of manufacturers or suppliers that requests the amendment of a decision approving an innovative technology as an eco-innovation.';

(3) Article 4 is amended as follows:

(a) the title is replaced by the following:

'*Article 4*

Application for the approval of an innovative technology as an eco-innovation';

(b) paragraph 2 is amended as follows:

(i) the introductory sentence is replaced by the following:

'An application for the approval of an innovative technology as an eco-innovation shall include the following:';

(ii) point (e) is replaced by the following:

'(e) a methodology to be used for demonstrating the CO_2 emissions reductions of the innovative technology, including a reference to the applicable standard test procedure in accordance with Article 2(3), or where such methodology has already been approved by the Commission, a reference to the approved methodology;';

(iii) the following point (ea) is inserted:

'(ea) where appropriate, and in addition to the methodology referred to in point (e), a simplified method for evaluating the CO_2 savings to be certified or pre-defined CO_2 savings values to be used for the purpose of certification of all vehicles fitted with the innovative technology;';

(iv) in point (f) points (i) and (ii) are replaced by the following:

'(i) the emissions reduction achieved by the innovative technology as determined in accordance with points (e) and, where applicable, (ea) meets the relevant threshold specified in Article 9(1), taking into account any deterioration over time of the technology;

(ii) the CO_2 savings of the innovative technology are not or only partially covered by the standard test procedure CO_2 measurement as referred to in point (c) of Article 12(2) of Regulation (EC) No 443/2009 and as specified in Article 2(3) of this Regulation;';

(v) the following point (iv) is added:

'(iv) the CO_2 reduction value to be attributed to a vehicle at the moment of certification using the simplified evaluation method or by way of pre-defined CO_2 savings values as referred to in point (ea), is lower or equal to the emissions reduction achieved by the innovative technology as determined using the testing methodology referred to in point (e), including any possible interactions with other approved eco-innovations.';

(4) Article 5 is amended as follows:

(a) the title is replaced by the following:

'*Article 5*

Baseline and eco-innovation';

(b) in paragraph 1, points (a) and (b) are replaced by the following:

'(a) an eco-innovation vehicle that shall be fitted with the innovative technology, or, where appropriate, the innovative technology as a stand-alone component;

(b) a baseline vehicle that shall not be fitted with the innovative technology but that is in all other aspects identical to the eco-innovation vehicle, or, where appropriate, a baseline technology as a stand-alone component.';

(c) paragraph 2 is replaced by the following:

'2. If the applicant considers that the information referred to in Articles 8 and 9 can be demonstrated by other means than those referred to in paragraph 1, the application for the approval of an innovative technology as an eco-innovation shall include the necessary details justifying that conclusion and a methodology providing equivalent results.';

(d) the following paragraph 3 is added:

'3. Where the application for the approval of an innovative technology as an eco-innovation is made by reference to the WLTP as referred to in Article 2(3)(b), the baseline vehicle shall be the vehicle within the interpolation family which represents the worst case for the purpose of demonstrating the eco-innovation savings.

In the case referred to in the second subparagraph of point 1.2.3.1 of sub-Annex 6 to Annex XXI to Regulation (EU) 2017/1151, the baseline vehicle shall be the test vehicle H.

The choice of baseline vehicle shall be supported by strong and independent statistical evidence on the basis of which verifiable assumptions about the appropriateness and representativeness of the baseline vehicle can be made.';

(5) Article 7 is amended as follows:

(a) the following paragraph 1a is added:

'1a. Where the applicant is a group of manufacturers or suppliers, the following conditions apply:

(a) the independent and certified body shall carry out the verifications referred to in points (a) to (e) of paragraph 2 in relation to each member of the applicant group, where relevant, depending on the content of the application for the approval of an innovative technology as an eco-innovation;

(b) where appropriate for confidentiality or competition reasons, several verification reports may be provided by the members of the applicant group for different sets of data supporting the same application.';

(b) paragraph 2 is amended as follows:

(i) the following point (ca) is inserted:

'(ca) verify, in the case of point (ea) of Article 4(2), that the simplified evaluation method or the pre-defined CO_2 savings values referred to in that point are appropriate for certifying the CO_2 savings for the relevant vehicles referred to in point (d) of Article 4(2), and meet the minimum requirements specified in Article 4[2][f](iv);';

(ii) the following subparagraph is added:

'For the purpose of points (c) and (ca), the independent and certified body shall provide the testing protocols established for the verification.';

(c) in paragraph 3, the first subparagraph is replaced by the following:

'For the purposes of the certification of the CO_2 savings in accordance with Article 11, the independent and certified body shall, at the request of the manufacturer, draw up a report on the interaction between several eco-innovations fitted to one vehicle type, variant, version or, where applicable, interpolation family.';

(6) Article 8 is amended as follows:

(a) in paragraph 1, points (a) and (b) are replaced by the following:

'(a) the CO_2 emissions from the baseline vehicle and from the eco-innovation vehicle with the innovative technology in operation resulting from the application of the methodology referred to in point (e) of Article 4(2) and, where appropriate, the application of the simplified evaluation method referred to in point (ea) of that Article;

(b) the CO_2 emissions from the baseline vehicle and from the eco-innovation vehicle with the innovative technology in operation resulting from the application of the standard test procedure as specified in accordance with Article 2(3)(a) or (b).';

(b) in paragraph 2, the following subparagraph is added:

'In the case of applications for the approval of an innovative technology as an eco-innovation made by reference to Article 2(3)(b), the uncertainty shall be assessed and quantified for the purpose of determining the savings. The quantified uncertainty shall be subtracted from the total savings.';

(c) the following paragraph 3 is added:

'3. In the case of pre-defined CO_2 savings values proposed in accordance with Article 4(2)(ea), those values shall be set at a level that is lower or equal to the total savings determined in accordance with paragraph 2.';

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The minimum reduction to be achieved in accordance with Article 8(2) by the innovative technology shall be:

(a) 1 g CO_2/km in the case of applications made by reference to Article 2(3)(a);

(b) 0,5 g CO_2/km in the case of applications made by reference to Article 2(3)(b)';

(b) in paragraph 2, the wording 'standard test cycle' is replaced by 'standard test procedure';

(8) the title of Article 10 is replaced by the following:

'*Article 10*

Assessment of an application for the approval of an innovative technology as an eco-innovation';

(9) Article 11 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The certified CO_2 savings of the eco-innovation demonstrated in accordance with the corresponding decision to approve the innovative technology as an eco-innovation shall be specified separately in both the type approval documentation and the certificate of conformity in accordance with Directive 2007/46/EC, on the basis of tests carried out by technical services in accordance with Article 11 of that Directive, using the approved testing methodology.

Subject to the requirements of the approval decision, the quantified uncertainty referred to in Article 8(2) shall be subtracted from the total savings to be certified. Where the CO_2 savings of an eco-innovation for a specific type, variant, version and, where appropriate, interpolation family are below the relevant threshold specified in Article 9(1), the savings shall not be certified.

In the case pre-defined CO_2 savings determined in accordance with Article 4(2)(ea) are specified in the approval decision, the relevant pre-defined savings value may be entered directly into the type approval documentation, provided that the approval authority is in a position to confirm that the vehicle is fitted with the technology in accordance with the specifications of the approval decision.';

(b) in the second subparagraph of paragraph 4, the value '1 g CO_2/km' is replaced by '0,5 g CO_2/km';

(10) Article 12 is amended as follows:

(a) in paragraph 1, after the second subparagraph, the following subparagraph is inserted:

'The Commission may also, where it finds or is informed of deviations or inconsistences in the testing methodology or in the innovative technology in comparison to the information it had received as part of the application for the approval of the innovative technology as an eco-innovation, notify this to the manufacturer.';

(b) paragraph 3 is replaced by the following:

'3. A manufacturer for which the certified CO_2 savings are no longer taken into account may apply for a new certification of the vehicles concerned in accordance with the procedure laid down in Article 11, or may, where appropriate, make a request for an amendment of the approval decision in accordance with Article 12a, which shall be supported by such evidence that is required to confirm the appropriateness of the testing methodology and the level of CO_2 savings achieved by the innovative technology.';

(11) the following Article 12a is inserted:

'*Article 12a*

Amendment of a decision to approve an innovative technology as an eco-innovation

1. A manufacturer or supplier, including the original applicant, may submit to the Commission a request for an existing approval decision to be amended. The request and all supporting documentation shall also be submitted by electronic mail or electronic data carrier or uploaded to a server managed by the Commission. The written request shall list the supporting documentation.

2. The following information and evidence shall be provided together with the request for amendment:

(a) contact details of the requester;

(b) the reference to the approval decision to be amended;

(c) a description of the amendments proposed including a summary of that description;

(d) evidence demonstrating the necessity and the appropriateness of the amendments;

(e) evidence demonstrating that emissions reduction achieved by the innovative technology as determined using the amended testing methodology, or where appropriate, the new or amended simplified evaluation method or pre-defined CO_2 savings, meets the relevant threshold specified in article 9(1), taking into account any deterioration over time of the technology;

(f) a specific validation report established by an independent and certified body that verifies the following:

(i) the amended testing methodology meets the requirements set out in Article 6(1) and, where applicable, the requirements set out in Article 4(2)(f)(iv);

(ii) the emissions reduction achieved by the innovative technology as determined using the amended testing methodology or, where appropriate, the new or amended simplified evaluation method or pre-defined CO_2 savings, meets the relevant threshold specified in Article 9(1), taking into account any deterioration over time of the technology.

3. On receipt of the request for the amendment, the Commission shall make public the summary description of the amendments proposed referred to in point 2(c).

4. The Commission shall assess the request for amendment and, within nine months from receipt of a complete request, it shall amend the approval decision, unless objections are raised in respect of the appropriateness of the proposed amendments.

The amended approval decision shall, where necessary, specify its applicability and the information required for the certification of the CO_2 savings in accordance with Article 11 of this Regulation, subject to the application of the exceptions to the right to public access to documents specified in Regulation (EC) No 1049/2001.

5. The Commission may require adjustments to the proposed amendments. The Commission shall in that case consult the requester as well as other relevant stakeholders, including the original applicant for the approval of the innovative technology as an eco-innovation, on the proposed amendments and, where appropriate, take account of the comments received.

6. The assessment period may be extended by five months where the Commission finds that, because of the complexity of the innovative technology and the accompanying amended testing methodology or because of the size and contents of the request for amendment, the request cannot be appropriately assessed within the nine months assessment period.

The Commission shall within 40 days of receipt of the request notify the requester if the assessment period is to be extended.

7. The Commission may at any time amend an approval decision on its own initiative, in particular to take into account technical progress. The Commission shall consult the original applicant for approval of the innovative technology as an eco-innovation and other relevant stakeholders on the amendments it considers and, where appropriate, take account of the comments received.';

(12) Article 14 is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2018.

For the Commission
The President
Jean-Claude JUNCKER