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COMMISSION REGULATION (EU) .../...

of **XXX**

amending Regulation (EC) No 595/2009 of the European Parliament and of the Council and Commission Regulation (EC) No 582/2011 as regards the standardized access to vehicle repair and maintenance information and the access to vehicle security features

(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 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC¹, and in particular Article 6(2) thereof,

Whereas:

- (1) Regulation (EC) No 595/2009 is one of the separate regulatory acts under the type-approval procedure laid down by Directive 2007/46/EC of the European Parliament and of the Council².
- (2) Article 6 of Regulation (EC) No 595/2009 requires manufacturers to provide unrestricted and standardised access to vehicle repair and maintenance information to independent operators through websites using a standardised format. New standards to facilitate the exchange of information between manufacturers and service providers have been agreed by CEN/ISO, with the involvement of stakeholders. It is therefore appropriate to require, for the purposes of legal certainty and accuracy, the use of the technical specifications of ISO 18541.
- (3) The new set of ISO 18541 standards does not cover a common structured process for the exchange of data between vehicle manufacturers and independent operators for the specific case of data on vehicle parts which can be replaced by spare parts. Therefore, a future common structured process for this data exchange should be developed; this common structured process should reflect the interests and needs of vehicle manufacturers and independent operators alike and should also investigate solutions such as open data formats described by well-defined meta-data to accommodate existing IT infrastructures.
- (4) Measures should be laid down for the implementation of Article 2h of Commission Regulation (EC) No 582/2011³, which extends to the vehicles covered by Regulation

¹ OJ L 188, 18.7.2009, p. 1.

² Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

³ Commission Regulation (EU) No 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No 595/2009 of the European Parliament and of the Council with respect to emissions from heavy

(EC) No 595/2009 the scope of application of the activities carried out by the Forum on Access to Vehicle Information ('the Forum'), established in accordance with Article 13(9) of Commission Regulation (EC) No 692/2008⁴, in particular as regards access to vehicle security features.

- (5) The Forum recommended the creation of a de-facto association responsible for proposing a process for approving and authorising independent operators to access to vehicle security features by accredited organisations, as well as for its implementation, operation and maintenance.
- (6) For that purpose, the stakeholders involved in the process of access to vehicle security features established on 15 July 2011 the association 'Forum for Access to Security-Related Vehicle Repair and Maintenance Information'⁵ ('SERMI Association').
- (7) In accordance with the Forum's recommendation, the SERMI Association drafted the 'Scheme for accreditation, approval and authorization to Access Security-related Repair and Maintenance Information (RMI)⁶', which was validated on 19 May 2016 by the European co-operation for Accreditation.
- (8) The Forum submitted this proposal to the Commission as the detailed procedure for the Scheme for Standardised Access to Vehicle Security Features ('SERMI scheme') set out in this Regulation.
- (9) It should be underlined that the SERMI scheme requires the establishment of appropriate provisions ensuring that personal data is processed in accordance with Union rules protecting fundamental rights and freedoms of individuals, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council⁷ and Directive 2002/58/EC of the European Parliament and of the Council⁸. Hence, in order to ensure privacy, the SERMI scheme should use pseud-anonymous data.
- (10) Since the United Kingdom notified on 29 March 2017 its intention to leave the Union, pursuant Article 50 of the Treaty of the European Union, the Treaties will cease to apply to the United Kingdom from the day of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the United Kingdom, decides to extend that period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, this Commission Regulation (EU) .../... of XXX amending Regulation (EC) No 595/2009 of the European Parliament and of the Council and Commission Regulation (EC) No 582/2011 as regards the standardized access to vehicle repair and

duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council (OJ L 167, 25.6.2011, p. 1).

⁴ 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).

⁵ <http://www.vehiclesermi.eu/>

⁶ <http://www.vehiclesermi.eu/public-area/security-report/>

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.07.2002, p. 37).

maintenance information and the access to vehicle security features only applies until the United Kingdom ceases to be a Member State.

- (11) Regulations (EC) No 595/2009 and (EC) No 582/2011 should therefore be amended accordingly.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee – Motor Vehicles,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EC) No 595/2009

Regulation (EC) No 595/2009 is amended as follows:

- (1) In Article 6(1) of Regulation (EC) No 595/2009, the following sentence is added at the end of the first subparagraph:

‘With a view to facilitating the achievement of this objective, the information shall be submitted in a consistent manner, in accordance with the technical requirements in **parts 1 to 4** of ISO 18541.’.
- (2) The fifth subparagraph of Article 6(1) is deleted.

Article 2

Amendments to Regulation (EC) No 582/2011

Regulation (EC) No 582/2011 is amended as follows:

- (1) In Article 2, the following point 57 is added:

‘57. ‘Vehicle security features’ means the information, functions and services related with the software, including its updates, and parts, including servicing of replacement parts, fitted by the manufacturer in a vehicle in order to prevent its theft, illegal tow away and unauthorised driving or unauthorised provision of a new vehicle identity, as well as for its tracking and recovery.’
- (2) In Article 2h, the following sub-paragraphs are added after the second sub-paragraph:

‘Independent operators shall be approved and authorised to access vehicle security features, including the electronic security systems referred to in Article 3(8) and point 2.1 of Annex X, in accordance with the Scheme for Accreditation, Approval and Authorisation for the Standardised Access to Vehicle Security Features (‘SERMI scheme’) set out in Appendix 4 to Annex XVII to this Regulation.

The association ‘Forum for Access to Security-Related Vehicle Repair and Maintenance Information⁹’ (‘SERMI Association’) is hereby empowered to implement and assume the operation and maintenance of the SERMI scheme.’.
- (3) Annex XVII is amended as set out in the Annex to this Regulation.

⁹ <http://www.vehiclesermi.eu/>

Article 3

Entry into force and application

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

Article 1, Article 2(2) and the Annex to this Regulation, with the exception of its points (3) and (4), shall apply from two years after 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,

*For the Commission
The President
Jean-Claude Juncker*

ANNEX

to the

Commission Regulation (EU) .../...

amending Regulation (EC) No 595/2009 of the European Parliament and of the Council and Commission Regulation (EC) No 582/2011 as regards the standardized access to vehicle repair and maintenance information and the access to vehicle security features

Annex XVII to Regulation (EC) No 595/2008 is amended as follows:

- (4) In point 2.1, the first subparagraph is replaced by the following:
‘Vehicle OBD and vehicle repair and maintenance information available through websites shall follow the technical specifications of **parts 1 to 4 of ISO 18541**, using only open text and graphic formats or formats which can be viewed and printed using only standard software plug-ins that are freely available, easy to install, and which run under computer operating systems commonly in use.’
- (5) In point 2.2, the second sentence of the last subparagraph is replaced by the following:
‘Independent operators shall be approved and authorised for this purpose on the basis of documents demonstrating that they pursue a legitimate business activity and have not been convicted of relevant criminal activity, in accordance with the SERMI scheme referred to in Article 2h.’
- (6) In point 2.2, the following sub-paragraph is added:
‘Manufacturers shall design vehicle security features in accordance with UN/ECE Regulation No 116¹⁰. Such design shall not impose additional requirements to those set out in point 2.5 for accessing any other vehicle OBD and vehicle repair and maintenance information.’
- (7) Point 2.6 is replaced by the following:
‘2.6. For access to any vehicle OBD and vehicle repair and maintenance information other than that relating to vehicle security features, registration requirements for use of the manufacturer’s web site by an independent operator shall require only such information as is necessary to confirm how payment for the information is to be made. For information concerning access to vehicle security features, the independent operator shall present a certificate in accordance with ISO 20828 to identify himself and the organisation to which he belongs and the manufacturer shall respond with his own certificate in accordance with ISO 20828 to confirm to the independent operator that he is accessing a legitimate site of the intended manufacturer. Both parties shall keep a log of any such transactions indicating the vehicles and changes made to them under this provision.’

¹⁰ Regulation No 116 of the Economic Commission for Europe of the United Nations (UN/ECE) - Uniform technical prescriptions concerning the protection of motor vehicles against unauthorised use (OJ L 45, 16.2.2012, p. 1).

- (8) After Appendix 3, a new Appendix 4 is added as follows:

‘Appendix 4

Scheme for accreditation, approval and authorization to access vehicle security features

1. Introduction

- 1.1. This Appendix sets out the Scheme for Accreditation, Approval and Authorisation for the Standardised Access to Vehicle Security Features (‘SERMI scheme’) by independent operators and independent operators’ employees based on the inspection performed by a Conformity Assessment Body and for issuing individual digital certificates. It thereby implies using and transferring personal data of individuals.
- 1.2. The SERMI scheme is based on the advice given by the Forum on Access to Vehicle Information referred to in Article 2h of this Regulation.
- 1.3. The SERMI scheme implements the procedure set out in the report ‘‘Scheme for accreditation, approval and authorization to Access Security-related Repair and Maintenance Information (RMI)¹¹’. It includes additional provisions on data protection, data security and confidentiality.

2. Definitions

For the purposes of this Appendix, the following definitions shall apply:

- 2.1. ‘Independent operator’s employee’ (‘IO’s employee’) means the employee of an independent operator.
- 2.2. ‘Conformity Assessment Body’ (‘CAB’) means the body responsible for inspecting independent operators and IO’s employees according to the SERMI scheme, so that independent operators and IO’s employees can be approved and authorized to access vehicle security features.
- 2.3. ‘National Accreditation Body’ (‘NAB’) means the body defined in Article 2(10) of Regulation (EC) 765/2008¹².
- 2.4. ‘Accreditation’ means the attestation by a NAB, that a CAB meets the requirements of the standard ISO/IEC 17020:2012 (Conformity assessment - Requirements for the operation of various types of bodies performing inspection) and the functional requirements necessary to carry out the conformity assessment activity related with the approval and authorization to access vehicle security features.
- 2.5. ‘Independent operator representative’ means any natural or legal person established in the Union who is duly appointed by the independent operator to represent the independent operator before the NAB, the CAB or the Trust Centre and to act on the independent operator’s behalf in matters covered by this Appendix.
- 2.6. ‘Approval’ means the attestation based on the inspection performed by the CAB determining that an independent operator pursues a legitimate business activity, complies with the requirements set out in this Appendix and is, therefore, allowed to access vehicle security features.

¹¹ <http://www.vehiclesermi.eu/public-area/security-report/>

¹² Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.08.2008, p. 30).

- 2.7. 'Authorisation' means the attestation based on the inspection performed by the CAB determining that an independent operator's employee of an approved independent operator has not been convicted of relevant criminal activity, complies with the requirements set out in this Appendix and, therefore, is allowed to access to vehicle security features.
- 2.8. 'Digital certificate' means the digital signature of the Trust Centre which assigns a public key to the identity of the IO's employee according to the standard ISO 20828:2006 (Road vehicles -- Security certificate management).
- 2.9. 'Trust Centre' means the body responsible for managing the digital certificates and the authorisation records of the IO's employees.
3. SERMI Scheme procedure
- 3.1. The SERMI scheme shall be carried out in accordance with the detailed procedure and provisions set out in the 'Scheme for accreditation, approval and authorization to Access Security-related Repair and Maintenance Information (RMI)' drafted by the SERMI Association and validated by the European co-operation for Accreditation on 19 May 2016.
4. Data protection
- 4.1. The processing of personal data to be carried out by the CAB in the context of the SERMI scheme shall comply with Union rules protecting fundamental rights and freedoms of individuals, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council¹³ and Directive 2002/58/EC of the European Parliament and of the Council¹⁴.
- 4.2. The CAB is entitled to create and store an internal file for each approved independent operator, its representative and its authorised IO's employee(s) on the basis of the relevant information received in accordance with the procedure referred to in point 3.
- 4.3. To ensure data privacy, the CAB shall generate and assign a unique identifier (pseudonymous identity) to each IO's employee and forward it to the Trust Centre.
- 4.4. Criminal records received by the CAB in accordance with the procedure referred to in point 3 shall be treated as sensitive personal information. They shall be used solely to confirm the trustworthiness of the respective person with regard to receiving access to vehicle security features. Therefore, solely property offenses shall be considered and no other offenses shall be extracted, processed, stored or otherwise used.
- 4.5. Documents or data received by the CAB in accordance with the procedure referred to in point 3 and the files created by the CAB in accordance with point 4.1, shall be stored only for the time required to achieve the purposes for which they were collected or created.
5. Data security

¹³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹⁴ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.07.2002, p. 37).

- 5.1. Each CAB shall implement appropriate measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access in accordance with Article 32 of Regulation (EU) 2016/679.
6. Confidentiality
- 6.1. Each CAB shall apply its rules of professional secrecy or other equivalent duties of confidentiality to all persons required to work with authorised IO's employees' data, and supplementary information, in accordance with the applicable national legislation. This obligation shall also apply after those persons leave office or employment.’.