

# SCOPE OF RMI PROVISIONS IN REGULATION 2018/858 – ACEA POSITION

## ISSUE AT STAKE

At the Motor Vehicle Working Group meeting on 12 February 2020, the European Commission proposed to clarify the scope of the provisions regarding access to repair and maintenance information (RMI). The Regulation itself is silent on this point.

During its presentation, the Commission stated that the RMI provisions should apply to all existing vehicles without exception since these provisions are the only legal obligations that currently exist in EU law. The provisions that were laid down in Regulations 715/2007 and 595/2009 have meanwhile been repealed.

Following discussions with participants, the Commission reviewed its position and stated that the RMI provisions in Regulation 2018/858 should apply to all vehicles that were subject to RMI requirements at the time of their type approval. Considering that the RMI provisions were first introduced in EU type approval (emissions) legislation in 2007 and 2009 respectively, this would imply that the new rules would apply to Euro 5/6 and Euro VI vehicles but not to vehicles meeting earlier emissions standards.

The Commission indicated that it would note this interpretation in the minutes of the meeting and invited Member States to apply the rules in this manner.

## ACEA POSITION

ACEA considers that this interpretation is legally incorrect, contravenes several fundamental principles of EU law, contradicts current practice and is neither practicable nor futureproof.

## THE RMI RULES SHOULD APPLY TO THE SAME VEHICLES AS OTHER TYPE APPROVAL REQUIREMENTS

The RMI rules are an integral part of the type approval legislation. Amongst other things, this is evidenced by the fact that article 64 makes the granting of type approval conditional on compliance with the RMI provisions and that article 65 confers the competence to monitor compliance with the RMI rules, even after type approval is granted, to the national type approval authorities.

This leads us to conclude that the RMI provisions form part of a composite set of requirements together with the other type approval requirements, whose compliance must be assessed at the moment of type approval.

In the absence of any specific indications in the Regulation, the application of the RMI provisions to vehicle types approved before 1 September while the other type approval requirements would instead apply only to vehicle types approved after that date appears to us highly questionable.

## THE RMI RULES SHOULD NOT APPLY RETROSPECTIVELY

An application of the RMI rules which would require manufacturers to ensure compliance for all Euro 5/6 and Euro VI vehicles would contravene several fundamental principles of EU law.

- In particular, it would be contrary to the principles of legal certainty and non-retroactive application of rules of EU law, which, according to well-established case law, “preclude an EU act from being applied retroactively – that is to say, it may not take effect from a point in time before its publication, and therefore apply to a situation established before its entry into force, irrespective of whether such application might produce favourable or unfavourable effects for the person concerned, save where, exceptionally, the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected” (Judgment of 28 February 2017, case T-157/14, JingAo Solar Co. Ltd v Council, para 156).
- It is evident that applying the new RMI provisions to all Euro 5/6 and Euro VI vehicles would mean applying the rules to situations established before the entry into force of the new rules.

## TYPE APPROVAL AUTHORITIES SHOULD NOT CHANGE THEIR CURRENT PRACTICE

The Commission’s interpretation to apply the new RMI rules to all Euro 5/6 and Euro VI vehicles would contradict current practice.

- Indeed, it is only since the application of Regulation 715/2007 that vehicle manufacturers are obliged to make repair and maintenance information available on a website.
- The reality is that manufacturers now effectively make this information available online but only for Euro 5 and Euro 6 vehicles. To the extent that information is available for older vehicles, it may exist in the form of paper or CDs but is has not been digitized.
- To the best of our knowledge, no type approval authority has ever refused to grant an approval on the basis that a manufacturer had not made information for pre-Euro 5 vehicles available online. This shows that type approval authorities currently do not apply the RMI rules to vehicles type approved before the application date of those rules.
- Vehicle manufacturers may thus legitimately expect that type approval authorities will continue to act in the same manner going forward.

## THE COMMISSION’S INTERPRETATION IS IMPRACTICABLE

From a practical point of view, it is factually impossible for manufacturers to comply with the new RMI rules for all Euro 5/6 and Euro VI vehicles.

- Indeed, many vehicles approved before the entry into force of Regulation 2018/858 often are simply not designed to meet requirements that were set years

- after they were approved. This why, for example, such vehicles will sometimes not comply with the following new RMI rules:
- Provisions regarding trailers (Regulations 715/2007 and 595/2009 were not relevant for trailers)
  - Online reprogramming of control units with certain vehicle communication interface standards (Annex X, 6.4)
- In other cases, applying the new rules to such vehicles would impose on vehicle manufacturers an excessive and disproportionate burden.
- This would be the case, for example, if they were forced to make spare parts information available in a machine readable and electronically processable format – one of the new requirements in Regulation 2018/858 – for all Euro 5/6 and Euro VI vehicles. This would be a massive, expensive and time-consuming exercise that could not possibly be completed before 1 September 2020. Considering that the Regulation was adopted on 30 May 2018 and ACEA was advised several times by the Commission that the new rules would apply only to future vehicles, it would be unreasonable, following a sudden change of mind at the Commission, to expect vehicle manufacturers to prepare themselves in 6 months' time.

## THE COMMISSION'S INTERPRETATION IS NOT FUTUREPROOF

Looking ahead, it is clear to us that applying new RMI rules to all Euro 5/6 and Euro VI vehicles will continue to create problems of the kind described above:

- The Commission's interpretation implies that Euro 5/6 and Euro VI vehicles would have to comply with any provision regarding access to RMI that the EU may add to the existing rules at any time between now and the moment the last of these vehicles is taken out of circulation. This is totally unrealistic since these vehicles have been sold and cannot be modified.
- For example, it will not be possible for many of these vehicles to comply with all provisions of the forthcoming delegated act that will reference the ISO standards and the SERMI scheme in EU law. Amongst other things, re-programming of keys will not always be possible. All those involved in the preparation of the ISO standards assumed they would apply only to future vehicles and that there would be sufficient implementation time. No one thought they could apply retroactively.
- The problem will be even bigger once the EU starts regulating remote access to vehicle data, whether for repair and maintenance (delegated act) or possibly more broadly (primary legislation). In that case, it is obvious that existing vehicles that are not connected will not comply. The same holds true for vehicles that are connected but do not meet any new technical requirements set in the new regulations.

## CONCLUSION

For the many legal and practical reasons mentioned above, the rules regarding access to repair and maintenance information in Regulation 2018/858 should apply only to vehicles falling within the scope of that Regulation, not to vehicles falling within the scope of the previous Directive 2007/46. Member States should continue to grant type approvals and assess vehicle manufacturers' compliance on this basis.