



Brussels, 21 September 2009

## NOTE FOR THE TCMV MEETING OF 20 OCTOBER 2009

### Agenda item 6: **Impact of the market surveillance provisions of the New Legislative Framework on the acquis in the automotive sector - Exchange of views**

#### **1. Introduction**

The **New Legislative Framework** adopted in July 2008 contains a broad package of measures aimed at improving the implementation of the Community's internal market legislation for goods. It seeks to strengthen and modernise the conditions for the free circulation on the EU market of a wide range of industrial and consumer products which are subject to EU harmonisation legislation. The package builds upon existing systems to introduce **clear Community rules on the application and enforcement of current and future internal market legislation for goods.**

**Regulation (EC) No 765/2008<sup>1</sup>**, which is an essential part of the New legal Framework package, sets out the requirements for accreditation and market surveillance relating to the marketing of products and also repeals Regulation (EEC) No 339/93 on checks for conformity with the rules on product safety in the case of products imported from third countries.

The Regulation introduces – amongst others - clear **rules on market surveillance** to protect both consumers and professionals from unsafe products, including imports from third countries, and **will apply as from 1 January 2010**. These rules on market surveillance aim at complementing and strengthening existing Community harmonisation legislation and its enforcement, and apply, in accordance with the principles of "lex specialis", **in so far as there are no specific provisions with the same objective, nature or effects in the sectoral harmonisation legislation concerned.**

Market surveillance is defined in Article 2 (17) of the Regulation as *“the activities carried out and measures taken by the public authorities to ensure that the products comply with the requirements set out in the relevant Community harmonisation*

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<sup>1</sup> 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, OJEU L218, 13.08.2008, p. 30

*legislation and do not endanger health, safety or any other aspect of public interest protection”*

The purpose of this document is to explore whether and **to which extent the market surveillance provisions and obligations** of Regulation (EC) N° 765/2008 **should be applied to the Community's harmonisation legislation in the field of motor vehicles** and to facilitate a first exchange of views on this issue with the representatives of the Member States in the Technical Committee on Motor Vehicles.

## **2. Applicability of the Market surveillance provisions of Regulation N° (EC) 765/2008 to sector specific harmonisation legislation**

Articles 15 to 26 of Regulation N° (EC) 765/2008 specify the market surveillance provisions under the New Legal Framework. Their overall objective is to ensure that Member States have appropriate control mechanisms in place to verify that products placed on their market comply with the requirements of the applicable Community harmonisation legislation. To this end the Regulation establish minimum requirements with regard to the organisation and operation of market surveillance, including border controls, but does not – in general - contain specific provisions on how Member States should enforce compliance with these requirements.

The Regulation recognises that some sector specific harmonisation legislation may already contain - to various degrees - provisions on market surveillance, in which case the Regulation's provisions on market surveillance should apply to the products covered by this sector specific legislation in so far the market surveillance provisions of that sector specific legislation have not the same objective. This is reflected in Article 15(2) of the Regulation, specifying that *“Each of the provisions of Articles 16 to 26 shall apply in so far as there are no specific provisions with the same objective in Community harmonisation legislation.”*

Further clarification on the applicability of the market surveillance provisions of the Regulation to sector specific harmonisation legislation as specified in Article 15(2) is provided in Recital (5) of the Regulation, which states that *“in accordance with the principle of lex specialis, this Regulations should apply only in so far as there are no specific provisions with the same objective, nature or effect in other existing or future rules of Community harmonisation legislation”*. The same Recital mentions that examples can be found in a number of sectors, including motor vehicles, and concludes that *“the corresponding provisions of this Regulation should therefore not apply in areas covered by such specific provisions”*.

## **3. Analysis**

From the above follows that for the purpose of establishing whether and to what extent each of the market surveillance provisions in Articles 16 to 26 of Regulation N° (EC) 765/2008 would be applicable to the harmonisation legislation on motor vehicles, it is necessary to assess whether or not the motor vehicles legislation contains specific provisions with the same objective as each of the provisions in Articles 16 to 26 of the Regulation.

It should be noted in this context that the existence of certain provisions on market surveillance in a sector specific harmonisation legislation does not automatically

imply that the application of the market surveillance provisions of the Regulation could be excluded “en bloc” for that specific sector. The principle laid down in article 15(2) and Recital (5) of the Regulation has to be understood in the sense that such an overall exemption would only be applicable in case the sector specific legislation would contain provisions which provide for a comprehensive market surveillance system adapted to the particular needs of that sector and which ensures that all the objectives of the horizontal system established by the Regulation are met.

It is therefore necessary, for the purpose of assessing whether Articles 16 to 26 of the Regulation should be applied to the motor vehicle sector, to compare each of the market surveillance provisions of the Regulation with any specific provisions in the motor vehicles legislation which may have the same objective and to establish whether these specific provisions would ensure the achievement of that same objective to the same extent as the horizontal market surveillance system established by the Regulation.

To enable this assessment and facilitate a first exchange of view with the competent authorities of the Member States on this subject, the table in Annex I is providing a preliminary assessment by summarising the main elements of the horizontal market system set up by Articles 16 to 26 of the Regulation, and by identifying any similar provisions in the motor vehicles legislation which could have the same objective, nature or effect.

#### **4. Conclusion**

From the preliminary assessment in Annex I it would appear that the motor vehicle harmonisation legislation contains provisions which to a large extent have the same objective, nature or effect as those of the Regulation with regard to:

- the general principles for taking restrictive measures (Article 16 (2) )
- the recall of products presenting a serious risk (Article 20)
- the notification procedure for restrictive measures (Article 21)

On the other hand, the motor vehicle harmonisation legislation does not seem to contain specific provisions having the same objective as those of the Regulation with regard to:

- the general requirements (Article 16), except for Article 16(2) )
- the information and organisation obligations (Articles 17 & 18)
- the market surveillance measures (Article 19),
- the exchange of information (Article 22), and
- the principles of cooperation (Articles 24 to 26)

These issues may require further consideration and reflection on how these should be addressed, in particular in view of the **obligation for Member States arising from Article 18 (5) of the Regulation to draw up either a general market surveillance programme or sector specific programmes, and to communicate these to the other Member States and the Commission by 1 January 2010.**

#### **4. Next steps**

Member States will be invited to provide information on how market surveillance in the automotive sector is - or will be - organised in their territory and to share experiences and exchange best practices for the purpose of facilitating the drawing up of the national market surveillance programmes in accordance with Article 18(5) of the Regulation.

This exchange of experiences should also enable to identify whether there are any areas of priority or product categories in the automotive sector upon which specific market surveillance activities in the future may need to be focused. By way of example, the European tyre manufacturing industry is calling for a dedicated market surveillance campaign to verify that tyres produced in or imported into the EU are fully compliant with the applicable Community legislation (see Annex II).

**Comparative table relating to market surveillance provisions in Regulation N° (EC) 765/2008  
and in the Community harmonisation legislation on motor vehicles (Framework Directive 2007/46/EC)**

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 16: General requirements</b>		
Art. 16 (1)	MS shall organise and carry out market surveillance	Not explicit (indirect reference in recital 17)
Art. 16 (2)	Market surveillance to ensure that: <ul style="list-style-type: none"> <li>- products which are liable to compromise safety or health of consumers or do not comply with harmonisation legislation, are withdrawn from the market or their being made available on the market is prohibited or restricted, and</li> <li>- the public, Commission and other MS are informed accordingly</li> </ul>	Safeguard clauses of Article 29 (compliant products posing a risk) to Article 32 (recall of vehicles)
Art. 16 (3)	National market surveillance infrastructure and programmes to ensure that effective measures can be taken in relation to products covered by harmonisation legislation.	?
Art. 16 (4)	Market surveillance to cover products for manufacturers own use (if covered by harmonisation legislation)	NA

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 17: Information obligations</b>		
Art 17 (1)	MS to inform Commission of their market surveillance authorities and their areas of competence. Commission to transmit info to other MS	similar provision for approval authorities and technical services only (article 43)
Art 17 (2)	MS to ensure that public is aware of existence, responsibility and identity of national market surveillance authorities and how these can be contacted	?
<b>Article 18: MS obligations as regards organisation</b>		
Art 18 (1)	MS to establish appropriate communication and coordination mechanisms between their market surveillance authorities	?
Art 18 (2)	MS to establish adequate procedures for: (a) following up complaints or reports on risks related to products covered by harmonisation legislation (b) monitoring accidents and harm to health attributed to these products (c) verifying that corrective action is taken (d) following up scientific and technical knowledge on safety issues	?
Art 18 (3)	MS to entrust market surveillance authorities with powers, resources and knowledge necessary for the proper performance of their tasks	?
Art 18 (4)	MS to ensure that their market surveillance authorities exercise their powers in accordance with the principle of proportionality	?

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (Framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 18: MS obligations as regards organisation (continued)</b>		
Art 18(5)	<p>MS to establish, implement and periodically to update their market surveillance programmes, either on a horizontal level or sector specific, and communicate these to the other MS and the Commission and make them available to the public.</p> <p><b>The first such communication shall be effected by 1 January 2010.</b></p> <p>Subsequent updates of those programmes to be made public in the same manner. MS may cooperate with all relevant stakeholders for this purpose.</p>	?
Art 18(6)	<p>MS to periodically review and assess functioning of their market surveillance activities (at least every fourth year) and results to be communicated to other MS and the Commission and to be made available to the public.</p>	?
<b>Article 19: Market surveillance measures</b>		
Art 19 (1)	<p>Market surveillance authorities to perform appropriate checks of products on an adequate scale, by means of documentary checks and where appropriate by physical and laboratory checks on the basis of adequate samples, whilst taking account of established principles of risk assessment, complaints and other information.</p> <p>Economic operators may be required to provide documentation and information necessary for these activities, including where necessary and justified to provide market surveillance authorities access to their premises and let them take samples.</p>	?

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (Framework directive 2007/46/EC) with same objective, nature or effect</b>
Art 19 (1) (continued)	Market surveillance authorities may destroy or otherwise render inoperable products presenting serious risk.  Market surveillance authorities to take due account of test reports and certificates attesting conformity submitted by economic operators	?
Art 19 (2)	Market surveillance authorities to take appropriate measures to alert users timely of hazards they have identified relating to any product so as to reduce the risk of injury, risk or other damage.  Market surveillance authorities to cooperate with economic operators regarding actions that could prevent or reduce risks caused by products made available by those operators	?  To some extent addressed by Article 32 (on recall of vehicles)
Art 19(3)	When market surveillance authorities in one MS decide to withdraw a product manufactured in another MS, they shall inform the economic operator concerned.	Implicitly addressed by Article 33 (Notification of decisions and remedies available)
Art 19 (4)	Market surveillance authorities to carry out duties independently, impartially and without bias	Similar provisions specified for technical services only
Art 19 (5)	Market surveillance authorities to observe confidentiality to protect commercial secrets or to preserve personal data, but information to the public to be made to the fullest extent necessary to protect the interests of users	Similar provisions specified for technical services only



<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (Framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 20: Products presenting a serious risk</b>		
Art 20 (1)	MS to ensure that products presenting serious risks requiring rapid intervention, are recalled , or their making available on their market is prohibited, and that the Commission is informed thereof without delay in accordance with Art 22	To some extent addressed by Article 32 (Recall of vehicles)
Art 20 (2)	Decision on whether product presents serious risk to be based on risk assessment, taking into account the nature of the hazard and the likelihood of its occurrence. Availability of products presenting lesser degree of risk or feasibility of obtaining higher levels of safety shall not constitute grounds for considering that a product presents a serious risk.	?
<b>Article 21: Restrictive measures</b>		
Art 21 (1)	MS to ensure that any measure taken to prohibit, withdraw, recall a product or restrict its making available on their market is proportionate and states the exact grounds upon which it is based.	Addressed by Article 29 (1)
Art 21 (2)	Such measures to be communicated without delay to economic operator concerned, which shall be informed of remedies available and the time limits to which such remedies are subject	Addressed by Article 29 (1)

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (Framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 21: Restrictive measures (continued)</b>		
Art 21 (3)	Prior to the adoption of such measure, the economic operator shall be given the opportunity to be heard within a period not less than 10 days, unless this is not possible due to the urgency of the measure to be taken justified by health or safety requirements or other grounds relating to the public interest. In this case economic operator to given the opportunity to be heard asap and action to be reviewed promptly thereafter.	?
Art 21 (4)	Any restrictive measure to be promptly withdrawn or amended upon demonstration by the economic operator that he has taken effective action	?
<b>Article 22: Exchange of information – Community Rapid Information System</b>		
Art 22 (1)	When MS takes restrictive measure in accordance with Art 20 and considers the reasons for the measure or its effects go beyond its territory, it shall notify the measure without delay to the Commission, as well as any modification to or withdrawal of such measure	?
Art 22 (2)	MS to notify to the Commission any voluntary measure taken and communicated by an economic operator with regard to a product presenting a serious risk	?

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (Framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 22: Exchange of information – Community Rapid Information System (continued)</b>		
Art 22 (3)	Information the provided with the notification: data necessary to identify the product, its origin and the supply chain for the products, related risks, nature and duration of the restrictive measure and any voluntary measure taken by the economic operator	?
Art 22 (4)	For the purpose of the exchange of information, the market surveillance and information exchange system provided for in the general product safety directive shall be used (RAPEX).	?
<b>Article 23: General information support system</b>		
Art 23 (1)	Commission to set up and maintain a general archiving and exchange of information system using electronic means	Entails no direct obligation for MS
Art 23 (2)	Ms to provide Commission with information at their disposal and not already provided under Article 22 as an input to the general information support system.	?
Art 23 (3)	Confidentiality provisions on the data contained in the general information support systems	Entails no direct obligation for MS

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (Framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 24: Principles of co-operation between the Member States and the Commission</b>		
Art 24 (1)	MS to ensure efficient co-operation and exchange of information between their market surveillance authorities and those of the other MS and between their own authorities and the Commission regarding their market surveillance programmes and all issues relating to products presenting risks.	?
Art 24 (2)	Market surveillance authorities of one MS to assist market surveillance authorities of other MS on an adequate scale by supplying information or documentation, by carrying out appropriate investigations or any appropriate measure and by participating in investigations initiated in other MS.	?
Art 24 (3)	Commission to collect and organise such data on national market surveillance measures to fulfil its obligations	Entails no direct obligations for MS
Art 24 (4)	Any information provided by an economic operator under Art 21 (3) to be included when the reporting MS notifies other MS and the Commission on its findings and actions. Any subsequent information to be clearly identified as relating to information already provided.	?

<b>Market surveillance provisions in Regulation N° (EC)765/2008</b>		<b>provisions in motor vehicles legislation (Framework directive 2007/46/EC) with same objective, nature or effect</b>
<b>Article 25: Sharing of resources</b>		
Art 25 (1)	Market surveillance initiatives designed to share resources and expertise between the competent authorities of the MS, may be set up by the Commission or the Ms concerned, and coordinated by the Commission	Entails no direct obligations for MS
Art 25 (2)	Commission, in cooperation with MS, shall: (a) develop and organise training programmes and exchanges of national officials (b) develop, organise and set up programmes for the exchange of experience, information and best practice, and for common projects, information campaigns, joint visit programmes and sharing of resources	Entails no direct obligations for MS
Art 25 (3)	MS to ensure that their competent authorities participate in the above activities, where appropriate.	?
<b>Article 26: Cooperation with competent authorities of third countries</b>		
Art 26 (1)	Market surveillance authorities may cooperate with competent authorities of 3 <sup>rd</sup> countries to exchange information and to provide technical support, promoting access to European systems and activities relating to conformity assessment, market surveillance and accreditation. Commission to develop appropriate programmes for that purpose	Entails no direct obligations for MS
Art 26 (2)	MS to ensure that their competent authorities participates in the above activities	?



## EU Compliance Programme for Tyre-Related Legislation:

### Phase 1: Testing Plan on the Aromatic Oils Restriction

#### WHY A COMPLIANCE PROGRAMME FOR THE EUROPEAN TYRE SECTOR

With the introduction of environmental and safety standards, both at international and EU level, the industry is continuously responding to the need to adapt products and production processes. The tyre sector is no exception. Over the last few years alone, the EU regulatory landscape for tyres has significantly changed, introducing more stringent requirements for safety, health and environmental purposes, and enhancing information transparency towards consumers. It will not be exaggerated to say that while the EU tyre producers just succeed in making technological adjustments to meet legislation coming into force, they are already confronted with new high requirements to become effective in the short to medium term.

#### Present & Forthcoming Challenges

In support of the statement above, an overview is provided of the most important tyre-related regulations, which have been recently adopted or are pending for implementation:

- **Waste restrictions:** in the EU, landfill of end of life tyres and parts of tyres is forbidden since 2006; tyre producers have anticipated the requirements and have taken action to organise the different players in the recovery industry, with the creation of end-of-life tyre management companies under producer responsibility statutory regimes, introduced in the majority of EU Member States;
- **Chemicals reporting:** under the REACH Regulation<sup>2</sup>, tyre producers have to comply with the obligation to declare and/or register all chemicals and substances used in tyre production. This is a process with various stages, and the efforts will be concentrated between December 2009 and 2011;
- **Chemicals restrictions and hence need of substitution: a ban on the use of certain oils in tyres from 1 January 2010, as part of REACH<sup>3</sup> (see further for more details on this legislation);**
- **Limits on rolling noise: technical requirements in force from 1 October 2009 to reduce tyre rolling noise pollution<sup>4</sup>;**
- **Solvent reduction:** new limits on solvent input in rubber conversion, as well as on certain emissions (SO<sub>2</sub>, NO<sub>x</sub>, CO) from industrial installations<sup>5</sup>;
- **Reduction of CO<sub>2</sub> emissions from manufacturing facilities:** obligations for the tyre sector under the revised rules of the EU Greenhouse Gas Emission Trading System; from 2013 onwards, the industry will have to buy pollution permits and increase efforts to produce in a more environmentally-friendly manner;

And most recently:

- **New type approval requirements for the general safety of vehicles and tyres<sup>6</sup>: new tyres from 2012 will have to meet higher standards for fuel consumption, safety, and noise.**

<sup>2</sup> Regulation (EC) 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

<sup>3</sup> Regulation 552/2009; Annex XVII - entry number 50

<sup>4</sup> Directive 2001/43/EC relating to tyres for motor vehicles and their trailers and to their fitting

<sup>5</sup> Ongoing recast of the Directive on Integrated Pollution Prevention and Control [COM(2007) 843 final]

<sup>6</sup> Regulation 661/2009

This legislative demand is coupled with requirements of the original equipment manufacturers, which look for tyres with less rolling resistance (a factor for fuel consumption and vehicle emissions) to meet vehicle-related legislation on CO<sub>2</sub> and other greenhouse gases. A progressive implementation of standards for rolling resistance, wet grip and noise will take place between 2012 and 2020;

- ⇒ Also effective from 2012 and still under discussion: an EU tyre labelling scheme<sup>7</sup> will oblige tyre producers to provide consumers with information on rolling resistance (related to fuel consumption), wet grip (related to safety) and external noise of tyres.

### Risk Analysis

In other words, the complexity of EU Legislation is increasing and is focusing especially in the context of environmental concerns, on specific tyre characteristics and components which were not legislated in such a way in the past. EU Legislation is in certain areas more stringent than on other continents. Test procedures to check the compliance of tyres get more specific, require highly specialised test machines, take time to obtain results and are expensive. Past conformity checks by only looking at the tyre are not sufficient anymore.

At the Member States level:

- The volume of goods entering into Europe is increasing and Custom authorities have limited resources and possibilities. It is estimated that no more than about 5 % of the total EU imports are checked visually, mostly concentrating on weapons, narcotics, fake medicines and counterfeit.
- Member States have more and more budgetary constraints preventing them from increasing the necessary dedicated resources to follow this trend and to have more efficient controls.

At the global level:

- Global present over-production will encourage unscrupulous producers or exporters to get rid of stocks by any means to generate cash.
- Commercial decisions compromising quality and conformity will oblige producers or exporters to focus on new markets. Europe is one of those.

Given this background, the likelihood to find tyres which are non-compliant with European legislation entering into Europe is higher than ever, with the following consequences:

- The risk for consumers on key safety features of their vehicle becomes real, and dangerous.
- The risk of competition distortion is high: European producers in conformity with the legislation will have a competitive disadvantage if products are sold in the EU without fully complying with EU standards.
- The global cost for Society at large linked to those risks might be important. (Safety, environment, social, legal...).

### The necessity for a generic market surveillance programme

Under this increasing EU regulatory pressure for a safer and “greener” environment, the European tyre industry has been acting to the best of its efforts to ensure timely and efficient compliance with the norms. This requires a costly, complex and lengthy process for developing, testing and implementing new technologies and substances for the tyre production against tight deadlines. Also, it needs to be kept in mind that these efforts occur on the background of the additional burden generated by the economic and financial crisis, which has hit particularly seriously the automotive industry.

However the producer’s consciousness alone is not a guarantee for proper enforcement of EU regulations and, ultimately for the achievement of the EU vision for a safer and cleaner society. ETRMA members make all necessary efforts to fully comply with current and pending legislation. They wish to see firm guarantees that all the liable economic actors on the EU market will be compliant. Tyres produced in or imported into the EU should be either compliant with all relevant rules or must be removed from the market. National and EU authorities should make all efforts to build and maintain a level playing field in the EU tyre market. **ETRMA is therefore pleading for a robust compliance programme for tyre-related legislation.**

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<sup>7</sup> Proposal for a Regulation 2009/348

Such a programme should be organised in relation to most of the legislative acts enumerated above, and its first building block should be compliance with the legislation on aromatic oils in tyres (Reach 1907/2006, Annex XVII, entry #50), as this is one of the most significant regulations, in terms of costs and complexity, and is to be implemented soon (January 2010).

The recently adopted Regulation 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, which comes into force on 1 January 2010, provides a brand new opportunity. **National plans for its enforcement are under elaboration, and the tyre sector pleads for being covered therein.**

### Conclusion:

**The intention of the European tyre industry is to engage in a long-term strategic compliance campaign stressing the importance of the quality of tyres. This campaign should be supported by the EU and national governments and enhance awareness of all relevant stakeholders: consumers, dealers, consumer organisations, governments, and enforcement authorities, amongst others.**

**As a first and immediate step to this overall programme, the tyre industry wishes to launch intelligence-based market surveillance programme specifically on the aromatic oils ban.**

A next stage would be awareness-raising communication campaigns, coupled with market checks on the tyre labelling legislation. The latter represents a significant change for the industry, across the entire supply chain, down to the consumers.

Tyre type approval requirements following 661/2009 will be the ensuing actions.



## PHASE 1: THE COMPLIANCE PROGRAMME ON AROMATIC OILS

### - The legal provisions in detail

The EU Directive 2005/69 is placing restrictions on the marketing and use of high aromatic oils for the production of tyres or parts of tyres produced after 1 January 2010.

From June 2009, the provisions of the Aromatic Oil Directive became part of REACH<sup>8</sup> (Annex XVII - Restrictions). Penalties for non-compliance should apply as from 1 January 2010, and are still to be decided by Member States.

### - Implications for the European tyre industry

The PAHs restrictions will apply to tyres and retreads produced from 1 January 2010 onwards.

The phasing out high aromatic oils and the implementation of low aromatic oils (a difference made upon the legally acceptable upper limit) in tyre manufacturing is a complex process. Extender oils are in correlation to several tyre performance characteristics, most notably tyre adherence on wet roads (wet grip), which is an important factor for road safety. Given the fact that a simple replacement of one type of oil by another is not possible, all the major tyre companies have engaged in significant material development and tyre testing at considerable expense to ensure that the switch to compliant oils will be made with no compromise to the whole performance envelope of the new tyres.

High costs follow also from the significant number of different tyre types subject to the PAHs restrictions: they range from tyres for motorcycles and passenger cars to the largest truck, bus, agricultural and earthmover tyres.

Given these factors, the cost estimations are that, by the entry into force of the PAHs restrictions, the European tyre companies will have collectively spent more than one hundred million euro to ensure compliance. The tyre sector has been committed to making the transition process as transparent as possible to its customers – both vehicle manufacturers and end users.

### - The risk from non-compliance

While enforcement of the marketing ban on the oils as such is considered as relatively easy due to the fact that only a few suppliers exist globally, this is not the case with compliance of tyres as a final product. Every year some 300 million passenger car tyres alone are placed on the EU market. About 100 million of them are imported from a large number of producers and hundreds of factories in diverse countries with no bans on PAHs. China, South Korea, Taiwan and Indonesia are the largest exporters to the EU, but there are many more countries involved. The very large number of tyres involved coupled with diverse marketing of those tyres throughout the whole EU market, make it clear that the risk of non-compliant imported tyres is considerable and that enforcement of the ban is a challenging but indispensable task. It is understood that not only imported tyres but also tyres produced within the EU should be checked for compliance.

**This private-public partnership programme demonstrates that the tyre industry in Europe has no intention to shy away from its environmental obligations, but, on the contrary, to cooperate with national and EU authorities for a uniform and efficient application of the EU legislation. The proposal to the Competent Authorities (CARACAL) foresees the budget and sharing of actions and costs over 2010-2011.**

<sup>8</sup> Reach Regulation 1907/2006 Annex XVII, entry #50

An important issue to the attention of the national governments is also the fact that the test methods specified in the legislation (in particular the ISO 21461 method to test the tyres) are not readily available in many laboratories. Specialized knowledge of tyres and their construction, as well as specialized equipment (an NMR spectrometer) are needed to perform the analyses on tyres. ETRMA has identified and the members have trained staff in several labs in the EU and these are recommended to the Member States.

A robust market surveillance and good communication of inspections results over 2010-2011.

**A detailed market intelligence-based testing programme has been developed and is being discussed with the enforcement authorities.** The first checks should start in mid-2010; depending on the results, e.g. whether non-compliant products are found or not, we will have to adapt our communication and demands for actions (see point B).

### A. Stakeholders and Sought Actions

#### *EU border authorities*

Focus especially on the EU external borders (and ports specifically) as they are the first point of entry of goods, and hence of major importance for preventing access of non-compliant tyres. Explore the possibility of documentation checks for each imported tyre.

If there are good information sharing mechanisms with the national market surveillance authorities, border controls could take more timely and focused measures towards producers/importers regularly infringing the restrictions.

#### *National market surveillance authorities*

- Periodical and random sample testing;
- Random checks on test reports and assessment certificates of tyre producers;
- Information exchange system: involving market surveillance authorities, border authorities, and the European Commission. Specifically designed for the tyre sector integration into existing databases for other products.

#### *Laboratories*

Application of the appropriate test methods (see above).

Due to the complexity and the different set-ups of legal enforcement systems in the various member states, a necessary condition for a successful compliance programme across the whole EU is the involvement of the national tyre associations: they would be instrumental in giving guidance which levels of the national structure (e.g. regional, federal or both) should be addressed and with what requests. The reference should be to Regulation 765/2008 on market surveillance to get national plans which point out what are the competences of each authority.

### B. Possible Test Scenarios

#### *Infringements Found:*

In the case of non-compliance, results should be disseminated with strong messages so that relevant authorities continue inspections.

\*N.B.: For imported non-compliant tyres, in the first instance to be determined who is liable: manufacturer or importer/person responsible for placing the tyres on the market.

- Customs authorities to suspend the release of non-compliant tyres on the EU market;
- Market surveillance authorities' intervention for withdrawal of non-compliant tyres and fines;
- For considerable number of infringements by the same economic operator: "blaming and shaming" – also increasing consumer's attention through e.g. tyre magazines, dealers' communication;

- ETRMA communication campaign with the EU institutions: raising awareness particularly of the EP (Committees on Environment, Consumer Protection, Industry), the EC (DG Enterprise, Commissioner Cabinet, DG Environment);
- Consideration of a need to extend the market surveillance programme beyond 2011 depending on amount of infringements (threshold possibly to be set);
- ETRMA and national tyre associations' communication to tyre-specialised press;
- For considerable infringements from the same economic operator: possible considerations of a temporary restriction on trade with the EU market

### ***No Infringements Found:***

If at the first round of inspection in mid-2010 no non-compliant tyres are found, the main message would be that the legislation, accompanied by the industry's pro-active measures, is delivering on the objective of eliminating from the EU market health and environment risks from aromatic oils. Also, communicating that producers remain determined to prevent non-compliance throughout the whole critical period (until end 2011) and recognition for the contribution/efforts of the actors involved: national authorities, laboratories, etc. "Refreshed" messages to dealers and distributors to pay attention to tyres manufactured after 1 January 2010 and to look for the date of production on the tyre sidewall. Also, message to the national authorities that the national compliance programmes should be continued.

It would remain to be decided whether in the case of non-infringements by end-2010 the programme should be conducted with the same intensity.

### **C. Sponsors**

*Member State authorities*

*European Commission DG ENTR*

→Communication to be delivered by one of the sponsors

## **NEXT PHASES: COMPLIANCE PROGRAMMES ON OTHER TYRE-RELATED LAWS**

The experience learned from the oil testing programme as well as the network put in place at the Member States level, shall help industry and the authorities with the second wave of legislations, starting with the tyre performances labelling requirements, immediately followed by the mandatory thresholds for tyre rolling resistance, wet grip and rolling noise.

The sought EU legal basis for the compliance programme is EC Regulation 765/2008, and the national plans for its implementation.

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