

In Brussels, on the 17<sup>th</sup> of March 2020

## Scope of RMI provisions of the Regulation (EU) 2018/858

### ADPA/ FIGIEFA POSITION PAPER

ADPA and FIGIEFA welcome that in view of the application of the Regulation (EU) 2018/858 the European Commission had included the issue of the scope of this new regulation in the agenda of the last meeting of the Motor Vehicle Working Group (MVWG) on 12 February 2020.

**At the meeting, the Commission made clear that the obligations of vehicle manufacturers to provide access to their repair and maintenance information, as prescribed in the Regulation (EU) 2018/858, concern besides newly type-approved vehicles as of 1 September 2020, all vehicle models already type approved pursuant to the Regulations (EC) No. 715/2007 and (EC) No. 595/2009. Therefore, apart from even older vehicles, the Regulation applies to the almost entire car park in the EU today, both passenger and commercial vehicles.**

This opinion of the European Commission is fully supported by ADPA and FIGIEFA members and is in line with the unmistakable wording of the law and the clear intention of the European legislator. It is consistent with the clear goals of Regulation (EU) 2018/858, i.e. to improve competition on the automotive aftermarket. ADPA and FIGIEFA therefore welcome this clarification by the Commission, which will be helpful in putting the intention of the legislator into effect.

#### **ADPA and FIGIEFA consider the clarification by the Commission being in line with the following legal arguments:**

#### **Access to repair and maintenance information is a permanent obligation of the vehicle manufacturers without regard to the date of type-approval**

- Independently from the legal situation at the time of type-approval for the vehicle model concerned, vehicle manufacturers have always been obliged to provide a permanent access to their repair and maintenance information for independent operators. These obligations were introduced by the European legislator through Regulations (EC) No. 715/2007 and (EC) No. 595/2009 in order to ensure competition on the automotive aftermarket.
- These future-oriented obligations of the vehicle manufacturers were never considered as static. The legislator was and is able to modify the exact content of this statutory permanent obligations in order to stay abreast of changes of a technical nature and/or of market developments. Access to repair and maintenance information must therefore always be granted in accordance with the legal requirements at the in force at the time regardless of the date of type-approval of the respective vehicle model.

- Exceptions might apply if the vehicle manufacturers cannot satisfy the current requirements in individual cases due to the technical equipment of an older vehicle does not support compliance. Importantly however, this does not concern access to repair and maintenance information in the form of machine-readable and electronically processable datasets. This has nothing to do with the technical functions of a vehicle as such, but relates to off-board systems (e.g. websites) of the vehicle manufacturers that require adaptations to comply with their obligations.
- It is considered that Vehicle manufacturers have had sufficient time to prepare for the new requirements (more than 2 years). As the permanent obligation to grant access is subject to change, the European legislator has granted the vehicle manufacturers sufficient time to enable them to make the necessary arrangements to meet the legal requirements. The requirements of Regulation (EU) 2018/858 have to be met upon entry into force of the Regulation, which is on 1 September 2020. Therefore, since the adoption of the Regulation (May 2018), vehicle manufacturers will have had more than two years to implement the necessary measures, thus granting the vehicle manufacturers a considerable transitional period.

### **Consequences with respect to new obligations of vehicle manufacturers from September 2020 on**

- Regulation (EU) 2018/858 modifies the permanent obligations of the vehicle manufacturers introduced by Regulations (EC) No. 715/2007 and (EC) No. 595/2009. The Regulation does not retroactively interfere with facts or specific obligations in the past. Instead, it changes the requirements as to access to repair and maintenance information from September 2020 on. This is in conformity with all basic principles of European law.
- The Recital 50 of the Regulation also shows the clear intention to consolidate in the new Regulation the provision of information previously regulated in Regulations (EC) No. 715/2007 and (EC) No. 595/2009. Consequently, Articles 86 and 87 of the Regulation stipulate that the earlier provisions regarding access to information in Regulations (EC) No. 715/2007 and (EC) No. 595/2009 are repealed entirely.
- Therefore, from September 2020 on, the requirements as to the granting of access to repair and maintenance information follow from the provisions of Regulation (EU) 2018/858 only, whereas Regulations (EC) No. 715/2007 and (EC) No. 595/2009 remain applicable only with respect to their remaining regulatory content, but not with regard to access to repair and maintenance information. For the latter, only the new Regulation applies without regard to the date of the type approval of the model concerned. As this is a clear legal situation, there was no need for the legislator to clarify this separately.
- Consequently, from 1 September 2020 on, also the supervisory functions of the national type-approval authorities with respect to all type approved models will be subject to Articles 64 and 65 of Regulation (EU) 2018/858 only. Whereas Article 64 (1) deals with an application for a new type-approval, the authorities may, in accordance with Article 65 (1), check at any time whether a vehicle manufacturer complies with the provisions of Regulation (EU) 2018/858 regarding any of his type approved models, irrespective of the date of such type approval. This concerns in particular also the obligation under Article 61 regarding the format in which the repair and maintenance information shall be provided: *'in an easily accessible manner in the form of machine-readable and electronically processable datasets'*. The information in the electronic systems of the vehicle manufacturers is and has been available in such a format, as most vehicle manufacturers are using, and have always used, external service providers to develop their EPCs (electronic parts catalogues) and other electronic information systems based on electronically processable datasets stemming from the vehicle manufacturers.