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COMMISSION STAFF WORKING DOCUMENT

GUIDANCE ON FINANCIAL INCENTIVES FOR VEHICLES

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GUIDANCE ON FINANCIAL INCENTIVES FOR VEHICLES

I. Introduction

Several Member States have already adopted or have announced their intention to provide financial incentives for motor vehicles that fulfil pollutant emission limits that are stricter than those currently in force (Euro 4 stage). In 2007 a new Regulation (EC) No 715/2007 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 information¹ has been adopted.

This new Commission Staff Working Document aims at giving practical guidelines to Member States wishing to introduce financial incentives for vehicles that meet mandatory emission limits in advance of the due dates set out in Regulation (EC) No 715/2007 on how to design such incentives in line with the relevant Community legislation.

It replaces the Staff Working Paper on "*Fiscal Incentives for Motor Vehicles in Advance of Euro 5*"² which was published in 2005.

The notion of "*incentive*" used in this Commission Staff Working Document should not be interpreted as including State aid. As far as Member States design incentives under Regulation (EC) No 715/2007 which however fall under the notion of State aid, the Community Guidelines on State aid for environmental protection³ are fully applicable.

In view of the recent adoption of the Regulation setting emission limits for heavy duty-vehicles (Euro VI Regulation)⁴ these guidelines should also apply *mutatis mutandis* to financial incentives for heavy-duty vehicles.

II. Legal Framework

Community legislation lays down the mandatory limit values for various pollutant emissions from light duty vehicles (Euro 4) and heavy duty vehicles (Euro V). New limit values (Euro 5 and 6) for light duty vehicles have been laid down in Regulation (EC) No 715/2007. These limit values are minimum standards that apply to the type-approval of vehicles and entry into service of new vehicles. The main purpose of the Regulation is the harmonization of the market conditions for new vehicles. In general, Member States are allowed to give financial incentives for vehicles which comply with the emission limit values before their mandatory application.

¹ OJ L 171, 29.6.2007, p.1.

² SEC(2005) 43

³ OJ C 82, 1.04.2008, p. 1.

⁴ 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/EC, OJ L 188, 18.7.2009, p. 1.

Article 12 of Regulation (EC) No 715/2007 provides for financial incentives for the early compliance by light duty vehicles with Euro 5 and 6 emission limits. This Article stipulates certain conditions which such national incentives must meet in order to be compatible with the Regulation. The purpose of this provision is to ensure that, in the transitional period before the lower emissions standards become mandatory, Member States can incentivize the introduction of less polluting vehicles while still allowing car manufacturers the choice of producing vehicles that are approved under the existing mandatory emission standards. The conditions in Article 12 ensure that the placing on the market of vehicles complying with the new requirements will not create distortions of the internal market. Detailed guidance on the interpretation of these conditions is provided in the section below.

According to Article 12(4), Member States have to inform the Commission about plans to institute or change financial incentives "*in sufficient time*". In the absence of any procedure laid down for this purpose, a notification pursuant to Directive 98/34/EC⁵ will be considered as fulfilling the obligation to inform set out in Article 12(4).

All financial incentives must furthermore be compatible with the EC Treaty, as recalled by Recital 19 of Regulation (EC) No 715/2007. Based on the guidance given in Recital 19, it can be concluded that Member States may levy registration taxes on motor vehicles, the amount of which may differ depending on objective criteria such as emission standards, when this differentiation aims at encouraging the purchase of less polluting cars and preserving the environment. Nevertheless, Regulation (EC) No 715/2007 is intended to remove obstacles in relation to the technical requirements for type-approval of motor vehicles with regard to certain emission standards and to introduce certain rules on accessibility of information. As a result, Member States may link the financial incentives to the emission standards regulated by Regulation (EC) No 715/2007. National measures which are based on the emission limit values included in Regulation (EC) No 715/2007 must comply with the requirements of Article 12. If the incentives are not linked to a pollutant regulated by this act, Article 12 will not apply. Nevertheless, such incentives would have to be compatible with Community law.

Should the financial incentives be provided in the form of fiscal incentives, they have to comply in particular with Article 90 of the EC Treaty, which prohibits any discrimination through internal taxation, in particular by favouring the sale of vehicles of domestic manufacture.

Member States are also under an obligation to respect the EC Treaty provisions on State aid. As set out in Article 87 of the EC Treaty, granting State aid by Member State is prohibited unless it is compatible with the common market. Therefore, Member States must assess whether the intended measure qualifies as state aid and if this is the case, they must comply with the notification obligation under State aid rules. Notifying the planned measure under Directive 98/34/EC does not fulfil that obligation. State aid rules and the legislation in the automotive sector may thus present separate procedural and substantive requirements to which Member States must adhere.

III. Guidance on the interpretation of the provisions on financial incentives in Regulation (EC) No 715/2007

⁵ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provisions of information in the field of technical standards and regulations and of rules on information Society services, OJ L 24, 21.7.1998.

When designing financial incentives, the Member States must respect the following guiding principles which result from requirements of Article 12 interpreted in light of Recital 19 of Regulation (EC) No 715/2007 ("*This Regulation should not affect the Member States' right to include emissions in the basis for calculating taxes levied on vehicles*").

Article 12 (1) 2nd subparagraph requires that incentives shall be valid for "*all new vehicles*". This should be interpreted as not allowing selectivity on the basis of manufacturer or country of origin.

a) Forms of incentives

The scope of Article 12 covers financial incentives granted in all forms. It therefore includes: straight grants, loans, tax deductions, other kinds of fiscal incentives or incentives in other monetary form. It is thus wider in scope than previous provisions which were limited to tax incentives⁶.

Recital 19 clarifies that Member States remain free to include emissions in the basis for calculating taxes levied on vehicles as long as, for emissions covered by this legislation, they comply with the conditions of Article 12.

b) Kinds of measures

Article 12 covers not only incentives for new vehicles offered for sale on the market of a Member State but also incentives for the retrofitting of in-use vehicles and scrapping of vehicles which do not comply with this Regulation.

With regard to incentives for scrapping the Commission adopted in February 2009 "*Guidance on scrapping schemes for vehicles*" as part of the Communication "*Responding to the crisis in the European automotive industry*"⁷. It gives practical guidance to Member States on how to design scrapping schemes for the vehicles and explains the relevant Community legislation without imposing maximum amounts for financial incentives for scrapping schemes by Member States.

This guidance remains valid and the present document does not cover financial incentives for scrapping schemes.

c) Type-approval requirement

Article 12(1) provides that Member States can introduce financial incentives that apply to vehicle "*in series production which comply with this Regulation and its implementing measures*". Since this Regulation is one of a number of separate regulatory acts in the context of the Community type-approval procedure, this provision should be understood as requiring vehicles which benefit from the incentives to be type-approved in compliance with Regulation (EC) No 715/2007 and its implementing measures.

Commission Regulation (EC) No 692/2008⁸ implementing Regulation (EC) No 715/2007 provides for the administrative provisions for type-approval which results in vehicles being

⁶ Article 6 of Directive 2005/55/EC; Article 5 of Directive 98/69/EC.

⁷ COM/2009/104 final.

⁸ OJ L 199, 28.7.2008, p. 1.

type-approved according to several stages. This should be reflected by the addition of the character to the EC type-approval number as foreseen by Appendix 6 to Annex I of this Regulation. Therefore, in their legislation on financial incentives Member States should always specify the appropriate character reflected in the type-approval number for which the financial incentive can be granted.⁹ This character is also indicated in the certificate of conformity¹⁰ which accompanies new EC type-approved vehicles in accordance with the provisions of Directive 2007/46/EC¹¹.

Therefore, Member States should not be allowed to grant incentives to vehicles complying with some of the requirements of the Regulation if they are not type-approved in accordance with Regulation (EC) No 715/2007. This means that as from the date when the type-approval under Regulation (EC) No 715/2007 is possible, Member States cannot link a financial incentive to the emission limit for only a single pollutant regulated under this Regulation.

However, unless the legislation otherwise specifies¹², in the intermediary period between adoption of the co-decision act setting the emission limits and the adoption of the implementing measures, when vehicles cannot yet be type-approved, Member States should be allowed to give financial incentives to vehicles which satisfy one or more emission limits required by the co-decision act.

This limitation shall not apply to retrofitting of in-use vehicles. In some particular cases, especially with regard to heavy-duty vehicles, there might be a need to apply provisions foreseen in the implementing legislation.

d) Maximum amount of support

Article 12(3) stipulates that financial incentives shall not exceed the additional cost of the technical devices introduced to ensure compliance with the relevant emission limits, including cost of installation on the vehicle. Consequently, a cap is imposed on the maximum amount of support to be granted. In order to be able to assess the compatibility of an incentive against this provision, it is thus a prerequisite that the incentive can be expressed as an amount which can be assessed against this Article.

The additional cost of the technical devices has to be determined by calculating the cost difference between the devices used to comply with the emission standard in force when the incentive is granted and the devices complying with the future emission standard referred to in the measure, with installation costs added. Article 12(3) cannot be understood as making all emission control costs eligible.

⁹ For example, type-approval for category M is granted with the following characters: A, F, J (Euro 5), N, Q, T, W (Euro 6).

¹⁰ See Explanatory notes relating to Annex IX ((1) *Add the number of the Euro level and the character corresponding to the provisions used for type-approval*) in Commission Regulation (EC) No 385/2009 of 7 May 2009 replacing Annex IX to Directive 2007/46/EC of the European Parliament and of the Council 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 118, 13.5.2009, p. 13.

¹¹ 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

¹² See Art. 10 of Regulation (EC) No 595/2009.

It follows that where Member States introduce in parallel incentives aiming at the early compliance with different future standards, the maximum permissible amount linked to those incentives may differ insofar as it reflects the cost difference for the respective technical devices. The reference standard for calculating the maximum permissible amount should be the one preceding the standard for which the incentive is being granted. This means for example that when applying combined incentives for Euro 5 and Euro 6 vehicles, Member States should not be allowed to grant in respect of Euro 6 vehicles incentive of a lesser amount than those granted in respect of Euro 5 vehicle.

Member States are allowed to grant an incentive that is lower than the maximum permissible amount.

Since retrofitting of in-use vehicles requires the technical device to be fitted, the maximum limitation of the amount will also apply in that case.

e) Time limits and application of sub-stages

Article 12 clearly stipulates time limits for the application of different financial incentives. Member States are therefore allowed to grant incentives provided that they comply with the relevant time limits.

As explained above in section c), Member States should always identify the character which forms part of the EC type-approval number. In practical terms, this will allow to identify all benefitting vehicles on the basis of their certificate of conformity which will also include this character.

The requirement in Article 12 (1) 2nd subparagraph that vehicles must "*at least*" comply with Euro 5 emission limit values does not exclude that the Member State also provides incentives for vehicles which already comply with stricter emission limit values. It should be recalled that the cap laid down in Article 12 (3) sets the ceiling of the maximum permissible aid amount.

Provided that the time limits are respected, Member States may grant incentives only to certain stages reflected by the appropriate character which forms part of the EC type-approval number. When doing so they may only exclude vehicles meeting lower requirements. However, they should not be allowed to give incentives to vehicles meeting lower requirements with the exclusion of vehicles which comply with the higher requirements. When applying such incentives Member States should ensure that the difference between the amount of incentive is not disproportionate.

For example, in the case of vehicles of category M, Member States should be allowed, when granting incentives for Euro 5 and Euro 6 vehicles, to give incentives for vehicles type-approved with the characters A, F, J (Euro 5) and N, Q, T, W (Euro 6). Member States should be allowed to limit the incentive to vehicles type-approved with the character F, J, N, Q, T, W but should not be allowed to give the incentive only to vehicles type-approved with character A. This principle should apply accordingly to other categories of vehicles.

Moreover, if Member States wish to limit incentives exclusively to vehicles complying with Euro 6 standards, they may only do so from the dates mentioned in Article 12 (1) third subparagraph and Article 10 (3) onwards. Member States are, however, free to introduce Euro 6 incentives already prior to the dates mentioned in Article 12, if such incentives do not exclusively cover Euro 6 compliant vehicles but also lay down incentives for vehicles meeting lower (Euro 5) standards. Differentiations as to the level of the financial incentive provided on the basis of the emission standards complied with are permissible.

When applying combined incentives for Euro 5 and Euro 6 vehicles, Member States should ensure that the difference between the amount of incentive is proportionate. Thus, the following incentives are permissible, with the following starting and end dates:

Type-approval	Start date	End date
Euro 5 (for vehicles of category M - character A, F, J; appropriate characters for other categories of vehicles)	1 August 2008	1 January 2011 / 1 January 2012 (depending on vehicle category)
Euro 6 (for vehicles of category M - character N, Q, T, W; appropriate characters for other categories of vehicles)	1 August 2008 ¹³ if combined with Euro 5 incentives. 1 January 2011/1 January 2012 (depending on vehicle category) if exclusively for Euro 6 vehicles.	31 August 2015/ 31 August 2016 (depending on vehicle category) ¹⁴

Incentives can be only granted for new vehicles which are acquired or registered for the first time between the start date and the end date.

IV. Notification obligation under Directive 98/34/EC

Article 12 (4) obliges Member States to inform the Commission in sufficient time of their plans to institute or change financial incentives. The text does not make a specific reference to Directive 98/34/EC which obliges Member States to notify technical regulations at a draft stage. However, notification under Directive 98/34/EC will be considered as fulfilling the obligation stemming from Article 12.

¹³ The start date for Euro 6 vehicles should be the one as from which OBD thresholds are introduced for these vehicles on a mandatory basis (see Article 4(7) of Regulation (EC) No 692/2008).

¹⁴ These dates should be also applicable to vehicles type-approved under the voluntary stage "Euro 6-" (characters from N to V). Since "Euro 6-" stage applies only on the voluntary base, no dates are provided for the mandatory implementation for new types and new vehicles.

In accordance with Directive 98/34/EC, technical regulations have to be notified at a draft stage.

Technical regulations include so-called de facto technical regulations which are inter alia:

"technical specifications or other requirements or rules on services which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications or other requirements or rules on services; technical specifications or other requirements or rules on services linked to national social security systems are not included." (third indent of the second subparagraph of point 11 of Article 1 of Directive 98/34/EC).

As they are linked to compliance with certain technical requirements, for example emission standards, financial incentives that are based on these requirements are *de facto* technical regulations within the meaning of the Directive thus triggering the obligation to notify such draft measures under Directive 98/34/EC. This notification will be treated in accordance with the procedure applicable under that Directive. In the notification message communicated to the Commission Member States should specify that the notification also fulfils the obligation under Article 12 of Regulation (EC) No 715/2007.¹⁵

The duty to inform pursuant to Article 12 (4) of Regulation (EC) No 715/2007 clearly serves a different purpose from a possible duty to notify the measure under state aid rules. Consequently, if a Member State concludes that the envisaged measure contains a state aid element, it will have to pursue both procedures separately.

¹⁵ Point 7 of the notification form under Directive 98/34/EC provides for the possibility of a notification under another Act.