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**QUESTIONS AND ANSWERS RELATED TO THE UNITED KINGDOM'S WITHDRAWAL FROM
THE EUROPEAN UNION WITH REGARD TO TYPE-APPROVAL OF
VEHICLES, SYSTEMS, COMPONENTS AND SEPARATE TECHNICAL UNITS**

On 8 January 2019, the European Parliament and the Council of the European Union adopted Regulation (EU) 2019/26¹, which complements Union type-approval legislation with regard to the withdrawal of the United Kingdom from the Union.²

This list of Questions and Answers (Q&A) gives further guidance on the basis of the Regulation in a situation where the United Kingdom (UK) becomes a third country on 30 March 2019 at 00:00h (CET) ('the withdrawal date') without a ratified withdrawal agreement and hence

- **without the transition period provided for in the draft Withdrawal Agreement;**

and

- **without the provisions in relation to "goods placed on the market" provided for in the draft Withdrawal Agreement.**

The list of Q&A may be further updated and complemented as necessary and should be read in conjunction with Regulation (EU) 2019/26, the "*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of type-approval of motor vehicles*"³ and the "*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of type-approval of certain vehicles and engines*"⁴, which were published by the European Commission on 29 January 2018 and 28 March 2018, respectively.

¹ OJ L 8, 10.1.2019, p. 1.

² Regulation (EU) 2019/26 is adopted within the framework of Directive 2007/46/EC on the approval of motor vehicles, Regulation (EU) 167/2013 on the approval and market surveillance of agricultural and forestry vehicles, Regulation (EU) 168/2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles, Regulation (EU) 2016/1628 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery and Regulation 765/2008/EC on market surveillance.

³ https://ec.europa.eu/growth/content/brexit-%E2%80%93-guidance-stakeholders-impact-type-approval-motor-vehicles_en.

⁴ https://ec.europa.eu/growth/content/brexit-guidance-stakeholders-impact-type-approval-certain-vehicles-and-engines_en.

A. CONCEPT OF GOODS PLACED ON THE UNION (EU-27) MARKET BEFORE THE WITHDRAWAL DATE

In the event of the UK leaving the EU without a ratified withdrawal agreement, Union type-approval legislation will cease to apply to and in the UK on the withdrawal date. This means that, as from that date, the UK type-approval authority will cease to be a type-approval authority under Union type-approval legislation. As a result, placing on the Union (EU-27) market of products manufactured on the basis of a UK type-approval will no longer be possible as of the withdrawal date.

The relevant criterion to determine the extent to which there may be consequences from the UK withdrawal for a specific vehicle, system, component or separate technical unit manufactured on the basis of a UK type-approval is therefore whether that product was placed on the Union (EU-27) market before the withdrawal date. The concept of “placing on the market” applies consistently to Union product legislation to determine the legal requirements applicable to a specific product: a product must comply with the applicable Union legislation at the time of its placing on the market⁵.

In this regard, Regulation (EU) 2019/26 recalls that vehicles, systems, components or separate technical units must conform to the requirements applicable at the time of their placing on the market. The concept of "placing on the market in the Union (EU-27)" must therefore be the concept used also in this framework. 'Placing on the market' means the first supply of a product for distribution, consumption or use in the Union (EU-27) market in the course of a commercial activity, whether in return for payment or free of charge⁶. Placing on the market requires an offer or agreement between two or more legal or natural persons for the transfer of ownership, possession or any other property right concerning a specific product after the stage of manufacture has taken place. The concept of placing on the market refers to each individual product, not to a type of product. Moreover, placing on the market does not require physical delivery of the product but does require that the manufacturing stage has been completed⁷.

These principles apply to the automotive sector as harmonised at EU-level as no deviating provisions are laid down in the harmonised legislation of the sector.

Vehicles, complete or incomplete, shall be equipped with a valid certificate of conformity (CoC) based on a valid type-approval by the time of their placing on the EU-27 market. This means that vehicles, complete or incomplete, which were placed on the EU-27 market with a CoC based on a valid UK type-approval prior to the withdrawal date may continue to be made available on the EU-27 market. Without prejudice to the application of the provisions on the placing on the market, registration and entry into

⁵ See Commission Notice 2016/C 272/01 "The Blue Guide on the implementation of EU product rules 2016", OJ C 272, 26.7.2016, p. 1.

⁶ See Article 2(2) of 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, 13.8.2008, p. 30. The market surveillance provisions included in this Regulation are applicable in the context of Directive 2007/46/EC on the approval of motor vehicles. See also Regulations (EU) No 167/2013, (EU) No 168/2013 and (EU) 2016/1628.

⁷ For more information on the concept of placing on the market, see Chapter 2 of "The Blue Guide on the implementation of EU product rules 2016", cited above.

service of end-of-series vehicles,⁸ registration and entry into service as of the withdrawal date will be possible under the conditions set out in Regulations (EU) 2019/26 (see Section B below). As of the withdrawal date, vehicles, systems, components or separate technical units can only be placed on the EU-27 market with a CoC based on a Union (EU-27) type-approval.

1. Vehicles, systems, components or separate technical units physically in the distribution chain or already in use in the EU-27 market on the withdrawal date.

Example A: Tyres already with an EU-27 importer or a motor vehicle already with an EU-27 dealer.

These products are considered as placed on the Union (EU-27) market before the withdrawal date and can therefore continue to be made available in the EU-27 market (provided the vehicles are equipped with a valid CoC) or remain in use with no need for a (new) Union type-approval, re-labelling/re-marking or product modifications. This is without prejudice to the obligation to appoint a new 'manufacturer's representative' established in the EU-27 where the current one is UK-based and intends to place products on the EU-27 market as of the withdrawal date.

Example B: An unfinished truck manufactured in the Union (EU-27) prior to the withdrawal date, based on a UK type-approval, subject to multistage production, equipped with a valid CoC and supplied for further assembly or completion in the Union (EU-27) prior to the withdrawal date.

This example concerns a multistage vehicle where the first stage comprises the chassis-cab (i.e. an incomplete vehicle). In case of a truck, a chassis-cab may be type-approved as the first stage for a vehicle manufacturer, and a bodybuilder (i.e. third party) holds the approval for a subsequent second and final stage. A truck could also be built in multistage procedure by the same manufacturer. In case the incomplete vehicle can be considered having been placed on the EU-27 market, on the basis of a commercial transaction between two entities for the purposes of distribution or use in the EU-27 market prior to the UK withdrawal, the approach is the same as for the products under Example A.

2. Vehicles, systems, components or separate technical units manufactured either in a third country or in the Union (EU-27) on the basis of a UK type-approval, supplied to an importer/manufacturer's representative in the EU-27 or sold to an EU-27 dealer or customer before the withdrawal date after the manufacturing stage was completed but not yet physically delivered to the EU-27 customer until after the UK withdrawal.

Example: A non-road mobile machinery engine manufactured in the US on the basis of a UK type-approval is sold to an EU-27 importer or an original equipment manufacturer of non-road mobile machinery on 28 March 2019 (i.e. date of placing on the market, date of the transaction) but will only arrive at the Union customs on 5 June 2019.

⁸ Article 27(3) of Directive 2007/46/EC, Article 39(3) of Regulation (EU) No 167/2013 and Article 44(3) of Regulation (EU) No 168/2013. Cf. also recitals 15 and 19 of the preamble to Regulation (EU) No 2019/26.

Same as the products under Q&A No. 1. The date of placing on the Union (EU-27) market is the date of the transaction between the manufacturer and the EU-27 importer or original equipment manufacturer provided that the manufacturing stage has been completed by that date. Placing on the market does not require physical delivery of the product.

- 3. Vehicles, systems, components or separate technical units manufactured on the basis of a UK type-approval, either imported into the UK from a third country or manufactured in the UK before the withdrawal date, subsequently sold to an EU-27 customer as of the withdrawal date.**

Example: An incomplete vehicle manufactured in Japan based on a UK type-approval and accompanied by a CoC is sold to a UK bodybuilder on 25 February 2019 and imported by the latter into the UK on 10 March 2019. The UK bodybuilder then sells it to an EU-27 dealer on 20 April 2019 and the complete vehicle arrives at the Union customs on 30 April 2019.

In this example, the incomplete vehicle is placed on the Union (EU-27) market after the withdrawal date as the date of its first making available to an EU-27 customer is on or after the withdrawal date. The incomplete vehicle is considered as a product imported from a third country and will have to fully comply with the provisions of Union law applicable at the time of its placing on the market.

Products placed on the EU-27 market as of the withdrawal date need to be accompanied by a CoC referring to a type-approval issued by an EU-27 type-approval authority.

- 4. Vehicles, systems, components or separate technical units manufactured in a third country on the basis of a UK type-approval after the withdrawal date.**

Example: A car manufactured in China based on a UK type-approval on 5 April 2019 is sold to an EU-27 dealer on 15 April 2019 and arrives at the Union customs on 1 June 2019.

In this example, the car cannot be placed on the Union (EU-27) market based on a CoC referring to the UK type-approval. Same as Q&A No. 3.

- 5. How can proof of placing on the market before the withdrawal date be given?**

Proof of placing on the market can be given on the basis of any relevant document ordinarily used in business transactions (e.g. contract of sale concerning goods which have already been manufactured, invoice, documents concerning the shipping of goods to distribution or similar commercial documents).

In practice, such proof will need to be given in case of checks upon importation into the Union (EU-27) or in case of checks by market surveillance authorities or at the time of registration, for products subject to that requirement. The documentary evidence provided must make it possible to verify that it corresponds to the individual goods and quantity presented to customs or checked by market surveillance authorities or for which registration is requested, for example, with the reference to the specific identification elements of the products.

B. GRANTING OF UNION TYPE-APPROVALS IN ACCORDANCE WITH REGULATION (EU) 2019/26

Article 4 of Regulation (EU) 2019/26 provides that a manufacturer holding a valid UK type-approval may, until the Union type-approval legislation ceases to apply to and in the United Kingdom, submit an application to a Union (EU-27) type-approval authority for a Union type-approval of the same type.

1. New Union type-approval granted and taking effect before the withdrawal date

Under this scenario, the old UK type-approval will become invalid as of the date on which the new Union type-approval takes effect.

Article 5(6), third subparagraph, of Regulation (EU) 2019/26 provides that vehicles, systems, components or separate technical units produced on the basis of a UK type-approval which has become invalid as a result of the granting of a Union type-approval before the withdrawal date may be placed on the market, registered and entered into service in the Union until Union type-approval legislation ceases to apply to and in the United Kingdom. Where the UK type-approval becomes invalid before that date for other reasons, the vehicles, systems, components or separate technical units can only be placed on the market, registered and entered into service in the Union until the date on which the Union type-approval becomes invalid. For vehicles, manufacturers will have to indicate the new Union type-approval number in a supplement to the CoC.

Recital 17 in the preamble to Regulation (EU) 2019/26 clarifies that, *“since the moments of placing on the market, of registration, and of entry into service can differ, the moment when the first of those steps has been undertaken should be used to determine the time limits set out in this Regulation.”* Accordingly, a vehicle, system, component or separate technical unit placed on the market before the withdrawal date under the conditions set out in Article 5(6), third subparagraph, may be registered and entered into service also on or after the withdrawal date.

2. New Union type-approval granted on or after the withdrawal date

It is foreseeable that a Union type-approval authority, despite all good intentions, may not be able to process all the applications of different manufactures on time, i.e. prior to the withdrawal date. It is therefore possible that the new Union type-approval, replacing the previous UK type-approval, will be issued only on or after the withdrawal date.

In such a case:

- Vehicles, systems, components or separate technical units produced on the basis of a UK type-approval for which a Union type-approval for the same type has been requested in accordance with Article 4(1) of Regulation (EU) 2019/26 and which have been placed on the EU-27 market before the withdrawal date may be registered and enter into service also on or after the withdrawal date, pending the granting of the new Union type-approval. For vehicles, manufacturers will have to present proof to the competent authorities of the Member State where registration and entry into service is sought that they have submitted an application to a Union type-approval authority for a Union type-approval of the same type in accordance with Article 4(1) of Regulation (EU) 2019/26.

- As of the withdrawal date, production of vehicles, systems, components or separate technical units intended to be placed on the EU-27 market can only take place on the basis of a type-approval granted by an EU-27 type-approval authority.

C. CLARIFICATION ON THE (IN)VALIDITY OF TYPE-APPROVALS ISSUED UNDER DIRECTIVE 97/68/EC

Both Recital 20 and Article 7 of Regulation (EU) 2019/26 are based on the assumption that the type-approvals, which fall under the exemptions and transitional provisions provided in either Directive 97/68/EC or Regulation (EU) 2016/1628, have become invalid.

Directive 97/68/EC does not contain an Article equivalent to Article 30 of Regulation (EU) 2016/1628 that specifies when type-approvals become invalid.

However, Article 10(2) of Directive 76/68/EC lays down an end-of-series provision that relies upon the principle that a type-approval issued for an engine category of a given emission stage becomes invalid from the date of mandatory application, for the purposes of the placing on the market, of the subsequent emission stage in Article 9(4).

Therefore, type-approvals granted under Directive 97/68/EC are considered to become invalid through the mandatory application of new emission requirements for the placing on the market. This is in line with the provisions of Article 7 of Regulation (EU) 2019/26.

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