



## Adapting driver behaviour for lower emissions

### MODALES D2.3: Legal situation of tampering

<b>WORK PACKAGE</b>	WP2: Knowledge of low-emission factors
<b>TASK 2.5</b>	Legal issues on tampering
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<b>DISSEMINATION LEVEL</b>	Public (PU)
<b>STATUS</b>	Final submitted to EC. <b>Subject to European Commission approval</b>
<b>DUE DATE</b>	31/08/2020
<b>DOCUMENT DATE</b>	04/09/2020
<b>VERSION NUMBER</b>	1.0



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 815189.

## Quality control

	Name	Organisation	Date
<b>Editor:</b>	Esther Tenge	Spark Legal Network	14/08/2020
<b>Peer review 1:</b>	Juhani Laurikko	VTT	30/08/2020
<b>Peer review 2:</b>	Haibo Chen	University of Leeds	28/08/2020
<b>Authorised by (Technical Coordinator):</b>	Juhani Laurikko	VTT	31/08/2020
<b>Authorised by (Project Coordinator):</b>	Jean-Charles Pandazis	ERTICO	02/09/2020
<b>Submitted by:</b>	Andrew Winder	ERTICO	04/09/2020

## Revision and history chart

Version	Date	Main author	Summary of changes
<b>0.1</b>	14/08/2020	E. Tenge	Final draft
<b>0.2</b>	26/08/2020	A. Winder	First review
<b>0.3</b>	28/08/2020	E. Tenge	Addressing comments first review
<b>0.4</b>	01/09/2020	E. Tenge	Addressing comments of peer reviewers
<b>1.0</b>	04/09/2020	A. Winder	Final submitted version

## Legal disclaimer

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## Table of contents

Quality control.....	2
Revision and history chart.....	2
Legal disclaimer .....	2
Table of contents.....	3
Index of figures.....	6
Index of tables .....	6
List of abbreviations and acronyms.....	7
Executive Summary .....	8
1. Introduction.....	10
1.1. Background.....	10
1.2. Scope, structure and intended audience .....	10
1.3. Deviations from the Description of Action.....	11
2. Methodology, Definitions and Scope of tampering .....	13
2.1. Methodology .....	13
2.2. Definitions and scope .....	14
3. EU law regarding vehicle tampering .....	15
3.1. Introduction.....	15
3.2. EU law on type approval.....	15
3.3. EU law on vehicle inspections .....	18
3.4. EU law on the exchange of information.....	19
3.5. Conclusion .....	20
4. National legal frameworks regarding vehicle tampering .....	21
4.1. Introduction.....	21
4.2. The relevant Directives and Regulations regarding tampering at national level.....	21
4.2.1. Transposition of the relevant Directives .....	21
4.2.2. Subject matter set out in the relevant Regulations .....	22
4.3. Other national legal measures related to tampering.....	23
4.4. EU emissions regulation and standards .....	24
4.5. Reasoning for adoption of national measures .....	25
4.6. Conclusion .....	26
5. Obligations on manufacturers.....	27
5.1. Introduction.....	27

5.2. Legal requirements on manufacturers .....	27
5.2.1. Requirements on tamper resistance .....	27
5.2.2. Other requirements.....	27
5.3. Disclosure of information .....	29
5.4. Conclusion .....	30
6. Type approval processes and requirements .....	31
6.1. Introduction.....	31
6.2. Type approval processes and requirements at national level .....	31
6.3. Type approval checks .....	33
6.4. Type approval authorities and technical services .....	34
6.4.1. Type approval authorities .....	34
6.4.2. Technical services .....	36
6.5. Disclosure of information .....	39
6.6. Penalties and sanctions .....	40
6.6.1. Nature and severity .....	40
6.6.2. Recipients .....	44
6.7. Survey findings .....	44
6.8. Conclusion .....	45
7. Post-type approval rules on tampering.....	46
7.1. Introduction.....	46
7.2. Post-type approval rules at national level.....	46
7.2.1. Prohibition on vehicle tampering.....	46
7.2.2. Tampering with the emission control design .....	48
7.2.3. Tampering with aftermarket parts .....	49
7.2.4. Tampering with the engine .....	50
7.2.5. Tampering with the OBD system.....	50
7.2.6. Odometer tampering.....	51
7.3. Relevant national authorities .....	52
7.4. Penalties and sanctions .....	56
7.5. Consumer remedies .....	60
7.6. Conclusion .....	62
8. Periodic roadworthiness tests and technical roadside inspections .....	64
8.1. Introduction.....	64
8.2. Periodic roadworthiness tests.....	64
8.3. Technical roadside inspections .....	67
8.4. Relevant national authorities .....	69

8.5. Disclosure of information .....	70
8.6. Penalties and sanctions .....	71
8.6.1. Periodic roadworthiness tests .....	71
8.6.2. Technical roadside inspections .....	72
8.7. Survey findings .....	73
8.8. Conclusion .....	74
9. National strategies and initiatives regarding vehicle tampering .....	75
9.1. Introduction .....	75
9.2. Collection of odometer data .....	75
9.3. Tracking of mileage history .....	76
9.4. Measuring of emissions .....	77
9.5. National research on vehicle tampering .....	77
9.6. Strategies and initiatives by private stakeholders .....	78
9.7. Links with national legislation .....	79
9.8. Survey findings .....	79
9.9. Conclusion .....	79
10. Effectiveness of rules on tampering and enforcement .....	81
10.1 Introduction .....	81
10.2. Awareness at national level of the rules .....	81
10.3. Effectiveness of rules on tampering .....	82
10.4. Effectiveness of enforcement of rules on tampering .....	83
10.5. Survey findings .....	85
10.6. Conclusion .....	85
11. Case law on vehicle tampering .....	87
11.1. Introduction .....	87
11.2. Emission measurement tampering .....	87
11.3. Odometer tampering .....	89
11.4. Conclusion .....	90
12. Conclusions .....	91
Annex: Legal research questionnaires .....	94
Austria .....	95
Belgium .....	115
Finland .....	133
France .....	151
Germany .....	169
Ireland .....	191

Italy .....	203
Luxembourg.....	222
Netherlands.....	241
Poland.....	258
Romania.....	275
Slovakia.....	298
Spain .....	318
United Kingdom.....	336

## Index of figures

Figure 1: D2.3 Legal situation on tampering in the context of related MODALES deliverables .....	11
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## Index of tables

Table 1: National type approval authorities.....	34
Table 2: National authorities for ensuring compliance with the legislation on tampering .....	53

## List of abbreviations and acronyms

Abbreviation	Meaning
<b>ABE</b>	Allgemeine Betriebserlaubnis (German national type approval process)
<b>AES</b>	Auxiliary Emission Strategy
<b>BES</b>	Base Emission Strategy
<b>BMVI</b>	German Federal Ministry of Transport and Digital Infrastructure
<b>DPF</b>	Diesel Particle Filter
<b>EC</b>	European Commission
<b>EEA</b>	European Economic Area
<b>EGR</b>	Exhaust Gas Recirculation
<b>EOBD</b>	European On-Board Diagnostics
<b>EU</b>	European Union
<b>HDV</b>	Heavy Duty Vehicle
<b>ICT</b>	Information and Communication Technologies
<b>ITV</b>	Spanish technical inspection of vehicles
<b>KBA</b>	Kraftfahrt-Bundesamt (German type approval authority)
<b>LDV</b>	Light Duty Vehicle
<b>OBD</b>	On-Board Diagnostics
<b>RAR</b>	Autonomous Company 'Romanian Automotive Register'
<b>RDW</b>	Netherlands Vehicle Authority
<b>RPVZ</b>	Register of vehicle operating records (Slovakia)
<b>TDI</b>	Transport Technical Supervision (Poland)
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TWC</b>	Three-Way Catalysts
<b>VCA</b>	The Vehicle Certification Agency (the United Kingdom)
<b>WP</b>	Work Package

## Executive Summary

The MODALES project aims to reduce air pollution from all types of road vehicles through greater adoption of low-emission driving behaviour and proper maintenance choice. This report forms part of Work Package 2: Knowledge of low-emission factors. The main goal of this work package is to gather current international knowledge of vehicular emissions to define key factors ranging from the driving and maintenance behaviours of individual car users to the real effectiveness of OBD systems and retrofits, as well as the legal situation on tampering in different EU Member States. This report covers this last aspect, providing a comparative analysis aimed at identifying the commonalities and contrasts in legislation on vehicle tampering across EU Member States based on data collected through legal research questionnaires as well as a stakeholder survey. Some of the main findings regarding each topic analysed as part of this exercise are provided below.

- *The EU legal framework regarding vehicle tampering:* as part of the EU legal framework on type approval, defeat devices are generally and explicitly prohibited, and under EU law on vehicle inspections, both periodic roadworthiness tests and technical roadside inspections must check for (signs of) tampering, with a clear focus on odometer tampering.
- *The relevant national legal and regulatory frameworks on vehicle tampering:* the relevant Directives and Regulations are generally transposed and covered at national level by (often the same) national road and/or motor vehicle regulations.
- *The obligations placed on manufacturers under national law:* in the majority of Member States, aside from the rules applicable in the context of type approval processes, there seem to be no specific national legal requirements on manufacturers relating to the prevention of tampering, nor other specific requirements regarding tampering that manufacturers would have to meet.
- *The national rules and requirements in place in relation to type approval:* in most Member States, national legislation on type approval processes relates to Directive 2007/46/EC and mostly does not provide for provisions, which specifically target tampering.
- *The national rules and requirements regarding post-type approval rules on tampering:* vehicle tampering is prohibited under the national law in most Member States, but this prohibition most often is derived from legislation on type approval processes, rather than included as a specific legal provision.
- *The national legislation in place regarding periodic roadworthiness tests and technical roadside inspections:* several Member States provide for specific verifications in order to identify tampered vehicles or parts in the national legal measures relating to periodic roadworthiness tests, and some Member States seem to impose checks specifically related to tampering in the relevant national measures regarding technical roadside inspections.
- *National strategies and initiatives regarding vehicle tampering:* odometer data is often collected at Member State level and gathered in a national database, and there are many initiatives, often handled by public bodies, which help buyers of (mostly second-hand) vehicle to have access to the mileage history of a specific vehicle.
- *The effectiveness of the rules on tampering and the enforcement of these rules:* although studies conducted in the Member States generally identify their national rules and systems on tampering as proportionate and globally efficient, some gaps in national legislation at national level were identified, and that issues related to the effectiveness of the enforcement of rules on tampering and recalls identified at national level mostly relate to the lack of severity of the sanctions, although some practical obstacles were also found to exist.



- *Relevant case law by national courts, bodies, or authorities relating to vehicle tampering identified in the Member States:* most rulings did not rely on specific anti-tampering rules but rather on general consumer, contractual and/or criminal law (applying the concept of fraud or hidden defect).

# 1. Introduction

## 1.1. Background

This report constitutes the main deliverable in relation to the research on the legal situation on vehicle tampering across EU Member States in the context of the MODify Drivers' behaviour to Adapt for Lower EmissionS (MODALES) project. It contains a comparative analysis based on data collected through legal research questionnaires as well as a stakeholder survey.

It forms part of the work of Work Package 2 of the project, "Knowledge of low-emission factors", which gathers current international knowledge of vehicular emissions to define key factors ranging from the driving and maintenance behaviours of individual car users to the real effectiveness of OBD systems and retrofits, as well as the legal situation on tampering in different Member States. Specifically this report deals with this last point. This includes the following tasks as defined in the Description of Action (DoA) of MODALES:

- Developing a customised and detailed survey methodology, establishing a network of experts with the required expertise, language skills and familiarity with the national legal vocabulary allowing them to interpret and understand the legislation fully (Chapter 2);
- Conducting a questionnaire with the national legal experts and collecting information on the national legislation and regulation on tampering, the extent to which it refers to EU emissions regulations, the reasoning behind the legislation (or absence of it), national rules for penalties, and the effectiveness of the legislation (see Annex);
- Gathering all collected data from the survey questionnaire and apply quality control measures (Chapter 2);
- Carrying out a review of the laws and regulations on emission tampering in EU Member States where the legal issue is significant, and a comparative analysis to identify the commonalities and contrasts in legislation on tampering across the EU (Chapter 3-12);
- Identifying best practices and recommendations from a legal perspective which address the issue of tampering.

## 1.2. Scope, structure and intended audience

This report (a public deliverable) investigates the legal situation in Europe regarding vehicle tampering, which is the action of purposefully removing or making inoperable any system or device used to control emissions from a vehicle.

Following the introduction at hand, Chapter 2 provides an overview of the methodology applied in collecting the relevant data and drafting the comparative analysis. Then, it introduces the definitions and scope adhered to in relation to the legal research carried out on vehicle tampering. Lastly, the structure of the report is set out.

The report then sets out the EU legal framework regarding vehicle tampering in Chapter 3 in order to provide context in relation to the subsequent chapters. Chapter 4 then examines the relevant national legal and regulatory frameworks on vehicle tampering.

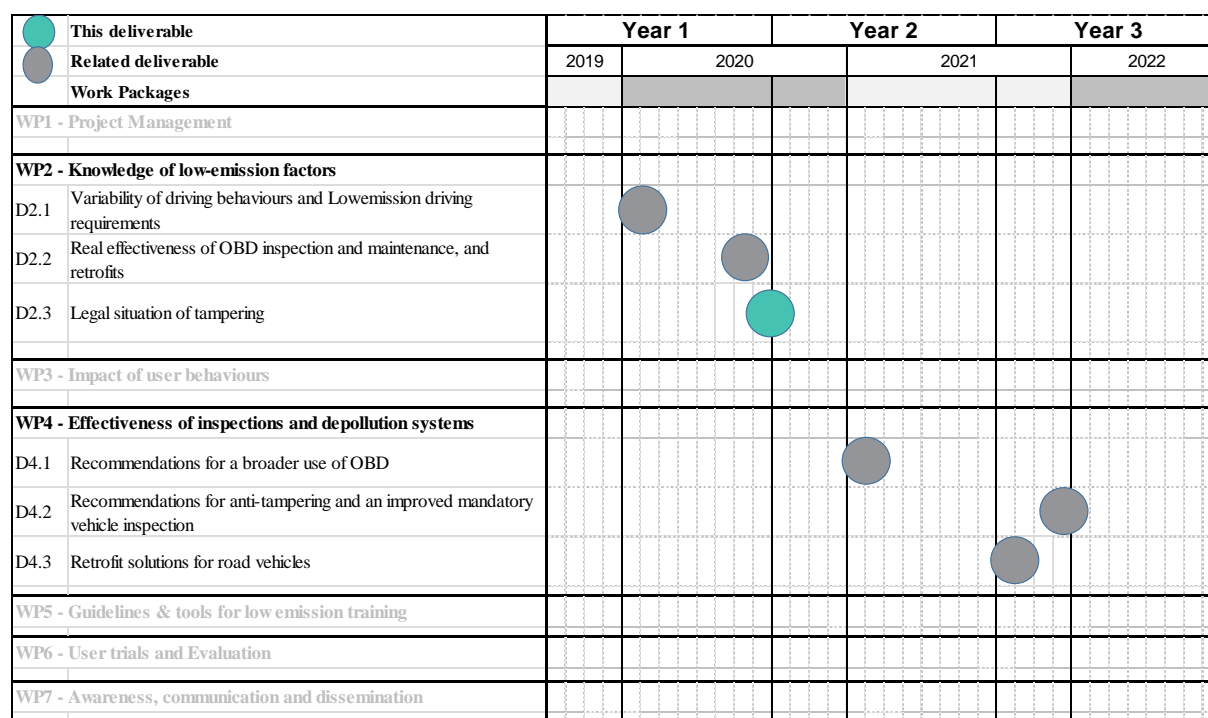
Following this, Chapter 5 focuses on the obligations placed on manufacturers under national law. Chapters 6 and 7 consider the national rules and requirements in place in relation to type approval, and post-type approval rules on tampering respectively. Subsequently, Chapter 8 describes the national legislation in place regarding periodic roadworthiness tests and technical roadside

inspections, and Chapter 9 sets out the national strategies and initiatives regarding vehicle tampering that were identified at national level.

Chapter 10 then analyses the effectiveness of the rules on tampering and the enforcement of these rules. Lastly, Chapter 11 provides relevant case law by national courts, bodies, or authorities relating to vehicle tampering identified in the Member States.

Lastly, the main conclusions of the report are provided in Chapter 12.

The figure below shows how this deliverable fits in the project and highlights related deliverables which will take into account the content of this one.



**Figure 1: D2.3 Legal situation on tampering in the context of related MODALES deliverables**

Please note that the identification of best practices and recommendations from a legal perspective which address the issue of tampering will be identified in the context of Task 4.2 (see below).

### 1.3. Deviations from the Description of Action

In relation to (significant) deviations from the Description of Action (DoA), the following can be noted:

- The survey among stakeholders in the context of this deliverable (see Chapter 2) was not originally foreseen. Nonetheless, it was conducted to allow for the report to contain input from a more practical perspective, including insights into how the relevant legal provisions may be implemented or perceived by these stakeholders.
- The report focusses on, and incorporates a comparative analysis regarding, jurisdictions which are subject to EU law. Other jurisdictions (e.g. the United States) were thus not considered.
- Although not within the scope of MODALES, several experts reported the situation of odometer tampering. It was decided to keep this information in this report to serve as a comparison of the situation with emissions tampering, particularly as the latter can be seen to lag behind the former in terms of legislation and penalties.

- The identification of best practices and recommendations from a legal perspective which address the issue of tampering will be carried out in the context of Task 4.2: Periodic inspections and other anti-tampering solutions. This deviation will allow for 1) the findings presented in the report at hand to be discussed in depth with project partners; and 2) for robust best practices and recommendations stemming from it to be developed with, and validated by, project partners and external stakeholders over the next couple of months. More specifically, it will be important that the best practices and recommendations reflect and take into account the results and insights gathered under other Work Packages. However, discussions with the project partners in this regard have so far not occurred due to the fact that activities under most Work Packages are still ongoing, as well as the restrictions due to COVID-19. Moreover, this deviation will allow for the best practices and recommendations to be discussed as part of the Mid-Term Technical Event (stakeholder conference due in Month 19), allowing for their verification by external stakeholders.

## 2. Methodology, Definitions and Scope of tampering

### 2.1. Methodology

The main objective of the research on the legal situation on vehicle tampering across EU Member States carried out by Spark Legal Network was to assess existing legal and regulatory aspects of tampering in Europe.

The first step undertaken in order to achieve this objective was the execution of legal desk research in 14 countries: 13 EU Member States, namely Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Spain and the United Kingdom (for the purposes of this report, the UK is treated as a Member State, as that was the situation at the beginning of this task; also at the time of writing the UK continues to apply EU law and regulations). In selecting the Member States, several factors were considered, including 1) budgetary restraints (i.e. not all Member States could be covered); 2) the biggest and main Member States should be covered (e.g. Germany, France, Italy, UK, Spain and Poland); and 3) different regions of the EU should be covered (e.g. i.e. north, west, south and east).

As part of this legal desk research, national legal experts based in these Member States plus the UK completed a research questionnaire in relation to their country's legal system based on guidelines and instructions provided to them by Spark Legal Network. These legal research questionnaires firstly covered all of the national measures in place related to vehicle tampering. Thereafter, they inquired about the rules and requirements set out in those measures in relation to different topics concerning tampering as also covered in this report. Lastly, the national legal experts were asked to examine and set out any relevant case law and (legal) sources identified at national level. The completed legal research questionnaires can be found in the Annex to this report. The completed questionnaires were then reviewed (and sent back to the national legal experts for them to address comments) in order to guarantee their quality.

In addition to the data collected through the legal research questionnaires, a stakeholder survey was conducted. The survey was made available on EU Survey, an online survey-management system built for the creation and publishing of globally accessible forms<sup>1</sup>, and an invitation to participate was sent out to more than 300 governmental and industry stakeholders as well as to associations. These stakeholders included manufacturers, type approval authorities, technical services, parties involved in tests and inspections and those involved in national strategies and initiatives in the field of vehicle tampering. When completing the survey, these stakeholders were asked to indicate the type of organisation they represented. Based on this indication, the questions posed to them were customised in order to allow for the most useful output with regard to the survey.<sup>2</sup>

Based on these two data collection exercises, a comparative analysis aimed at identifying the commonalities and contrasts in legislation on vehicle tampering across EU Member States was drafted. The foundation of this analysis stems from the information gathered through the research questionnaires. Thus, any findings presented in this analysis (e.g. "in most Member States") is based on the examination of the 14 Member States.<sup>3</sup> The analysis was complemented with input from the

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<sup>1</sup> <https://ec.europa.eu/eusurvey/home/welcome>.

<sup>2</sup> Around 30-35 stakeholders completed the questionnaire. The completed stakeholder surveys were not annexed to this report.

<sup>3</sup> Please note that the answers provided in legal research questionnaires may not be exhaustive. Moreover, the legal research questionnaires targeted information concerning *national* rules, meaning not all links and/or comparisons to EU law may have been explored.

stakeholder surveys, which presented more practical information on how the legislation is viewed or implemented in practice. This report presents this comparative analysis.

## 2.2. Definitions and scope

The section at hand presents the definition of vehicle tampering which was adhered to throughout the legal research on this subject, as well as the scope of this research.

For the purposes of the legal research, vehicle tampering was said to consist of purposefully removing or making inoperable any system or device used to control emissions from a vehicle. It may take the following forms, for example:

- As three-way catalysts (TWC) systems in gasoline and natural gas vehicles, diesel particle filters (DPF), Exhaust Gas Recirculation (EGR) systems can limit engine power, create maintenance problems and may be costly to replace, they are often tampered with (“tampering with the emission control design”).
- The use of replacement parts that are not type approved for a specific vehicle and may thereby affect vehicle performance and /or emissions (“tampering with aftermarket parts”).
- There are systems providing a remapping of the engine control to increase power, which often leads to strong increases in emissions (“tampering with the engine”).
- On-board diagnostic systems (OBD systems) have the capability of identifying the likely area of malfunction and are supposed to alert the driver, if a malfunction is present in the emissions control system. In case of tampering with the OBD system, environmentally-damaging component ageing or failure go undetected.
- Odometer tampering (mostly affecting second-hand car markets) involves an unauthorised manipulation of mileage readings shown on odometers. Such tampering results in heavily used cars, expected to perform poorer in terms of pollutant and emission, being re-sold at higher prices. Note that while odometer tampering is not in the scope of MODALES, it is included because it is the field of tampering which is most prevalent in the countries covered (and in many it is the only issue relating to tampering on which there are relevant national provisions). It was also frequently mentioned by questionnaire respondents. Thus its inclusion provides valuable context even if it is not directly related to the MODALES project, allowing comparisons to be made with the situation of emissions-related tampering.

Moreover, the legal research covered tampering in relation to light-duty vehicles (passenger cars and vans) and heavy-duty vehicles (trucks, buses, and coaches), as well as new vehicles and used vehicles.

## 3. EU law regarding vehicle tampering

### 3.1. Introduction

With regard to legislation on vehicle tampering, there is an EU legal framework in place in relation to both type approval and vehicle inspections. Both of these are discussed in more detail in this chapter, in order to provide an understanding of the context in which the national legal frameworks exist and operate. Moreover, the EU law provisions on the exchange of information which arise in the context of type approval and vehicle inspections are set out. It can be noted in this regard that the legal framework at EU level encompasses both regulations and directives. Regulations are legal acts that apply directly and automatically in all Member States, without needing to be transposed into national law. Directives, on the other hand, require Member States to adopt measures to transpose them and incorporate them into national law in order to achieve the objectives set by the Directive.<sup>4</sup>

### 3.2. EU law on type approval

The first area relating to vehicle tampering in which the EU has legislated is that of type approval. Type approval is the process applied by national authorities to certify that a model of a vehicle meets all EU safety, environmental and conformity of production requirements before authorising it to be placed on the EU market.<sup>5</sup> As part of the type approval process, prototypes made available by the manufacturer are used to test compliance with rules and requirements. This process is overseen by national type approval authorities - national public authorities which are in charge of officially approving vehicles before they can be put on the EU market. They are assisted in this task by technical services - the test bodies and laboratories that are specifically designated to test the prototypes on behalf of the type approval authority. If the rules and requirements are met, the national authority delivers an EU vehicle type approval to the manufacturer, providing the authorisation of the sale of that vehicle type everywhere in the EU through the principle of mutual recognition. Following the acquisition of a type approval, the corresponding vehicles are accompanied by a certificate of conformity. It is then up to national authorities to check the car manufacturers' compliance and enforce EU legislation in this regard.<sup>6</sup> It is worth noting in this regard that although type approval is granted by national authority, the EU type-approval system is based on the principle of mutual recognition such approvals.<sup>7</sup>

*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* (hereinafter referred to as 'Directive 2007/46/EC') is the main legal instrument at EU level concerning type approval. This Directive makes type approval compulsory for all categories of whole vehicles and lays down the procedure to be followed for the approval of vehicles.

In 2016, partly in response to "*Dieseldgate*"<sup>8</sup> well as based on already ongoing initiatives, a legal proposal for strengthening the type-approval system was put forward.<sup>9</sup> This resulted in the legal

<sup>4</sup> [https://ec.europa.eu/info/law/law-making-process/types-eu-law\\_en](https://ec.europa.eu/info/law/law-making-process/types-eu-law_en).

<sup>5</sup> [https://ec.europa.eu/growth/sectors/automotive/technical-harmonisation/fag-auto\\_en#:~:text=Type%20approval%20describes%20the%20process,placed%20on%20the%20EU%20market](https://ec.europa.eu/growth/sectors/automotive/technical-harmonisation/fag-auto_en#:~:text=Type%20approval%20describes%20the%20process,placed%20on%20the%20EU%20market).

<sup>6</sup> [https://ec.europa.eu/growth/sectors/automotive/technical-harmonisation/fag-auto\\_en#:~:text=Type%20approval%20describes%20the%20process,placed%20on%20the%20EU%20market](https://ec.europa.eu/growth/sectors/automotive/technical-harmonisation/fag-auto_en#:~:text=Type%20approval%20describes%20the%20process,placed%20on%20the%20EU%20market).

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3An26100>.

<sup>8</sup> For more information, see: [www.bbc.com/news/business-34324772](http://www.bbc.com/news/business-34324772).

framework set by Directive 2007/46/EC on type-approval being repealed by *Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles* (hereinafter referred to as ‘Regulation (EU) 2018/858’). This Regulation shall apply from 1 September 2020 onwards. Its goal is to ensure the effective enforcement of rules, to strengthen the quality and independence of technical tests and to introduce EU oversight on the type-approval process (e.g. by requiring Member States to carry out regular spot-checks on vehicles, providing for auditing of technical services and national type-approval authorities, and providing the Commission with the competence to carry out market checks and initiate EU-wide recalls). Although the amendments to the legal environment will impact upon the legal situation on tampering at EU level indirectly, the Regulation also requires (in addition to the existing ban on ‘defeat devices’, see below) that manufacturers provide access to the car’s software protocols to allow for external checks.

Within the legal framework laid down by *Directive 2007/46/EC, Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 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 information* (hereinafter referred to as ‘Regulation (EC) No 715/2007’) establishes common technical requirements for the type approval of motor vehicles and replacement parts with regard to their emissions.<sup>10</sup> The Regulation covers motor vehicles for the carriage of passengers and of goods, and their trailers, as well as their systems and components. With regard to vehicle tampering, the Regulation prohibits defeat devices that reduce the effectiveness of emission control systems, although some exceptions are made, for example, if the device is justified in terms of protecting the engine against damage or accidents and for the safe operation of the vehicle.<sup>11</sup> More specifically, Article 3 of the Regulation defines a ‘defeat device’ as “any element of design which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use”. In addition, the Regulation requires Member States lay down rules on penalties in relation to the use of such devices.<sup>12</sup>

Moreover, *Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council 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 information* (hereinafter referred to as ‘Regulation (EC) No 692/2008’) includes definitions for “base emission strategy” (BES) and “auxiliary emission strategy” (AES) for the purposes of type approval of light-duty vehicles.<sup>13</sup> Under the requirements set by this Regulation, manufacturers are required to provide an extended documentation package containing information on the operation of all AES and BES as part of the application for type approval.<sup>14</sup> Since, taking into account the definitions provided, there would not appear to be any defeat devices which would not be embedded in either the BES or the AES,

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<sup>9</sup> <https://epthinktank.eu/2017/06/22/motor-vehicles-new-approval-and-market-surveillance-rules-eu-legislation-in-progress/>.

<sup>10</sup> Article 1.

<sup>11</sup> Article 5(2).

<sup>12</sup> Article 13(2).

<sup>13</sup> Article 2(43) and (44).

<sup>14</sup> Article 5(11).



authorities are able to assess whether these might constitute a defeat device prohibited under Regulation (EC) No 715/2007.<sup>15</sup> Manufacturers could arguably be penalised for a break of this requirement under Article 89(c) of Regulation (EC) No 715/2007, which prescribes that Member States should lay down the provisions on penalties applicable for withholding data or technical specifications which could lead to recall or withdrawal of type approval.

In 2017, the European Commission released a publication containing good practices on how to assess intended engine protection strategies and prevent illegal defeat devices; i.e. how to effectively implement the existing legislation as set out above. More specifically, this document deals with “the process and tools for evaluating Auxiliary Emission Strategies at Type Approval, including the information that the manufacturer needs to provide to the Type Approval Authority and how this information will be used in order to assess whether the AES is acceptable or not, taking into account the prohibition of defeat devices” and “the ways to identify possible cases of defeat devices through targeted emission tests as part of Member States' market surveillance obligations.”<sup>16</sup>

*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* (hereinafter referred to as ‘Regulation (EC) No 595/2009’) covers the same subject matter as Regulation (EC) No 715/2007, but applies to heavy-duty vehicles instead. Nonetheless, it follows the aforementioned Regulation in terms of content. Namely, it outlaws the use of defeat strategies that reduce the effectiveness of emission control equipment and defines such a strategy as “an emission control strategy that reduces the effectiveness of the emission controls under ambient or engine operating conditions encountered either during normal vehicle operation or outside the type-approval test procedures”.<sup>17</sup> In addition, it prescribes that this type of infringement by manufacturers must be subject to a penalty.<sup>18</sup>

However, unlike Regulation (EC) No 715/2007 on light duty vehicles, Regulation (EC) No 595/2009 does define tampering, namely as “means inactivation, adjustment or modification of the vehicle emissions control or propulsion system, including any software or other logical control elements of those systems, that has the effect, whether intended or not, of worsening the emissions performance of the vehicle.”<sup>19</sup> The Regulation then specifies that tampering with systems which control NOx emissions (including for example, tampering with systems which use a consumable reagent) by manufacturers, repairers and operators of the vehicles must be subject to a penalty.<sup>20</sup>

Lastly, *Directive 2007/46/EC* is also implemented through *Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007* (hereinafter referred to as ‘Regulation (EU) 2017/1151’). This Directive provides for several obligations on manufacturers in relation to vehicle tampering. Most notably, it requires that car manufacturers design vehicle types that are more robust against odometer manipulation in order to obtain type-approval. More specifically, it states that “manufacturers shall effectively deter reprogramming of the odometer readings, in the board network, in any powertrain controller as well as in the transmitting unit for remote data exchange if

<sup>15</sup> Strengthening the Regulation of Defeat Devices in the European Union, p. 3.

<sup>16</sup> Guidance on the evaluation of Auxiliary Emission Strategies and the presence of Defeat Devices with regard to the application of 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).

<http://ec.europa.eu/DocsRoom/documents/21145/attachments/1/translations/en/renditions/pdf>

<sup>17</sup> Article 3, 5(3).

<sup>18</sup> Article 11(2).

<sup>19</sup> Article 3.

<sup>20</sup> Article 11(2).

applicable. Manufacturers shall include systematic tamper-protection strategies and write-protect features to protect the integrity of the odometer reading. Methods giving an adequate level of tamper protection shall be approved by the approval authority.”<sup>21</sup> Furthermore, the Directive requires that manufacturers submit to the approval authority a description of the provisions taken to prevent tampering with and modification of the emission control computer, odometer including the recording of mileage values in order to receive type-approval.<sup>22</sup>

Thus, within the EU legal framework on type approval, defeat devices are generally and explicitly prohibited. However, tampering is only defined in the context of heavy duty vehicles. Moreover, for these vehicles, tampering with systems which control NOx emissions is considered an infringement of the law. Lastly, EU law provides for several obligations on manufacturers in relation to tampering with the odometer.

### 3.3. EU law on vehicle inspections

The next field considered relevant with regard to vehicle tampering regulated by EU law is that of inspections. EU law requires Member States to conduct two kinds of inspections; periodic roadworthiness tests and technical roadside inspections.

Periodic roadworthiness tests are carried out at regular intervals and ensure that vehicles throughout the EU are in a roadworthy condition and meet the same standards as when they were first registered. This is relevant with regard to tampering, as it ensures that vehicles were not tampered with after having been put on the market following type approval processes. The main piece of legislation regulating periodic roadworthiness tests is *Directive 2014/45/EU on periodic roadworthiness tests* (hereinafter referred to as ‘Directive 2014/45/EU’). This Directive aims to improve road safety by setting minimum requirements for periodic roadworthiness tests of vehicles and trailers in the European Union (EU) and establishes minimum requirements for a regime of periodic roadworthiness tests of vehicles used on public roads.<sup>23</sup>

Generally, Directive 2014/45/EU sets out that Member States should consider appropriate measures to prevent adverse manipulation of, or tampering with, vehicle parts and components that could have a negative bearing on required safety and environmental characteristics of the vehicle, in particular through the periodic roadworthiness test, including effective, proportionate, dissuasive and non-discriminatory penalties.<sup>24</sup> More concretely, the Directive focusses on odometer tampering. Under the Directive, periodic roadworthiness tests must include a visual inspection of the odometer to see whether it has been “obviously manipulated (fraud) to reduce or misrepresent the vehicle's distance record”.<sup>25</sup> Additionally, Member States are required to ensure that the (mileage) information included in the previous roadworthiness test is made available to the inspectors electronically – this will help facilitate the detection of odometer tampering or manipulation.<sup>26</sup> Lastly, the Directive prescribes that odometer fraud should be regarded as an offence liable to a penalty, because manipulation of an odometer may lead to an incorrect evaluation of the roadworthiness of a vehicle.<sup>27</sup>

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<sup>21</sup> Article 2.3.3.

<sup>22</sup> Article 5(7).

<sup>23</sup> Article 1.

<sup>24</sup> Recital (8)

<sup>25</sup> Annex I, Recital 7.11.

<sup>26</sup> Recital 8(6).

<sup>27</sup> Recital (25).

Technical roadside inspections, on the other hand, constitute unannounced inspections of commercial vehicles during which the vehicle's brakes, overall condition, etc. are checked. During these inspections, drivers may also be asked to produce evidence that the vehicle has passed the relevant periodic roadworthiness tests. These inspections are regulated through *Directive 2014/47/EU on technical roadside inspections for commercial vehicles* (hereinafter referred to as 'Directive 2014/47/EU'). In order to improve road safety and the environment, this Directive establishes minimum requirements for a regime of technical roadside inspections of the roadworthiness of commercial vehicles circulating within the territory of the Member States. In terms of tampering, as part of these inspections, an odometer check is carried out through a "visual inspection, and/or using electronic interface". As part of this check, it is verified whether the odometer has been obviously manipulated (fraud) to reduce or misrepresent the vehicle's distance record.<sup>28</sup>

Thus, under EU law on vehicle inspections, both periodic roadworthiness tests and technical roadside inspections must check for (signs of) tampering, with a clear focus on odometer tampering.

### 3.4. EU law on the exchange of information

EU law also provides for provisions relating to the exchange of information in the context of type approval and vehicle inspections. In relation to the former, these provisions mainly concern the exchange of information between Member States and other Member States and/or the European Commission. More specifically, the following provisions are laid down in Directive 2007/46/EC, for example:

- "[...] if the manufacturer so requests, the approval authority shall send by registered mail or by electronic mail a copy of the type-approval certificate and its attachments to the approval authorities of the Member States designated by the manufacturer."<sup>29</sup>
- "In case of withdrawal of the EC vehicle type-approval, the concerned approval authority shall notify the manufacturer, the approval authorities of the other Member States and the Commission [...]."<sup>30</sup>
- "When production of a particular type of vehicle is definitively discontinued, the manufacturer shall notify the approval authority that granted the EC type-approval for that vehicle."<sup>31</sup>
- "[...] in cases where an EC type-approval of a vehicle is due to become invalid, the manufacturer shall notify the approval authority that granted the EC type-approval."<sup>32</sup>
- "The approval authority shall inform without delay the approval authorities of the other Member States of its refusal or withdrawal of any vehicle approval, together with the reasons for its decision."<sup>33</sup>

Moreover, in relation to the designation of technical services, the Directive sets out, for example:

- "Member States shall notify to the Commission the name, the address including electronic address, the responsible persons and the category of activities with respect to each designated technical service. They shall notify it of any subsequent modifications thereto."<sup>34</sup>

<sup>28</sup> ANNEX II, OTHER EQUIPMENT, Recital 7.11.

<sup>29</sup> Article 23(6).

<sup>30</sup> Article 32(3).

<sup>31</sup> Article 17(3).

<sup>32</sup> Article 17(4).

<sup>33</sup> Article 8(6).

<sup>34</sup> Article 43(1).

The Directives on tests and inspections also foresee the exchange of information. Under Directive 2014/45/EU, from 2021 onwards, for example, testing centres in the Member States must communicate electronically, to the competent authority of the Member State concerned, the information mentioned in the roadworthiness certificates which they issue.<sup>35</sup> Directive 2014/47/EU also includes several provisions on the exchange of information in relation to technical roadside inspections. It prescribes, for example, that Member States designate a contact point to ensure information exchanges and assist the contact points of other Member States.<sup>36</sup> Moreover, it provides that in cases where major or dangerous deficiencies, or deficiencies resulting in a restriction or prohibition on the use of the vehicle, are found in a vehicle not registered in the Member State of inspection, the contact point shall notify the results of the inspection to the contact point of the Member State of registration of the vehicle.<sup>37</sup> The Directive also specifies, for instance, that Member States shall communicate to the Commission, by electronic means, the data collected relating to the previous two calendar years (before 31 March 2021 and before 31 March every two years thereafter) and concerning the vehicles inspected in their territory.<sup>38</sup>

### 3.5. Conclusion

In this chapter, it was found that as part of the EU legal framework on type approval, defeat devices are generally and explicitly prohibited. However, tampering is only defined in the context of heavy duty vehicles. Moreover, for these vehicles, tampering with systems which control NOx emissions is considered an infringement of the law. Lastly, EU law on type approval provides for several obligations on manufacturers in relation to tampering with the odometer. Under EU law on vehicle inspections, on the other hand, it was found that both periodic roadworthiness tests and technical roadside inspections must check for (signs of) tampering, with a clear focus on odometer tampering. Lastly, the chapter set out that EU law also provides for provisions relating to the exchange of information (with other Member States and/or the Commission, for example) in the context of type approval and vehicle inspections.

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<sup>35</sup> Article 8(5).

<sup>36</sup> Article 17.

<sup>37</sup> Article 18(1).

<sup>38</sup> Article 20(1).

## 4. National legal frameworks regarding vehicle tampering

### 4.1. Introduction

This chapter sets out the legal frameworks regarding vehicle tampering at national level. Firstly, it considers how the relevant Directives discussed in Chapter 3 have been transposed into the national legal orders and in what manner the subject matter set out in the relevant Regulations has been covered in the Member States. This chapter also analyses whether, aside from the national legal measures discussed in the context of these Directives and Regulations, there are any other national legal measures related to tampering in place at national level. Furthermore, it explores how the national legal acts relate and refer to EU emissions regulations and standards. Lastly, Chapter 4 provides information on the reasoning that Member States provided for the adoption of the national measures relevant in relation to tampering.

### 4.2. The relevant Directives and Regulations regarding tampering at national level

#### 4.2.1. Transposition of the relevant Directives

In most Member States the relevant Directives (i.e. Directive 2007/46/EC, Directive 2014/45/EU and Directive 2014/47/EU) have been transposed through national road and/or motor vehicle regulations. Generally, Member States have transposed the relevant Directives through one or two national legal acts, which often transpose multiple Directives. Several regulations and orders have also been adopted in light of the Directives (e.g. in France, Poland, Romania and Slovakia).

In Belgium, due to specific regional organisation, two of the Directives have been transposed regionally (e.g. Directive 2014/45/EU was transposed through 4 Orders of the Regional Governments – Walloon, Flemish and Brussels-Capital Regions). A regional transposition approach has also been relied on in the United Kingdom, for the Directive 2014/45/EU and Directive 2014/47/EU (e.g. Directive 2014/45/EU was transposed by four measures in England and Wales and in Scotland, and by six measures in the Northern Ireland, and Directive 2014/47/EU was transposed in its entirety through two regional measures – one for England and Wales and Scotland and one for the Northern Ireland).

Infringement proceedings with regards to the Directive 2014/45/EU as with Directive 2014/47/EU were initiated in several Member States, starting with the formal notices sent in in July 2017 (in accordance with Article 258 TFEU). Although some of the Member States still failed to comply with the requirements of the Directive and reasoned opinions were sent to them in July 2019 (again, in accordance with Article 258 TFEU), most of those cases have since then closed. However, there remain (four) open infringement proceedings in relation to Directive 2014/45/EU for Belgium, the Netherlands, Poland and the United Kingdom<sup>39</sup> and (eight) open infringement proceedings for Directive 2014/47/EU for the United Kingdom, Poland, Ireland, Finland, Denmark, Czech Republic,

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<sup>39</sup> Information on infringement proceedings for Directive 2014/45/EU retrieved from the European Commission at work database, available [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\\_decisions/index.cfm?lang\\_code=EN&typeOfSearch=true&active\\_only=1&noncom=0&r\\_dossier=&decision\\_date\\_from=&decision\\_date\\_to=&title=2014%2F45%2FEU&submit=Search](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&title=2014%2F45%2FEU&submit=Search).

Cyprus and Austria.<sup>40</sup> With regard to Directive 2014/46/EU, the only remaining infringement proceedings relate to Cyprus.<sup>41</sup>

In Germany, some lawyers, in their legal opinions prepared under the 5<sup>th</sup> Investigation Commission of the German Parliament, raised concerns that the obligation of Member States to impose sanctions has not yet been sufficiently implemented in German law. The response options are not sufficient according to EU law, nor does German law have any other sanctioning norms that meet the requirements of Union law.<sup>42</sup> Opposite views, however, can also be found.<sup>43</sup>

#### 4.2.2. Subject matter set out in the relevant Regulations

In almost all of the Member States, the subject matter of the relevant Regulations is covered by the legal acts transposing the aforementioned Directives<sup>44</sup> (e.g. Austria, Germany, Finland, Ireland, Luxembourg, Poland, Slovakia and the United Kingdom).

Additionally, the subject matter of Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles) and Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles) is often covered by the same legal act (e.g. Austria, Spain, France, Finland, Italy, Luxembourg, the Netherlands, Slovakia).

In Belgium, the Regulations are covered both at regional level by Orders as well as at national level, due to the specific organisation (e.g. Regulation (EC) No 715/2007 is covered both on a national level by a Decree and on a regional level by Orders of regional governments).

Mainly, no issues were identified in relation to the manner in which the field/subject matter set out in the relevant Regulations are covered at national levels. However, some issues were detected with regard to national coverage of the Regulation (EU) 2017/1151 (on odometer readings). For example, in Germany, Spain, Finland, the Netherlands and Slovakia, no additional provisions were detected concerning Commission Regulation (EU) 2017/1151, which would oblige the car manufacturers to effectively deter reprogramming of odometer readings. In Italy, by stating that the odometer shall

<sup>40</sup> Information on infringement proceedings for Directive 2014/47/EU retrieved from the European Commission at work database, available [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/index.cfm?lang\\_code=EN&typeOfSearch=true&active\\_only=1&noncom=0&r\\_dossier=&decision\\_date\\_from=&decision\\_date\\_to=&title=2014%2F47%2FEU&submit=Search](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&title=2014%2F47%2FEU&submit=Search).

<sup>41</sup> Information on infringement proceedings for Directive 2014/46/EU, available [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/index.cfm?lang\\_code=EN&typeOfSearch=true&active\\_only=1&noncom=0&r\\_dossier=&decision\\_date\\_from=&decision\\_date\\_to=&title=2014%2F46%2FEU&submit=Search](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&title=2014%2F46%2FEU&submit=Search).

<sup>42</sup> R. Klinger, Rechtsgutachten zum Stand der Umsetzung der Verordnung (EG) Nr. 715/2007, der Durchführungsverordnung 692/2008, der Richtlinie 2007/46/EG und der Regelung Nr. 83 der Wirtschaftskommission der Vereinten Nationen für Europa (UN/ECE) - insbesondere zum Geltungsbereich der Grenzwerte, Vorgaben zum Funktionieren des Abgasreinigungssystems, zur Zulässigkeit von Abschaltvorrichtungen und festzusetzenden Sanktionen, erstellt zum Beweisbeschluss SV-4 des 5. Untersuchungsausschusses der 18. Wahlperiode des Deutschen Bundestags., 29. September 2016, p. 7-16, available [www.bundestag.de/resource/blob/481328/582edca3c468da80a64db2ff3745e859/stellungnahme-prof-dr--klinger--sv-4--data.pdf](http://www.bundestag.de/resource/blob/481328/582edca3c468da80a64db2ff3745e859/stellungnahme-prof-dr--klinger--sv-4--data.pdf)

<sup>43</sup> M. Brenner, Rechtsgutachten zur Umsetzung der Verordnung 715/2007, der Durchführungsverordnung 692/2008 und der Regelung Nr. 83 der Wirtschaftskommission der Vereinten Nationen für Europa (UN/ECE) im deutschen Recht erstellt im Auftrag des 5. Untersuchungsausschusses des Deutschen Bundestages der 18. Wahlperiode, 28. Oktober 2016, p. 13-14, available [www.bundestag.de/resource/blob/481326/37b80450b6b86699527d9e690ee62a03/stellungnahme-prof-dr--brenner--sv-4--data.pdf](http://www.bundestag.de/resource/blob/481326/37b80450b6b86699527d9e690ee62a03/stellungnahme-prof-dr--brenner--sv-4--data.pdf)

<sup>44</sup> Directive 2007/46/EC, Directive 2014/45/EU and Directive 2014/47/EU.



not be tampered with and that it shall be free of manual zeroing devices, the national provision<sup>45</sup> seems to encompass the specific requirement laid down in Commission Regulation (EU) 2017/1151.

#### 4.3. Other national legal measures related to tampering

Tampering seems to be covered in most of the Member States in generic terms by means of the national measure(s) relating to the aforementioned Directives and Regulations. This is applicable for example in Austria, Germany, Finland, France, Ireland, Italy, Luxembourg and the Netherlands. Additional national measures which relate to tampering were, however, detected for example in Belgium, Spain, Poland, Romania, Slovakia and the United Kingdom.

In Belgium, the use of a manipulation device on two or three-wheels motor vehicles is explicitly prohibited by the Royal Decree of 20 April 2010 on general regulations on the technical conditions which must be met by mopeds and motorcycles as well as their trailers<sup>46</sup>.

In Spain, the obligations related to tampering are set by the Procedure manual for technical inspection of vehicles (ITV) - roadworthiness certification/test - stations.<sup>47</sup> In addition, Royal Decree 115/2017 of February 17<sup>48</sup> sets requirements in relation to the installation, maintenance, revision and handling of gas containers in relation to the refrigeration system in vehicles and fire protection systems that use fluorinated gases; Royal Decree 1417/2005 of November 25<sup>49</sup> regulates the use, installation and operational check of speed limitation devices in certain categories of vehicles, and Royal Decree 125/2017 of February 24<sup>50</sup> establishes the technical requirements and performance standards that must be met by the technical centres of tachographs.

In Poland, in addition to legislation transposing the aforementioned Directives, there are also several Regulations covering the field of type approval and vehicle requirements. These Regulations are: the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof, the Regulation on the approval of the assembly plant adapting the type of vehicle to gas supply, the Regulation on the EC vehicle type-approval and the Regulation on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants. Additionally, the Polish Penal Act regulates the penalty for odometer tampering.

In Romania, the national legislation relating to tampering includes the Government Ordinance no. 82/2000 on the authorisation of economic operators providing repairs, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles

<sup>45</sup> Art.229 of the Implementing Regulation.

<sup>46</sup> Arrêté royal modifiant l'arrêté royal du 10 octobre 1974 portant règlement général sur les conditions techniques auxquelles doivent répondre les cyclomoteurs et les motocyclettes ainsi que leurs remorques. Available at: [www.ejustice.just.fgov.be/mopdf/2010/04/28\\_1.pdf#Page2](http://www.ejustice.just.fgov.be/mopdf/2010/04/28_1.pdf#Page2).

<sup>47</sup> Manual de procedimiento de inspección de las estaciones ITV. Available at: [www.f2i2.net/documentos/Isi/STO\\_Vehiculos/ITV/Manual\\_de\\_procedimiento\\_de\\_inspeccion\\_de\\_estaciones\\_ITV\\_v7\\_4\\_1\\_COVID19\\_Rev1.pdf](http://www.f2i2.net/documentos/Isi/STO_Vehiculos/ITV/Manual_de_procedimiento_de_inspeccion_de_estaciones_ITV_v7_4_1_COVID19_Rev1.pdf), last accessed 22/05/2020.

<sup>48</sup> Real Decreto 115/2017, de 17 de febrero, por el que se regula la comercialización y manipulación de gases fluorados y equipos basados en los mismos, así como la certificación de los profesionales que los utilizan y por el que se establecen los requisitos técnicos para las instalaciones que desarrollen actividades que emitan gases fluorados. Available at: [www.boe.es/buscar/doc.php?id=BOE-A-2017-1679](http://www.boe.es/buscar/doc.php?id=BOE-A-2017-1679), last accessed 22/05/2020.

<sup>49</sup> Real Decreto 1417/2005, de 25 de noviembre, por el que se regula la utilización, instalación y comprobación del funcionamiento de dispositivos de limitación de velocidad en determinadas categorías de vehículos. Available at: [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2005-19990](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2005-19990), last accessed 22/05/2020.

<sup>50</sup> Real Decreto 125/2017, de 24 de febrero, por el que se establecen los requisitos técnicos y las normas de actuación que deben cumplir los centros técnicos de tacógrafos. Available at: [www.boe.es/buscar/doc.php?id=BOE-A-2017-1935](http://www.boe.es/buscar/doc.php?id=BOE-A-2017-1935), last accessed 22/05/2020.

(last amended March 2013).<sup>51</sup> The Ordinance regulates activities that can influence the constructive, functional and quality parameters of road vehicles as compared to regulations on the technical requirements regarding access on public roads. Tampering is also regulated by Order no. 2131/2005 for the approval of the Regulation on the authorisation of economic operators providing repairs, maintenance, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles – RNTR 9 (last amended July 2016).<sup>52</sup>

In Slovakia, there are three Acts that penalise tampering, mainly Act no. 147/2001 Coll. on advertising<sup>53</sup> adopted on 5 April 2001 and several times amended by the National Council of the Slovak Republic, Act no. 455/1991 Coll. on trade licences<sup>54</sup> adopted on 2 October 1991 by the Federal Assembly of the Czech and Slovak Republic and several times amended by the National Council of the Slovak Republic and Act no. 128/2002 Coll. on state control of the internal market in consumer protection matters<sup>55</sup> adopted on 15 February 2002 and several times amended by the National Council of the Slovak Republic.

In the United Kingdom, it is an offence to use on a road a vehicle which has been modified in such a way that it no longer complies with the air pollutant emissions standards it was designed to meet under the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) (Regulations 61(7) and 61A(3))<sup>56</sup> and the Road Traffic Act 1988 (Section 42)<sup>57</sup>. It is also an offence to alter a vehicle in such a way that the use of the vehicle on a road would be unlawful under the Road Traffic Act 1988 (Section 75). Trading of tampered goods may also be in breach of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs)<sup>58</sup>.

#### 4.4. EU emissions regulation and standards

In all of the Member States, the national legislative measures mentioned above refer to the EU Directives and Regulations they transpose and/or implement<sup>59</sup> and do not directly refer to the EU emissions regulations and standards.

In Poland, for example, the national measures do not directly refer to EU emissions regulations and standards; they solely indicate the EU Directives which they implement. However, the Regulation on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants was introduced in order to implement the previous EU Directives on EU emissions standards, e.g. Commission Directive 2012/46/EU of 6 December 2012 amending Directive 97/68/EC

<sup>51</sup> Ordonanța Guvernului nr. 82/2000 privind autorizarea operatorilor economici care desfășoară activități de reparatii, de reglare, de modificări constructive, de reconstrucție a vehiculelor rutiere, precum și de dezmembrare a vehiculelor scoase din uz, Monitorul Oficial al României nr. 413 din 30 august 2000.

<sup>52</sup> Ordin nr. 2131/2005 pentru aprobarea Reglementărilor privind autorizarea operatorilor economici care desfășoară activități de reparatii, de întreținere, de reglare, de modificări constructive, de reconstrucție a vehiculelor rutiere, precum și de dezmembrare a vehiculelor scoase din uz – RNTR 7, al Ministrului transporturilor, construcțiilor și turismului, Monitorul Oficial al României nr. 1160 din 21 decembrie 2005.

<sup>53</sup> Zákon č. 147/2001 Z.z. o reklame a o zmene a doplnení niektorých zákonov, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/).

<sup>54</sup> Zákon č. 147/2001 Z.z. o živnostenskom podnikaní, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/455/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/455/).

<sup>55</sup> Zákon č. 128/2002 Z.z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/128/20200101/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/128/20200101/).

<sup>56</sup> [www.legislation.gov.uk/ukxi/1986/1078/contents/made](http://www.legislation.gov.uk/ukxi/1986/1078/contents/made).

<sup>57</sup> [www.legislation.gov.uk/ukpga/1988/52/contents](http://www.legislation.gov.uk/ukpga/1988/52/contents).

<sup>58</sup> [www.legislation.gov.uk/ukxi/2008/1277/contents](http://www.legislation.gov.uk/ukxi/2008/1277/contents).

<sup>59</sup> Directive 2007/46/EC, Directive 2014/45/EU, Directive 2014/47/EU, Regulation (EC) No 715/2007, Commission Regulation (EU) 2017/1151 and Regulation (EC) No 595/2009.



of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery. The mentioned Directive, however, is no longer in force (as of 1 January 2017 and was implicitly repealed by Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery).

In Romania, the amended Government Ordinance no. 82/2000 (amended) regulates that during repairs, constructive modifications or reconstruction of road vehicles, in case there are required interventions on systems regarding traffic safety, environmental protection, energy efficiency and protection against theft which are regulated by EU regulations / directives and ECE-UN regulations, economic operators can only use equipment, components, technical entities, spare parts and products used of origin or approved / certified according to the legislation in force. Economic operators must issue to the beneficiaries guarantee certificates, including guarantees for new or reconditioned components used, according to the law. Non-compliance with this requirement represents an administrative offense. It is also forbidden to sell in view of reuse systems, equipment, components, technical entities, spare parts which regard road safety.

#### 4.5. Reasoning for adoption of national measures

The majority of the legislation observed for the purposes of this research throughout Member States has as its main aim (in the articles on the reasoning for adoption) the need for compliance with EU law. Mostly, the reasoning for the adoption of the national measures only contains the names of directives and regulations they are implementing, thus the reason for their adoption seems to be compliance with EU law in general. National measures generally do not directly refer to health and environmental considerations (see above). However, in some individual provisions of the laws in Member States, references to public health, environmental considerations, aims of improving road safety and consumer protection can be found.

In Spain, the measures - in addition to references to the national or EU legislative acts as the reason for their adoption - also include a general reasoning (e.g. “In order to avoid regulatory dispersion and duplications, this Royal Decree repeals the previous regulations and establishes a single framework by which the technical inspection of vehicles is regulated”). However, it should be noted that the objective of Royal Decree 563/2017 is to regulate the conditions of the technical road inspections with the aim of improving road safety and the environment (Article 1).

In Ireland, Section 14 of the Road Traffic Act 2014 was not included in the initial draft of the Road Traffic Bill. It was added at a late stage. A record of the parliamentary debates noted that, while interfering with an odometer was dealt with pursuant to the Consumer Protection Act 2007 (insofar as it amounted to a misleading practice), there was a gap in the law, as it did not cover sales between individuals. Nor did it deal with the act of interfering itself. The debate here seemed to focus on the consumer protection angle of avoiding odometer tampering, rather than any impact this may have on emissions calculations.<sup>60</sup>

In Luxembourg, even though the main reason for the adoption of the relevant national measures was the transposition of EU Directives, there were also environmental and security considerations. For

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<sup>60</sup> Parliamentary debates record, available [www.oireachtas.ie/en/debates/debate/dail/2014-01-15/22/](http://www.oireachtas.ie/en/debates/debate/dail/2014-01-15/22/), last accessed 05 August 2020.

example, in Article 5 of the Grand-ducal Regulation of 26 January 2016<sup>61</sup> relating to the approval and the registration of road vehicles, the aim to not affect safety or the environmental behaviour of the vehicle is mentioned and in Article 3 of the Law of 26 January 2016<sup>62</sup> concerning the regulation of traffic on all public roads, the objective of technical safety as well as the regulatory compliance on a technical and environmental level is mentioned.

In the United Kingdom, currently no national measures with regard to emissions tampering were adopted. The United Kingdom has a long tradition of allowing vehicle owners relative freedom to change their vehicles to suit their specific requirements subject, of course, to ongoing compliance with the relevant United Kingdom construction standards. In the 2019 Department for Environment, Food & Rural Affairs publication Clean Air Strategy,<sup>63</sup> it is stated that “new legislation will enable the Transport Secretary to compel manufacturers to recall vehicles and nonroad mobile machinery for any failures in their emissions control system, and to take effective action against tampering with vehicle emissions control systems”. This suggests that the government is focusing on legislation applying to vehicle manufacturers rather than individuals.

#### 4.6. Conclusion

In conclusion, the relevant Directives and Regulations are generally transposed and covered at national level by (often the same) national road and/or motor vehicle regulations (although it can be noted that there are still open infringement proceedings in relation to the relevant Directives). Aside from this legislation, additional national measures related to tampering were found to be in place in several Member States. Moreover, the national legal measures that are in place all refer to the compliance with EU law as their main objective, and do not directly refer to the EU Emissions Regulation and standards.

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<sup>61</sup> Règlement grand-ducal modifié du 26 janvier 2016 sur le contrôle technique des véhicules routiers ( Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles), Memorial A No 8 of 2016, available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo), last accessed 05 August 2020.

<sup>62</sup> Loi du 26 janvier 2016 concernant la réglementation de la circulation sur toutes les voies publiques (Law of 26 January 2016 concerning the regulation of traffic on all public roads), Memorial A No 8 of 2016, available at : [www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo), last accessed 05 August 2020.

<sup>63</sup> Clean Air Strategy 2019, Department for Environment, Food & Rural Affairs, available [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/770715/clean-air-strategy-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf), last accessed 05 August 2020.

## 5. Obligations on manufacturers

### 5.1. Introduction

Chapter 5 investigates whether, aside from the rules applicable in the context of type approval processes, there are any national legal requirements on manufacturers relating to the prevention of tampering, or any other requirements on tampering targeting manufacturers of vehicle (parts) that have been adopted in the Member States. Lastly, the chapter analyses whether national provisions oblige manufacturers to disclose information relating to tampering (resistance).

### 5.2. Legal requirements on manufacturers

#### 5.2.1. Requirements on tamper resistance

In the majority of Member States, there seem to be no specific national legal requirements on manufacturers relating to the prevention of tampering in place (aside from those applicable in the context of type approval processes).

In Austria, however, the manufacturers' obligations are extensively covered in Article 28c of the Kraftfahrzeuggesetz (KFG).<sup>64</sup> It stipulates that the manufacturer is responsible to the approval authority for all matters relating to the approval process and for ensuring the conformity of production, even if it is not directly involved in all stages of the manufacture of the vehicle, the system, the component or the independent technical unit. In the case of a multi-stage type approval, each manufacturer is responsible for the approval and conformity of the production of the systems, components or independent technical units that it adds at the vehicle manufacturing stage.

In Belgium, the Royal Decree of 15 March 1968 lays down the general technical requirements for motor vehicles and their trailers, their components and safety accessories and contains generally applicable principles which are especially relevant for manufacturers. Among other things, according to this Decree, cars needed to be equipped with an OBD system, an electronic system which diagnoses if some parts of the car are tampered with, such as the anti-pollution disposal. Although this Decree is still in force, some of its articles were amended in 2018 by each Belgian Region in order to transpose Directive 2014/45/EU.

Although no specific legal requirements on manufacturers of vehicles are laid down in Germany, Article 22a(1)(3) of the Road Traffic Act<sup>65</sup> can be seen as relevant in this case, as it contains a criminal provision with a preventative function. It prohibits and penalises the preparation of offences related to vehicle tampering.

#### 5.2.2. Other requirements

The overview of the national legislation shows that in most Member States, there are no other specific requirements regarding tampering that manufacturers would have to meet (aside from those applicable in the context of type approval processes). Nonetheless, the legislation in place in some Member States does provide for such requirements. Moreover, in some cases there are rules in place at national level, which although they are generally applicable, can be said to apply to manufacturers.

<sup>64</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrzeuggesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

<sup>65</sup> Straßenverkehrsgesetz vom 5. März 2003 (BGBl. I p. 310, 919), das zuletzt von Artikel 2 des Gesetzes vom 29. Juni 2020 geändert worden ist (BGBl. I p. 1528), available at: [www.gesetze-im-internet.de/stvg/BJNR004370909.html](http://www.gesetze-im-internet.de/stvg/BJNR004370909.html) , last accessed 05 August 2020.

Austrian law, for example imposes obligations on manufacturers.<sup>66</sup> Namely, manufacturers of parts or equipment that can pose a significant risk to the proper functioning of essential systems shall also ensure that such parts or equipment are only put on the market if they are authorised within the meaning of Article 31 of Directive 2007/46/EC and a corresponding certificate was issued. All parts or equipment for which authorisation has been granted must be marked accordingly. The manufacturer is responsible to ensuring that these parts and equipment are always manufactured under the conditions of which the certificate was issued. The manufacturer must provide users with all relevant information and necessary instructions, from which all special conditions of use or restrictions on use applicable to a vehicle, a component or an independent technical unit can be seen, provided that a legal act expressly provides for this. Vehicle manufacturers in Austria must also provide the manufacturers of components or separate technical units with all information, including drawings if necessary, which are expressly mentioned in the appendix or in the annex to a legal act and for the EC type approval of components or separate technical units or are required to obtain a permit in accordance with Article 31 of Directive 2007/46/EC. If a manufacturer of components or separate technical units is the holder of an EC type-approval certificate, in which reference is made to restrictions on use and/or special installation instructions, it shall provide the vehicle manufacturer with all relevant information. If a legal act provides for this, the manufacturer of components or separate technical units must add information on restrictions of use and/or special installation instructions to the components or independent technical units manufactured by him.

In Slovakia, manufacturers are obliged to submit the displayed value of odometers during various situations, like repair, maintenance or inspection of a vehicle or repair or replacement of an odometer to a Register of vehicle operating records (RPVZ)<sup>67</sup>.

In the United Kingdom, the Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018<sup>68</sup> strengthens existing provisions on the use of defeat devices by making it an offence for a manufacturer to supply a vehicle with a prohibited defeat device to the United Kingdom market. It provides that if such a prohibited defeat device is found in two or more of the same model of vehicle, it will be presumed to be in place across all examples of that model, unless the manufacturer can prove otherwise. This strengthening is as a result of issues identified with the regulations following the VW controversy.<sup>69</sup>

In relation to general rules applying to manufacturers, although in Italy, for example, there are no specific provisions adopted at national level that would lay down any obligations for manufacturers to prevent tampering, the general rule laid out under the Implementing Regulation can be considered as an exception.<sup>70</sup> In fact, by stating that the odometer shall not be tampered with and that it shall be free of manual zeroing devices, this national provision could be interpreted as an obligation also applicable to car manufacturers, who should effectively deter reprogramming of the odometer readings as these shall be free of manual zeroing devices.

Similarly, in the Netherlands, the Type Approval Motor Vehicles Air Pollution Decree prohibits manufacturers (as well as repairers and operators) from tampering with systems which use a

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<sup>66</sup> Article 28c, KFG.

<sup>67</sup> Art. 48, par. 3, let. g) of Act no. 106/2018 Coll. on operation of vehicles in conjunction with Art. 6, par. 2, let. g), q) of Order no. 139/2018 Coll. on control of originality.

<sup>68</sup> Part 6 of The Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673).

<sup>69</sup> Referred to the “Dieselgate” scandal.

<sup>70</sup> Art. 229 of the Implementing Regulation.

consumable reagent in the context of heavy duty vehicles.<sup>71</sup> Additionally, it generally outlaws the use of use of defeat strategies that reduce the effectiveness of emission control equipment (both relating to heavy duty vehicles and light passenger and commercial vehicles) – a ban which also applies to manufacturers.<sup>72</sup>

In terms of potential developments in this area, in Finland, there have been discussions on whether liability should be extended to cover manufacturers as well, but as the law currently stands, it only covers vehicle drivers, owners and permanent holders<sup>73</sup>. The problem in extending the liability to cover manufacturers, service providers and retailers is considered to relate to the difficulties in terms of detection of such ‘activities’.

### 5.3. Disclosure of information

Generally, the research has not identified many requirements for the manufacturers to disclose information relating to tampering (resistance) at national level. Those requirements that were identified mostly relate to obligations on the exchange of information set under EU law (see Section 2.4).

In Austria, however, manufacturers are required to disclose information in accordance to Article 28c of the KFG. A manufacturer that has been granted an EC type approval for vehicles by Austria must recall vehicles that have already been sold, registered or put into operation, if there is a significant risk to traffic safety, public health or the environment. If this is the case, the Federal Minister for Transport, Innovation and Technology as the licensing authority must be informed immediately. The remedial action to be taken to remedy the above risk should also be proposed in this communication.

In Belgium, there is a distinction with regard to the disclosure of information, dependent on whether the vehicle has already been put on the market or not and whether certain designing defects have been discovered. Manufacturers are not required to disclose information relating to tampering before vehicles are put on the market, only vehicles that are already on the market (second-hand vehicles) are subject to the requirement to disclose information. Manufacturers are required to disclose information on vehicles which have been recalled after manufacturing or when designing defects were discovered. The owners of such vehicles must be given notice that they should have their vehicle inspected. In the event that the owners do not have the vehicle inspected, the recall remains ‘open’. This must be disclosed to the Car-Pass association, to be mentioned on the Car-Pass certificates. This requirement is provided by the Art. 6 (3) of the 11 June 2004 Law on information to be disclosed when selling second-hand vehicles.

Germany sets out an obligation on the disclosure of information by manufacturers in Article 28 of the EC Vehicle Type Approval Regulation. Technical information provided by the manufacturer with regards to Directive 2007/46/EC or in the acts referred to in Annex IV to Directive 2007/46/EC shall not differ from those approved by the national type approval authority. Only if one of those expressly so provides, the manufacturer shall make available to users all relevant information and necessary instructions indicating any special conditions or restrictions of use applicable to a vehicle, component or separate technical unit. The vehicle, component or separate technical unit may not be offered for sale, sold or placed on the market unless it is accompanied by the information and instructions supplied pursuant to the first sentence.

<sup>71</sup> Type Approval Motor Vehicles Air Pollution Decree, Article 3(1)(d).

<sup>72</sup> Type Approval Motor Vehicles Air Pollution Decree, Articles 2(1)(b) and (3)(1)(b).

<sup>73</sup> Sections 7 and 96(4) of the Vehicles Act.

Finish legislation, mainly Sections 93, 93a and 93b of the Vehicle Act, contains certain requirements concerning manufacturers. These do not concern tampering per se, but instead address more generally the requirements to disclose information that might be needed in terms of, for example, inspections and type approval, and as such might be needed when, for example, assessing a vehicle that might have been tampered with.

In Italy, the only information manufacturers need to disclose is that included in the declaration of conformity, following the type approval process. Pursuant to Art.76 of the Highway Code, for each vehicle built according to the approved type, the manufacturer issues the declaration of conformity to the buyer, which certifies that the vehicle complies with the type approved.

#### 5.4. Conclusion

This chapter has illustrated that in the majority of Member States, aside from the rules applicable in the context of type approval processes, there seem to be no specific national legal requirements on manufacturers relating to the prevention of tampering, nor other specific requirements regarding tampering that manufacturers would have to meet. Nonetheless, in relation to the latter, it was found that in some Member States such requirements can be found in national legislation, or there are rules in place at national level, which although they are generally applicable, can be said to apply to manufacturers. Lastly, the chapter set out that in most Member States, no obligations are placed on manufacturers in relation to the disclose of information regarding tampering, and that in cases where such requirements were identified, these mostly relate to obligations set under EU law.

## 6. Type approval processes and requirements

### 6.1. Introduction

This chapter investigates the type approval processes in place at national level, how they relate to EU law on this matter, and whether any specific provisions on tampering are laid down at national level in the context of these processes. Moreover, it looks at the checks (relating to tampering) carried out to ensure requirements to be granted type approval are met. The chapter also sets out which national bodies serve as type approval authorities and technical services in the Member States. Furthermore, it presents national systems and requirements regarding the disclosure of information on type approval process in place. Lastly, the nature and severity, as well as the recipients, of penalties and sanctions in relation to type approval processes are set out.

### 6.2. Type approval processes and requirements at national level

In most of the Member States, the type approval processes are mainly based on Directive 2007/46/EC (see Section 2.2). In some of the Member States, two types of type approval processes are foreseen under national law; EC type-approval processes based on the Directive 2007/46/EC and national type approval processes. In most cases, national law on type approval processes does not provide for provisions which specifically target tampering.

In Belgium<sup>74</sup> and Finland<sup>75</sup>, the type approval process is regulated solely by provisions which transpose Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (hence, there are no national type approval processes).

In the Netherlands, the Vehicle Regulation lays down requirements regarding the type approval of vehicles, the type approval of systems and components, and the approval of production processes. In setting out the requirements in relation to type-approval of vehicles, the Vehicle Regulation solely refers to Directive 2007/46/EC. The only exceptions in this regard are:

- Vehicles of vehicle categories M, N and O, with the exception of vehicles with vehicle classification M1 or N1, as well as special purpose vehicles of vehicle categories M, N and O must comply with the requirements set out in Annex IV of the Vehicle Regulation to obtain a national small series type-approval.<sup>76</sup> However, national small series type-approvals are not provided on a large scale, are only valid for one country, and the requirements relating to this kind of approval are in accordance with those in Directive 2007/46/EC.
- The Vehicle Regulation also provides for individual approvals, for which vehicles need to adhere to the requirements in Annex IV of the Regulation.<sup>77</sup> The same considerations as for national small series type-approval apply in this regard.

In Austria, before deciding on the application for type approval, the Federal Minister of Transport, Innovation and Technology shall obtain an opinion from one or more experts as to whether the type meets the requirements of traffic and operational safety, with the type not causing excessive noise, smoke, bad smell or harmful air pollution, and - insofar as this is recognisable to the expert(s) - the

<sup>74</sup> In Belgium, Directive 2007/46/EC was transposed through two acts - the ministerial circular of 20 February 2009 and the Royal Decree of 14 April 2009, amending the Royal Decree of 15 March 1968.

<sup>75</sup> In Finland, it is the Vehicles Act (1090/2002) implementing the EU requirements from Directive 2007/46/EC.

<sup>76</sup> Vehicle Regulation, Article 3.2.

<sup>77</sup> Vehicle Regulation, Article 3.7.



type corresponds to the type description and the vehicle complies with the provisions of this Federal Law and the regulations issued on the basis of this Federal Law.<sup>78</sup>

In Germany, both a national general type approval process Allgemeine Betriebserlaubnis (ABE) and an EC type approval process are in place. A national general type approval shall be granted in accordance with § 19(1) of Road Traffic Regulations if the vehicle complies with the provisions of the Regulations. The validity of the national general type-approval is nationally limited<sup>79</sup>. It can also be granted for vehicle parts<sup>80</sup>, NOx reduction systems with high reduction performance and software updates. In the case of the general type approval according to § 20 of the Road Traffic Act, a data certificate issued by the manufacturer, must be submitted, which shows that the vehicle is in conformity with the approved type. An EC type approval means that vehicles, whose conformity with the approved type is certified by the manufacturer, have a type approval. The Road Traffic Licensing Regulations (§ 19(7)) makes it clear that the same rules apply to EC and ABE type approval. EC type-approval is granted if the requirements set out in § 4(4) of the EG-Fahrzeuggenehmigungsverordnung (EG-FGV)<sup>81</sup> are met. EC type approval may be therefore granted only if it has been proven that the type satisfies the material requirements laid down in Articles 8, 9 and 10 of Directive 2007/46/EC and has undergone the required test procedures properly and with satisfactory results. As with the national type approval process, proof that the vehicle conforms to the approved type, as required for registration, is provided by a certificate of conformity issued by the manufacturer for each vehicle.

Spanish national legislation foresees two types of approval processes as well. Spanish national legislation refers to the applicable EU Directives, thus the requirements that form part of the approval processes under Spanish law are those provided in Directive 2007/46/EC and its latest applicable modifications. Additionally, Royal Decree 750/2010 sets the requirements in relation to national type approval of vehicles, systems and components, and the approval of production processes.

In Ireland, the European Communities (Road Vehicles: Type-Approval) Regulations 2009 (SI 158 of 2009) transpose the requirements of Directive 2007/46/EC on type-approval. Further, Regulation (EC) No 715/2007 and Regulation (EC) No 595/2009 transpose the EU rules on type approval for light passenger and commercial vehicles and heavy-duty vehicles, respectively. On the other hand, the national type-approval system for small series is based on the European Communities (Road Vehicles: Type-Approval) (Amendment) Regulations 2017 (SI 280 of 2017)<sup>82</sup> provides for a national type-approval system for small series.

In Luxembourg, the types of motor vehicles and the types of trailers which are intended to be coupled to it must, for the registration in Luxembourg of the corresponding road vehicles, meet the requirements of European Union Directives on vehicle type approval. In the absence of European type approval, these types of vehicles must be subject to a national type approval in Luxembourg.<sup>83</sup>

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<sup>78</sup> Article 29(3) of the KFG.

<sup>79</sup> Art. 3(3), Directive 2007/46/EC.

<sup>80</sup> § 22, Road Traffic Licensing Regulations

<sup>81</sup> Verordnung über die EG-Genehmigung für Kraftfahrzeuge und ihre Anhänger sowie für Systeme, Bauteile und selbstständige technische Einheiten für diese Fahrzeuge (EG-Fahrzeuggenehmigungsverordnung – EG-FGV), vom 3. Februar 2011 (BGBl. I S. 126), available at: [www.gesetze-im-internet.de/eg-fgv\\_2011/BJNR012600011.html](http://www.gesetze-im-internet.de/eg-fgv_2011/BJNR012600011.html)

<sup>82</sup> [www.irishstatutebook.ie/eli/2017/si/280/made/en/print](http://www.irishstatutebook.ie/eli/2017/si/280/made/en/print).

<sup>83</sup> Article 2 and 3, Law of 26 January 2016 on the regulation of traffic on all public roads.



### 6.3. Type approval checks

The checks and/or processes Member States generally require to be carried out to ensure requirements to be granted type approval are met mostly depend on the vehicle category and stem from requirements in EU legislation (see Section 2.2). Moreover, they do not typically seem to relate specifically to tampering.

Most of the Member States' checks/tests to be conducted include the following:

- Noise/sound level measures;
- Emissions;
- Fuel tanks/rear protective devices;
- Breaking/steering mechanisms;
- Door latches and hinges;
- Seat belt requirements;
- Lamps requirements;
- Alarm systems;
- Location and installation of rear number plates;
- Door lock and door retention components.

This list is non-exhaustive since there are many more aspects checked during the type approval process. For example, in Ireland there are more than 60 in total, which can be consulted in the European Communities (Road Vehicles: Type-Approval) (Amendment) Regulations 2017 (SI 280 of 2017).<sup>84</sup>

In Poland, additional requirements for type-approval of vehicles were introduced for vehicle categories M, N, such as digital tachograph requirements, fire extinguisher, and the safety of the driver's compartment.

In Austria, the experts have to submit their expert opinions on the basis of the type examination. The facilities required for the type test must be provided by the applicant. This can be waived if the type test is carried out by the Federal Minister of Transport, Innovation and Technology or in a state test centre and the scope of the required facilities does not exceed those required for periodic roadworthiness tests. The result of the type test is to be recorded in an expert opinion, which refers to the type description of the type.

In Germany, no type approval can be granted without an initial assessment. As part of the initial assessment, the national type approval authority - Kraftfahrt-Bundesamt (KBA) - checks whether the procedures put in place by the manufacturer lead to the expectation of production in conformity with the approval. This requires an on-site inspection. In addition, the manufacturer must prove his legal identity.

In Finland, according to Section 36 of the Vehicles Act, conformity is attested with inspections, measurements, tests and calculations carried out by the approval authority; with a certificate issued by the approval authority of another EEA country or by a national approval authority applying the E Regulation concerned and submitted by the applicant; or with inspections, measurements, tests and calculations made by a technical service.

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<sup>84</sup> [www.irishstatutebook.ie/eli/2017/si/280/made/en/print](http://www.irishstatutebook.ie/eli/2017/si/280/made/en/print)

## 6.4. Type approval authorities and technical services

### 6.4.1. Type approval authorities

In most of the Member States, the national type approval authorities (see Section 2.2) are either Ministries (e.g. Austria, Spain, France, Slovakia) or various public services, authorities or bodies designated by Ministries in the field of Transportation, and Mobility (e.g. Belgium, Germany, Luxembourg, Netherlands, Romania).

In the table below, some examples of the national type approval authorities can be found.

**Table 1: National type approval authorities**

Member State	National type approval authority
<b>Austria</b>	Federal Minister of Transport, Innovation and Technology
<b>Belgium</b>	Mobility and Transportation Federal Public Service, Mobility and Transportation head management, Vehicles Department
<b>Germany</b>	Federal Motor Transport Authority ( <i>Kraftfahrt-Bundesamt</i> – KBA)
<b>Spain</b>	Ministry of Industry, Tourism and Trade
<b>Finland</b>	Finnish Transport and Communication Agency (Traficom)
<b>France</b>	Vehicle safety and emissions Department within the Ministry in charge of Transports (currently the Ministry of ecological and solidarity transition)
<b>Ireland</b>	National Standards Authority of Ireland (NSAI)
<b>Luxembourg</b>	<i>Société Nationale de Circulation Automobile</i> (SNCA) (responsible for the national type approval) National Society of Certification and Homologation (responsible for carrying out the work in connection with the European and international homologation)
<b>The Netherlands</b>	Netherlands Vehicle Authority (RDW)
<b>Poland</b>	Director of the Transport Technical Supervision ( <i>Transportowy Dozór Techniczny</i> (TDT))
<b>Romania</b>	The Autonomous Company ‘Romanian Automotive Register’ (RAR)
<b>Slovakia</b>	Ministry of Transport
<b>The United Kingdom</b>	The Vehicle Certification Agency (VCA)

In Belgium, given the specific regional organisation, the national type approval authority is represented by regional public services in the Flanders, Walloon and Brussels Region. The national authority in charge of type-approvals is the Mobility and Transportation Federal Public Service, Mobility and Transportation head management, Vehicles Department.<sup>85</sup>

In Germany, type approval is granted by the KBA. The KBA is the national approval authority for type approvals and approvals for sale, offering for sale or putting into service parts or equipment which may pose a significant risk to the proper functioning of systems essential to the safety of the vehicle or its environmental values. The competence of authorities conducting individual approvals is set out in the law of the respective German states.

The Spanish national approval authority is the Ministry of Industry, Tourism and Trade,<sup>86</sup> which also has the competence to designate the technical services.<sup>87</sup>

In Finland, Finnish Transport and Communication Agency (Traficom) is the approval authority in charge of vehicles of categories M, N, L, O, T1-T3, C, or R and traffic tractors, public works vehicles and off-road vehicles as well as their components, systems and separate technical units.<sup>88</sup>

National Standards Authority of Ireland (NSAI)<sup>89</sup> is responsible for small series type approval in Ireland. It should be noted that there are no large car manufacturers in Ireland. The NSAI Act sets out a general power under Section 7(1)(j) for the NSAI to “to arrange for the testing and analysis of commodities, particularly in relation to certification and approval schemes, by or on behalf of the Authority”.

The national type approval authorities in Luxembourg are the *Société Nationale de Circulation Automobile* (SNCA), Approval Service, responsible for the national type approval<sup>90</sup> and the National Society of Certification and Homologation, responsible for carrying out the work in connection with the European and international homologation. The latter is therefore the approval authority in charge of the EC type approval process.

The Dutch national type approval authority is the Netherlands Vehicle Authority (RDW). The RDW is authorised to determine the manner in which type approval is requested and granted, and to decide on the tariff for this service under the 1994 Road Traffic Act.<sup>91</sup>

The Polish national type approval authority is the Director of the Transport Technical Supervision (*Transportowy Dozór Techniczny* (TDT)).<sup>92</sup> The Director of TDT is authorised to grant, refuse, modify or revoke the type approval certificate in line with the 1997 Road Traffic Act. The certificate is issued by virtue of an administrative decision. It carries out technical supervision. The TDT is under the supervision of the Ministry of Transport and its Director is appointed by the Minister of Transport.

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<sup>85</sup> The Royal Decree of 14 April 2009, amending the Royal Decree of 15 March 1968 laying down general regulations on the technical conditions to be met by motor vehicles and their trailers, their components and safety accessories (Art.2.§2.6 and 2.§2.7).

<sup>86</sup> Chapter I, Article 2.14 of Royal Decree 750/2010 and Article 3 of Law 21/1992, of 16 July, of Industry.

<sup>87</sup> Article 11.1 of Royal Decree 750/2010.

<sup>88</sup> Section 34 of the Vehicles Act.

<sup>89</sup> [www.nsai.ie/](http://www.nsai.ie/)

<sup>90</sup> Designated by Grand-ducal Regulation of 26 January 2016 relating to the approval and registration of road vehicles, Article 1(2)

<sup>91</sup> 1994 Road Traffic Act, Article 22(1).

<sup>92</sup> More information available at [www.tdt.gov.pl/](http://www.tdt.gov.pl/).

The Autonomous Company ‘Romanian Automotive Register’ (RAR) is the technical specialised body designated by the Ministry of Transports, Infrastructure and Communications as the competent authority in the field of road vehicles, road safety, environment protection and quality assurance, operating under the authority of the Ministry. It is the only national authority granting type-approval for the entire vehicle or for systems, equipment, spare parts, components and separate technical units of a vehicle (national, EC, and international EEC-UNO type-approval), individual approval, and certifications for road vehicles. It is designated in this capacity by law (G.O. no. 78/2000 amended, Order no. 211/2003 amended).

#### 6.4.2. Technical services

The technical services (see Section 3.2) in the Member States are generally private bodies designated or mandated by the Ministries or other national authorities. The technical services are appointed based on procedures as defined in national legislation.

In Austria, the technical services/experts in charge of ensuring compliance in relation to national type approval processes are mandated by the Federal Minister of Transport, Innovation and Technology. The technical experts have to be appointed according to Article 124 of the KFG to assess types of motor vehicles or trailers, chassis of such vehicles or parts or equipment items of such vehicles. A list of the experts appointed must be made available for general inspection in the Federal Ministry of Transport, Innovation and Technology. This list must contain at least one expert from the staff of the Federal Ministry of Agriculture and Forestry and one from the Federal Ministry of Defence as well as at least two from the staff of each federal state, provided a proposal from its governor is available. The following may only be appointed as experts: employees from the staff of a local authority dealing with matters relating to the automotive industry, or persons not belonging to the staff of a local authority, when certain criteria are met, such as at least three years of experience in the automotive industry.

In Belgium, the technical services are in charge of ensuring compliance and can also designate any other organisations for this purpose. Currently, the technical services accredited are:

- KIWA Belgium SA ([www.kiwa.be](http://www.kiwa.be))
- Vincotte ([www.vincotte.be](http://www.vincotte.be))
- ESTL ([www.estl.be](http://www.estl.be))

In Germany, authorities performing the tasks of technical services must be recognised under the relevant Directive and notified to the Commission. The KBA acts as the recognition authority. The KBA can monitor the recognised bodies at any time. Technical services can also be accredited<sup>93</sup> and thus recognised. Accreditation recognises the technical and organisational competence of technical services. There are two types of technical services:

- Testing laboratories (designated as technical services of category A and/or B, D);
- Certification bodies (category C technical services).

In Spain, the Ministry of Industry, Tourism and Trade has the competence to designate the technical services. The designation shall be based on a report assessing the required skills, which shall be met by the technical services, set by the national approval authority. Furthermore, the designation shall also comply with the requirements set in EU law.<sup>94</sup>

<sup>93</sup> § 35, EG-FGV.

<sup>94</sup> Catálogo de servicios técnicos de vehículos (List of vehicle technical services) 2019, pgs. 5-11.

In Finland, the Ministry of Transport and Communications is in charge of approving a technical service to carry out inspections, measurements, tests and calculations.<sup>95</sup> In order to be approved, the technical service must meet the requirements of the SFS-EN ISO/IEC 17025:2000 standard and qualify in relation to all the provisions that regulate the approval. A manufacturer shall not be accepted as a technical service, unless this is specifically provided for in EU legislation. The approved technical services which carry out inspections are listed on the national type approval authority - Traficom's webpages.<sup>96</sup>

In France, L'Union technique de l'automobile, du motocycle et du cycle (UTAC) - The Technical Union for the Automobile, Motorcycle and Cycle<sup>97</sup> is in charge of the technical test and inspections in relation to national type approval processes, and carries out all inspections themselves. UTAC is designated by the Ministry in charge of Transports<sup>98</sup>. The Ministry in charge of Transports also designates the *Centre national de réception des véhicules* (CNRV) - National vehicle reception center, as the administrative body in charge of the EC type approval processes (it delivers EC type approval certificates and certain national type approval certificates)<sup>99</sup>. Lastly, the *Direction régionale et interdépartementale de l'environnement et de l'énergie* (DRIEE) - Regional and interdepartmental directorate for the environment and energy, the *Directions régionales de l'environnement, de l'aménagement et du logement* (DREAL) - regional directorates for environment, planning and housing and the *Directions de l'environnement, de l'aménagement et du logement* (DEAL) - Directorates for environment, planning and housing are the administrative bodies in charge of the national type approval processes (they receive the request made by manufacturers, deliver certain national type approval certificates, etc.) and are also designated by the Ministry in charge of Transports<sup>100</sup>.

In Ireland, the aforementioned NSAI has established a network of Appointed Test Centre's (ATC) that physically examine and issue test reports for some or all of the technical requirements. These test reports are then used by NSAI to grant the vehicle or trailer approvals.<sup>101</sup>

The two type approval authorities in Luxembourg may, if necessary and for the tests and expert appraisals, have recourse to specialised organisations (technical services) which are approved by the Minister having transport in its attributions. The technical services in Luxembourg are:

- Allied Technology Experts Enterprise of Luxembourg s.à.r.l.,

<sup>95</sup> Section 47, Vehicles Act. The list of technical services can be found here:

[www.f2i2.net/documentos/lsi/STO\\_Vehiculos/CatalogoST\\_2019\\_Junio\\_V01-MINCOTUR.pdf](http://www.f2i2.net/documentos/lsi/STO_Vehiculos/CatalogoST_2019_Junio_V01-MINCOTUR.pdf).

<sup>96</sup> See [www.traficom.fi/fi/liikenne/tieliikenne/nimetyt-tutkimuslaitokset](http://www.traficom.fi/fi/liikenne/tieliikenne/nimetyt-tutkimuslaitokset)

<sup>97</sup> UTAC is in fact designated as the entity in charge of type approval tests by France, Luxemburg, Netherlands, Romania and the United Kingdom.

<sup>98</sup> Article 3.6, Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE (Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC available [here](#), last accessed on 28/05/2020).

<sup>99</sup> Article 3.4, Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE (Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC available [here](#), last accessed on 28/05/2020).

<sup>100</sup> Article 3.5, Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE (Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC available [here](#), last accessed on 28/05/2020).

<sup>101</sup> A list of appointed centres can be found on the NSAI website, available:

[www.nsai.ie/certification/automotive/national-type-approva/atc/](http://www.nsai.ie/certification/automotive/national-type-approva/atc/)

- LUXCONTROL s.a.,
- TÜV Rheinland Luxemburg GmbH,
- TÜV SÜD Auto Service GmbH,
- Technical Union of the Automobile,
- Motorcycle and Cycle SAS,
- CETOC Technical Service s.r.l. and
- Dekra Automobil Test Center.<sup>102</sup>

The Dutch national type approval authority - RDW also constitutes a technical service, mandated to carry out inspections relating to type approval.<sup>103</sup> The RDW Test Department carries out inspections at the RDW Test Centre, an accredited test facility for independently conducting tests for European and national admission (including conducting experimental tests).<sup>104</sup>

In the Netherlands, the technical services are appointed by the national type approval authority, RDW, to carry out certain tests for approval on its behalf (if these services meet the required standards).<sup>105</sup>

In Poland, the Office of Technical Supervision (*Urząd Dozoru Technicznego* (UDT)) is responsible for technical services<sup>106</sup>. It is represented by the President of UDT and remains under the supervision of the Minister of Economy.

In Romania, RAR in its capacity as approval authority and technical service, can designate other technical services. The competencies of the designated technical services need to be proven by an assessment report drawn up by RAR. It may include an accreditation certificate issued by an accreditation organisation. The assessment needs to comply with the provisions of Directive 2007/46/EC and it may be revised after a period of maximum 3 years.<sup>107</sup>

The Slovak Ministry of Transport, as a type approval authority, designates and controls technical services.<sup>108</sup> According to Art. 71, par. 1, let. m) of the same Act, the evaluation and monitoring of technical services has been performed by Slovak National Accreditation Centre<sup>109</sup>.

In the United Kingdom, the Vehicle Certification Agency (VCA), an executive agency of the Department for Transport, is the designated type approval authority and technical service for type approval in relation to all automotive European Community (EC) Directives and the equivalent United Nations Economic Community for Europe (ECE) Regulations. Additionally, the VCA is also authorised to designate laboratories to act as Technical Services for testing or supervising testing of vehicles, systems or components, in accordance with Article 41 of Directive 2007/46/EC as amended. It is also

<sup>102</sup> List available at: [www.snch.lu/fr-FR/Page/Documents](http://www.snch.lu/fr-FR/Page/Documents)

<sup>103</sup> 1994 Road Traffic Act, Article 22(1).

<sup>104</sup> See [www.rdw.nl/zakelijk/branches/fabrikanten-en-importeurs/typegoedkeuring-aanvragen/testen/uitvoering-testen](http://www.rdw.nl/zakelijk/branches/fabrikanten-en-importeurs/typegoedkeuring-aanvragen/testen/uitvoering-testen) (last accessed on 15 April 2020).

<sup>105</sup> 1994 Road Traffic Act, Article 22(b)(1). The list of technical services can be found here: <https://ec.europa.eu/docsroom/documents/36483/attachments/1/translations/en/renditions/native>.

<sup>106</sup> Article 37 of the Act of 21 December 2000 on technical supervision.

<sup>107</sup> Order no. 211/2003, sect. 2, cap. 1, para. 34 (1) and 35 (4).

<sup>108</sup> The list of Slovak technical services can be found here: <https://ec.europa.eu/docsroom/documents/29625?locale=en> ; and even broader list updated by the Ministry of Transport here: [www.mindop.sk/ministerstvo-1/statny-dopravny-urad-4/technicke-sluzby-a-kontroly-vozidiel/technicke-sluzby-v-sr/technicka-sluzba-overovania-vozidiel](http://www.mindop.sk/ministerstvo-1/statny-dopravny-urad-4/technicke-sluzby-a-kontroly-vozidiel/technicke-sluzby-v-sr/technicka-sluzba-overovania-vozidiel).

<sup>109</sup> [www.snas.sk/index.php?l=en](http://www.snas.sk/index.php?l=en)

authorised to apply a similar approach to the designation of Technical Services under Article 14 of the 2002/24/EC, and Article 21 of 2003/37/EC, both as amended.

### 6.5. Disclosure of information

Most Member States have in place national systems and requirements regarding the disclosure of information on type approval processes. Often, national legal provisions on this relate to EU provision on the exchange of information (see Section 3.4).

The German KBA also supports the idea of Open Data. The legal basis for the provision of Open Data within the KBA is § 12a of the E-Government Act (EGovG) and the position paper on Open Data of the Federal Ministry of Transport and Digital Infrastructure (BMVI). An overview of the data sets provided by the KBA can be found in the mCLOUD Open Data portal of the BMVI.

In Austria, data is collected in the national approval database.<sup>110</sup> The approval database is managed by the joint facility of the insurers authorised to operate motor vehicle liability insurance and is part of the central registration evidence. The approval data or the type data of vehicles and chassis belonging to a type and the approval data of individually approved vehicles as evidence of the approval are kept within the database. The data is entered into the database online by means of remote data transmission. The authorities concerned with the matters of the approval and registration system according to this federal law as well as the registration offices can access the data in question for the purposes of the approval, registration or inspection of vehicles and use them for the approval, registration or inspection. The approval data consists of:

- The registration-relevant data of a vehicle determined by the chassis number,
- The conditions and conditions prescribed when the vehicle was approved,
- The data on granted approvals for changes and exemptions,
- Further data which are necessary for the proper performance of the tasks associated with the registration and approval of the vehicle and
- Technical information required for proper assessment and verification.

In Belgium, the national type-approval authority should notify the similar authorities in other Member States when the manufacturing of a type-approved vehicle is permanently discontinued. In addition, when a type-approval authority has been notified that a type-approval is going to lose its validity, it shall disclose to the type-approval authorities in the other Member States all useful information to allow them, if necessary, the application of the end-of-series vehicles provisions. This communication shall include, in particular, the manufacturing date as well as the identification number of the last manufactured vehicle.<sup>111</sup>

In the Netherlands, the Vehicle Authority Regulation specifies that the RDW is responsible for providing the Commission with the information referred to in Article 20 of Directive 2014/47/EU, as well as for any other exchange of information.<sup>112</sup> Such other exchanges may relate to the information obligations the 1994 Road Traffic Act places on the RDW in relation to emissions, for example.<sup>113</sup> The

<sup>110</sup> Article 30a of the KFG.

<sup>111</sup> Art. 9(3) and Art.9(4) of the 1968 Decree.

<sup>112</sup> Vehicle Authority Regulation, Article 2(k).

<sup>113</sup> For example, the obligation to draw up a guide on fuel consumption and CO<sub>2</sub> emissions from passenger cars on the basis of Directive 1999/94/EC, and identifying information for monitoring CO<sub>2</sub> emissions and communicating that information to the Commission under Regulation (EC) No 443/2009 (1994 Road Traffic Act, Article 4(b)(r)).



RDW makes available several data sets as Open Data for re-use. It has a database with all (non-sensitive) data from all EU vehicle type approvals since 1998. The amount of open data differs per vehicle category. For example, the data for passenger vehicles is almost complete. This does not apply with regard to buses, commercial vehicles, trailers and semi-trailers. For these EC type approvals, the RDW only registers the vehicle data when the (digital) EU Certificate of Conformity has been received.<sup>114</sup>

In Romania, the holder of any type approval is mandated by law to ensure immediate information of the national type approval authority (RAR) on any change in the type approval file; notification of RAR is required with regard to definitive termination of production for a certain type of vehicle, cases when a type approval is about to expire and, in case of vehicle recall for safety, environmental or public health failures, the obligation to immediately inform RAR is complemented by the obligation to propose to RAR adequate solutions to eliminate the risks. The producer is also required to ensure general access to information based on existing legislation.<sup>115</sup> Additionally, products/ operating materials found to be non-compliant and which are banned from market placement and selling are publicly disclosed by RAR.<sup>116</sup>

The Slovak Ministry of Transport makes available to the type approval authorities of the EU Member States granted/refused EC type approvals regarding whole vehicles via the European exchange type approval system and fulfils information obligations in relation to EU bodies and type approval authorities of other Member States. Moreover, according to Art. 7, par. 3 and 5 of the Decree no. 140/2009 Coll. on the approval of motor vehicles, the Slovak Ministry of Transport, as a type approval authority, shall inform without delay the type-approval authorities of the other Member States of the rejection of the application for an EU vehicle type-approval or of the withdrawal of an EU vehicle type-approval certificate granted, and of the reasons for such a decision.

In Spain, there seem to be no requirements to disclose information regarding national type approval processes in Royal Decree 750/2010. The Royal Decree only specifies that the Ministry of Industry, Tourism and Trade (the Spanish national approval authority) is the contact point for the approval authorities of other Member States and EEA countries.<sup>117</sup>

Lastly, it should be noted that in France, when the Ministry in charge of Transports denies an applicant a type approval certificate, a registration number or prohibits the making available on the markets of vehicles, it shall immediately inform type-approval authorities from other Member States and the European Commission.<sup>118</sup>

## 6.6. Penalties and sanctions

### 6.6.1. Nature and severity

Most Member States have laid down various penalties and sanctions in relation to type approval processes. These are often of an administrative nature and mostly result in parties being fined. Nonetheless, in some cases they made also be of a criminal nature with foreseen fines and/or prison sentences. In addition, legislation at national level generally foresees a withdrawal of the type approval in situations where it is incomplete or where there have been changes to the vehicle, that

<sup>114</sup> See [www.rdw.nl/over-rdw/dienstverlening/open-data/algemene-informatie](http://www.rdw.nl/over-rdw/dienstverlening/open-data/algemene-informatie) (last accessed on 15 April 2020).

<sup>115</sup> G.O. no. 78/2000, art. 13<sup>^</sup>2.

<sup>116</sup> G.O. no. 80/2000, art. 4 (6).

<sup>117</sup> Article 3.14 of Royal Decree 750/2010.

<sup>118</sup> Articles R321-9 and R321-14 of Highway Code.



result in non-conformity of the type for which the approval has been granted. For example, in the Netherlands, the RDW can withdraw a type approval or approval of the production process in case the person who has been granted approval changes a vehicle or component in a way which does not conform with the type for which approval has been granted, or acts in contravention of one or more other obligations arising from the approval<sup>119</sup>

Penalties in Austria are covered by the KFG that also defines the type approval processes. Whoever contravenes the KFG and the ordinances, notices or other orders issued on its basis commits an administrative offence and is punishable with a fine of up to 5,000 EUR, if not recoverable, with a prison sentence of up to six weeks. Such violations are also punishable when vehicles are brought into the federal territory, if they are committed on the way from an Austrian border clearance point located on foreign territory to the state border. If the perpetrator has already been punished for the same infringement, a prison sentence of up to six weeks can be imposed instead of the fine. If the perpetrator has already been punished twice for the same infringement, the fine and imprisonment can also be imposed side by side. In these cases, a prison sentence is only permissible if it is necessary to prevent the perpetrator from further administrative offences of the same kind. Attempting to do this is also punishable. Anyone who, as a manufacturer or as the manufacturer's authorised representative in Austria has committed the violations mentioned in directly applicable European Union Regulations relating to the type approval of vehicles is to be fined up to 5,000 EUR. Attempting to commit such a violation is also punishable. If the violations affect several vehicles, the threat of punishment relates to each individual vehicle. The penalties are mainly regulated as an administrative offence and are punishable with fines up to 5,000 EUR or if not recoverable, a prison sentence of up to six weeks is foreseen.<sup>120</sup>

In Belgium, different sanctions and prohibitions are available. These can range from prohibitions (such as the already mentioned prohibition of sale if the certificate of conformity is found out to be incomplete and is therefore unvalidated), to criminal sanctions with imprisonment for up to 3 months, fines up to 10 000 EUR and/or damages. Even higher sanctions are foreseen for the infringement of regulations linked with environment protection, which can be sanctioned by imprisonment (10 days to 10 years) and a fine (10 000 to 10 million EUR) if this action or inaction has been committed with the intention to degrade the environment.

In Germany, the expiration of the type approval certificate is foreseen in cases where the type of vehicle approved in the type approval is modified, a danger to road users is to be expected, or the exhaust emission or noise behaviour has worsened (it is not certain whether an increase in carbon dioxide emissions constitutes a deterioration of the exhaust gas behaviour within the meaning of § 19(2)(2)(3) of the Vehicle Registration Regulation). As a consequence, vehicles lacking the type approval certificate may no longer be put into operation on public roads or the owner may no longer order or register the vehicle to be put into operation. Moreover, the KBA may revoke or withdraw the EC type approval in whole or in part, in particular if:

- Vehicles do not conform to the approved type;
- Vehicles pose a significant risk to road safety, public health or the environment;
- The manufacturer does not have an effective system of production conformity control or does not apply this system in the manner intended;

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<sup>119</sup> In the Netherlands, in this case the RDW can withdraw a type approval based on 1994 Road Traffic Act, Articles 25(2) and 25(d)(2).

<sup>120</sup> Article 134, KFG.

- The holder of the type approval is in breach of the conditions attached to the type approval.<sup>121</sup>

Criminal offences are regulated in the German Criminal Code.<sup>122</sup> It should be noted that Law 21/1992 on Industry sets administrative sanctions, without prejudice to civil, criminal or other responsibilities that may concur.<sup>123</sup> Furthermore, Law 21/1992 classifies infractions into three groups: very serious infractions, serious infractions, and minor infractions.<sup>124</sup> Very serious infractions are sanctioned with fines of up to 100 000 000 EUR, serious infractions are sanctioned with fines of up to 6 000 000 EUR, and minor infractions are sanctioned with fines of up to 60 000 EUR.<sup>125</sup>

In Poland, the main piece of legislation regulating administrative sanctions for placing vehicles on the market without an appropriate certificate of type-approval process is the 1997 Road Traffic Act. It sets forth prohibitions on placing on the market for:

- Vehicles without an appropriate certificate of type-approval process;
- Vehicles withdrawn from the market;
- Equipment or part thereof without an appropriate certificate of type-approval process;
- Equipment of part thereof withdrawn from the market.

In Poland, the entity placing the vehicles on the market is subject to a monetary fine in the amount of no more than 25% of the sale value. In addition to a monetary fine, the entity is obliged to withdraw the vehicle, equipment or part thereof at its own expense. It is further specified that an entity placing a vehicle, equipment or any part thereof on the market without the type-approval certificate is obliged to make public information when they will be withdrawn from the market, and to buy back the vehicle from a person who has actual control over it. Additionally, criminal sanctions are foreseen pursuant to the Act of 21 December 2000 on technical supervision. Placing in service or on the market any technical device without an appropriate administrative decision, or contrary to provisions thereof, is subject to the penalty of restriction of liberty or a fine. Additionally, the Act provides the same penalty for exploitation of petrol vapour recovery equipment without periodic inspection, or contrary to the provisions of the administrative decision, as well as for converting technical devices. The penalties set forth in the Act are of a criminal nature.

In Romania, the holder of a type-approval has as obligations: to immediately inform RAR on any changes related to the approval file; to immediately inform RAR in the case of a recall of vehicles already sold, registered or placed on the market (because one or multiple systems, equipment, components or technical units separately installed on the vehicle present an important risk for road safety, public health or environmental protection); to propose to RAR adequate solution for elimination of the aforementioned risks (non-compliance with of any of these obligations by the producer represent administrative offense, punishable by fine of 1000 to 5000 lei).<sup>126</sup> The producers on the other side are obliged to provide RAR with information including on data or technical specifications that may lead to recall of vehicles or withdrawal of the type-approval - failure to do so is administrative offense punishable by fine of 1000 to 5000 lei;

<sup>121</sup> § 25, EG-FGV

<sup>122</sup> § 263 and § 267, Strafgesetzbuch vom 13. November 1998 (BGBl. I S. 3322), available at: <https://dejure.org/gesetze/StGB>

<sup>123</sup> Article 30 of Law 21/1992.

<sup>124</sup> Article 31 of Law 21/1992.

<sup>125</sup> Article 34 of Law 21/1992.

<sup>126</sup> G.O. no. 78/2000, art. 13<sup>2</sup> a)-e) art. 14 (1) e). Fine is approx. 200 to 1000 euro.

In France, the Highway Code<sup>127</sup> sets out the following criminal penalties:

- The penalty for offering for sale or selling a vehicle or a component of a vehicle that has not been subject to an approval is a fine of 1 500€.
- The penalty for placing or maintaining in circulation a motor vehicle or a trailer that has not been subject to an approval is a fine of 750€.
- The penalty for offering for sale or selling a device or equipment that does not conform to an approved type or to a type that has been approved, when approval of this device or equipment is required, is a fine of 750€.
- The penalty for using a device or equipment that does not conform to an approved type or to a type that has been approved, when approval of this device or equipment is required, is a fine of 38€.

In Ireland a person commits an offence if, when making an application, supplying information or producing a document:

- Makes a statement or a declaration which that person knows to be false in a material particular or recklessly makes a statement or a declaration which is false in a material particular,
- Produces, provides, sends or otherwise makes use of a document which that person knows to be false in a material particular or recklessly produces, provides or sends or otherwise makes use of a document which is false in a material particular.

Further, it is an offence to falsify test results to be submitted as part of an application for type approval or in-service conformity, to withhold from the NSAI data or technical specifications that could lead to the recall or withdrawal of a type approval, or refuse to allow the NSAI access to information, being access to information that the NSAI reasonably requires for the purposes of these Regulations. In addition, several other offences are listed in Regulation 25(2). These offences are criminal in nature and can be prosecuted summarily or on indictment. A person found guilty on summary conviction is liable to a fine up to 5,000 EUR, a prison sentence of up to 6 months (or both), while on summary conviction, they are liable for a fine up to 100,000 EUR, a prison sentence up to 12 months (or both).<sup>128</sup>

The Slovak Ministry of Transport, as a type approval authority, can refuse the registration, sale or entry into service or to withdraw a type-approval of vehicles, components or separate technical units either presenting a serious risk to road safety or seriously harming the environment or public health, or being not in conformity with the approved type.<sup>129</sup> Moreover, Slovakia broadly defines the fines that can be imposed to manufacturers or its representatives, the holders of the trial authorisation to vehicle operation and anyone without certificate or permission performing the activity of a manufacturer or its representative. Fines may vary from 300 EUR to 50,000 EUR.<sup>130</sup>

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<sup>127</sup> Article R321-4.

<sup>128</sup> Regulation 25(1) of the European Communities (Road Vehicles: Type-approval) Regulations 2009 (S.I. No. 158/2009).

<sup>129</sup> Art. 32, 33 of the Decree no. 140/2009 Coll. on the approval of motor vehicles lays down safeguard clauses (Chapter XII of the Framework Directive)

<sup>130</sup> Article 148, Act no. 106/2018 Coll. on operation of vehicles

In the United Kingdom, it is an offence for a person to knowingly or recklessly make a false statement for the purpose of obtaining vehicle type approval. A person guilty of such an offence, is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine.<sup>131</sup> It is also punishable to supply a vehicle containing a prohibited defeat device.<sup>132</sup> A person who is a manufacturer is guilty of an offence if a motor vehicle manufactured by that person is placed on the market or registered in the United Kingdom and that motor vehicle is fitted with a defeat system which is not permitted.<sup>133</sup>

#### 6.6.2. Recipients

The main recipients of the penalties and sanctions set out above are generally the manufacturers of the vehicles/entities, who possess a type approval certificate for their vehicles and who place vehicles on the market.

In Spain, however, the sanctions explicitly apply to a wide range of people (e.g. owners, directors, managers, manufacturers, sellers, importers, organisation, entities, laboratories, etc.)<sup>134</sup>

In Slovakia, recipients of fines are manufacturers or its representatives, the holders of the trial authorisation to vehicle operation and anyone without certificate or permission performing the activity of a manufacturer or its representative.<sup>135</sup>

In the Netherlands, it may be noted, the RDW can also withdraw the designation of a technical service if it no longer meets the requirements for the designation, or suspend the appointment for a term which shall not exceed twelve weeks.<sup>136</sup>

#### 6.7. Survey findings

Traficom, the national type approval authority in Finland, noted that it has the following possibilities in terms of sanctions:

- Prohibition of the manufacturing, marketing, selling, etc. (temporarily or permanently);
- Requiring making such modifications to the products that allow them to fulfil valid requirements, and demand from the manufacturer to demonstrate the outcome;
- Oblige the manufacturer to make a public statement on conformity of the product;
- Oblige the manufacturer to reimburse type-approval authority the costs of testing and examination;
- Intensify the abovementioned prohibition;
- Withdrawal of the type-approval, if the above measures do not result in the conformity of the products.

<sup>131</sup> Regulation 33(4) of the Road Vehicles (Approval) Regulations 2009.

<sup>132</sup> The Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673) Part 6 Regulation 33A

<sup>133</sup> Regulation 33(4) of the Road Vehicles (Approval) Regulations 2009

<sup>134</sup> Article 33 of Law 21/1992.

<sup>135</sup> Article 148, Act no. 106/2018 Coll. on operation of vehicles.

<sup>136</sup> 1994 Road Traffic Act, Articles 22(b)(5) and 22(b)(6).

## 6.8. Conclusion

Chapter 6 has demonstrated that in most Member States, national legislation on type approval processes relates to Directive 2007/46/EC (although in some Member States, the national law provides for EU as well as national law type approval processes) and mostly does not provide for provisions which specifically target tampering. The chapter also set out the checks carried out to ensure requirements to be granted type approval are met, and explained these requirements do not typically seem to relate specifically to tampering. In relation to type approval authorities and technical services, it found that in most of the Member States, the type approval authorities are either Ministries (e.g. Austria, Spain, France, Slovakia) or various public services, authorities or bodies designated by Ministries in the field of Transportation, and Mobility, and technical services are generally private bodies designated or mandated by the Ministries or other national authorities. The technical services are appointed based on procedures as defined in national legislation. Furthermore, the chapter explained that most Member States have in place national systems and requirements regarding the disclosure of information on type approval processes based on provisions of EU law. Lastly, it is specified that Member States have laid down penalties and sanctions of both an administrative and criminal nature in relation to type approval, and that these often have manufacturers as their main recipients.

## 7. Post-type approval rules on tampering

### 7.1. Introduction

Chapter 7 looks into the post-type approval rules in place at national level. More specifically, it reviews national rules regarding the prohibition on vehicle tampering, tampering with the emissions control design, aftermarket parts, the engine, the OBD system, and (although not part of MODALES) odometer tampering, for purposes of comparison. Moreover, the chapter considers the national authorities in charge of ensuring compliance with these national rules, as well as the legal basis for their competences. Then, it provides information regarding the penalties and sanctions in place in the Member States regarding post type-approval legislation on vehicle tampering. Finally, the matter of consumer remedies is examined in the context of this legislation.

### 7.2. Post-type approval rules at national level

#### 7.2.1. Prohibition on vehicle tampering

In most Member States, vehicle tampering is prohibited under the national law. It may be noted, however, that this prohibition most often is derived from legislation on type approval processes, rather than included as a specific legal provision.

In Germany, the EC Vehicle Type Approval Regulation generally prohibits vehicle tampering.<sup>137</sup>

In Spain, Royal Decree 920/2017 sets a general obligation applicable to all inspection equipment. Specifically, it establishes that the inspection equipment shall be protected against possible manipulations.<sup>138</sup>

In Slovakia, there are post-type approval rules in relation to tampering in place prohibiting<sup>139</sup> making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality. It is also forbidden to put on the market or make available on the market in the Slovak Republic, or to offer a) services which are prohibited pursuant to paragraph 1, b) services which result in the incapacity or technical incapacity of a vehicle or e) services which result in the use of defeat device which reduce the effectiveness or interfere with the safety features laid down in the technical requirements. Moreover, Art. 53, par. 5 of the same Act prohibits legal entities and natural persons – entrepreneurs from putting on market, making available or offering on the market in the Slovak Republic road motor vehicle in which there is a device or other software device mounted for the purpose of unauthorised manipulation with the parameters evaluated during the technical control, emission control or control of originality or otherwise mediating its sale on the market in the Slovak Republic. Art. 3, par. 6 of Act no. 147/2001 Coll. on advertising prohibits the advertisement of goods/services whose unauthorised manipulation (tampering) is prohibited by special regulations (in this case Art. 53 of Act no. 106/2018 Coll. on operation of vehicles).

In Austria, any modifications made to already approved types are covered by Articles 32 and 33 of the KFG. Article 32 of the KFG sets out that the producer or his authorised representative must immediately notify the Federal Minister of Transport, Innovation and Technology of any changes to an approved type that affect the decision-making basis of the type approval notice and the final cessation of production. If changes are made to an approved type, the notification must be

<sup>137</sup> See EG-FGV.

<sup>138</sup> Annex III Recital II.6 of Royal Decree 920/2017.

<sup>139</sup> Art. 53, par. 1, let. d) of the Act no. 106/2018 Coll. on operation of vehicles.

accompanied by a correspondingly modified type description. Before deciding on the approval of the changes, the Federal Minister of Transport, Innovation and Technology must obtain an opinion from one or more appointed experts appointed as to whether no essential technical features of the approved type have been changed and whether the type has been changed according to the ones indicated and that changes still meet the requirements of traffic and operational safety. This means that the type does not cause excessive noise, smoke, bad smell or harmful air pollution - insofar as this is recognisable by the expert(s). Moreover, Article 33 of the KFG sets out provisions regarding alterations to individual vehicles. The owner of the vehicle's registration must immediately notify the governor of the state in whose area of effect the vehicle has its permanent location of changes to a single vehicle of an approved type that is approved for traffic and that can influence the traffic and operational safety or the environmental compatibility of the vehicle.

In Finland, the 'general' prohibition states that a vehicle used in traffic may not be repaired, modified, allowed to change or be equipped with an accessory after commissioning in such a way that the vehicle no longer meets the requirements that were in force in Finland at the time of the vehicle's first commissioning or later. As such, this rule covers all kinds of tampering.<sup>140</sup>

Similarly, in Italy, national law does not provide any specific rules in relation to tampering following the type approval. In general, according to Art.78 of the Highway Code, motor vehicles and their trailers must be inspected and tested at the competent offices of the Department of Land Transport when one or more modifications are carried out to the construction or functional characteristics, or to certain equipment devices, or the frame has been replaced or modified. Art.79 of the Highway Code ('Efficiency of motor vehicles and their trailers in circulation') and the correspondent Art.237 of the Implementing Regulation, also provide a general obligation under which vehicles and their trailers during circulation must be kept in conditions of maximum efficiency, as to guarantee safety (e.g. signalling devices, braking systems) and to limit noise and emissions. If these standards are subject to EU Directives, the technical requirements are those contained in the Directives themselves. Moreover, the general prohibition of tampering can be inferred by the fact that according to Art.79, anyone who circulates with a vehicle that has alterations in the construction and functional characteristics prescribed, or circulates with the devices not functioning or not regularly installed, is subject to the administrative sanction of the payment of a sum from 87 EUR to 345 EUR.<sup>141</sup>

In the Netherlands, there is a general prohibition on tampering in place which stems from the Type Approval Motor Vehicles Air Pollution Decree. This Decree prohibits manufacturers, repairers and operators from tampering with systems which use a consumable reagent in the context of heavy duty vehicles.<sup>142</sup> Additionally, it outlaws the use of defeat strategies that reduce the effectiveness of emission control equipment (both relating to heavy duty vehicles and light passenger and commercial vehicles).<sup>143</sup>

In Poland, there are no specific, direct provisions concerning vehicle tampering. Nonetheless, the Director of the TDT revokes the type-approval certificate in case of a negative compliance inspection result. Moreover, the Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts including the Polish Penal Code introduced penalties for odometer tampering. Pursuant to the new

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<sup>140</sup> Section 7 of the Vehicles Act

<sup>141</sup> The amount of the penalty is from € 1,210 to € 12,108 if the vehicle is used in for certain competitions provided for in articles 9-bis and 9-ter of the Highway Code.

<sup>142</sup> Type Approval Motor Vehicles Air Pollution Decree, Article 3(1)(d).

<sup>143</sup> Type Approval Motor Vehicles Air Pollution Decree, Articles 2(1)(b) and (3)(1)(b).



legislation, odometer tampering is subject to a penalty of imprisonment for at least 3 months and a maximum of 5 years.

In Ireland, no national provisions relating to tampering with the emissions control design are in place. If the emission control system fitted by the manufacturer is absent, modified or obviously defective, this may be recorded as a major deficiency in the context of roadworthiness testing (e.g. NCT).<sup>144</sup>

### 7.2.2. Tampering with the emission control design

Some Member States were found to have in place specific national rules regarding tampering with the emission control design.

In Belgium, second-hand cars sold by professionals or private persons, must, since 2004, be granted a “Car-Pass” certificate ensuring that the value given by the odometer has not been tampered with. The initial 2004 law was updated in 2018 to add more information to the “Car-Pass” certificate such as the CO<sub>2</sub> emissions<sup>145</sup>. This aims at preventing any tampering with the emission control system or filter. The CO<sub>2</sub> emissions on the Car-Pass must comply with the certificate of conformity. A Car-Pass certificate should also be provided for the sale of light professional vehicles. These emissions used to be measured with the NEDC test, which needed to be updated, and is being replaced with the WLTP test, a most complex process which gives a better estimation of the vehicle’s actual emissions.<sup>146</sup>

In Finland, according to Section 2.4 of the Vehicle Order concerning the modification of an exhaust system, a catalytic converter may be installed in the exhaust system. The catalytic converter must not be removed if it is necessary to comply with the vehicle's exhaust emission regulations. Catalytic converters as well as exhaust sensors and exhaust gas cleaning systems must be duplicated if the exhaust system is duplicated before duplicating exhaust sensors and exhaust cleaning systems. Furthermore, Section 2.2 specifies that the vehicle may be fitted with retrofit exhaust gas cleaning systems type-approved in accordance with E Regulation 132. If the system type-approval states that fitting the vehicle with the retrofit exhaust gas cleaning system changes the exhaust emissions of the engine to a more stringent emission class than the original emission class, that emission class may be changed to the information entered in the vehicle register.

In France, Article L318-3 of the Highway Code prohibits carrying out or having carried out transformations on a vehicle having the effect of removing a pollution control device, degrading its performance or masking its possible malfunction, or engaging in propaganda or advertising in favour of these transformations and lays down penalties for such transformations.

In the Netherlands, the Vehicle Regulation specifies that any modifications made to the emission control system of a vehicle must comply with the requirements laid down in Annex IV of the Regulation (to the extent that those requirements are related to the modification made) unless the emission control system is replaced by the same original system or a system which has been approved under Regulation (EC) No 715/2007 or Regulation (EC) No 595/2009.<sup>147</sup> This requirement can thus be said to specifically target and ban tampering with the emission control design.

<sup>144</sup> The legislation governing the NCT is the Road Traffic (National Car Test) Regulations 2017 (SI 415 of 2017), available [www.irishstatutebook.ie/eli/2017/si/415/made/en/print](http://www.irishstatutebook.ie/eli/2017/si/415/made/en/print).

<sup>145</sup> 11 Juin 2004. - Loi relative à l'information à fournir lors de la vente de véhicules d'occasion [www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2004061135&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004061135&table_name=loi)

<sup>146</sup> [www.car-pass.be/fr/emissions-co2](http://www.car-pass.be/fr/emissions-co2)

<sup>147</sup> Vehicle Regulation, Article 6.10.

### 7.2.3. Tampering with aftermarket parts

Some Member States were found to have in place specific national rules regarding tampering with aftermarket parts.

In Belgium, there are some prohibitions regarding aftermarket parts, which are related to road safety (e.g. tampering with the brakes system, removing lights, etc.).<sup>148</sup> For non-prohibited modifications, a validation report is required, ensuring that the modification has been approved. The Mobility and Transportation Federal Public Service – Registration Department delivers such reports.<sup>149</sup>

In Finland, according to Section 2.3 of the Vehicle Order, structures and equipment directly affecting the emissions of a vehicle that has been approved according to more stringent exhaust emission requirements that Euro 3 or Euro III classes may be replaced *only by equipment approved by the vehicle manufacturer or the relevant authority*; in this case, the vehicle must meet those emission requirements laid down for the vehicle before it was modified. As such, this provision rules out the use of aftermarket parts that are not approved by the vehicle manufacturer or the relevant authority.

In the Netherlands, in addition to the general prohibition on tampering, Chapter 6 of the Vehicle Regulation includes provisions in relation to modifications made to a vehicle. It specifies that modifications in the construction of a registered vehicle (with the exception of the installation of an electric drivetrain or a fuel system for gas) are subject to the requirements as stated at the time of the commissioning of the vehicle.<sup>150</sup> Moreover, it provides that in the event of 1) a modification of the construction of a vehicle that causes certain vehicle data to change and after this change to no longer correspond to the vehicle registration register (e.g. the engine type), or 2) a modification of the vehicle parts (e.g. the braking system), the vehicle (part) must meet the requirements set out in Annex IV of the Regulation (insofar as those requirements are related to the modification made).<sup>151</sup> Such rules may also be considered to ban tampering with aftermarket parts.

In Romania, Government Ordinance no. 82/2000 on the authorisation of economic operators providing repairs, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles specifies the following:

- During repairs, constructive modifications or reconstruction of road vehicles, in case there are required interventions on systems regarding traffic safety, environmental protection, energy efficiency and protection against theft which are regulated by EU regulations / directives and ECE-UN regulations, economic operators can only use equipment, components, technical entities, spare parts and products used of origin or approved / certified according to the legislation in force. Economic operators must issue to the beneficiaries guarantee certificates, including guarantees for new or reconditioned components used, according to the law. Non-compliance with this requirement represents an administrative offense.<sup>152</sup>
- It is forbidden to sell in view of reuse systems, equipment, components, technical entities, or spare parts which regard road safety.

<sup>148</sup> See the list of prohibited modifications here : [www.goca.be/upload/AKCT/tuning.jpg](http://www.goca.be/upload/AKCT/tuning.jpg)

<sup>149</sup> [www.autocontrole.be/fr/controle-technique/type/voitures/transformations-tuning-voitures#1.2](http://www.autocontrole.be/fr/controle-technique/type/voitures/transformations-tuning-voitures#1.2)

<sup>150</sup> Vehicle Regulation, Article 6(2).

<sup>151</sup> Vehicle Regulation, Articles 6(4) and 6(3).

<sup>152</sup> G. O. no. 82/2000 (amended), art. 4, 5, 5<sup>2</sup>.

#### 7.2.4. Tampering with the engine

Some Member States were found to have in place specific national rules regarding tampering with the engine.

The use of a manipulation device is prohibited in Belgium through the Royal Decree of 20 April 2010 on certain components and characteristics of two or three-wheel motor vehicles.<sup>153</sup> The Decree defines this device as something which could modify the engine's capacities. It therefore aims at preventing any engine tampering on these types of vehicles. This Decree was adopted in the context of the transposition of Directive 2009/108/EC.

In Finland, according to Section 2.3 of the Vehicle Order concerning engine replacement, a vehicle which has been approved according to lower emission standards than the Euro 3 or Euro III emission requirements, shall meet the exhaust emission requirements of the original vehicle during the engine replacement test.

In Romania, Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) defines the types of tampering or malfunctions constituting major deficiencies (MaD) as follows: - engine performance: a) command unit modified, affecting safety and / or environment – MaD; b) engine modifications or its axes, affecting safety and / or environment (DD). Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11 specifies that verifications relevant for tampering are included in the list under the category 'Chassis and chassis accessories': engine performance (command unit is tampered with, affecting safety and/or environment; engine modifications, affecting safety and /or environment).

#### 7.2.5. Tampering with the OBD system

Some Member States were found to have in place specific national rules regarding tampering with the OBD system.

In Belgium, the mandatory Car-Pass certificate ensures that the emissions level has not been tampered with.

In Spain, the Royal Decree 920/2017 obliges ITV stations to have the necessary equipment to carry out an OBD port diagnosis in those vehicles that support it. The diagnosis shall be made through the OBD communication port, thus accessing the vehicle's ECU to check the correct operation of the systems, the faults recorded in memory and possible tampering.<sup>154</sup> The main objective of this diagnosis is to end the tampering of anti-pollution systems such as FAP, AdBlue and EGR and security systems such as airbags or pre-tensioners.

In Romania, Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) includes OBD reading indicates sub-optimal functioning (MaD) as one of the types of tampering or malfunctions constituting major deficiencies (MaD). Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11 defines: - Gas emissions (+E) (for vehicles equipped with an OBD, emissions can be checked by the adequate reading of the OBD and the verification of the correct functioning of the OBD; the OBD reading indicates malfunctioning, measurement indicate significant unconformity).

<sup>153</sup> Arrêté royal modifiant l'arrêté royal du 10 octobre 1974 portant règlement général sur les conditions techniques auxquelles doivent répondre les cyclomoteurs et les motocyclettes ainsi que leurs remorques Available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0108>

<sup>154</sup> Annex III, Recital I of Royal Decree 920/2017.

### 7.2.6. Odometer tampering

Contrary to the forms of tampering discussed above, there is a much higher number of Member States that have in place national legal provisions on odometer tampering specifically. For this reason odometer tampering is included in this deliverable (for comparison), although it is not within the scope of MODALES. Generally, under these provisions, it is forbidden to change the odometer readings of motor vehicles.

Since 2004, second-hand cars sold in Belgium by professionals or private persons, must be sold with a “Car-Pass” certificate, ensuring that the value given by the odometer has not been tampered with. The initial 2004 law was updated in 2018 to add more information to the “Car-Pass” certificate such as the Euro-norm, the CO2 emissions, and the need for a type approval if the vehicle has been in an accident. The authenticity of the certificate can be verified by the company who emits them. Since this certificate has been made mandatory, very few cars have been suspected of odometer tampering<sup>155</sup> - the Car-Pass certificate is considered to be a success in Belgium.

In **Germany**, § 22b of the Road Traffic Act lists odometer tampering as a criminal offence. Under this provision, falsifying the measurements of an odometer fitted to a motor vehicle by influencing the result of the measurement by acting on the device or the measurement process, or cancelling or impairing the intended function of a speed limitation device fitted to a motor vehicle by acting on that device is punishable with imprisonment of up to one year or a fine.

In Spain, in relation to odometers, Royal Decree 920/2017 regulating roadworthiness tests prescribes that for mileage checking purposes, the information from previous technical inspections shall be made available to inspectors as soon as the information is available electronically. In cases where a data inconsistency is observed, and if it is found that there is manipulation of an odometer in order to reduce or inadequately represent the distance recording of a vehicle, this shall be communicated to the competent metrology authority of the Autonomous Community in which the inspection is carried out.<sup>156</sup> Furthermore, the procedure manual for inspection of ITV stations (roadworthiness tests)<sup>157</sup> sets out that, in the event that the vehicle has an odometer, it shall be verified through a visual inspection that the odometer is not clearly tampered with or out of service. It shall be understood that the odometer is tampered with when physical manipulation of the device and/or its connections can be observed. Moreover, it shall be understood that the odometer is out of service when it is impossible to identify the kilometers traveled.<sup>158</sup>

In France, Article 3 of Decree 78-993 prohibits any modification or its reduction to zero of the mileage shown on the odometer of a motor vehicle.

In Ireland, Section 14 of the Road Traffic Act 2014 makes it an offence to interfere or attempt to interfere with the odometer of a mechanically propelled vehicle.

Italian national law does not provide any specific rules in relation to tampering following the type approval. However, Art.229 of the Implementing Regulation generally prohibits tampering with the odometer reader, as it specifies that ‘the odometer installed on vehicles must provide at least the indication of the total distance travelled, starting from the first entry into service of the vehicles or

<sup>155</sup> [www.traxio.be/fr/nouvelles/2019/09/les-chiffres-de-car-pass-en-2018/](http://www.traxio.be/fr/nouvelles/2019/09/les-chiffres-de-car-pass-en-2018/)

<sup>156</sup> Article 10.8 of Royal Decree 920/2017.

<sup>157</sup> Manual de procedimiento de inspección de las estaciones ITV. Available at: [www.f2i2.net/documentos/lsi/STO\\_Vehiculos/ITV/Manual\\_de\\_procedimiento\\_de\\_inspeccion\\_de\\_estaciones\\_ITV\\_v7\\_4\\_1\\_COVID19\\_Rev1.pdf](http://www.f2i2.net/documentos/lsi/STO_Vehiculos/ITV/Manual_de_procedimiento_de_inspeccion_de_estaciones_ITV_v7_4_1_COVID19_Rev1.pdf), last accessed 22/05/2020.

<sup>158</sup> Section I, Recital 3.8 of procedure manual for inspection of ITV stations.

from the automatic reset of this indication. It must also be free of manual zeroing devices and must not be tampered with. The installation of a resettable trip-meter is allowed. The indications of the device must fall within the direct field of vision of the driver and be at least five digits, each progressively variable from zero to nine'. Moreover, Art. 8, paragraph 5, of Ministerial Decree 19 of May 2017 (Protocol 214), whilst stating that the odometer check and reading is carried out during periodic roadworthiness tests and that the data is made available to the inspectors electronically, also specifies that tampering of the odometer is punishable according to the provisions of the Highway Code.

In the Netherlands, under the 1994 Road Traffic Act, it is forbidden to change the odometer reading of motor vehicles that must be registered (or have it changed), or to influence or have influenced the operation of the odometer in such a way that the distance indicated on the odometer does not correspond to the distance actually travelled by that motor vehicle.<sup>159</sup>

In Poland, the Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts including the Polish Penal Code introduced penalties for odometer tampering. Pursuant to the new regulation, odometer tampering is subject to a penalty of imprisonment for at least 3 months and a maximum of 5 years.

With regard to odometer verification in Romania, RAR<sup>160</sup> allows access of technical inspectors conducting ITP to the previous odometer reading from the last ITP conducted in Romania.<sup>161</sup> If the odometer is tampered with or its reading indicates any other manipulation, the ITP cannot be passed. Moreover, Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) includes obvious manipulation (fraud) or odometer (if included by the manufacturer): a) obvious manipulation (fraud) or obvious malfunction of the odometer as one of the major deficiencies (MaD).

In Slovakia, with regard to odometer tampering, Art. 53, par. 1, let. a), b) and d) of Act no. 106/2018 Coll. on operation of vehicles prohibits:

- unauthorised manipulation of the odometer,
- making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of the odometer,
- making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality.

In the United Kingdom, adjusting a vehicle's odometer reading to show an inaccurate mileage is potentially a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') and the Fraud Act 2006.<sup>162</sup>

### 7.3. Relevant national authorities

Which national authorities are in charge of ensuring compliance with legislation on tampering differs throughout the Member States (e.g. the policy, national type approval authorities, or multiple authorities). The legal basis for their competences mostly lies in national legislation concerning the transposition of the relevant Directives and Regulations. Examples of relevant national authorities are identified in the table below.

<sup>159</sup> 1994 Road Traffic Act, Article 70m.

<sup>160</sup> RAR is the national type approval authority in Romania.

<sup>161</sup> Order no. 2133/2005 – RNTR 1, art. 16 (5<sup>th</sup>1).

<sup>162</sup> [www.legislation.gov.uk/ukpga/2006/35/contents](http://www.legislation.gov.uk/ukpga/2006/35/contents)

Table 2: National authorities for ensuring compliance with the legislation on tampering

Member State	National authority	Legal basis
<b>Austria</b>	<ul style="list-style-type: none"> <li>The Federal Minister of Transport, Innovation and Technology (tampering in relation to type approval)</li> <li>Offices of the nine Austrian state governors (tampering and alteration to individual vehicles)</li> </ul>	Articles 32 and 33 of the KFG
<b>Belgium</b>	Car-Pass association	4 May 2006 Royal Decree
<b>Germany</b>	Kraftfahrt-Bundesamt (KBA)	§ 2 of the Law on the establishment of KBA
<b>Poland</b>	Transportowy Dozór Techniczny (TDT)	<ul style="list-style-type: none"> <li>The Act of 21 December 2000 on technical supervision,</li> <li>The 1997 Road Traffic Act, and</li> <li>The Regulation on approval of motor vehicles, trailers and their equipment or any part thereof</li> </ul>
<b>Romania</b>	Romanian Automotive Register (RAR)	<ul style="list-style-type: none"> <li>G.O. no. 78/2000 amended</li> <li>Order no. 211/2003 amended</li> </ul>
<b>The Netherlands</b>	<ul style="list-style-type: none"> <li>RDW</li> <li>Human Environment and Transport Inspectorate</li> </ul>	<ul style="list-style-type: none"> <li>Road Traffic Act</li> <li>Articles 9.5.1 and 9.5.6 of the Environmental Protection Act</li> </ul>

In some of the Member States, police forces are (partly) in charge of ensuring this compliance. This is the case, for example:

- In France, where police officers are in charge of ensuring compliance with the legislation set out by the Highway Code, including Article L318-3 on tampering<sup>163</sup>. As per Decree 78-993, on odometer tampering, Article 10 specifies that the Ministry of Justice, the Home Secretary, the Ministry of Economy, the Ministry of Agriculture and Ministry of Industry and transports are in charge, each Ministry for its part, of the enforcement of the Decree.
- In Ireland, the organisation responsible for enforcing Section 14 (on odometer tampering) of the Road Traffic Act 2014 is the Garda Síochána (Police), as provided for by Section 14(3) of that Act. The organisation responsible for ensuring that cars which are not roadworthy due to e.g. modified emissions control systems are not on the road is the Road Safety Authority (pursuant to S.4 of the Road Safety Authority Act 2006<sup>164</sup>).
- In the United Kingdom, police forces of England and Wales, Scotland and Northern Ireland are in charge of ensuring compliance with the relevant legislation.

<sup>163</sup> Article L130-4, Highway Code

<sup>164</sup> [www.irishstatutebook.ie/eli/2006/act/14/enacted/en/html](http://www.irishstatutebook.ie/eli/2006/act/14/enacted/en/html)



In Austria, however, if it involves tampering in relation to type approval, this is dealt with by the Federal Minister of Transport, Innovation and Technology. If it involves tampering and alteration to individual vehicles, then compliance is ensured by the offices of the nine Austrian state governors. The legal basis are Articles 32 and 33 of the KFG.

In some of the Member States, the authority in charge of ensuring compliance with legislation on tampering is the national type-approval authority.

In Germany, the KBA is the main type approval authority for vehicles and vehicle parts, which means that it also oversees compliance with legislation on tampering. The KBA is a government agency, governed by the Federal Ministry of Transport and Digital Infrastructure (BMVI). The tasks of the KBA result from § 2 of the Law on the establishment of KBA<sup>165</sup>

In Poland, TDT<sup>166</sup> is the main authority dealing with the type-approval process.<sup>167</sup> The scope of the TDT's activities includes e.g. technical supervision, issuing administrative decisions, as well as ensuring compliance with legislation on type-approval process, including on tampering. The TDT's activities are governed by: (i) the Act of 21 December 2000 on technical supervision, (ii) the 1997 Road Traffic Act, and (iii) the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof. Penalties in relation to the rules on odometer tampering under the Polish Penal Code, are imposed by the courts.

The national legislation in Romania designates RAR as a competent authority to validate any modification of any vehicle registered<sup>168</sup> (except for Order no. 601/2017 (...) on inspections and checks on road transport (...)) for which the authority conducting this type of technical roadside inspection is the State Inspectorate for Road Transport Control (ISCTR)).

In the Netherlands, the 1994 Road Traffic Act tasks the RDW with the supervision of the conformity of vehicles, systems, components, separate technical units, equipment and devices with the type for which approval has been granted as well as the conformity of parts and appliances that have been approved with the approval.<sup>169</sup> In particular, the RDW is responsible for identifying and recording manipulation of vehicle systems and reporting of this to the competent authorities.<sup>170</sup> The Approval Motor Vehicles Air Pollution Decree (which prohibits tampering) is based on Articles 9.5.1 and 9.5.6 of the Environmental Protection Act.<sup>171</sup> The enforcement of these provisions is thus in the hands of the Human Environment and Transport Inspectorate.<sup>172</sup> Due to the overlap, these two parties thus must closely cooperate in ensuring compliance with the legislation on tampering listed above.

<sup>165</sup> Gesetz über die Errichtung eines Kraftfahrt-Bundesamtes (KBAG k.a.Abk.) vom 4. August 1951 (BGBl. I S. 488); zuletzt geändert durch Artikel 3a G. v. 5. Dezember 2019 (BGBl. I S. 2008), available at: [www.gesetze-im-internet.de/kbag/index.html](http://www.gesetze-im-internet.de/kbag/index.html)

<sup>166</sup> More information available at [www.tdt.gov.pl/](http://www.tdt.gov.pl/).

<sup>167</sup> Article 42 of the Act of 21 December 2000 on technical supervision.

<sup>168</sup> Designated on the basis of G.O. no. 78/2000 amended, Order no. 211/2003 amended.

<sup>169</sup> 1994 Road Traffic Act, Article 4b(b).

<sup>170</sup> Article 4(b)(1)(6b).

<sup>171</sup> Wet milieubeheer (Environmental Protection Act), available at <https://wetten.overheid.nl/BWBR0003245/>.

<sup>172</sup> Instellingsbesluit Inspectie Leefomgeving en Transport (Institutional Decree on the Human Environment and Transport Inspectorate), available at <https://wetten.overheid.nl/BWBR0031032/2019-06-16>.



In Slovakia, there are several authorities in charge of ensuring compliance as well. The state professional supervision is performed by:<sup>173</sup>

- Chief state professional supervision of the Ministry of Transport,
- State professional supervision of the Ministry of Transport,
- State professional supervision of District Authority in the seat of the Self-governing region,
- State professional supervision of District Authorities.

Additionally, according to Art. 2, let. k) of Act no. 128/2002 Coll. on state control in consumer protection in conjunction with Art. 152, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles, the Slovak Trade Inspection performs:

- Market surveillance for the purposes of this Act (when placing on the market and making available on the market a type of vehicle, system, component, separate technical unit) and
- Control of compliance with the obligations of economic entities set out in Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

According to Art. 10, let. f) of Act no. 147/2001 Coll. on advertising, the Slovak Trade Inspection performs surveillance on compliance with the prohibition to advertise goods/services whose unauthorised manipulation (tampering) is prohibited by Art. 53 of Act no. 106/2018 Coll. on operation of vehicles. According to Art. 58, par. 1, let. e) of Act no. 455/1991 Coll. on trade licences, the Trade Licence Office acts based on the instigation of the Slovak Trade Inspection submitted due to a repeated violation of Art. 53 of Act no. 106/2018 Coll. on operation of vehicles by a natural person - entrepreneur or legal entity.

In Belgium it is the Car-Pass association that oversees the delivery of Car-Pass certificates and also ensures that the certificates do not provide false information. It is a non-profit association that has been established by the 4 May 2006 Royal Decree. Moreover, the Mobility and Transportation Federal Public Service – Registration Department is in charge of ensuring that modifications brought to vehicles are valid. This is provided by the ministerial circular of 12 March 2010 concerning certain M1 converted vehicles<sup>174</sup>. Regarding the prohibition of the use of a manipulation device, the national type-approval authority is in charge of ensuring that such a device is not used during the type-approval process. This is provided by the Royal Decree of 10 April 2010, Art.22/1, §3, 1.5.3.

In Spain, ITV stations are subject to the supervision and control of the competent body of the Autonomous Community in which they are located.<sup>175</sup> With regard to the supervision of the technical inspection activity of vehicles, the supervisory body (i.e. the competent body of the AC) may consider that the supervision is fulfilled if:<sup>176</sup>

- In the case of ITV stations accredited by the National Accreditation Entity according to the UNE-EN ISO / IEC 17020 standard as a third-party inspection entity, the activity evaluation may be carried out according to the accreditation maintenance procedures in accordance to the aforementioned rule, without prejudice to other complementary control procedures that may

<sup>173</sup> Art. 141, par. 2 and Art. 142, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles.

<sup>174</sup> [www.code-de-la-route.be/textes-legaux/sections/circulaires/cm-120310/1144-mo-120310](http://www.code-de-la-route.be/textes-legaux/sections/circulaires/cm-120310/1144-mo-120310)

<sup>175</sup> Article 22.1 of Royal Decree 920/2017.

<sup>176</sup> Article 22.2 of Royal Decree 920/2017.

be established by the competent body of the Autonomous Community, in the exercise of its powers.

- In the case of ITV stations in which the material execution of technical inspections is carried out directly by an Administration (Public Authority), with its own personnel, the supervision of the activity may be carried out according to any of the following methods:
  - By the Administration itself, according to the procedures that it designates, which must be communicated to the interested parties.
  - By a body other than the Administration.

The results of the audits will be forwarded by the owner of the ITV station to the competent body in the field of industry of the Autonomous Community in which it is located.

#### 7.4. Penalties and sanctions

Throughout Member States, a broad scope of both administrative and criminal offences are foreseen in relation to the abovementioned post type-approval legislation on vehicle tampering.

In Austria, penalties foreseen are covered in Article 134 of the KFG. Whoever contravenes the KFG and the ordinances, notices or other orders issued on its basis commits an administrative offence and is punishable with a fine of up to 5,000 EUR, if not recoverable, with a prison sentence of up to six weeks. Such violations are also punishable when vehicles are brought into the federal territory, if they are committed on the way from an Austrian border clearance point located on foreign territory to the state border. If the perpetrator has already been punished for the same infringement, a prison sentence of up to six weeks can be imposed instead of the fine. If the perpetrator has already been punished twice for the same infringement, the fine and imprisonment can also be imposed side by side. In these cases, a prison sentence is only permissible if it is necessary to prevent the perpetrator from further administrative offences of the same kind. Attempting to do this is also punishable. Anyone who, as a manufacturer or as the manufacturer's authorised representative in Austria has committed the violations mentioned in directly applicable European Union regulations relating to the type approval of vehicles is to be fined up to 5,000 EUR. Attempting to commit such a violation is also punishable. If the violations affect several vehicles, the threat of punishment relates to each individual vehicle.

In Belgium, concerning the Car-Pass certificate, the association can ask the names of the professionals who seem to communicate false odometer information. If this is the case, the Economic Affairs Department can apply an administrative sanction, and they can also be condemned by a criminal court.<sup>177</sup> The 2004 Law establishing the association (Art. 8) sanctions the disclosure of false information with imprisonment for one month to one year and a fine of 10 EUR to 3,000 EUR, or one of these penalties only. Moreover, tampered vehicles are not always insured, as modifications should be notified to the insurance company.

In Germany, the Road Traffic Act contains criminal and administrative sanctions regarding tampering.

The Road Traffic Act (§ 22b) regulates the misuse of odometers and speed limiters as a criminal offence. Under this provision, falsifying the measurements of an odometer fitted to a motor vehicle by influencing the result of the measurement by acting on the device or the measurement process, or cancelling or impairing the intended function of a speed limitation device fitted to a motor vehicle by acting on that device is punishable with imprisonment of up to one year or a fine. Preparing to commit one of the abovementioned offences by producing, acquiring, supplying, offering for sale or

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<sup>177</sup> [www.car-pass.be/fr/faq](http://www.car-pass.be/fr/faq)

giving to another person computer programs whose purpose is to commit such an offence (§ 149(2) and 3 of the StGB on attempting money counterfeit) is punishable with imprisonment of up to five years or a fine. Furthermore, under § 23 of the Road Traffic Act, the offering for sale of unauthorised vehicles, vehicle parts and equipment is considered an administrative offence. The offence constitutes of either intentionally or negligently offering for sale vehicle parts, which should be of a design approved by the Federal Motor Transport Authority, but are not marked with an officially prescribed and assigned test mark. The offence may be punished by a fine of up to 5000 EUR. Vehicles, vehicle parts and equipment to which the administrative offence relates may be confiscated.

In Spain, Royal Decree 920/2017 regulating roadworthiness tests establishes that in case of non-compliance with the provisions of the Royal Decree, sanctions set in Law 21/1992 on Industry, or in Law on Traffic, Movement of Motor Vehicles and Road Safety, approved by Royal Legislative Decree 6/2015 apply.<sup>178</sup> The Law on Traffic, Movement of Motor Vehicles and Road Safety<sup>179</sup> sets administrative sanctions,<sup>180</sup> without prejudice to criminal sanctions.<sup>181</sup> Furthermore, it classifies the infractions into three groups: very serious infractions, serious infractions, and minor infractions.<sup>182</sup> Very serious infractions are sanctioned with fines of up to 500 EUR, serious infractions are sanctioned with fines of up to 200 EUR, and minor infractions are sanctioned with fines of up to 100 EUR.<sup>183</sup> Nevertheless, certain infractions can be sanctioned with higher fines, for instance the installation of radar inhibitors in vehicles or any other mechanisms designed to interfere with the proper functioning of traffic surveillance systems, can be sanctioned with fines between 3000 EUR and 20000 EUR).<sup>184</sup> Lastly, the sanctions apply to the owners or user of the vehicles.<sup>185</sup>

In Finland, a person is convicted of intentional or negligent vehicle violation if he/she:

- fails to comply with the obligation with the obligation to provide information laid down in Directive 2007/46/EC and related regulations , which may lead to the withdrawal of a vehicle, component, separate technical unit or equipment from the market;
- fails to comply with the obligation to use an additive in the vehicle's emission control system when the vehicle is used in traffic (as required in Directive 2007/46/EC and related regulations) or;
- violates the prohibition on the use of a device limiting the operation of an emission control system provided for in a regulation of the European Union supplementing the regulations mentioned in section 30 (1) or the prohibition on the modification of an emission control system contrary to type approval requirements.

According to Section 96 of the Vehicles Act, they shall be sentenced, unless a more severe punishment is provided elsewhere in the law, to a fine for a vehicle violation. A fine for an

<sup>178</sup> Article 25 of Royal Decree 920/2017.

<sup>179</sup> Real Decreto Legislativo 6/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley sobre Tráfico, Circulación de Vehículos a Motor y Seguridad Vial. Available at: [www.boe.es/buscar/act.php?id=BOE-A-2015-11722](http://www.boe.es/buscar/act.php?id=BOE-A-2015-11722), last accessed 22/05/2020.

<sup>180</sup> Article 74 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>181</sup> Article 74.2 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>182</sup> Articles 15, 76 and 77 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>183</sup> Article 80 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>184</sup> Article 80.2.d of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>185</sup> Article 2 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

infringement concerning the structure, equipment or condition of a motor vehicle is 70 EUR.<sup>186</sup> Furthermore, if a person fails to comply with Section 7(1) of the Vehicles Act (general prohibition on tampering), the person shall be sentenced to a fee of 70 EUR.

In France, the administrative penalty for carrying out or having carried out transformations on a vehicle having the effect of removing a pollution control device, degrading its performance or masking its possible malfunction, or engaging in propaganda or advertising in favour of these transformations is a fine of 7.500 €.<sup>187</sup> Additionally, the same article also lays down (following modalities set out in the French criminal code), the prohibition for natural persons to practice the professional or social activity in the exercise or on the occasion of which the offense was committed. The maximum duration during which the person is banned from practicing the professional or social activity is one year. This is a criminal penalty. As for legal persons, Article L318-3 also refers to Article 131-39 of the French criminal code, setting out the following criminal penalties:

- Definitive closure or for a period of five years at most of the establishments or of one or more of the establishments of the company which served to commit the accused acts;
- Exclusion from public contracts on a permanent basis or for a period of up to five years;
- Confiscation;
- Display of the decision or its dissemination either by the written press or by any electronic means of communication to the public.

In addition, in France, no sanctions are set out for odometer tampering. However, selling a vehicle, of which the mileage shown on the odometer has been modified, constitutes a miss-selling (*tromperie*) offence.<sup>188</sup> As set out in Article L454-1 of the French Consumer Code,<sup>189</sup> the penalty for miss-selling is incarceration (up to 2 years) and a fine up to 300 000 EUR (criminal penalty).

In Ireland, for an offence under Section 14(1) of the Road Traffic Act 2014, one is liable on summary conviction to a Class C fine (up to 2500 EUR) or up to 3 months imprisonment (or both). It is unlikely that an individual would receive a prison sentence for a once off offence – this is more likely to be reserved for a more serious offender.

In Luxembourg, any person who has imported or offered for sale road vehicles or parts and components of road vehicles which do not meet the set requirements which are related in particular, to European type approval and national type approval, is liable to a penalty of imprisonment for eight days to one year and to a fine of 251 to 5000 EUR, or one of these penalties only.<sup>190</sup> Moreover, Luxembourg distinguishes between private and professional seller (or natural and legal entities) when it comes to sanctions. Professional sellers may also face a criminal offence in accordance to the Penal Code.

In the Netherlands, the Type Approval Motor Vehicles Air Pollution Decree is based on Articles 9.5.1 and 9.5.6 of the Environmental Protection Act. The Economic Offences Act provides that violations of instructions laid down pursuant to these articles constitute economic offences.<sup>191</sup> In case of an intentionally committed offence, according to Article 6 of the Economic Offences Act, the penalty is a

<sup>186</sup> <https://oikeus.fi/tuomioistuimet/karajaoikeudet/fi/index/rikosasiat/seuraamukset/rikesakko.html>

<sup>187</sup> Article L318-3 of the Highway Code.

<sup>188</sup> Article L. 441-1, French Consumer Code (available [here](#)).

<sup>189</sup> Article L454-1, Code de la Consommation (available [here](#)).

<sup>190</sup> Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles, Article 2

<sup>191</sup> Wet op de economische delicten (Economic Offences Act), Article 1a(2), available at <https://wetten.overheid.nl/BWBR0002063/>.

maximum of two years' imprisonment, community service or a fine of the fourth category (maximum 21.750 EUR<sup>192</sup>). The penalty for unintentional offence is a maximum of six months' imprisonment, community service or a fourth category fine.<sup>193</sup> The prohibition on odometer tampering can be seen as constituting criminal behaviour such as fraud or forgery.<sup>194</sup> Under the Dutch Criminal Law Code, the former is punishable with imprisonment of up to four years or a fifth category fine (maximum 87000 EUR),<sup>195</sup> and the latter with a prison sentence of up to six years or a fine of the fifth category.<sup>196</sup>

In Romania, in repairs and other operations, economic operators can only use equipment, components, technical entities, spare parts and products used of origin or approved / certified according to the legislation in force. Failure to do so represents an administrative offense sanctioned with a fine of 3000 to 6000 lei (600-1200 EUR). Economic operators must also issue to the beneficiaries guarantee certificates, including guarantees for new or reconditioned components used. Failure to do so represents administrative offense sanctioned with a fine of 3000 to 6000 lei (600-1200 EUR).<sup>197</sup>

In Italy, the following administrative sanctions included in the Highway Code could be said to apply to tampering:

- any user of a vehicle to which modifications have been made in relation to the characteristics indicated in the certificate of approval and in the registration certificate, or circulates with a vehicle to which the chassis has been entirely or partially replaced, and who are not found to have successfully passed the prescribed inspection and test, is subject to the administrative sanction of paying a sum from 431 EUR to 1,734 EUR. These violations also entail the accessory administrative sanction of the withdrawal of the registration certificate,<sup>198</sup>
- anyone who circulates with a vehicle that has alterations in the construction and functional characteristics prescribed, or circulates with the devices not functioning or not regularly installed, is subject to the administrative sanction of the payment of a sum from 87 EUR to 345 EUR,<sup>199 200</sup>
- tampering with the odometer reader when carried out in relation to the sale of a vehicle could be punished as fraud (Art. 640 of the Italian Criminal Code), or 'trade fraud' (Art. 515 of the Italian Criminal Code),<sup>201</sup>

<sup>192</sup> See [www.rijksoverheid.nl/onderwerpen/straffen-en-maatregelen/vraag-en-antwoord/hoe-hoog-zijn-de-boetes-in-nederland](http://www.rijksoverheid.nl/onderwerpen/straffen-en-maatregelen/vraag-en-antwoord/hoe-hoog-zijn-de-boetes-in-nederland) (last accessed on 15 April 2020).

<sup>193</sup> Economic Offences Act, Article 6.

<sup>194</sup> See [www.parlementairemonitor.nl/9353000/1/i9vvij5epmj1ey0/vkzb6x8wsdro](http://www.parlementairemonitor.nl/9353000/1/i9vvij5epmj1ey0/vkzb6x8wsdro) (last accessed on 15 April 2020).

<sup>195</sup> Wetboek van Strafrecht (Dutch Criminal Law Code), Article 326, available at <https://maxius.nl/wetboek-van-strafrecht/artikel326>.

<sup>196</sup> Wetboek van Strafrecht (Dutch Criminal Law Code), Article 225, available at <https://maxius.nl/wetboek-van-strafrecht/artikel225>.

<sup>197</sup> Government Ordinance no. 82/2000 on the authorisation of economic operators providing repairs, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles.

<sup>198</sup> Art.78 of the Highway Code.

<sup>199</sup> The amount of the penalty is from € 1,210 to € 12,108 if the vehicle is used in for certain competitions provided for in articles 9-bis and 9-ter of the Highway Code.

<sup>200</sup> Art.79 of the Highway Code.

<sup>201</sup> Codice Penale - Regio Decreto 19 ottobre 1930, n. 1398 Approvazione del testo definitivo del Codice Penale. (030U1398) (Gazzetta Ufficiale n.251 del 26-10-1930). Available at [www.gazzettaufficiale.it/anteprima/codici/codicePenale](http://www.gazzettaufficiale.it/anteprima/codici/codicePenale), last accessed 02/06/2020.

- the sale to consumers of used cars providing the buyers with untruthful information in relation to the odometer readings, is considered a misleading practice in violation of Article 21, paragraph 1, letters b) and d), of the Legislative Decree 206/2005 ('Consumer Code')<sup>202</sup> and has become severely sanctioned by the Competition and Market Authority in terms of unfair commercial practice. Pursuant to Art.27, paragraph 9, of the Consumer Code, for such practices the Authority may order the application of a sanction from 5,000 EUR to 5,000,000 EUR (taking into account the seriousness and duration of the violation).

In Poland, the main piece of legislation regulating type-approval process is the 1997 Road Traffic Act. This Act does not introduce specific penalties or sanctions with regards to tampering. Under a general provision, the 1997 Road Traffic act provides that the Director of TDT revokes the type-approval certificate in case of a negative compliance inspection result.<sup>203</sup> The only regulation which specifically addresses tampering is the Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts including the Polish Penal Code. The amendment introduced penalties for odometer tampering, which is subject to a penalty of imprisonment for at least 3 months and a maximum of 5 years.

### 7.5. Consumer remedies

Mostly, there are no specific national legal provisions in relation to the remedies available to consumers that are subject to tampering, and generally applicable provisions (e.g. on national consumer protection legislation) regarding remedies apply in the Member States. The burden of proof mainly falls on the claimant.

In Belgium, the general provisions on hidden defects apply in circumstances of tampering. They provide that the seller is liable for hidden defects and the consumer must prove that there was already a defect when the vehicle was bought (Art. 1641, civil code). If there is a clause exonerating the seller in case of hidden defects, the consumer can prove the seller's dishonesty. Belgium is also an exception, when it comes to the burden of proof (that lies on the claimant in most of the Member States), since if the seller is a professional, there is a presumption of dishonesty and the burden of proof may be shifted on to the seller.

Similarly, in Slovakia, the general provisions from the Civil Code apply. According to Art. 597 of the Slovak Civil Code:<sup>204</sup>

- If a defect subsequently comes to light which the seller has not pointed out to the buyer, the buyer is entitled to a reasonable discount from the agreed price corresponding to the nature and extent of the defect; if it is a defect that makes the thing unusable, the buyer also has the right to withdraw from the contract.
- The buyer has the right to withdraw from the contract even if the seller has assured him that the item has certain qualities, in particular the qualities stipulated by the buyer, or that it has no defects, and this statement turns out to be untrue.

<sup>202</sup> Codice del Consumo – Decreto Legislativo 6 settembre 2005, n. 206 Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229. (Gazzetta Ufficiale n.235 del 8-10-2005 - Suppl. Ordinario n. 162). Available at [www.gazzettaufficiale.it/anteprima/codici/consumo](http://www.gazzettaufficiale.it/anteprima/codici/consumo), last accessed 02/06/2020.

<sup>203</sup> Article 70r the 1997 Road Traffic Act.

<sup>204</sup> Zákon č. 40/1964 – Občiansky zákonník, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201)



The burden of proof has to be borne by consumer, but there is again an exception, that he/she has a right to compensation of necessary costs (e.g. expert testimony) incurred in connection with the exercise of rights regarding liability for defects (Art. 509, par. 1 of the Civil Code).

In Austria, general principles regarding remedies apply. According to the Austrian Civil Code, a producer is liable for damage caused by a defect in his product, unless for example, it is plausible that the defect that caused the damage did not exist at the time when he put the product into circulation, or that this defect arose later<sup>205</sup>.

In Spain, the civil liability regime for defective products seems to apply.<sup>206</sup> In relation to the burden of proof, the injured party, who intends to obtain reparation for the damages caused, has to prove the defect, the damage and the causal relationship existing between both.<sup>207</sup>

In Finland, general principles regarding remedies apply. In terms of a new vehicle, the Consumer Protection Act (38/1978) protects the buyer in the event of a car dealership error. The car must have been purchased from a company, i.e. a car dealer, for example; the Consumer Protection Act will apply only to the relationship between a trader and a consumer. According to the Consumer Protection Act, the seller has a broad responsibility to find out the features and defects in the car. If the defect is not specifically mentioned, the buyer must be able to trust that the car is in a condition that the information suggests. Even if the seller does not know about faults in the car, it is still his/her responsibility. However, the buyer must use the car properly and cannot rely on an error caused by his own negligence or misuse. In terms of a second-hand vehicle, the car trade between two individuals is not subject to the Consumer Protection Act, but the Trade Act (355/1987) will apply. In this case, the position of the buyer is weaker than under the Consumer Protection Act. According to the Trade Act, an individual is also responsible for the condition of the car or other vehicle he or she sells. Deliberately selling a defective product constitutes fraud, but the seller may also have to compensate for latent defects. In practice, the private buyer must reach an agreement with the seller in the event of a defect. In the case of a clear, known error or fraud, the matter can be taken to court.

In France, as well, general principles regarding remedies apply. The consumer could sue the trader for a misleading commercial practice and in particular for the miss-selling practice.<sup>208</sup> Additionally, pursuant to the French Civil Code, the consumer could request the cancellation of the sale for hidden defect.<sup>209</sup> In both cases, the consumer may receive damages from the court. The burden of proof falls on the claimant.

In Ireland, in the context of a business to consumer relationship (such as when a consumer buys from a car dealership), the consumer could bring a case pursuant to the Consumer Protection Act. The consumer could complain to the Competition and Consumer Protection Commission, which may take action against the trader. The consumer may also sue the trader for breach of the Consumer

<sup>205</sup> Allgemeines bürgerliches Gesetzbuch für die gesamten deutschen Erbländer der Oesterreichischen Monarchie (ABGB) (Austrian Civil Code), Articles 922-933, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622).

<sup>206</sup> Articles 135 et seq. of Royal Legislative Decree 1/2007 of 16 November, which approves the consolidated text of the General Law for the Protection of Consumers and Users and other complementary laws. Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias. Available at:

[www.boe.es/buscar/act.php?id=BOE-A-2007-20555](http://www.boe.es/buscar/act.php?id=BOE-A-2007-20555), last accessed 22/05/2020.

<sup>207</sup> Article 139 of Royal Legislative Decree 1/2007.

<sup>208</sup> Article L213-1, French Consumer Code

<sup>209</sup> Article 1641, French Civil Code (available [here](#)).



Protection Act, for a misleading commercial practice. The consumer may receive damages from the court. The burden of proof in Irish law usually falls on the claimant, while the standard of proof in civil cases is the ‘balance of probabilities’ (rather than ‘beyond reasonable doubt’, as is the case for criminal cases).

In Italy, according to the Consumer Code and the more general rules on contracts provided by the Italian Civil Code<sup>210</sup> and Criminal Code, the sale of a vehicle with an altered odometer leads to well-defined responsibilities. It follows that the seller's liability may concern multiple aspects, varying from criminal, contractual and institutional responsibility.

In Netherlands, general principles regarding remedies apply. According to the Dutch Civil Code, a producer is liable for damage caused by a defect in his product, unless for example, it is plausible that the defect that caused the damage did not exist at the time when he put the product into circulation, or that this defect arose later.<sup>211</sup>

In Poland, general provisions on remedies available to consumers under the Polish Civil Code<sup>212</sup> and the Act of 30 May 2014 on consumer protection rights<sup>213</sup> are applicable.

In Germany, following the “*Dieselgate*” scandal, many analyses have been undertaken by German lawyers with regards to remedies available to consumers of cars that have been tampered with, in particular with regards to emission control systems. Currently, the German law foresees warranty claims according to the German Civil Code and non-contractual claims for damages (however, it is questionable whether, in addition to the warranty claims, which can be regarded as contractual entitlements, non-contractual claims for damages on the basis of § 823(1) BGB are conceivable, since in this case, both the persons employed by the manufacturer and the company itself would be considered as defendants (claims for damages on the basis of § 823(1) BGB should therefore regularly fail because none of the legal interests protected by § 823 (1) BGB would be damaged). Claims for damages could also possibly be based on § 826 BGB. According to this provision, a person who wilfully causes damage to another in a manner contrary to good morals (*gute Sitten*) is obliged to compensate the other for the damage. The infringement of a specific legal interest is not required in this case. When it comes to the burden of proof in German civil proceedings, in principle each party in a contentious civil case bears the burden of proof for its assertions (so-called *Beibringungsgrundsatz* - principle of presentation).

## 7.6. Conclusion

In Chapter 7, it was found that vehicle tampering is prohibited under the national law in most Member States, but that this prohibition most often is derived from legislation on type approval processes, rather than included as a specific legal provision. Furthermore, several Member States were found to have in place specific national rules regarding tampering with the emission control

<sup>210</sup> Codice Civile - Regio Decreto 16 marzo 1942, n. 262 Approvazione del testo del Codice civile. (042U0262) (Gazzetta Ufficiale n.79 del 4-4-1942). Available at: [www.gazzettaufficiale.it/anteprima/codici/codiceCivile](http://www.gazzettaufficiale.it/anteprima/codici/codiceCivile), last accessed 02/06/2020.

<sup>211</sup> Burgerlijk Wetboek (Dutch Civil Code), Book 6, Article 185(1), available at <https://maxius.nl/burgerlijk-wetboek-boek-6/artikel185/lid1>.

<sup>212</sup> Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny (the Polish Civil Code), Official Journal 1964 No 16 Item 93, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640160093> (last accessed on 16 June 2020).

<sup>213</sup> Ustawa z dnia 30 maja 2014 r. o prawach konsumenta (the Act of 30 May 2014 on consumer protection rights), Official Journal 2014 Item 827, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20140000827> (last accessed on 16 June 2020).

design, aftermarket parts, the engine, the OBD system and odometer tampering. The chapter also laid out that there is a variety in the type of national authorities in charge of ensuring compliance with legislation on tampering. In relation to sanctions, it was illustrated that a broad scope of both administrative and criminal offences is foreseen at national level in relation to the abovementioned post type-approval legislation on vehicle tampering. Lastly, in relation to consumer remedies, the chapter demonstrated that generally there are no specific national legal provisions in relation to the remedies available to consumers that are subject to tampering, and generally applicable provisions regarding remedies, which place the burden of proof on the claimant, apply in the Member States.

## 8. Periodic roadworthiness tests and technical roadside inspections

### 8.1. Introduction

Chapter 8 takes an in-depth look at the manner in which periodic roadworthiness tests and technical roadside inspections are regulated at national level, by whom, where and how they are carried out, and whether national legislation in relation to these tests and inspections refers directly to vehicle tampering. Secondly, the chapter described the national authorities in charge of the periodic roadworthiness tests and technical roadside inspections, and how these are designated. Furthermore, national obligations on the disclosure of information on the tests and inspections are examined. Lastly, the chapter considers the penalties and sanctions which are applied in the Member States in case of non-compliance with the legislation applicable to periodic roadworthiness tests and technical roadside inspections.

### 8.2. Periodic roadworthiness tests

At national level, the periodic roadworthiness tests are regulated by technical national or, where applicable regional, rules that mostly relate to the requirements set by Directive 2014/45/EU (see Section 2.3).

In Austria, the tests are regulated by Article 57a of the KFG.

In the United Kingdom, the rules on periodic tests for England, Scotland and Wales are contained in the 1981 Motor Vehicles (Tests) Regulations<sup>214</sup>. In Northern Ireland, The Motor Vehicle Testing (Amendment) Regulations (Northern Ireland) 1981 (SR 1981/355) apply<sup>215</sup>.

In Romania, the general framework is established by the Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania and completed by Order no. 2133/2005 on approving the Regulation on the regular roadworthiness tests of road vehicles registered in Romania (RNTR 1), which provides with specific requirements for the organisation of the tests. The framework is similar in Finland, where the Vehicles Act (1090/2002) is the main national legislation, and addresses the periodical and other inspections carried out (Section 1(5) of the Act). This general framework is completed by the Government Decree on the Inspections of the Roadworthiness of Vehicles (1455/2019), which sets the time period between two tests and the rules for emission measurements, and by the Act on Licences for Roadworthiness Test for Vehicles (957/2013), which applies to testers' training.

In Belgium, the tests are regulated by the 23 December 1994 Royal Decree laying out the conditions for approval and administrative control rules of the bodies overseeing registered vehicles as well as the 1968 Royal decree laying down general regulations on the technical conditions to which motor vehicles and their trailers, their components and safety accessories must meet. The 1968 Decree sets requirements whose details may vary depending on the Region of enforcement. For instance, its Article 23ter, §2, 1<sup>o</sup>sexies sets out the time period between tests for heavy-duty vehicles intended for the transports of goods and which have been inspected during the type-approval process. In the Brussels-Capital and Walloon Regions, the first test will take place six months after the first

<sup>214</sup> [www.legislation.gov.uk/ukxi/1981/1694/contents/made](http://www.legislation.gov.uk/ukxi/1981/1694/contents/made)

<sup>215</sup> [www.legislation.gov.uk/nisr/1981/355/contents/made](http://www.legislation.gov.uk/nisr/1981/355/contents/made)

registration and then every six months, whereas in the Flemish Region, the first test will take place a year after and then each year.

Periodic roadworthiness tests are carried out in specific garages centres, designated by the competent regional or national authority.

In some Member States, several bodies may carry out these tests. For instance, in Italy, there are public control centres of the competent Ministry, as well as private centres, which must be specifically authorised by the Ministry to carry out the tests in particular circumstances<sup>216</sup>. In Poland, motor vehicle inspection stations may carry out inspections only for vehicles weighting less than 3.5 tonnes; there are therefore regional diagnostic stations which can carry out tests for all types of vehicles, including for heritage vehicles<sup>217</sup>.

In several Member States, the period between two tests depends on the category of the vehicle (e.g. M1, N1). In other Member States, the period between two tests depends on the weight of the vehicle; heavy-duty vehicle will undergo roadworthiness tests more often than light-duty ones. The fact that a vehicle is used for passenger transportation can also shorten the time period. In France, periodic roadworthiness tests are carried out every 2 years for light-duty vehicles, every year for heavy-duty vehicles, and every 6 months for buses and coaches<sup>218</sup>. In the Netherlands, the type of fuel used by a vehicle is also taken into account to calculate the time between two roadworthiness tests, in addition with the weight and age of the vehicle<sup>219</sup>.

In addition, the period between the registration of the vehicle and its first periodic test is usually longer than between all the following tests. In Slovakia, for example, M1 and N1 vehicles must undergo their first periodic roadworthiness test four years after their registration. Afterwards, the test will have to be done every two years<sup>220</sup>. In Romania, the period between two tests is shortened once the vehicle reaches a certain age for passenger cars, the first test must be carried out three years after the vehicle registration, and once every two years after that. Once the vehicle is older than twelve years old, then it must undergo the periodic test each year<sup>221</sup>.

Regarding the specific steps of such tests, periodic roadworthiness testers must carry out many verifications, which all are precisely detailed in national regulations. In general, the verifications aim at assessing the road-safety of the vehicle and its compliance to environmental rules and at identifying the vehicle. If defects are identified, they usually are classified according to their gravity.

In France for instance, 610 failures are potentially identifiable on 133 checkpoints for light-duty vehicles<sup>222</sup>. As for heavy-duty vehicles, 820 failures are potentially identifiable on 195 checkpoints<sup>223</sup>. Once identified, the severity of the failure is determined. It can be a:

- Minor failure: having no consequences on the security of the vehicle or on the environment.
- Major failure: likely to compromise vehicle safety, have a negative impact on the environment or endanger other road users.

<sup>216</sup> Art.80, paragraph 8, Italian Highway Code.

<sup>217</sup> [www.gov.pl/web/infrastruktura/badania-techniczne-pojazdow](http://www.gov.pl/web/infrastruktura/badania-techniczne-pojazdow)

<sup>218</sup> French Highway Code, Art. R323-22 to Art. R323-25.

<sup>219</sup> [www.rijksoverheid.nl/onderwerpen/apk/vraag-en-antwoord/hoe-vaak-moet-ik-mijn-auto-apk-laten-keuren](http://www.rijksoverheid.nl/onderwerpen/apk/vraag-en-antwoord/hoe-vaak-moet-ik-mijn-auto-apk-laten-keuren)

<sup>220</sup> Order no. 137/2018 Coll. on technical inspection, At. 47.

<sup>221</sup> G. O. no. 81/2000, art. 2 (3), (3<sup>1</sup>).

<sup>222</sup> Annex I, Order of 18 June 1991

<sup>223</sup> Annex I, Order of 27 July 2004

- Critical failure: constituting a serious anomaly or a direct and immediate danger to road safety or the environment.

Depending on the identified failure, the outcome of the test will be favourable (minor or no failure), unfavourable for major failures (the inspection will be valid for two months, or one month for heavy vehicles, from the date of the technical inspection) or unfavourable for critical failures (the validity of the inspection will be limited to the day of the inspection). In the case of unfavourable result (either for major or critical failure), the identified failures must be fixed within the two months (one month for heavy vehicles) following the test and the vehicle must be submitted to a follow-up test.

In Italy, the test must cover at least the following areas listed in Annex I, point 2 of Ministerial Decree 19 May 2017 (Protocol 214):

- vehicle identification;
- braking system;
- steering;
- visibility;
- electrical system and parts of the electrical circuit;
- axles, wheels, tires, suspensions;
- frame and elements fixed to the frame;
- other equipment;
- harmful effects;
- additional checks for vehicles of categories M2 and M3 used for the transport of passengers.

The defects detected are classified as follows: minor defects, serious defects, and dangerous (very serious) defects<sup>224</sup>.

In Ireland, there is a separate type of test for commercial vehicles, which is divided in two parts, one for light-duty vehicles and one for heavy-duty vehicles<sup>225</sup>. For all tests, the tester shall have available electronically to him or her the information included in the previous test (if any) for the purpose of checking the information in the odometer, if fitted. If defects are identified, they are categorised minor, major or dangerous.

In addition, some Member States require a specific emission control test. In France for instance, light-duty vehicles are submitted to emission control tests, which are separate from roadworthiness tests and must be carried out in between two roadworthiness tests, every two years<sup>226</sup>.

The testers who carry out periodic roadworthiness work in the centres designated by authorities. In Ireland, they must work in an impartial, objective, free of all conflict of interest manner and are certified by the competent authority after the required training and upon demonstrating evidence of the required competence to carry out tests<sup>227</sup>. In Italy, where there are public and private centres, the testers in public centres are inspectors from the Ministry whereas in private centres they are authorised and appointed by the Ministry. Both inspectors must meet specific requirements<sup>228</sup>.

<sup>224</sup> Art.7 and Annex I, point 3 of Ministerial Decree 19 May 2017 (Protocol 214).

<sup>225</sup> Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012.

<sup>226</sup> Art. 323-22, French Highway Code.

<sup>227</sup> Road Traffic (National Car Test) Regulations 2017 (SI 415 of 2017).

<sup>228</sup> Art.13 and Annex IV of Ministerial Decree 19 May 2017 (Protocol 214), Art.80 of the Highway Code and Art.239 of the Implementing Regulation.

With regard to tampering in particular, several Member States provide for specific verifications in order to identify tampered vehicles or parts in the national legal measures relating to periodic roadworthiness tests. The United Kingdom, for example, provides that testers should check for evidence that the Diesel Particulate Filter has been removed or tampered with<sup>229</sup>. In Slovakia, the applicable Orders provide for a method and criteria to assess whether odometers or OBD systems have been tampered with or not<sup>230</sup>. In Luxembourg, the applicable rules set out a list of checkpoints and for each of them, non-compliance causes. For instance, the odometer will be verified and declared non-compliant in case of 'obvious manipulation (fraud) to reduce or give a misleading representation of the number of km travelled by the vehicle'<sup>231</sup>. Exhaust emissions are also checked and non-compliant if 'the emission reduction equipment fitted by the manufacturer is absent, modified or manifestly defective'<sup>232</sup>. In addition, testers have access to the odometer reading of the previous periodic test<sup>233</sup>.

### 8.3. Technical roadside inspections

Technical roadside inspections, in the Member States, are mostly regulated through national legal measures relating to Directive 2014/47/EU (see Section 2.3).

In France for instance, this measure is the Order of 8 June 2017 relating to the technical roadside inspection of heavy vehicles<sup>234</sup> (which applies to all types of vehicles, despite its title).

In Slovakia, the Act no. 106/2018 Coll. on operation of vehicles describes roadside inspections and sets out the qualifications that inspectors must have. Order no. 135/2018 Coll. on technical roadside inspection provides the other requirements for the inspections (which vehicles should be inspected, what to verify during the inspection and possible outcomes of the inspection).

In Italy, the Ministerial Decree 19 of May 2017 (Protocol 215) and some parts of the Highway Code (Article 12 in particular) apply to roadside technical inspections.

In Ireland, this is regulated by Sections 32-35 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 and Commercial Vehicle Roadworthiness (Roadside Enforcement) Regulations 2018 (SI 161 of 2018).

At national level, technical roadside inspections usually are divided in two parts: a mandatory initial inspection and, if deemed necessary, a further in-depth inspection. There is not always a specified place for initial inspections; however, in-depth inspections can take place in a mobile unit or in a near control centre. In Spain for example, if an in-depth inspection is carried out, it will take place either in a mobile inspection unit or at the nearest station for periodic roadworthiness test<sup>235</sup>.

Regarding the way the inspections are conducted, it appears that they must legally be carried out randomly, without discrimination against the nationality of the driver or the State of registration of the vehicle inspected. Many Member States nonetheless prioritise the inspection of high-risk profile

<sup>229</sup> Motor Vehicles (Tests) Regulations 1981;

For Northern Ireland : The Motor Vehicle Testing (Amendment) Regulations (Northern Ireland) 1981.

<sup>230</sup> Order no. 137/2018 Coll. on technical inspection, Annex 9 and Order no. 138/2018 Coll. on emission control, Annex 10.

<sup>231</sup> Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles, Annex II, 7.11)

<sup>232</sup> Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles, Annex II, 8.2.1.1.a)

<sup>233</sup> Art.3 Grand-Ducal Regulation of 26 January 2016 regulating traffic on all public roads

<sup>234</sup> Arrêté du 8 juin 2017 relatif au contrôle technique routier des véhicules lourds, available here (last accessed on 28/05/2020).

<sup>235</sup> Article 18.2 of Royal Decree 563/2017.

vehicles and/or vehicles which are suspected to have a defect. In Belgium, there is an order of priority to choose which vehicle to inspect: vehicles used by high-risk companies, then those suspected of representing a high risk for road safety or the environment, then those randomly selected – without any discrimination<sup>236</sup>. In France, there are no such criteria and vehicles are selected randomly, without any discrimination<sup>237</sup>.

Regarding the steps that should be followed in such inspections, the verifications of the initial inspection focus on the certificates and documents that the driver should have and on the visual technical aspect of the vehicle. If a defect is identified or suspected, an in-depth inspection may take place. The latter will focus on the said defects. National regulations are relatively similar regarding this part of the inspection. In Romania, for instance, the initial inspection can be: a visual inspection of the technical status of the parked vehicle; a verification of a recent test or inspection documentation performed in the registration state; and/or an inspection for detecting technical deficiencies on one, several, or all check points listed in the roadside inspection report. If inspectors evaluate the importance of deficiencies as capable to create a risk for road safety, especially with regard to the braking system, they can subject the vehicle to a complex inspection in an authorised periodic roadworthiness test station<sup>238</sup>.

The inspectors are generally from the entities in charge of road safety or highway safety, and the training or requirements that they must have or meet is usually specified. In Ireland, the inspections are conducted by vehicle inspectors of the Road Safety Authority.<sup>239</sup>

In some Member States, a different body will carry out the in-depth inspection. In the Netherlands for instance, the police are in charge of initial inspections and the Netherlands Vehicle Authority (RDW) is in charge of the in-depth ones<sup>240</sup>.

In Finland, however, it does not appear that two inspections are envisaged by the law. The inspection can be carried out with or without prior notice by police, customs, or border guards. At least one of the following must be carried out during the technical roadside inspection:

- A visual inspection of the condition of the vehicle when stationary;
- An inspection of the documents certifying the technical condition of the vehicle, the performance of inspections and compliance with other regulations;
- An inspection of the technical condition of the vehicle<sup>241</sup>.

Concerning tampering in particular, some Member States seem to impose checks specifically related to tampering in the relevant national measures regarding technical roadside inspections. However, the relevant legal provisions in Romania<sup>242</sup> and Slovakia<sup>243</sup> explicitly require inspectors to verify that

<sup>236</sup> Order of the Brussels-Capital Region Government of 19 July 2018 and of the Walloon Government of 6 July 2017 concerning technical roadside inspections of commercial vehicles registered in Belgium or abroad, and the Order of the Flemish Government of 2 March 2018 on the technical roadside inspection of commercial vehicles.

<sup>237</sup> Order of 8 June 2017 relating to the technical roadside inspection of heavy vehicles, see here

<sup>238</sup> Order no. 510/230/2007 – RTRN 11, art. 7 (4), art. 10 (3).

<sup>239</sup> Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012, Sections 32-35, and Commercial Vehicle Roadworthiness (Roadside Enforcement) Regulations 2018 (SI 161 of 2018).

<sup>240</sup> <https://zoek.officielebekendmakingen.nl/stcrt-2017-26291.html>

<sup>241</sup> Section 14 of the Government Decree on the Inspections of the Roadworthiness of Vehicles (1455/2019)

<sup>242</sup> Order no. 601/2017, Annex 2.

<sup>243</sup> Order no. 135/2018 Coll., Annex 1



some vehicle parts have not been tampered with. The Romanian rule lists that engine performance, odometer, and emissions control systems must be checked for any evidence of tampering. The Slovakian rule recommends methods and criteria to be used to determine whether an odometer has been tampered with or not. In Luxembourg, the Grand-Ducal Regulation of 26 January 2016 on the technical control of road vehicles provides a specific method to check the components during the in-depth inspection. The method sets out causes for non-compliance, which are similar to the periodic test causes. For instance, engine performance must be checked, a defect is identified in case of a modification of the engine or a modified control unit affecting safety and / or the environment. Tachographs must be checked, a defect is identified in particular in case of obvious alteration or manipulation.

#### 8.4. Relevant national authorities

In each Member State, there are authorities in charge of the tests and inspections mentioned above. They often are linked with the national or regional Ministry of Transport or the Police and, in case there is not a single authority in charge of both tests and inspections, they tend to collaborate with each other.

All Member States have different authorities in charge of roadworthiness tests, although they usually are public bodies in charge of road safety or bodies of the Ministry of Transports. The bodies often are national but can be regional. In Ireland, the Road Safety Authority is responsible for the tests. In Poland, the authority in charge is the head of each county administration. In the United Kingdom, the Driver & Vehicle Standards Agency, an executive agency of the Department of Transport is in charge of the MOT in England and Wales, and Scotland. The Driver & Vehicle Agency, an executive agency of the Department for Infrastructure, is in charge of the MOT in Northern Ireland. In Germany, there is no public body in charge of the tests, but several officially recognised testing organisations. The authority responsible for giving the accreditations is the KBA, which is also the main type-approval authority.

In most Member States, the Police are in charge of technical roadside inspections, as part of their role of traffic supervision. This is for example the case in Poland, Spain, or Finland.

The Police are not always the sole entity in charge; in the Netherlands, they collaborate with the Netherlands Vehicle Authority (RDW) to supervise the inspections. In Italy, the Directorate General for Motorisation, a body of the Ministry of Infrastructure, is responsible for the roadside inspections.

In the United Kingdom, there is no national authority in charge of these inspections. Authorised examiners for roadside tests in England, Scotland and Wales may be a person appointed to act by the Secretary of State; a constable authorised so to act by or chief officer of police; a person appointed by a chief officer of police in England or Wales (other than the Commissioner of Police for the City of London) to act, under the directions of that chief officer; and a person appointed by the police authority in Scotland, or by the Common Council of the City of London, to act, under the directions of the chief officer of police.<sup>244</sup> In Northern Ireland, the 1995 Road Traffic Order<sup>245</sup> provides that a constable authorised so to act by or on behalf of the Chief Constable; and a person appointed as an examiner under Article 74 of the Order may carry out roadside tests.

<sup>244</sup> Road Traffic Act 1988 Section 67.

<sup>245</sup> Road Traffic (Northern Ireland) Order 1995.

Concerning the designation of these authorities, national rules may directly designate them. This is the case in Italy, for both tests and inspections<sup>246</sup> as well as in Romania.<sup>247</sup>

In the United Kingdom, the entity in charge of roadworthiness tests is designated by a Regulation<sup>248</sup> for England, Scotland and Wales. For roadside inspections, the Road Traffic Act 1988 Section 67, which sets out who may act as authorised examiners, applies in England, Scotland and Wales. In Northern Ireland, an Order designates the competent bodies for periodic tests and roadside inspections<sup>249</sup>.

The authorities may also be designated by a regional or another sub-national entity. In Spain, the autonomous communities designate the periodic tests stations<sup>250</sup>. In France, the head of departments (sub-regional territories) deliver accreditation to test centres. It will work with the Ministry of Transports for networks of test centres accreditations.<sup>251</sup>

## 8.5. Disclosure of information

Under the legal system in most Member States, information on tests and inspections must be disclosed, in order to be integrated in a national database. Most Member States do not require the exchange of information beyond that provided for in EU law in relation to periodic roadworthiness tests and technical roadside inspections (see Section 2.4), and thus have rather similar national legal requirements in place in this regard.

In Slovakia, there is a database which gathers all data from periodic roadworthiness tests (CIS TK)<sup>252</sup> and one from roadside inspections (CIS CTK)<sup>253</sup>. The inspectors must also provide information on vehicle operational records, including data on current states of odometers, to the RPVZ<sup>254</sup>. In addition, there is a specific database for emission systems controls (AIS EK) which gathers all data stated in the protocol on emission control<sup>255</sup>.

In Belgium, periodic test centres provide any information requested by the Minister of Road safety or his delegate. They should also disclose to the General Director of the Traffic and Infrastructure Regulation Administration: the number of services provided at each place of business; the list of the effective presence of the staff during the past financial year in each seat of activity; their operating account for the past year; and their annual accounts, balance sheet and profit and loss account for the past financial year as well as a detailed report on all of their activities<sup>256</sup>.

In Ireland, the Road Safety Authority publishes a disclosure log on its website, indicating the information which has been disclosed<sup>257</sup>. For instance, it publishes pass and fail rates for each Road

<sup>246</sup> Art.3, paragraph 1(o) of Ministerial Decree 19 May 2017 (Protocol 214).

<sup>247</sup> Government Ordinance no. 81/2000 (for periodic roadworthiness tests) and Order no. 601/2017 amending and supplementing the methodological norms on how to carry out inspections and checks on road transport (for technical roadside inspections).

<sup>248</sup> Motor Vehicles (Tests) Regulations 1981.

<sup>249</sup> Road Traffic (Northern Ireland) Order 1995, Art. 61.

<sup>250</sup> Article 21.1. of Royal Decree 920/2017.

<sup>251</sup> Articles R323-6 to R323-21, Highway Code

<sup>252</sup> Art. 74, par. 1, let. i) of the Act no. 106/2018 Coll. on operation of vehicles.

<sup>253</sup> Art. 74, par. 7, let. c), d) of the Act no. 106/2018 Coll. on operation of vehicles.

<sup>254</sup> Art. 74, par. 1, let. q) and par. 7, let. g) of the Act no. 106/2018 Coll. on operation of vehicles.

<sup>255</sup> Art. 75, par. 1 i) of the Act no. 106/2018 Coll. on operation of vehicles.

<sup>256</sup> Art. 26 of the 1994 Order on periodic roadworthiness tests.

<sup>257</sup> [www.rsa.ie/en/Utility/About-Us/Freedom-of-Information/FOI-Publication-Scheme/FOI-Disclosure-Log](http://www.rsa.ie/en/Utility/About-Us/Freedom-of-Information/FOI-Publication-Scheme/FOI-Disclosure-Log)

Safety Authority test centre around the country with a breakdown by month, licence type, and test centre.

In Spain, Royal Decree 563/2017 regulating technical roadside inspections and Royal Decree 920/2017 regulating roadworthiness tests do require the disclosing of information. Specifically, Royal Decree 563/2017 establishes that, on a monthly basis, certain information<sup>258</sup> shall be provided to the competent traffic authority, which shall communicate the information to the European Commission.<sup>259</sup> Stations that have performed vehicle inspections shall send (within ten days following the inspection) the inspection report to the Provincial Traffic Headquarters<sup>260</sup>, in addition to sending it to the Central Traffic Headquarter, which is the body in charge of notifying other Member States when a vehicle registered in their territory is inspected in Spain and is prohibited from being on public roads<sup>261</sup> and notifying the Commission<sup>262</sup>. Moreover, Royal Decree 920/2017 establishes that the Directorate General for Industry and Small and Medium-Sized Enterprises is the national contact point in charge of exchanging information with the other Member States of the European Union and the European Commission regarding the application of Directive 2014/45/EU.<sup>263</sup>

In Romania, no third party is involved in the disclosure of information. Both the RAR and Road Police (bodies conducting the inspections) keep a copy or original version of the inspection report and deliver a copy to the inspected driver. The Order no. 601/2017<sup>264</sup> also ensures that the necessary information is communicated to other Member States (when a vehicle is not registered in Romania) and the Commission (following the obligation to notify inspection data every two years). In Italy, the 19 May 2017 Ministerial Decree sets out the same requirements<sup>265</sup>.

## 8.6. Penalties and sanctions

Penalties and sanctions are applied in all Member States in case of non-compliance with the legislation applicable to periodic roadworthiness tests and technical roadside inspections in force in the Member States. As detailed below, there are various ways of sanctioning non-compliance with national rules regarding periodic tests, whereas national sanctions in relation to technical roadside inspections are more similar across the Member States.

### 8.6.1. Periodic roadworthiness tests

The most common sanction in relation to periodic roadworthiness tests is a fine to the driver of a vehicle which does not comply with national requirements. In all Member States, if the vehicle represents a danger for road safety or environment, its use will be restricted or prohibited until the defect is repaired. For example, Ireland sanctions the use of commercial vehicles which do not have the relevant roadworthiness certificate by a fine which might go up to 5000 EUR and/or a prison term of up to 3 months<sup>266</sup>. If the vehicle is not commercial, the driver will lose points on its licence<sup>267</sup>.

<sup>258</sup> Information regarding the number of commercial vehicles inspected on the road, including a classification of the vehicles based on the categories they belong to and the country of registration. Furthermore, information about the controlled points and the deficiencies found shall also be provided.

<sup>259</sup> Article 15 of Royal Decree 563/2017.

<sup>260</sup> Article 15.3 of Royal Decree 563/2017.

<sup>261</sup> Article 15.2 of Royal Decree 563/2017.

<sup>262</sup> Article 15.1 of Royal Decree 563/2017.

<sup>263</sup> Article 24 of Royal Decree 920/2017.

<sup>264</sup> Order no. 601/2017 amending and supplementing the Methodological norms on how to carry out inspections and checks on road transport.

<sup>265</sup> Ministerial Decree 19 May 2017 (Protocol 215), Art. 16 and Art. 20.

<sup>266</sup> Section 6 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012

Some Member States also sanction drivers who did not get their vehicle periodically tested. However, this fine usually is lower than the one sanctioning the use of a vehicle which should be repaired (as above). In Italy, drivers who have not been to the prescribed periodic test are sanctioned by an administrative fine from 173 EUR to 695 EUR; whereas those driving vehicles which have been suspended from circulation after such a test may face an administrative fine from 2.002 to 8.009 EUR<sup>268</sup>.

France also has similar sanctions, although these constitute criminal sanctions<sup>269</sup>.

In Luxembourg, however, there is no other sanction than the restriction of the use of the vehicle if it is not compliant<sup>270</sup>.

There also are specific sanctions applied to technical centres which carry out the tests. Belgian law sanctions garages which do not comply with regional requirements by an administrative fine ranging from 750 to 10 000 EUR. The amount of the fine depends on the Region and on the exact conditions of the violation.<sup>271</sup> Italian law also sanctions these centres when they do not disclose the required information to the Ministry, or if they provide false audit certificates by an administrative fine of 431 to 1.734 EUR.

Lastly, Romanian law sanctions manufacturers which do not comply with their obligation to specify to test centres which parts of the vehicles should be tested and to recommend testing methods. The sanction is an administrative fine which may be from 1000 Lei up to 3000 Lei.<sup>272</sup>

#### 8.6.2. Technical roadside inspections

The sanctions related to technical roadside inspections are less diverse and all apply to the driver or owner of vehicle. In addition, the sanctions appear to generally be lower than those related to periodic roadworthiness tests. In some Member States (e.g. France and Ireland), no specific sanctions related to roadside inspections seem to be in place.

In Finland, for example, if defects are identified, or if the vehicle is not allowed to be on the road, the inspectors may withdraw its registration plates, transfer plates, registration certificate, test number certificate, transfer license or use any other appropriate means to prevent the vehicle from being on the road. In case the defect does not pose an immediate threat, a time limit within which it must be rectified is set<sup>273</sup>. The driver of the vehicle will be fined if it fails to comply with the repair obligation, violates the prohibition on the use of a vehicle or the prohibition on driving, fails to comply with the obligation to keep the vehicle roadworthy, violates the obligation to allow the performance of a technical roadside inspection, and/or fails to comply with the inspection obligation. For example, the fine for the use of an uninspected or unregistered vehicle is 70 EUR<sup>274</sup>.

In Belgium, the sanction also depends on the gravity of the defect identified. Similarly, if the vehicle poses a direct and immediate danger, its use will be restricted or prohibited as long as the defect is not repaired. In case the defect constitutes an infraction, the driver will be sanctioned with a criminal fine. The maximum fine is 3.500 EUR, unless the driver refuses to be inspected, then the maximum is

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<sup>267</sup> S.I. No. 415/2017

<sup>268</sup> Art.80, paragraph 14, of the Highway Code,

<sup>269</sup> Article R323-1, Highway Code

<sup>270</sup> Law of 26 January 2016 concerning the regulation of traffic on all public roads , Art. 3.

<sup>271</sup> Art. 29.1 of the 1994 Order on periodic roadworthiness tests.

<sup>272</sup> G. O. no. 81/2000, art. 6<sup>^</sup>2 (1)-(8).

<sup>273</sup> Section 84 of the Vehicles Act

<sup>274</sup> Section 96 of the Vehicles Act.

6.600 EUR. For example, if the emission control device has been modified, the driver is sanctioned with a 2.500 EUR fine.

Finally, it is interesting to note that in the Netherlands, there seem to be no specific sanctions for these tests or inspections, because they are seen as ways to enforce the rules on type-approval and tampering.

### 8.7. Survey findings

In relation to France, DEKRA (a company in charge of a network of periodic test centres) indicated that additional items were included as part of the periodic roadworthiness tests since they were included before the entry into force of Directive 2014/45/EU (e.g. OBD test, suspension and side slip benches). This stakeholder also noted that tests are performed only in authorised stations, by authorised inspectors that are fully independent from sales/repair activities, and supervised through different means (e.g. monitoring of statistics, discrepancy tests, regular audits for stations and inspectors).

The German Central Agency for periodic roadworthiness tests (FSD Zentrale Stelle) indicated that if high defect rates are identified in a type of vehicle, this is notified to the manufacturers. In addition, typical defects are notified to testers by the FSD Zentrale, which gathers national data on periodic tests.

A Slovak accredited inspection body (TESTEK, a.s.) mentioned, in relation to the Slovak databases gathering all data from periodic roadworthiness tests (CIS TK), from roadside inspections (CIS CTK), and from emission systems controls (AIS EK) that these were not publicly available, the only available information covers whether a vehicle has been periodically tested or not.

The Estonian Road Administration (ERA) remarked that periodic roadworthiness tests are carried out by private companies who have signed a contract with ERA, and that inspectors need to be certified by them. The ERA coordinates the periodic roadworthiness tests process, and information on these tests is publicly available (<https://eteenindus.mnt.ee/public/soidukTaustakontroll.jsf>). Lastly, the ERA mentioned that the sanctions for periodic roadworthiness tests are 1) the obligation to pass re-inspections; and 2) the use of a vehicle can be prohibited.

In relation to sanctions, the Traficom remarked that there were no penalties applied in Finland to customers who brought tampered vehicles to periodic roadworthiness tests. The Estonian Road Administration mentioned that the Estonian law sanctions with a fine of up to 400 EUR drivers of vehicles which did not pass the periodic test. In case the inspected vehicle is a commercial vehicle, the fine will go up to 1.200 EUR and the vehicle might be detained.

The Center for Vehicles of Croatia (a private company with public authorisation for organising and performing PTI and registration procedures in PTI system in Republic of Croatia) noted in relation to periodic roadworthiness tests – which fall under the responsibility of the Ministry of the Interior - that the odometer reading is checked and inspectors are provided with odometer reading from last test which they can compare with present one. The stakeholder remarked that if an odometer reading is less than the year before, and only if the inspector can prove that this is a result of present owner manipulation, the vehicle may be failed. The Center noted that the test also includes a visual check of the vehicle exhaust emission system, and if inspector finds out that some parts are missing (like DPF or catalytic converter, EGR, etc.), the vehicle may also be failed. It also provided that technical roadside inspections are executed and organised by the Ministry of the Interior, that road

inspectors, policemen, customs inspectors and weighing personnel participate in these inspections, and that most tampering identified is connected to odometer reading and tachograph tampering.

## 8.8. Conclusion

In this chapter, it was found that national rules regarding periodic roadworthiness tests and technical roadside inspections mostly relate to the requirements set by Directive 2014/45/EU and Directive 2014/47/EU respectively. With regard to tampering in particular, the chapter set out that several Member States provide for specific verifications in order to identify tampered vehicles or parts in the national legal measures relating to periodic roadworthiness tests. Similarly, it was found that some Member States seem to impose checks specifically related to tampering in the relevant national measures regarding technical roadside inspections. Furthermore, the chapter described that the authorities in charge the tests and inspections are often linked with the national or regional Ministry of Transport or the Police and, in case there is not a single authority in charge of both tests and inspections, they tend to collaborate with each other. The national authorities are designated either directly through national rules, or by a regional or sub-national entity. In addition, it was found that in most national legal systems, information on tests and inspections must be disclosed, in order to be integrated in a national database, but that most Member States do not require the exchange of information beyond that provided for in EU law in this regard. Lastly, in relation to penalties and sanctions, non-compliance with national rules regarding periodic tests seem to be of various natures, whereas national sanctions regarding technical roadside inspections are more similar across the Member States.

## 9. National strategies and initiatives regarding vehicle tampering

### 9.1. Introduction

This chapter investigates national strategies and initiatives regarding vehicle tampering carried out by national public bodies. More specifically, it considers those relating to the collection of odometer data, the tracking of mileage history and the measuring of emissions, and describes research conducted by national public authorities on vehicle tampering. Secondly, the chapter looks into strategies and initiatives enacted by private stakeholder. Lastly, it examines whether any of these strategies or initiatives were based on or resulted in national legislation.

### 9.2. Collection of odometer data

Odometer data is often collected at Member State level and gathered in a national database. Where such a database exists, there usually is a national legal obligation for some actors to disclose that data. In several Member States, this data is used by inspectors and testers in order to have access to the previous odometer reading of a vehicle for the purposes of detecting odometer tampering.

In Poland, the data obtained during periodic tests has been gathered since 1 January 2020 in the Central Register of Vehicles and Drivers (CEPiK)<sup>275</sup>. The system gathers data on the odometer exchange and odometer readings collected during technical inspections. This system is mentioned in the Law of road traffic in the field of odometers.

In Slovakia, there is theRPVZ which gathers odometer data. Many actors are legally obliged to disclose odometer data<sup>276</sup> :

- Technical services provide data obtained during roadworthiness tests (technical inspections and emission controls performed at Technical Inspection Stations and Emission Control Workplaces), technical roadside inspections and controls of originality;
- The Police, when recording a car accident or a registration change of a vehicle;
- The Ministry of Transport, when recording international cargo transport;
- Manufacturers and their representatives during the repair, maintenance or inspection of vehicles or repair or replacement of odometers;
- Auto services during the repair, maintenance or inspection of vehicle;
- Insurance, auction and leasing companies, car rentals and used cars dealers/sellers.

In the Netherlands, all companies recognised by the Vehicle Authority (RDW) are legally obliged to disclose odometer readings for passenger cars and light commercial vehicles<sup>277</sup>.

In Belgium, odometer data is gathered by the Car-Pass association, which is in charge of providing certificates for the sale of second-hand vehicles. Vehicle professionals (importers, manufacturers, testers and inspectors) are required to disclose odometer data, which is stored in the Car-Pass'

<sup>275</sup> [www.cepik.gov.pl/-/zmiany-w-przepisach-prawo-o-ruchu-drogowym-w-zakresie-drogomierzy](http://www.cepik.gov.pl/-/zmiany-w-przepisach-prawo-o-ruchu-drogowym-w-zakresie-drogomierzy) .

<sup>276</sup> Art. 48 of Act no. 106/2018 Coll. on operation of vehicles and Art. 6, par. 2, let. g), q) of Order no. 139/2018 Coll. on control of originality

<sup>277</sup> [www.automobielmanagement.nl/download/RDW.pdf](http://www.automobielmanagement.nl/download/RDW.pdf)



database.<sup>278</sup> The Car-Pass certificate has had to provide Euro norm and CO2 emission data of vehicles, in addition to odometer data, since 2018<sup>279</sup>. In addition, a project between Belgium and the Netherlands was set up in 2016 in order to exchange odometer data of vehicles being imported from each other's territories. Since the results of the project had a significant effect on the number of tampered odometers,<sup>280</sup> the Netherlands are currently conducting investigations to improve these exchanges and extend them to other Member States<sup>281</sup>.

In France, there is no collection of odometer data. However, in the French Parliament, a bill providing for the creation of a register for mileage history was proposed in March 2020. This bill is still in the early stages of the legislative process.

In Italy, the Automobile Club of Italy (a public body) has proposed to develop a 'digital logbook', which would certify the real mileage and list the maintenance interventions that were carried out on each vehicle. This would be possible with the use of blockchain technology and be accessible via a mobile application<sup>282</sup>.

### 9.3. Tracking of mileage history

There are many initiatives which help buyers of (mostly second-hand) vehicle to have access to the mileage history of a specific vehicle. Although these initiatives do not always stem from national legislation, many of them are handled by public bodies. The most common initiative is to allow vehicle buyers to have access to a part of the national database, either free of charge or at very low cost (less than 10 EUR).

In Belgium, the Law has provided since 2006 that a 'Car-Pass' certificate must be provided with every second-hand vehicle sold, unless both the seller and buyer are professionals in the vehicle field. The certificate costs 8.80 EUR and provides the vehicle's mileage history<sup>283</sup>. The need for a certificate was implemented by the 2004 Order on the information to provide when selling second-hand vehicles, but the Car-Pass association only received official approval in 2006 (through the Royal order of 4 May 2006 approving the association responsible for recording vehicle mileage<sup>284</sup>), which is why the Car-Pass certificate has been mandatory since 2006. Each certificate has its own number, which can be used online (for free) to verify its authenticity<sup>285</sup>.

A very similar initiative exists in Slovakia, where anyone can request a mileage certificate based on information from a national database when giving the VIN number of a vehicle and paying 8 EUR.

In Romania, the Romanian Automotive Register has set up a free online application which can give access to odometer data of a vehicle, if its identification number is provided by the user. This is linked with the national database for odometer readings, which is managed by the same authority.

<sup>278</sup> Royal Decree of 4 May 2006 on the approval of the association in charge of the registration of vehicle mileage

<sup>279</sup> 4 May 2006 Royal Decree amended in 2018.

<sup>280</sup> <https://gocar.be/fr/actu-auto/actualite/car-pass-aussi-efficace-avec-les-importations-des-pays-bas-9865575>

<sup>281</sup> [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf)

<sup>282</sup> [www.ansa.it/canale\\_motori/notizie/componentie\\_tech/2019/03/04/acistop-a-truffe-del-contachilometri-con-fascicolo-digitale\\_e901f65c-194f-4e48-bc46-e69bd24185b6.html](http://www.ansa.it/canale_motori/notizie/componentie_tech/2019/03/04/acistop-a-truffe-del-contachilometri-con-fascicolo-digitale_e901f65c-194f-4e48-bc46-e69bd24185b6.html)

<sup>283</sup> Art. 4. §3 of the 2004 Order on second-hand vehicles

<sup>284</sup> [www.code-de-la-route.be/textes-legaux/sections/ar/ar-040506/779-art1-4](http://www.code-de-la-route.be/textes-legaux/sections/ar/ar-040506/779-art1-4)

<sup>285</sup> [www.car-pass.be/en/buy](http://www.car-pass.be/en/buy)

In Ireland, there is a mileage database established for the Motor Trade and wider Automotive Industry to help combat the illegal practice of car clocking. It is the Irish National Mileage Register (INMR)<sup>286</sup> and is Ireland's largest publicly available database of car mileage readings with over 15 million readings recorded. The register is operated by a private company called Benchmark Fleet Services Ltd.

In the Netherlands, the access to the database depends on the identity of the user. The Vehicle Authority (in charge of the database) can only give detailed information regarding the mileage history of a vehicle to owners of passenger cars or light commercial vehicles<sup>287</sup>. People owning a passenger car or planning on purchasing one can ask for an 'odometer check', which is a judgement from the authority, stating whether the odometer reading seems logical or not. The odometer check does not allow access to mileage reading<sup>288</sup>.

In Germany, three private solutions exist to prevent consumers from buying tampered vehicles. The first one is the Car-Pass certificate (already in force in Belgium), which will soon be offered in Germany. However, unlike in Belgium, this will not be mandatory. Then, the German Automobile Club has created a tamper-proof chip, which can be permanently installed in cars, and has founded an Initiative against odometer fraud. Finally, the Carly company sells plugs for the latest OBD systems interface, allowing consumers to assess tampering themselves<sup>289</sup>.

#### 9.4. Measuring of emissions

In several Member States, the Real Urban Emissions initiative was implemented for a few months<sup>290</sup>. This was the case in the United Kingdom and France, for example, where there has not been a similar project since, but also in Belgium, where another project is currently in place. In fact, the Walloon Region of Belgium is testing a remote emission measurement equipment along a highway, with an Automatic Number Plate Recognition camera. This will help targeting which types of vehicles should be tested with priority in a 2021 project, which aims at measuring real driving emissions<sup>291</sup>.

In Germany, the MesBAR project currently in place aims at developing a mobile, modular pollutant measurement system. Drones would measure pollution levels in high emission areas. This would also improve pollution predictions<sup>292</sup>.

Lastly, an experiment is planned in Bratislava 'based on the measurement of various components of the environment by 400 sensors and subsequent publication of data on environmental quality'<sup>293</sup>.

#### 9.5. National research on vehicle tampering

Some national public institutions or authorities have conducted research at a national level regarding vehicle tampering; often this research was implemented as a direct response to the "Dieselgate" events.

In Germany, in reaction to the "Dieselgate", an investigative commission was created by the Federal Ministry of Transport<sup>294</sup>. It carried out extensive emission measurements on many vehicles. Two

<sup>286</sup> [www.motorcheck.ie](http://www.motorcheck.ie)

<sup>287</sup> [www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerrapport-aanvragen](http://www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerrapport-aanvragen)

<sup>288</sup> [www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerstand-controleren](http://www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerstand-controleren)

<sup>289</sup> [www.test.de/Tachomanipulation-Gebrauchtwagen-Tachobetrug-5271655-0/](http://www.test.de/Tachomanipulation-Gebrauchtwagen-Tachobetrug-5271655-0/)

<sup>290</sup> [www.trueinitiative.org/data](http://www.trueinitiative.org/data)

<sup>291</sup> [www.opurse.com/projects/public-administrations-1/](http://www.opurse.com/projects/public-administrations-1/)

<sup>292</sup> [www.bmvi.de/SharedDocs/DE/Artikel/DG/mfund-projekte/messbar.html](http://www.bmvi.de/SharedDocs/DE/Artikel/DG/mfund-projekte/messbar.html)

<sup>293</sup> [www.tasr.sk/tasr-clanok/TASR:20191126TBA01750](http://www.tasr.sk/tasr-clanok/TASR:20191126TBA01750)

reports were then published. In the first report in April 2016, the results of the nitrogen oxide (NOx) measurements by the KBA (main type-approval authority) were published, along with the abnormalities identified in terms of impermissible shutdown devices. Diesel vehicles were investigated. The second report provides information on the CO<sub>2</sub> emissions of the vehicles examined in the first report, where conspicuous CO<sub>2</sub> emissions were found. In the updated version of the second report dated 8 April 2020, the results of the CO<sub>2</sub> investigations of vehicles from foreign manufacturers for which the KBA is not the responsible type approval authority are also presented and evaluated. The results of these reports were criticised because of the links between the KBA and the automotive industry<sup>295</sup>. Afterwards, a Committee of Inquiry was established; it conducted many technical and legal studies, but also examined the actions of the Federal Government<sup>296</sup>. Later, the National Diesel Forum was held in August 2017 and organised by the Federal Minister of Transport. It aimed at finding measures to lower diesel vehicles emissions. However, the measures taken were only optional; and environmental and consumer associations did not take part in the Forum<sup>297</sup>.

## 9.6. Strategies and initiatives by private stakeholders

There are a few Member States where private initiatives relating to vehicle tampering were identified. These mainly entail the compiling of data to provide information to consumers and advocating for new legislation, and generally focus on odometer and/or emission tampering.

In Spain, three strategies were identified. Firstly, the Real Automobile Club of Catalonia provides consumers with a list of tips to avoid odometer tampering<sup>298</sup>. In addition, in 2014, the National Association of Automobile Manufacturers requested from the Congress of Deputies that odometer tampering be punished<sup>299</sup>, this request is also shared by the Real Automobile Club of Catalonia (RACC). Lastly, the RACC claimed that a law should oblige the communication of odometer readings to professional entities (periodic testers, roadside inspectors, etc.) and that there should be a cooperation between Member States to exchange this information. The RACC also requested amendments in type-approval regulations to force manufacturers to include anti-tampering devices on odometers<sup>300</sup>.

In Slovakia, a civil association (SOVA) has a database of vehicles whose odometers might be tampered with<sup>301</sup>. It also advises consumers on how to avoid being misled regarding tampered vehicles. In particular, it collects information on misleading advertisements and complaints on second-hand vehicle sellers.

<sup>294</sup> [www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte\\_uk\\_vw.html?nn=2308842](http://www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte_uk_vw.html?nn=2308842)

<sup>295</sup> „The Federal Motor Transport Authority is a bedside rug for the automotive industry. This federal authority has degenerated into the extended arm of the car manufacturers. What a descent for a once proud supervisory authority. At the same time, it is also a service provider that does certain things for the car industry for a fee. No comparison to the sovereignty of the American Environmental Protection Agency EPA.”, Kraftfahrtbundesamt ist Bettvorleger der Industrie, In: Nordwest-Zeitung, 24 Sept. 2015, available at:

[www.nwzonline.de/interview/kraftfahrtbundesamt-ist-bettvorleger-der-industrie\\_a\\_30,1,1556155470.html](http://www.nwzonline.de/interview/kraftfahrtbundesamt-ist-bettvorleger-der-industrie_a_30,1,1556155470.html)

<sup>296</sup> [www.bundestag.de/ausschuesse/ausschuesse18/ua/5untersuchungsausschuss](http://www.bundestag.de/ausschuesse/ausschuesse18/ua/5untersuchungsausschuss)

<sup>297</sup> [www.finanzen.net/nachricht/rohstoffe/diw-expertin-kemfert-kritisiert-ergebnisse-des-diesel-gipfels-5614808](http://www.finanzen.net/nachricht/rohstoffe/diw-expertin-kemfert-kritisiert-ergebnisse-des-diesel-gipfels-5614808)

<sup>298</sup> <http://saladeprensa.racc.es/wp-content/uploads/2014/05/dp-racc-fraude-manipulacion-kilometraje.pdf>

<sup>299</sup> <http://revista.dgt.es/es/noticias/nacional/2014/05MAYO/0509racc-fraude.shtml#.XsZoFGgzblU>

<sup>300</sup> <http://revista.dgt.es/es/noticias/nacional/2014/05MAYO/0509racc-fraude.shtml#.XsZoFGgzblU>

<sup>301</sup> [www.zdruzenie-sova.sk/seznam-aut-s-podezrenim-na-zasah-do-stavu-tachometru?vin=tmbpy46y674060850&make=%C5%A0kofa&model=Fabia&tab=1](http://www.zdruzenie-sova.sk/seznam-aut-s-podezrenim-na-zasah-do-stavu-tachometru?vin=tmbpy46y674060850&make=%C5%A0kofa&model=Fabia&tab=1)

In Luxembourg, in 2014, a consumer organisation published three declarations on its website, calling for legislation to be adopted on odometer tampering<sup>302</sup>.

In Germany, research was conducted by Volkswagen, Daimler, BMW and Bosch between 2007 and 2017, to assess and document the effects of transport on health with a focus on polluting emissions. This study was criticised by the scientific community for not using scientific methods and not being independent enough from lobbies<sup>303</sup>. In parallel, there currently is a NGO initiative against Odometer Tampering<sup>304</sup>.

In Belgium, a laboratory-grade testing operation developed by SGS is available for the evaluation and comparison of various exhaust emissions testing systems and inspection processes, which includes inspection for tampering<sup>305</sup>. This is not exclusively available in Belgium.

### 9.7. Links with national legislation

Few public and private strategies or initiatives related to vehicle tampering were based on or resulted in national legislation.

Nonetheless, in Luxembourg, the publications of the consumer organisation mentioned above led to the adoption of four legislative measures on 26 January 2016<sup>306</sup>. In addition to that, the federations representing the national automotive field signed a declaration in October 2016, requesting measures to fight odometer fraud and protect consumers.

### 9.8. Survey findings

The Dutch Ministry of Infrastructure and Water Management indicated that a new test is to be introduced for the periodic roadworthiness tests to check the particulate filters of diesel cars. The new test will be done by measuring the number of diesel particulates in the tailpipe of a diesel vehicle at low idle with a particle counter. Moreover, the Dutch National Police Unit (EXO-TMC Department) noted that the TNO institute in the Netherlands is developing a "sniffer-car" for checking emissions while driving.

Similarly, the Association for Emissions Control by Catalyst (AECC aisbl) in Belgium notes that several Member States (e.g, Germany, Netherlands, Belgium) have announced a new Particle Number (PN) measurement procedure during the periodic technical inspection (PTI) in the near future to better detect malfunction or removal of the diesel particulate filter (DPF).

### 9.9. Conclusion

This chapter found that, in relation to national strategies and initiatives regarding vehicle tampering carried out by national public bodies, odometer data is often collected at Member State level and gathered in a national database, and that where such a database exists, there usually is a national legal obligation for some actors to disclose that data. Moreover, it set out that there are many initiatives, often handled by public bodies, which help buyers of (mostly second-hand) vehicle to

<sup>302</sup> [www.ulc.lu/fr/recherche](http://www.ulc.lu/fr/recherche)

<sup>303</sup> [www.sueddeutsche.de/wirtschaft/tierversuche-vw-testete-diesel-abgase-an-affen-1.3842037](http://www.sueddeutsche.de/wirtschaft/tierversuche-vw-testete-diesel-abgase-an-affen-1.3842037)

<sup>304</sup> [www.gegentachomanipulation.de](http://www.gegentachomanipulation.de)

<sup>305</sup> [www.sgsgroup.fr/en/public-sector/road-safety-and-traffic/statutory-vehicle-inspection/vehicle-emission-test-equipment](http://www.sgsgroup.fr/en/public-sector/road-safety-and-traffic/statutory-vehicle-inspection/vehicle-emission-test-equipment)

<sup>306</sup> Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles, Grand-ducal Regulation of 26 January 2016 regulating traffic on all public roads, Law of 26 January 2016 concerning the regulation of traffic on all public roads, Grand-ducal Regulation of 26 January 2016 relating to the approval and registration of road vehicles

have access to the mileage history of a specific vehicle. The chapter also outlined that in some Member States, the Real Urban Emissions initiative was implemented for a few months, but this was mostly not followed by similar projects. Moreover, it was found that in some Member States, public institutions or authorities have conducted research at a national level regarding vehicle tampering. Private initiatives relating to vehicle tampering which were identified mainly entailed the compiling of data to provide information to consumers and advocating for new legislation, and generally focus on odometer and/or emission tampering. Lastly, the chapter set out that few public and private strategies or initiatives related to vehicle tampering were based on or resulted in national legislation.

## 10. Effectiveness of rules on tampering and enforcement

### 10.1 Introduction

Chapter 10 examines the effectiveness of rules on tampering, as well as the effectiveness of the enforcement of such rules. It does so first by setting out information identified at national level regarding the awareness of the rules. The chapter then provides information on the effectiveness of the rules on tampering, and the effectiveness of the enforcement of rules on tampering found in relating to the Member States.

### 10.2. Awareness at national level of the rules

In relation to the effectiveness of measures and provisions in place at national level regarding tampering, no official data or research focusing on awareness of rules has been identified at national level. Nonetheless, it was found that the media coverage of the topic and/or of the “*Dieseldgate*” events could have cause awareness regarding rules on tampering in the Member States to have risen.

For instance, in Slovakia, the rules on tampering are easily available and the RPVZ is often mentioned in the media as a tool against odometer tampering, in addition to also being accessible online. This appears to ensure that general awareness is sufficient.

In Ireland, there was widespread media coverage of the anti-tampering regulation when it entered into force<sup>307</sup>. Offences may also be published in the media<sup>308</sup>.

In Germany, it is estimated that the “*Dieseldgate*” events have made emission requirements and prohibition of cut-off devices become common knowledge for car owners and manufacturers.

In the United Kingdom, however, although consumer awareness of emission tampering has grown since the “*Dieseldgate*”, it still appears that awareness of existing rules remains low.

Aside from “*Dieseldgate*”, in Finland, newspaper articles have shown that the prohibition of odometer tampering is not very well known<sup>309</sup>, and consumers are therefore rather unsuspecting when buying second-hand cars<sup>310</sup>.

In the Netherlands, despite the fact that odometer manipulation has been made a criminal offence, there is little awareness on the subject by the police (who carry out roadside inspections) and judicial authorities, and thereby a lack of broad knowledge and experience on the subject<sup>311</sup>.

<sup>307</sup> [www.irishtimes.com/life-and-style/motors/clocking-mileage-illegal-from-today-1.1655128](http://www.irishtimes.com/life-and-style/motors/clocking-mileage-illegal-from-today-1.1655128)

<sup>308</sup> [www.irishexaminer.com/ireland/man-remanded-on-charge-of-clocking-car-451331.html](http://www.irishexaminer.com/ireland/man-remanded-on-charge-of-clocking-car-451331.html)

<sup>309</sup> For instance : [www.is.fi/autot/art-2000005147189.html](http://www.is.fi/autot/art-2000005147189.html); [www.mtvuutiset.fi/artikkeli/auton-matkamittarin-peukalointi-ei-ole-laitonta-tarkista-todelliset-lukemat-vaikka-kannykalla/6241444#gs.62s4jy](http://www.mtvuutiset.fi/artikkeli/auton-matkamittarin-peukalointi-ei-ole-laitonta-tarkista-todelliset-lukemat-vaikka-kannykalla/6241444#gs.62s4jy)

<sup>310</sup> <https://yle.fi/uutiset/3-8711681>

<sup>311</sup> See [www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf](http://www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf)

### 10.3. Effectiveness of rules on tampering

In relation to the effectiveness of the national rules on tampering in place in the Member States, studies conducted in the Member States generally identify their national systems as proportionate and globally efficient. However, some gaps in national legislation at national level were identified.

In the Netherlands, reports have shown that the system in place regarding tampering is effective. In 2017, it was reported that the measures taken to counter odometer fraud (i.e. the prohibition on odometer tampering as set out above) were effective and efficient, and that the number of illogical readings had sharply decreased<sup>312</sup>. Additionally, a somewhat upward trend of the use of criminal law to counter odometer fraud was observed. In 2018, the public prosecutor's office handled 11 odometer fraud cases, compared to 3, 10 and 8 in 2015, 2017 and 2017 respectively<sup>313</sup>. The registration and comparison of odometer readings has also been efficient and has reduced odometer fraud from 48% in 1991 to 2.75% in 2018<sup>314</sup>.

In the United Kingdom, the new emission test of the MOT has proved to be especially efficient. After its entry into application, the numbers of vehicles failing the emission test doubled.<sup>315</sup>

In Finland, Traficom has conducted a study in 2019 on odometer tampering in passenger cars. The results showed that the rate for tampered vehicles was very low compared to other European countries (around 0.6 per cent of vehicles). In that sense, the system seems to be efficient. However, the same study revealed that the rate for tampered imported cars was much higher (5 to 17 per cent). It was found that tampering on heavy-duty vehicles, both foreign and national, is increasing<sup>316</sup>. Statistics showed that one in ten trucks experienced emission manipulation causing environmental damage.

In Slovakia, issues concerning the effectiveness of rules on tampering are linked to imported vehicles as well. Statistics show that up to 37 per cent of individually imported vehicles had a tampered odometer. The most impactful issue is the connection between local vehicle operators, technicians performing emission control (measuring of emissions) and representatives of the District Authority ensuring supervision. This is currently being addressed through a mandatory video recording of the emission controls and a professional supervision performed by a technical service which is, inter alia, entitled to request a repeated emission control of vehicle still located in the area of the Emission Control Workplace.<sup>317</sup>

As mentioned above, some gaps in the national legislation on tampering were identified as well.

For example, German law prohibits odometer manipulation, but not the sale of manipulation devices.<sup>318</sup>

<sup>312</sup> [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf)

<sup>313</sup> *Ibid.*

<sup>314</sup> [www.rdw.nl/zakelijk/nieuws/2019/fraude-met-tellerstanden](http://www.rdw.nl/zakelijk/nieuws/2019/fraude-met-tellerstanden)

<sup>315</sup> [www.itv.com/news/2018-11-20/mot-emissions-test-failure-rate-soars-after-tougher-rules-introduced](http://www.itv.com/news/2018-11-20/mot-emissions-test-failure-rate-soars-after-tougher-rules-introduced)

<sup>316</sup> [www.maaseuduntulevaisuus.fi/kotimaa/artikkeli-1.544949](http://www.maaseuduntulevaisuus.fi/kotimaa/artikkeli-1.544949);  
[www.mtvuutiset.fi/artikkeli/paastomanipulointi-lisaantynyt-kuorma-autoliikenteessa-suomessa-seuraukset-huolettavat-manipulointi-voi-nostaa-terveydelle-haitallisten-paastojen-maaran-jopa-yli-kymmenkertaiseksi/7616880](http://www.mtvuutiset.fi/artikkeli/paastomanipulointi-lisaantynyt-kuorma-autoliikenteessa-suomessa-seuraukset-huolettavat-manipulointi-voi-nostaa-terveydelle-haitallisten-paastojen-maaran-jopa-yli-kymmenkertaiseksi/7616880)

<sup>317</sup> Act no. 106/2018 Coll. on operation of vehicles, Art. 114 and Art. 116, §10.

<sup>318</sup> [www.bussgeldkatalog.org/tachomanipulation/#die\\_rechtliche\\_situation\\_zum\\_thema\\_%25e2%2580%259ekilometerstand\\_zuruecksetzen%25e2%2580%259c](http://www.bussgeldkatalog.org/tachomanipulation/#die_rechtliche_situation_zum_thema_%25e2%2580%259ekilometerstand_zuruecksetzen%25e2%2580%259c)



Moreover, selling a clocked car without declaring its genuine mileage is illegal in the United Kingdom, whereas tampering with the odometer is not itself an offence.

In France, the requirements set out in Directive 2014/45/EU and 2014/47/EU regarding tampering have not been transposed into national law. In addition, the prohibition for manufacturers, repairers and operators of the vehicles to tamper with systems which use a consumable reagent (laid down in Regulation (EC) No 595/2009) is not covered by French legislation.

In Germany, several issues were identified. The wide tolerance range for type-approval emissions and fuel consumption measuring conditions has led to manufacturers setting unrealistic measuring conditions, thus creating a severe gap between catalogue values and real-life values. This should change with the implementation of the WLTP method. In addition, in the situation where an applicant for a type approval has not documented the presence of a defeat device in the application documents and the authority nevertheless grants a type approval, it is unclear whether he is then permitted to place the vehicle with a cut-off device on the market<sup>319</sup>. The issue has been ruled on in courts in environmental-related matters<sup>320</sup> but it is not clear in the legislation that all shutdown devices must be explicitly disclosed.

Two studies (Austrian and Dutch) have pointed to the fact that young cars must undergo periodic tests less often. Since this is when odometer data is registered, it limits the possibilities to check the odometer and other possible forms of tampering with the vehicle. In the Netherlands, a measure is implemented to ease odometer registering, which should act as an incentive to drivers<sup>321</sup>.

#### 10.4. Effectiveness of enforcement of rules on tampering

Issues related to the effectiveness of the enforcement of rules on tampering and recalls identified at national level mostly relate to the lack of severity of the sanctions, although some practical obstacles were also found to exist.

According to some, the obligation of Member States to impose sanctions has not yet been sufficiently implemented in German law. The response options are not sufficient according to EU law, nor does German law have any other sanctioning norms that meet the requirements of EU law<sup>322</sup>.

In Finland, the anti-emission tampering rules are not considered dissuasive enough, according to a study which showed that Finnish sanctions for emission tampering were very low<sup>323</sup>.

In Italy, the legislation on enforcement seems proportionate and non-discriminatory. However, it may not be very dissuasive due to the fact that most sanctions apply to the owner or user the vehicle, and it may be difficult to demonstrate that the defect of the vehicle may derive from conducts of the manufacturer/seller of the vehicle instead. Moreover, no specific criminal penalty is in place in relation to tampering with vehicle part as such (unless the practice falls within

<sup>319</sup> M. Fuhr, Der Dieselskandal und das Recht. Ein Lehrstück zum technischen Sicherheitsrecht, NVwZ 2017, 265, Recital III(3)(b), <https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fnvwz%2F2017%2Fcont%2Fnvwz.2017.265.1.htm&anchor=Y-300-Z-NVWZ-B-2017-S-265-N-1>

<sup>320</sup> Urteil vom 05. September 2013 - BVerwG 7 C 21.12, [www.bverwg.de/050913U7C21.12.0](http://www.bverwg.de/050913U7C21.12.0)

<sup>321</sup> [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf)

<sup>322</sup> M. Brenner, Rechtsgutachten zur Umsetzung der Verordnung 715/2007..., p. 13-14

<sup>323</sup> Main conclusions are summarised, eg. : Answer to written question to the Government of Finland on vehicle emission manipulation KKV 419/2018 vp; [www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV\\_419+2018.pdf](http://www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV_419+2018.pdf)

fraud/commercial fraud), hence the simple application of a pecuniary fine may not be the most dissuasive instrument to prevent such practices.

In Belgium, tampering is prohibited through general rules and not sanctioned by specific infractions. This means that harmed consumers must refer to general civil law to get compensation, which implies that they have to prove the damage caused, and this can often be difficult to demonstrate (e.g. to specifically demonstrate the health impact of a higher gas emission of a vehicle). In addition, it is still very easy to tamper car's engines, but it is difficult to identify such tampering in periodic tests.

In Romania, the effectiveness of the enforcement of national rules appears to be limited by corruption. The national research has shown that periodic roadworthiness testers and roadside inspectors were frequently bribed. Also, the sanctions are relatively low and therefore not dissuasive enough. Interviews conducted with two ITP (periodic tests) experts confirmed that it is possible to tamper with a car's emissions systems and use it on public roads and still pass the next ITP, as well as avoid roadside inspections (the capacity to conduct such controls in traffic is very limited in Romania; due to weak control infrastructure they are predictable, usually placed in the same places, they control very few cars from the total cars in traffic, etc.).

In the Netherlands, some problems in relation to the effectiveness of the enforcement of rules on tampering identified are legal; for instance, there is no legal obligation to comply with a recall. The Minister of Infrastructure and Water Management is working on a regulation that obliges vehicle owners to respond to a recall<sup>324</sup>. It is also not possible for the State to recover damages from manufacturers for damage resulting from the additional air pollution caused by tampering.<sup>325</sup> Some obstacles are practical; for instance, there is no coordinated approach to odometer tampering by the police and the judiciary, so that the investigations of odometer tampering are placed under different expertise in different regions and there are few specialists in the field<sup>326</sup>. Moreover, hardly any cases of removed soot filters were found during the APK inspection (periodic test) in 2019, although at least 20,200 cars are driving around without a filter. The Dutch authorities thus want to introduce a particle test at the APK inspections and roadside inspections as soon as possible. However, currently the equipment is not available for this<sup>327</sup>.

In Finland, there is also an issue with air/particulate filters, whose maintenance is expensive, which causes drivers to remove the devices from their vehicles, inevitably increasing gas emissions. Although it is prohibited, some companies openly advertised that they did this. It is only allowed if the car passes a change inspection afterwards as the Finnish law does not criminalise the removal of a particulate filter. The only sanction is the rejection of the car during the inspection. These practises had an influence on compliance to recalls after the "*Diesellate*"; some owners of vehicles recalled due to an emissions scam were delaying repairing their car to the last minute. Nevertheless, some new measurement and inspection methods were introduced in order to facilitate the detection of filter depreciation.

<sup>324</sup> <https://automotive-online.nl/management/laatste-nieuws/aftermarket/26840-minister-verplicht-voertuigeigenaren-recall-op-te-volgen>  
[www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/01/23/zevende-overzichtsbrief-dieselfraude/zevende-overzichtsbrief-dieselfraude.pdf](http://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/01/23/zevende-overzichtsbrief-dieselfraude/zevende-overzichtsbrief-dieselfraude.pdf)

<sup>325</sup> [www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/01/23/zevende-overzichtsbrief-dieselfraude/zevende-overzichtsbrief-dieselfraude.pdf](http://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/01/23/zevende-overzichtsbrief-dieselfraude/zevende-overzichtsbrief-dieselfraude.pdf)

<sup>326</sup> [www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf](http://www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf)

<sup>327</sup> <https://eenvandaag.avrotros.nl/item/strengere-controle-op-roetfilterfraude-faalt-dus-worden-duizenden-vuile-diesels-apk-goedgekeurd/>

## 10.5. Survey findings

The Dutch Ministry of Infrastructure and Water Management indicated that the new test which will be introduced for the periodic roadworthiness tests to check the particulate filters of diesel cars will ensure a higher level of control of diesel car emissions. It notes that the opacity test is not accurate enough for checking particulate filters. Moreover, the Dutch National Police Unit (EXO-TMC Department) noted that it has a specific interest in investigating vehicle tampering concerning AdBlue manipulation. In relation to the effectiveness of roadside inspections, they indicated that although these rules (including on fines) are efficient in themselves, the chance of getting controlled is rare because of a shortage of officers capable of carrying out these checks.

In relation to France, DEKRA (a company in charge of a network of periodic roadworthiness test centres) indicated in relation to the effectiveness of national enforcement that it considered the fines in place as relatively low, and that detection campaigns are not carried out on a large scale (mainly only on the basis of severe accidents).

Car-Pass remarked that the Belgian legislation to prevent odometer tampering has proven to be very efficient and effective, since the number of fraud cases fell from 60 - 100 000 cases a year to less than 2000 (see [www.car-pass.be/en/news/european-parliamentcalls-commission-to-tackle-odometer-manipulation](http://www.car-pass.be/en/news/european-parliamentcalls-commission-to-tackle-odometer-manipulation)).

Another Belgian stakeholder, the Association for Emissions Control by Catalyst (AECC aisbl), noted that there are two aspects of tampering prevention, (1) detection of any failure of the tampered emissions control system, through a combination of on-board tools (i.e. OBD/OBM), periodical technical inspection (PTI) and road-side inspection; and (2) correct enforcement of the anti-tampering provisions. They mentioned that although some detection measures are in place, they are not sufficient for the low levels of emissions of the most recent vehicles - detection alone will not solve the issue, more strict enforcement is required.

The Estonian Road Administration (ERA) remarked that although that tampering is prohibited and the owner of the vehicle is responsible if, for example, the odometer has been tampered with, it is difficult to prove who was vehicle owner when tampering took place.

Traficom, the national type approval authority in Finland, noted that it did not believe the national rules on tampering are efficient at the moment, and that solutions concerning the marketing, selling and installation of tampering equipment are necessary. It also remarked that there need to be ways to detect tampered vehicles in both inspections and tests and that the sanctions concerning tampering have to be assessed, so that Finland would have a large enough monetary “scare effect” related to tampering.

The Irish Competition and Consumer Protection Commission indicated, in relation to the effectiveness of national rules on tampering, that consumer protection offences and road traffic legislation that deals with the tampering of odometers are dealt with in the lower courts as summary only matters, and that rarely do any offenders engaged in tampering go to prison, although it is suspected that those who are prosecuted are involved in repeated activity.

## 10.6. Conclusion

In this chapter, it was found that no official data or research focusing on awareness of rules on tampering was identified at national level, although the media coverage of the topic and/or of the

*“Dieselgate”* events could have caused awareness regarding these rules in the Member States to have risen. Secondly, it set out that although studies conducted in the Member States generally identify their national rules and systems on tampering as proportionate and globally efficient, some gaps in national legislation at national level were identified. Lastly, the chapter outlined that issues related to the effectiveness of the enforcement of rules on tampering and recalls identified at national level mostly relate to the lack of severity of the sanctions, although some practical obstacles were also found to exist.

## 11. Case law on vehicle tampering

### 11.1. Introduction

This chapter sets out the case law from national courts, bodies, or authorities relating to vehicle tampering that was identified, specifically the rulings relating to emission measurement tampering and odometer tampering.

### 11.2. Emission measurement tampering

All the rulings identified in relation to emission measurement tampering arise from issues with Volkswagen vehicles, on which ‘cheating software devices’ installed by the manufacturer were exposed as part of “*Dieselgate*”. The disputes mostly are between the harmed customers and car dealers, who did not tamper with cars but still sold them.

For instance, in Austria, several rulings were made in cases where private persons had bought vehicles whose emission measurement system had been tampered with by the manufacturer (Volkswagen). In those cases, the cars were bought from a professional car dealer, who had not intervened in the tampering process (and was not aware of it either), and could therefore not be sanctioned for tampering. The Courts assessed the gravity of the manipulation to determine whether it had influenced the buyer’s consent, who could thus terminate the sale contract and get compensation. The Eisenstadt Regional Court (Landesgericht, LG) saw a legitimate reversal of the purchase contract due to error and awarded the plaintiffs the purchase price minus the user fee<sup>328</sup>. Indeed, manipulated vehicles would not have the properties usually required when purchasing if the specified values for NOx emissions in real operation are exceeded 5 times. Even after the software update, limit values are exceeded by 77%. The Court stated on the acceptable gap between real emissions and catalogue emissions; acknowledging that it was in line with general life experience that engine test bench values were exceeded in real operation. It was noted that exceeding 20-30% still seemed acceptable, but that exceeding 247% before or 77% after the update was surprising. The buyer must be able to assume that a new car meets all legal requirements and does not have an inadmissible shutdown device. The applicants were, therefore, subject to a material business error. The authorised car dealer of Porsche caused the error, even if he had no knowledge of the fact. He claimed that there were no legal requirements in the ordinance for compliance in real operation. Here, however, reference should be made to Art 5 (1) of Regulation (EC) No 715/2007, according to which the manufacturer must equip the vehicle in such a way that the components are likely to influence the emission behaviour in such a way that the vehicle complies with the Regulation under normal operating conditions. Both the aim of the Regulation and the expectation of buyers are that the limit values are (almost) reached in normal road traffic. This was not achieved. The plaintiffs were, therefore, entitled to reverse the contract. They must return the vehicle and receive the purchase price minus a usage fee. In another ruling, the Linz LG could not find that the driver concerned would not have bought the car if she had known about the manipulation of the software at the time of purchase<sup>329</sup>. The court did not accept the argument that used diesel cars were generally less valuable due to the exhaust gas scandal, i.e. that their replacement value had

<sup>328</sup> Landesgericht Eisenstadt (Regional Court Eisenstadt), 22 May 2019 (18 Cg 18/16y), Verein für Konsumenteninformation, VKI (Association for Consumer Information), Vienna against Volkswagen AG, Wolfsburg, Germany

[https://verbraucherrecht.at/cms/uploads/media/LG\\_Eisenstadt\\_22.05.2019\\_34\\_Cg\\_16\\_19a\\_20.pdf](https://verbraucherrecht.at/cms/uploads/media/LG_Eisenstadt_22.05.2019_34_Cg_16_19a_20.pdf)

<sup>329</sup> Landesgericht Linz (Regional Court Linz), 27 May 2018 (45 Cg 42/17), Verein für Konsumenteninformation, VKI (Association for Consumer Information), Vienna vs. Volkswagen AG, Wolfsburg, Germany  
[www.nachrichten.at/wirtschaft/VW-Skandal-Linzer-Gericht-wies-VKI-Klage-ab;art15,2907536](http://www.nachrichten.at/wirtschaft/VW-Skandal-Linzer-Gericht-wies-VKI-Klage-ab;art15,2907536)

decreased. The illegal manipulation software, which increased the pollutant emissions, was a fault that could be improved. It is also within reason to expect the customer to accept this. The time required for the update is about half an hour, during which customers receive a free replacement vehicle or a free pick-up and delivery service is offered. Incidentally, the consumer represented by the VKI had not had the update carried out so far, but would do it, if otherwise the approval for the car could be withdrawn. The woman would also buy a VW diesel again, as she said in court. In the opinion of the LG Linz, the update did not lead to an impairment and did not lead to other defects or damage or adverse effects either. The vehicle was fully usable (with and without a software update), technically safe and not restricted in terms of driving readiness. It also fulfilled the safety standards. The car dealer's sales employee could at least not be accused of illegal and deliberate misleading conduct, since at the relevant time he himself knew nothing of the manipulation.

In Germany, there are many relevant rulings on emission manipulation. The Federal Constitutional Court determined in 2019 for the first time that the shutdown devices in diesel engines were a material defect pursuant to § 434 (1) Sentence 2 No. 2 of the German Civil Code<sup>330</sup>. For such vehicles, the withdrawal of the registration for road traffic was to be considered. Purchasers are not denied the right to a replacement delivery of a vehicle as good as new on the basis of an interim model change by the manufacturer. However, the seller could refuse to supply a replacement if this would entail disproportionate costs. The Court left it further open whether the recall action to bring the engines into a proper condition without cost to the buyers was sufficient to satisfy the buyers' claims. In May 2020, the Federal Constitutional Court held that the claim for damages against VW was justified in case of a buyer of a manipulated VW diesel car. VW had to pay damages for immoral deliberate damage (§ 826 German Civil Code) and refund the purchase price against return of the car. However, the buyer had to allow the advantage of previous use to be offset against the kilometers driven so far. Any claims for damages against the manufacturer will not be eliminated by a software update, since the point of time of purchase is relevant for the damage and later changes are irrelevant. In a hearing on 5 May 2020, the Federal Court of Justice indicated that it tended provisionally to assume that the buyer of a vehicle with a cut-off device would suffer damage as early as at the conclusion of the contract. In addition, the Higher Administrative Court of North Rhine-Westphalia ruled that if buyers wanted to keep the tampered cars, they should carry out the software update at the latest as soon as the relevant vehicle registration authority threatens to immobilise the car. This also applies if the buyer is suing the dealer or the manufacturer in court<sup>331</sup>. Lastly, the Higher Regional Court of Cologne ruled that customers could withdraw from the purchase even if the software update has already been carried out<sup>332</sup>.

In the United Kingdom, Mr Justice Waksman found in early 2020 that Volkswagen's engine software function amounts to a 'defeat device' for the purpose of EU law, and that previous findings of the relevant German authorities were binding on the High Court in that respect<sup>333</sup>.

<sup>330</sup> BGH (Federal Constitutional Court), decision from 8 January 2019, VIII ZR 225/17, <https://autokaufrecht.info/2019/01/unzulaessige-abschalteneinrichtung-als-sachmangel-eines-fahrzeugs-vw-abgasskandal/>

<sup>331</sup> OLG Münster (Higher Administrative Court of North Rhine-Westphalia), 17 Aug. 2018, 8 B 548/18 and 8 B 865/18, <https://openjur.de/u/2126823.html>

<sup>332</sup> OLG Köln (Higher Regional Court of Cologne), 27 March 2018, 18 U134/17 [www.justiz.nrw.de/nrwe/olgs/koeln/j2018/18\\_U\\_134\\_17\\_Beschluss\\_20180327.html](http://www.justiz.nrw.de/nrwe/olgs/koeln/j2018/18_U_134_17_Beschluss_20180327.html)

<sup>333</sup> Crossley & Ors v Volkswagen Aktiengesellschaft (the "VW NOx Emissions Group Litigation"), [2020] EWHC 783 (QB), [www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/783.html&query=\(title:\(+crossley+\)\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/783.html&query=(title:(+crossley+)))



In Finland, harmed consumers must prove that they personally financially suffered from the manipulative software for emissions measurement<sup>334</sup>. The decision was voted 5-4. The minority considered it sufficiently probable that the value of the car had fallen despite the repair campaign.

In Spain, a buyer, who had the legal status of consumer, sued both the vehicle manufacturer, Seat S.A. – which is a Volkswagen’s subsidiary – and the car dealership who sold it. The Supreme Court upheld the plaintiff’s appeal and also ordered the manufacturer, in solidarity with the car dealership, to pay the plaintiff a compensation, without prejudice to the actions that the seller may exercise against the manufacturer<sup>335</sup>.

### 11.3. Odometer tampering

Odometer tampering is not within the scope of MODALES but is included here for comparison purposes. It appears that most rulings on this type of tampering did not rely on specific anti-tampering rules but rather on general consumer, contractual and/or criminal law (applying the concept of fraud or hidden defect). Moreover, the rulings on odometer tampering mostly arise from contract annulment or termination claims from buyers of tampered vehicles.

In Belgium, the law obliges Car-Pass certificates to be provided with the sale of a vehicle, unless both seller and buyer are professional in the field. The Belgian Supreme Court has specified that if a person sells a vehicle registered in Belgium, his obligation of information is only completed when the Car-Pass certificate is given to the buyer. If not, the buyer can claim the sale is null<sup>336</sup>. More recently, the Court ruled on the situation where a person buys a car which has been tampered by a previous owner (who is therefore not the seller). In this situation, the new buyer can only claim that the sale is void if it appears that the tampering has influenced his consent. If the tampering is minor and could not have had any effect on the buyer’s consent, then the sale is valid<sup>337</sup>. Here, the Court’s reasoning relies on general contract law.

In Finland, the Helsinki Court of Appeal ruled that a fraud was not characterised if a tampered vehicle is sold and its odometer reading does not correspond to reality<sup>338</sup>. The Finnish Consumer Disputes Board has recommended the annulment of trades of imported cars whose actual mileage was almost twice higher than what mentioned on the odometer<sup>339</sup>.

In the Netherlands, in a case where odometer fraud was demonstrated on a car imported from Germany and sold by a private seller, judges established that the car did not comply with the agreement and that there were non-conformity, which justified termination of the agreement. The seller’s appeal regarding the breach of the obligation to investigate was not honoured; there were no reason for the buyer to further investigate the accuracy of the odometer reading. Therefore, the seller of the second-hand car had to repay the buyer the purchase price of the car<sup>340</sup>.

<sup>334</sup> Consumer Disputes Board, [www.kuluttajariita.fi/fi/index/ajankohtaista/tiedotteet/2017/11/autonpaastomanipuloinnistaehyivitystaarvonalentumisestaehyitynaytto.html](http://www.kuluttajariita.fi/fi/index/ajankohtaista/tiedotteet/2017/11/autonpaastomanipuloinnistaehyivitystaarvonalentumisestaehyitynaytto.html)

<sup>335</sup> Supreme Court - Tribunal Supremo. Sala de lo Civil - STS 735/2020 - ECLI: ES:TS:2020:735, [www.poderjudicial.es/search/openDocument/273b60770e2c1f23](http://www.poderjudicial.es/search/openDocument/273b60770e2c1f23)

<sup>336</sup> Cour de Cassation (Belgian Supreme Court), 5 May 2012: [http://jure.juridat.just.fgov.be/view\\_decision.html?justel=F-20120504-4&idxc\\_id=263670&lang=FR](http://jure.juridat.just.fgov.be/view_decision.html?justel=F-20120504-4&idxc_id=263670&lang=FR)

<sup>337</sup> Cour de cassation (Belgian Supreme court), 09 May 2016, C.14.0404.N: <https://juricaf.org/arret/BELGIQUE-COURDECASSATION-20160509-C140404N>

<sup>338</sup> Helsinki Appeal Court 19.11.2019, Decision no 19/149929, Case no R 19/648

<sup>339</sup> Consumer Disputes Board 974/33/13, Consumer Disputes Board 70/33/12, [www.edilex.fi/uutiset/63682](http://www.edilex.fi/uutiset/63682)

<sup>340</sup> Amsterdam Court (2019), <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2019:1609>



In Ireland, a car dealer was convicted of providing false information about the mileage of an imported car, whose odometer showed 36,000 miles when its real mileage was of 105,412. He was sanctioned to a rather small fine (500 EUR plus 1,000 EUR in legal costs) compared to the compensation paid to the customer (8,000 EUR)<sup>341</sup>.

In the United Kingdom, a provider of 'mileage correction services' was convicted for the first time in 2012 under consumer law, after a criminal investigation. He pleaded guilty to five charges under the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') and eight charges under the Fraud Act 2006 and was sentenced to nine months' imprisonment<sup>342</sup>.

In Italian law, two different sanctions could apply to odometer tampering if the vehicle were used on a workplace: one would be administrative and the other one would be criminal (tampering with tools that serve to prevent accidents on the workplace). Rulings have determined that where the violation was committed directly by the employer, or in any case on his disposal, and in any case for reasons relating to the performance of the business activity, this appears consistent with the ratio of the crime envisaged by Art. 437 of the criminal code. However, if the odometer is tampered with by an employee, for reasons which are not attributable to the exercise of the business activity, the driver can only be sanctioned by the administrative fine<sup>343</sup>.

#### 11.4. Conclusion

This chapter summarises the main case law in the Member States on vehicle tampering identified. In relation to emission measurement tampering, it was outlined that rulings generally arose from disputes between the harmed customers and car dealers regarding issues with Volkswagen vehicles, on which 'cheating software devices' installed by the manufacturer were exposed as part of "Dieselgate". Regarding odometer tampering, the chapter found that most rulings did not rely on specific anti-tampering rules but rather on general consumer, contractual and/or criminal law (applying the concept of fraud or hidden defect). Furthermore, it was found that the rulings on odometer tampering mostly arose from contract annulation or termination claims from buyers of tampered vehicles.

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<sup>341</sup> [www.ccpc.ie/consumers/2017/10/24/waterford-car-dealer-convicted-following-ccpc-investigation-prosecution/](http://www.ccpc.ie/consumers/2017/10/24/waterford-car-dealer-convicted-following-ccpc-investigation-prosecution/)

<sup>342</sup> 21 Nov. 2012, Swindon Crown Court, CRE-E/26641, [www.gov.uk/cma-cases/mileage-correction-services-provider-investigation-and-conviction](http://www.gov.uk/cma-cases/mileage-correction-services-provider-investigation-and-conviction)

<sup>343</sup> Supreme Court of Criminal Cassation - Section 1 - 02 May 2019, n. 18221 - Alteration of the truck's digital odometer, [www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpn&id=20190502/snpn@s10@a2019@n18221@tS.clean.pdf](http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpn&id=20190502/snpn@s10@a2019@n18221@tS.clean.pdf).

## 12. Conclusions

This report constitutes the main deliverable in relation to the research on the legal situation on vehicle tampering across EU Member States in the context of the MODify Drivers' behaviour to Adapt for Lower EmissionS (MODALES) project. The main objective of this research was to assess existing legal and regulatory aspects of tampering in Europe. The report provides a comparative analysis aimed at identifying the commonalities and contrasts in legislation on vehicle tampering across EU Member States based on data collected through legal research questionnaires as well as a stakeholder survey. The main findings per chapter of the report are set out below.

Chapter 3 set out the EU legal framework regarding vehicle tampering in order to provide context in relation to the subsequent chapters. In this chapter, it was found that as part of the EU legal framework on type approval, defeat devices are generally and explicitly prohibited. However, tampering is only defined in the context of heavy duty vehicles. Moreover, for these vehicles, tampering with systems which control NOx emissions is considered an infringement of the law. Lastly, EU law on type approval provides for several obligations on manufacturers in relation to tampering with the odometer. Under EU law on vehicle inspections, on the other hand, it was found that both periodic roadworthiness tests and technical roadside inspections must check for (signs of) tampering, with a clear focus on odometer tampering. Lastly, the chapter set out that EU law also provides for provisions relating to the exchange of information (with other Member States and/or the Commission, for example) in the context of type approval and vehicle inspections.

Chapter 4 examined the relevant national legal and regulatory frameworks on vehicle tampering, and found that the relevant Directives and Regulations are generally transposed and covered at national level by (often the same) national road and/or motor vehicle regulations (although it can be noted that there are still open infringement proceedings in relation to the relevant Directives). Aside from this legislation, additional national measures related to tampering were found to be in place in several Member States. Moreover, the national legal measures that are in place all refer to the compliance with EU law as their main objective, and do not directly refer to the EU Emissions Regulation and standards.

Chapter 5 focused on the obligations placed on manufacturers under national law. This chapter illustrated that in the majority of Member States, aside from the rules applicable in the context of type approval processes, there seem to be no specific national legal requirements on manufacturers relating to the prevention of tampering, nor other specific requirements regarding tampering that manufacturers would have to meet. Nonetheless, in relation to the latter, it was found that in some Member States such requirements can be found in national legislation, or there are rules in place at national level, which although they are generally applicable, can be said to apply to manufacturers. Lastly, the chapter set out that in most Member States, no obligations are placed on manufacturers in relation to the disclosure of information regarding tampering, and that in cases where such requirements were identified, these mostly relate to obligations set under EU law.

Chapter 6 considered the national rules and requirements in place in relation to type approval, and demonstrated that in most Member States, national legislation on type approval processes relates to Directive 2007/46/EC (although in some Member States, the national law provides for EU as well as national law type approval processes) and mostly does not provide for provisions which specifically target tampering. The chapter also set out the checks carried out to ensure requirements to be granted type approval are met, and explained these requirements do not typically seem to relate specifically to tampering. In relation to type approval authorities and technical services, it found that

in most of the Member States, the type approval authorities are either Ministries (e.g. Austria, Spain, France, Slovakia) or various public services, authorities or bodies designated by Ministries in the field of Transportation, and Mobility, and technical services are generally private bodies designated or mandated by the Ministries or other national authorities. The technical services are appointed based on procedures as defined in national legislation. Furthermore, the chapter explained that most Member States have in place national systems and requirements regarding the disclosure of information on type approval processes based on provisions of EU law. Lastly, it is specified that Member States have laid down penalties and sanctions of both an administrative and criminal nature in relation to type approval, and that these often have manufacturers as their main recipients.

Chapter 7 considered the national rules and requirements regarding post-type approval rules on tampering and found that vehicle tampering is prohibited under the national law in most Member States, but that this prohibition most often is derived from legislation on type approval processes, rather than included as a specific legal provision. Furthermore, several Member States were found to have in place specific national rules regarding tampering with the emission control design, aftermarket parts, the engine, the OBD system and odometer tampering. The chapter also laid out that there is a variety in the type of national authorities in charge of ensuring compliance with legislation on tampering. In relation to sanctions, it was illustrated that a broad scope of both administrative and criminal offences is foreseen at national level in relation to the abovementioned post type-approval legislation on vehicle tampering. Lastly, in relation to consumer remedies, the chapter demonstrated that generally there are no specific national legal provisions in relation to the remedies available to consumers that are subject to tampering, and generally applicable provisions regarding remedies, which place the burden of proof on the claimant, apply in the Member States.

Chapter 8 described the national legislation in place regarding periodic roadworthiness tests and technical roadside inspections and found that national rules regarding periodic roadworthiness tests and technical roadside inspections mostly relate to the requirements set by Directive 2014/45/EU and Directive 2014/47/EU respectively. With regard to tampering in particular, the chapter set out that several Member States provide for specific verifications in order to identify tampered vehicles or parts in the national legal measures relating to periodic roadworthiness tests. Similarly, it was found that some Member States seem to impose checks specifically related to tampering in the relevant national measures regarding technical roadside inspections. Furthermore, the chapter described that the authorities in charge the tests and inspections are often linked with the national or regional Ministry of Transport or the Police and, in case there is not a single authority in charge of both tests and inspections, they tend to collaborate with each other. The national authorities are designated either directly through national rules, or by a regional or sub-national entity. In addition, it was found that in most national legal systems, information on tests and inspections must be disclosed, in order to be integrated in a national database, but that most Member States do not require the exchange of information beyond that provided for in EU law in this regard. Lastly, in relation to penalties and sanctions, non-compliance with national rules regarding periodic tests seem to be of various natures, whereas national sanctions regarding technical roadside inspections are more similar across the Member States.

Chapter 9 set out the national strategies and initiatives regarding vehicle tampering that were identified at national level. This chapter found that, in relation to national strategies and initiatives regarding vehicle tampering carried out by national public bodies, odometer data is often collected at Member State level and gathered in a national database, and that where such a database exists, there usually is a national legal obligation for some actors to disclose that data. Moreover, it set out that there are many initiatives, often handled by public bodies, which help buyers of (mostly second-

hand) vehicle to have access to the mileage history of a specific vehicle. The chapter also outlined that in some Member States, the Real Urban Emissions initiative was implemented for a few months, but this was mostly not followed by similar projects. Moreover, it was found that in some Member States, public institutions or authorities have conducted research at a national level regarding vehicle tampering. Private initiatives relating to vehicle tampering which were identified mainly entailed the compiling of data to provide information to consumers and advocating for new legislation, and generally focus on odometer and/or emission tampering. Lastly, the chapter set out that few public and private strategies or initiatives related to vehicle tampering were based on or resulted in national legislation.

Chapter 10 analysed the effectiveness of the rules on tampering and the enforcement of these rules. In this chapter, it was found that no official data or research focusing on awareness of rules on tampering was identified at national level, although the media coverage of the topic and/or of the “*Dieseldgate*” events could have caused awareness regarding these rules in the Member States to have risen. Secondly, it set out that although studies conducted in the Member States generally identify their national rules and systems on tampering as proportionate and globally efficient, some gaps in national legislation at national level were identified. Lastly, the chapter outlined that issues related to the effectiveness of the enforcement of rules on tampering and recalls identified at national level mostly relate to the lack of severity of the sanctions, although some practical obstacles were also found to exist.

Lastly, Chapter 11 provided relevant case law by national courts, bodies, or authorities relating to vehicle tampering identified in the Member States. In relation to emission measurement tampering, it was outlined that rulings generally arose from disputes between the harmed customers and car dealers regarding issues with Volkswagen vehicles, on which ‘cheating software devices’ installed by the manufacturer were exposed as part of “*Dieseldgate*”. Regarding odometer tampering, the chapter found that most rulings did not rely on specific anti-tampering rules but rather on general consumer, contractual and/or criminal law (applying the concept of fraud or hidden defect). Furthermore, it was found that the rulings on odometer tampering mostly arose from contract annulment or termination claims from buyers of tampered vehicles.

## Annex: Legal research questionnaires

This Annex includes the completed legal research questionnaires for Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Spain and the United Kingdom. Please note that more information on these questionnaires can be found in Section 2.1.

## Austria

### Overview of legislation

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

Directive 2007/46/EC was implemented through an amendment to the Motor Vehicle Law 1967 (KFG)<sup>344</sup>.

The KFG is the main piece of Austrian federal legislation dealing with motorised vehicles, trailers and parts, their construction and roadworthiness approval requirements, including type approval and individual approval of motor vehicles and trailers and their parts and equipment. Furthermore, the KFG also covers the requirements for type certification and admission to traffic, test and transfer rides and license plates of motor vehicles and trailers; inspection and assessment of motor vehicles and trailers; liability insurance for motor vehicles and trailers; granting and revoking the authorisation to drive motor vehicles; international motor transport; special regulations for individual types of motor vehicles and trailers; driving with motor vehicles and trailers and obligations of the motor vehicle driver and the license holder; as well as the training of drivers; responsibility, experts, remuneration; transitional, criminal and enforcement provisions.

Particular mention is made of the Directive in Articles 27a (regulations for vehicles that are covered by the scope of the EU operating license guidelines) and 28-35 of the KFG are of relevance (type approval and individual approval of motor vehicles and trailers and their parts and equipment), with mention made of Directive 2007/46/EC at several points throughout these Articles.

Directive 2014/45/EU (on periodic roadworthiness tests)

Directive 2014/45/EU was implemented through an amendment to the Motor Vehicle Law 1967 (KFG)<sup>345</sup>.

Particular mention is made of the Directive in Articles 28b (EC operating license from other countries) and 37 (registration) of the KFG.

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

Directive 2014/45/EU was implemented through an amendment to the Motor Vehicle Law 1967 (KFG)<sup>346</sup>.

344 Bundesgesetz, 23. Juni 1967, über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

345 Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

346 Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

Particular mention is made of the Directive and its requirements in Article 58a (technical roadside checks) of the KFG.

**2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

Regulation (EC) No 715/2007 is covered by the Motor Vehicle Law 1967 (KFG)<sup>347</sup>.

Particular mention is made of the Regulation in Article 33 of the KFG in relation to changes to individual vehicles and how changes to the emission-relevant components of the power train, including the engine, exhaust system and emission control system of vehicles, by means of which their properties or their effect with regard to the emission behaviour can be reduced, are not permitted. In particular, the installation of shutdown devices within the meaning of the applicable Regulations (EC) No. 715/2007 and (EU) No. 168/2013 or bypass strategies within the meaning of the applicable Regulations (EC) No. 595/2009 or (EU) 2016/1628 and the deactivation or removal of emission-reducing devices or a change that could reduce their effectiveness is not permitted.

Moreover, a decree was issued by the Federal Ministry for Transport, Innovation and Technology on 9 August 2018 on CO<sub>2</sub> emissions: approval, registration and CO<sub>2</sub> monitoring<sup>348</sup>. It details the various steps of the approval process that have to be taken into consideration, as well as the data entry process in the approval database for the approval and registration of light-duty vehicles.

Commission Regulation (EU) 2017/1151 (on odometer readings)

Commission Regulation (EU) 2017/1551 is covered by the Motor Vehicle Law 1967 (KFG)<sup>349</sup>.

Although no specific reference is made to it within the KFG, of particular importance to its provisions are Articles 29 (type approval), 57 (review process during evaluations) and 57a (recurring assessments) of the KFG, which also deal with odometer readings and their requirements to establish the road worthiness of vehicles.

Moreover, a Decree was issued by the Federal Ministry for Transport, Innovation and Technology on 9 August 2018 on CO<sub>2</sub> emissions: approval, registration and CO<sub>2</sub> monitoring<sup>350</sup>. It details the various steps of the approval process that have to be taken into consideration, as well as the data entry process in the approval database for the approval and registration of light-duty vehicles.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

<sup>347</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrzeuggesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

<sup>348</sup> Erlass – CO<sub>2</sub>-Emissionen: Genehmigung, Zulassung und CO<sub>2</sub>-Monitoring (WLTPLeitfaden), Wien, am 09.08.2018, available at: [www.wko.at/branchen/handel/fahrzeughandel/leitfaden-aenderungen-an-wltp-fahrzeugen.pdf](http://www.wko.at/branchen/handel/fahrzeughandel/leitfaden-aenderungen-an-wltp-fahrzeugen.pdf)

<sup>349</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrzeuggesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

<sup>350</sup> Erlass – CO<sub>2</sub>-Emissionen: Genehmigung, Zulassung und CO<sub>2</sub>-Monitoring (WLTPLeitfaden), Wien, am 09.08.2018, available at: [www.wko.at/branchen/handel/fahrzeughandel/leitfaden-aenderungen-an-wltp-fahrzeugen.pdf](http://www.wko.at/branchen/handel/fahrzeughandel/leitfaden-aenderungen-an-wltp-fahrzeugen.pdf)



Regulation (EC) No 595/2009 is covered by the Motor Vehicle Law 1967 (KFG)<sup>351</sup>.

Particular mention is made of the Regulation in Article 33 of the KFG in relation to changes to individual vehicles and how changes to the emission-relevant components of the power train, including the engine, exhaust system and emission control system of vehicles, by means of which their properties or their effect with regard to the emission behaviour can be reduced, are not permitted. In particular, the installation of shutdown devices within the meaning of the applicable Regulations (EC) No. 715/2007 and (EU) No. 168/2013 or bypass strategies within the meaning of the applicable Regulations (EC) No. 595/2009 or (EU) 2016/1628 and the deactivation or removal of emission-reducing devices or a change that could reduce their effectiveness is not permitted.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

As mentioned above, the main piece of federal legislation that deals with tampering is the Motor Vehicle Law 1967 (KFG).

There are no other national measures which are of particular relevance in this regard.

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

As outlined above, there are certain articles of the KFG that make specific reference to Directive 2007/46/EC, Directive 2014/45/EU, Directive 2014/45/EU, Regulation (EC) No 715/2007 and Regulation (EC) No 595/2009 and their legal requirements. Beyond that, the national pieces of legislation mentioned above only refer to the EU Directives and Regulations in relation to their transposition/implementation into national law.

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The national measures set out above primarily refer to the EU legislative acts as the reason for their adoption, i.e. the road traffic rules are redefined on the basis of the provisions mandated in the relevant EU legislation, including the health and environmental considerations made within them.

## Requirements and rules on tampering

### *Obligations manufacturers*

**6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

<sup>351</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

The manufacturers obligations are covered in Article 28c of the KFG<sup>352</sup>. It stipulates that the manufacturer is responsible to the approval authority for all matters relating to the approval process and for ensuring the conformity of production, even if it is not directly involved in all stages of the manufacture of the vehicle, the system, the component or the independent technical unit. In the case of a multi-stage type approval, each manufacturer is responsible for the approval and conformity of the production of the systems, components or independent technical units that it adds at the vehicle manufacturing stage.

*'If a manufacturer changes components or systems that have already been approved at previous production stages, it is responsible for the approval and conformity of the production of these components and systems. A manufacturer that has been granted an EC type approval for vehicles by Austria must recall vehicles that have already been sold, registered or put into operation because of one or more systems or components or one or more independent technical units with which they the vehicles are equipped, if there is a significant risk to traffic safety, public health or the environment'.* If this is the case, the Federal Minister for Transport, Innovation and Technology as the licensing authority must be informed immediately. *'The remedial action to be taken to remedy the above risk should also be proposed in this communication. If the manufacturer does not propose and implement effective remedial measures, the approval authority which granted the EC type approval can take protective measures, in turn, up to the withdrawal of the EC type approval'.*

Manufacturers of parts or equipment that can pose a significant risk to the proper functioning of essential systems shall ensure that such parts or equipment are only put on the market if they are authorised within the meaning of Article 31 of Directive 2007/46/EC and a corresponding certificate was issued. All parts or equipment for which authorisation has been granted must be marked accordingly. The manufacturer is responsible to ensuring that these parts and equipment are always manufactured under the conditions of which the certificate was issued.

The manufacturer must provide users with all relevant information and necessary instructions, from which all special conditions of use or restrictions on use applicable to a vehicle, a component or an independent technical unit can be seen, provided that a legal act expressly provides for this.

The vehicle manufacturer must provide the manufacturers of components or separate technical units with all information, including drawings if necessary, which are expressly mentioned in the appendix or in the annex to a legal act and for the EC type approval of components or separate technical units or are required to obtain a permit in accordance with Article 31 of Directive 2007/46/EC. If a manufacturer of components or separate technical units is the holder of an EC type-approval certificate, in which reference is made to restrictions on use and/or special installation instructions, it shall provide the vehicle manufacturer with all relevant information. If a legal act provides for this, the manufacturer of components or separate technical units must add information on restrictions of use and/or special installation instructions to the components or independent technical units manufactured by him.

For the purposes of an EU type approval, a manufacturer located outside of the federal territory of Austria must appoint an authorised representative resident in the federal territory to represent him at the approval authority. In such a case, the obligations stipulated in the previous paragraphs also apply to the authorised representative.

Of particular importance for this questionnaire are the passages highlighted in *italics* above, which indicate that a manufacturer must recall vehicles that have been modified after having been granted

<sup>352</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

an EC type approval, if these pose a *significant risk to traffic safety, public health or the environment*. If no remedial action is brought by the manufacturer, protective measures can be taken by the approval authority which granted the EC type approval, in turn, up to the withdrawal of the EC type approval.

**7. Are there any other requirements relating to tampering which manufacturers need to meet?**

These are also covered by Article 28c of the KFG, as indicated above.

Moreover, manufacturers have to meet the requirements set out as part of the type approval process, as stipulated in the next section below, which may relate to tampering as well.

**8. Are manufacturers required to disclose information relating to tampering (resistance)?**

Yes, as explained above in relation to Article 28c of the KFG.

*Type approval*

**9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

These requirements are covered by Article 29(3) of the KFG.

Before deciding on the application for type approval, the Federal Minister of Transport, Innovation and Technology shall obtain an opinion from one or more experts as to whether the type meets the requirements of traffic and operational safety, with the type not causing excessive noise, smoke, bad smell or harmful air pollution, and - insofar as this is recognisable to the expert(s) - the type corresponds to the type description and the vehicle complies with the provisions of this Federal Law and the regulations issued on the basis of this Federal Law.

**10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

These requirements are covered by Article 29(4) of the KFG.

The experts have to submit their expert opinions on the basis of an examination, the type examination. The facilities required for the type test must be provided by the applicant. This can be waived if the type test is carried out by the Federal Minister of Transport, Innovation and Technology or in a state test centre and the scope of the required facilities does not exceed those required for periodic roadworthiness tests. The result of the type test is to be recorded in an expert opinion, which refers to the type description of the type.

**11. Please list the national type approval authority<sup>353</sup> and technical services<sup>354</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

<sup>353</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

According to Article 29(2) of the KFG, the Federal Minister of Transport, Innovation and Technology has to decide on an application for approval of a type.

The technical services/experts in charge of ensuring compliance in relation to national type approval processes are mandated by the Federal Minister of Transport, Innovation and Technology, as indicated under point 9 above.

The technical experts have to be appointed according to Article 124 of the KFG to assess types of motor vehicles or trailers, chassis of such vehicles or parts or equipment items of such vehicles. A list of the experts appointed must be made available for general inspection in the Federal Ministry of Transport, Innovation and Technology. This list must contain at least one expert from the staff of the Federal Ministry of Agriculture and Forestry and one from the Federal Ministry of Defence as well as at least two from the staff of each federal state, provided a proposal from its governor is available. The following may only be appointed as experts: employees from the staff of a local authority dealing with matters relating to the automotive industry, or persons not belonging to the staff of a local authority, when certain criteria are met, such as at least three years in the automotive industry.

## **12. Are any of these parties required to disclose information on national type approval processes?**

Yes, data is collected in the national approval database, according to Article 30a of the KFG.

The approval database is managed by the joint facility of the insurers authorised to operate motor vehicle liability insurance and is part of the central registration evidence. The approval data or the type data of vehicles and chassis belonging to a type and the approval data of individually approved vehicles as evidence of the approval are kept within the database. The data is entered into the database online by means of remote data transmission. The authorities concerned with the matters of the approval and registration system according to this federal law as well as the registration offices can access the data in question for the purposes of the approval, registration or inspection of vehicles and use them for the approval, registration or inspection. The approval data consists of

1. the registration-relevant data of a vehicle determined by the chassis number,
2. the conditions and conditions prescribed when the vehicle was approved,
3. the data on granted approvals for changes and exemptions,
4. further data which are necessary for the proper performance of the tasks associated with the registration and approval of the vehicle and,
5. Technical information required for proper assessment and verification.

## **13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Penalties foreseen are covered in Article 134 of the KFG<sup>355</sup>.

Whoever contravenes the KFG and the ordinances, notices or other orders issued on its basis commits an administrative offence and is punishable with a fine of up to EUR 5,000, if not recoverable, with a prison sentence of up to six weeks. Such violations are also punishable when

<sup>354</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>355</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrzeuggesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

vehicles are brought into the federal territory, if they are committed on the way from an Austrian border clearance point located on foreign territory to the state border. If the perpetrator has already been punished for the same infringement, a prison sentence of up to six weeks can be imposed instead of the fine. If the perpetrator has already been punished twice for the same infringement, the fine and imprisonment can also be imposed side by side. In these cases, a prison sentence is only permissible if it is necessary to prevent the perpetrator from further administrative offences of the same kind. Attempting to do this is also punishable.

Anyone who, as a manufacturer or as the manufacturer's authorised representative in Austria has committed the violations mentioned in directly applicable European Union regulations relating to the type approval of vehicles is to be fined up to EUR 5,000. Attempting to commit such a violation is also punishable. If the violations affect several vehicles, the threat of punishment relates to each individual vehicle.

### *Rules on tampering*

#### **14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

Any modifications made to already approved types are covered by Articles 32 and 33 of the KFG.

Article 32 of the KFG sets out that the producer or his authorised representative must immediately notify the Federal Minister of Transport, Innovation and Technology of any changes to an approved type that affect the decision-making basis of the type approval notice and the final cessation of production. If changes are made to an approved type, the notification must be accompanied by a correspondingly modified type description. Before deciding on the approval of the changes, the Federal Minister of Transport, Innovation and Technology must obtain an opinion from one or more appointed experts appointed as to whether no essential technical features of the approved type have been changed and whether the type has been changed according to the ones indicated and that changes still meet the requirements of traffic and operational safety. This means that the type does not cause excessive noise, smoke, bad smell or harmful air pollution - insofar as this is recognisable by the expert(s).

If there are circumstances that justify the reasonable assumption that vehicles or chassis that are offered for sale as a type do not correspond to this type, or if there is an obligation for Austria based on international agreements, the Federal Minister of Transport, Innovation and Technology has to check whether vehicles or chassis of this type match the corresponding type. If the test reveals that the vehicle or chassis does not match the corresponding approved type, the authority that issued the approval notice in the last instance must determine that the approval notice or the type certificates issued to it no longer serve as evidence and revoke the approval mark.

Moreover, Article 33 of the KFG sets out provisions regarding alterations to individual vehicles. The owner of the vehicle's registration must immediately notify the governor of the state in whose area of effect the vehicle has its permanent location of changes to a single vehicle of an approved type that is approved for traffic and that can influence the traffic and operational safety or the environmental compatibility of the vehicle.

Modifications to parts and equipment of approved vehicles, by means of which their properties or their effect can be reduced in terms of traffic or operational safety, are not permitted. Changes to

the emission-relevant components of the drive train, including the engine, exhaust system and emission control system of vehicles, by means of which their properties or their effect with regard to their emission behaviour can be reduced, are not permitted. In particular, the installation of shutdown devices within the meaning of the applicable Regulations (EC) No. 715/2007 or (EU) No. 168/2013 or bypass strategies within the meaning of the applicable Regulations (EC) No. 595/2009 or (EU) 2016/1628 and the deactivation or removal of emission-reducing devices or a change that could reduce their effectiveness is not permitted. Interventions in the engine control (chip tuning) that change performance are only permitted and may only be approved if a test report from a technical service named for the above-mentioned Regulations shows that all emission regulations relevant to the vehicle are still being complied with. The placing on the market, making available on the market, offering and promoting of switch-off devices, bypass strategies or objects for deactivating or manipulating emission-reducing devices as well as deactivating or removing or otherwise modifying emission-reducing devices, which could reduce their effectiveness, is not permitted. Offering or promoting the implementation of such changes, as well as placing them on the market, making them available on the market, offering or promoting chip tuning that is not permitted within this meaning is also prohibited.

#### Tampering with aftermarket parts

Please see point 14 above.

#### Tampering with the engine

Please see point 14 above.

#### Tampering with the OBD system

Please see point 14 above.

#### Odometer tampering (in particular on second-hand vehicles)

Please see point 14 above.

#### Other

N/A

### **15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

If it involves tampering in relation to type approval, this is dealt with by the Federal Minister of Transport, Innovation and Technology. If it involves tampering and alteration to individual vehicles, then compliance is ensured by the offices of the nine Austrian state governors.

The legal basis has been described above under point 14 (Articles 32 and 33 of the KFG).



**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Penalties foreseen are covered in Article 134 of the KFG<sup>356</sup>.

Whoever contravenes the KFG and the ordinances, notices or other orders issued on its basis commits an administrative offence and is punishable with a fine of up to EUR 5,000, if not recoverable, with a prison sentence of up to six weeks. Such violations are also punishable when vehicles are brought into the federal territory, if they are committed on the way from an Austrian border clearance point located on foreign territory to the state border. If the perpetrator has already been punished for the same infringement, a prison sentence of up to six weeks can be imposed instead of the fine. If the perpetrator has already been punished twice for the same infringement, the fine and imprisonment can also be imposed side by side. In these cases, a prison sentence is only permissible if it is necessary to prevent the perpetrator from further administrative offences of the same kind. Attempting to do this is also punishable.

Anyone who, as a manufacturer or as the manufacturer's authorised representative in Austria has committed the violations mentioned in directly applicable European Union regulations relating to the type approval of vehicles is to be fined up to EUR 5,000. Attempting to commit such a violation is also punishable. If the violations affect several vehicles, the threat of punishment relates to each individual vehicle.

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

There are no specific national legal provisions in this regard. General principles regarding remedies apply. According to the Austrian Civil Code, a producer is liable for damage caused by a defect in his product, unless for example, it is plausible that the defect that caused the damage did not exist at the time when he put the product into circulation, or that this defect arose later<sup>357</sup>.

### *Tests and inspections*

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

Periodic roadworthiness tests are covered by Article 57a of the KFG<sup>358</sup>.

The registration holder of a vehicle, except trailers with which a speed of 25 km/h may not be exceeded, tractors with a design speed of not more than 25 km/h, self-propelled work machines and

<sup>356</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

<sup>357</sup> Allgemeines bürgerliches Gesetzbuch für die gesamten deutschen Erbländer der Oesterreichischen Monarchie (ABGB) (Austrian Civil Code), Articles 922-933, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622)

<sup>358</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)



transport carts each with a design speed of no more than 30 km/h, motor carts with a design speed of not more than 25 km/h, must, at specified times, have a person authorised to do so, inspect it repeatedly to determine whether it meets the requirements of traffic and operational safety and, in the case of motor vehicles, whether the vehicle does not cause excessive noise, smoke, bad smell or harmful air pollution. However, the near-field level does not need to be measured if there are no concerns about changing the exhaust system or if the vehicle is not marked as a low-noise vehicle. Vehicles with a maximum permissible total weight of more than 3,500 kg as well as historical vehicles must also be assessed, insofar as this can be assessed by the inspecting body, to determine whether they comply with the provisions of the KFG.

The registration holder must present the vehicle to the authorised person for recurring inspection and ensure that it is cleaned and present the registration certificate. He gives his consent to the possible readout of data as part of the vehicle inspection and, if necessary, enables technical access to interfaces. For vehicles with a maximum gross vehicle weight of more than 3,500 kg as well as for historic vehicles, the vehicle approval document and any additional evidence required - if necessary, in copy - must also be submitted. For other vehicles, the vehicle approval document can be requested if there are doubts about the approved condition of the vehicle. The registration holder can also have the vehicle inspected periodically by an appointed expert appointed, whom the governor of a federal state has provided the necessary facilities (state inspection body). In addition, these bodies have the same rights and obligations as provided for by the authorised institutions for these inspections.

The state governor has to, for his local area of activity, authorise civil technicians or technical office engineers of the relevant specialist area, associations or tradesmen authorised to repair motor vehicles or trailers, who have sufficient personnel and the necessary facilities, to carry out the periodic inspection of all or individual types of vehicles. The authorisation may only be granted to trustworthy persons. The authorisation must also state how the inspection bodies must be identified. The Federal Minister of Transport, Innovation and Technology has issued an ordinance stipulating the conditions under which a person should be considered suitable for carrying out the recurring assessment taking into account the vehicle types and which facilities are required in accordance with the current state of the art for the recurrent assessment taking the vehicle types into account. The federal guild of automotive technicians maintains a list of suitable personnel as a matter of the transferred sphere of activity.

The recurring assessment is to be carried out on the anniversary of the first approval, even if it was granted abroad, or on the anniversary of the date specified by the authority:  
 annually for motor vehicles; annually for trailers; every three years after the first approval, two years after the first assessment and one year after the second and after each subsequent assessment for motor vehicles class L and class M1, excluding taxis, ambulances and ambulance vehicles, tractors and motor carts each with a design speed of more than 25 km / h, but not more than 40 km / h, self-propelled machinery and transport carts each with a design speed of more than 30 km / h but not more than 40 km / h and trailers with which a speed of 25 km / h may be exceeded and which have a maximum permissible total weight of not more than 3,500 kg and agricultural trailers with a speed exceeding 40 km / h; every two years for historic vehicles; for agricultural trailers, with which a speed of 25 km / h but not 40 km / h may be exceeded, three years after the first registration, two years after the first assessment and thereafter every two years.

It is checked whether the vehicle meets the requirements of traffic and operational safety. The following elements of the vehicle are checked in detail: equipment, lighting, safety devices, chassis and body, tyres and wheels, engine, brakes. In addition, care is taken to ensure that the vehicle cannot cause excessive noise, smoke, malodour or harmful air pollution. The details of the inspection

are elaborated upon in Ordinance on Inspection and Assessment Bodies – PBStV, which was first introduced in 1998 and was last updated in 2018<sup>359</sup>

The authorised inspector must issue an expert opinion on an assessment form on the condition of a vehicle presented to him before any defects are remedied; the report is a public document. One copy must be given to the person presenting the vehicle for inspection, a second copy of the report must be kept for five years and submitted to the authorities concerned with matters relating to the automotive industry on request.

If the vehicle presented for inspection meets the requirements of traffic and operational safety and cannot excessively cause noise, smoke, malodour or harmful air pollution, and corresponds to the vehicle with a maximum permissible total weight of more than 3,500 kg or the historical vehicle - insofar as this could be assessed - the authorised inspector has an inspection sticker issued by the authority on which the license plate number of the vehicle is permanently legible and indelibly marked, to hand it over to the license holder or attach it to the vehicle; the inspection sticker is a public document. The inspection sticker is to be attached to the vehicle in such a way that the end of the period specified for the next recurring inspection can always be easily determined outside the vehicle. The delivery or affixing of the inspection sticker is to be noted in the inspection.

If it is determined during the inspection that the vehicle has one or more serious defects, no inspection sticker can be affixed or issued. Such a vehicle may not be used for longer than two months after this assessment, however, beyond the period specified on the previous sticker. The date of the two-month period must be indicated on the printout of the report.

Vehicles not admitted to traffic can be presented to a person authorised to carry out inspection for recurring assessment if the vehicle approval document is presented at the same time as the vehicle for inspection. Does such a vehicle meet the requirements of traffic and operational safety and cannot cause excessive noise, smoke, bad smell or harmful air pollution, and it corresponds to a vehicle with a maximum gross vehicle weight of more than 3500 kg - as far as this is assessed If - the authorised inspector must issue an expert opinion on the assessment form on which the chassis number and, if available, the engine number must be recorded. The assessment badge may only be issued on the basis of such an assessment after the vehicle has been approved for traffic by the authority at the request of the owner of the vehicle approval document.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

On-site inspections are covered by Article 58 of the KFG<sup>360</sup>.

The authority in whose local area the vehicle is located, or the public security organs at its disposal, i.e., the police, can check the technical condition and the compliance with the regulations of a vehicle

<sup>359</sup> Verordnung des Bundesministers für Wissenschaft und Verkehr, mit der Bestimmungen über die Durchführung der besonderen Überprüfung und wiederkehrenden Begutachtung von Fahrzeugen sowie über die Prüfung von Fahrtschreibern, Kontrollgeräten und Geschwindigkeitsbegrenzern festgelegt werden (Prüf- und Begutachtungsstellenverordnung – PBStV), available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10012794](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10012794)

<sup>360</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

or its parts and equipment at any time. If traffic safety is endangered by the continued use of the vehicle, the provisions of Article 57(8) apply. This stipulates that if traffic safety is endangered by the continued use of the vehicle, then in the event of danger, this is in default brings about the immediate cancellation of the approval, the approval certificate and the license plates. An approval block for the vehicle must be entered in the approval database.

If the vehicle shows any damage that currently obviously precludes its further use, this must be reported to the authority.

The authority in whose local area a vehicle is located or the public security organs at its disposal can check on the spot at any time whether the vehicle is causing more noise, smoke, bad smell or harmful air pollution, as compared to what is unavoidable in good condition and proper operation. If it is determined that the vehicle is causing inadmissible excessive noise, smoke, bad smell or harmful air pollution due to inadmissible, unauthorised changes or due to defective parts or equipment, then the cancellation of the approval, the approval certificate and the license plates are to be enacted with immediate effect. By ordinance of the Federal Minister of Transport, Innovation and Technology, more detailed criteria can be set as to when danger is to be assumed and the registration certificate and license plates have to be removed.

Motor vehicle drivers,

1. who cause more noise, smoke, bad smell or harmful air pollution with their vehicle than is unavoidable, if the vehicle is in good condition and operated properly, or
2. whose vehicle appears to impair the effectiveness of parts and equipment that are important for traffic and operational safety,

have to show the vehicle at the request of the organs of the public security service at a suitable place no more than 10 km from their way to their destination for inspection. If, during the course of the inspection, serious defects are found on the spot, the license holder must immediately reimburse the use of the facilities provided. The driver of the motor vehicle is deemed to be the representative of the license holder if he is not himself, or a representative he has appointed is present during the inspection. If the reimbursement of costs is not readily paid, the reimbursement must be prescribed by the authority. The reimbursement of costs goes to the local authority, which has to bear the costs for the facilities provided. The amount of this reimbursement of costs is to be determined by ordinance of the Federal Minister of Transport, Innovation and Technology. The Federal Minister of Transport, Innovation and Technology may, by ordinance, transfer the performance of certain non-official tasks in connection with the fulfilment of the tasks of a contact point in accordance with Article 17 of Directive 2014/47 / EU, reporting and quality assurance in the area of technical roadside inspections and the cooperation between Member States, to the Motor- and Expressway finance joint stock company (ASFiNAG) in their own right.

Furthermore, Articles 56 and 57 of the KFG<sup>361</sup> cover the provisions on a special review of vehicles.

If the authorities have doubts as to whether a vehicle is still in a safe and operational condition (possibly based on a legal complaint), it must order a special inspection. Such a special inspection can also be ordered for vehicles that were first registered more than twelve years ago.

Such inspections are to take place in order to check whether the vehicle(s) is in a operationally safe condition, such as when a traffic accident report shows that the vehicle has serious damage, such as serious deformation of the chassis, whether they cause no more noise, smoke, malodour or harmful air pollution than is inevitable if they are in good condition and properly operated or whether they are in good condition.

<sup>361</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

The license holder must present his vehicle for inspection based on such a summons and present the vehicle approval document. In the course of the summons, the authority sets an individual deadline within which the vehicle must be presented for inspection. The vehicle must be presented to a state inspection body or to a person authorised by the state governor (e.g. car repair shop) for inspection.

Article 58a of the KFG includes additional provisions in relation to technical roadside inspections for vehicles of classes M2, M3, N2, N3, O3, O4 and tractors of vehicle class T5 mainly used in commercial road traffic on wheels with a design-related maximum speed of more than 40 km/ h. In the case of these vehicles, a distinction must be made between an initial technical roadside inspection and a more thorough technical roadside inspection. For vehicles in categories M2, M3, N2, N3, O3 and O4, the inspections must be carried out in such a way that the total number of initial technical roadside inspections in each calendar year corresponds to at least 5% of the total number of these vehicles that are registered in Austria. When identifying vehicles that are to be subjected to an initial technical on-the-go check, the control bodies can primarily focus on vehicles operated by companies with a high-risk rating. Furthermore, vehicles can also be randomly selected for inspection or if there is a suspicion that they pose a threat to road safety or the environment. A more thorough technical roadside inspection is carried out by a suitable inspection body using a mobile inspection unit, in a special facility for roadside inspection or in an authorised inspection body or in a state inspection body. During a more thorough technical roadside inspection, the items listed in Annex II to Directive 2014/47 / EU, that are considered necessary and relevant are checked, taking particular account of the safety of the brake system, the tires, the wheels, the chassis and the environmental impact.

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

The periodic roadworthiness tests are carried out by either associations, such as drivers' clubs (ARBÖ and ÖAMTC in Austria), businesses (e.g. car workshops), civil engineers and technical offices - engineering offices.

The special reviews are carried out by either one of the state inspection bodies of the nine federal states or a person authorised by the state governor (e.g. car repair shop). The technical roadside inspections are carried out by the local authority in whose area the vehicle is located when the checks are being carried out, or the public security organs at its disposal, i.e., the police.

The manner in which these inspection authorities are mandated has been described in points 18 and 19 above.

**21. Are any of these authorities required to disclose information on these tests and inspections?**

Yes, according to Articles 30a and 57c of the TKG<sup>362</sup>, a types approval and inspections plaque databases have to be maintained, respectively. Any violations of the type approval and/or of the conditions to be included in the plaques databases during the relevant inspections has to be inputted into them. Both can be accessed by all relevant bodies and authorities in the type approval and inspection processes at any time.

The technical roadside inspections mentioned in point 19 above in relation to Article 58a of the KFG, records must be kept of the initial technical roadside checks and the data required for reporting in

<sup>362</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

accordance with Article 20 of Directive 2014/47 / EU. These records are to be collected by the police and, with the assistance of automation, transmitted anonymously to the Federal Minister of Transport, Innovation and Technology by the Federal Ministry of the Interior at least every six months. The control data should be broken down as follows:

- number of vehicles checked,
- Number of vehicles checked with defects,
- Vehicle class of the controlled vehicles,
- Country of registration of controlled vehicles.

**22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Penalties foreseen are covered in Article 134 of the KFG<sup>363</sup>.

Whoever contravenes the KFG and the ordinances, notices or other orders issued on its basis commits an administrative offence and is punishable with a fine of up to EUR 5,000, if not recoverable, with a prison sentence of up to six weeks. Such violations are also punishable when vehicles are brought into the federal territory, if they are committed on the way from an Austrian border clearance point located on foreign territory to the state border. If the perpetrator has already been punished for the same infringement, a prison sentence of up to six weeks can be imposed instead of the fine. If the perpetrator has already been punished twice for the same infringement, the fine and imprisonment can also be imposed side by side. In these cases, a prison sentence is only permissible if it is necessary to prevent the perpetrator from further administrative offences of the same kind. Attempting to do this is also punishable.

*National strategies and initiatives*

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

This is done as part of the periodic roadworthiness tests, during which the current mileage and the mileage of the last review are saved in the central assessment plaque database (please see point 18 above for further details on which actor takes care of this).

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

As explained above under point 23, this is possible via the central assessment plaque database.

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

<sup>363</sup> Bundesgesetz vom 23. Juni 1967 über das Kraftfahrwesen (Kraftfahrgesetz 1967 – KFG. 1967), available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011384)

N/A

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

Such research has in the past been carried out by the Federal Transport Authority (Bundesanstalt für Verkehr – BAV). Its areas of operations included automotive and traffic engineering and a security investigation body, which included cooperation with the federal state inspection bodies.

BAV was responsible for certain matters relating to road traffic, rail traffic, aviation, shipping and cable cars. The agendas in the field of road safety work were summarised under the umbrella of VERSA (road safety work for Austria). BAV was entitled to process, solve and assess automotive and traffic-related questions, for the testing and assessment of motor vehicles and trailers, parts and equipment and checking the load of these vehicles. BAV issued expert reports on tests and also contributed to the further development of regulations (laws, ordinances, decrees, catalogue of defects, standards, etc.) and vehicle test systems based on practical experience. Among other things, BAV supervised the special check for traffic and operational safety (demonstration), maintained the Austrian approval database for type approval in road traffic and bore overall responsibility for the digital tachograph system. BAV published extensive activity reports (annual reports and safety reports), which were also noted by the Parliament, as well as statistical work on accidents and traffic safety.

As an example, the BAV published annual reports about technical roadside inspections and relevant statistics. Here is an example from 2016: [www.parlament.gv.at/PAKT/VHG/BR/III-BR/III-BR\\_00619/imfname\\_626266.pdf](http://www.parlament.gv.at/PAKT/VHG/BR/III-BR/III-BR_00619/imfname_626266.pdf)

BAV and its tasks was integrated into the Federal Ministry Climate Action, Environment, Energy, Mobility, Innovation and Technology on 1 August 2017: [www.bmk.gv.at/themen/strasse.html](http://www.bmk.gv.at/themen/strasse.html)

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

N/A

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

As mentioned above under point 26, the work carried by BAV (and now the Federal Ministry) contributed to the further development of regulations (laws, ordinances, decrees, catalogue of defects, standards, etc.) in the field. No indication could be found though that this resulted directly in national legislation from such strategies or initiatives in the field. The BAV's responsibilities (and now the Federal Ministry's) for the issuing of such reports as mentioned above was granted through the KFG.



## Effectiveness and enforcement

### 29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There has been no research carried out at national level that would allow for an answer to this question.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question.

Potential gaps in the legislation

None found so far.

### 30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?

The existing enforcement system appears to be effective.

### 31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?

In Austria, the 3-2-1 rule applies: for cars and trailers up to 3.5 tons total weight, the first periodic roadworthiness test assessment is three years after the first registration. The second one is due after another two years. After then, these tests have to be carried out annually. Hence, in the first few years of a new car's life, the number of garage visits is limited, and, thus, the possibility to check the odometer and other possible forms of tampering with the vehicle.

As such infringements are dealt with as administrative ones, the absolute fine of €5000 may appear low regarding enforcement measures.

Austria recently reformed the part of the KFG regarding the periodic roadworthiness tests and the manner in which exhaust are measured. Tailpipe measurements are no longer required and only a purely electronic test is now deemed sufficient. This may appear to be inadequate to ensure that all possible checks can be carried out to ensure that nothing was tampered with.

## Other

### 32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services),



3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.

Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology: [www.bmk.gv.at/en.html](http://www.bmk.gv.at/en.html) and [www.bmk.gv.at/themen/strasse.html](http://www.bmk.gv.at/themen/strasse.html)

Nine federal state inspection bodies:

- Vorarlberg: [www.tuev-sued.at/at-de/branchen/automobil-verkehr/auto-service-mobility/vorarlberg-auto-service](http://www.tuev-sued.at/at-de/branchen/automobil-verkehr/auto-service-mobility/vorarlberg-auto-service)
- Tyrol: [www.tirol.gv.at/verkehr/verkehrsrecht/fbv/aufsichtpruefhalle/](http://www.tirol.gv.at/verkehr/verkehrsrecht/fbv/aufsichtpruefhalle/)
- Salzburg: [www.salzburg.gv.at/themen/verkehr/strasse-auto/kfz-ueberpruefung](http://www.salzburg.gv.at/themen/verkehr/strasse-auto/kfz-ueberpruefung)
- Carinthia: <https://strassenbau.ktn.gv.at/Themen/Technisches%20Kraftfahrwesen>
- Styria: [www.technik.steiermark.at/cms/ziel/65975200/DE/](http://www.technik.steiermark.at/cms/ziel/65975200/DE/)
- Upper Austria: [www.land-oberoesterreich.gv.at/landespruefstelle.htm](http://www.land-oberoesterreich.gv.at/landespruefstelle.htm)
- Lower Austria: <http://www.noel.gv.at/noe/KFZueberpruefung-Genuehmigung/Pruefstellen-Termine.html>
- Vienna: [www.wien.gv.at/verkehr/kfz/pruefstelle/](http://www.wien.gv.at/verkehr/kfz/pruefstelle/)
- Burgenland: [www.burgenland.at/verwaltung/landesverwaltung-im-ueberblick/gruppe-4/abteilung-5-baudirektion/hauptreferat-sachverstaendigendienst/referat-kraftfahrwesen/einzelgenehmigungen-von-kraftfahrzeugen-typisierung/](http://www.burgenland.at/verwaltung/landesverwaltung-im-ueberblick/gruppe-4/abteilung-5-baudirektion/hauptreferat-sachverstaendigendienst/referat-kraftfahrwesen/einzelgenehmigungen-von-kraftfahrzeugen-typisierung/)

ÖAMTC (automobile club): [www.oeamtc.at/](http://www.oeamtc.at/)

ARBÖ: [www.arboe.at/](http://www.arboe.at/)

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

None.

Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

CJEU 2019 (C-343/19): A request for a preliminary ruling was brought by the Landesgericht Klagenfurt on 17 April 2019 in a case involving the Verein für Konsumenteninformation (Association for Consumer Information), Vienna against Volkswagen AG, Wolfsburg, Germany on the basis of a national case (21 Cg 74/18v).

[http://curia.europa.eu/juris/documents.jsf?ogp=&for=&mat=or&lgrec=de&ige=&td=%3BALL&jur=C%2CT%2CF&num=C-343%252F19&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=11163037](http://curia.europa.eu/juris/documents.jsf?ogp=&for=&mat=or&lgrec=de&ige=&td=%3BALL&jur=C%2CT%2CF&num=C-343%252F19&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=11163037)

The Verein für Konsumenteninformation (VKI), an Austrian consumer-protection association, had brought before the Landesgericht Klagenfurt (Regional Court, Klagenfurt, Austria) an action for damages against the German motor vehicle manufacturer Volkswagen on the ground of damage resulting from the installation, in vehicles purchased by Austrian consumers, of software that manipulates data relating to exhaust gas emissions. The VKI claimed that Volkswagen should be ordered to pay it EUR 3,611,806, plus associated costs, and be declared liable for all damage that is not yet quantifiable and/or that is yet to be suffered in the future. The VKI based its application on Volkswagen's liability in tort, delict and quasi-delict, relying on the fact that the 574 consumers who had assigned to it their claims for the purposes of that action purchased in Austria new or used vehicles equipped with an EA 189 engine before the disclosure to the public, on 18 September 2015, of Volkswagen's manipulation of data relating to exhaust gas emissions from those vehicles. According to the VKI, those engines were equipped with a 'defeat device' which is unlawful under the regulation on type approval of motor vehicles 1 with regard to emissions from light passenger and commercial vehicles (EUR 5 and EUR 6). The software in question makes it possible to display, during tests and when measurements are being taken, exhaust gas emissions that comply with the prescribed limit values, whereas a level of pollutants many times higher than the prescribed limit values is actually emitted under the real-world driving conditions of the vehicles concerned, that is to say, on the road. The VKI submitted that it was only by means of that software which manipulates data relating to those emissions that Volkswagen was able to obtain the type approval provided for under EU legislation for vehicles with the EA 189 engine. According to the VKI, the damage suffered by the owners of those vehicles consisted in the fact that, had they been aware of the manipulation at issue, they would either not have purchased such a vehicle or would have purchased it at a price reduced by at least 30%. Since the vehicles in question were defective from the outset, their market value and, therefore, their purchase price are significantly lower than the purchase price actually paid. The VKI argued that the difference constituted a recoverable loss. Volkswagen, that has its registered office in Wolfsburg (Germany), disputed in particular the international jurisdiction of the Austrian courts.

In this context, the Landesgericht Klagenfurt asked the CJEU to interpret the Regulation on jurisdiction<sup>364</sup>. According to that Regulation, in principle, the courts of the Member State in which the defendant is domiciled have jurisdiction. However, in matters relating to tort, delict or quasi-delict, that Regulation confers special jurisdiction on the courts for the place where the damage occurred and on the courts for the place of the event giving rise to that damage. Consequently, the defendant may also be sued, at the option of the applicant, in the courts for either of those places. In the present case, the place of the event giving rise to the damage is in Germany, where the vehicles in question were equipped with software that manipulates data relating to exhaust gas emissions. The connection to that place thus results, like the defendant's domicile, in the German courts having jurisdiction. The Landesgericht Klagenfurt harboured doubts as to whether the view must be taken, owing to the mere purchase of the vehicles in question from car dealers established in Austria and the delivery of those vehicles in Austria, that the place where the damage occurred is in Austria, which would mean that the Austrian courts have jurisdiction. The CJEU replied that, where a manufacturer in a Member State (Germany) has unlawfully equipped its vehicles with software that manipulates data relating to exhaust gas emissions before those vehicles are purchased from a third party in another Member State (Austria), the place where the damage occurs is in that latter Member State (Austria). In the present case, the damage alleged by the VKI took the form of a loss in value of the vehicles in question stemming from the difference between the price paid by the purchaser for such a vehicle and its actual value owing to the installation of software that manipulates data relating to exhaust gas emissions. Consequently, while those vehicles became

<sup>364</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

defective as soon as that software had been installed, the view was taken that the damage asserted occurred only at the time when those vehicles were purchased, as they were acquired for a price higher than their actual value. The CJEU concluded that, in the case where vehicles equipped by their manufacturer with software that manipulates data relating to exhaust gas emissions are sold, the damage suffered by the final purchaser is neither indirect nor purely financial and occurs when such a vehicle is purchased from a third party. The CJEU also observed that a motor vehicle manufacturer which is established in one Member State and engages in unlawful tampering with vehicles sold in other Member States may reasonably expect to be sued in the courts of those States.

Landesgericht Eisenstadt (Regional Court Eisenstadt), judgment of 22 May 2019 (18 Cg 18/16y) in a case of the Verein für Konsumenteninformation, VKI (Association for Consumer Information), Vienna against Volkswagen AG, Wolfsburg, Germany

[https://verbraucherrecht.at/cms/uploads/media/LG\\_Eisenstadt\\_22.05.2019\\_34\\_Cg\\_16\\_19a\\_20.pdf](https://verbraucherrecht.at/cms/uploads/media/LG_Eisenstadt_22.05.2019_34_Cg_16_19a_20.pdf)

The Landesgericht (LG) Eisenstadt saw a legitimate reversal of the purchase contract due to error and awarded the plaintiffs the purchase price minus the user fee. Manipulated vehicles would not have the properties usually required when purchasing, if the specified values for NOx emissions in real operation are exceeded 5 times. Even after the software update, limit values are exceeded by 77%.

The VKI brought the court claim on behalf of plaintiffs, who on 16 July 2013 purchased an Audi Q3 from the defendant as an authorised dealer of Porsche Austria GmbH & Co KG for EUR 40,490.

The LG Eisenstadt determined that due to the impermissible shutdown device, there was an intervention in the switching logic between the engine test bench and normal vehicle operation and this represented an intervention in the emission control system. Furthermore, it was found that if the vehicle registration office had been aware of the switchover logic, the initial operating license would have been refused or removed again. A software update, which was able to remove the switching logic, was only available on 1 December 2016. A completely new mode was developed for this, which does not correspond to the engine test bench mode.

In the course of preparing the report, real driving measurements were carried out before and after the update. In the measurement before the update, the average NOx value was 625.7 mg / km. This meant an exceedance of 247.6% or 3.4 times the permissible limit value according to the Euro 5 standard as well as five times exceeding the value specified in the data extract. The real driving measurement after the software update resulted in an average NOx value of 318.9 mg / km. This meant exceeding 77% of the limit or 2.5 times the value specified in the data extract.

The judge stated that it was in line with general life experience that engine test bench values were exceeded in real operation. It was noted that exceeding 20-30% still seemed acceptable, but that exceeding 247% before or 77% after the update was surprising.

The vehicle does not have the properties normally required if the pollutant emissions in real operation are more than 200% higher than in the engine test bench. The buyer must be able to assume that a new car meets all legal requirements and does not have an inadmissible shutdown device. The applicants were, therefore, subject to a material business error. The defendant caused the error, even if the defendant had no knowledge of the fact.

The software update did not result in any harmlessness. On the one hand, the software update was only available over a year after the scandal was exposed. In addition, although the Euro 5 standard will be observed on the engine test bench after the update, in real operation there would still be an overrun of 77%. The defendant claims that there are no legal requirements in the ordinance for compliance in real operation. Here, however, reference should be made to Art 5 (1) of Regulation

(EC) Nr 715/2007, according to which the manufacturer must equip the vehicle in such a way that the components are likely to influence the emission behaviour in such a way that the vehicle complies with the Regulation under normal operating conditions. Both the aim of the Regulation and the expectation of buyers are that the limit values are (almost) reached in normal road traffic. This was not achieved. The plaintiffs were, therefore, entitled to reverse the contract. They have to return the vehicle and receive the purchase price minus a usage fee.

Landesgericht Linz (Regional Court Linz) judgment of 27 May 2018 (45 Cg 42/17) in a case of the Verein für Konsumenteninformation, VKI (Association for Consumer Information), Vienna against Volkswagen AG, Wolfsburg, Germany

[www.nachrichten.at/wirtschaft/VW-Skandal-Linzer-Gericht-wies-VKI-Klage-ab;art15,2907536](http://www.nachrichten.at/wirtschaft/VW-Skandal-Linzer-Gericht-wies-VKI-Klage-ab;art15,2907536)

The LG Linz dismissed the lawsuit in first instance, in which the VKI had asked for the reversal of a car owner's purchase contract. As loss of value was claimed as well.

The LG Linz stated that the installation of the illegal manipulation software, which increased the pollutant emissions, was a fault that could be improved. It is also within reason to expect the customer to accept this. The time required for the update is about half an hour. During this time, customers receive a free replacement vehicle or a free pick-up and delivery service is offered. Incidentally, the consumer represented by the VKI had not had the update carried out so far, but would do it, if otherwise the approval for the car could be withdrawn. The woman would also buy a VW diesel again, as she said in court.

In the opinion of the LG Linz, the update did not lead to an impairment and also did not lead to other defects or damage or adverse effects. The vehicle was fully usable (with and without a software update), technically safe and not restricted in terms of driving readiness. It also fulfilled the safety standards. ... Also, a mercantile inferior value resulting from the 'cheat software' or from the software update is not available, the court stated, with reference to the expert opinion obtained for the procedure. The court could not find that the driver concerned would not have bought the car if she had known about the manipulation of the software at the time of purchase. The court did not accept the argument that used diesel cars were generally less valuable due to the exhaust gas scandal, i.e. that their replacement value had decreased. The sales employee of the accused Linz car dealer could at least not be accused of illegal and deliberate misleading conduct, since at the relevant time he himself knew nothing of the manipulation.

#### Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
n/a		

## Belgium

### Overview of legislation

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

The directive was transposed through:

- the ministerial circular of 20 February 2009 concerning the conditions for the approval of particulate reduction systems and their installation on diesel engines of vehicles of categories M1 and N1, not equipped with such devices<sup>365</sup> and
- the Royal Decree of 14 April 2009, amending the Royal Decree of 15 March 1968 laying down general regulations on the technical conditions to be met by motor vehicles and their trailers, their components and safety accessories<sup>366</sup>.

Directive 2014/45/EU (on periodic roadworthiness tests)

Directive 2014/45/EU was transposed through:

- Two Orders of the Walloon Government:
  1. One of 30 March 2017 amending the Royal Decree of 23 December 1994 determining the conditions of approval and the rules of administrative control of the bodies responsible for the control of vehicles in circulation<sup>367</sup>.
  2. One of 17 May 2018 amending the Royal Decree of 15 March 1968 laying down general regulations on the technical conditions to be met by motor vehicles and their trailers, their components and safety accessories<sup>368</sup>.
- It was also implemented through the Order of the Flemish Government
  3. of 27 April 2018 amending various orders concerning technical inspection<sup>369</sup> and

<sup>365</sup> Circulaire ministérielle relative aux conditions d'homologation de systèmes de réduction de particules et de leur placement sur les moteurs diesel des véhicules des catégories M1 et N1, non équipés de tels dispositifs. Available at

[www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?sql=\(text%20contains%20\(%27%27\)\)&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table\\_name=loi&F=&cn=2009022037&caller=image\\_a1&fromtab=loi&la=F](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?sql=(text%20contains%20(%27%27))&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table_name=loi&F=&cn=2009022037&caller=image_a1&fromtab=loi&la=F)

<sup>366</sup> Arrêté royal portant modification de l'arrêté royal du 15 mars 1968 portant règlement général sur les conditions techniques auxquelles doivent répondre les véhicules automobiles et leurs remorques, leurs éléments ainsi que les accessoires de sécurité. Available at :

[ejustice.just.fgov.be/cgi\\_loi/loi\\_l1.pl?language=fr&caller=list&la=f&fromtab=loi&tri=dd+as+rank&sql=dd+=+date%272009-04-14%27+and+nm+contains+%272009014091%27](http://ejustice.just.fgov.be/cgi_loi/loi_l1.pl?language=fr&caller=list&la=f&fromtab=loi&tri=dd+as+rank&sql=dd+=+date%272009-04-14%27+and+nm+contains+%272009014091%27)

<sup>367</sup> Arrêté du Gouvernement wallon modifiant l'arrêté royal du 23 décembre 1994 portant détermination des conditions d'agrément et des règles du contrôle administratif des organismes chargés du contrôle des véhicules en circulation.

Available at: [wallex.wallonie.be/sites/wallex/contents/acts/4/4635/1.html?doc=30526&rev=32117-20376](http://wallex.wallonie.be/sites/wallex/contents/acts/4/4635/1.html?doc=30526&rev=32117-20376)

<sup>368</sup> Arrêté du Gouvernement wallon modifiant l'arrêté royal du 15 mars 1968 portant règlement général sur les conditions techniques auxquelles doivent répondre les véhicules automobiles et leurs remorques, leurs éléments ainsi que les accessoires de sécurité. Available at : [etaamb.be/fr/arrete-du-gouvernement-wallon-du-17-mai-2018\\_n2018202912.html](http://etaamb.be/fr/arrete-du-gouvernement-wallon-du-17-mai-2018_n2018202912.html)

<sup>369</sup> Arrêté du Gouvernement flamand modifiant divers arrêtés concernant le contrôle technique.

Available at: [ejustice.just.fgov.be/mopdf/2018/05/17\\_1.pdf#Page282](http://ejustice.just.fgov.be/mopdf/2018/05/17_1.pdf#Page282)

- through an Order of the Government of the Brussels-Capital Region:  
4. of 28 June 2018 amending the Royal Decree of 23 December 1994 laying down the conditions for approval and the rules for administrative control of bodies responsible for the control of vehicles in circulation<sup>370</sup>.

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

This Directive has been transposed through:

- an Order of the Walloon Government of 6 July 2017<sup>371</sup> and
- an Order of the Government of the Brussels-Capital Region of 19 July 2018<sup>372</sup>, both on the technical roadside inspection of commercial vehicles registered in Belgium or abroad.
- an Order of the Flemish Government of 2 March 2018 on the technical roadside inspection of commercial vehicles<sup>373</sup>.

## 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

On a national level, the decree of 17 January 2018 on the Control of Air Pollution linked to Vehicle Traffic<sup>374</sup> mentions the emissions norm set out by the Commission Regulation (EC) 715/2007.

On a regional level, the Order of the Flemish Government of 31 March 2017 amending Article 2 of the Flemish Government Order of 26 February 2016 on low emission zones<sup>375</sup> and the Order of the Government of the Brussels-Capital Region of 25 January 2018 on the creation of a low emission zone<sup>376</sup> also both mention this emission norm.

Commission Regulation (EU) 2017/1151 (on odometer readings)

<sup>370</sup> Arrêté du Gouvernement de la Région de Bruxelles-Capitale modifiant l'arrêté royal du 23 décembre 1994 portant détermination des conditions d'agrément et des règles du contrôle administratif des organismes chargés du contrôle des véhicules en circulation. Available at:

[www.ejustice.just.fgov.be/mopdf/2018/07/20\\_2.pdf#Page223](http://www.ejustice.just.fgov.be/mopdf/2018/07/20_2.pdf#Page223)

<sup>371</sup> Arrêté du Gouvernement wallon relatif au contrôle technique routier des véhicules utilitaires immatriculés en Belgique ou à l'étranger. Available at : [www.ejustice.just.fgov.be/mopdf/2017/09/18\\_1.pdf#Page51](http://www.ejustice.just.fgov.be/mopdf/2017/09/18_1.pdf#Page51)

<sup>372</sup> Arrêté du Gouvernement de la Région de Bruxelles-Capitale relative au contrôle technique routier des véhicules utilitaires immatriculés en Belgique ou à l'étranger. Available at:

[www.ejustice.just.fgov.be/mopdf/2018/08/03\\_1.pdf#Page380](http://www.ejustice.just.fgov.be/mopdf/2018/08/03_1.pdf#Page380)

<sup>373</sup> Arrêté du Gouvernement flamand relatif au contrôle technique routier des véhicules utilitaires.

Available at: [ejustice.just.fgov.be/mopdf/2018/05/11\\_1.pdf#Page226](http://ejustice.just.fgov.be/mopdf/2018/05/11_1.pdf#Page226)

<sup>374</sup> Décret relatif à la lutte contre la pollution atmosphérique liée à la circulation des véhicules. Available at :

[wallex.wallonie.be/contents/acts/20/20147/1.html?doc=31336&rev=33096-21214](http://wallex.wallonie.be/contents/acts/20/20147/1.html?doc=31336&rev=33096-21214)

<sup>375</sup> Arrêté du Gouvernement flamand portant modification de l'article 2 de l'arrêté du Gouvernement flamand du 26 février 2016 relatif aux zones de basses émissions.

Available at: [justice.just.fgov.be/mopdf/2017/05/09\\_1.pdf#Page173](http://justice.just.fgov.be/mopdf/2017/05/09_1.pdf#Page173)

<sup>376</sup> Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif à la création d'une zone de basses émissions. Available at:

[ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2018012503&table\\_name=loi](http://ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2018012503&table_name=loi)



The Royal Decree of 17 December 2017 amending the Royal Decree of 5 September 2001 on the availability of information to consumers on fuel consumption and CO<sub>2</sub> emissions in the marketing of new passenger cars<sup>377</sup> refers to the WLTP procedure which is provided for by the Commission Regulation (EU) 2017/1151, even though it does not directly refer to the Regulation.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

The order of the Flemish Government of 26 February 2016 on low emission zones cites the emission norm for heavy duty vehicles set in Regulation 595/2009.

The Order of the Government of the Brussels-Capital Region of 25 January 2018 on the creation of a low-emission zones cites the emissions norms set out for M3 vehicles in Regulation 595/2009.

Also, the Decree of the Flemish Government of 17 January 2019 on the fight against air pollution from vehicle traffic cites the emission norm set out by Regulation 595/2009 for N2, N3 and M3 vehicles.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

The use of a manipulation device on two or three-wheels motor vehicles is prohibited in Belgium. It is enforced by the Royal Decree of 20 April 2010 on general regulations on the technical conditions which must be met by mopeds and motorcycles as well as their trailers<sup>378</sup>.

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

The Royal Decree of 20 April 2010 transposes Directive 2009/108/CE, which provides the grounds of refusal for granting an EC type-approval, based on measures to counter air pollution or noise emission. The Decree does not explicitly cite EU emission standards, but it refers to the Directive.

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

All these measures refer to the European norm that they are covering or transposing. Most of them refer to better road safety and protecting the environment as an additional reason for adopting such provisions in the articles themselves - but often while citing the European texts. For example, to evaluate the gradation of a failure, its damage to environment or to road safety is considered, as provided by the Directives.

<sup>377</sup> Arrêté royal modifiant l'arrêté royal du 5 septembre 2001 concernant la disponibilité d'informations sur la consommation de carburant et les émissions de CO<sub>2</sub> à l'intention des consommateurs lors de la commercialisation des voitures particulières neuves. Available at :

[ejustice.just.fgov.be/mopdf/2018/01/12\\_1.pdf#Page152](http://ejustice.just.fgov.be/mopdf/2018/01/12_1.pdf#Page152)

<sup>378</sup> Arrêté royal modifiant l'arrêté royal du 10 octobre 1974 portant règlement general sur les conditions techniques auxquelles doivent répondre les cyclomoteurs et les motocyclettes ainsi que leurs remorques.

Available at: [www.ejustice.just.fgov.be/mopdf/2010/04/28\\_1.pdf#Page2](http://www.ejustice.just.fgov.be/mopdf/2010/04/28_1.pdf#Page2)



The Royal Decree of the 14 April 2009 has a “King’s report” annexed to it in which the benefits for road safety and the environment are mentioned.

A few measures also refer to improving the citizens’ health.

## Requirements and rules on tampering

### *Obligations manufacturers*

#### **6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

Initially, the Royal Decree of 15 March 1968 laying down the general technical requirements for motor vehicles and their trailers, their components and safety accessories prevented vehicle tampering. Among other things, according to this decree, cars needed to be equipped with an OBD system, an electronic system which diagnoses if some parts of the car are tampered with, such as the anti-pollution disposal. Although this Decree is still in force, some of its articles have been updated in 2018.

This Decree was amended in 2018 by each Belgian Region to transpose the Directive 2014/45/EU on periodic roadworthiness tests for motor vehicles and their trailers but it does not apply to manufacturers.

#### **7. Are there any other requirements relating to tampering which manufacturers need to meet?**

There are no other requirements regarding this.

#### **8. Are manufacturers required to disclose information relating to tampering (resistance)?**

Manufacturers are not required to disclose information relating to tampering *before vehicles are put on the market*.

They are required to disclose information on vehicles which have been recalled after manufacturing or when designing defects were discovered. The owners of such vehicles must be given notice that they should have their vehicle inspected.

In the event that the owners do not have the vehicle inspected, the recall remains ‘open’. This must be disclosed to the Car-Pass association, to be mentioned on the Car-Pass certificates. This requirement is provided by Article 6 (3) of the 11 June 2004 Law on information to be disclosed when selling second-hand vehicles<sup>379</sup>.

**9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

Type approval process in Belgium is regulated by provisions which transpose Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (hence, there are no national type approval processes):

- The Ministerial Circular of 20 February 2009 concerning the conditions for the approval of particulate reduction systems and their installation on diesel engines of vehicles of categories M1 and N1, not equipped with such devices<sup>380</sup>.
- The Royal Decree of 14 April 2009, amending the Royal Decree of 15 March 1968 laying down general regulations on the technical conditions to be met by motor vehicles and their trailers, their components and safety accessories<sup>381</sup>. Article 8§5 of this decree specifies that if an important modification to a vehicle has been carried out, it will have to go under a new type-approval process, to ensure that it meets the regulations in force.

In addition, the Royal Decree of 17 December 2017 modifying the 5 September 2001 Decree on the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger car<sup>382</sup> sets out that as of 1 September 2018, fuel consumption and emissions standards for new cars must be determined in accordance with the new WLTP test method<sup>383</sup>.

Thus, there are no regulations in Belgium which specifically refer to tampering among those referring to the type-approval process.

**10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

Since there are no specific requirements regarding tampering as part of the type-approval process, there are no checks being carried out regarding these requirements.

The details for the tests used for type-approval can be found here [www.code-de-la-route.be/pdf/tech/bijl26fr1.pdf](http://www.code-de-la-route.be/pdf/tech/bijl26fr1.pdf).

<sup>380</sup> Circulaire ministérielle relative aux conditions d'homologation de systèmes de réduction de particules et de leur placement sur les moteurs diesel des véhicules des catégories M1 et N1, non équipés de tels dispositifs. Available at:

[www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?sql=\(text%20contains%20\(%27%27\)\)&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table\\_name=loi&F=&cn=2009022037&caller=image\\_a1&fromtab=loi&la=F](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?sql=(text%20contains%20(%27%27))&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table_name=loi&F=&cn=2009022037&caller=image_a1&fromtab=loi&la=F)

<sup>381</sup> Arrêté royal portant modification de l'arrêté royal du 15 mars 1968 portant règlement général sur les conditions techniques auxquelles doivent répondre les véhicules automobiles et leurs remorques, leurs éléments ainsi que les accessoires de sécurité. Available at :

[ejustice.just.fgov.be/cgi\\_loi/loi\\_l1.pl?language=fr&caller=list&la=f&fromtab=loi&tri=dd+as+rank&sql=dd+=+date%272009-04-14%27+and+nm+contains+%272009014091%27](http://ejustice.just.fgov.be/cgi_loi/loi_l1.pl?language=fr&caller=list&la=f&fromtab=loi&tri=dd+as+rank&sql=dd+=+date%272009-04-14%27+and+nm+contains+%272009014091%27)

<sup>382</sup> Arrêté royal modifiant l'arrêté royal du 5 septembre 2001 concernant la disponibilité d'informations sur la consommation de carburant et les émissions de CO2 à l'intention des consommateurs lors de la commercialisation des voitures particulières neuves.

Available at : [ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2017121726](http://ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2017121726)

<sup>383</sup> [www.etaamb.be/fr/arrete-royal-du-17-decembre-2017\\_n2017032251.html](http://www.etaamb.be/fr/arrete-royal-du-17-decembre-2017_n2017032251.html)

**11. Please list the national type approval authority<sup>384</sup> and technical services<sup>385</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

In Belgium, the national authority in charge of type-approvals is the Mobility and Transportation Federal Public Service, Mobility and Transportation head management, Vehicles Department. This authority is represented by:

- For the Brussels region: The Regional Public Service of Brussels – Brussels Mobility – Road Safety Management
- For the Flanders region: The Department
- For the Walloon region: The Public Service of Wallonia – Mobility and Hydraulic Routes Head Management

These authorities can be technical services in charge of ensuring compliance. They can also designate any other organisations for this purpose. Currently, the technical services accredited are:

- KIWA Belgium SA ([www.kiwa.be](http://www.kiwa.be))
- Vincotte ([www.vincotte.be](http://www.vincotte.be))
- ESTL ([www.estl.be](http://www.estl.be))

The authorities and their power to designate technical services are set out in the The Royal Decree of 14 April 2009, amending the Royal Decree of 15 March 1968 laying down general regulations on the technical conditions to be met by motor vehicles and their trailers, their components and safety accessories<sup>386</sup> (Article 2.§2.6 and 2.§2.7).

**12. Are any of these parties required to disclose information on national type approval processes?**

Article 9(3) of the 1968 Decree provides that the national type-approval authority should notify the similar authorities in other Member States when the manufacturing of a type-approved vehicle is permanently discontinued.

In addition, Article 9(4) provides that when a type-approval authority has been notified that a type-approval is going to lose its validity, it shall disclose to the type-approval authorities in the other Member States all useful information to allow them, if necessary, the application of the end-of-series vehicles provisions. This communication shall include, in particular, the manufacturing date as well as the identification number of the last manufactured vehicle.

<sup>384</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>385</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>386</sup> Arrêté royal portant modification de l'arrêté royal du 15 mars 1968 portant règlement général sur les conditions techniques auxquelles doivent répondre les véhicules automobiles et leurs remorques, leurs éléments ainsi que les accessoires de sécurité. Available at : [ejustice.just.fgov.be/cgi\\_loi/loi\\_l1.pl?language=fr&caller=list&la=f&fromtab=loi&tri=dd+as+rank&sql=dd+=+date%272009-04-14%27+and+nm+contains+%272009014091%27](http://ejustice.just.fgov.be/cgi_loi/loi_l1.pl?language=fr&caller=list&la=f&fromtab=loi&tri=dd+as+rank&sql=dd+=+date%272009-04-14%27+and+nm+contains+%272009014091%27)

**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

The 15 March 1968 Royal Decree provides different sanctions and prohibitions. Article 14 specifies that if the certificate of conformity does not give the correct NOx emission of the vehicle, the certificate is not valid. Without a valid certificate of conformity, the sale cannot take place, and the sale of the vehicle is therefore void. The seller must reimburse the buyer with interest, who is also entitled to reimbursement of taxes and various repairs. Moreover, damages can be claimed by the injured parties for the damage caused.

If a modification has been made to the vehicle or one of its components, the national authority might withdraw the type-approval if the modification is not compliant with the rules.

The Decree also states that vehicles cannot be delivered nor allowed on public ways if they are not perfectly compliant to their type-approval document.

The approval is given for six years, therefore if the manufacturer still wants to market the type of vehicle, it needs to go through the type-approval process once again.

Criminal sanctions are provided with the 21 June 1985 Law concerning technical conditions for terrestrial transportation vehicles, its components, and all safety accessories<sup>387</sup>. It lays out the general conditions for vehicle type-approvals. Any infringement of the technical conditions can be sanctioned by imprisonment (8 days to 3 months), a fine (EUR 10 to 10 000) and/or damages. Any infringement to regulations linked with environment protection can be sanctioned by imprisonment (10 days to 10 years) and a fine (EUR 10 000 to 10 million) if this action or inaction has been committed with the intention to degrade the environment.

### *Rules on tampering*

**14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

Since 2004, second-hand cars sold in Belgium by professionals or private persons, must be granted a “Car-Pass” certificate, ensuring that the value given by the odometer has not been tampered with.

The initial 2004 Law was updated in 2018 to add more information to the “Car-Pass” certificate such as the CO2 emissions<sup>388</sup>. This aims at preventing any tampering with the emission control system or filter. The CO2 emissions on the Car-Pass must comply with the certificate of conformity.

A Car-Pass certificate should also be provided for the sale of light professional vehicles.

<sup>387</sup> 21 June 1985 law concerning technical conditions for terrestrial transportation vehicles, its components, and all safety accessories. Available at : [www.code-de-la-route.be/textes-legaux/sections/lois/w210685/990-art1-11](http://www.code-de-la-route.be/textes-legaux/sections/lois/w210685/990-art1-11)

<sup>388</sup> 11 Juin 2004. - Loi relative à l'information à fournir lors de la vente de véhicules d'occasion [www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2004061135&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004061135&table_name=loi)

These emissions used to be measured with the NEDC test, which needed to be updated, and is being replaced with the WLTP test, a most complex process which gives a better estimation of the vehicle's actual emissions<sup>389</sup>.

#### Tampering with aftermarket parts

There are some prohibitions regarding aftermarket parts, which are related to road safety (e.g. tampering with the brakes system, removing lights, etc.)<sup>390</sup>. For non-prohibited modifications, a validation report is required, ensuring that the modification has been approved. The Mobility and Transportation Federal Public Service – Registration Department delivers such reports<sup>391</sup>.

#### Tampering with the engine

The use of a manipulation device is prohibited in Belgium through the Royal Decree of 20 April 2010 on certain components and characteristics of two or three-wheel motor vehicles<sup>392</sup>. The Decree defines this device as something which could modify the engine's capacities. It therefore aims at preventing any engine tampering on those types of vehicles. This Decree was a transposition of Directive 2009/108/EC.

For other vehicles, the manipulation of the engine itself is prohibited, as it falls under the prohibited modifications listed above, which can never be granted without a validation report.

#### Tampering with the OBD system

As previously mentioned regarding vehicles emissions, the mandatory Car-Pass certificate ensures that the emissions level has not been tampered with.

#### Odometer tampering (in particular on second-hand vehicles)

Since 2004, second-hand cars sold in Belgium by professionals or private persons, must be sold with a "Car-Pass" certificate, ensuring that the value given by the odometer has not been tampered with. The initial 2004 law was updated in 2018 to add more information to the "Car-Pass" certificate such as the Euro-norm, the CO2 emissions, and the need for a type approval if the vehicle has been in an accident. The authenticity of the certificate can be verified by the company which emits them.

Since this certificate has been made mandatory, very few cars have been suspected of odometer tampering<sup>393</sup> - the Car-Pass certificate is considered to be a success in Belgium.

<sup>389</sup> [www.car-pass.be/fr/emissions-co2](http://www.car-pass.be/fr/emissions-co2)

<sup>390</sup> See the list of prohibited modifications here : [www.goca.be/upload/AKCT/tuning.jpg](http://www.goca.be/upload/AKCT/tuning.jpg)

<sup>391</sup> [www.autocontrole.be/fr/controle-technique/type/voitures/transmutations-tuning-voitures#1.2](http://www.autocontrole.be/fr/controle-technique/type/voitures/transmutations-tuning-voitures#1.2)

<sup>392</sup> Arrêté royal modifiant l'arrêté royal du 10 octobre 1974 portant règlement général sur les conditions techniques auxquelles doivent répondre les cyclomoteurs et les motocyclettes ainsi que leurs remorques

Available at: [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0108](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0108)

<sup>393</sup> [www.traxio.be/fr/nouvelles/2019/09/les-chiffres-de-car-pass-en-2018/](http://www.traxio.be/fr/nouvelles/2019/09/les-chiffres-de-car-pass-en-2018/)

## Other

It is forbidden to transform a motor vehicle into a trailer and vice-versa (Article 8§6 of the 15 March 1968 Decree) and it is forbidden to modify anything on a vehicle already on the market to raise the maximum authorised weight (Article 8§7).

In addition, it can be mentioned that tampered vehicles are not always insured, as modifications should be notified to the insurance company.

### **15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

The Car-Pass association oversees the delivering the Car-Pass certificates and also ensures that the certificates do not provide false information. It is a non-profit association that has been established by the 4 May 2006 Royal Decree.

Since 2018, the company has collaborated with the Mobility and Transportation Federal Public Service, which provides the Car-Pass association with Euro norm and CO2 emissions data. The collaboration between the two entities is enshrined in a protocol for data processing, renewed in June 2019<sup>394</sup>.

The Mobility and Transportation Federal Public Service – Registration Department is in charge of ensuring that modifications brought to vehicles are valid. This is provided by the ministerial circular of 12 March 2010 concerning certain M1 converted vehicles<sup>395</sup>.

Regarding the prohibition of the use of a manipulation device, the national type-approval authority is in charge of ensuring that such a device is not used during the type-approval process. This is provided by the Royal Decree of 10 April 2010, Article 22/1, §3, 1.5.3.

### **16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

As listed above, tampered vehicles are not always insured, as modifications should be notified to the insurance company. A fine is applied to people who drive without insurance, according to the 21 November 1989 Law on compulsory liability insurance for motor vehicles<sup>396</sup>.

The 20 April 2010 Decree does not provide with any sanctions regarding the use of a manipulation device, however the Law of 21 June 1985 concerning technical conditions for terrestrial transportation vehicles, its components and all safety accessories sanctions offences under [...] the Orders that relate to the technical conditions relating to conveyances by land, to their elements and to the security accessories. The Law provides in its first article that tampering with the emission control system on is prohibited. Its article 4, paragraphs 4 to 6 provide with the following sanctions :

<sup>394</sup> Protocole pour le traitement des données.

Available at : [https://mobilit.belgium.be/sites/default/files/DGWVVV/car-pass\\_asbl\\_-\\_vzw.pdf](https://mobilit.belgium.be/sites/default/files/DGWVVV/car-pass_asbl_-_vzw.pdf)

<sup>395</sup> [www.code-de-la-route.be/textes-legaux/sections/circulaires/cm-120310/1144-mo-120310](http://www.code-de-la-route.be/textes-legaux/sections/circulaires/cm-120310/1144-mo-120310)

<sup>396</sup> 21 novembre 1989, Loi relative à l'assurance obligatoire de la responsabilité en matière de véhicules automoteurs, n°1989011371. Available at : [www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1989112130&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1989112130&table_name=loi)

- the moped can be immobilized immediately for a period of maximum thirty days.
- the equipment intended to increase the engine power or the speed of mopeds are entered and made available to the competent authority.

The equipment concerned is seized, even if it does not belong to the offender. Said equipment is confiscated in accordance with Articles 42 and 43 of the Criminal Code or Article 216bis of the Code of Criminal Procedure and are destroyed.

Concerning the Car-Pass certificate, the association can ask the names of the professionals who seem to communicate false odometer information. If it is the case, the Economic Affairs Department can apply an administrative sanction, and they can also be condemned by a criminal court.<sup>397</sup>

The 2004 Law, Article 8 establishing the association, sanctions the disclosure of false information with imprisonment for one month to one year and a fine of EUR 10 to EUR 3,000, or one of these penalties only.

#### **17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

There are no specific remedies concerning this in Belgian Law. The general provisions on hidden defects apply. They provide that the seller is liable for hidden defects and the consumer must prove that there was already a defect when the vehicle was bought (Article 1641, Civil Code).

If there is a clause exonerating the seller in case of hidden defects, the consumer can prove the seller's dishonesty. However, if the seller is a professional, there is a presumption of dishonesty and the burden of proof shifts on to the seller.

#### *Tests and inspections*

#### **18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The periodic roadworthiness tests are executed by organs designated by the 23 December 1994 Royal Decree laying out the conditions for approval and administrative control rules of the bodies overseeing registered vehicles. These bodies are garages which are required to have several mechanical devices and equipment to be able to carry out the tests (Article 8). Very few garage shops are designated for this purpose in Belgium, there are 77 of them.

The periodic roadworthiness tests must be executed 4 years after the first registration date and then every year for cars, dual-mode cars, minibuses, and hearses. For other vehicles or similar vehicles but assigned to non-private use, the tests must be executed from every 3 months to every 2 year (for more details, see the 1968 Royal Decree, Chapter 4<sup>398</sup>).

There also are some regional specifications which are detailed in the Decree. In any case, one late periodic test cannot modify the whole periodic cycle.

<sup>397</sup> [www.car-pass.be/fr/faq](http://www.car-pass.be/fr/faq)

<sup>398</sup> [www.code-de-la-route.be/textes-legaux/sections/ar/reglement-technique-des-vehicules/283-art23ter](http://www.code-de-la-route.be/textes-legaux/sections/ar/reglement-technique-des-vehicules/283-art23ter)



When it is time for a periodic test, drivers must bring their vehicle to a designated technical centre.

The 1968 Royal Decree specifies what should be verified during these tests. They consist of three steps: identifying the vehicle, environmental control, and mechanical and functional state of the components control. Details on the mechanical verifications : [autocontrole.be/fr/points-v%C3%A9rifi%C3%A9s-lors-du-contr%C3%B4le-technique](https://autocontrole.be/fr/points-v%C3%A9rifi%C3%A9s-lors-du-contr%C3%B4le-technique).

Specifically related to tampering, the level of emissions is verified during these tests. Apart from that, any tampering that would affect the safety of the vehicle might result in a failure of the test. If a vehicle is not compliant after a periodic test, the owner must resolve the defect and undergo a second periodic test afterwards. If a defect is “critical” (immediate danger for road safety on environment), the vehicle can be prohibited from driving on public roads.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

Technical roadside inspections are carried out randomly on commercial vehicles. Controllers are in charge of the inspection and collaborate with the inspectors in charge of periodic roadworthiness tests. They are independent and their remuneration does not rely on the inspections’ results. They have a judiciary police mandate and have followed a training for these kinds of inspections.

The number of inspections to be done is fixed proportionally to the number of vehicles registered in the region.

There are two types of roadside inspections: initial and extensive. To carry out an extensive inspection, an initial inspection must have been conducted previously.

#### Initial inspection:

Technical roadside inspections might be carried out on M2, M3, N2, N3, O3, O4, N1 vehicles and category T vehicles whose maximal speed is higher than 40km/h. It also affects their trailers, components, and safety accessories. In the Flanders region, these inspections do not apply to N1 vehicles.

Vehicles are chosen to be inspected in order of priority:

- Vehicles used by high risk companies (which are defined through transpositions of Directive 2006/22CE).
- Vehicles suspected of representing a high risk for road safety or the environment.
- Other vehicles randomly selected, without any discrimination on the driver’s nationality or the registering country.

When a vehicle is selected, the following elements are visually checked (i.e. without using any equipment): the certificate of the last periodic roadworthiness test, the technical state of the vehicle and the load’s stowage of the vehicle.

Then, technical verifications might be done with any appropriate method and equipment, either to justify an extensive inspection or to ask for an immediate repair.

#### Extensive inspection:

In this case, only relevant requirements should be inspected. These inspections can take place either in a garage designated for periodic roadworthiness tests or in a technical roadside inspection installation, whichever is the closest in distance at the time of the inspection.

Vehicles are inspected with a specific device, designated by the Minister of Road Safety or by a company designated for periodic tests (see above for the relevant provisions).

The consequences of this inspection depend on the gravity of the defect: minor, major, or critical. Any major or critical defect must be immediately repaired. This can apply to tampering, notably engine tampering or emission tampering, which can have immediate effect on air pollution. The tampered component will have to be repaired as soon as possible.

These rules are provided at regional level though the Order of the Brussels-Capital Region Government of 19 July 2018 concerning technical roadside inspections of commercial vehicles registered in Belgium or abroad<sup>399</sup>, the Order of the Walloon Government of 6 July 2017<sup>400</sup> on the technical roadside inspection of commercial vehicles registered in Belgium or abroad and the Order of the Flemish Government of 2 March 2018 on the technical roadside inspection of commercial vehicles<sup>401</sup>. These transpose Directive 2014/47/EU related to technical roadside inspection of commercial vehicles in the EU.

#### **20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

The periodic roadworthiness tests are executed by organisations designated by the 23 December 1994 Royal Decree laying out the conditions for approval and administrative control rules of the bodies overseeing registered vehicles. These organisations are garages which are required to have several mechanical devices and equipment to be able to carry out the tests (Article 8). Very few garage shops are designated for this purpose in Belgium; there are 77 of them. The regional Ministers responsible for road traffic or their representatives oversee the centres located in their Region (Article 2).

Controllers oversee the technical roadside inspections. They are independent, have a judiciary police mandate and belong to local or federal police or roadworthiness tests inspection centres. They have followed a training for these kinds of inspections. They are designated through the provisions regulating technical roadside inspections. They are supervised by the Ministry of Road Safety.

#### **21. Are any of these authorities required to disclose information on these tests and inspections?**

The centers in charge of periodic tests provide all documents relating to their missions and prescribed by the Minister or his delegate, and any information requested by the Minister or his delegate.

<sup>399</sup> [code-de-la-route.be/textes-legaux/sections/decrets/agrbc-19-07-2018/1987-agrbc-190718](https://code-de-la-route.be/textes-legaux/sections/decrets/agrbc-19-07-2018/1987-agrbc-190718)  
<sup>400</sup>

Arrêté du Gouvernement wallon relatif au contrôle technique routier des véhicules utilitaires immatriculés en Belgique ou à l'étranger. Available at [ejustice.just.fg6+ov.be/mopdf/2017/09/18\\_1.pdf#Page51](https://ejustice.just.fg6+ov.be/mopdf/2017/09/18_1.pdf#Page51)

<sup>401</sup> Arrêté du Gouvernement flamand relatif au contrôle technique routier des véhicules utilitaires. Available at : [ejustice.just.fgov.be/mopdf/2018/05/11\\_1.pdf#Page226](https://ejustice.just.fgov.be/mopdf/2018/05/11_1.pdf#Page226)

The following information should be disclosed to the General Director of the Traffic and Infrastructure Regulation Administration:

- a) monthly, the number of services provided at each place of business;
- b) annually, the list of the effective presence of the staff during the past financial year in each seat of activity;
- c) annually, its operating account for the past year;
- d) annually, its annual account, balance sheet and profit and loss account for the past financial year as well as a detailed report on all of its activities.

This is provided by Article 26 of the 1994 Order on periodic roadworthiness tests.

After each technical roadside inspection, the following data is collected by the inspectors: the country where the vehicle is registered, the vehicle's category and the result of the inspection. If an extensive inspection has been carried out, the controller must write a report, and give a copy of this report to the vehicle's driver. The inspectors in charge of extensive inspections must disclose its results within a reasonable timeframe to the roadside controller.

Moreover, if a vehicle registered in another Member State has a defect causing it to be restricted or prohibited in Belgium, the results of the inspections are notified to that Member State. The Member State can ask for the vehicle's roadworthiness to be tested.

Inspectors organise, at least once per year, mutual roadside inspections with other Member States.

Also, data is collected on how many vehicles are inspected, their category, the country of registration and results of extensive tests. Every two years, this information must be disclosed to the European Commission.

**22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

For periodic roadworthiness tests, the 1994 Order (Art. 29.(1)) concerning these tests provides that any violation of the provisions of this Decree, with the exception of Articles 1, 2, 3 and 15, may result in an administrative fine of :

- EUR 750 to EUR 7,500 in the Brussels-Capital and Walloon Region;
- EUR 1,000 to EUR 10,000 in the Flanders Region.

The garages carrying out the tests are the recipients.

For technical roadside inspections, the sanctions depend on the gravity of the defect identified. It is provided with that if it represents a direct and immediate danger for road safety, the use of the vehicle is restricted or forbidden as long as the defect has not been repaired.

The inspector can fine the driver if a defect is an infraction. The maximum fine is EUR 3,500, unless the driver refuses to be inspected, then the maximum is EUR 6,600. For example, if the emission control device has been modified, the driver is sanctioned with a EUR 2,500 fine.

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

Odometer data is collected at national level by the Car-Pass association mentioned above, as provided by the Royal Decree of 4 May 2006 on the approval of the association in charge of the registration of vehicle mileage.<sup>402</sup>

The association is able to collect this information thanks to professionals (roadworthiness tests centres, vehicle industry companies, etc.) who are lawfully obliged to disclose odometer data on the vehicles they have worked on. The data is exclusively used for information purposes for sellers and buyers.

For imported vehicles, a specific software is used by professionals to notify odometer data, see more here [www.Car-Pass.be/fr/flux-des-donnees](http://www.Car-Pass.be/fr/flux-des-donnees).

The data is stored in Car-Pass's database, where every vehicle has its own mileage history.

It is forbidden to bias or prevent the recording of odometer data.

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

Yes, through the Car-Pass certificate, which has been mandatory for the sale of second-hand cars in Belgium since 2006, may the seller be private or professional. However, if both the buyer and seller are professionals in the field of vehicles, the certificate is not mandatory (Article 4. §3 of the 2004 Order on second-hand vehicles).

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

The TRUE project aims at compiling emission data in Europe. Portable emissions measurement system (PEMS) testing data on over 200 vehicles have been collected and published by the governments of France, the United Kingdom, the Netherlands, Belgium, and Germany, as well as a database of more than 700,000 measurements made via remote sensing as part of the CONOX project, and supplied by IVL<sup>403</sup>.

The Walloon region is setting up a device in that field. The Spanish company Opus RS has installed remote measurement equipment along a highway: an emission detection system, and an ANPR (Automatic Number Plate Recognition) camera, currently being tried in the region. The results will be the basis for a project which should be implemented in 2021. The project aims at creating a test bench to measure real-driving emission and the current device helps at targeting which types of

<sup>402</sup> [www.ejustice.just.fgov.be/loi/loi.htm](http://www.ejustice.just.fgov.be/loi/loi.htm)

<sup>403</sup> [www.trueinitiative.org/data](http://www.trueinitiative.org/data)

vehicles should be tested in priority. The data measured can be compared to information given by manufacturers.<sup>404</sup>

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

Many rules already exist through the Car-Pass certificate, especially since it also gives information on emissions and Euro norm.

Studies had highlighted that many tampered cars in Belgium came from the Netherlands, therefore a project between both countries has been set up in 2016 in order to exchange odometer data on vehicles being imported from each other's territories. It appears that the number of tampered odometers had lowered by two thirds only six months after the entry into force of this collaboration<sup>405</sup>.

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

The consumer protection association Test-Achats announced in the media on 15 June 2016 that it intended to start a class action against the German Volkswagen group in connection with the fake engine scandal. This action would be based on Dutch laws which apply to all EU consumers.

Additionally, the company Total has launched a product aimed at converting harmful emissions into harmless ones. Its name is AdBlue®, it is an aqueous solution that converts 85% of the NOx from the exhaust gases of diesel vehicles into harmless nitrogen and water vapour. Used on vehicles with SCR technology, it enables the transportation sector to meet European standards for environmental protection<sup>406</sup>.

Working in partnership on an SGS client program, SGS developed and operated a comprehensive laboratory-grade testing operation for the evaluation and comparison of various exhaust emissions testing systems and inspection processes (e.g. used vehicle inspection/used car inspection). This included:

- Transient, loaded mode testing
- Extraction and analysis of onboard diagnostic (OBD II) information
- Inspection for tampering (with emission control devices)

According to their website, BOSAL develops and produces fully integrated exhaust systems for passenger vehicles and trucks. Bosal is able to integrate the full range of Emission Control solutions into its systems, ensuring near zero emissions of harmful substances generated by burning fuel. The use of these systems facilitates the fine-tuning of the lean combustion process and the reduction of fuel consumption and greenhouse gases.

<sup>404</sup> [www.opusurser.com/projects/public-administrations-1](http://www.opusurser.com/projects/public-administrations-1)

<sup>405</sup> <https://gocar.be/fr/actu-auto/actualite/car-pass-aussi-efficace-avec-les-importations-des-pays-bas-9865575>

<sup>406</sup> [www.total.be/fr/professionnels/carburants/transport-reduire-les-emissions-polluantes-grace-adbluer](http://www.total.be/fr/professionnels/carburants/transport-reduire-les-emissions-polluantes-grace-adbluer)

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No.

*Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There is no official data on this question.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

Manufacturers are legally required to share information with Car-Pass.

Potential gaps in the legislation

There is nothing specific related to the prohibition of tampering and its sanctions in Belgian Law. To get justice, consumers/aggrieved parties must refer to general civil law and they are asked to prove the damage caused which can often be difficult to demonstrate (e.g. to specifically demonstrate the health impact of a higher gas emission of a vehicle) .

For example, several groups (consumer associations, politicians, professional syndicates, etc.) have pointed out to the fact that it is very easy to tamper with a car's engines in Belgium and that many vehicles have a tampered engine. They claim that this tampering is difficult to identify at periodic tests and that the law should more efficiently sanction the owners and professionals involved in such practices.

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

Since there is nothing specific related to tampering and its sanctions in Belgian law, it is difficult to say whether the existing system is dissuasive or not.

However, the Car-Pass certificate has had a real impact and dissuasive effect on odometer tampering in second-hand cars. In 2019, the association identified 1 454 highly probable cases of odometer tampering in its annual report for more than 800 000 certificates delivered.<sup>407</sup>

<sup>407</sup> Car-Pass' annual 2019 report, page 2.

Available at : [www.car-pass.be/files/article\\_files/file/65/0000\\_CAP\\_jaarverslag%202019\\_FR\\_v5.pdf](http://www.car-pass.be/files/article_files/file/65/0000_CAP_jaarverslag%202019_FR_v5.pdf)

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

The number of designated garages for periodic roadworthiness tests is very limited in Belgium: there are 77, whereas there are 9500 in the Netherlands (which has twice as many registered vehicles). Some criticise this, whereas others claim that it has the advantage of having garages independent from the automobile field. The Secretary of State for Mobility had assured in 2015 that no modifications in this regard were being considered<sup>408</sup>.

There are a few differences between regional regulations which set out different requirements for vehicles, or which provide more or less detailed sanctions. However, regional regulations still are very similar.

Apart from that, no legal obstacle to enforcing national measures were identified.

*Other*

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

**Federal Public Service – Mobility and Transportation**

+32 (0)2 277 31 11

<https://mobilit.belgium.be/fr/contact>

**Car-Pass association**

+32 (0)2 773 50 56

[www.Car-Pass.be/fr/contact](http://www.Car-Pass.be/fr/contact)

**GOCA** (association of certified businesses for roadworthiness tests and driving licences)

<http://www.goca.be/fr/>

**Federal Police**

[www.police.be/5998/fr/contact/formulaire-de-contact](http://www.police.be/5998/fr/contact/formulaire-de-contact)

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

n/a

<sup>408</sup> [www.rtbef.be/info/dossier/la-redaction-vous-propose-aussi/detail\\_faut-il-changer-la-procedure-de-controle-technique?id=9015563](http://www.rtbef.be/info/dossier/la-redaction-vous-propose-aussi/detail_faut-il-changer-la-procedure-de-controle-technique?id=9015563)



## Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

There is case law on odometer tampering, such as :

- Cour de cassation (Belgian Supreme court), 09 May 2016, C.14.0404.N: if an odometer has been tampered with by a previous owner, the new buyer can only claim that the sale is void if it appears that the tampering has had an effect on his consent. If the tampering is minor and could not have any effect on the buyer's consent, then the sale is valid. Available at: <https://juricaf.org/arret/BELGIQUE-COURDECASSATION-20160509-C140404N>
- Cour de Cassation (Belgian Supreme Court), 5 May 2012: if a person sells a vehicle registered in Belgium, his obligation of information is only completed when the document specifying the vehicle's mileage is given to the buyer. If the document is not provided, then the buyer can claim that the sale is null. Available at: [http://jure.juridat.just.fgov.be/view\\_decision.html?justel=F-20120504-4&idxc\\_id=263670&lang=FR](http://jure.juridat.just.fgov.be/view_decision.html?justel=F-20120504-4&idxc_id=263670&lang=FR)

## Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
Impact sur l'environnement de l'évolution de la demande de transport à l'horizon 2030 (impact of the transportation demand evolution on environment)	document.environnement.brussels /opac_css/elecfile/Air_8.	In November 2015, the Belgian House of Representatives launched a series of hearings to determine the impact of the Volkswagen Affair on the health of the Belgian population. As part of these hearings, the High Council of Health took stock of the impact of nitrogen oxides (NOx) on health.

## Finland

### Overview of legislation

- 1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.**

Directive 2007/46/EC (establishing an approval framework)

1090/2002 Ajoneuvolaki ('Vehicles Act')

Directive 2014/45/EU (on periodic roadworthiness tests)

957/2013 Laki ajoneuvojen katsastustoiminnasta ('Act on Vehicle Inspections')

1455/2019 Valtioneuvoston asetus ajoneuvojen liikennekelpoisuuden valvonnasta ('Government Decree on the Control of Roadworthiness of Vehicles Used in Traffic')

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

1090/2002 Ajoneuvolaki ('Vehicles Act')

1455/2019 Valtioneuvoston asetus ajoneuvojen liikennekelpoisuuden valvonnasta ('Government Decree on the Control of Roadworthiness of Vehicles Used in Traffic')

- 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

1090/2002 Ajoneuvolaki ('Vehicles Act')

Commission Regulation (EU) 2017/1151 (on odometer readings)

n/a

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

1090/2002 Ajoneuvolaki ('Vehicles Act')

- 3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

As set out above, the main national pieces of legislation which relate to tampering are the following:

- 1090/2002 Ajoneuvolaki ('Vehicles Act')
- Traficom order (TRAFI/66404/03.04.03.00/2015, 'the Vehicles Order')

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

In general, they only refer to the EU Directives and Regulations they implement/cover. The Finnish national legislation seems to provide only very general rules that can be applied to vehicle tampering as well.

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The national measures set out above mostly refer to the national or EU legislative acts as the reason for their adoption, or provide a very general reasoning. They do not directly refer to emissions tampering and the prevention of such activity. Some preparatory documents (such as Government Bills) usually set out the reasons behind the adoption of an act in more detail; however when it comes to transposing EU obligations national preparatory documents also often refer only to EU legislative acts as the reasons for their adoption.

## Requirements and rules on tampering

### *Obligations manufacturers*

**6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific provisions adopted at national level that would lay down any obligations for manufacturers to prevent tampering.

**7. Are there any other requirements relating to tampering which manufacturers need to meet?**

No. There have been discussions on whether liability should be extended to cover manufacturers as well, but as the law currently stands, it only covers vehicle drivers, owners and permanent holders<sup>409</sup>. The problem in extending the liability to cover manufacturers, service providers and retailers is considered to relate to the difficulties in terms of detection of such 'activities'.<sup>410</sup>

<sup>409</sup> Sections 7 and 96(4) of the Vehicles Act.

<sup>410</sup> There has been a study by Traficom where this issue has been examined in more detail in relation to heavy duty vehicles; however I have not been able to locate the study, instead the main conclusions of it has been summarised, e.g., in this Answer to written question to the Government of Finland on vehicle emission manipulation KKV 419/2018 vp; available at:

[www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV\\_419+2018.pdf](http://www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV_419+2018.pdf)

## 8. Are manufacturers required to disclose information relating to tampering (resistance)?

According to Sections 93, 93a and 93b of the Vehicle Act, there are certain requirements concerning the manufacturers. These do not concern tampering per se, but instead address more generally the requirements to disclose information that might be needed in terms of inspections, type approval, etc. and as such might be needed when, for example, assessing a vehicle that might have been tampered with.

Section 93 deals with the requirement placed on the vehicle manufacturer, the manufacturer's representative and the importer to provide Traficom with the vehicle manufacturer's special instructions required for vehicle inspection or technical roadside inspection. The vehicle manufacturer or the manufacturer's representative shall also provide the technical data of the vehicle required for the roadworthiness test.

Section 93a obliges the manufacturer of the car and its trailer to provide technical information and instructions to users in accordance with Article 37 of Directive 2007/46/EC.

According to Section 93b, the manufacturer of a type-approved vehicle shall make available to the manufacturers of components or separate technical units all information necessary for the EC type-approval of components or separate technical units or for the granting of the authorisation (Article 78). The vehicle manufacturer shall have the right to require manufacturers of components or separate technical units to enter into an agreement to protect the confidentiality of non-public information.

The manufacturer of components or separate technical units holding an EC type-approval certificate which imposes operating restrictions or special installation conditions in accordance with the EU Act on which approval is based shall provide details of this to the vehicle manufacturer.

If Directive 2007/46/EC and related regulations so provide, the manufacturer of components or separate technical units shall provide instructions on restrictions on use or special conditions for installation with the component or separate technical unit to the car manufacturer.

Furthermore, the notification of special conditions concerning the restrictions on the use of a component or a separate technical unit and the installation thereof shall be laid down in more detail, if necessary, by a Government Decree.

### *Type approval*

## 9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?

The Vehicles Act (1090/2002) implements the EU requirements concerning type-approvals and lays down requirements regarding the type approval of vehicles, the type approval of systems and components, and the approval of production processes.

According to Section 30, there are four different types of type approvals.

**EC type-approval** means a type-approval in accordance with EU legislation concerning type-approval of vehicles or their systems, components or separate technical units. The EC type-approval of an entire vehicle is based on the Directive 2007/46/EC (and related regulations). In addition to the EC type-approval, **E type-approval** (hereinafter 'E regulation') means a type-approval granted in accordance with the Regulations annexed to the Agreement concerning the Adoption of Uniform

Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts concluded in Geneva on 20 March 1958<sup>411</sup>. Each new E rule shall enter into force for all Parties which have notified the UN Secretariat of their acceptance of the rule.

**National type-approval** can be granted to a vehicle, a system, a component or a separate technical unit only in Finland. The Finnish Transport and Communications Agency issues type-approvals for certain vehicles and vehicle components for which there is no uniform international legislation. These include motor vehicles and off-road vehicles registered from vehicles for road use, and vehicle pins, tire-pin combinations and alcohol interlocks for vehicle components.

Finally, **small-series type-approval** means a type-approval granted to a vehicle in accordance with EU measures which is manufactured in limited numbers and to which a full type-approval has not been granted in the form in which the vehicle is intended to be entered in the register. National small series type-approval means the procedure under the Framework Directive (2007/46 / EC) and the Framework Regulations (167/2013 and 168/2013) for granting type-approval to a new vehicle manufactured in limited quantities. The national small series type-approval may grant exemptions from the technical requirements and / or the means of demonstrating compliance with the requirements in comparison with the EC or EU type-approval. National small series type-approval is an alternative to EC-type approval of an entire vehicle if EC-type-approved vehicles are modified in Finland and it is not appropriate to apply for a new EC type-approval for the modified vehicles.

According to Section 31 of the Vehicles Act, EC type-approvals are granted to systems, components and separate technical units as well as vehicles of categories M1, L, and T1-T3. National type-approvals are granted to vehicles, systems, components and separate technical units. Small-series type-approvals are granted to vehicles. E type-approvals are granted to systems, components and separate technical units.

#### 10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?

According to Section 36 of the Vehicles Act, conformity is attested with inspections, measurements, tests and calculations carried out by the approval authority; with a certificate issued by the approval authority of another EEA country or by a national approval authority applying the E Regulation concerned and submitted by the applicant; or with inspections, measurements, tests and calculations made by a technical service.

The technical service may, with permission of the approval authority, commission some of the tests to an external service which meets the requirements referred to elsewhere in the Act or use the manufacturer's laboratory or measuring and testing devices. The technical service is responsible for the inspections, measurements and tests carried out by the service or laboratory which it uses.

In addition, further provisions on the type-approval procedure, the issuing of type-approval certificates and extracts from the type register for individual vehicles as well as the form to be used and the notifications of granted approvals sent to the approval authorities of other EEA countries, to the EU Commission and the national approval authorities applying the E Regulation concerned shall be laid down by Government Decree.

<sup>411</sup> Treaty Series of the Statute Book of Finland 70/1976) (hereafter 'the Geneva Agreement')

**11. Please list the national type approval authority<sup>412</sup> and technical services<sup>413</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

According to Section 34 of the Vehicles Act, Traficom is the approval authority in charge of vehicles of categories M, N, L, O, T1-T3, C, or R and traffic tractors, public works vehicles and off-road vehicles as well as their components, systems and separate technical units in Finland.

According to Section 47 of the Vehicles Act, the Ministry of Transport and Communications shall be in charge of approving a technical service to carry out inspections, measurements, tests and calculations referred to in Section 36 (see above no 10 for the content of Section 36). In order to be approved, the technical service must meet the requirements of the SFS-EN ISO/IEC 17025:2000 standard and qualify in relation to all the provisions that regulate the approval. A manufacturer shall not be accepted as a technical service, unless this is specifically provided for in EU legislation.

The approved technical services which carry out inspections are listed in Traficom's webpages.<sup>414</sup>

**12. Are any of these parties required to disclose information on national type approval processes?**

According to Section 39 of the Vehicles Act, the approval authority shall keep a register of type-approvals which it has granted and of type-approvals of vehicles notified to it by the approval authorities of other EEA countries and signatory states of the Geneva Agreement, or by the vehicle manufacturer or the manufacturer's representative. Data from the type-approval certificate of the vehicle type and test results annexed to the certificate shall be entered in the register.

Notwithstanding confidentiality requirements, information included in the register of type-approval data, including matters of commercial and professional secrecy, may be submitted to a person carrying out inspections and to a registrar under contract for the purposes of inspection, registration and technical roadside inspection provided by or pursuant to law.

**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Strictly speaking, these are not penalties or sanctions, but instead relate to the expiry and/or withdrawal of the type-approval authorisation.

**In terms of the type-approval**, according to Section 38 of the Vehicles Act, the holder of the type-approval shall inform the approval authority of any modification to the approved vehicle, system, component or separate technical unit. The approval authority shall decide whether the change requires new measurements, tests, calculations or inspections and whether it is an extension of the original type-approval and shall inform the type-approval holder accordingly.

According to Section 46b of the Vehicles Act, the type-approval expires if:

<sup>412</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>413</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>414</sup> See [www.traficom.fi/fi/liikenne/tieliikenne/nimetyt-tutkimuslaitokset](http://www.traficom.fi/fi/liikenne/tieliikenne/nimetyt-tutkimuslaitokset)

- a new provision or regulation concerning the registration, sale or entry into service of the vehicle enters into force and the type-approval has not been updated accordingly;
- the production of the type-approved vehicle is permanently discontinued;
- the type-approval authority withdraws the type-approval.

The holder of the vehicle type-approval shall immediately notify the type approval authority of the expiry of the type-approval pursuant to subsection (1) and (2).

A Government Decree may lay down more detailed provisions on the expiry of the type-approval of a vehicle, system, component and separate technical unit.

**In terms of the technical service**, according to Section 50 of the Vehicles Act, if a designated technical service or an approved expert does not comply with the prescribed requirements or acts in breach of the provisions of the Vehicles Act, the type-approval authority may issue a remark or warning to the designated technical service or approved expert. If the remark or warning given to the designated technical service or approved expert does not lead to the rectification of the deficiencies in the operation, the type-approval authority, i.e. the Ministry of Transport and Communication may suspend the approval. Approval may be withdrawn in its entirety if substantial deficiencies or omissions have been identified in the activities of the designated institute or approved expert.

### *Rules on tampering*

#### **14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

First, it should be noted that the 'general' prohibition enshrined in Section 7 of the Vehicles Act states that a vehicle used in traffic may not be repaired, modified, allowed to change or be equipped with an accessory after commissioning in such a way that the vehicle no longer meets the requirements that were in force in Finland at the time of the vehicle's first commissioning or later. As such, this rule covers all kinds of tampering. According to this Section, as a general rule, a vehicle used in traffic may not be repaired, modified, modified or fitted with an accessory after its entry into service in such a way that the vehicle no longer meets the requirements in force in Finland at the time of the vehicle's first commissioning or later. Due to the age and inherent wear and tear of the vehicle, the risk to safety, health or the environment from the vehicle must also not increase more than up to a limited degree.

Traficom shall issue more detailed provisions on the technical requirements for the repair, refurbishment and redesign of a vehicle, as well as provisions on minor exceptions and alternative requirements for the purpose of demonstrating conformity. The risk to safety, health or the environment from exemptions and alternative requirements must not increase except for a limited degree.

When it comes to tampering – and as such, modification of a vehicle's technical components – in 2017 Traficom issued an Order (TRAFI/66404/03.04.03.00/2015, hereinafter 'the Vehicles Order') on the technical requirements concerning vehicles and trailers, the legal base of which is Section 7 of the Vehicles Act. This order clarifies the technical requirements for vehicles and the procedures to be followed in order to demonstrate conformity. These requirements are presented in more detail in Question 14 et seq below.



In addition to this general rule, an Order (TRAFI/66404/03.04.03.00/2015, hereinafter ‘the Vehicles Order’) on the technical requirements concerning vehicles and trailers, issued by Traficom clarifies the technical requirements for vehicles and the procedures to be followed in order to demonstrate post-type approval conformity. Changes in accordance with the Order may be accepted in a change inspection if the changes are such that they require a change inspection. Changes deviating from this provision may be subject to an exemption from Traficom. Modifications must not significantly impair the safety of the vehicle.

According to Section 2.4 of the Vehicle Order concerning the modification of an exhaust system, a catalytic converter may be installed in the exhaust system. The catalytic converter must not be removed if it is necessary to comply with the vehicle's exhaust emission regulations. Catalytic converters as well as exhaust sensors and exhaust gas cleaning systems must be duplicated if the exhaust system is duplicated before duplicating exhaust sensors and exhaust cleaning systems.

Furthermore, Section 2.2 specifies that the vehicle may be fitted with retrofit exhaust gas cleaning systems type-approved in accordance with E Regulation 132. If the system type-approval states that fitting the vehicle with the retrofit exhaust gas cleaning system changes the exhaust emissions of the engine to a more stringent emission class than the original emission class, that emission class may be changed to the information entered in the vehicle register.

#### Tampering with aftermarket parts

According to Section 2.3 of the Vehicle Order, structures and equipment directly affecting the emissions of a vehicle that has been approved according to more stringent exhaust emission requirements than Euro 3 or Euro III classes may be replaced ‘only by equipment approved by the vehicle manufacturer or the relevant authority’; in this case, the vehicle must meet those emission requirements laid down for the vehicle before it was modified. As such, this provision rules out the use of aftermarket parts that are not approved by the vehicle manufacturer or the relevant authority.

#### Tampering with the engine

According to Section 2.3 of the Vehicle Order concerning engine replacement, a vehicle which has been approved according to lower emission standards than the Euro 3 or Euro III emission requirements, shall meet the exhaust emission requirements of the original vehicle during the engine replacement test.

Structures and equipment directly affecting the emissions of a vehicle approved according to Euro 3 or Euro III or according to more stringent exhaust emission requirements may be replaced only by equipment approved by the vehicle manufacturer or the relevant authority; in this case, the vehicle must meet those emission requirements prior it was being modified..

Those structures and equipment of a vehicle that directly affects emissions of a vehicle approved according to Euro 3 or Euro III exhaust emission categories or according to more stringent exhaust emission requirements may be replaced by structures and equipment of a vehicle of the same type which is being modified. An engine of another type with all the structures and devices directly affecting emissions may be replaced only if the engine is intended for a vehicle which meets the emission requirements of the vehicle being modified or at a later date.

Even after a change in the vehicle's propulsion power, the vehicle's exhaust emission requirements must be met. When the engine of a vehicle is modified to be powered by liquefied petroleum gas or natural gas, the emission requirements shall be deemed to be met if the series of modifications used is intended for use in that vehicle and meets the requirements of E Regulation 115.

In the case of a conversion of a petrol-powered vehicle to a fuel composed mainly of ethanol, the emission requirements shall be deemed to be met by a vehicle put into service by 31 December 2006 at the latest if the vehicle meets the in-service exhaust emission requirements of the original vehicle after the conversion test. The modification shall also not cause undue malfunctioning of the OBD system or otherwise interfere with its operation.

#### Tampering with the OBD system

There are no specific rules on OBD system tampering, but Section 7 of the Vehicles Act can be considered to ban tampering with the OBD system as well.

#### Odometer tampering (in particular on second-hand vehicles)

In Finland, modifying the odometer reading is not in itself illegal. It may be necessary, for example, in connection with the maintenance or repair of a car, if the odometer is defective, or for some other acceptable reason. However, if the reading does not correspond to the actual number of kilometres driven, this is not communicated to the buyer of the car, and its purpose is to seek financial benefits in connection with the transaction, the act may be a criminal offense from a legal point of view. In this respect, only if the manipulation is intended to mislead the car buyer can the car buyer prosecute fraud. As such, there are no specific rules that would deal with odometer tampering.

#### Other

Decree of the Ministry of Transport and Communications on the construction and equipment of cars and trailers (1248/2002) lays down further requirements regarding the modification of vehicles and provides certain exceptions to the main rules and provides more detailed rules concerning e.g. trailers. According to Section 51 of the Vehicles Act, the use in traffic of a motor vehicle and a trailer coupled to it or to its trailer is prohibited (prohibition of use) unless the vehicle has been approved for a periodic inspection.

### **15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

All those modifications that fall under the scope of the Vehicles Order may be accepted in a change inspection if the changes are such that they require a change inspection.<sup>415</sup> Modifications that deviate from those set out in the Vehicles Order can apply for an exemption from Traficom.

Traficom may impose a driving ban on a vehicle if the structure of the vehicle has been changed in violation of Section 7 or the regulations issued on the basis thereof (i.e. those rules that relate to the modification, construction and repair of a vehicle, discussed above under question 9).

<sup>415</sup> Sections 61 and 61a of the Vehicles Act lay down rules concerning the change inspection.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

A person is convicted of intentional or negligent vehicle violation if he/she:

1. fails to comply with the obligation with the obligation to provide information laid down in Directive 2007/46/EC and related regulations , which may lead to the withdrawal of a vehicle, component, separate technical unit or equipment from the market;
2. fails to comply with the obligation to use an additive in the vehicle's emission control system when the vehicle is used in traffic (as required in Directive 2007/46/EC and related regulations), or;
3. violates the prohibition on the use of a device limiting the operation of an emission control system provided for in a Regulation of the European Union supplementing the regulations mentioned in section 30 (1) or the prohibition on the modification of an emission control system contrary to type approval requirements.

According to Section 96 of the Vehicles Act, they shall be sentenced, unless a more severe punishment is provided elsewhere in the law, to a fine for a vehicle violation. Fine for an infringement concerning the structure, equipment or condition of a motor vehicle is EUR 70.<sup>416</sup>

Furhtermore, if a person fails to comply with Section 7(1) of the Vehicles Act (general prohibition on tampering), the person shall be sentenced to a free of EUR 70.

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

There are no specific provisions in this regard; instead, general principle regarding remedies apply.

In terms of a new vehicle, the Consumer Protection Act (38/1978) protects the buyer in the event of a car dealership error. The car must have been purchased from a company, i.e. a car dealer, for example; the Consumer Protection Act will apply only to the relationship between a trader and a consumer.

According to the Consumer Protection Act, the seller has a broad responsibility to find out the features and defects in the car. If the defect is not specifically mentioned, the buyer must be able to trust that the car is in a condition that the information suggests. Even if the seller does not know about faults in the car, it is still his/her responsibility. However, the buyer must use the car properly and cannot rely on an error caused by his own negligence or misuse.

In terms of a second-hand vehicle, the car trade between two individuals is not subject to the Consumer Protection Act, but the Trade Act (355/1987) will apply. In this case, the position of the buyer is weaker than under the Consumer Protection Act. According to the Trade Act, an individual is also responsible for the condition of the car or other vehicle he or she sells. Deliberately selling a defective product constitutes fraud (see e.g. question 14 on odometer tampering), but the seller may also have to compensate for latent defects. In practice, the private buyer must reach an agreement with the seller in the event of a defect. In the case of a clear, known error or fraud, the matter can be taken to court.

<sup>416</sup> <https://oikeus.fi/tuomioistuimet/karajaoikeudet/fi/index/rikosasiat/seuraamukset/rikesakko.html>

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The Vehicles Act (1090/2002) is the main national legislation that addresses the periodical and other inspections carried out in order to examine and modify the maintenance of a vehicle and the data entered in the register (Section 1(5)).

The requirements (e.g. competence requirements, educational requirements) concerning persons carrying out the inspections are specified in the Act on Licences for Roadworthiness Test for Vehicles (957/2013).

The requirements concerning the inspections are specified in Section 53 of the Vehicles Act (1090/2002), according to which the vehicle shall be submitted to a periodic inspection which is carried out in order to examine: (1) the condition of the vehicle is in accordance with the relevant provisions; (2) it is safe to use in traffic; (3) it does not cause unnecessary harm to the environment; (4) the data entered in the register is correct. In addition, the payment of any taxes and fees related to the vehicle is checked. Further provisions on the content of a periodic inspection shall be laid down by Government Decree. More specifically, during the inspection, a series of safety checks are conducted on each vehicle covering brakes, suspension, emission measurements and a diesel test.

After the inspection, the owner receives an inspection report containing the results of the inspection. How often a periodic inspection is required depends on the vehicle category as well as when it was allowed on the road for the first time. These requirements are laid down in Section 3 of the Government Decree on the Inspections of the Roadworthiness of Vehicles (1455/2019).

The national rules that deal with the inspections concerning the emission measurements are set out in Section 12 of the Government Decree on the Inspections of the Roadworthiness of Vehicles (1455/2019). It provides detailed rules concerning who is competent to carry out the emission measurements and what information the certificate regarding the emissions measurements shall contain, for example.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The Vehicles Act (1090/2002) applies also to technical roadside inspections (Section 1(5)).

According to Section 70 of the Vehicles Act (1090/2002), the technical roadside inspection shall examine, to the extent deemed appropriate by the inspector, the condition of the vehicle used in road traffic or elsewhere in so far as it affects road safety, the environment and the data entered in the register. The content of the technical roadside inspection is regulated in more detail by a Government Decree.

According to Section 14 of the Government Decree on the Inspections of the Roadworthiness of Vehicles (1455/2019), the technical roadside inspections are carried out by the police, customs and border guards and the inspections can include (at least one of) the following:

- a visual inspection of the condition of the vehicle when stationary;
- an inspection of the documents certifying the technical condition of the vehicle, the performance of inspections and compliance with other regulations;
- an inspection of the technical condition of the vehicle.

Furthermore, Section 14 specifically states that the inspection of the technical condition of the vehicle shall follow the rules laid down in Article 10(3) and Annex II of Directive 2014/47/EU. Similarly, Section 15 states that the minimum requirements for the information that the roadside inspection report shall include are those listed in Annex IV of Directive 2014/47/EU.

A technical roadside inspection can be carried out without prior notice. The inspector may also give prior notice of the inspection if it is intended to improve compliance with the provisions applicable to the vehicle. If the inspection is carried out in the vicinity of the inspection office, the vehicle may be ordered to be inspected at that office.

Finally, the following must be taken into account by the technical roadside inspection, if presented by the driver:

- any periodic inspection certificate;
- a roadside inspection report; or
- other certificate proving the condition of the vehicle.

If the certificate or report shows that an inspection has been carried out in the previous 3 months, that vehicle shall not be re-inspected without good reason.

## **20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

Inspections are a public administrative task entrusted by law to a private company (in line with Section 124 of the Constitution of Finland). Therefore, inspections may be carried out only those persons that have been granted an inspection permit (license) by Traficom.<sup>417</sup> Traficom also oversees inspection activities and handles rectification claims concerning inspection decisions. Traficom does not engage in inspection activities and does not own any inspection companies.

The Act on Licences for Roadworthiness Test of Vehicles (957/2013) sets out detailed rules concerning the persons carrying out the inspections. The Act applies to licence applicants and those carrying out licenced roadworthiness tests for vehicles as well as to parties giving further training required in roadworthiness testing (Section 1). As such, the provisions cover, e.g., the following:

- Tasks that are subject to a licence;
- Evaluating the reliability of an applicant;
- Qualifications of an applicant;
- Rules on the application procedure of a licence;
- Competence requirements for a person carrying out roadworthiness tests;
- Rules on the premises of a vehicle testing centre and detailed provisions regarding the testing procedure;
- Examinations and supervision relating to training.

<sup>417</sup> The Finnish Transport and Communications Agency Traficom is an authority serving people and businesses in licence, registration and approval matters related to transport and communications, see [www.traficom.fi/en/traficom/about-traficom](http://www.traficom.fi/en/traficom/about-traficom)

Finally, the Finnish Ministry of Transport and Communications is responsible for the provision of safe and secure transport, and is the legislative authority in the transport (and communications) sector.

A technical roadside inspection is an inspection of the condition of a vehicle used in road traffic or elsewhere and of the information entered in the register, which are carried out by the police, customs and border guards.

## 21. Are any of these authorities required to disclose information on these tests and inspections?

Regarding **periodic roadworthiness inspections**, according to Section 38 of the Act on Vehicle Inspections 957/2013, the person carrying out the inspections (i.e. inspection permit 'license' holder) shall provide Traficom upon request with the information necessary for supervision, including information on the licensee's accounting, financial management, administration, rental of premises and equipment, inspection persons and inspection activities. In addition, the holder of an inspection permit shall provide Traficom upon request with information on the average fees charged for inspections during the previous and current year by inspection type and vehicle category for inspection, monitoring and research activities. In addition, the section includes rules on information disclosure regarding the persons providing training and the training provided.

Holders of an inspection permit and a further training permit shall immediately notify Traficom of any changes in the persons responsible for the operation as well as of other significant changes concerning the operation. The holder of the inspection permit shall also notify Traficom of any change in ownership.

Regarding **technical roadside inspections**, according to Section 17 of the Government Decree on the Control of Roadworthiness of Vehicles Used in Traffic, the police, customs and border guard (i.e. the competent authorities to carry out technical roadside inspections) shall immediately notify Traficom of serious defects and deficiencies in a commercial vehicle registered or put into service in the province of Åland or in an EEA state other than Finland.

Traficom, the police, customs, the border guard and the inspection offices performing the inspections agree on the statistics of technical roadside inspections and the submission of information on technical roadside inspections other than those referred to above to Traficom.

Traficom shall forward the information referred to in Article 20 of Directive 2014/47/EU and the information pursuant to Article 18 to the contact point of the Member State of registration of the vehicle.

## 22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

The Vehicles Act refers to the Penal Code for more detailed rules on penalties/sanctions. For example, according to the Penal Code of Finland (39/1889) (Chapter 16, Section 8(1)), whoever provides the authority with a legally relevant untrue written certificate or equivalent technical record, or makes such a certificate or record available for another purpose, shall be sentenced to a fine or imprisonment of up to six months, unless otherwise provided by a more severe penalty.



According to Section 56 of the Vehicles Act, if a dangerous defect or deficiency is detected in a vehicle, the vehicle shall be subject to a driving ban in addition to rejection during the roadworthiness test.

A vehicle subject to a driving ban may not be used in traffic until the defects and deficiencies found during the roadworthiness test have been rectified and the vehicle has been approved for the roadworthiness test. However, a vehicle that has been immobilised on grounds of a significant nuisance may be used in traffic as soon as the fault or defect has been repaired and the immobilisation of the vehicle has been abolished in an inspection.

According to Section 84 of the Vehicles Act, if a roadside inspection or otherwise finds that (1) the structure, equipment or condition of a vehicle does not meet the prescribed requirements, (2) if the vehicle is prohibited from use or (3) if the vehicle has been used in contravention of the registration or temporary use, a police officer, customs officer or border guard may prevent the use of the vehicle in traffic or elsewhere and impose a driving ban on the vehicle by removing the registration plates, transfer plates, registration certificate, test number certificate, transfer license or other appropriate means. However, a police officer, customs officer or border guard may give written permission to transport the vehicle to its destination, for repair or inspection. If the defect in the vehicle does not pose an immediate danger to road safety or significant harm to the environment, the police officer, customs officer or border guard may, without impeding the use of the vehicle, set a time limit within which the defect must be rectified.

Finally, according to Section 96 of the Vehicles Act, if a person - intentionally or by negligence - fails to comply with the repair obligation, violates the prohibition on the use of a vehicle or the prohibition on driving, fails to comply with the obligation to keep the vehicle roadworthy, violates the obligation to allow the performance of a technical roadside inspection, and/or fails to comply with the inspection obligation, he/she shall be sentenced, unless the act provides for a more severe punishment elsewhere in the law, to a fine for a vehicle violation. For example, the fine for the use of an uninspected or unregistered vehicle is EUR 70<sup>418</sup>.

### *National strategies and initiatives*

#### **23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

In Finland, odometer readings are collected during the inspections in the traffic register maintained by Traficom and are publicly available from Traficom's electronic service. The latest mileage data for the logged-in users is free, but more extensive historical data is subject to a fee (ranging from EUR 2 to 6 depending on the data searched).

#### **24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

In terms of second-hand cars sold and bought in Finland, the mileage history can be checked through Traficom's electronic service (see above). However in terms of second-hand vehicles imported to

<sup>418</sup> <https://oikeus.fi/tuomioistuimet/karajaoikeudet/fi/index/rikosasiat/seuraamukset/rikesakko.html>



Finland, mileage history is more complicated to check and requires an international information exchange initiated by Traficom.<sup>419</sup>

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

n/a

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

Traficom, *Matkamittarilukemien väärentäminen henkilö- ja pakettiautoissa*, (Traficomin tutkimuksia ja selvityksiä 17/2019), ['Odometer tampering in passenger cars and vans'], available at: [www.traficom.fi/sites/default/files/media/publication/Traficom\\_17\\_2019\\_Matkamittarilukemien%20v%C3%A4%C3%A4rent%C3%A4minen%20henkil%C3%B6-%20ja%20pakettiautoissa.pdf](http://www.traficom.fi/sites/default/files/media/publication/Traficom_17_2019_Matkamittarilukemien%20v%C3%A4%C3%A4rent%C3%A4minen%20henkil%C3%B6-%20ja%20pakettiautoissa.pdf)

In addition, there has been a preliminary study by Traficom concerning emissions tampering. Its main conclusions have been summarised, e.g. in this answer to written question to the Government of Finland on vehicle emission manipulation (KKV 419/2018 vp); available at: [www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV\\_419+2018.pdf](http://www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV_419+2018.pdf)

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

n/a

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

n/a

### *Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There are no official studies that I could rely on in answering to this question, but instead I am relying on the general 'understanding' regarding the experiences that relate to **odometer tampering**. This

<sup>419</sup> [www.traficom.fi/fi/ajankohtaista/harkitsetko-kaytetyn-auton-ostamista-ulkomailta-tarkista-matkamittarilukema](http://www.traficom.fi/fi/ajankohtaista/harkitsetko-kaytetyn-auton-ostamista-ulkomailta-tarkista-matkamittarilukema)

‘understanding’ is supported, e.g. by several newspaper articles.<sup>420</sup> In my understanding, it is not very well known that odometer tampering is not prohibited per se. This is also potentially problematic regarding the buying of second-hand vehicles as the Finnish car buyer is still considered to be relatively unsuspecting in this regard.<sup>421</sup>

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

n/a

Potential gaps in the legislation

Potential gaps in the legislation seems to relate mainly to odometer tampering in relation to imported cars, as well as some other issues that relate to enforcement; see below.

### 30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?

Regarding **odometer tampering**: In 2019, Traficom published a study that concerned odometer tampering in passenger cars and vans.<sup>422</sup> The study examined whether there are any indications of odometer manipulation, or intentional tampering of odometer readings, in vehicles in use in Finland by analysing odometer data collected at regular inspections of vehicles. The data revealed reduced mileages between inspections in approximately 0.6 per cent of passenger cars and vans in use in Finland. Some of them result from mistakes in the recording and rounding of figures, or other similar reasons. This means that the share of actual tampering cases is probably lower. The percentage is very low compared to studies carried out in other European countries. In this respect, the existing enforcement system seems to be working fairly well.

Nevertheless, the same study also revealed the number is higher when comes to car imports; the data received from the Netherlands, Belgium and Estonia reveal that 5 to 17 per cent of imported cars show some indications of potential odometer tampering. In this respect, the study calls for an improved exchange of information on inspection and maintenance recordings between countries.

Also, from a practical point of view, the Finnish consumers are more aware and ‘afraid’ of odometer tampering in relation to imported cars than compared to cars bought and sold within the borders of Finland due to the fact that there are no possibilities to check the data collected during inspections in a similar manner as in the Finnish context.

**Regarding emissions tampering** in general, a study published by Traficom considered that sanctions are considered to be too low; instead sanctions could be more substantial fines, effects on the license and/or various tax consequences. Furthermore, control problems should be resolved in co-

<sup>420</sup> See, e.g., [www.is.fi/autot/art-2000005147189.html](http://www.is.fi/autot/art-2000005147189.html); [www.mtvuutiset.fi/artikkeli/auton-matkamittarin-peukalointi-ei-ole-laitonta-tarkista-todelliset-lukemat-vaikka-kannykalla/6241444#gs.62s4jy](http://www.mtvuutiset.fi/artikkeli/auton-matkamittarin-peukalointi-ei-ole-laitonta-tarkista-todelliset-lukemat-vaikka-kannykalla/6241444#gs.62s4jy)

<sup>421</sup> See, e.g., <https://yle.fi/uutiset/3-8711681>

<sup>422</sup> Traficom, *Matkamittarilukemien vääräntäminen henkilö- ja pakettiautoissa*, (Traficomien tutkimuksia ja selvityksiä 17/2019), [‘Odometer tampering in passenger cars and vans’], available at: [www.traficom.fi/sites/default/files/media/publication/Traficom\\_17\\_2019\\_Matkamittarilukemien%20v%C3%A4r%C3%A4nt%C3%A4minen%20henkil%C3%B6-%20ja%20pakettiautoissa.pdf](http://www.traficom.fi/sites/default/files/media/publication/Traficom_17_2019_Matkamittarilukemien%20v%C3%A4r%C3%A4nt%C3%A4minen%20henkil%C3%B6-%20ja%20pakettiautoissa.pdf)

operation with the industry, as Traficom has the competence to monitor repair shops only under very limited circumstances. Informing the public about the debate was also considered to be important.<sup>423</sup>

### 31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?

- As stated above, in terms of imported cars, it is considered that a more coordinated and enforced information exchange between countries would be beneficial to prevent odometer tampering.
- According to the latest technical roadside inspections, it seems that in the context of heavy-duty vehicles, emission tampering is increasing. In November 2019, the Police carried out technical roadside inspections in Northern Finland that targeted heavy-duty vehicles; this inspection revealed that one in ten trucks experienced emission manipulation causing environmental damage.<sup>424</sup> This applied both in terms of Finnish heavy-duty vehicles as well as foreign ones. In this respect, enforcement system cannot be considered to be effective enough.
- There have been problems concerning the recall of vehicles in the aftermath of the Volkswagen emissions scandal. Some owners of vehicles recalled due to an emissions scam were delaying repairing their car to the last minute. Traficom approached car owners who, despite the manufacturer's invitation letters, have not taken their car for an upgrade by letter. Two repair invitations were sent to car owners. If they were not complied with, a so-called "last letter" was sent. If the vehicle had not been delivered for repair to the manufacturer's representative or repair shop within 8 weeks of the date of the 'final' letter, Traficom recorded an entry in the vehicle's registration data about the unfinished recall campaign. The registration, in turn, results in the vehicle being rejected at the next periodic inspection. The entry could only be deleted after the required correction was made.<sup>425</sup>
- The problem described above concerning the recalls was partially considered to relate to the illegal removal of the particulate filter of diesel cars, as it is expensive to replace a clogged filter. In 2015, it was reported that unauthorised particulate filter removals are increasing in diesel cars at a rapid pace. Because renovations cost a lot, some owners prefer removing the entire filter. Although the measure is prohibited, some companies openly advertised that they did so. In some cases, it is possible to remove the DPF if the car then passes a change inspection as the Finnish law does not criminalise the removal of a particulate filter. The only sanction is the rejection of the car during the inspection. Nevertheless, some new measurement and inspection methods were introduced in order to facilitate the detection of DPF depreciation.<sup>426</sup>

<sup>423</sup> There has been a study by Traficom where this issue has been examined in more detail; however I have not been able to locate the study, instead the main conclusions of it has been summarised, eg., in this Answer to written question to the Government of Finland on vehicle emission manipulation KKV 419/2018 vp; available at: [www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV\\_419+2018.pdf](http://www.eduskunta.fi/FI/vaski/Kysymys/Documents/KKV_419+2018.pdf)

<sup>424</sup> See, general newspaper articles, eg., [www.maaseuduntulevaisuus.fi/kotimaa/artikkeli-1.544949](http://www.maaseuduntulevaisuus.fi/kotimaa/artikkeli-1.544949); [www.mtvuutiset.fi/artikkeli/paastomanipulointi-lisaantynyt-kuorma-autoliikenteessa-suomessa-seuraukset-huolettavat-manipulointi-voi-nostaa-terveydelle-haitallisten-paastojen-maaran-jopa-yli-kymmenkertaiseksi/7616880](http://www.mtvuutiset.fi/artikkeli/paastomanipulointi-lisaantynyt-kuorma-autoliikenteessa-suomessa-seuraukset-huolettavat-manipulointi-voi-nostaa-terveydelle-haitallisten-paastojen-maaran-jopa-yli-kymmenkertaiseksi/7616880)

<sup>425</sup> See, Yle, 'Trafi herättelee autonomistajia, jotka eivät ole noudattaneet VW:n takaisinkutsua: jos autoa ei pian korjata katsastuksessa odottaa hylkäys' ['Trafi wakes up car owners who have not followed VW's recall: if the car is not repaired soon, rejection awaits'] (12.4.2018), available at: <https://yle.fi/uutiset/3-10156657>

<sup>426</sup> See, Yle, 'Jokamiehen päästöhuijaukset yleistyvät nyt kovaa vauhtia – Trafi uhkaa vastaiskulla' ['Every man's emissions scams are now becoming more widespread - Trafi threatens to strike back'] (30.11.2015), available at: <https://yle.fi/uutiset/3-8486593>

## Other

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

1. Valmet Automotive Inc.  
Head Office  
PO Box 4  
FI-23501 Uusikaupunki  
Finland  
Tel. +358 20 484 8111  
[www.valmet-automotive.com/contact/](http://www.valmet-automotive.com/contact/)

2. Traficom  
+358 29 534 5000

Teknologian tutkimuskeskus VTT Oy  
+358 2072 2111  
[www.vtt.fi](http://www.vtt.fi)

See also: [www.traficom.fi/en/liikenne/tieliikenne/tyyppihyvakysynta/hyvakysynnat](http://www.traficom.fi/en/liikenne/tieliikenne/tyyppihyvakysynta/hyvakysynnat)

3. The Police  
[www.poliisi.fi/yhteystiedot](http://www.poliisi.fi/yhteystiedot) (including phone numbers, etc.)

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

Please note that both the Vehicles Act and the Vehicles Order are currently being revised, and the current schedule for their adoption is September 2020.

## Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

1) According to the Consumer Disputes Board, the car had an error when it was installed with software that affects the emission values of nitrogen oxides. However, in the present case, the consumer did not provide evidence that he had suffered financially from the defect. The decision was voted 5-4. With regard to the display, the minority considered it sufficiently probable that the value of the car had fallen despite the repair campaign. The matter was not dealt with as a class complaint.  
[www.kuluttajariita.fi/fi/index/ajankohtaista/tiedotteet/2017/11/autonpaastomanipuloinnistaehyvit\\_ystaarvonalentumisestaellutnaytto.html](http://www.kuluttajariita.fi/fi/index/ajankohtaista/tiedotteet/2017/11/autonpaastomanipuloinnistaehyvit_ystaarvonalentumisestaellutnaytto.html)

2) The trading of a vehicle did not appear to have been misleading when the odometer reading of the car sold to it did not correspond to reality - the charge of fraud was rejected.

Helsinki Appeal Court 19.11.2019  
Decision no 19/149929  
Case no R 19/648

3) The trade of a car imported from Latvia to Finland was recommended to be dismantled in a case where the actual mileage of the car had been about 144,000 kilometers higher than the odometer reading of 245,000 kilometers entered in the car's sales announcement and sales contract.

Consumer Disputes Board 974/33/13.

4) A car imported from Germany was claimed to have an odometer reading of 88,000 kilometers but actually had a mileage of more than 170,000 kilometers - the Consumer Disputes Board recommended dismantling the deal.

Consumer Disputes Board 70/33/12.<sup>427</sup>

#### Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
Traficom, 'Matkamittarilukemien väärentäminen henkilö- ja pakettiautoissa' ['Odometer tampering in passenger cars and vans']	Traficomin tutkimuksia ja selvityksiä 17/2019, available at: <a href="https://traficom.fi/sites/default/files/media/publication/Traficom_17_2019_Matkamittarilukemien%20v%C3%A4%C3%A4rent%C3%A4minen%20henkil%C3%B6-%20ja%20pakettiautoissa.pdf">traficom.fi/sites/default/files/media/publication/Traficom_17_2019_Matkamittarilukemien%20v%C3%A4%C3%A4rent%C3%A4minen%20henkil%C3%B6-%20ja%20pakettiautoissa.pdf</a>	The study examined whether there are any indications of odometer manipulation, or intentional tampering of odometer readings, in vehicles in use in Finland by analysing odometer data collected at regular inspections of vehicles.

<sup>427</sup> The four last cases can be accessed only through the following database (€): [www.edilex.fi/uutiset/63682](http://www.edilex.fi/uutiset/63682)

**1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.**

Directive 2007/46/EC (establishing an approval framework)

Directive 2007/46/EC was implemented by Decree n° 2009-497 of 30 April 2009 relating to the type approval and approval of vehicles and amending the Highway Code<sup>428</sup>. Decree n° 2009-497 amended the French Highway Code<sup>429</sup>.

Decree n°2009-497 was further implemented by the following ministerial orders:

- In particular, Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC<sup>430</sup> transposed significative parts of Directive 2007/46/EC.
- Order of 4 May 2009 relating to the steering devices of motor vehicles and their trailers<sup>431</sup>
- Order of 4 May 2009 amending the decree of October 24, 1994 relating to the fuel tanks of motor vehicles<sup>432</sup>
- Order of 4 May 2009 amending the decree of March 26, 1999 relating to the mechanical coupling devices of motor vehicles and their trailers<sup>433</sup>
- Order of 4 May 2009 relating to the location and mounting of rear registration plates for motor vehicles and their trailers<sup>434</sup>
- Order of 4 May 2009 relating to the type-approval of motor vehicles concerning radio interference (electromagnetic compatibility)<sup>435</sup>
- Order of 4 May 2009 amending the decree of December 19, 1958 relating to the fitting out of motor vehicles<sup>436</sup>
- Order of 4 May 2009 amending the decree of January 14, 1958 fixing the specifications which must be met by the audible warning devices of motor vehicles<sup>437</sup>

<sup>428</sup> Décret n° 2009-497 du 30 avril 2009 relatif aux réceptions et homologations des véhicules et modifiant le code de la route, available [here](#) (last accessed on 28/05/2020).

<sup>429</sup> Code de la Route, available [here](#) (last accessed on 28/05/2020).

<sup>430</sup> Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE, available [here](#) (last accessed on 28/05/2020).

<sup>431</sup> Arrêté du 4 mai 2009 relatif aux dispositifs de direction des véhicules à moteur et de leurs remorques, available [here](#) (last accessed on 28/05/2020).

<sup>432</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 24 octobre 1994 relatif aux réservoirs de carburant des véhicules à moteur, available [here](#) (last accessed on 28/05/2020).

<sup>433</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 26 mars 1999 relatif aux dispositifs d'attelage mécanique des véhicules à moteur et de leurs remorques, available [here](#) (last accessed on 28/05/2020).

<sup>434</sup> Arrêté du 4 mai 2009 relatif à l'emplacement et au montage des plaques d'immatriculation arrière des véhicules à moteur et de leurs remorques, available [here](#) (last accessed on 28/05/2020).

<sup>435</sup> Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur concernant les parasites radioélectriques (compatibilité électromagnétique), available [here](#) (last accessed on 28/05/2020).

<sup>436</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 19 décembre 1958 relatif à l'aménagement des véhicules automobiles, available [here](#) (last accessed on 28/05/2020).

<sup>437</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 14 janvier 1958 fixant les spécifications auxquelles doivent répondre les avertisseurs sonores des véhicules automobiles, available [here](#) (last accessed on 28/05/2020).

- Order of 4 May 2009 amending the decree of 28 July 2006 relating to motor vehicles equipped with short-range radar systems in the 24 GHz frequency band<sup>438</sup>
- Order of 4 May 2009 amending the decree of 20 November 1997 relating to the application of Directive 97/27 / EC concerning the masses and dimensions of certain categories of motor vehicles and their trailers<sup>439</sup>
- Order of 4 May 2009 relating to the type-approval of motor vehicles with regard to their protection against unauthorized use<sup>440</sup>
- Order of 4 May 2009 on the covering of motor vehicle wheels<sup>441</sup>
- Order of 4 May 2009 on towing devices for motor vehicles<sup>442</sup>
- Order of 4 May 2009 amending the decree of 5 February 1969 relating to the protection of the driver against the steering device in the event of an impact<sup>443</sup>
- Order of 4 May 2009 amending the decree of 2 July 1982 relating to the public transport of people<sup>444</sup>

Directive 2014/45/EU (on periodic roadworthiness tests)

With regard to light-duty vehicles, Directive 2007/46/EC was implemented by the following measures:

- Decree n ° 2017-208 of 20 February 2017 relating to the nomenclature of vehicles appearing in article R. 311-1 of the highway code and to the modification of the rules relating to the technical control of collector's cars<sup>445</sup>.
- Order of 2 March 2017 amending the order of 18 June 1991 relating to the establishment and organisation of technical inspection of vehicles whose weight does not exceed 3.5 tonnes<sup>446</sup>.

With regard to heavy-duty vehicles, Directive 2007/46/EC was implemented by the following measures:

- Order of 9 March 2017 amending the order of 27 July 2004 relating to the technical control of heavy vehicles<sup>447</sup>

<sup>438</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 28 juillet 2006 relatif aux véhicules à moteur équipés de systèmes radar à courte portée dans la bande de fréquences des 24 GHz, available [here](#) (last accessed on 28/05/2020).

<sup>439</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 20 novembre 1997 relatif à l'application de la directive 97/27/CE concernant les masses et dimensions de certaines catégories de véhicules à moteur et de leurs remorques, available [here](#) (last accessed on 28/05/2020).

<sup>440</sup> Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur pour ce qui concerne leur dispositif de protection contre une utilisation non autorisée, available [here](#) (last accessed on 28/05/2020).

<sup>441</sup> Arrêté du 4 mai 2009 relatif au recouvrement des roues des véhicules à moteur, available [here](#) (last accessed on 28/05/2020).

<sup>442</sup> Arrêté du 4 mai 2009 relatif aux dispositifs de remorquage des véhicules à moteur, available [here](#) (last accessed on 28/05/2020).

<sup>443</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 5 février 1969 relatif à la protection du conducteur contre le dispositif de direction en cas de choc, available [here](#) (last accessed on 28/05/2020).

<sup>444</sup> Arrêté du 4 mai 2009 modifiant l'arrêté du 2 juillet 1982 relatif aux transports en commun de personnes, available [here](#) (last accessed on 28/05/2020).

<sup>445</sup> Décret n° 2017-208 du 20 février 2017 relatif à la nomenclature des véhicules figurant à l'article R. 311-1 du code de la route et à la modification des règles relatives au contrôle technique des véhicules de collection, available [here](#) (last accessed on 28/05/2020).

<sup>446</sup> Arrêté du 2 mars 2017 modifiant l'arrêté du 18 juin 1991 relatif à la mise en place et à l'organisation du contrôle technique des véhicules dont le poids n'excède pas 3,5 tonnes, available [here](#) (last accessed on 28/05/2020).



- Order of 16 March 2017 amending the order of 27 July 2004 relating to the technical control of heavy vehicles<sup>448</sup>
- Order of 24 April 2017 amending the order of 27 July 2004 relating to the technical control of heavy vehicles<sup>449</sup>.

However, it should be noted that these national measures do not seem to implement the dispositions of Directive 2014/45/EU regarding tampering.

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

Directive 2014/47/EU was implemented by Order of 8 June 2017 relating to the technical roadside inspection of heavy vehicles<sup>450</sup>.

However, it should be noted that this national measure does not seem to implement the dispositions of Directive 2014/47/EU regarding tampering.

## 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

The French Highway Code constitutes the main piece of legislation concerning road traffic in France. In Volume III, it sets out general rules on 'vehicle' – including on type approval of light and heavy-duty vehicles and on 'Energy, polluting emissions and nuisances'.

Additionally, regarding tampering in particular, Article L318-3 of the Highway Code (introduced in 2015<sup>451</sup>) prohibits any modification reducing the effectiveness of emission control systems or deleting such systems and lays down penalties in relation to such modifications.

Commission Regulation (EU) 2017/1151 (on odometer readings)

The requirement laid down in Commission Regulation (EU) 2017/1151 that car manufacturers effectively deter reprogramming of the odometer readings is not covered by French legislation.

Nevertheless, it can be noted that Article 3 of Decree 78-993<sup>452</sup> prohibits any modification or its reduction to zero of the mileage shown on the odometer of a motor vehicle.

<sup>447</sup> Arrêté du 9 mars 2017 modifiant l'arrêté du 27 juillet 2004 relatif au contrôle technique des véhicules lourds, available [here](#) (last accessed on 28/05/2020).

<sup>448</sup> Arrêté du 16 mars 2017 modifiant l'arrêté du 27 juillet 2004 relatif au contrôle technique des véhicules lourds, available [here](#) (last accessed on 28/05/2020).

<sup>449</sup> Arrêté du 24 Avril 2017 modifiant l'arrêté du 27 juillet 2004 relatif au contrôle technique des véhicules lourds, available [here](#) (last accessed on 28/05/2020).

<sup>450</sup> Arrêté du 8 juin 2017 relatif au contrôle technique routier des véhicules lourds, available [here](#) (last accessed on 28/05/2020).

<sup>451</sup> Article 58, LOI n° 2015-992 du 17 août 2015 relative à la transition énergétique pour la croissance verte (LAW n° 2015-992 of August 17, 2015 relating to the energy transition for green growth, available [here](#), last accessed on 28/05/2020).

<sup>452</sup> Article 3, Décret 78-993 du 4 octobre 1978 pris pour l'application de la loi du 1er août 1905 sur les fraudes et falsifications en matière de produits ou de services en ce qui concerne les véhicules automobiles (Decree

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

The French Highway Code constitutes the main piece of legislation concerning road traffic in France. In Volume III, it sets out general rules on ‘vehicle’ – including on type approval of light and heavy-duty vehicles and on ‘Energy, polluting emissions and nuisances’.

Additionally, regarding tampering in particular, Article L318-3 of the Highway Code (introduced in 2015<sup>453</sup>) prohibits any modification reducing the effectiveness of emission control systems or deleting such systems and lays down penalties in relation to such modifications.

However, the prohibition, laid down in Regulation (EC) No 595/2009, of manufacturers, repairers and operators of the vehicles from tampering with systems which use a consumable reagent is not covered by French legislation.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

As set out above, the main national pieces of legislation which relate to tampering are the Highway Code and Decree n°78-993, there are no other national measures which are of particular relevance in this regard.

It can be noted that the Highway Code includes penalties for the advertising or propaganda in favour of a modification reducing the effectiveness of emission control systems or deleting such systems<sup>454</sup>.

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

They do not (the pieces of legislation set out above only refer to the EU directives and regulations they implement / cover).

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

In the explanatory memorandum presenting the reasons<sup>455</sup> of Law n ° 2015-992 relating to the energy transition for green growth, which introduced Article L318-3 of the Highway Code, it is specifically mentioned that Article L318-3 has been introduced to punish the practice of removing particle filters and the advertising of this practice.

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78-993 of 4 October 1978 for the application of the law of 1 August 1905 on frauds and falsifications in matters of products or services with regard to motor vehicles, available [here](#), last accessed on 28/05/2020).

<sup>453</sup> *Ibid.*

<sup>454</sup> Article L318-3, Code de la route (Highway Code, available [here](#), last accessed on 28/05/2020).

<sup>455</sup> Exposé des motifs, Projet de loi relatif à transition énergétique pour la croissance verte (Explanatory memorandum, Bill relating to the energy transition for green growth, available [here](#)).

More generally, title III of Law n° 2015-992 refers to the objective of developing clean transportation in order to improve air quality and protect health.

## Requirements and rules on tampering

### *Obligations manufacturers*

#### **6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific national legal requirements on manufacturers relating to the prevention of tampering.

#### **7. Are there any other requirements relating to tampering which manufacturers need to meet?**

No.

#### **8. Are manufacturers required to disclose information relating to tampering (resistance)?**

No.

### *Type approval*

#### **9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

Articles R321-6 to R321-14-1 of the Highway Code<sup>456</sup> and Articles 5 to 7 and 10 of Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC<sup>457</sup> set the requirements in relation to **EC type approval**. The requirements that form part of the approval processes under French law are those provided in Directive 2007/46/EC (with mostly direct reference to the provisions of the Directive). No specific provisions on tampering are in place at national level.

Articles R321-15 to R321-25 of the Highway Code<sup>458</sup> and Articles 11 to 21 of Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC<sup>459</sup> set the requirements in relation to **national type approval** of vehicles. No specific provisions on tampering are in place at national level.

<sup>456</sup> Code de la Route, available [here](#) (last accessed on 28/05/2020)

<sup>457</sup> Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE, available [here](#) (last accessed on 28/05/2020).

<sup>458</sup> Code de la Route, available [here](#) (last accessed on 28/05/2020)

<sup>459</sup> Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE, available [here](#) (last accessed on 28/05/2020).

## 10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?

As for the **EC type approval**, Article 5 of the abovementioned Order of 4 May 2009 directly refers to Directive 2007/46/EC<sup>460</sup>.

As for the **national type approval**, many aspects of a vehicle are tested (depending on the vehicle category), mostly stemming from requirement in EU legislation. For example (for small series type approval for Category M vehicles):

- Sound level;
- Emissions;
- Fuel tanks;
- Rear protective devices;
- Rear registration plate space;
- Steering effort;
- Door latches and hinges\*;
- Vehicle access and manoeuvrability (steps, and door latches)\*;
- Door locks and fasteners;
- Audible warning;
- Indirect vision devices;
- Braking;
- Radio interference / Electromagnetic compatibility
- Etc (more than 70 in total, which can be consulted in Annex 3 of Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC<sup>461</sup>).

\*Door latches and hinges and vehicle access and manoeuvrability are examples of checks that do not seem to stem from EU legislation.

## 11. Please list the national type approval authority<sup>462</sup> and technical services<sup>463</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.

The French type approval authority is the Vehicle safety and emissions Department within the **Ministry in charge of Transports**<sup>464</sup>, currently the Ministry of ecological and solidarity transition.

*L'Union technique de l'automobile, du motocycle et du cycle* **UTAC** (The Technical Union for the Automobile, Motorcycle and Cycle) is in charge of the technical test and inspections in relation to national type approval processes, and carries out all inspections themselves. UTAC is designated by the Ministry in charge of Transports<sup>465</sup>.

<sup>460</sup> Article 5, *Ibid*.

<sup>461</sup> Annex 3, *Ibid*.

<sup>462</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>463</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>464</sup> Article R321-7, Highway Code, available [here](#).

<sup>465</sup> Article 3.6, Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE (Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC available [here](#), last accessed on 28/05/2020).

The Ministry in charge of Transports also designates the *Centre national de réception des véhicules CNRV* (National vehicle reception center) as the administrative body in charge of the EC type approval processes (it delivers EC type approval certificates and certain national type approval certificates)<sup>466</sup>.

Lastly, the *Direction régionale et interdépartementale de l'environnement et de l'énergie DRIEE* (Regional and interdepartmental directorate for the environment and energy), the *directions régionales de l'environnement, de l'aménagement et du logement DREAL* (regional directorates for environment, planning and housing) and the *directions de l'environnement, de l'aménagement et du logement DEAL* (directorates for environment, planning and housing) are the administrative bodies in charge of the national type approval processes (they receive the request made by manufacturers, deliver certain national type approval certificates, etc) and are also designated by the Ministry in charge of Transports<sup>467</sup>.

## 12. Are any of these parties required to disclose information on national type approval processes?

There is no other specific legislation regarding the obligation for the abovementioned parties to disclose information on national type approval processes.

It can be noted that, pursuant to Article 3.4, letter f) of Order of 4 May 2009, the **CNRV** communicates to other Member States the information in accordance with the procedures laid down in point 6 of Article 23 of Directive 2007/46/EU.

Additionally, it should be noted that Articles R321-9 and R321-14 of Highway Code specify that, when the Ministry in charge of Transports denies an applicant a type approval certificate, a registration number or prohibits the making available on the markets of vehicles, it shall immediately inform type-approval authorities from other Member States and the European Commission.

## 13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

Article R321-4 of the Highway Code sets out the following criminal penalties:

- The penalty for offering for sale or selling a vehicle or a component of a vehicle that has not been subject to an approval is a fine of EUR 1 500.
- The penalty for placing or maintaining in circulation a motor vehicle or a trailer that has not been subject to an approval is a fine of EUR 750.
- The penalty for offering for sale or selling a device or equipment that does not conform to an approved type or to a type that has been approved, when approval of this device or equipment is required, is a fine of EUR 750.

<sup>466</sup> Article 3.4, Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE (Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC available [here](#), last accessed on 28/05/2020).

<sup>467</sup> Article 3.5, Arrêté du 4 mai 2009 relatif à la réception des véhicules à moteur, de leurs remorques et des systèmes et équipements destinés à ces véhicules en application de la directive 2007/46/CE (Order of 4 May 2009 relating to the type-approval of motor vehicles, their trailers and the systems and equipment intended for these vehicles pursuant to Directive 2007/46/EC available [here](#), last accessed on 28/05/2020).

- The penalty for using a device or equipment that does not conform to an approved type or to a type that has been approved, when approval of this device or equipment is required, is a fine of EUR 38.

### *Rules on tampering*

#### **14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

Article L318-3 of the Highway Code prohibits carrying out or having carried out transformations on a vehicle having the effect of removing a pollution control device, degrading its performance or masking its possible malfunction, or engaging in propaganda or advertising in favour of these transformations and lays down penalties for such transformations.

Tampering with aftermarket parts

There is no specific legislation concerning tampering with aftermarket parts.

Tampering with the engine

There is no specific legislation concerning tampering with the engine.

Tampering with the OBD system

There is no specific legislation concerning tampering with OBD systems.

Odometer tampering (in particular on second-hand vehicles)

Article 3 of Decree 78-993 prohibits any modification or its reduction to zero of the mileage shown on the odometer of a motor vehicle.

Other

n/a

#### **15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

Police officers are in charge of ensuring compliance with the legislation set out by the Highway Code, in general, including Article L318-3 on tampering<sup>468</sup>.

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<sup>468</sup> Article L130-4, Highway Code

As per Decree 78-993, on odometer tampering, Article 10 specifies that the Ministry of Justice, the Home Secretary, the Ministry of Economy, the Ministry of Agriculture and Ministry of Industry and transports are in charge, each Ministry for its part, of the enforcement of the Decree.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Emission control design tampering:

As set out in Article L318-3 of the Highway Code, the administrative penalty for carrying out or having carried out transformations on a vehicle having the effect of removing a pollution control device, degrading its performance or masking its possible malfunction, or engaging in propaganda or advertising in favour of these transformations is a fine of EUR 7,500 .

Additionally, the same Article also lays down (following modalities set out in the French criminal code), the prohibition for **natural persons** to practice the professional or social activity in the exercise or on the occasion of which the offense was committed. The maximum duration during which the person is banned from practicing the professional or social activity is one year. this is a criminal penalty.

As for **legal persons**, Article L318-3 also refers to Article 131-39 of the French criminal code, setting out the following criminal penalties:

- Definitive closure or for a period of five years at most of the establishments or of one or more of the establishments of the company which served to commit the accused acts;
- Exclusion from public contracts on a permanent basis or for a period of up to five years;
- Confiscation;
- Display of the decision or its dissemination either by the written press or by any electronic means of communication to the public.

Odometer tampering:

Decree 78-993 does not set out sanctions for odometer tampering. However, selling a vehicle, of which the mileage shown on the odometer has been modified, constitutes a miss-selling (*tromperie*) offence<sup>469</sup>. As set out in Article L454-1 of the French Consumer Code<sup>470</sup>, the penalty for miss-selling is incarceration (up to 2 years) and a fine up to EUR 300,000 (criminal penalty).

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

There are no specific national legal provisions in this regard; general principles regarding remedies apply.

The consumer could sue the trader for breach of the Consumer Code, for a misleading commercial practice and in particular for the miss-selling practice described in the abovementioned Article L213-1.

<sup>469</sup> Article L. 441-1, French Consumer Code (available [here](#)).

<sup>470</sup> Article L454-1, Code de la Consommation (available [here](#)).



Additionally, pursuant to the French Civil Code, the consumer could request the cancellation of the sale for hidden defect<sup>471</sup>.

In both cases, the consumer may receive damages from the court.

The burden of proof falls on the claimant.

### Tests and inspections

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

Article L323-1 and Articles R323-1 to 323-26 of the Highway Code set out the general rules relating to periodic roadworthiness tests. Additionally, Order of 18 June 1991 relating to the establishment and organisation of technical inspection of vehicles whose weight does not exceed 3.5 tonnes<sup>472</sup> and Order of 27 July 2004 relating to the technical control of heavy vehicles<sup>473</sup> set out the technical requirements of the roadworthiness tests for light-duty and heavy-duty vehicles, respectively.

Periodic roadworthiness tests, carried out without dismantling the essential parts of the vehicle, aim at identifying potential failures of the vehicle by controlling specific checkpoints. As for light-duty vehicles, 610 failures are potentially identifiable on 133 checkpoints<sup>474</sup>. As for heavy-duty vehicles, 820 failures are potentially identifiable on 195 checkpoints<sup>475</sup>. Once identified, the severity of the failure is determined<sup>476</sup>:

- Minor failure: having no consequences on the security of the vehicle or on the environment.
- Major failure: likely to compromise vehicle safety, have a negative impact on the environment or endanger other road users.
- Critical failure: constituting a serious anomaly or a direct and immediate danger to road safety or the environment.

A roadworthiness test can lead to the following results<sup>477</sup>:

- Favourable result: in the absence of default or in the event of a minor failure;
- Unfavourable result for major failures: in this case, the inspection will be valid for two months (one month for heavy vehicles) from the date of the technical inspection;
- Unfavourable result for critical failures: in this case, the validity of the inspection will be limited to the day of the inspection.

In the case of unfavourable result (either for major or critical failure), the identified failures must be fixed within the two months (one month for heavy vehicles) following the test and the vehicle must be submitted to a follow-up test.

<sup>471</sup> Article 1641, French Civil Code (available [here](#)).

<sup>472</sup> Arrêté du 18 juin 1991 relatif à la mise en place et à l'organisation du contrôle technique des véhicules dont le poids n'excède pas 3,5 tonnes, available [here](#) (last accessed on 28/05/2020).

<sup>473</sup> Arrêté du 27 juillet 2004 relatif au contrôle technique des véhicules lourds, available [here](#) (last accessed on 28/05/2020).

<sup>474</sup> Annex I, Order of 18 June 1991

<sup>475</sup> Annex I, Order of 27 July 2004

<sup>476</sup> Article 7, Order of 18 June 1991 and Article 9, Order of 27 July 2004

<sup>477</sup> Article 7, Order of 18 June 1991 and Article 9, Order of 27 July 2004

Following the test, an official report (*procès-verbal*)<sup>478</sup>, an official stamp to be stuck on the registration certificate<sup>479</sup> and a road tax disc to be stuck of the windscreen<sup>480</sup> (mentioning the result and the duration of validity of the test) are delivered to the user of the vehicle.

In relation to light-duty vehicles, the first roadworthiness test must be carried out four years after the first registration. As from this first test, periodic tests must be carried out **every two years**. Light-duty vehicles are also submitted to emission control tests which must be carried out in between two roadworthiness tests, every two years<sup>481</sup>. Thus, a light-duty vehicle is submitted to either a roadworthiness or a emission control test every year.

In relation to heavy-duty vehicles, the first roadworthiness test must be carried out one year after the first registration. As from this first test, periodic tests must be carried out **every year**<sup>482</sup>. As for bus and coach, the tests must be carried out **every six months**<sup>483</sup>.

Roadworthiness tests are carried out by States services or by controllers accredited by the State. The accreditation of a test centre is delivered by the prefect of the *department* (*préfet de département*) where the centre is established. Additionally, such centres can be organised in networks of test centres. To be recognised as such, a network of light-duty vehicle test centres must cover at least 90 *departments*. A network of heavy-duty vehicle test centres must constitute at least 30 centres, covering at least 13 regions. Networks of test centres are accredited by the Ministry in charge of Transports<sup>484</sup>.

Additionally, L'*Union technique de l'automobile, du motocycle et du cycle* UTAC (The Technical Union for the Automobile, Motorcycle and Cycle) has been designated by the Ministry of Transports as the central technical body<sup>485</sup>. It is in charge of collecting and analysing the results of the tests in order to monitor the functioning of the installations, ensure the consistency of the tests and collect information on the state of the national car fleet; keeping up to date the elements allowing to adapt to technical progress the equipment and control methods, as well as the information and training of controllers; and providing technical assistance for the verification of the quality of the services provided by the test centres<sup>486</sup>.

There is no specific legislation on periodic roadworthiness tests with regard to tampering.

<sup>478</sup> Article 6, Order of 18 June 1991, Article 8, Order of 27 July 2004

<sup>479</sup> Article 9, Order of 18 June 1991, Article 10, Order of 27 July 2004

<sup>480</sup> Article 10, Order of 18 June 1991, Article 10-1, Order of 27 July 2004

<sup>481</sup> Article R323-22, Highway Code

<sup>482</sup> Articles R323-24 and R323-25, Highway Code

<sup>483</sup> Article R323-23, Highway Code

<sup>484</sup> Articles R323-6 to R323-21, Highway Code

<sup>485</sup> Décret n°91-1021 du 4 octobre 1991 portant désignation d'un organisme technique central du contrôle technique des véhicules (Decree No. 91-1021 of 4 October 1991 designating a central technical body for technical vehicle inspection, available [here](#), last accessed on 28/05/2020).

<sup>486</sup> Article R323-7, Highway Code

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

Order of 8 June 2017 relating to the technical roadside inspection of heavy vehicles<sup>487</sup> sets out the rules relating to the technical roadside inspections. Even though the title refers to heavy-duty vehicles, it should be noted that Order of 8 June applies to the same categories of vehicles mentioned under Directive 2014/47/EU (M2, M3, N2, N3, O3, O4).

Similar to periodic roadworthiness, technical roadside inspections aim at identifying potential failures of the vehicle by controlling specific checkpoints and lead to the following results:

- Favourable result: in the absence of default or in the event of a minor failure;
- Unfavourable result: in case of major failures.
- Unfavourable result: in case of critical failures.

Inspections are carried out without discrimination based on the nationality of the driver or the registration country of the vehicle.

The technical roadside inspection takes place in 2 steps:

- Initial inspection: the official report (procès-verbal) of the latest roadworthiness test is checked and a visual verification of checkpoints to establish the state of the vehicle is carried out. Following this initial inspection, the controller may either, authorise the owner to have the vehicle repaired, if necessary, authorise the vehicle to resume traffic or decide to proceed with an in-depth inspection.
- In-depth inspection: a roadworthiness test carried out in the nearest accredited test centre. The costs of this test falls on the owner of the vehicle. The report of the roadworthiness test is transmitted to the controller who will take it into account to draft the in-depth inspection report.

The Order of 8 June 2017 does not specify the entities in charge of the technical roadside inspection.

There is no specific legislation on technical roadside inspections with regard to tampering.

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

Roadworthiness tests are carried out by States services or by controllers accredited by the State. The accreditation of a test centre is delivered by the prefect of the *department (préfet de département)* where the centre is established. Additionally, such centres can be organised in networks of test centres. To be recognised as such, a network of light-duty vehicle test centres must cover at least 90 *departments*. A network of heavy-duty vehicle test centres must constitute at least 30 centres, covering at least 13 regions. Networks of test centres are accredited by the Ministry in charge of Transports<sup>488</sup>.

Additionally, *L'Union technique de l'automobile, du motocycle et du cycle* UTAC (The Technical Union for the Automobile, Motorcycle and Cycle) has been designated by the Ministry of Transports as the

<sup>487</sup> Arrêté du 8 juin 2017 relatif au contrôle technique routier des véhicules lourds, available [here](#) (last accessed on 28/05/2020).

<sup>488</sup> Articles R323-6 to R323-21, Highway Code

central technical body<sup>489</sup>. It is in charge of collecting and analysing the results of the tests in order to monitor the functioning of the installations, ensure the consistency of the tests and collect information on the state of the national car fleet; keeping up to date the elements allowing to adapt to technical progress the equipment and control methods, as well as the information and training of controllers; and providing technical assistance for the verification of the quality of the services provided by the test centres<sup>490</sup>.

As for technical roadside inspection, the Order of 8 June 2017 does not specify the entities in charge of the inspections. Therefore, it could be concluded that police officers, generally in charge of the search and observation of infringements relating to road safety and of ensuring compliance with the legislation set out by the Highway Code<sup>491</sup>, are in charge of such roadside inspections.

## 21. Are any of these authorities required to disclose information on these tests and inspections?

As for periodic roadworthiness tests, test centres communicate data relating to the tests to the central technical body (via their network, if any)<sup>492</sup>. The central technical body is responsible for the harmonisation and optimisation of the quality of roadworthiness tests and for systematically exploit data<sup>493</sup>.

There is no specific legislation regarding the obligation of the central technical body to disclose information on roadworthiness tests.

There is no specific legislation regarding the obligation to disclose information on technical roadside inspections.

## 22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

The Highway Code<sup>494</sup> sets up the following penalties for the owner of the vehicle:

- A fine of 750€ for maintaining in circulation a vehicle which does not satisfied the obligations relating to roadworthiness tests (criminal penalty);
- Immobilisation of the vehicle (administrative penalty). The immobilisation of the vehicle can take place in the following situations:
  - Vehicles whose circulation or parking is in violation of the provisions of the Highway code and compromise the safety or the right to compensation of road users, tranquillity or public health, the aesthetics of classified sites and landscapes, the conservation or normal use of roads open to public traffic and their dependencies, can be immobilised, under the request of the competent mayor or police officer and without the agreement of the owner<sup>495</sup>;

<sup>489</sup> Décret n°91-1021 du 4 octobre 1991 portant désignation d'un organisme technique central du contrôle technique des véhicules (Decree No. 91-1021 of 4 October 1991 designating a central technical body for technical vehicle inspection, available [here](#), last accessed on 28/05/2020).

<sup>490</sup> Article R323-7, Highway Code

<sup>491</sup> Article L130-4, Highway Code

<sup>492</sup> Article 28, Order of 18 June 1991, Article 38, Order of 27 July 2004

<sup>493</sup> Article 27, Order of 18 June 1991, Article 36, Order of 27 July 2004

<sup>494</sup> Article R323-1, Code de la Route

<sup>495</sup> Article L325-1, Highway Code

- In case of offense, police officers can immobilise the vehicle, upon authorisation of the public prosecutor<sup>496</sup>;
- In the absence of presentation of the vehicle to the compulsory test or in the event that the repairs or adjustments prescribed by the expert in charge of the test are not carried out, impoundment of the vehicle (administrative penalty).

### *National strategies and initiatives*

#### **23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

There is no system collecting odometer data at national level.

A draft bill was proposed by French Senators in March 2020 aiming at securing the sale of second-hand vehicles<sup>497</sup>. This bill includes the creation of a national register including mileage history. The draft bill is in the early stage of the legislative process and there is no indication available on when the law could be passed.

#### **24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

In January 2019, the Ministry of the Interior (Home Secretary) launched the platform **Histovec** (<https://histovec.interieur.gouv.fr/histovec/home>). On this platform (free access), a seller or a buyer can consult the history of a second-hand vehicle with a search based on its register number. It includes data of the first registration of the vehicle, the changes of owner or potential reported damages. However, for the time being, this platform does not include any mileage history.

#### **25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

The Real Urban Emission Initiative was launched in Paris in 2018. The Real Urban Emissions (TRUE) Initiative is a partnership of the FIA Foundation and the International Council on Clean Transportation with a shared interest in cleaning up vehicles and improving urban air quality<sup>498</sup>.

The cities of Paris and London started to score cars based on real-world emissions and impact on air quality, and to publicise that information.

<sup>496</sup> Article L325-1-1, Highway Code

<sup>497</sup> N° 276 SÉNAT, Session ordinaire de 2019-2020, Proposition de loi tendant à sécuriser la vente de véhicules automobiles d'occasion, available [here](#), last accessed on 28/05/2020.

<sup>498</sup> See [www.trueinitiative.org/about-true](http://www.trueinitiative.org/about-true), last accessed on 28/05/2020

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

In 2015, following the Volkswagen scandal, the Ministry in charge of the environment (currently the Ministry of ecological and solidarity transition) designated an independent commission in charge of the examination of the emissions of about 100 vehicles<sup>499</sup>. The commission gathered representatives from the Ministry, the Agency for ecological transition, the industry and consumer organisations. The technical tests were carried out by UTAC.

It aimed at identifying the potential presence of fraudulent devices detecting approval tests conditions and activating vehicle pollution control functions. 86 vehicles were submitted to various test (test bench and on road tests) and data were compared. Vehicle manufacturers were also audited.

The Final Report<sup>500</sup> was published in July 2016. The tests carried out did not establish the presence of devices deceiving approval tests, but did not exclude such a possibility. The tests, nevertheless, showed significant exceedances of the emission limits in real traffic conditions. They revealed that the pollution control systems used by several manufacturers were not working optimally at all times. In view of the results of this study, the Ministry in charge of the environment decided to carry out further inspections.

Therefore, a complementary study for the same 86 vehicles was entrusted to IFP New Energies (*IFP Energies Nouvelles*, a institutional scientific expertise body, conducting scientific studies in the field of energies on behalf of public authorities). The Final Report<sup>501</sup> was published in May 2017.

Following these two reports, the Ministry in charge of the environment issued recommendations and requested from manufacturers (and in particular the Renault Group) to set up action plans to improve emission control devices. The Ministry monitors these evolutions<sup>502</sup>.

Lastly, IPF New Energies and the Ministry of ecological and solidarity transition launched another study in 2019, aiming at examining the emissions of a broad range of ‘new’ vehicles, i.e. Euro6 vehicles. The study focuses on a representative panel of Euro6 vehicles sold in number and in model, centred on the French fleet. The vehicles are collected from the fleet, targeting vehicles with a high mileage and as representative as possible. The study has not produced any result yet. However the research protocol is available [here](#).

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

Not that we are aware of.

<sup>499</sup> See [www.ecologique-solidaire.gouv.fr/controle-des-emissions-polluants#e0](http://www.ecologique-solidaire.gouv.fr/controle-des-emissions-polluants#e0), last accessed on 28/05/2020

<sup>500</sup> Final report of the independent commission set up by Minister Ségolène Royal after the revelation of the Volkswagen affair - Control of pollutant emissions atmospheric and CO2 conducted on 86 vehicles – July 2016, available [here](#), last accessed on 28/05/2020.

<sup>501</sup> Control of atmospheric pollutants and CO2 emissions: Additional analyses carried out by IFPEN – May 2017, available [here](#), last access on 28/05/2020.

<sup>502</sup> See [www.ecologique-solidaire.gouv.fr/controle-des-emissions-polluants#e0](http://www.ecologique-solidaire.gouv.fr/controle-des-emissions-polluants#e0), last accessed on 28/05/2020

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No.

*Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There has been no research carried out at national level that would allow for an answer to this question.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question.

Potential gaps in the legislation

As mentioned above, it seems that the requirements set out in Directive 2014/45/EU and Directive 2014/47/EU, relating to periodic roadworthiness tests and technical roadside inspections with regard to “obvious tampering or manipulation” and “obviously manipulated (fraud) to reduce or misrepresent the vehicle's distance record” have not been transposed into French law.

Additionally, it could be noted that the prohibition, laid down in Regulation (EC) No 595/2009, of manufacturers, repairers and operators of the vehicles from tampering with systems which use a consumable reagent is not covered by French legislation.

Lastly, as mentioned above, there is no legislation providing for a national odometer register.

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

Yes.

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

No specific legal or practical obstacles have been noted in the literature.



## Other

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

**French Automobile Manufacturers Committee (CCFA) – *Comité des constructeurs français d'automobiles (CCFA)***

Members: Groupe Renault, Groupe PSA and Renault Trucks.

Website: <https://ccfa.fr/>

**Federation of Vehicle Equipment Industries – *Fédération des Industries des Équipements pour Véhicules FIEV***

Website: <https://fievf.fr/jcms/>

**Vehicle safety and emissions Department, Ministry of ecological and solidarity transition – *Sous-direction de la sécurité et des émissions des véhicules, Ministère de la transition écologique et solidaire***

Website: [www.ecologique-solidaire.gouv.fr/](http://www.ecologique-solidaire.gouv.fr/)

Telephone: +33 01 40 81 21 22

**Technical Union for the Automobile, Motorcycle and Cycle – *Union technique de l'automobile, du motocycle et du cycle UTAC***

Website UTAC as a type approval technical services: [www.utacceram.com/fr/](http://www.utacceram.com/fr/)

Telephone: +33 (0)1 69 80 17 00

Website UTAC, as the technical central body for roadworthiness tests: [www.utac-otc.com/Pages/Accueil.aspx](http://www.utac-otc.com/Pages/Accueil.aspx)

**Agency for ecological transition – *Agence pour la transition écologique ADEME***

Website: [www.ademe.fr/](http://www.ademe.fr/)

Representation to the European institutions: [representation.bruxelles@ademe.fr](mailto:representation.bruxelles@ademe.fr), +32 2 506 88 42

**IFP New Energies – *IFP Nouvelles Energies***

Institutional scientific expertise body in the field of energy

Website: [www.ifpenergiesnouvelles.fr/](http://www.ifpenergiesnouvelles.fr/)

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

n/a

## Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

There are a number of civil court decisions relating to the annulation of the sale of a second-hand vehicle for hidden defect relating to mileage. However, this case law focuses on contract law and there is no specific case law relating to vehicle tampering.

#### Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
Final report of the independent commission set up by Minister Ségolène Royal after the revelation of the Volkswagen affair - Control of pollutant emissions atmospheric and CO2 conducted on 86 vehicles – July 2016 <sup>503</sup>	Report from the Ministry in charge of Ecology and transport  <a href="http://www.ecologique-solidaire.gouv.fr/sites/default/files/Rapport%20commission%20d%C3%A9finitif%2029-07-16.pdf">www.ecologique-solidaire.gouv.fr/sites/default/files/Rapport%20commission%20d%C3%A9finitif%2029-07-16.pdf</a>	Report from the Ministry in charge of Ecology and transport aiming at identifying the potential presence of fraudulent devices detecting approval tests conditions and activating vehicle pollution control functions, examination of 86 vehicles.
Control of atmospheric pollutants and CO2 emissions: Additional analyses carried out by IFPEN – May 2017 <sup>504</sup>	Report from the Ministry in charge of Ecology and transport  <a href="http://www.ecologique-solidaire.gouv.fr/sites/default/files/Rapport%20final%20-%20Mission%20d%27expertise%20IFPEN.pdf">www.ecologique-solidaire.gouv.fr/sites/default/files/Rapport%20final%20-%20Mission%20d%27expertise%20IFPEN.pdf</a>	Complementary report from the Ministry in charge of Ecology and transport aiming at identifying the potential presence of fraudulent devices detecting approval tests conditions and activating vehicle pollution control functions, examination of 86 vehicles.
Supply in the automobile field, climate and air pollution: a transition in slow motion <sup>505</sup>	Report from Réseau Action Climat  <a href="https://reseauactionclimat.org/wp-content/uploads/2019/03/offre-automobile-transition-ralenti-reseauactionclimat.pdf">https://reseauactionclimat.org/wp-content/uploads/2019/03/offre-automobile-transition-ralenti-reseauactionclimat.pdf</a>	The Climate Action Network decodes of the state of the automobile market and aims at proving that French manufacturers do not make sufficient efforts regarding climate and air pollution.

<sup>503</sup> Rapport final de la commission indépendante mise en place par la Ministre Ségolène Royal après la révélation de l'affaire Volkswagen - Contrôle des émissions de polluants atmosphériques et de CO2 mené sur 86 véhicules – July 2016

<sup>504</sup> Contrôle des émissions de polluants atmosphériques et de CO2 : Analyses complémentaires menées par IFPEN – Mai 2017

<sup>505</sup> Offre automobile, climat et pollution de l'air : une transition au ralenti

## Germany

### Overview of legislation

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

In Germany, Directive 2007/46/EC was transposed by the Federal Ministry of Transport, Construction and Urban Development on 3 February 2009<sup>506</sup> with the Regulation on the EC Type Approval for Motor Vehicles and their Trailers, as well as Systems, Components and Separate Technical Units for these Vehicles (EC Vehicle Type Approval Regulation - EG-FGV).<sup>507</sup>

The Directive has been transposed for the most part by analogy or incorporated into German law by reference to the corresponding articles in the Directive. No use was made of the optional flexibility granted to Member States with regards to some provisions.

Some lawyers in their legal opinions prepared under the 5. Investigation Commission of the German Parliament, raised their concerns, that the obligation of Member States to impose sanctions has not yet been sufficiently implemented in German law. The response options are not sufficient according to EU law, nor does German law have any other sanctioning norms that meet the requirements of Union law.<sup>508</sup> Opposite views, however, can also be found.<sup>509</sup> This issue will be further explained in the section regarding Regulation (EC) 715/2007 below.

<sup>506</sup> <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32007L0046>

<sup>507</sup> Verordnung über die EG-Genehmigung für Kraftfahrzeuge und ihre Anhänger sowie für Systeme, Bauteile und selbstständige technische Einheiten für diese Fahrzeuge (EG-Fahrzeuggenehmigungsverordnung – EG-FGV), vom 3. Februar 2011 (BGBl. I S. 126), available at: [www.gesetze-im-internet.de/eg-fgv\\_2011/BJNR012600011.html](http://www.gesetze-im-internet.de/eg-fgv_2011/BJNR012600011.html)

<sup>508</sup> R. Klinger, Rechtsgutachten zum Stand der Umsetzung der Verordnung (EG) Nr. 715/2007, der Durchführungsverordnung 692/2008, der Richtlinie 2007/46/EG und der Regelung Nr. 83 der Wirtschaftskommission der Vereinten Nationen für Europa (UN/ECE) - insbesondere zum Geltungsbereich der Grenzwerte, Vorgaben zum Funktionieren des Abgasreinigungssystems, zur Zulässigkeit von Abschaltvorrichtungen und festzusetzenden Sanktionen, erstellt zum Beweisbeschluss SV-4 des 5. Untersuchungsausschusses der 18. Wahlperiode des Deutschen Bundestags., 29. September 2016, p. 7-16, available at: [www.bundestag.de/resource/blob/481328/582edca3c468da80a64db2ff3745e859/stellungnahme-prof-dr--klinger--sv-4--data.pdf](http://www.bundestag.de/resource/blob/481328/582edca3c468da80a64db2ff3745e859/stellungnahme-prof-dr--klinger--sv-4--data.pdf)

<sup>509</sup> M. Brenner, Rechtsgutachten zur Umsetzung der Verordnung 715/2007, der Durchführungsverordnung 692/2008 und der Regelung Nr. 83 der Wirtschaftskommission der Vereinten Nationen für Europa (UN/ECE) im deutschen Recht erstellt im Auftrag des 5. Untersuchungsausschusses des Deutschen Bundestages der 18. Wahlperiode, 28. Oktober 2016, p. 13-14, available at: [www.bundestag.de/resource/blob/481326/37b80450b6b86699527d9e690ee62a03/stellungnahme-prof-dr--brenner--sv-4--data.pdf](http://www.bundestag.de/resource/blob/481326/37b80450b6b86699527d9e690ee62a03/stellungnahme-prof-dr--brenner--sv-4--data.pdf)

## Directive 2014/45/EU (on periodic roadworthiness tests)

Even before the entry into force of Directive 2014/45/EU, Germany already had extensive regulation on periodic roadworthiness tests. As a result of this, the following pieces of legislation have been reviewed or amended as part of the transposition of the Directive<sup>510</sup>:

1. Vehicle Registration Regulation<sup>511</sup>
2. Road Traffic Act<sup>512</sup>
3. Fines Catalogue Regulations<sup>513</sup>
4. Road Traffic Licensing Regulation<sup>514</sup>
5. Guideline for carrying out the Gas System Installation Inspections or Periodic or Other Gas System Inspections (GSP/GAP Implementation Guideline)<sup>515</sup>
6. Law on officially recognised experts and officially recognised examiners for motor vehicle traffic<sup>516</sup>

On top of this, the following regulations have been introduced as part of the transposition of the Directive:

1. Law on more effective and practical organisation of criminal proceedings<sup>517</sup>
2. Guideline for the performance of main inspections (HU) and the assessment of the deficiencies of vehicles found during these inspections according to § 29, Annexes VIII and VIIIa StVZO ("HU guideline")<sup>518</sup>
3. Guideline for the testing of equipment to be used for the system data test and/or the test via the electronic vehicle interface according to § 29 in conjunction with Annex VI<sup>519</sup>

<sup>510</sup> <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32014L0045&qid=1595318484883>

<sup>511</sup> Verordnung über die Zulassung von Fahrzeugen zum Straßenverkehr (Fahrzeug-Zulassungsverordnung) vom 3. Februar 2011 (BGBl. I S. 139), die zuletzt durch Artikel 4 des Gesetzes vom 29. Juni 2020 (BGBl. I S. 1528) geändert worden ist, available at: [www.gesetze-im-internet.de/fzv\\_2011/BJNR013900011.html](http://www.gesetze-im-internet.de/fzv_2011/BJNR013900011.html)

<sup>512</sup> Straßenverkehrsgesetz vom 5. März 2003 (BGBl. I p. 310, 919), das zuletzt von Artikel 2 des Gesetzes vom 29. Juni 2020 geändert worden ist (BGBl. I p. 1528), available at: [www.gesetze-im-internet.de/stvg/BJNR004370909.html](http://www.gesetze-im-internet.de/stvg/BJNR004370909.html)

<sup>513</sup> Verordnung über die Erteilung einer Verwarnung, Regelsätze für Geldbußen und die Anordnung eines Fahrverbotes wegen Ordnungswidrigkeiten im Straßenverkehr (Bußgeldkatalog-Verordnung) vom 22. März 2013 (BGBl. I S. 498-546), available at: [www.gesetze-im-internet.de/bkatv\\_2013](http://www.gesetze-im-internet.de/bkatv_2013)

<sup>514</sup> Straßenverkehrs-Zulassungs-Ordnung vom 26. April 2012 (BGBl. I S. 679), die zuletzt durch Artikel 1 der Verordnung vom 26. November 2019 (BGBl. I S. 2015) geändert worden ist, available at: [www.buzer.de/gesetz/10146/index.htm](http://www.buzer.de/gesetz/10146/index.htm)

<sup>515</sup> GSP/GAP-Schulungsrichtlinie (BMVBS/S 33/36.05.05 vom 5.4.2006, VkbI. S. 437), available at: [www.verkehrsblatt.de/docs/online-shop/detail?bnr=B%203705](http://www.verkehrsblatt.de/docs/online-shop/detail?bnr=B%203705)

<sup>516</sup> Gesetz über amtlich anerkannte Sachverständige und amtlich anerkannte Prüfer für den Kraftfahrzeugverkehr (Kraftfahrtsachverständigengesetz - KfSachvG), vom 22. Dezember 1971 (BGBl. I S. 2086), das zuletzt durch Artikel 326 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist, available at:

[www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr\\_id%3D%27bgbl171s2086.pdf%27%5D](http://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl171s2086.pdf%27%5D)

<sup>517</sup> Gesetz zur effektiveren und praxistauglicheren Ausgestaltung des Strafverfahrens vom 17. August 2017 (BGBl. I S. 3202-3210), available at:

[www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&start=%2F%2F%2A%5B%40attr\\_id%27bgbl117s3202.pdf%27%5D#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl117s3202.pdf%27%5D\\_1594308176783](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=%2F%2F%2A%5B%40attr_id%27bgbl117s3202.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl117s3202.pdf%27%5D_1594308176783)

<sup>518</sup> H. Braun, R. Krautscheid, Aktuelle HU – geänderte Richtlinien nach § 29 StVZO. Stand Dezember 2018, available at: [www.heinrich-vogel-shop.de/img/asset/readings/91216\\_0\\_reading.pdf](http://www.heinrich-vogel-shop.de/img/asset/readings/91216_0_reading.pdf)

<sup>519</sup> Id.

4. Guideline for checking the adjustment of the headlamps of motor vehicles during the main inspection according to § 29 Straßenverkehrs-Zulassungs-Ordnung (StVZO) (HU headlamp test guideline)<sup>520</sup>

\*Guidelines (Richtlinien) under German law constitute internal administrative law acts that are binding for respective public authorities.

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

The EU Commission had initially initiated infringement proceedings against Germany due to insufficient transposition into the national legal system of Directive 2014/47/EU. However, Germany has since duly implemented the Directive into the German legal system through an amendment of the Regulation on Roadworthiness Tests for Commercial Vehicles from 15 May 2018.<sup>521</sup>

## 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

Regulation (EC) No 715/2007 is covered by the same provisions under German law as Directive 2007/46/EC.

In a plenary debate on 30 September 2015, MdB (Member of the German Bundestag) Barthle discussed the obligation to lay down effective, proportionate and dissuasive penalties set out in Article 13(1) of Regulation (EC) No 715/2007: 'Articles 7, 25, 27 and 37 of the EC Vehicle Approval Regulation apply. In particular, these regulations provide for special administrative measures, ranging from partial revocation of the type approval to its expiry, for example. In addition, the general administrative response options exist'.<sup>522</sup>

Even though the provisions of Regulation (EC) No 715/2007 are directly applicable within the Member States on the basis of Article 288(2) TFEU without any further national transposition act, Article 13(1) of Regulation (EC) No 715/2007 imposes on the Member States an obligation to introduce effective, proportionate and dissuasive penalties. The Regulation is therefore like a legal implementation order, in need of completion. Some voices in the legal doctrine have been raised, that Germany has not yet fulfilled this obligation and that the suggested penalties do not meet the standards of EU law<sup>523</sup>.

<sup>520</sup> Vorschriften zu § 29 StVZO, Stand: Februar 2014, Richtlinie für die Überprüfung der Einstellung der Scheinwerfer von Kraftfahrzeugen bei der Hauptuntersuchung nach § 29 StVZO (HU-Scheinwerfer-Prüfrichtlinie), available at: [www.svb-gelmis.de/wordpress/wp-content/uploads/2018/07/SWRILI.pdf](http://www.svb-gelmis.de/wordpress/wp-content/uploads/2018/07/SWRILI.pdf)

<sup>521</sup> Verordnung zur Änderung der Verordnung über technische Kontrollen von Nutzfahrzeugen auf der Straße vom 15. Mai 2018 (BGBl. I S. 544-549), available at:

[www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr\\_id%3D%27bgbl103s0774.pdf%27%5D](http://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl103s0774.pdf%27%5D)

<sup>522</sup> BT-Plenarprotokoll 18/126, p. 12220B-12200C

<sup>523</sup> R. Klinger, Rechtsgutachten zum Stand der Umsetzung der Verordnung (EG) Nr. 715/2007..., p. 7-20

Commission Regulation (EU) 2017/1151 (on odometer readings)

Apart from Commission Regulation (EU) 2017/1151, there are no additional provisions in the German legal system stating that car manufacturers should effectively deter reprogramming of odometer readings.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

The aforementioned Road Traffic Licensing Regulations and Vehicle Registration Regulation contain provisions on type approval of heavy duty vehicles, explicitly mentioning Regulation 595/2009.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

The main national pieces of legislation which relate to tampering are the following:

- EC Vehicle Type Approval Regulation
- Vehicle Registration Regulation
- Road Traffic Regulations<sup>524</sup>
- Road Traffic Act
- Road Traffic Licensing Regulation (in 1998 Part A was removed and instead regulated in the Vehicle Registration Regulation)
- The Regulation on testing and approval of the type of construction of vehicle parts and their marking<sup>525</sup>
- Law on officially recognised experts and officially recognised examiners for motor vehicle traffic
- Regulation on Roadworthiness Tests for Commercial Vehicles
- Motor Vehicle Experts Act<sup>526</sup>
- Fines Catalogue Regulation,

complemented by relevant technical internal administrative acts (guidelines).

There are no other national measures which are of particular relevance in this regard.

<sup>524</sup> Straßenverkehrs-Ordnung vom 6. März 2013 (BGBl. I S. 367), die zuletzt durch Artikel 1 der Verordnung vom 20. April 2020 (BGBl. I S. 814) geändert worden ist, available at: [www.stvo.de/strassenverkehrsordnung](http://www.stvo.de/strassenverkehrsordnung)

<sup>525</sup> Verordnung über die Prüfung und Genehmigung der Bauart von Fahrzeugteilen sowie deren Kennzeichnung (Fahrzeugteileverordnung) vom 12. August 1998 (BGBl. I S. 2142), die zuletzt durch Artikel 171 (Nummer 16) des Gesetzes vom 29. März 2017 (BGBl. I S. 626) geändert worden ist, available at: [www.gesetze-im-internet.de/fztv](http://www.gesetze-im-internet.de/fztv)

<sup>526</sup> Gesetz über amtlich anerkannte Sachverständige und amtlich anerkannte Prüfer für den Kraftfahrzeugverkehr (Kraftfahrtsachverständigengesetz - KfSachvG), Kraftfahrtsachverständigengesetz vom 22. Dezember 1971 (BGBl. I S. 2086), das zuletzt durch Artikel 326 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist, available at: [www.gesetze-im-internet.de/kfsachvg/BJNR020860971.html](http://www.gesetze-im-internet.de/kfsachvg/BJNR020860971.html)

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

National legislation does not refer to EU emissions Regulation and standards – they only refer to the EU Directives and Regulations that they implement. Some of them refer to the EU emissions standards in specific technical provisions contained in their Annexes.

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The reasons mentioned for the adoption of the national measures only contain the names of Directives and Regulations they are implementing. However, in individual provisions of the Laws, references to public health and environmental considerations can be found.

## Requirements and rules on tampering

### *Obligations manufacturers*

**6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific national legal requirements on manufacturers relating to the prevention of tampering.

However, § 22a(1)(3) of the Road Traffic Act can be seen as one, as it contains a criminal provision with a preventative function. It prohibits and penalises the preparation of offences related to vehicle tampering (for further information, see Section 16).

**7. Are there any other requirements relating to tampering which manufacturers need to meet?**

Manufacturers will need to meet the requirements set out as part of the type approval process, which may relate to tampering.

**8. Are manufacturers required to disclose information relating to tampering (resistance)?**

According to § 28 of the EC Vehicle Type Approval Regulation, technical information provided by the manufacturer with regards to Directive 2007/46/EC or in the acts referred to in Annex IV to Directive 2007/46/EC shall not differ from those approved by the national type approval authority. Only if one of those expressly so provides, the manufacturer shall make available to users all relevant information and necessary instructions indicating any special conditions or restrictions of use applicable to a vehicle, component or separate technical unit. The vehicle, component or separate technical unit may not be offered for sale, sold or placed on the market unless it is accompanied by the information and instructions supplied pursuant to the first sentence.



## 9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?

If a passenger car is to be put into use in Germany, it must be registered<sup>527</sup>. Approval is granted on application if the vehicle corresponds to an approved type or an individual approval has been granted and there is motor vehicle liability insurance.

Apart from the case of individual approval - which is less relevant in practice – there are two processes to establish an "approved type" within the meaning of § 3(1) of the Vehicle Registration Regulation:

- a national general type approval process (*Allgemeine Betriebserlaubnis* - ABE)
- an EC type approval process

### a. The national general type approval (ABE)

A national general type approval shall be granted in accordance with § 19(1) of Road Traffic Regulations if the vehicle complies with the provisions of the Regulations. The validity of the national general type-approval is nationally limited<sup>528</sup>. In addition, according to § 20(1)(3) of the Road Traffic Regulations, under certain conditions the general type approval can also be granted for vehicles which have been produced outside the scope of this Regulation, e.g. to a manufacturer or his authorised representative, if the vehicles have been produced in a state in which the Treaty establishing the European Economic Community or the Agreement on the European Economic Area applies (§ 20(1)(2)(1)). The national general type approval can also be granted for vehicle parts<sup>529</sup>, NOx reduction systems with high reduction performance and software updates.

Against the backdrop of the National Diesel Forum set up by the Federal Ministry of Transport and Digital Infrastructure (BMVI), the issuing of ABE for software updates for engine management systems to reduce nitrogen oxide emissions from various manufacturers was approved. This has created the basis for voluntary software updates on Euro 5 or Euro 6 Diesel passenger cars. Euro 5 passenger cars with an update can be exempted from traffic restrictions that apply in some regions for vehicles in emission class Euro 5.<sup>530</sup>

In the case of the general type approval according to § 20 of the Road Traffic Act, a data certificate issued by the manufacturer, must be submitted, which shows that the vehicle is in conformity with the approved type.

### b. EC Vehicle Type Approval

An EC type approval means that vehicles, whose conformity with the approved type is certified by the manufacturer, have a type approval. § 19(7) of the Road Traffic Licensing Regulations makes it clear that the same rules apply to EC and ABE type approval.

<sup>527</sup> § 3(1) of the Vehicle Registration Regulation

<sup>528</sup> Art. 3(3) of Directive 2007/46/EC.

<sup>529</sup> § 22 of the Road Traffic Licensing Regulations

<sup>530</sup> [www.kba.de/DE/Typgenehmigung/Typgenehmigungen/Typgenehmigungserteilung/ABE\\_NFD/ABE\\_NFD\\_nod\\_e.html](http://www.kba.de/DE/Typgenehmigung/Typgenehmigungen/Typgenehmigungserteilung/ABE_NFD/ABE_NFD_nod_e.html) (last accessed on 21.07.2020)

§ 3(1)(1) of the EG-FGV deems Directive 2007/46/EC applicable to motor vehicles with at least four wheels and with a maximum design speed exceeding 25 km/h, and their trailers designed and constructed in one or more stages for use on the road.

EC type-approval is granted if the requirements set out in § 4(4) EC-FGV are met. EC type approval may be therefore granted only if it has been proven that the type satisfies the material requirements laid down in Articles 8, 9 and 10 of Directive 2007/46/EC and has undergone the required test procedures properly and with satisfactory results. Further details on the "necessary test procedures" are contained in Art. 11(1) of Directive 2007/46/EC. The standard refers to the legal acts listed in Annex IV of the Directive for the implementation of the test procedures.

Proof that the vehicle conforms to the approved type, as required for registration, is provided by a certificate of conformity issued by the manufacturer for each vehicle.

#### **10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

No type approval can be granted without an initial assessment.<sup>531</sup> With the initial assessment, the national type approval authority - Kraftfahrt-Bundesamt (KBA) - checks whether the procedures put in place by the manufacturer lead to the expectation of production in conformity with the approval. This requires an on-site inspection. In addition, the manufacturer must prove his legal identity.

The granting of type approval by the national type approval authority entitles the manufacturer to mass-produce vehicles or vehicle parts in accordance with the type approval granted. The manufacturer shall ensure that the approved product continues to conform in series production to the product submitted for type approval. Monitoring by the approval authority is carried out as part of the conformity of production test.

The KBA's tasks with regards to conformity checks (CoP) are divided into the following areas:

- Product Verification (CoP-P) and
- System checks (CoP-Q).<sup>532</sup>

#### **11. Please list the national type approval authority<sup>533</sup> and technical services<sup>534</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

Type approval is granted by the Federal Motor Transport Authority (Kraftfahrt-Bundesamt – KBA).

The Kraftfahrt-Bundesamt is the national approval authority for type approvals and approvals for sale, offering for sale or putting into service parts or equipment which may pose a significant risk to the proper functioning of systems essential to the safety of the vehicle or its environmental values.

<sup>531</sup> [www.kba.de/DE/Typgenehmigung/Zum\\_Herunterladen/Anfangsbewertung\\_Konformitaetspruefung/mab\\_d\\_deutsch\\_handbuch\\_rtf.html?nn=669130](http://www.kba.de/DE/Typgenehmigung/Zum_Herunterladen/Anfangsbewertung_Konformitaetspruefung/mab_d_deutsch_handbuch_rtf.html?nn=669130) (last accessed on 21.07.2020)

<sup>532</sup> [www.kba.de/DE/Typgenehmigung/Typgenehmigungen/Konformitaetsueberpruefung/konformitaetsueberpruefung\\_CoP\\_inhalt.html?nn=645930](http://www.kba.de/DE/Typgenehmigung/Typgenehmigungen/Konformitaetsueberpruefung/konformitaetsueberpruefung_CoP_inhalt.html?nn=645930) (last accessed on 21.07.2020)

<sup>533</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>534</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

The competence of authorities conducting individual approvals is set out in the law of the respective German states.<sup>535</sup>

#### Recognition and accreditation of technical services

Authorities performing the tasks of technical services must be recognised under the relevant Directive and notified to the Commission. The KBA acts as the recognition authority. The KBA may specify in more detail how the applicant has to prove that the conditions are fulfilled. The recognition shall cease on expiry of a time limit or if the notified body ceases to operate. It may be withdrawn.<sup>536</sup>

The KBA can monitor the recognised bodies at any time.

Technical services can also be accredited<sup>537</sup> and thus recognised. Accreditation recognises the technical and organisational competence of technical services. Accreditation shall be granted if the applicant can guarantee that, for the testing and assessment scope requested, the proper performance of these tasks will be carried out in accordance with the general criteria set out in the relevant testing standards and the relevant criteria specific to motor vehicles, and if the assessment according to the relevant standard demonstrates compliance with these criteria. On the basis of an accreditation certificate, a technical service can also apply for recognition by the KBA.

There are two types of technical services:

- Testing laboratories (designated as technical services of category A and/or B, D).
- Certification bodies (category C technical services).<sup>538</sup>

### **12. Are any of these parties required to disclose information on national type approval processes?**

The KBA supports the idea of Open Data. The legal basis for the provision of Open Data within the KBA is § 12a of the E-Government Act (EGovG)<sup>539</sup> and the position paper on Open Data of the Federal Ministry of Transport and Digital Infrastructure (BMVI)<sup>540</sup>.

An overview of the data sets provided by the KBA can be found in the mCLOUD Open Data portal of the BMVI.<sup>541</sup>

### **13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

According to § 19(2) of the Road Traffic Regulations, the type approval expires if:

- the type of vehicle approved in the type approval is modified,
- a danger to road users is to be expected, or

<sup>535</sup> § 2 EG-FGV

<sup>536</sup> § 30-34 EG-FGV

<sup>537</sup> § 35 EG-FGV

<sup>538</sup> [www.kba.de/DE/Typgenehmigung/Typgenehmigungen/Benennung\\_Technischer\\_Dienste/Benannte\\_Stellen/benannte\\_stellen\\_inhalt.html?nn=644754](http://www.kba.de/DE/Typgenehmigung/Typgenehmigungen/Benennung_Technischer_Dienste/Benannte_Stellen/benannte_stellen_inhalt.html?nn=644754) (last accessed on 21.07.2020)

<sup>539</sup> [www.gesetze-im-internet.de/egovg/\\_12a.html](http://www.gesetze-im-internet.de/egovg/_12a.html)

<sup>540</sup> Positionspapier Open Data des BMVI, Version 1.02, 4. Mai 2017, available at : [www.bmvi.de/SharedDocs/DE/Anlage/DG/positionierung-des-bmvi.pdf?blob=publicationFile](http://www.bmvi.de/SharedDocs/DE/Anlage/DG/positionierung-des-bmvi.pdf?blob=publicationFile)

<sup>541</sup> [www.kba.de/DE/Service/OpenData/opendata\\_node.html](http://www.kba.de/DE/Service/OpenData/opendata_node.html)

- the exhaust emission or noise behaviour has worsened (it is not certain whether an increase in carbon dioxide emissions constitutes a *deterioration of the exhaust gas behaviour* within the meaning of § 19(2)(2)(3) of the Vehicle Registration Regulation)

No additional legal acts are required in order to determine the expiry. The consequence of the expiry is that the vehicle may no longer be put into operation on public roads or that the owner may no longer order or register the vehicle to be put into operation (§ 19(5)). An exception to this are journeys which are directly connected with the attainment of a new type approval or which are carried out by an official motor vehicle expert within the framework of the preparation of an expert opinion. If the assessment shows that the vehicle is still in accordance with regulations despite the modification, a new type approval is issued.

Moreover, the KBA may revoke or withdraw the EC type approval in whole or in part, in particular if:

- vehicles do not conform to the approved type
- vehicles pose a significant risk to road safety, public health or the environment,
- the manufacturer does not have an effective system of production conformity control or does not apply this system in the manner intended
- the holder of the type approval is in breach of the conditions attached to the type approval.<sup>542</sup>

Technical information provided by the manufacturer, which includes a certificate of conformity, may not deviate from the information approved by the approval authority according to § 28(1) EG-FGV. Therefore, if the manufacturers have made false declarations with regard to the emission behaviour of the vehicles they produce, this may constitute an administrative offence within the meaning of § 37(1) of the EG-FGV, resulting in a fine which may be imposed on those responsible in the individual case. The legal consequence is a fine of up to EUR 2,000 (§ 24(1) and (2) of the Road Traffic Act in conjunction with § 37(1) of the EG-FGV), whereas the fine for commercial offering is up to EUR 5,000 (§ 23(3) of the Road Traffic Act in conjunction with § 37(2) of the EG-FGV). It is important to note that this sanction applies to each individual vehicle that is offered for sale, sold or put into circulation without a valid certificate of conformity. The validity of the certificate of conformity relates to the information approved by the approval authority, i.e. it is linked to the prerequisite for granting an EC type approval.<sup>543</sup>

According to § 26 of the Road Traffic Act, it is the fine authorities of the respective states or, following a recent amendment, the KBA that have competence in case of administrative offences.

From a criminal law point of view, the criminal offence of fraud according to § 263 StGB<sup>544</sup> (*Strafgesetzbuch* - German Criminal Code) could also be considered. Furthermore, the offence of falsification of documents according to § 267 StGB could also be relevant.

### Rules on tampering

#### 14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:

Tampering with the emission control design

<sup>542</sup> § 25 EG-FGV

<sup>543</sup> M. Brenner, Rechtsgutachten zur Umsetzung der Verordnung 715/2007..., p. 18

<sup>544</sup> Strafgesetzbuch vom 13. November 1998 (BGBl. I S. 3322), available at: <https://dejure.org/gesetze/StGB>

The EC Vehicle Type Approval Regulation generally prohibits vehicle tampering. Moreover, Part B Chapter III of the Road Traffic Regulations contains specific requirements that vehicles have to meet in terms of their construction concerning, among others:

- Specific parts of vehicles
- Compressed gas installations and pressure vessels
- Exhaust gases
- Discharge of waste gases
- Carbon dioxide emissions, fuel consumption, range, electricity consumption
- Fuels, fuels relevant to emissions and systems for reducing nitrogen oxide emissions
- Emission classes for motor vehicles
- Speedometer and odometer
- Tachograph and recording equipment
- Speed limitation devices

#### Tampering with aftermarket parts

Under German law, similarly to the approval procedure of vehicles, individual approvals for individual vehicle parts may be granted, or type approvals for a type of construction of vehicle parts.<sup>545</sup> The Regulation on testing and approval of the type of construction of vehicle parts and their marking contains requirements that aftermarket parts of vehicles offered for sale have to meet. In addition, § 23 of the Road Traffic Act considers the offering for sale of unauthorised vehicles, vehicle parts and equipment (see Section 16) an administrative offence.

#### Tampering with the engine

n/a

#### Tampering with the OBD system

n/a

#### Odometer tampering (in particular on second-hand vehicles)

As discussed in more detail below, § 22b of the Road Traffic Act lists odometer tampering as a criminal offence (see Section 16).

#### Other

n/a

### 15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?

<sup>545</sup> § 22a(1) of the Road Traffic Licensing Regulation

The KBA is the main as type approval authority for vehicles and vehicle parts, which means that it oversees compliance with legislation on tampering. The Kraftfahrt-Bundesamt (KBA) is a government agency, governed by the Federal Ministry of Transport and Digital Infrastructure (BMVI). The tasks of the KBA result from § 2 of the Law on the establishment of a Kraftfahrt-Bundesamt.<sup>546</sup>

The KBA was established to increase road safety in Germany. The main statutory tasks are the maintenance of central registers for road traffic, statistics and vehicle technology<sup>547</sup>. In its central registers it stores data on motor vehicles and persons in road traffic. The data from the Central Register of Vehicles, the Central Register of Driving Licences, the Register of Fitness to Drive and the Central Register of Tachograph Cards are used, among other things, to provide information to legally authorised bodies in Germany and abroad. These are, among others, registration and driving licence authorities, fine authorities, as well as police and judicial authorities.<sup>548</sup>

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

The Road Traffic Act contains criminal and administrative sanctions regarding tampering.

§ 22b of the Road Traffic Act regulates the misuse of odometers and speed limiters as a criminal offence. Under this provision:

- falsifying the measurements of an odometer fitted to a motor vehicle by influencing the result of the measurement by acting on the device or the measurement process,
  - cancelling or impairing the intended function of a speed limitation device fitted to a motor vehicle by acting on that device
- is punishable with imprisonment of up to one year or a fine.

Preparing to commit one of the abovementioned offences by producing, acquiring, supplying, offering for sale or giving to another person computer programs whose purpose is to commit such an offence (§ 149(2) and 3 of the StGB on attempting money counterfeit) is punishable with imprisonment of up to five years or a fine.

Objects to which the offence refers to may be confiscated. § 74a of the StGB applies.

Under § 23 of the Road Traffic Act, the offering for sale of unauthorised vehicles, vehicle parts and equipment is considered an administrative offence. The offence constitutes of either intentionally or negligently offering for sale vehicle parts, which should be of a design approved by the Federal Motor Transport Authority, but are not marked with an officially prescribed and assigned test mark. The offence may be punished by a fine of up to EUR 5,000. Vehicles, vehicle parts and equipment to which the administrative offence relates may be confiscated.

According to § 26 of the Road Traffic Act, it is the fine authorities of the respective states or, following a recent amendment, the KBA that have competence in case of administrative offences.

<sup>546</sup> Gesetz über die Errichtung eines Kraftfahrt-Bundesamtes (KBAG k.a.Abk.) vom 4. August 1951 (BGBl. I S. 488); zuletzt geändert durch Artikel 3a G. v. 5. Dezember 2019 (BGBl. I S. 2008), available at: [www.gesetze-im-internet.de/kbag/index.html](http://www.gesetze-im-internet.de/kbag/index.html)

<sup>547</sup> § 28(1) Road Traffic Act

<sup>548</sup> [www.bmvi.de/SharedDocs/DE/Artikel/Z/geschaeftsbereich-des-bmvi.html](http://www.bmvi.de/SharedDocs/DE/Artikel/Z/geschaeftsbereich-des-bmvi.html) (last accessed on 21.07.2020)

## 17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?

Following the *Dieseldgate* scandal, there have been many analyses undertaken by German lawyers with regards to remedies available to consumers of cars that have been tampered with, in particular with regards to emission control systems.

### Warranty claims

If a buyer acquires a defective item, he may be entitled to warranty claims within the statutory periods. These are directed against the seller - for example the car dealer. The manufacturing company is not the claimant. The existence of a material defect within the meaning of § 434 BGB (*Bürgerliches Gesetzbuch* – German Civil Code)<sup>549</sup> is a possible ground for a claim - especially since the installation of a cut-off device infringes the conditions necessary for obtaining type approval. Decisive for the assessment of the existence of a material defect within the meaning of § 434 BGB is the nature of the item. It is irrelevant whether the seller was aware of the defect; nor is fault required. In the event of a material defect, the buyer may demand, at his discretion, either the removal of the defect or the delivery of a defect-free item as subsequent performance<sup>550</sup>.

### Non-contractual claims for damages

It is questionable whether, in addition to the warranty claims, which can be regarded as contractual entitlements, non-contractual claims for damages on the basis of § 823(1) BGB are conceivable. In this case, both the persons employed by the manufacturer and the company itself would be considered as defendants. Claims for damages on the basis of § 823(1) BGB should therefore regularly fail because none of the legal interests protected by § 823 (1) BGB would be damaged. An object of protection within the meaning of § 823(1), BGB, would be affected, for example, if increased NOx emissions have been proven to be harmful to health, which would not have occurred if the emission control systems had worked properly.

Claims for damages could also possibly be based on § 826 BGB. According to this provision, a person who wilfully causes damage to another in a manner contrary to good morals ('gute Sitten') is obliged to compensate the other for the damage. The infringement of a specific legal interest is not required in this case.

When it comes to the burden of proof in German civil proceedings, in principle each party in a contentious civil case bears the burden of proof for its assertions (so-called 'Beibringungsgrundsatz' - principle of presentation).

It is questionable whether a manufacturing company involved in the manipulation of emission control systems can also fulfil criminal or administrative offence requirements.<sup>551</sup>

<sup>549</sup> Bürgerliches Gesetzbuch, 2 January 2002 (BGBl. I S. 42, ber. S. 2909, 2003 S. 738), available at: <https://dejure.org/gesetze/BGB>

<sup>550</sup> § 439(1) BGB

<sup>551</sup> Manipulation von Emissionskontrollsystemen durch Autohersteller. Mögliche zivil- und strafrechtliche Implikationen, Wissenschaftliche Dienst des Deutschen Bundestags, Fachbereich: WD 7: Zivil-, Straf- und Verfahrensrecht, Umweltschutzrecht, Verkehr, Bau und Stadtentwicklung, Aktenzeichen: WD 7 - 3000 - 184/15, 15 October 2015, Available at: [www.bundestag.de/resource/blob/405432/c61725826babe5c65ae39282800168ef/WD-7-184-15-pdf-data.pdf](http://www.bundestag.de/resource/blob/405432/c61725826babe5c65ae39282800168ef/WD-7-184-15-pdf-data.pdf)



For specific information on the Volkswagen scandal rulings, see the Section on case law regarding tampering.

### Tests and inspections

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

#### Main inspection (HU)

Type approval and main inspection ('Hauptuntersuchung – HU') each pursue different objectives. While the purpose of type approval and the associated tests is to ensure that series-produced vehicle types comply with the applicable European regulations, the main inspection determines whether vehicles are affected by technical defects in their road safety and environmental performance. The contents and intervals of the main inspection are regulated by the Road Traffic Licensing Regulations<sup>552</sup>. After the initial registration, a car must undergo the main inspection after 36 months. After that, the HU is due every 24 months.

Engine management and emission control systems test ('Untersuchung des Motormanagements und Abgasreinigungssysteme – UMA') is part of the HU. Additional safety tests are prescribed for trucks with a gross vehicle weight over 7.5 t and buses. The aim is to ensure that the exhaust emission values of registered motor vehicles remain within the monitoring limits defined by the respective guidelines over the period of use. These are not identical with the approval exhaust emission standards.

For vehicles first registered on or after 1 January 2006, no exhaust emission test was necessary if the technical equipment of the exhaust measuring devices allows for OBD testing. The Federal Association of Manufacturers and Importers of Automotive Service Equipment (ASA) (an interest group), which lobbies for the maintenance of tailpipe testing with a new diesel measuring technology and stricter limits, deemed modern on-board diagnostic systems unreliable in detecting defective exhaust gas cleaning systems in diesel vehicles.<sup>553</sup> Tailpipe testing was reintroduced for all passenger cars from 1 January 2018. Since this date, a pure OBD test is no longer possible. This was seen as a first reaction to the Volkswagen scandal.<sup>554</sup>

For all UMA types, a purely visual inspection is carried out first. This includes the following points, if applicable:

- Ignition system
- Injection system
- Fuel system
- Tank filler neck
- Ventilation
- Air filter

<sup>552</sup> § 29(1-4), (7), (9), (11) and (13) in conjunction with Annex VIII, VIIIa-e, IX and IXb of the Road Traffic Licensing Regulations

<sup>553</sup> [https://web.archive.org/web/20140222051146/www.asa-verband.de/uploads/media/Zukunft\\_der\\_Abgasuntersuchung\\_PR\\_1-08.pdf](https://web.archive.org/web/20140222051146/www.asa-verband.de/uploads/media/Zukunft_der_Abgasuntersuchung_PR_1-08.pdf) (last accessed on 21.07.2020)

<sup>554</sup> [www.autoservicepraxis.de/nachrichten/kfz-werkstatt/abgasuntersuchung-endrohrmessung-wird-pflicht-2496454](http://www.autoservicepraxis.de/nachrichten/kfz-werkstatt/abgasuntersuchung-endrohrmessung-wird-pflicht-2496454) (last accessed on 21.07.2020)

- Exhaust gas recirculation systems
- Secondary air systems
- Catalyst
- Sensors
- Actuator cables
- Exhaust system
- Leakage of the motor
- Filling levels of operating fluids

The limit values (also target data) are defined by law and differentiate according to the type of exhaust aftertreatment. The vehicle manufacturers can set lower limit values. If this is the case, the corresponding vehicles must also be tested with the (stricter) limit values.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The initial roadside inspections are carried out by the police in the context of traffic supervision. If the initial technical roadside inspection reveals that certain items listed in Annex II to Directive 2014/47/EU cannot be checked, but it is deemed necessary, the vehicle shall be subject to a more thorough roadside inspection. The more detailed roadside inspection shall take into account in particular the safety of the braking and steering systems, tyres, wheels, chassis and environmental impact<sup>555</sup>.

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

#### Periodic roadworthiness tests

In Germany, the HU is not carried out by public authorities, but by officially recognised testing organisations such as DEKRA, TÜV Süd, TÜV Nord, TÜV Rheinland, GTÜ or KÜS. Due to the former monopoly of the TÜVs as executing organisations, HU is often referred to as "TÜV". The authority responsible for accreditation of the testing bodies is the KBA.

#### Technical roadside inspections

According to § 3 of the Regulation on Roadworthiness Tests for Commercial Vehicles, technical roadside inspections shall be carried out by the authorities competent under Federal and State Law. The competent authorities may be officially recognised experts and examiners for motor vehicle traffic in accordance with the Motor Vehicle Experts Act, test engineers in accordance with Annex VIIIb, point 3.9 of the Road Traffic Licensing Regulations or the motor vehicle workshops recognised for carrying out safety tests to participate in the technical inspections in whole or in part. The Federal Office for Goods Transport (*Bundesamt für Güterverkehr - BAG*) was designated as the contact point between Germany, other Member States and the European Union.

<sup>555</sup> § 5(5) of the Regulation on Roadworthiness Tests for Commercial Vehicles

## 21. Are any of these authorities required to disclose information on these tests and inspections?

According to § 8 of the Regulation on Roadworthiness Tests for Commercial Vehicles, the higher state authorities or the bodies commissioned by them shall inform the Federal Office for Goods Transport each year for the purpose of sharing information among the Member States on which authority in their state is responsible for carrying out the technical roadside inspections and who is the contact person.

§ 10 of the abovementioned Regulation sets out the reporting system.

Every two years, the authorities shall share with the Federal Office for Goods Transport a report on the application of the Regulation on Roadworthiness Tests for Commercial Vehicles drawn up for their area of responsibility, containing the following information:

- number of commercial vehicles checked, broken down by vehicle category and by country of registration in accordance with Annex V to Directive 2014/47/EU
- number of deficiencies found

On the basis of the reports, the Federal Office for Goods Transport shall prepare a summary report for Germany and send it to the Federal Ministry of Transport and Digital Infrastructure so it can be forwarded to the Commission of the European Union.

## 22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

There are fines for missing the periodic roadworthiness tests. They are set out in the Fines Catalogue Regulations. The relevant sums can be found on the website of the Bußgeldkatalog 2020: [www.bussgeldkatalog.org/tuev-ueberziehen/](http://www.bussgeldkatalog.org/tuev-ueberziehen/)

### *National strategies and initiatives*

## 23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?

Since 1 October 2017/20 May 2018, the data reported by the monitoring institutions for the main tests (HU) and safety tests (SP) - including the status of the odometer - have been stored in the Central Vehicle Register ('Zentrales Fahrzeugsregister – ZFZR') kept by the KBA (see Section 15 and 18 of this questionnaire) as a prerequisite for Internet-based vehicle approval.<sup>556</sup>

The collection of the data was realised in two phases. Initially, the month and year of the expiry of the deadline for the next main test or safety test following the issuing of the registration certificate had to be transmitted and stored as of 1 October 2017. Voluntary reporting of further data became mandatory from 20 May 2018. These additional data included the odometer status at the time of the inspection. These data are mainly used in the conventional registration procedure and, as mentioned above, for the implementation of Internet-based registration. If required, the data is also available for other information procedures of the KBA within the scope of the legal regulations.<sup>557</sup>

<sup>556</sup> [www.kba.de/DE/ZentraleRegister/ZFZR/zfzr\\_node.html](http://www.kba.de/DE/ZentraleRegister/ZFZR/zfzr_node.html) (last accessed on 21.07.2020)

<sup>557</sup> [www.kba.de/DE/ZentraleRegister/ZFZR/hauptuntersuchung.html](http://www.kba.de/DE/ZentraleRegister/ZFZR/hauptuntersuchung.html) (last accessed on 21.07.2020)

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

- CarPass, the system tested in Belgium, will soon be offered in Germany. Car owners will then be able to enter the chassis number on the Internet at Car-pass.de. During the next visit to the garage, the mechanic can enter the speedometer reading into the system, as well as other mileage data, such as from TÜV reports. The CarPass group claims to be cooperating with 90 percent of garages.<sup>558</sup>

- The ADAC ('Allgemeiner Deutscher Automobil-Club' – The German Automobile Club) favours a tamper-proof chip that is permanently installed in the car. The club criticises databases like CarPass. They point to the fact that the speedometer could be turned back even before the first entry is made. As a result, incorrect data is entered into the service booklet every time a garage is visited. The ADAC has also founded an Initiative against speedometer fraud ('Initiative gegen Tachobetrug').

- The company Carly from Munich sells a plug for the OBD2 (the newest OBD system) interface. It allows the customers to read out the sensors and fault memory of his car themselves, including manipulations where the fraudsters did not reset the electronic memory<sup>559</sup>.

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

The MesSBAR project, funded by the BMVI and coordinated by the *Institut für Flugführung* at the Technical University Braunschweig aims at developing a mobile, modular pollutant measurement system that will be used in the vicinity of motorways, cities and conurbations to record the distribution of particulate matter, soot, NOx and O3 up to a height of 1km. Several drones measure pollution levels in high emission and immission areas. The drones are also expected to improve pollution predictions. The focus of the project is on the manageability of the system, data quality and the use and publication of the data<sup>560</sup>.

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

The type approval procedure under Directive 2007/46/EC has been put under increased scrutiny, especially in Germany, after the mass manipulation of emission control systems in vehicles by the Volkswagen Group ("Abgasskandal") became known in 2015 – even though the EU Commission had already concluded the need to improve the procedure in an internal fitness check from 2013. The Federal Ministry of Transport created an investigative commission<sup>561</sup> as a direct result of the scandal. The KBA and DEKRA were commissioned as independent auditing experts to inspect the VW diesel models involved in the scandal. On their behalf, extensive emission measurements were carried out

<sup>558</sup> <https://car-pass.de> (last accessed on 21.07.2020)

<sup>559</sup> [www.test.de/Tachomanipulation-Gebrauchtwagen-Tachobetrug-5271655-0](http://www.test.de/Tachomanipulation-Gebrauchtwagen-Tachobetrug-5271655-0) (last accessed on 21.07.2020)

<sup>560</sup> [www.bmvi.de/SharedDocs/DE/Artikel/DG/mfund-projekte/messbar.html](http://www.bmvi.de/SharedDocs/DE/Artikel/DG/mfund-projekte/messbar.html) (last accessed on 21.07.2020)

<sup>561</sup> [www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte\\_uk\\_vw.html?nn=2308842](http://www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte_uk_vw.html?nn=2308842) (last accessed on 21.07.2020)

on more than 50 vehicles from various manufacturers in order to identify impermissible shutdown strategies and test bench and cycle recognition systems. In the first report in April 2016, the results of the nitrogen oxide (NOx) measurements by the KBA were published, along with the abnormalities identified in terms of impermissible shutdown devices. Diesel vehicles were investigated. The second report provides information on the CO<sub>2</sub> emissions of the vehicles examined in the first report, where conspicuous CO<sub>2</sub> emissions were found. In the now completed version of the second report dated 8 April 2020, the results of the CO<sub>2</sub> investigations of vehicles from foreign manufacturers for which the KBA is not the responsible type approval authority are also presented and evaluated. The future inspections by the KBA described in the first report in April 2016 not only apply to pollutant emissions, but also to CO<sub>2</sub> emissions and fuel consumption. Once type approvals have been granted, the KBA will no longer leave these inspections to a technical service, but will itself carry out independent inspections on its own test equipment. The KBA has been regularly removing vehicles from the market for this purpose since the beginning of 2017 in order to check them for compliance with the regulations. The KBA also carries out random follow-up checks on vehicles for which other authorities have issued a type approval. It is worth mentioning that the neutrality of KBA has been questioned in the past, as the authority is criticised for being influenced by the automobile industry<sup>562</sup>. The commission's work dates between 2015-2017, when the Federal Minister of Transport resigned. Simultaneously, the German Parliament established the 5. Committee of Inquiry to study the exhaust as scandal. The Commission left a number of significant technical and legal studies, as well as examining the actions of the Federal Government.<sup>563</sup>

In August 2017, Federal Minister of Transport Alexander Dobrindt held the National Diesel Forum with representatives of the government and industry but not environmental and consumer protection associations. The aim of the summit was to find measures to lower emissions from diesel vehicles. It was then decided that German car manufacturers (BMW, Daimler, Volkswagen) will carry out software updates at their expense. However, these updates were only voluntary. A second diesel summit took place in November 2017, when the Federal Government set out to continue support programmes for e-mobility and low-emission transport<sup>564</sup>.

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

- Environment and Health in the Transport Research Cluster ('Europäische Forschungsvereinigung für Umwelt und Gesundheit im Transportsektor e.V.' - EUGT) was a research institute founded by the companies Volkswagen, Daimler, BMW and Bosch and existing from 2007 to 2017 with the aim of assessing and documenting the effects of transport on health with a focus on air pollution by particulate matter, nitrogen oxides and diesel exhaust gases. The institution was

<sup>562</sup> „The Federal Motor Transport Authority is a bedside rug for the automotive industry. This federal authority has degenerated into the extended arm of the car manufacturers. What a descent for a once proud supervisory authority. At the same time, it is also a service provider that does certain things for the car industry for a fee. No comparison to the sovereignty of the American Environmental Protection Agency EPA.“, Kraftfahrtbundesamt ist Bettvorleger der Industrie, In: Nordwest-Zeitung, 24. September 2015, available at: [www.nwzonline.de/interview/kraftfahrtbundesamt-ist-bettvorleger-der-industrie\\_a\\_30,1,1556155470.html](http://www.nwzonline.de/interview/kraftfahrtbundesamt-ist-bettvorleger-der-industrie_a_30,1,1556155470.html) (last accessed on 21.07.2020)

<sup>563</sup> [www.bundestag.de/ausschuesse/ausschuesse18/ua/5untersuchungsausschuss](http://www.bundestag.de/ausschuesse/ausschuesse18/ua/5untersuchungsausschuss) (last accessed on 21.07.2020)

<sup>564</sup> [www.finanzen.net/nachricht/rohstoffe/diw-expertin-kemfert-kritisiert-ergebnisse-des-diesel-gipfels-5614808](http://www.finanzen.net/nachricht/rohstoffe/diw-expertin-kemfert-kritisiert-ergebnisse-des-diesel-gipfels-5614808) (last accessed on 21.07.2020)

subject to severe criticism by the scientific community for conducting unscientific research, including animal cruelty, and lobbying for the German car industry.<sup>565</sup>

- Worth mentioning is the NGO Initiative against Odometer Tampering (*Initiative Gemeinsam Gegen Tachomanipulation e.V.*) which lobbies for consumer protection against tampering as well as promotes the prevention of tampering<sup>566</sup>.

## 28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?

The 2015 Exhaust Gas Manipulation Scandal directly resulted in a discussion on the effectiveness of anti-tampering legislation on the national and European level. Two investigative commissions have been established which resulted in a number of (legal) studies on the effectiveness of EU type approval legislation (see the Section on sources).

### Effectiveness and enforcement

## 29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There has been no research carried out at national level that would allow for an answer to this question. Nevertheless, it can be stated, that the legal requirements that vehicles with combustion engines must comply with in terms of emissions became common knowledge after the Volkswagen scandal. Car owners and manufacturers are aware, that they not only have to comply with certain limit values on the test bench, but that EU regulations also prohibit cut-off devices.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

See the next Section (point 3) to find out more about manufacturer behaviour in test settings.

Potential gaps in the legislation

- Although it is prohibited to manipulate the mileage of motor vehicles, the sale of devices suitable for this purpose is still permitted – this is a serious loophole in national legislation that makes it easy for fraudsters to continue the prohibited practice.<sup>567</sup>
- Existing legal regulations regarding the measuring conditions grant manufacturers an excessively wide tolerance range, particularly with regard to temperatures, driver influence when following the test cycle and roller test bench settings. As a result, reproducibility can only be

<sup>565</sup> [www.sueddeutsche.de/wirtschaft/tierversuche-vw-testete-diesel-abgase-an-affen-1.3842037](http://www.sueddeutsche.de/wirtschaft/tierversuche-vw-testete-diesel-abgase-an-affen-1.3842037) (last accessed on 21.07.2020)

<sup>566</sup> [www.gegentachomanipulation.de](http://www.gegentachomanipulation.de) (last accessed on 21.07.2020)

<sup>567</sup> [www.bussgeldkatalog.org/tachomanipulation/#die\\_rechtliche\\_situation\\_zum\\_thema\\_%25e2%2580%259ekilometerstand\\_zuruecksetzen%25e2%2580%259c](http://www.bussgeldkatalog.org/tachomanipulation/#die_rechtliche_situation_zum_thema_%25e2%2580%259ekilometerstand_zuruecksetzen%25e2%2580%259c) (last accessed on 21.07.2020)



guaranteed if all boundary conditions are almost identical during the measurements. If CO<sub>2</sub> measurements are carried out with different boundary conditions, although these are within the legal limits, this can lead to considerable differences in the CO<sub>2</sub> measurement results.<sup>568</sup>

- In addition to the partly unrealistic test conditions of the currently valid test specifications for determining the CO<sub>2</sub> and fuel consumption values, the manufacturer's use of the permissible tolerance ranges in particular contributes to the discrepancy between the catalogue values and the actual fuel consumption. With the implementation of GTR No. 15 (WLTP) in the European type approval regulations and the simultaneous revision of the administrative regulations, an important step has been taken to improve the realism and reproducibility of the CO<sub>2</sub> values and fuel consumption values in the future. The Federal Government has been advocating that CO<sub>2</sub> emissions should also be included in the regulations for the inspection of vehicles in circulation in the future.<sup>569</sup>

- Another potential loophole arises in the situation where the applicant for a type approval has not documented the presence of a defeat device in the application documents and the authority has nevertheless granted a type approval. It is unclear, whether he is then permitted to place the vehicle with a cut-off device on the market.<sup>570</sup> Having said that, this issue has already been ruled on in the context of installation-related environmental law<sup>571</sup>. In the area of immission control law it is the applicant's task to present the intended activity in a concrete and detailed manner. If he does not do so, he cannot refer to later ambiguities, because the principle that everything is permitted which is not prohibited in the permit does not apply, but rather that everything is prohibited which is not permitted in the permit.

- The criminal liability for tampering should also be examined and reviewed (see Sections 13, 16 and 30).

- The official procedures are neither transparent nor open to public participation. The legislator should close these gaps at national level.<sup>572</sup> In order to prevent further misuse in the type approval procedure, it must be made legally binding for the application documents to make it clear that all shutdown devices must be explicitly disclosed. However, the vehicles must also meet the requirements in real operation. To this end, mechanisms must be established that enable monitoring of real emissions.

- It is also necessary and appropriate to extend the right of action for recognised environmental NGOs to type approvals for motor vehicles, in order to strengthen the third pillar of the Aarhus Convention in Germany.

- Taking into consideration mass disregard for the law, that was disclosed in the VW scandal, as well as the industry lobbying accusations against KBA, it is worth considering a transfer of competences in the area of vehicle emission control and reporting to a body whose statutory tasks include the protection of health and the environment. Perhaps the Federal Ministry for Environment should play a bigger role in this process.

<sup>568</sup> [www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte\\_uk\\_vw.html?nn=2308842](http://www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte_uk_vw.html?nn=2308842) (last accessed on 21.07.2020)

<sup>569</sup> [www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte\\_uk\\_vw.html?nn=2308842](http://www.kba.de/DE/Marktueberwachung/Abgasthematik/berichte_uk_vw.html?nn=2308842) (last accessed on 21.07.2020)

<sup>570</sup> M. Fuhr, Der Dieselskandal und das Recht. Ein Lehrstück zum technischen Sicherheitsrecht, NVwZ 2017, 265, Point III(3)(b), available at: <https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fnvwz%2F2017%2Fcont%2Fnvwz.2017.265.1.htm&anchor=Y-300-Z-NVWZ-B-2017-S-265-N-1> (last accessed on 21.07.2020)

<sup>571</sup> Urteil vom 05. September 2013 - BVerwG 7 C 21.12, available at: [www.bverwg.de/050913U7C21.12.0](http://www.bverwg.de/050913U7C21.12.0) (last accessed on 21.07.2020)

<sup>572</sup> M. Fuhr, Der Dieselskandal und das Recht. Ein Lehrstück zum technischen Sicherheitsrecht, NVwZ 2017, 265, Point VI, available at: <https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fnvwz%2F2017%2Fcont%2Fnvwz.2017.265.1.htm&anchor=Y-300-Z-NVWZ-B-2017-S-265-N-1> (last accessed on 21.07.2020)



**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

The obligation of the Member States under Article 46 of Directive 2007/46/EC to set out effective, proportionate and dissuasive sanctions for infringements against the Directive has been transposed into German regulatory offences law without objection by Article 37(1) EC-FGV. The permissible level of fines for violations of the prohibitions specified in Directive 2007/46/EC is not subject to a rigid upper limit and thus allows for sanctions that are effective, proportionate and dissuasive according to the circumstances of the individual case. The fines may be imposed on natural persons and undertakings. In addition, infringements of the prohibitions also lead to criminal sanctions.

However, according to some, the obligation of Member States to impose sanctions has not yet been sufficiently implemented in German law. The response options are not sufficient according to EU law, nor does German law have any other sanctioning norms that meet the requirements of Union law.<sup>573</sup> Opposite views, however, can be found<sup>574</sup>.

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

See Sections 29 and 30.

*Other*

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

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+49 0221-5776-0

**Federal Police (Bundespolizei)**

+49 (0) 800 6 888 000

**DEKRA e.V.**

+49 (0) 800-3333333

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

<sup>573</sup> R. Klinger, Rechtsgutachten zum Stand der Umsetzung der Verordnung (EG) Nr. 715/2007..., p. 7-16

<sup>574</sup> M. Brenner, Rechtsgutachten zur Umsetzung der Verordnung 715/2007..., p. 13-14

n/a

## Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

### Relevant case law on the exhaust gas manipulation scandal

#### **OLG Münster (Higher Administrative Court of North Rhine-Westphalia), ruling of 17 August 2018, 8 B 548/18 and 8 B 865/18**

The court ruled that if buyers wanted to keep the cars, they should carry out the retrofit at the latest as soon as the relevant vehicle registration authority threatens to immobilise the car. This also applies if the buyer is suing the dealer or the manufacturer in court.

<https://openjur.de/u/2126823.html>

#### **OLG Köln (Higher Regional Court of Cologne), ruling of 27 March 2018, 18 U134/17**

The court ruled that customers can withdraw from the purchase even if the software update has already been carried out.

[www.justiz.nrw.de/nrwe/olgs/koeln/j2018/18\\_U\\_134\\_17\\_Beschluss\\_20180327.html](http://www.justiz.nrw.de/nrwe/olgs/koeln/j2018/18_U_134_17_Beschluss_20180327.html)

#### **BGH (Federal Constitutional Court), decision from 8 January 2019, VIII ZR 225/17**

The BGH for the first time determined that the shutdown devices in diesel engines are a material defect pursuant to § 434 (1) Sentence 2 No. 2 of the German Civil Code. In the case of such vehicles, the withdrawal of the registration for road traffic was to be considered. In the decision, the BGH decided that the purchaser of an affected vehicle is not denied the right to a replacement delivery of a vehicle as good as new on the basis of an interim model change by the manufacturer. However, the seller could refuse to supply a replacement if this would entail disproportionate costs. The BGH left it further open whether the recall action to bring the engines into a proper condition without cost to the buyers was sufficient to satisfy the buyers' claims.

<https://autokaufrecht.info/2019/01/unzulaessige-abschalteinrichtung-als-sachmangel-eines-fahrzeugs-vw-abgasskandal/>

#### **BGH, decision of 25 May 2020, VI 252/19**

The Federal Court of Justice considered the claim for damages against VW AG to be justified in the case of a buyer of a manipulated VW diesel car. VW had to pay damages for immoral deliberate damage (§ 826 BGB) and refund the purchase price against return of the car. However, the buyer had to allow the advantage of previous use to be offset against the kilometers driven so far. Further, it was decided that any claims for damages against the manufacturer will not be eliminated by a software update, since the point of time of purchase is relevant for the damage and later changes are irrelevant. In a hearing on 5 May 2020, the Federal Court of Justice indicated that it tended provisionally to assume that the buyer of a vehicle with a cut-off device would suffer damage as early as at the conclusion of the contract.

<https://openjur.de/u/2201958.html>

In July 2020 further hearings before the BGH will take place<sup>575</sup>.

<sup>575</sup> [www.tagesschau.de/inland/bgh-vw-dieselsklager-101.html](http://www.tagesschau.de/inland/bgh-vw-dieselsklager-101.html) (last accessed on 21.07.2020)

Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.

Title	Reference	Short description
<i>R. Klinger</i> , Legal opinion on the implementation of Regulation 715/2007, 692/2008, Directive 2007/46/EG and Regulation No. 83 of the Economic Commission for Europe of the United Nations (UN/ECE) (2016)	<a href="http://www.bundestag.de/resource/blob/481328/582edca3c468da80a64db2ff3745e859/stellungnahme-prof-dr-klinger--sv-4--data.pdf">www.bundestag.de/resource/blob/481328/582edca3c468da80a64db2ff3745e859/stellungnahme-prof-dr-klinger--sv-4--data.pdf</a>	The legal opinion examines in particular the scope of the limit values, specifications for the functioning of the exhaust gas purification system, the permissibility of shut-off devices and sanctions to be determined, prepared for the evidence resolution SV-4 of the 5th Committee of Inquiry of the 18th legislative period of the German Bundestag.
<i>M. Brenner</i> , Legal opinion on the implementation of Regulation 715/2007, 692/2008, Directive 2007/46/EG and Regulation No. 83 of the Economic Commission for Europe of the United Nations (UN/ECE) (2016)	<a href="http://www.bundestag.de/resource/blob/481326/37b80450b6b86699527d9e690ee62a03/stellungnahme-prof-dr-brenner--sv-4--data.pdf">www.bundestag.de/resource/blob/481326/37b80450b6b86699527d9e690ee62a03/stellungnahme-prof-dr-brenner--sv-4--data.pdf</a>	A legal opinion by a different expert on the same topic, commissioned by the Bundestag as part of the same investigation.
Manipulation of emission control systems by manufacturers. Possible civil and criminal law implications (2015)	<a href="http://www.bundestag.de/resource/blob/405432/c61725826babe5c65ae39282800168ef/WD-7-184-15-pdf-data.pdf">www.bundestag.de/resource/blob/405432/c61725826babe5c65ae39282800168ef/WD-7-184-15-pdf-data.pdf</a>	The study was prepared by the Scientific Service ( <i>Wissenschaftliche Dienst</i> ) of the Bundestag in reaction to the VW scandal. It focusses on possible consumer protection.
Second report of the Investigation Commission Volkswagen on CO <sub>2</sub> emissions of vehicles and field testing (2020)	<a href="http://www.kba.de/DE/Marktueberwachung/Abgasthematik/zweiter_ber_uk_vw_co2_pdf.pdf?__blob=publicationFile&amp;v=3">www.kba.de/DE/Marktueberwachung/Abgasthematik/zweiter_ber_uk_vw_co2_pdf.pdf?__blob=publicationFile&amp;v=3</a>	The second report prepared for the Volkswagen Commission of the Federal Ministry of Transport, that commissioned KBA to prepare a report on the CO <sub>2</sub> emissions of vehicles, as well as field testing.
<i>M. Fuhr</i> , The Diesel scandal and the law. A study on technical safety (2015)	<a href="https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fnvwz%2F2017%2Fcont%2Fnvwz.2017.265.1.htm&amp;anchor=Y-300-Z-NVWZ-B-2017-S-265-N-1">https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fnvwz%2F2017%2Fcont%2Fnvwz.2017.265.1.htm&amp;anchor=Y-300-Z-NVWZ-B-2017-S-265-N-1</a>	An article by an administrative lawyer, examining the potential loopholes of German vehicle tampering legislation, published in New Magazine for Administrative Law.

## Ireland

### Overview of legislation

- 1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.**

Directive 2007/46/EC (establishing an approval framework)

Directive 2007/46/EC is transposed by the European Communities (Road Vehicles: Type-Approval) Regulations 2009 (SI 158 of 2009)<sup>576</sup> and the European Communities (Road Vehicles: Entry into Service) Regulations 2009 (SI 157 of 2009).<sup>577</sup>

Directive 2014/45/EU (on periodic roadworthiness tests)

Directive 2014/45/EU is transposed by the Commercial Vehicle Roadworthiness (Vehicle Testing) (Amendment) Regulations 2018 (SI 117 of 2018),<sup>578</sup> and the Road Traffic (National Car Test) Regulations 2017 (SI 415 of 2017).

The Regulations were adopted late (after 20 May 2017) which led to the Commission issuing a formal notice pursuant to Article 258 TFEU. However, the Regulations came into force by 20 May 2018, in line with the Directive, so the case seems to have been closed.

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

The Directive was transposed by the Commercial Vehicle Roadworthiness (Roadside Enforcement) Regulations 2018 (SI 161 of 2018),<sup>579</sup> and the European Communities (Roadside Inspection of Commercial Vehicles) (Designated Contact Point) Regulations 2018 (SI 162 of 2018).<sup>580</sup>

The Regulations were adopted late which led to the Commission issuing a reasoned opinion pursuant to Article 258 TFEU.

- 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

The European Communities (Road Vehicles: Type-Approval) Regulations 2009 (SI 158 of 2009) and European Communities (Motor Vehicles Type Approval) Regulations 2009 (SI 127 of 2009) were enacted partly to give further effect to Articles 11 and 13 of Regulation (EC) No 715/2007.

<sup>576</sup> [www.irishstatutebook.ie/eli/2009/si/158/made/en/print?num=158&years=2009&search\\_type=si](http://www.irishstatutebook.ie/eli/2009/si/158/made/en/print?num=158&years=2009&search_type=si)

<sup>577</sup> [www.irishstatutebook.ie/eli/2009/si/157/made/en/print?num=157&years=2009&search\\_type=si](http://www.irishstatutebook.ie/eli/2009/si/157/made/en/print?num=157&years=2009&search_type=si)

<sup>578</sup> [www.irishstatutebook.ie/eli/2018/si/117/made/en/print?num=117&years=2018&search\\_type=si](http://www.irishstatutebook.ie/eli/2018/si/117/made/en/print?num=117&years=2018&search_type=si)

<sup>579</sup> [www.irishstatutebook.ie/eli/2018/si/161/made/en/print?num=161&years=2018&search\\_type=si](http://www.irishstatutebook.ie/eli/2018/si/161/made/en/print?num=161&years=2018&search_type=si)

<sup>580</sup> [www.irishstatutebook.ie/eli/2018/si/162/made/en/print](http://www.irishstatutebook.ie/eli/2018/si/162/made/en/print)

The European Communities (Motor Vehicles Type Approval) (Amendment) Regulations 2010 (SI 171 of 2010) give effect to Article 10 of Regulation (EC) No 715/2007.

The European Communities (Motor Vehicles Type Approval) (Amendment) Regulations 2011 (SI 421/2011), the European Communities (Road Vehicles: Type-Approval) (Amendment) Regulations 2011 (SI 422/2011), the European Communities (Road Vehicles: Type-Approval) (Amendment) Regulations 2013 (SI 471/2013), the European Communities (Motor Vehicles Type Approval) (Amendment) Regulations 2013 (SI 473/2013) amend schedules of previous legislation in order to include the administrative procedures required by Regulation (EC) No 715/2007.

Commission Regulation (EU) 2017/1151 (on odometer readings)

Section 14 of the Road Traffic Act 2014<sup>581</sup> makes it an offence to interfere or attempt to interfere with the odometer of a mechanically propelled vehicle.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

The European Communities (Motor Vehicles Type Approval) (Amendment) Regulations 2010 (SI No. 171/2010),<sup>582</sup> European Communities (Road Vehicles: Type-Approval) (Amendment) Regulations 2010 (SI 169/2010)<sup>583</sup> and the European Communities (Road Vehicles: Entry into Service)(Amendment) Regulations 2010 (SI 170/2010)<sup>584</sup> give effect to Articles 8, 9 and 11 of Regulation (EC) No. 595/2009.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

Aside from Section 14 of the Road Traffic Act 2014, there are no other provisions on tampering. Section 14 of the Road Traffic Act 2014 prohibits interference with odometers. Advertising falsely described goods for sale may be in breach of other general provisions (such as the Consumer Protection Act 2007<sup>585</sup>).

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

Section 14 of the Road Traffic Act 2014 does not refer to EU emissions regulation and standards.

<sup>581</sup>

[www.irishstatutebook.ie/eli/2014/act/3/enacted/en/html?q=road+traffic+act&years=2014&search\\_type=acts](http://www.irishstatutebook.ie/eli/2014/act/3/enacted/en/html?q=road+traffic+act&years=2014&search_type=acts)

<sup>582</sup> [www.irishstatutebook.ie/eli/2010/si/171/made/en/print?num=171&years=2010&search\\_type=si](http://www.irishstatutebook.ie/eli/2010/si/171/made/en/print?num=171&years=2010&search_type=si)

<sup>583</sup> [www.irishstatutebook.ie/eli/2010/si/169/made/en/print?num=169&years=2010&search\\_type=si](http://www.irishstatutebook.ie/eli/2010/si/169/made/en/print?num=169&years=2010&search_type=si)

<sup>584</sup> [www.irishstatutebook.ie/eli/2010/si/170/made/en/print?num=170&years=2010&search\\_type=si](http://www.irishstatutebook.ie/eli/2010/si/170/made/en/print?num=170&years=2010&search_type=si)

<sup>585</sup> [www.irishstatutebook.ie/eli/2007/act/19/enacted/en/html?q=consumer+protection&search\\_type=all](http://www.irishstatutebook.ie/eli/2007/act/19/enacted/en/html?q=consumer+protection&search_type=all)

- 5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

Section 14 was not included in the initial draft of the Road Traffic Bill. It was added at a late stage. A record of the [parliamentary debates](#) noted that, while interfering with an odometer was dealt with pursuant to the Consumer Protection Act 2007 (insofar as it amounted to a misleading practice), there was a gap in the law, as it did not cover sales between individuals. Nor did it deal with the act of interfering itself.

The debate seems to focus on the consumer protection angle of avoiding odometer tampering, rather than any impact this may have on emissions calculations.

#### Requirements and rules on tampering

##### *Obligations manufacturers*

- 6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific national legal requirements on manufacturers relating to the *prevention* of tampering.

- 7. Are there any other requirements relating to tampering which manufacturers need to meet?**

No.

- 8. Are manufacturers required to disclose information relating to tampering (resistance)?**

No.

##### *Type approval*

- 9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

The European Communities (Road Vehicles: Type-Approval) Regulations 2009 (SI 158 of 2009) transpose the requirements of Directive 2007/46/EC on type-approval. Further, Regulation (EC) No 715/2007 and Regulation (EC) No 595/2009 transpose the EU rules on type approval for light passenger and commercial vehicles and heavy-duty vehicles, respectively.

The European Communities (Road Vehicles: Type-Approval) (Amendment) Regulations 2017 (SI 280 of 2017)<sup>586</sup> provides for a national type-approval system for small series (although it implements EU law).

Beyond EU law, there are no national requirements regarding tampering.

<sup>586</sup> [www.irishstatutebook.ie/eli/2017/si/280/made/en/print](http://www.irishstatutebook.ie/eli/2017/si/280/made/en/print)

## 10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?

Many aspects of a vehicle are tested (depending on the vehicle category) all stemming from requirements in EU legislation. For example (for small series type approval for Category M vehicles):

- Sound level;
- Emissions;
- Fuel tanks/rear protective devices;
- Rear registration plate space;
- Steering effort;
- Door latches and hinges;
- Audible warning;
- Indirect vision devices;
- Braking;
- Radio interference / Electromagnetic compatibility
- Etc (more than 60 in total, which can be consulted in the European Communities (Road Vehicles: Type-Approval) (Amendment) Regulations 2017 (SI 280 of 2017)<sup>587</sup>)

## 11. Please list the national type approval authority<sup>588</sup> and technical services<sup>589</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.

The [National Standards Authority of Ireland](https://www.nsai.ie/certification/automotive/national-type-approval/atc/) (NSAI) is responsible for small series type approval. It should be noted that there are not any large car manufacturers in Ireland. The NSAI Act sets out a general power under Section 7(1)(j) for the NSAI to “to arrange for the testing and analysis of commodities, particularly in relation to certification and approval schemes, by or on behalf of the Authority”. The NSAI has established a network of Appointed Test Centre’s (ATC) who physically examine and issue test reports for some or all of the technical requirements. These test reports are then used by NSAI to grant the vehicle or trailer approvals. A list of appointed centres can be found here: [www.nsai.ie/certification/automotive/national-type-approval/atc/](https://www.nsai.ie/certification/automotive/national-type-approval/atc/).

## 12. Are any of these parties required to disclose information on national type approval processes?

The NSAI is subject to the Freedom of Information Act 2014<sup>590</sup> and the Reuse of Public Sector Information Regulations (SI 279 of 2005)<sup>591</sup>. This legislation requires the NSAI to make public or make available for re-use certain information.

<sup>587</sup> [www.irishstatutebook.ie/eli/2017/si/280/made/en/print](https://www.irishstatutebook.ie/eli/2017/si/280/made/en/print)

<sup>588</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>589</sup> Test bodies and laboratories that are specifically designated by the Member States’ type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>590</sup> [www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html](https://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html)

<sup>591</sup> [www.irishstatutebook.ie/eli/2005/si/279/made/en/print](https://www.irishstatutebook.ie/eli/2005/si/279/made/en/print)



**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Pursuant to Regulation 25(1) of the European Communities (Road Vehicles: Type-approval) Regulations 2009 (S.I. No. 158/2009) a person commits an offence when, making an application, supplying information or producing a document:

- (i) makes a statement or a declaration which that person knows to be false in a material particular or recklessly makes a statement or a declaration which is false in a material particular,
- (ii) produces, provides, sends or otherwise makes use of a document which that person knows to be false in a material particular or recklessly produces, provides or sends or otherwise makes use of a document which is false in a material particular.

Further, it is an offence to falsify test results to be submitted as part of an application for type approval or in-service conformity, to withhold from the NSAI data or technical specifications that could lead to the recall or withdrawal of a type approval, or refuse to allow the NSAI access to information, being

access to information that the NSAI reasonably requires for the purposes of these Regulations.

In addition, several other offences are listed in Regulation 25(2). These offences are criminal in nature and can be prosecuted summarily or on indictment. A person found guilty on summary conviction is liable to a fine up to EUR 5,000, a prison sentence of up to 6 months (or both), while on summary conviction, they are liable for a fine up to EUR 100,000, a prison sentence up to 12 months (or both).

#### *Rules on tampering*

**14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

No national provisions relating to tampering with the emissions control design are in place. If the emission control system fitted by the manufacturer is absent, modified or obviously defective, this may be recorded as a major deficiency in the context of roadworthiness testing (e.g. NCT).

Regulation 90 of the Road Traffic (Construction, Equipment and Use of Vehicles) Regulations, 1963 (SI 190 of 1963)<sup>592</sup> prohibits using a vehicle in a public place so that there is emitted therefrom any smoke, visible vapour, grit, sparks, ashes, cinders or oily substances the emission of which could be prevented by the exercise of reasonable care.

Tampering with aftermarket parts

There is no specific legislation concerning tampering with aftermarket parts.

Tampering with the engine

<sup>592</sup> [www.irishstatutebook.ie/eli/1963/si/190/made/en/print](http://www.irishstatutebook.ie/eli/1963/si/190/made/en/print)

There is no specific legislation concerning tampering with the engine.

Tampering with the OBD system

There is no specific legislation concerning tampering with OBD systems.

Odometer tampering (in particular on second-hand vehicles)

Section 14 of the Road Traffic Act 2014 makes it an offence to interfere or attempt to interfere with the odometer of a mechanically propelled vehicle.

Other

N/a

**15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

The organisation responsible for enforcing Section 14 of the Road Traffic Act 2014 is the Garda Síochána (Police), as provided for by section 14(3) of that Act. The organisation responsible for ensuring that cars which are not roadworthy due to e.g. modified emissions control systems are not on the road is the Road Safety Authority (pursuant to S.4 of the Road Safety Authority Act 2006<sup>593</sup>).

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

For an offence under Section 14(1) of the Road Traffic Act 2014, one is liable on summary conviction to a Class C fine (up to EUR 2,500) or up to 3 months imprisonment (or both). It is unlikely that an individual would receive a prison sentence for a once off offence – this is more likely to be reserved for a more serious offender.

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

In the context of a business to consumer relationship (such as when a consumer buys from a car dealership), the consumer could bring a case pursuant to the Consumer Protection Act. The consumer could complain to the Competition and Consumer Protection Commission, which may take action against the trader. The consumer may also sue the trader for breach of the Consumer Protection Act, for a misleading commercial practice. The consumer may receive damages from the court. The burden of proof in Irish law usually falls on the claimant, while the standard of proof in civil cases is the 'balance of probabilities' (rather than 'beyond reasonable doubt', as is the case for criminal cases).

<sup>593</sup> [www.irishstatutebook.ie/eli/2006/act/14/enacted/en/html](http://www.irishstatutebook.ie/eli/2006/act/14/enacted/en/html)

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The periodic roadworthiness tests are the National Car Test (NCT) and the Commercial Vehicles Roadworthiness Test (CVRT). The legislation governing the NCT is the [Road Traffic \(National Car Test\) Regulations 2017](#) (SI 415 of 2017).<sup>594</sup>

A test or a re-test of a vehicle is carried out by a tester. Testers shall carry out tests in a manner that is impartial and objective and free from conflicts of interest.

The Road Safety Authority, or a training body approved by the Authority, shall provide a certificate to testers, upon completion of the required training and upon demonstrating to the Authority or the approved training body, as the case may be, evidence of the required competence to carry out tests.

In carrying out a test on a vehicle—

- (a) the items to be tested, at any time, are the items specified in Schedule 3 of the Regulations to be tested at such time, and
- (b) the reasons for failure of the test by the vehicle shall be any one or more of the reasons mentioned in Schedule 3 Regulations in respect of the items to be tested.

The tester shall have available electronically to him or her the information included in the previous test (if any) for the purpose of checking the information in the odometer, if fitted.

Any defect or other items of non-compliance in relation to a vehicle found when carrying out a test shall be categorised into one of the following:

- (a) minor deficiencies, namely those with no significant effect on the safety of the vehicle or impact on the environment or are otherwise minor;
- (b) major deficiencies, namely those which may prejudice the safety of the vehicle or have an impact on the environment or put other road users at risk, or are otherwise regarded as more significant deficiencies than minor deficiencies;
- (c) dangerous deficiencies, namely those constituting a direct and immediate risk to road safety or having an impact on the environment.

Where a vehicle has a number of defects or other items of non-compliance:

- (a) the vehicle shall be categorised by reference to the most serious deficiency; or
- (b) if relate to the items listed in Schedule 3, the vehicle may be categorised as falling within a more serious category if the tester is of the opinion that the combined effect of such defects or other items of non-compliance results in a higher risk to road safety than that to which each individual defect or other item of non-compliance is otherwise categorised.

The person presenting the vehicle for the test shall be informed of any defects or other items of non-compliance identified which require rectification.

The items listed in Schedule 3 include testing if the emissions control system or the exhaust system have been modified. If so, it is marked as a major deficiency.

<sup>594</sup> [www.irishstatutebook.ie/eli/2017/si/415/made/en/print](http://www.irishstatutebook.ie/eli/2017/si/415/made/en/print)

The main legislation governing the CVRT is the [Road Safety Authority \(Commercial Vehicle Roadworthiness\) Act 2012](#).<sup>595</sup> There is a separate test for Light Commercial Vehicles (LCVs) and Heavy Commercial Vehicles (HCVs). The test includes the items listed in Annex II to Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009, as amended by Commission Directive 2010/48/EU of 5 July 2010.

The vehicle may receive a 'pass', 'fail' or 'pass pending recheck of minor deficiencies'.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

In respect of commercial vehicles, a vehicle inspector of the Road Safety Authority can carry out visual checks on the roadworthiness of a vehicle or trailer. He/she will check that a valid Certificate of Roadworthiness (CRW) is displayed on the vehicle(s) (including trailers) and will check the physical condition of the vehicle to assess its roadworthiness. This (the roadside inspection) is a limited visual inspection and the inspector may require the vehicle to be brought to a Commercial Vehicle Testing Centre for further inspection. This more detailed inspection shall include the items listed in Annex II of Directive 2014/47/EU that the inspector considers necessary and relevant having regard, in particular, to the safety of the brakes, tyres, wheels and chassis, the particular defect, and the recommended methods applicable to the testing of those items.

This is provided for by Sections 32-35 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 and Commercial Vehicle Roadworthiness (Roadside Enforcement) Regulations 2018 (SI 161 of 2018).

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

The [Road Safety Authority](#) is responsible for the testing system. It is a statutory body established by the Road Safety Authority Act, 2006. It receives funding from and is responsible to the Minister for Transport.

The NCT is executed by a company called Applus+ Car Testing Services Limited, on behalf of the Road Safety Authority. The CVRT is conducted by entities which apply to become test centres, and who meet all of the statutory requirements as specified in Section 11(1) – (a) to (f) of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012.

**21. Are any of these authorities required to disclose information on these tests and inspections?**

Section 8 of the Freedom of Information Act 2014 requires FOI bodies to prepare and publish as much information as possible in an open and accessible manner on a routine basis outside of FOI, having regard to the principles of openness and transparency. This allows for the publication of records outside of FOI provided that such publication is not prohibited by law. The scheme commits

<sup>595</sup> [www.irishstatutebook.ie/eli/2012/act/16/enacted/en/html](http://www.irishstatutebook.ie/eli/2012/act/16/enacted/en/html)

FOI bodies to make information available as part of their normal business activities in accordance with this scheme.

The Road Safety Authority publishes a disclosure log on its website, indicating the information which has been disclosed.

[www.rsa.ie/en/Utility/About-Us/Freedom-of-Information/FOI-Publication-Scheme/FOI-Disclosure-Log/](http://www.rsa.ie/en/Utility/About-Us/Freedom-of-Information/FOI-Publication-Scheme/FOI-Disclosure-Log/)

For example, it publishes pass and fail rates for each Road Safety Authority test centre around the country with a breakdown by month, licence type, and test centre.

These requests are mostly made by journalists.

**22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Ordinarily, failure of the vehicle tests means the vehicle cannot be driven until the deficiency is remedied and subsequently passes upon re-testing.

However, using the vehicle without the relevant roadworthiness certificate is an offence. In respect of commercial vehicles, Section 6 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 provides for a fine of up to 5,000 Euro, a prison term of up to 3 months (or both).

For non-commercial vehicles, S.I. No. 415/2017 provides that it is an offence to drive one, if it has received “fail dangerous” in the test. Further, driving it without a roadworthiness certificate can result in penalty points on the driver’s licence.

*National strategies and initiatives*

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

The odometer reading is recorded during the NCT. It is printed on the NCT certificate and the current reading on the disc (displayed on the windscreen). Certain websites like [www.motorcheck.ie](http://www.motorcheck.ie) provide information about odometer readings. This website is based on re-used public sector data, and data from industry. It is unclear which public entity it receives the data from, although it is likely the Road Safety Authority or the Department of Transport.

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles’ mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles’ mileage history)?**

The Irish National Mileage Register (INMR) is Ireland's largest publicly available database of car mileage readings with over 15 million readings recorded. The database was established for the Motor Trade and wider Automotive Industry in Ireland to help combat the illegal practice of car clocking in Ireland. A prospective car purchaser can check the registration number of the car on the website [www.motorcheck.ie](http://www.motorcheck.ie).

The register is operated by a private company called Benchmark Fleet Services Ltd.

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

No. Nor does Ireland have zero or low-emission zones such as Paris or London.

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

No.

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

Not that we are aware of.

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No.

### *Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There seems to have been widespread media coverage of the introduction of the introduction of the Section 14 of the Road Traffic Act 2014.

[www.irishtimes.com/life-and-style/motors/clocking-mileage-illegal-from-today-1.1655128](http://www.irishtimes.com/life-and-style/motors/clocking-mileage-illegal-from-today-1.1655128)

In addition, offences are sometimes published in the media.

[www.irishexaminer.com/ireland/man-remanded-on-charge-of-clocking-car-451331.html](http://www.irishexaminer.com/ireland/man-remanded-on-charge-of-clocking-car-451331.html)

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question.

## Potential gaps in the legislation

It is unclear whether there are gaps in the legislation. There is nothing to suggest a problem with Section 14 of the Road Traffic Act 2014 or its enforcement.

There is, however, a brief reference to the ‘shortcomings in the regulation of emissions from motor vehicles’ in a 2018 publication from the Irish Law Reform Commission ([Regulatory Powers and Corporate Offences](#), Law Reform Commission, (LRC 119-2018)).

### **30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

The enforcement of Section 14 of the Road Traffic Act is the responsibility of the Police. In addition, the Competition and Consumer Protection Commission has a mandate to enforce consumer law. In this context, in 2017 it launched enforcement measures against car dealerships, including unannounced inspections in order to determine whether odometer tampering was taking place.<sup>596</sup> It has successfully prosecuted several cases against dealers engaging in such practices.

### **31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

No specific legal or practical obstacles have been noted in the literature.

## *Other*

### **32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

- 1) Ireland does not have a significant automotive manufacturing industry, and generally relies on imports. However, there are some companies producing vehicle parts, such as:
  - Kostal Ireland GmbH, a subsidiary of German company [Leopold Kostal GmbH & Co. KG](#) (+353 22 44000)
  - [Connaught Electronics Ltd](#) ([info@cel.ie](mailto:info@cel.ie); + 353 93 25128)
  - [Borgwarner](#) (+353 66 7125111)
- 2) The entity responsible for type approval is the [National Standards Authority of Ireland \(NSAI\)](#) ([info@nsai.ie](mailto:info@nsai.ie) + 353 1 807 3800)
- 3) The National Car Test (NCT) is conducted by a company called [Applus+ Car Testing Services Limited](#) ([info@ncts.ie](mailto:info@ncts.ie) +353 1 4135994) on behalf of the [Road Safety Authority \(RSA\)](#) (1890 40 60 40, 09625000, outside Ireland 00353-9625000). The RSA also carries out roadside inspections and is responsible for commercial vehicle testing.
- 4) No national strategies were identified. However, the [Irish Competition and Consumer Protection Commission](#) does pursue car dealers who engage in odometer tampering. ([info@ccpc.ie](mailto:info@ccpc.ie) +353 (1) 402 5500)

<sup>596</sup> [www.ccpc.ie/business/ccpc-launches-new-enforcement-measures-targeting-irelands-motor-trade-sector/](http://www.ccpc.ie/business/ccpc-launches-new-enforcement-measures-targeting-irelands-motor-trade-sector/)



### 33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?

No.

#### Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

Cases concerning odometer tampering generally arise in the District Court (lower court), so are not always reported in case law databases. Rather, they tend to be reported in the media, or by the Competition and Consumer Protection Commission.

For example:

A Waterford car dealer has been convicted of providing false information about the mileage of a BMW car following an investigation and prosecution by the CCPC.

Mr Oleksandr Matveyshyn of 'MIV Motors' at 6 Cross Roads Business Park, Kilbarry, Waterford was found guilty by Judge Staunton in Waterford City District Court. He was fined €500 and was ordered to pay EUR 1,000 in legal costs. In addition he must pay EUR 8,000 compensation to the consumer he sold the car to.

The BMW was sold to the consumer for EUR 32,500 by Mr Matveyshyn. The car had been imported from the UK and showed 36,000 miles on its odometer (the 'clock' that shows the mileage of the car on the dashboard). Our investigation found that the mileage of the car was actually 105,412 miles and the odometer had been clocked.

[www.ccpc.ie/consumers/2017/10/24/waterford-car-dealer-convicted-following-ccpc-investigation-prosecution/](http://www.ccpc.ie/consumers/2017/10/24/waterford-car-dealer-convicted-following-ccpc-investigation-prosecution/)

#### Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
<a href="#">FAQs on Clocked Vehicles and Odometer Fraud</a> , Road Safety Authority	n/a	This is a brief document with questions and answers concerning the phenomenon of odometer tampering.

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

Decree of the Ministry of Transport 28 April 2008 - Transposition of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007, relating to the type-approval of motor vehicles and their trailers, as well as of systems, components and technical units intended to these vehicles.<sup>597</sup>

Directive 2014/45/EU (on periodic roadworthiness tests)

Ministerial Decree of 19 May 2017 (Protocol 214) - Decree of transposition of Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 relating to periodic technical inspections of motor vehicles and their trailers, which also repeals Directive 2009/40/EC.<sup>598</sup>

The aforementioned decree was amended by Decree 11 December 2019 - Amendment of the decree of 19 May 2017, and establishment of the single register of audit inspectors<sup>599</sup>, with the aim of implementing the Corrigendum to Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC.

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

Decree of the Ministry of Transport 19 May 2017 'Transposition of Directive 2014/47/EU of the European Parliament and of the Council of 3 April 2014 on technical roadside inspections of

<sup>597</sup> Decreto del Ministero dei Trasporti 28 aprile 2008 - Recepimento della direttiva 2007/46/CE del Parlamento europeo e del Consiglio del 5 settembre 2007, relativa all'omologazione dei veicoli a motore e dei loro rimorchi, nonché dei sistemi, componenti ed entità tecniche destinati a tali veicoli (Gazzetta Ufficiale della Repubblica Italiana; Number: S.O. 167) Available at:

[www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-07-12&atto.codiceRedazionale=08A04605&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-07-12&atto.codiceRedazionale=08A04605&elenco30giorni=false), last accessed 02/06/2020.

<sup>598</sup> Decreto 19 maggio 2017 – Protocollo 214 - Recepimento della direttiva 2014/45/UE del Parlamento europeo e del Consiglio del 3 aprile 2014 relativa ai controlli tecnici periodici dei veicoli a motore e dei loro rimorchi e recante abrogazione della direttiva 2009/40/CE. (17A04093) (GU Serie Generale n.139 del 17-06-2017).

Available at:

[www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2017-06-17&atto.codiceRedazionale=17A04093](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2017-06-17&atto.codiceRedazionale=17A04093), or in alternative at:

[www.mit.gov.it/normativa/decreto-ministeriale-protocollo-214-del-19052017](http://www.mit.gov.it/normativa/decreto-ministeriale-protocollo-214-del-19052017), last accessed 02/06/2020.

<sup>599</sup> Decreto 11 dicembre 2019 - Modifica del decreto 19 maggio 2017, in recepimento della rettifica alla direttiva 2014/47/UE della Commissione relativa ai controlli tecnici su strada dei veicoli commerciali circolanti nell'Unione. (20A00502) (GU Serie Generale n.22 del 28-01-2020). Available at

[www.gazzettaufficiale.it/eli/id/2020/01/28/20A00502/sg](http://www.gazzettaufficiale.it/eli/id/2020/01/28/20A00502/sg), last accessed 02/06/2020.

commercial vehicles circulating in the Union and repealing Directive 2000/30/EC. (17A04094) (OJ General Series n.139 of 17-06-2017)<sup>600</sup>.

**2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

Legislative Decree n. 285 of 30 April 1992 ('Highway Code')<sup>601</sup> and Decree of the President of the Republic, 16 December 1992, n. 495 - Regulations for the execution and implementation of the new highway code ('Implementing Regulation')<sup>602</sup> constitute the main pieces of legislation concerning road traffic in Italy.

Chapter III ('Motor vehicles and their trailers'), Section I ('Construction and equipment standards and technical checks for circulation') and the respective sections of the Implementing Regulation set out general rules on the requirements that vehicles (including light passenger and commercial vehicles) must bear in order to obtain a type approval. A list of specific construction and functional characteristics of motor vehicles and their trailers can be found in Appendix V of the Implementing Regulation.<sup>603</sup>

These general rules on requirements as well as the methods for their assessment are further elaborated by means of Decrees of the Ministry of Transport, in agreement with the other Ministries when interested, which periodically establish the technical prescriptions relating to the characteristics referred to in the Highway Code and the Implementing Regulation<sup>604</sup>.

However, the national law does not specifically include a provision to prohibit the use of defeat devices that reduce the effectiveness of emission control systems.

Commission Regulation (EU) 2017/1151 (on odometer readings)

The Italian Highway Code and the Implementing Regulation constitute the main pieces of legislation concerning road traffic in Italy.

Chapter III ('Motor vehicles and their trailers'), Section I ('Construction and equipment standards and technical checks for circulation') and the respective sections of the Implementing Regulation set out general rules on vehicle requirements.

<sup>600</sup> Decreto del Ministero dei Trasporti 19 maggio 2017 – Protocollo 215 - Recepimento della direttiva 2014/47/UE del Parlamento europeo e del Consiglio del 3 aprile 2014, relativa ai controlli tecnici su strada dei veicoli commerciali circolanti nell'Unione e che abroga la direttiva 2000/30/CE. (17A04094) (GU Serie Generale n.139 del 17-06-2017). Available at [www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2017-06-17&atto.codiceRedazionale=17A04094](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2017-06-17&atto.codiceRedazionale=17A04094), last accessed 02/06/2020.

<sup>601</sup> Decreto Legislativo 30 aprile 1992, n. 285- Nuovo codice della strada (Gazzetta Ufficiale n.114 del 18-5-1992 - Suppl. Ordinario n. 74). Available at [www.gazzettaufficiale.it/sommario/codici/strada](http://www.gazzettaufficiale.it/sommario/codici/strada), last accessed 02/06/2020.

<sup>602</sup> Decreto del Presidente della Repubblica 16 dicembre 1992, n. 495 - Regolamento di esecuzione e di attuazione del nuovo codice della strada. (GU Serie Generale n.303 del 28-12-1992 - Suppl. Ordinario n. 134). Available at [www.gazzettaufficiale.it/eli/id/1992/12/28/092G0531/sg](http://www.gazzettaufficiale.it/eli/id/1992/12/28/092G0531/sg), last accessed 02/06/2020.

<sup>603</sup> Art. 227 of the Implementing Regulation.

<sup>604</sup> Art.71(3) of the New Highway Code and Art.228 of the Implementing Regulation.

In particular, Article 229 of the Implementing Regulation specifies that ‘the odometer installed on vehicles must provide at least the indication of the total distance travelled, starting from the first entry into service of the vehicles or from the automatic reset of this indication. The odometer must also be free of manual zeroing devices and must not be tampered with. The installation of a resettable tripmeter is allowed. The indications of the device must fall within the direct field of vision of the driver and be at least five digits, each progressively variable from zero to nine’.

These general rules on requirements as well as the methods for their assessment are further elaborated by means of Decrees of the Ministry of Transport, in agreement with the other Ministries when interested, which periodically establish the technical prescriptions relating to the characteristics referred to in the Highway Code and the Implementing Regulation<sup>605</sup>.

Therefore, though not specifying the obligation on the manufacturers, by stating that the odometer shall not be tampered with and that it shall be free of manual zeroing devices, the above national provision seems to encompass the specific requirement laid down in Commission Regulation (EU) 2017/1151 that car manufacturers effectively deter reprogramming of the odometer readings.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

The Highway Code and the Implementing Regulation constitute the main pieces of legislation concerning road traffic in Italy.

Chapter III (‘Motor vehicles and their trailers’), Section I (‘Construction and equipment standards and technical checks for circulation’) and the respective sections of the Implementing Regulation set out general rules on the requirements that vehicles (including heavy duty vehicles) must bear in order to obtain a type approval.

However, the specific requirement provided by Commission Regulation (EU) 2017/1151 which prohibits manufacturers, repairers and operators of the vehicles from tampering with systems which use a consumable reagent, as well as the provision that outlaws the use of defeat devices that reduce the effectiveness of emission control equipment, has not been specifically transposed into the national law and seems to be implemented only by means of direct application of the EU Regulation.

### **3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

There are no specific national measures referring to tampering. Tampering seems to be covered in generic terms by means of the national measure transposing the aforementioned Directives, as well as by the Highway Code and the Implementing Regulation.

### **4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

The above measures generically refer to compliance with the EU directives and the technical requirements therein (and, alternatively, the corresponding technical requirements contained in the

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<sup>605</sup> *Id.*

regulations or recommendations issued by the European Office for the United Nations - Economic Commission for Europe). There is no direct reference to EU emissions regulations and standards.

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

There are no specific provisions adopted in relation to tampering. The reason for the adoption of the aforementioned general measures seems to be the general compliance with EU law. They do not directly refer to emissions tampering and the prevention of such activity.

## Requirements and rules on tampering

### *Obligations manufacturers*

**6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific provisions adopted at national level that would lay down any obligations for manufacturers to prevent tampering. The only exception could be the general rule laid out under Article 229 of the Implementing Regulation (see above). In fact, though not specifying the obligation on the manufacturers, by stating that the odometer shall not be tampered with and that it shall be free of manual zeroing devices, the above national provision could be interpreted as an obligation also applicable to car manufacturers, who should effectively deter reprogramming of the odometer readings as these shall be free of manual zeroing devices.

**7. Are there any other requirements relating to tampering which manufacturers need to meet?**

Besides those laid down in the transposing measure of Directive 2007/46/EC in relation to the type approval process, there are no other specific requirements related to tampering which manufacturers must comply with under national law.

**8. Are manufacturers required to disclose information relating to tampering (resistance)?**

No, the Italian legislation does not require manufacturers to disclose any information relating to tampering. The only information manufacturers need to disclose is that included in the declaration of conformity, following the type approval process.

### *Type approval*

**9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

In relation to type approval process, the national law only refers to the requirements and obligations set forth by EU legislation and UN/ECE regulations.

In fact, according to Article 71.4 of the Highway Code and Article 228 of the Implementing Regulation, if the Decrees relating to the requirements of the equipment of motor vehicles (and their trailers) and the methods for their assessment refer to provisions subject to EU Directives, the technical prescriptions are those contained in the aforementioned Directives; as an alternative, the approval is carried out through the application of the corresponding technical requirements contained in the regulations or recommendations issued by the European Office for the United Nations - Economic Commission for Europe, implemented by the Ministry of Infrastructure and Transport.

According to Article 75 of the Highway Code ('Assessment of the requirements for roadworthiness and approval'), in order to be admitted for circulation, motor vehicles are subject to verification of identification data and their correspondence to technical prescriptions and to the construction and functional characteristics. The vehicles, their components or technical units produced in series, are subject to type approval, which takes place by means of an assessment procedure, carried out on a prototype, according to the methods established by decrees of the Minister of Infrastructure and Transport. With the Decrees, the Minister establishes specific rules for the national approval of systems, components, and technical units, as well as the appropriate procedures for their installation as replacement or integration elements of vehicle parts, on types of cars and new or current motorcycles. If these rules refer to systems, components and technical entities subject to EU directives, or regulations issued by the European Office for the United Nations implemented by the Ministry of Infrastructure and Transport, the national approval requirements and installation comply with the provisions of the aforementioned directives or regulations.<sup>606</sup>

Therefore, it can be concluded that **the requirements that form part of the approval processes under Italian law are those provided in Decree of the Ministry of Transport 28 April 2008, which transposed Directive 2007/46/EC**, and no specific provisions (including on tampering) are in place at national level.

#### **10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

The type approval assessment may concern single vehicles or groups of specimens of the same type of vehicle and takes place by means of a visit and test by the competent offices (see below). As mentioned above, the approval process under Italian law is that provided in Decree of the Ministry of Transport 28 April 2008, which transposed Directive 2007/46/EC, and no other specific checks related to tampering are in place at national level.

#### **11. Please list the national type approval authority<sup>607</sup> and technical services<sup>608</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

According to the Decree of the Ministry of Transport 28 April 2008, which transposed Directive 2007/46/EC:

<sup>606</sup> Art.75 (3-ter) of the Highway Code.

<sup>607</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>608</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

**Type approval authority:** the Italian type approval authority is the **Directorate General for Motorisation - Department for Land Transport - Ministry of Transport**.<sup>609</sup> The authority is responsible for all aspects of the type approval of a vehicle, system, component or separate technical unit or the individual approval of a vehicle, together with the authorisation procedure; it issues and, if necessary, revokes the type approval documents, it ensures the connection with its counterparts of the other Member States of the EU, it designates the technical services and ensures that the manufacturer respects its obligations relating to the conformity of production.<sup>610</sup>

**Technical Services:** technical services are designated by the type approval authority, this being the Directorate General for Motorisation. Pursuant to Article 3(ii) of the above decree, a technical service is the body or entity appointed as a test laboratory for carrying out tests, or as a conformity assessment body for carrying out the initial assessment, or other tests or inspections, on behalf of the approval authority. In particular, in Italy the technical services are the so called 'Motor vehicle test centers' ('Centri Prova Autoveicoli' – CPA), together with the Directorate General for Motorisation and the Superior Research and Testing Center for motor vehicles and devices ('Centro Superiore Ricerche Prove Autoveicoli e Dispositivi' – CSRPAD). A list of the technical services in Italy can be found at the following link: <https://ec.europa.eu/docsroom/documents/8855?locale=en>.

Moreover, pursuant to Article 3(ii), the **Department for Land Transport of Ministry of Transport** is also competent for the assessment of the competences/skills of the technical services.

## 12. Are any of these parties required to disclose information on national type approval processes?

According to Article 8 of Decree of the Ministry of Transport 28 April 2008, for each type of vehicle that has received the type-approval, the type-approval authority sends, within twenty working days, a copy of the EC type-approval certificate, complete with the relative annexes, to the type approval authorities of the other Member States of the European Community. The hard copy can be replaced by an electronic copy. Moreover, the type approval authority shall without delay inform the authorities of the other Member States of the European Community of any refusal or withdrawal of approval of a vehicle, specifying the reasons for the decision. Every three months, the type-approval authority also sends the list of systems, components or technical entities for which it has issued, modified, refused or withdrawn EC type-approval to the authorities of the other Member States. At the request of an approval authority of another Member State, the approval authority which has issued an EC type-approval provides a copy thereof, within twenty working days of receipt of the request (the hard copy can be replaced by an electronic copy).

More generally, Decree of the Ministry of Transport 28 April 2008 provides for the same obligations set out in Directive 2007/46/EC with regard to the exchange of information on the type approval process, including the information referred to in Article 20 of Directive 2014/47/EU in relation to provisional approval certificates.

<sup>609</sup> Direzione Generale per la Motorizzazione, [www.mit.gov.it/ministero/dipartimento-trasporti-navigazione-affari-general/dg-motorizzazione](http://www.mit.gov.it/ministero/dipartimento-trasporti-navigazione-affari-general/dg-motorizzazione). The list of EU type approval authorities can be found at the following link.: <https://ec.europa.eu/docsroom/documents/28647/attachments/1/translations/en/renditions/native>.

<sup>610</sup> Art. 3(hh) of Decree of the Ministry of Transport 28 April 2008 which transposed Directive 2007/46/EC.



**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Pursuant to **Article 76 of the Highway Code**, for each vehicle built according to the approved type, the manufacturer issues the declaration of conformity to the buyer, which certifies that the vehicle complies with the type approved. Anyone who issues the declaration of conformity for vehicles not conforming to the approved type is subject, if the fact does not constitute a crime, to the administrative sanction of paying a sum from EUR 868 to EUR 3,471.

According to **Article 77 of the Highway Code** ('Checks of conformity on the approved type'), the Ministry of Infrastructure and Transport has the right to proceed, at any time, to ascertain compliance with the approved type of motor vehicles, trailers and devices for which the respective declaration of conformity has been issued. It also has the right to suspend or withdraw the approval of vehicles and devices if the aforementioned inspections show failure to comply with the approved type. The related costs are borne by the approval holder.

Anyone who manufactures or puts on the market a vehicle that does not conform to the approved type is subject, if the fact does not constitute a crime, to the administrative sanction of paying a sum from EUR 868 to EUR 3,471.

Anyone who imports, produces for marketing on the national territory or markets systems, components and technical units without the required approval, is subject to the administrative sanction of paying a sum from EUR 168 to EUR 679. Anyone who commits these violations in relation to braking systems, restraint devices or safety belts and tires is subject to the administrative sanction of the payment of a sum from EUR 847 to EUR 3,389. These components, even if installed on the vehicles, can be subject to seizure and confiscation.

### *Rules on tampering*

**14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

The national law does not provide any specific rules in relation to tampering following the type approval. In general, according to **Article 78 of the Highway Code**, motor vehicles and their trailers must be inspected and tested at the competent offices of the Department of Land Transport when one or more modifications are carried out to the construction or functional characteristics, or to certain equipment devices, or the frame has been replaced or modified.

Article 79 of the Highway Code ('**Efficiency of motor vehicles and their trailers in circulation**') and the correspondent Article 237 of the Implementing regulation, also provide a general obligation under which **vehicles and their trailers during circulation must be kept in conditions of maximum efficiency, as to guarantee safety (e.g. signalling devices, braking systems) and to limit noise and emissions. If these standards are subject to EU directives, the technical requirements are those contained in the directives themselves.**

Moreover, the general prohibition of tampering can be inferred by the fact that according to Article 79, anyone who circulates with a vehicle that has alterations in the construction and functional

characteristics prescribed, or circulates with the devices not functioning or not regularly installed, is subject to the administrative sanction of the payment of a sum from EUR 87 to EUR 345.<sup>611</sup>

Tampering with aftermarket parts

n/a

Tampering with the engine

n/a

Tampering with the OBD system

n/a

Odometer tampering (in particular on second-hand vehicles)

As mentioned above, the national law does not provide any specific rules in relation to tampering following the type approval. However, Article 229 of the Implementing Regulation generally prohibits tampering with the odometer reader, as it specifies that 'the odometer installed on vehicles must provide at least the indication of the total distance travelled, starting from the first entry into service of the vehicles or from the automatic reset of this indication. It must also be free of manual zeroing devices and must not be tampered with. The installation of a resettable tripmeter is allowed. The indications of the device must fall within the direct field of vision of the driver and be at least five digits, each progressively variable from zero to nine'.

Moreover, Article 8, paragraph 5, of Ministerial Decree 19 of May 2017 (Protocol 214), whilst stating that the odometer check and reading is carried out during periodic roadworthiness tests and that the data is made available to the inspectors electronically, also specifies that tampering of the odometer is punishable according to the provisions of the Highway Code (see below section 16).

Other

n/a

**15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

n/a

<sup>611</sup> The amount of the penalty is from € 1,210 to € 12,108 if the vehicle is used in for certain competitions provided for in articles 9-bis and 9-ter of the Highway Code.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

There is no specific penalty for tampering as such. However, the following administrative sanctions included in the Highway Code could also apply to tampering:

- According to Article 78 of the Highway Code, motor vehicles and their trailers must be inspected and tested at the competent offices of the Department of Land Transport when one or more modifications are carried out to the construction or functional characteristics, or to certain equipment devices, or the frame has been replaced or modified. Any user of a vehicle to which modifications have been made in relation to the characteristics indicated in the certificate of approval and in the registration certificate, or circulates with a vehicle to which the chassis has been entirely or partially replaced, and who are not found to have successfully passed the prescribed inspection and test, is subject to the administrative sanction of paying a sum from EUR 431 to EUR 1,734. These violations also entail the accessory administrative sanction of the withdrawal of the registration certificate.
- Article 79 of the Highway Code: anyone **who circulates with a vehicle that has alterations** in the construction and functional characteristics prescribed, or circulates with the devices not functioning or not regularly installed, is subject to the administrative sanction of the payment of a sum from EUR 87 to EUR 345.<sup>612</sup>
- With specific regard to tampering with the odometer reader, there is no specific crime in the Italian legal framework. However, tampering with the odometer reader when carried out in relation to the sale of a vehicle could be punished as fraud (Article 640 of the Italian Criminal Code), or 'trade fraud' (Article 515 of the Italian Criminal Code)<sup>613</sup>.
- Moreover, the sale to consumers of used cars providing the buyers with untruthful information in relation to the odometer readings, is considered a misleading practice in violation of Article 21, paragraph 1, letters b) and d), of the Legislative Decree 206/2005 ('Consumer Code')<sup>614</sup> and has become severely sanctioned by the Competition and Market Authority in terms of unfair commercial practice. Pursuant to Article 27, paragraph 9, of the Consumer Code, for such practices the Authority may order the application of a sanction from EUR 5,000 to EUR 5,000,000 (taking into account the seriousness and duration of the violation).

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

There are no specific remedies available to consumers subject to tampering.

<sup>612</sup> The amount of the penalty is from EUR 1,210 to EUR 12,108 if the vehicle is used in for certain competitions provided for in Art. 9-bis and 9-ter of the Highway Code.

<sup>613</sup> Codice Penale - Regio Decreto 19 ottobre 1930, n. 1398 Approvazione del testo definitivo del Codice Penale. (030U1398) (Gazzetta Ufficiale n.251 del 26-10-1930). Available at [www.gazzettaufficiale.it/anteprema/codici/codicePenale](http://www.gazzettaufficiale.it/anteprema/codici/codicePenale), last accessed 02/06/2020.

<sup>614</sup> Codice del Consumo – Decreto Legislativo 6 settembre 2005, n. 206 Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229. (Gazzetta Ufficiale n.235 del 8-10-2005 - Suppl. Ordinario n. 162). Available at [www.gazzettaufficiale.it/anteprema/codici/consumo](http://www.gazzettaufficiale.it/anteprema/codici/consumo), last accessed 02/06/2020.

However, according to the Consumer Code and the more general rules on contracts provided by the Italian Civil Code<sup>615</sup> and Criminal Code, the sale of a vehicle with an altered odometer leads to well-defined responsibilities. It follows that the seller's liability may concern multiple aspects:

- Criminal responsibility for commercial fraud and fraud (on the complaint of the injured party) if there is evidence that the odometer was manipulated after the seller took charge of the vehicle;
- Contractual responsibility for selling 'one thing for another': in particular, a legal warranty of product conformity is foreseen by the Consumer Code (Article 128 and following) and protects the consumer in case of faulty, malfunctioning products or non-compliance with the use declared by the seller, or for which the product is generally intended. **Pursuant to Article 129 of the Consumer Code, a product boasts conformity defects if it is not suitable for the use for which products of the same type are generally intended, if it does not comply with the seller's descriptions in terms of quality or performances, or if it lacks the typical quality and performances of a product of the same type, which the consumer can reasonably expect, keeping in consideration the nature of the product.** In this case, a purchaser of a tampered vehicle may take action within the term of the legal guarantee of 24 months. The consumer is advised to send a communication to the seller via registered post, complaining of a serious lack of conformity of the product pursuant to Article 129 of the Consumer Code and requesting compensation for damage and/or price reduction. The burden of proof lies with the seller, i.e. proving that the defect is due to the driver's inexperience or negligence or that it is attributable to a previous use.
- Institutional responsibility for unfair commercial practice: the sale to consumers of used cars providing the buyers with untruthful information in relation to the odometer readings, is considered a misleading practice in violation of Article 21, paragraph 1, letters b) and d), of the Consumer Code and has become severely sanctioned by the Competition and Market Authority in terms of unfair commercial practice. Pursuant to Article 27, paragraph 9, of the Consumer Code, for such practices the Authority may order the application of a pecuniary administrative sanction from EUR 5,000 to EUR 5,000,000 (taking into account the seriousness and duration of the violation).

### Tests and inspections

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The periodic roadworthiness tests are regulated by Ministerial Decree 19 May 2017 (Protocol 214) which implemented Directive 2014/45/UE, and by certain provision of the Highway Code and the Implementing Regulation.

#### WHERE

The periodic roadworthiness checks are carried out in public control centers of the Ministry of Infrastructure and Transport - Department for Transport, Navigation, General Affairs and

<sup>615</sup> Codice Civile - Regio Decreto 16 marzo 1942, n. 262 Approvazione del testo del Codice civile. (042U0262) (Gazzetta Ufficiale n.79 del 4-4-1942). Available at: [www.gazzettaufficiale.it/anteprima/codici/codiceCivile](http://www.gazzettaufficiale.it/anteprima/codici/codiceCivile), last accessed 02/06/2020.

Personnel<sup>616</sup>, or in private control centers which may be specifically authorised to carry out these tests in particular circumstances.<sup>617</sup>

#### WHEN

Article 5 of Ministerial Decree 19 May 2017 (Protocol 214) sets the frequency of the tests depending on the type of vehicle (e.g. M1, M2, M3, N1, N2, etc.).

#### HOW

Pursuant to Article 6 of Ministerial Decree 19 May 2017 (Protocol 214), all the technical inspections must cover at least the following areas listed in Annex I, point 2 of said Decree:

- vehicle identification;
- braking system;
- steering;
- visibility;
- electrical system and parts of the electrical circuit;
- axles, wheels, tires, suspensions;
- frame and elements fixed to the frame;
- other equipment;
- harmful effects;
- additional checks for vehicles of categories M2 and M3 used for the transport of passengers.

The defects detected during the technical inspections of the vehicles are classified as follows: minor defects, serious defects, and dangerous (very serious) defects.<sup>618</sup>

In relation to tampering, Article 8, paragraph 5 of Ministerial Decree 19 May 2017 (Protocol 214), whilst stating that the odometer check and reading is carried out during these periodic tests and that the data is made available to the inspectors electronically, also specifies that tampering of the odometer is punishable according to the provisions of the Highway Code.

#### BY WHOM

The technical checks are carried out in specific control centers by inspectors of the Ministry, or by authorised private inspectors appointed by the Ministry, which must both meet specific requirements set out in Article 13 and Annex IV of Ministerial Decree 19 May 2017 (Protocol 214), as well as specific requirements laid down in the Article 80 of the Highway Code and Article 239 of the Implementing Regulation.

### 19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in

<sup>616</sup> Art.4 and Art.12 of Ministerial Decree 19 May 2017 (Protocol 214).

<sup>617</sup> According to Art. 80, paragraph 8, of the Highway Code (and the related Art. 239 of the Implementing Regulation): in relation to particular and contingent operating situations of the competent offices of the Department of Land Transport, in order to ensure, compliance with the deadlines for periodic inspections of certain categories of motor vehicles, the Minister of Infrastructure and Transport may, for individual provinces identified with its own decree, entrust the roadworthiness tests (with a five-year concession) to car repair companies that carry out their activities in the field of mechanics and motoring, bodywork, auto repairers and tire repairers, or to companies that, exercising mainly vehicle trading activities, also exercise the self-repair activity. These companies must be registered in specific company registers pursuant to Art. 2, paragraph 1, of the law of 5 February 1992, n. 122.

<sup>618</sup> Art. 7 and Annex I, point 3 of Ministerial Decree 19 May 2017 (Protocol 214).

relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.

The minimum requirements for conducting technical roadside inspections are regulated by Ministerial Decree 19 of May 2017 (Protocol 215) which implemented Directive 2014/47/UE.

#### WHEN

In the selection of an initial technical road inspection, priority may be given to vehicles from companies with a high-risk profile. Other vehicles may also be randomly chosen for inspection or if they are suspected of presenting a risk to road safety or the environment.<sup>619</sup>

#### HOW

The technical road inspection regime consists of initial technical road inspections, and more detailed technical road inspections.<sup>620</sup> In each initial technical roadside inspection carried out on a vehicle, the inspector checks the latest inspection certificate and the latest report relating to a technical roadside inspection, if available. The inspector carries out a visual assessment of the technical condition of the vehicle, as well of the fixing of the vehicle load and, more generally, can carry out technical checks by any method deemed appropriate.<sup>621</sup>

Based on the results of the initial inspection, the inspector decides whether the vehicle or its trailer should undergo a more thorough roadside inspection. A more thorough technical roadside inspection concerns specific elements which are considered necessary and relevant, taking into account, in particular, the safety of brakes, tires, wheels and chassis and the harmful effects, and the recommended methods applicable to the control of these elements.<sup>622</sup> If the inspection certificate or a roadside inspection report proves that one of the areas listed in this regard has been subject to inspection during the previous three months, the inspector will not check it except in cases where this is justified by an obvious defect. The more detailed roadside technical inspections are carried out using a mobile unit, or at one of the closest control centers, depending on the availability of means and the scope of the inspection.<sup>623</sup>

Any serious or dangerous deficiency detected in an initial technical inspection or in a more detailed technical inspection must be corrected before the vehicle can circulate on public roads again.

#### BY WHOM

Roadside inspections are carried out by specific inspectors authorised by the Ministry of Infrastructure and Transport. This task is generally carried out by agents of the Highway Patrol ('Polizia Stradale') in the context of their general duty of prevention and detection of traffic violations.<sup>624</sup>

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

#### Periodic roadworthiness tests

<sup>619</sup> Art. 9 of Ministerial Decree 19 May 2017 (Protocol 215).

<sup>620</sup> Art. 4 of Ministerial Decree 19 May 2017 (Protocol 215).

<sup>621</sup> Art. 10 of Ministerial Decree 19 May 2017 (Protocol 215).

<sup>622</sup> Art. 10.5 and Annex II of Ministerial Decree 19 May 2017 (Protocol 215)

<sup>623</sup> Art. 11 of Ministerial Decree 19 May 2017 (Protocol 215).

<sup>624</sup> Art. 12 of the Highway Code and Art.22-25 of the Implementing Regulation.



Pursuant to Article 3, paragraph 1(o) of Ministerial Decree 19 May 2017 (Protocol 214), the competent authority with regards to periodic roadworthiness tests is the **Directorate General for Motorisation** of the Ministry of Infrastructure and Transport. The tests are carried out by inspectors of the Ministry, or by authorised private inspectors appointed by the Ministry, which must meet specific requirements set out in Article 13 and Annex IV of Ministerial Decree 19 May 2017 (Protocol 214), as well as specific requirements laid down in the Article 80 of the Highway Code and Article 239 of the Implementing Regulation.

#### **Technical roadside inspections**

Pursuant to Article 3, paragraph 1 (p) of Ministerial Decree 19 May 2017 (Protocol 215) the competent authority responsible for managing the system of roadside technical inspections including carrying out these inspections is the **Directorate General for Motorisation** of the Ministry of Infrastructure and Transport. The inspections are carried out by inspectors specifically authorised by the competent authority to carry out both the initial or more thorough technical roadside checks. This task is generally carried out by agents of the Highway Patrol (*'Polizia Stradale'*) in the context of their general duty of prevention and detection of traffic violations.

### **21. Are any of these authorities required to disclose information on these tests and inspections?**

#### **Periodic roadworthiness tests**

Pursuant to Article 8 of Ministerial Decree 19 May 2017 (Protocol 214), following the roadworthiness test, the control centers issue an audit certificate, a hard copy of which must be issued to the person who presented the vehicle for inspection. The control centers shall communicate the information contained in the audit certificates and the outcome of the periodic test to the Data Processing Center of the Ministry of Infrastructure and Transport - Directorate-General for Motorisation. The aforementioned information must be kept by the Data Processing Center of the Ministry of Infrastructure and Transport for a period of at least forty-eight months. The data relating to the odometer reading carried out during these tests is also made available to the inspectors electronically.

#### **Technical roadside inspections**

Pursuant to Article 16 of Ministerial Decree 19 May 2017 (Protocol 215), the details of the vehicles and the results of an initial roadside technical are communicated to the competent authority (i.e. the Directorate General for Motorisation of the Ministry of Infrastructure and Transport). Following a more thorough check, the inspector draws up a report, and the competent authority ensures that the driver of the vehicle receives a copy thereof. The inspector shall communicate to the competent authority the results of the more thorough technical roadside inspection within a reasonable period following the inspection in question. The competent authority shall keep this information in accordance with the applicable data protection legislation for at least thirty-six months from the date of their receipt.

Pursuant to Article 20 of Ministerial Decree 19 May 2017 (Protocol 215), every two years the competent authority (i.e. the Directorate General for Motorisation of the Ministry of Infrastructure and Transport) shall transmit the data collected concerning vehicles checked in the national territory to the European Commission. For vehicles not registered in Italy, if serious or dangerous deficiencies are detected, the contact point shall notify the results of the inspection to the respective contact point of the Member State where the vehicle was registered. If serious or dangerous deficiencies are found, the contact point may request the vehicle registration authority of the European Union



Member State to adopt appropriate measures, such as subjecting the vehicle to a further technical inspection.<sup>625</sup>

**22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

**Periodic roadworthiness tests**

According to Article 80, paragraph 14, of the Highway Code, anyone traveling with a vehicle that has not been submitted to the prescribed periodic test is subject to an administrative sanction of paying a sum from EUR 173 to EUR 695. This sanction can be doubled if the periodic revision is omitted more than once. The vehicle is suspended from circulation until the periodic test is carried out and the circulation of the vehicle is allowed for the sole purpose of going to one of the control centers for the prescribed inspection. Except for the latter case, anyone travelling with a vehicle suspended from circulation pending the outcome of the periodic test is subject to the administrative sanction of the payment of a sum between EUR 2,002 and EUR 8,009 and the vehicle is subject to an administrative detention of ninety days. In the event of a recurrence of the violations, the accessory sanction of the administrative confiscation of the vehicle is applied.

In relation to the control centers authorised to carry out periodic roadworthiness tests, if these fail to comply with the obligations to communicate the relevant information to the Ministry of Transport Pursuant Article 80(13) of the Highway Code, they are subject to the administrative sanction of payment of a sum from EUR 431 to EUR 1,734. If three violations are found within two years from the first, the authorisation is revoked.<sup>626</sup> Moreover, the falsification of the audit certificates leads to the cancellation from the register of authorised control centers.<sup>627</sup>

Anyone who produces a false audit certificate to the competent bodies is subject to an administrative sanction for the payment of a sum from EUR 431 to EUR 1,734. This violation also leads to the application of the accessory administrative sanction of the withdrawal of the registration certificate.<sup>628</sup>

**Technical roadside inspections**

In case of violation of the provisions of Ministerial Decree of 19 May 2017 (Protocol 215), the penalties provided for by Article 79 of the Highway Code are applicable.<sup>629</sup> In particular, anyone who travels with a vehicle that has alterations in the construction and functional characteristics prescribed, or circulates with the devices not functioning or not regularly installed, is subject to the administrative sanction of the payment of a sum of EUR 87 to EUR 345.<sup>630</sup>

*National strategies and initiatives*

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

<sup>625</sup> Art. 19 of Ministerial Decree 19 May 2017 (Protocol 215).

<sup>626</sup> Art. 80(15) of the Highway Code.

<sup>627</sup> Art. 80(16) of the Highway Code.

<sup>628</sup> Art. 80(17) of the Highway Code.

<sup>629</sup> Art. 21 of Ministerial Decree 19 May 2017 (Protocol 215).

<sup>630</sup> The amount of the penalty is from EUR 1,210 to EUR 12,108 if the vehicle is used in for certain competitions provided for in Art. 9-bis and 9-ter of the Highway Code.

According to Article 8, paragraph 5 of Ministerial Decree of 19 May 2017 (Protocol 214), the data relating to the odometer reading collected during the periodic roadworthiness tests is made available to the inspectors by electronic means.

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

Besides CarFax, buyers of second-hand vehicles can rely on the data provided on a specific website developed by the Ministry of Infrastructure and Transport, in collaboration with the Italian Post Office, called the 'Motorist Portal' (*'Il Portale dell'Automobilista'*)<sup>631</sup>. This website is totally free and allows a user to retrieve information in relation to the history of a second-hand vehicle, also with regards to the mileage history. In particular, by conducting research based on the type of vehicle and the license plate number, it is possible to access the data related to the last odometer reading of a vehicle, dating back to the last periodic test carried out at authorised center. The information, although truthful, may not be always be up to date, but still represents a valid point of reference for evaluating used cars.

The portal is accessible at the following link: [www.ilportaledellautomobilista.it/web/portale-automobilista/home](http://www.ilportaledellautomobilista.it/web/portale-automobilista/home)

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

n/a

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other public institutions?**

The Automobile Club of Italy (ACI), a non-economic public body<sup>632</sup>, has proposed to develop a so-called 'digital logbook' of the vehicle, consisting in a solution that would allow to put a stop to scams on odometers, certifying the real mileage of the cars and certifying the maintenance interventions carried out with respect to each vehicle. Developed in collaboration with EY, this product would be based on 'blockchain' technology which, through the encryption and concatenation of data, would allow to certify the life cycle of the vehicle through the virtual registration of the data (which would be accessible via a specific mobile application).<sup>633</sup>

<sup>631</sup> More information available at [www.mit.gov.it/comunicazione/news/automobilista/portale-dellautomobilista-accesso-facile-dati-su-auto-e-patenti](http://www.mit.gov.it/comunicazione/news/automobilista/portale-dellautomobilista-accesso-facile-dati-su-auto-e-patenti)

<sup>632</sup> More information available at: [www.aci.it/](http://www.aci.it/)

<sup>633</sup> More information available at: [www.ansa.it/canale\\_motori/notizie/componentie\\_tech/2019/03/04/acistop-a-truffe-del-contachilometri-con-fascicolo-digitale\\_e901f65c-194f-4e48-bc46-e69bd24185b6.html](http://www.ansa.it/canale_motori/notizie/componentie_tech/2019/03/04/acistop-a-truffe-del-contachilometri-con-fascicolo-digitale_e901f65c-194f-4e48-bc46-e69bd24185b6.html)

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

n/a

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

n/a

### *Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There has been no research carried out at national level that would allow for an answer to this question.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question.

Potential gaps in the legislation

More sanctions/penalties could be implemented specifically to punish tampering with specific parts of the vehicle (e.g. though tampering with the odometer reader can be punished as fraud under the more general rules of the Italian Criminal Code, there is no specific crime for tampering with the odometer reader; nor any specific sanction are in place on manufacturers, repairers and operators of the vehicles for tampering with systems which use a consumable reagent).

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

The enforcement system seems sufficiently proportionate and non-discriminatory. However, it may not be very dissuasive due to the fact that most of the sanctions seem to apply to the owner of the vehicle or the person circulating with the vehicle at the time of the inspection, and it may be difficult to demonstrate that the defect of the vehicle may derive from conducts of the manufacturer/seller of the vehicle instead. Moreover, no specific criminal penalty is in place in relation to tampering with vehicle part as such (unless the practice falls within fraud/commercial fraud), hence the simple application of a pecuniary fine may not be the most dissuasive instrument to prevent such practices.

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

No legal or practical obstacle has been found.

*Other*

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

**ACI – Automobile Club Italia**

Via Marsala 8, 00185 Roma

Tel. 06 49981

Website: <http://www.aci.it/i-servizi/servizi-online.html>

**ANFIA - Associazione Nazionale Filiera Industria Automobilistica (National Association of Automotive Industry Chain)**

**ANFIA - Turin Headquarters:**

10128 Torino – Corso Galileo Ferraris 61

Phone: (39) 011 55 46 511

Fax: (39) 011 54 59 86

E-mail: [anfia@anfia.it](mailto:anfia@anfia.it)

**ANFIA - Rome Headquarters:**

00144 Roma – Viale Pasteur 10

Phone: (39) 06 54 22 14 93/4

Fax: (39) 06 54 22 14 18

E-mail: [anfia.roma@anfia.it](mailto:anfia.roma@anfia.it)

Website: [www.anfia.it/en/](http://www.anfia.it/en/)

**Directorate General for Motorisation – Direzione Generale per la Motorizzazione**

**Responsible: [Alessandro Calchetti](#)**

Via Giuseppe Caraci, 36, Roma, Città Metropolitana di Roma, 00157, Lazio, Italia

Telefono: 06/4158.6672 - 6694 - 6695 - 6678

Email: [dgmot.segr@mit.gov.it](mailto:dgmot.segr@mit.gov.it)

A list of other contact details can be found at the following link:

[http://trasparenza.mit.gov.it/index.php?id\\_sezione=25&id\\_cat=0](http://trasparenza.mit.gov.it/index.php?id_sezione=25&id_cat=0)

Website: <http://www.mit.gov.it/ministero/dipartimento-trasporti-navigazione-affari-general/dg-motorizzazione>

**ASSO.CAR - Associazione Nazionale Centri di Controllo (National Association of Control Centers)**

General Mail: [info@asso-car.it](mailto:info@asso-car.it)

Website: [www.asso-car.it/chi-siamo/](http://www.asso-car.it/chi-siamo/)

**President: Luca Donna**

Tel: 3386601821  
Mail: [lucadonna2008@libero.it](mailto:lucadonna2008@libero.it)

**Secretary General: Fabio Marinello**

Tel: 3462105941  
Mail: [fabio@quadrarerevisioni.it](mailto:fabio@quadrarerevisioni.it)

### 33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?

n/a

#### Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

#### **Supreme Court of Criminal Cassation - Section 1 - 02 May 2019, n. 18221 - Alteration of the truck's digital odometer.<sup>634</sup>**

In this case, the judges ruled whether tampering with the odometer reader of a truck could be punished as a crime pursuant to Article 437 of the Criminal Code (which punishes the tampering with tools that serve to prevent accidents on the workplace) or whether it should be punished with a simple administrative penalty pursuant Article 179 of the Highway Code.<sup>635</sup> The judges confirmed that tampering is a crime under Article 437 of the Criminal Code, only if it is carried out by the company that owns the vehicle, while the driver must respond only in violation of Article 179 of the Highway Code (administrative fine). In this specific case, the driver confessed that he had installed the magnets to overcome the driving time because he wanted to return home for family reasons. According to the judges, in such hypothesis the driver who travels with the tampered or altered odometer is subject to only to the administrative sanction provided for by Article 179 of the Highway Code. The incriminating case referred to in Article 437 of the Italian criminal code has a greater scope than that provided for in Article 179 of the Highway Code, since, while the former, identifies, among the active subjects, all those who have an obligation to prevent - through systems, devices or signals - disasters or accidents on the workplace, the latter has as its recipient only the driver of the means of transport. The crime provided for by Article 437 of the Italian Criminal Code is intended to protect public safety with reference to the work environment, requiring the adoption of the necessary preventive tools regarding the risk of disasters or accidents, so that the this case is clearly aimed at regulating the business activities. It follows that, in any case in which the alteration of the odometer was directly performed by the driver of the vehicle for reasons not attributable to the exercise of the business activity, he is liable in relation to the administrative offense referred to in Article 179 of the Highway Code, with consequent exclusion of the criminal offense referred to in Article 437 of the

<sup>634</sup> Cassazione Penale, Sez. 1, 02 maggio 2019, n. 18221 - Alterazione del tachigrafo digitale dell'autocarro. Available at :

[www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=../20190502/snpen@s10@a2019@n18221@tS.clean.pdf](http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=../20190502/snpen@s10@a2019@n18221@tS.clean.pdf).

<sup>635</sup> This issue emerged after the Highway Patrol began to report the drivers, and in several cases also the companies owning the vehicle, for violation of article 437 of the Criminal Code. Many appeals were filed after the first criminal convictions, thus prompting the Supreme Court to decide on the merits. Case 18221/2019 arises from the fact that a driver of a heavy-duty vehicle was charged under Article 437 of the Criminal Code because he had been discovered in the act by driving a truck that mounted four magnets on the odometer

criminal code. In turn, where the violation was committed, directly by the employer, or in any case on his disposal, and in any case for reasons relating to the performance of the business activity, this appears consistent with the ratio of the crime envisaged by Article 437 of the criminal code.

#### Sources on tampering

Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.

Title	Reference	Short description
<p>Le prospettive del settore dei veicoli industriali in Italia per una mobilità sostenibile, più sicura, più efficiente.</p> <p>The prospects of the industrial vehicle sector in Italy for sustainable, safer, more efficient mobility</p>	<p><a href="http://www.unrae.it/files/RIE%20per%20UNRAE%20STUDIO%20COMPLETO%20con%20ES%20versione%20impaginata%205bfd31ba53548.pdf">http://www.unrae.it/files/RIE%20per%20UNRAE%20STUDIO%20COMPLETO%20con%20ES%20versione%20impaginata%205bfd31ba53548.pdf</a></p>	<p>This study conducted by RIE - Industrial and Energy Research on behalf of UNRAE (National Union of Foreign Automotive Representatives)<sup>636</sup> aims to analyse the prospects of the industrial vehicle sector in Italy in light of the current challenges posed by climate change and in view of new environmental policies which place increasing attention on new engine technologies.</p>

<sup>636</sup> Unione Nazionale Rappresentanti Autoveicoli Esteri. Website : [www.unrae.it](http://www.unrae.it)

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

**Règlement grand-ducal du 6 juin 2008** complétant le règlement grand-ducal modifié du 3 février 1998 portant exécution de Directives des CE relatives à la réception des véhicules à moteur et de leurs remorques ainsi que des tracteurs agricoles et forestiers à roues (**Grand-ducal Regulation of 6 June 2008** supplementing the modified Grand-ducal Regulation of 3 February 1998 implementing directives of the EC relating to the approval of motor vehicles and their trailers as well as wheeled agricultural and forestry tractors), Memorial A No 84 of 2008<sup>637</sup>.

**Loi modifiée du 9 mars 2018** concernant la réglementation de la circulation sur toutes les voies publiques en ce qu'elle modifie la loi du 14 février 1955 concernant la réglementation de la circulation sur toutes les voies publiques (Amended Law of 9 March 2018 on the regulation of traffic on all public roads amending the Law of 14 February 1955 concerning the regulation of traffic on all public roads), Memorial A No 195 of 2018<sup>638</sup>.

Directive 2014/45/EU (on periodic roadworthiness tests)

**Règlement grand-ducal modifié du 26 janvier 2016** sur le contrôle technique des véhicules routiers (Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles), Memorial A No 8 of 2016<sup>639</sup>.

Regulation amended by :

Règlement grand-ducal du 30 août 2016 (Grand-ducal Regulation of 30 August 2016), Memorial A No 181 of 2016<sup>640</sup>.

Règlement grand-ducal du 4 mai 2016 (Grand-ducal Regulation of 4 May 2016), Memorial A No 87 of 2016<sup>641</sup>.

Règlement grand-ducal du 11 septembre 2018 (Grand-ducal Regulation of 11 September 2018), Memorial A No 852 of 2018<sup>642</sup>.

**Règlement grand-ducal du 26 janvier 2016** portant règlement de la circulation sur toutes les voies publiques (Grand-ducal Regulation of 26 January 2016 regulating traffic on all public roads, Memorial A, No 8 of 2016<sup>643</sup>.

Regulation amended by :

Règlement grand-ducal du 30 août 2016 (Grand-ducal Regulation of 30 August 2016), Memorial A No 181 of 2016<sup>644</sup>.

<sup>637</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2008/06/06/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2008/06/06/n1/jo)

<sup>638</sup> Available at : [www.legilux.lu/eli/etat/leg/loi/2018/03/09/a195/jo](http://www.legilux.lu/eli/etat/leg/loi/2018/03/09/a195/jo)

<sup>639</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo)

<sup>640</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo)

<sup>641</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/05/04/n3/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/05/04/n3/jo)

<sup>642</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo)

<sup>643</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n3/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n3/jo)



Règlement grand-ducal du 11 septembre 2018 (Grand-ducal Regulation of 11 September 2018), Memorial A No 852 of 2018<sup>645</sup>.

Règlement grand-ducal du 1<sup>er</sup> octobre 2018 (Grand-ducal Regulation of 1 October 2018), Memorial A No 915<sup>646</sup>.

**Loi du 26 janvier 2016** concernant la réglementation de la circulation sur toutes les voies publiques (Law of 26 January 2016 concerning the regulation of traffic on all public roads), Memorial A No 8 of 2016<sup>647</sup>.

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

**Règlement grand-ducal du 26 janvier 2016** sur le contrôle technique des véhicules routiers (Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles), Memorial A No 8 of 2016<sup>648</sup>.

Regulation amended by :

Règlement grand-ducal du 30 août 2016 (Grand-ducal Regulation of 30 August 2016), Memorial A No 181 of 2016<sup>649</sup>.

Règlement grand-ducal du 4 mai 2016 (Grand-ducal Regulation of 4 May 2016), Memorial A No 87 of 2016<sup>650</sup>.

Règlement grand-ducal du 11 septembre 2018 (Grand-ducal Regulation of 11 September 2018), Memorial A No 852 of 2018<sup>651</sup>.

**Règlement grand-ducal du 26 janvier 2016** portant règlement de la circulation sur toutes les voies publiques (Grand-ducal Regulation of 26 January 2016 regulating traffic on all public roads, Memorial A, No 8 of 2016<sup>652</sup>.

**Loi du 26 janvier 2016** concernant la réglementation de la circulation sur toutes les voies publiques (Law of 26 January 2016 concerning the regulation of traffic on all public roads), Memorial A No 8 of 2016<sup>653</sup>.

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<sup>644</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo)

<sup>645</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo)

<sup>646</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/10/01/a915/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/10/01/a915/jo)

<sup>647</sup> Available at : [www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo)

<sup>648</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo)

<sup>649</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo)

<sup>650</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/05/04/n3/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/05/04/n3/jo)

<sup>651</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo)

<sup>652</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n3/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n3/jo)

<sup>653</sup> Available at : [www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo)

**2. Which national measures cover the field or subject matter set out in the following Regulations?  
Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

**Loi du 26 janvier 2016** concernant la réglementation de la circulation sur toutes les voies publiques (Law of 26 January 2016 concerning the regulation of traffic on all public roads), Memorial A No 8 of 2016<sup>654</sup>.

**Règlement grand-ducal du 26 janvier 2016** relatif à la **réception et l'immatriculation** des véhicules routiers (Grand-ducal Regulation of 26 January 2016 relating to the approval and registration of road vehicles), Memorial A No 8 of 2016<sup>655</sup>.

Regulation amended by :

Règlement grand-ducal du 30 août 2016 (Grand-ducal Regulation of 30 August 2016), Memorial A No 181 of 2016<sup>656</sup>.

Règlement grand-ducal du 11 septembre 2018 (Grand-ducal Regulation of 11 September 2018), Memorial A No 852 of 2018<sup>657</sup>.

Règlement grand-ducal du 1<sup>er</sup> octobre 2018 (Grand-ducal Regulation of 1 October 2018), Memorial A No 915<sup>658</sup>.

**Règlement grand-ducal du 6 juin 2008** portant exécution de Directives des CE relatives à la **réception** des véhicules à moteur et de leurs remorques ainsi que des tracteurs agricoles et forestiers à roues (Grand-ducal Regulation of 6 June 2008 implementing directives of the EC relating to the approval of motor vehicles and their trailers as well as wheeled agricultural and forestry tractors), Memorial A No 84 of 2008<sup>659</sup>.

**Loi modifiée du 9 mars 2018** concernant la réglementation de la **circulation sur toutes les voies publiques** en ce qu'elle modifie la loi du 14 février 1955 concernant la réglementation de la circulation sur toutes les voies publiques (Amended law of 9 March 2018 on the regulation of traffic on all public roads amending the law of 14 February 1955 concerning the regulation of traffic on all public roads), Memorial A No 195 of 2018<sup>660</sup>.

Commission Regulation (EU) 2017/1151 (on odometer readings)

**Loi du 26 janvier 2016** concernant la réglementation de la circulation sur toutes les voies publiques (Law of 26 January 2016 concerning the regulation of traffic on all public roads), Memorial A No 8 of 2016<sup>661</sup>.

**Règlement grand-ducal du 26 janvier 2016** relatif à la **réception et l'immatriculation** des véhicules routiers (Grand-ducal Regulation of 26 January 2016 relating to the approval and registration of road vehicles), Memorial A No 8 of 2016<sup>662</sup>.

<sup>654</sup> Available at : [www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo)

<sup>655</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n2/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n2/jo)

<sup>656</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo)

<sup>657</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo)

<sup>658</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/10/01/a915/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/10/01/a915/jo)

<sup>659</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2008/06/06/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2008/06/06/n1/jo)

<sup>660</sup> Available at : [www.legilux.lu/eli/etat/leg/loi/2018/03/09/a195/jo](http://www.legilux.lu/eli/etat/leg/loi/2018/03/09/a195/jo)

<sup>661</sup> Available at : [www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo)

<sup>662</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n2/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n2/jo)

Regulation amended by :

Règlement grand-ducal du 30 août 2016 (Grand-ducal Regulation of 30 August 2016), Memorial A No 181 of 2016<sup>663</sup>.

Règlement grand-ducal du 11 septembre 2018 (Grand-ducal Regulation of 11 September 2018), Memorial A No 852 of 2018<sup>664</sup>.

Règlement grand-ducal du 1<sup>er</sup> octobre 2018 (Grand-ducal Regulation of 1 October 2018), Memorial A No 915<sup>665</sup>.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

**Règlement grand-ducal du 26 janvier 2016 sur le contrôle technique des véhicules routiers** (Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles), Memorial A No 8 of 2016<sup>666</sup>.

Regulation as amended by :

Règlement grand-ducal du 30 août 2016 (Grand-ducal Regulation of 30 August 2016), Memorial A No 181 of 2016<sup>667</sup>.

Règlement grand-ducal du 4 mai 2016 (Grand-ducal Regulation of 4 May 2016), Memorial A No 87 of 2016<sup>668</sup>.

Règlement grand-ducal du 11 septembre 2018 (Grand-ducal Regulation of 11 September 2018), Memorial A No 852 of 2018<sup>669</sup>.

**Règlement grand-ducal du 26 janvier 2016** portant règlement de la **circulation sur toutes les voies publiques** (Grand-ducal regulation of 26 January 2016 regulating traffic on all public roads, Memorial A, No 8 of 2016<sup>670</sup>.

**Loi du 26 janvier 2016** concernant la réglementation de la **circulation sur toutes les voies publiques** (Law of 26 January 2016 concerning the regulation of traffic on all public roads), Memorial A No 8 of 2016<sup>671</sup>.

**Règlement grand-ducal du 16 juin 2011** concernant les modalités et les sanctions relatives à l'installation et l'utilisation des **tachygraphes** (Grand-ducal Regulation of 16 June 2011 concerning the terms and sanctions relating to the installation and use of tachographs), Memorial A No 137 of 2011.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

N/A

<sup>663</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo)

<sup>664</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo)

<sup>665</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/10/01/a915/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/10/01/a915/jo)

<sup>666</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n1/jo)

<sup>667</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/08/30/n1/jo)

<sup>668</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/05/04/n3/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/05/04/n3/jo)

<sup>669</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo](http://www.legilux.lu/eli/etat/leg/rgd/2018/09/11/a852/jo)

<sup>670</sup> Available at : [www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n3/jo](http://www.legilux.lu/eli/etat/leg/rgd/2016/01/26/n3/jo)

<sup>671</sup> Available at : [www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo](http://www.legilux.lu/eli/etat/leg/loi/2016/01/26/n1/jo)

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

The pieces of legislation set out above refer to the EU directives and regulations they implement / cover.

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

Transposition of EU Directives

Environmental and security considerations:

Grand-ducal Regulation of 26 January 2016 relating to the approval and the registration of road vehicles, Article 5

“2) If a vehicle has undergone a modification, transformation or repair likely to change one of the technical characteristics appearing on its approval certificate or other acceptance report, its certificate of conformity or its registration certificate, national approval individual vehicle is made on the basis of a note, established and signed either by the assembler or the repairer of the vehicle, or by the transformation workshop referred to in article 4, paragraph 4 of the aforementioned law of 14 February 1955, or by one of the technical services referred to in paragraph 1. This note describes the modification, transformation or repair carried out and includes the attestation that this modification, transformation or repair has been carried out according to the rules of the art and in accordance with the relevant technical requirements, and that it does not affect **safety or the environmental behavior of the vehicle.**”

Law of 26 January 2016 concerning the regulation of traffic on all public roads, Article 3 :

“Article 4bis. (1) Road vehicles subject to registration in Luxembourg are subject to periodic technical control intended to verify their **technical safety** as well as their regulatory compliance on the technical and **environmental** level.

4) The findings made by the technical inspection inspectors during the inspection of a road vehicle are

registered on the technical control certificate established by the technical control body. The person presenting the road vehicle to the control is informed of all the defects or non-conformities identified on the vehicle and which must be corrected.

Defects or non-conformities found during road vehicle technical inspections are classified in one of the following categories: [...]

2. Major faults or non-conformities likely to compromise the safety of the road vehicle, to have a negative impact on the **environment** or to endanger other road users, or even other significant anomalies, without however pose an immediate danger to traffic, give rise to the establishment of a technical control certificate valid for four weeks.”

Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles, Article 3

“(1) The technical inspection of road vehicles relates to the condition, functioning and adequate maintenance from the technical and regulatory point of view of their bodies and elements listed in Annex II as well as their equipment and their conformity. technical and environmental regulations. Annex II Requirements concerning the content and technical control methods nuisance: partly linked to **environmental reasons.**”

Amended law of 9 March 2018 on the regulation of traffic on all public roads amending the law of 14 February 1955 concerning the regulation of traffic on all public roads, Memorial A No 195 of 2018,

Article 3 : “Road vehicles subject to registration in Luxembourg shall undertake periodic technical control intended to verify their technical safety as well as their regulatory compliance on the **technical and environmental level**.

## Requirements and rules on tampering

### *Obligations manufacturers*

#### **6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

No specific legal requirements; manufacturers will need to meet the requirements set out as part of the type approval process (set out in the section below), which may relate to tampering.

#### **7. Are there any other requirements relating to tampering which manufacturers need to meet?**

Idem.

#### **8. Are manufacturers required to disclose information relating to tampering (resistance)?**

Idem.

### *Type approval*

#### **9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

Law of 26 January 2016 on the regulation of traffic on all public roads, Article 2: The types of motor vehicles and the types of trailers which are intended to be coupled to it must, for the registration in Luxembourg of the corresponding road vehicles, meet the requirements of European Union directives on vehicle type approval. They must be subject to type approval in accordance with the requirements of these directives, known as European type approval or European approval, and give rise to the establishment by the manufacturer of a European certificate of conformity for each road vehicle corresponding to the type approved.

In the absence of European type approval, these types of vehicles must be subject to a national type approval in Luxembourg. In fact, if the manufacturer has not issued the European type approval, he or his official representative have then issued a national type approval i.e. they established a national certificate of conformity for the road vehicle corresponding to the type of vehicle.

Law of 26 January 2016 on the regulation of traffic on all public roads, Article 3(1):

An individual national approval is issued for a vehicle, provided that:

a) that this vehicle does not present a danger for its occupants or for other road users, nor non-technical or environmental non-conformity, and

b) that this vehicle meets the provisions of the modified Grand-Ducal Decree of 23 November 1955 laying down regulations on traffic on all public roads in effect at the time of construction, unless it is:

- designed according to new technologies,
- intended for scientific tests on the public highway, or

- includes technical elements necessary for a special use.

#### 10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?

Grand-Ducal Regulation of 26 January 2016 relating to the approval and the registration of road vehicles, Article 5:

(1) For the purposes of a national type approval or an individual national approval, the Société Nationale de Circulation Automobile (National Society of Automobile Traffic) may require any certificate, report, attestation or descriptive note, mentioning the data for which the systems, components and technical units of the vehicle or vehicle type have been calculated and dimensioned and documenting the level of performance thereof.

The documents referred to in paragraph 1 may be issued either by a competent approval authority of another country, or by the manufacturer of the vehicle type or of the vehicle or his official representative.

2) If a vehicle has undergone a modification, transformation or repair likely to change one of the technical characteristics appearing on its approval certificate or other acceptance report, its certificate of conformity or its registration certificate, and individual national approval is made on the basis of a note, established and signed either by the assembler or the repairer of the vehicle, or by the transformation workshop referred to in article 4, paragraph 4 of the aforementioned law of 14 February 1955, or by one of the technical services referred to in paragraph 1. This note describes the modification, transformation or repair carried out and includes the attestation that this modification, transformation or repair has been carried out according to the state of the art and in accordance with the relevant technical requirements, and that it does not affect safety or the environmental behavior of the vehicle.

#### 11. Please list the national type approval authority<sup>672</sup> and technical services<sup>673</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.

National type approval authorities:

Société Nationale de Circulation Automobile (SNCA), Approval Service: is responsible for the national type approval (designated by Grand-ducal Regulation of 26 January 2016 relating to the approval and registration of road vehicles, Article 1(2)).

National Society of Certification and Homologation: is responsible for carrying out the work in connection with the European and international homologation (designated by Grand-ducal Regulation of 30 January 1983 as having the execution of the homologation work of the equipment and parts of motor vehicles under its responsibility<sup>674</sup>. It is therefore the approval authority in charge of the EU type approval process.

These two organisations may, if necessary and for the part of the tests and expert appraisals, have

<sup>672</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>673</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>674</sup> Available at: [www.legilux.lu/eli/etat/leg/rgd/1983/01/30/n1/jo](http://www.legilux.lu/eli/etat/leg/rgd/1983/01/30/n1/jo)

recourse to specialised organisations (technical services) which are approved by the Minister having transport in its attributions.

Technical services (list available at: [www.snch.lu/fr-FR/Page/Documents](http://www.snch.lu/fr-FR/Page/Documents)):

Allied Technology Experts Enterprise of Luxembourg s.à.r.l.

LUXCONTROL s.a.

TÜV Rheinland Luxemburg GmbH

TÜV SÜD Auto Service GmbH

Technical Union of the Automobile, Motorcycle and Cycle SAS

CETOC Technical Service s.r.l.

Dekra Automobil Test Center

## 12. Are any of these parties required to disclose information on national type approval processes?

n/a

## 13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

The Law of 26 January 2016, regulating traffic on all public roads, Article 2, imposes in particular that all vehicles must be subject to a European or national type-approval (or individual national approval) in order to be registered in Luxembourg.

Article 2(11) provides that 'Is liable to imprisonment from eight days to one year and a fine of 251 to 5,000 EUR, or one of these penalties only, any person who has imported or offered for sale road vehicles or parts and components of road vehicles which do not meet the requirements of this article'.

In addition, the judgement will confiscate the vehicle, even in case it is not owned by the convicted person.

The Article also sanctions by a 251 to 5,000 EUR fine any person refusing in particular to deliver the certificate covering a vehicle which do not meet the type-approval report.

### *Rules on tampering*

## 14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:

Tampering with the emission control design

Grand-ducal Regulation of 26 January 2016 on technical control of road vehicles

Regulation amended by :

Grand-ducal Regulation of 30 August 2016

Grand-ducal Regulation of 4 May 2016

Grand-ducal Regulation of 11 September 2018

Annex II lays down requirements and technical control methods applicable during periodic roadworthiness tests undertaken by a technical control centre and during technical roadside inspections. In fact, this Annex lays down in detail the control methods to be used and the criteria



applied to determine whether the vehicle's condition is suitable for the road. In particular, these controls are meant to check whether relevant components of the vehicle correspond to the safety and environmental requirements.

Under 6.1.9, the Annex lays down the requirements for the control in relation to the engine performance. In particular, the control concerns whether:

- a) a modification of the control device occurred which affects safety and / or the environment
- b) a modification of the engine occurred which affects safety and / or the environment.

Tampering with aftermarket parts

n/a

Tampering with the engine

n/a

Tampering with the OBD system

Grand-ducal Regulation of 26 January 2016 on technical control of road vehicles

Regulation amended by :

Grand-ducal Regulation of 30 August 2016

Grand-ducal Regulation of 4 May 2016

Grand-ducal Regulation of 11 September 2018

Annex II lays down requirements and technical control methods applicable during periodic roadworthiness tests undertaken by a technical control centre and during technical roadside inspections. In fact, this Annex lays down in detail the control methods to be used and the criteria applied to determine whether the vehicle's condition is suitable for the road. In particular, these controls are meant to check whether relevant components of the vehicle correspond to the safety and environmental requirements.

Under 8.2.1.2, Annex II lays down requirements for the control in relation to Gas emissions:

d) the OBD system reading indicates a significant malfunction;

Added by RGD of 11 September 2018: e) Remote sensing measurement indicating a notable lack of conformity lack of conformity?

Under 8.2.2.1, : Annex II lays down requirements for the control in relation to :

a) The emission reduction equipment fitted by the manufacturer is absent or manifestly defective.

c) The malfunction indicator does not follow a correct sequence

e) Remote sensing measurement indicating a significant lack of conformity

Under 8.2 , : Annex II lays down requirements for the control in relation to :

Exhaust emissions: 8.2.1.1 a) The emission reduction equipment fitted by the manufacturer is absent, modified or manifestly defective.

c) The malfunction indicator does not follow a correct sequence.

Odometer tampering (in particular on second-hand vehicles)

Under 7.9, Annex II lays down requirements for the control in relation to : tachograph: e) obvious alteration or manipulation.

Under 7.11, Annex II lays down requirements for the control in relation to : Odometer which will be verified "Obvious manipulation (fraud) to reduce or give a misleading representation of the number of km traveled by the vehicle. "

Other

n/a

**15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

There is not really one specific authority in charge of ensuring compliance with the provisions on tampering, since they all are checkpoints for periodic roadworthiness tests, the bodies in charge of compliance are those in charge of periodic tests.

These bodies are organisations approved for technical control (periodic roadworthiness test).

Law of 26 January 2016 on the regulation of traffic on all public roads, Article 5:

Following Article 4bis of the aforementioned law of 14 February 1955, a new Article 4ter, wording is inserted as following:

"Article 4ter.

(1) Any organisation carrying out the technical inspection of road vehicles must hold an approved license from the Minister"

see Section "tests and inspections" below for further details on the authorities in charge of periodic roadworthiness tests.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles, Article 2:

Is liable to a penalty of imprisonment for eight days to one year and to a fine of EUR 251 to 5,000, or one of these penalties only, any person who has imported or offered for sale road vehicles or parts and components road vehicles which do not meet the requirements of this Article which are related in particular, to European type approval and national type approval, as well as vehicle registration and periodic tests.

As for odometer tampering:

According to the national consumer organisation, the first step is to establish manipulation, which is difficult. One possibility is to contact the dealer to trace the history of the vehicle. A distinction must then be made depending on whether the seller of the vehicle is a professional or a private person.

Private seller:

It is possible to take action against an unprofessional seller for hidden defects as per Article 1641 of

the Civil Code, unless he has contractually excluded his liability, which he is entitled to do. In this case, you can only hold them accountable if you can prove that they knew or should have known about the defect (the manipulation of the meter) and therefore hid the information. If the individual seller has not excluded his responsibility, they will be held liable for the consequences resulting from hidden defects.

Professional seller:

A professional seller has the obligation to give you a car "conforming" to what you have ordered. He cannot exclude his liability for hidden defects in the sales contract. In addition, the professional seller is required to provide a minimum warranty of one year on a used vehicle (two years warranty if the sales contract does not specify a time limit). We can emphasise the fact that the manipulation of the meter carried out with the aim of deceiving a buyer constitutes a criminal offense (cf. Article 498 of the Penal Code). Obtaining compensation for the damage suffered is not easy, however, and people in this situation are advised to seek legal assistance.

Info available at : [www.ulc.lu/Fr/konsument/detail.asp?T=6&D=descr&ID=172](http://www.ulc.lu/Fr/konsument/detail.asp?T=6&D=descr&ID=172)

#### **17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

See above.

In case the seller is a private person who has excluded his liability, then the buyer bears the burden of proof.

If the seller is a professional, he must prove that the vehicle was not tampered if the action takes place less than six months after the sale (if the defect is identified in that timeframe, there is a presumption that it was already present at the time of the sale). Afterwards, the buyer will have to bear the burden of proof and bring evidence that he bought a tampered vehicle<sup>675</sup>.

#### *Tests and inspections*

#### **18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

When?

The deadlines for the technical inspection of motor cars (including driving schools and motor homes (maximum authorized mass not exceeding 3,500 kg)), motorcycles and trailers (maximum authorized mass between 750 kg and 3,500 kg ) are :

for the first periodic inspection: four years after the first entry into service of the vehicle;

for the second periodic inspection: six years after the first entry into service of the vehicle;  
every year for the following periodic inspections.

Are subject to annual technical control:

heavy goods vehicles and trailers weighing more than 3,500 kg;

<sup>675</sup> <https://guichet.public.lu/fr/citoyens/citoyennete/protection-consommateur/garantie-conformite/garantie-conformite-application.html>

trailers for the transport of people, vans, and vehicles intended for the transport of persons and comprising no more than nine seats, including that of the driver, registered as taxis, rental cars or ambulances.

This is provided by Article 3, Grand-Ducal Regulation of 26 January 2016 regulating traffic on all public roads.

Also see: <https://guichet.public.lu/fr/citoyens/transports-mobilite/transports-individuels/vehicule-motorise/controle-technique-obligatoire-vehicule.html#bloub-6>

By whom:

This control is carried out at a precise frequency, by one of the approved technical control bodies in Luxembourg: the Société nationale de contrôle technique (National Technical Control Company) (SNCT) or the DEKRA company.

The persons carrying out the test must have passed a specific test (which pre-requires that the applicants already have a mechanical training), which grants them an inspector certificate. Afterwards, they will follow an annual training to maintain and update their necessary knowledge and skills.

This is provided by Chapter 3 of the Grand-Ducal Regulation of 26 January 2016 on the technical control of road vehicles. Also see : <https://guichet.public.lu/fr/citoyens/transports-mobilite/transports-individuels/vehicule-motorise/controle-technique-obligatoire-vehicule.html#bloub-6>

How:

Nature of control

The technical control relates to the technical condition and maintenance of the vehicle as well as its compliance environmental rules (Art. 3, Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles), and in particular to:

- vehicle identification (chassis number, plates);
- environmental nuisances (noise, exhaust gases);
- braking devices;
- lights and reflective devices;
- electrical equipment;
- axles, wheels and tires, suspension;
- the chassis and chassis accessories;
- seat belts;
- the direction of the vehicle;
- the visibility.

Further details under :

**Grand-ducal Regulation of 26 January 2016** on the technical control of road vehicles.

Regulation amended by the Grand-ducal Regulation of 30 August 2016, Grand-ducal Regulation of 4 May 2016, and Grand-ducal Regulation of 11 September 2018.

Its Annex II provides a list of components which must be verified during the technical control and for each of them, possible defect causes. Some are related to tampering, see :

6.1.9 Engine performance must be checked, a defect is identified in case of a

- a) Modified control unit affecting safety and / or the environment
- b) Modification of the engine affecting safety and / or the environment.

7.9 tachograph must be checked, a defect is identified in particular in case of 'obvious alteration or manipulation'.

7.11 Odometer will be verified and a defect is identified in case of 'Obvious manipulation (fraud) to reduce or give a misleading representation of the number of km travelled by the vehicle'.

8.2 Exhaust emissions are checked and are defective if 'the emission reduction equipment fitted by the manufacturer is absent, modified or manifestly defective' or 'the malfunction indicator does not follow a correct sequence'.

8.2.1.2 Gas emissions are checked and are defective if 'the OBD system reading indicates a significant malfunction' or 'Remote sensing measurement indicating a notable lack of conformity'.

Other defects linked with tampering: 8.2.2.1: a) The emission reduction equipment fitted by the manufacturer is absent or manifestly defective.

c) The malfunction indicator does not follow a correct sequence

e) Remote sensing measurement indicating a significant lack of conformity

Also see: <https://guichet.public.lu/fr/citoyens/transport-mobilite/transport-individuels/vehicule-motorise/controle-technique-obligatoire-vehicule.html#bloub-6>

Chapter 4.- The technical inspection certificate

Article 11. The certificate issued following a technical inspection conforms to the model reproduced in Annex IV.

The paper used for these purposes must be protected against forgery by means of a watermark representing the logo commercial or figurative mark of the technical inspection body.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

Grand-Ducal Regulation of 26 January 2016 on the technical control of road vehicles:  
Chapter 5 - Road technical control

Article 13(1): The operations relating to road technical control are carried out by inspectors or technical control bodies designated by the Minister [in charge of Transports] for this purpose. These inspectors must hold a valid ministerial approval.

The enterprise within the meaning of Article 2(4) of Regulation (EC) No 1071/2009 which operates a vehicle subject to control by a road technician, and the driver thereof must cooperate with the inspectors and give them access to the vehicle, its parts and all documents useful for the purposes of control.

(2) In order to organise road traffic control operations, drivers must comply with injunctions given to them in this regard by officials of the Customs and Excise Administration, in accordance with the terms of Article 115 of the modified Grand-ducal Decree of 23 November 1955 regulating traffic on all public roads.

Under the same conditions, these officials are authorised to have the vehicle documents displayed inspected and to submit these to the inspectors.

Article 14: Inspectors shall, as far as possible, select vehicles for initial technical roadside inspection in the following order of priority:

- vehicles operated by high risk companies in accordance with the Grand-Ducal Regulation amended of 12 August 2008 implementing Directive 2006/22/EC establishing the minimum conditions to be observed for the implementation of Council regulations (EEC) No 3820/85 and (EEC) No 3821/85 on social legislation relating to road transport activities;
- vehicles presenting a perceptible risk to road **safety or the environment**;
- other vehicles randomly selected without discrimination based on driver nationality or the country in which the vehicle is registered or put into service.

Article 15(1): The vehicles selected in accordance with Article 14 are subject to an initial technical roadside inspection. During each initial technical roadside inspection, the technical inspectors :

- a) verify the last technical inspection certificate and the latest road technical inspection report;
- b) carry out a visual assessment of the technical condition of the vehicle;
- c) may carry out technical checks by any method deemed appropriate. These technical verifications can be carried out to justify a decision to submit the vehicle to a roadworthiness test or to request that defects or non-conformances be remedied without delay in accordance with in Article 4bis, paragraph 6 of the aforementioned Law of 14 February 1955.

If one or more defects or non-conformities are reported in the previous technical inspection report road, the technical inspection inspector checks whether or not they have been corrected.

(2) Depending on the result of the initial inspection, the technical inspection inspector decides whether the vehicle or its trailer must be subjected to a thorough road check.

(3) The in-depth roadworthiness test covers the points listed in Annex II deemed necessary and relevant, taking into account in particular the safety of brakes, tires, wheels and chassis, as well as nuisance, according to the recommended methods applicable to the control of these points. The method specifies which characteristics of the components make them non-compliant. Some are specifically linked with tampering, they are the same as those verified in periodic tests. For instance, engine performance must be checked, a defect is identified in case of a modification of the engine or a modified control unit affecting safety and / or the environment. Tachographs must be checked, a defect is identified in particular in case of obvious alteration or manipulation.

See the section on periodic roadworthiness tests for all the points related to tampering.

(4) When it appears from the technical control certificate or a road control report that one of the points listed in Annex II has been the subject of an audit during the last three months in accordance with Directive 2014/45/EU on the periodic technical inspection of vehicles engine and their trailers or Directive 2014/47/EU relating to the technical control of commercial vehicles circulating in the Union, the technical control inspector does not check this point, except where justified by a defect or obvious non-compliance.

The prescribed checks, inspections and tests must be carried out in accordance with the relevant provisions provided for in Annex II. The Minister may specify the procedures for applying the provisions of Annex II and determine those relating to the control of equipment, organs and accessory elements.

Article 16(2) :

Initial technical roadside inspections are carried out either in specific mobile units or in roadside inspections installations. They shall have the equipment necessary to carry out in-depth inspections. However, when it is not the case, the in-depth inspection will be carried out as soon as possible in one of the nearest available periodic roadworthiness centre or installation.

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

Grand-ducal regulation of 26 January 2016 on the technical control of road vehicles:

Article 18. The quality assurance system which any technical control body must justify requires its accreditation according to ISO-CEI 17020.

Regarding the independence of the organisation, accreditation takes place on the basis of Annex A of this standard.

In addition, the inspection body is required to submit to its customers, using an adequate statistical method,

Technical roadside inspection:

Grand-Ducal Regulation of 26 January 2016 on the technical control of road vehicles:

Article 13(1): The operations relating to road technical control are carried out by inspectors or technical control bodies designated by the Minister for this purpose.

The Minister referred to in this Article is the Minister having Transports in his or her powers (Article 1 of the Grand-Ducal Regulation).

Periodic roadworthiness test:

This control is carried out at a precise frequency, by one of the approved technical control bodies in Luxembourg: the Société nationale de contrôle technique (National Technical Control Company) (SNCT) or the DEKRA company.

## **21. Are any of these authorities required to disclose information on these tests and inspections?**

Article 3 Grand-Ducal Regulation of 26 January 2016 regulating traffic on all public roads.

After each periodic test, as of 20 May 2018, the technical inspection bodies communicate electronically to the Minister every day the information appearing on the technical inspection certificates they issue.

In order to check the mileage, for vehicles equipped with an odometer, the information communicated during the previous technical inspection is made available to the technical inspection bodies as soon as they are available electronically.

Article 17 of the Grand-Ducal Regulation of 26 January 2016 on the technical control of road vehicles.

(1) After each technical roadside inspection, the following information must be sent to the Minister (in charge of Transports): the State or registration of the vehicle, the category of the vehicle and the result of the initial inspection.

If an in-depth inspection has been carried out, the driver gets the original report describing the inspection.

(2) In addition, the technical control body draws up records of the roadside inspections and their results, which are sent every three months to the Minister and the Coordination Commission (a public body in charge of analysing the impact of professional training in the State and local authorities administrations).

## **22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Law of 26 January 2016 concerning the regulation of traffic on all public roads , Article 3(4).

Regarding both periodic technical roadworthiness tests and technical roadside inspections:



If the controlled vehicle is refused for one or more non-conformities with respect to the Highway Code in force, the owner is required to carry out repairs or bring the vehicle into conformity. In this case, a control certificate valid for four weeks is issued. The owner of the vehicle is required to remedy these irregularities and to present himself for an additional technical control before the deadline of four weeks.

During this period, this certificate covers the vehicle in Luxembourg on the route:

- between the control center and the place where the vehicle will be immobilized, repaired, brought into conformity or destroyed;
- between the control center and the head office or residence of the owner or holder of the vehicle;
- between the head office or the residence of the owner or holder of the vehicle and the place where the vehicle will be immobilized, repaired, brought into conformity or destroyed.

After repairing defects or correcting non-conformities, a new technical control certificate is issued.

### *National strategies and initiatives*

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

n/a

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

As laid out above, odometer information communicated during a periodic test is made available to the periodic test bodies as soon as they are available electronically, so that it can be used for the next test (Article 3 Grand-Ducal Regulation regulating traffic on all public roads). This can help identifying odometer tampering.

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

n/a

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

n/a

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

Consumer organisation: three publications on their website back in 2014 before the adoption of the new legislation i.e. the four legislative acts adopted on 26 January 2016 :

- Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles
- Grand-ducal regulation of 26 January 2016 regulating traffic on all public roads
- Law of 26 January 2016 concerning the regulation of traffic on all public roads
- Grand-ducal regulation of 26 January 2016 relating to the approval and registration of road vehicles,

the publications are available at : [www.ulc.lu/fr/recherche/](http://www.ulc.lu/fr/recherche/)

## 28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?

Yes.

The federations representing the automotive sector in Luxembourg, represented in the "House of Automobile" (ADAL, FEGARLUX, MOBIZ, FEBIAC), signed in October 2016 a declaration requesting the implementation of measures to fight against odometer fraud and therefore ensure better consumer protection.

Info available at : [www.link2fleet.lu/la-fraude-au-compteur-kilometrique/?cookie-consent=1](http://www.link2fleet.lu/la-fraude-au-compteur-kilometrique/?cookie-consent=1)

The publications of the consumer organisation resulted in the adoption of the four legislative acts on 26 January 2016 :

- Grand-ducal Regulation of 26 January 2016 on the technical control of road vehicles
- Grand-ducal Regulation of 26 January 2016 regulating traffic on all public roads
- Law of 26 January 2016 concerning the regulation of traffic on all public roads
- Grand-ducal Regulation of 26 January 2016 relating to the approval and registration of road vehicles

## *Effectiveness and enforcement*

## 29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

No research has been carried out which could provide insight into this.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

No research has been carried out which could provide insight into this.

Potential gaps in the legislation

No research has been carried out which could provide insight into this.

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

Yes, the enforcement system is effective: it covers many forms of tampering and addresses the issue clearly. However, sanctions do not seem to be very high which could question their dissuasive character.

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

n/a

*Other*

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

Approved technical control bodies in Luxembourg:  
- the Société nationale de contrôle technique (National Technical Control Company) :  
T : Tél : +352 26 15 62 – 500 ; email : [info@snct.lu](mailto:info@snct.lu)

- the DEKRA company :  
email: [info@snct.lu](mailto:info@snct.lu); T: +352 27400791

National type approval authority:  
- Société Nationale de Circulation Automobile (SNCA):  
T: +352 26 626 - 400 ; email: [info@snca.lu](mailto:info@snca.lu)

European type approval authority:  
- National Society of Certification and Homologation:  
T: +352 261 570 - 250; email: [info@snch.lu](mailto:info@snch.lu)

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

n/a

*Case law on tampering*

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

n/a

## Sources on tampering

Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.

Title	Reference	Short description
n/a		

## Netherlands

### Overview of legislation

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

Directive 2007/46/EC was implemented through the Act of 29 December 2008 amending the 1994 Road Traffic Act in connection with a revision and simplification of vehicle regulations, implementing Directive 2007/46/EC on vehicle approval and some other technical changes.<sup>676</sup>

This Act amended the 1994 Road Traffic Act.<sup>677</sup>

Directive 2014/45/EU (on periodic roadworthiness tests)

Directive 2014/45/EU was implemented through the Regulation of the Minister of Infrastructure and the Environment of 11 May 2017, no. IENM / BSK-2017/117058, amending the Regulation on recognition and inspection authority APK and the Vehicle Regulation for the implementation of Directive 2014/45/EU.<sup>678</sup>

This Regulation amended:

- The Regulation containing rules with regard to recognition and authorisation to carry out a general periodic inspection (Regulation on recognition and inspection authority APK);<sup>679</sup>
- The Vehicle Regulation.<sup>680</sup>

Although Directive 2014/45/EU has almost been fully implemented, this does not yet apply to the general periodic inspection ('APK') obligation for agricultural and forestry tractors with a maximum construction speed of more than 40 km / h (although please note these vehicles fall out of the scope of this research, as they fall under Category T). This obligation was delayed due to the rejection of the relevant bill in the House of Representatives. The European Commission declared that the Netherlands was late in implementing Directive 2014/45/EU on 17 July 2017. The Minister of Infrastructure and Water Management drew up a bill in which this obligation was regulated. This

<sup>676</sup> Wet van 29 december 2008 tot wijziging van de Wegenverkeerswet 1994 in verband met een herziening en vereenvoudiging van de voertuigregelgeving, ter implementatie van richtlijn nr. 2007/46/EG betreffende de goedkeuring van voertuigen en enkele andere technische wijzigingen, available at <https://zoek.officielebekendmakingen.nl/stb-2009-38.html>.

<sup>677</sup> Wegenverkeerswet 1994 (1994 Road Traffic Act), available at <https://wetten.overheid.nl/BWBR0006622/2020-01-01>.

<sup>678</sup> Regeling van de Minister van Infrastructuur en Milieu, van 11 mei 2017, nr. IENM/BSK-2017/117058 tot wijziging van de Regeling erkenning en keuringsbevoegdheid APK en de Regeling voertuigen ter implementatie van richtlijn 2014/45/EU, available at <https://zoek.officielebekendmakingen.nl/stcrt-2017-27126.html>.

<sup>679</sup> Regeling houdende regels met betrekking tot een erkenning voor en een keuringsbevoegdheid tot het uitvoeren van een algemene periodieke keuring (Regulation on recognition and inspection authority APK), available at <https://wetten.overheid.nl/BWBR0025735/2018-05-20>.

<sup>680</sup> Regeling voertuigen (Vehicle Regulation), available at <https://wetten.overheid.nl/BWBR0025798/2020-01-01>.

proposal was submitted to the House of Representatives on 10 April 2019 and is currently being considered. Once the bill has entered into force, Directive 2014/45/EU will be fully implemented.<sup>681</sup>

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

Directive 2014/47/EU was implemented through the Regulation of the Minister of Infrastructure and the Environment of 11 May 2017, no. IENM / BSK-2017/116880, amending the Vehicle Authority Regulation in connection with the implementation of Directive 2014/47/EU of the European Parliament and the Council of 3 April 2014 on roadside technical inspection of commercial vehicles driving in the Union and repealing Directive 2000/30/EC (OJ 2014, L 127).<sup>682</sup>

This Regulation amended the Vehicle Authority Regulation.<sup>683</sup>

## 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

The 1994 Road Traffic Act constitutes the main piece of legislation concerning road traffic in the Netherlands. In Chapter III, it sets out general rules on “admission and approval” – including on type approval of light passenger and commercial vehicles. These general rules are further elaborated on in the Vehicle Regulation, which provides more technical rules and requirements.<sup>684</sup>

Additionally, the Type Approval Motor Vehicles Air Pollution Decree specifically implements certain provisions of Regulation (EC) No 715/2007, including those that relate to tampering.<sup>685</sup>

<sup>681</sup> See [www.eerstekamer.nl/wetsvoorstel/35188\\_implementationrichtlijn](http://www.eerstekamer.nl/wetsvoorstel/35188_implementationrichtlijn); [www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vklajd4t7iz5](http://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vklajd4t7iz5); [www.njb.nl/wetgeving/wetsvoorstellen/registratie-en-kentekenplicht-trekkers.32301.lynkx](http://www.njb.nl/wetgeving/wetsvoorstellen/registratie-en-kentekenplicht-trekkers.32301.lynkx) (last accessed on 15 April 2020).

<sup>682</sup> Regeling van de Minister van Infrastructuur en Milieu, van 11 mei 2017, nr. IENM/BSK-2017/116880 tot wijziging van de Regeling taken Dienst Wegverkeer in verband met de implementatie van richtlijn 2014/47/EU van het Europees Parlement en de Raad van 3 april 2014 betreffende technische controle langs de weg van bedrijfsvoertuigen die in de Unie aan het verkeer deelnemen en tot intrekking van richtlijn 2000/30/EG (PbEU 2014, L 127, available at <https://zoek.officielebekendmakingen.nl/stcrt-2017-26291.html>).

<sup>683</sup> Regeling taken Dienst Wegverkeer (Vehicle Authority Regulation), available at <https://wetten.overheid.nl/BWBR0008144/2019-07-01>.

<sup>684</sup> Although these legal acts thus cover the field or subject matter, some decisions and regulations were adopted specifically based on Regulation (EC) No 715/2007, for example: Besluit van 1 maart 2014 tot wijziging en intrekking van diverse besluiten ter uitvoering van verordening (EG) nr. 715/2007 van het Europees Parlement en de Raad van 20 juni 2007 betreffende de typegoedkeuring van motorvoertuigen met betrekking tot emissies van lichte personen- en bedrijfsvoertuigen (Euro 5 en Euro 6) en de toegang tot reparatie- en onderhoudsinformatie (PbEG 2007, L 171) en van verordening (EG) nr. 595/2009 van het Europees Parlement en de Raad van 18 juni 2009 betreffende de typegoedkeuring van motorvoertuigen en motoren met betrekking tot emissies van zware bedrijfsvoertuigen (Euro VI) en de toegang tot reparatie- en onderhoudsinformatie, tot wijziging van Verordening (EG) nr. 715/2007 en Richtlijn 2007/46/EG en tot intrekking van de Richtlijnen 80/1269/EEG, 2005/55/EG en 2005/78/EG (PbEG 2009, L 188) en tot een technische aanpassing van het Waterbesluit, available at <https://zoek.officielebekendmakingen.nl/stb-2014-120.html>.

<sup>685</sup> Besluit typekeuring motorrijtuigen luchtverontreiniging (Type Approval Motor Vehicles Air Pollution Decree), available at <https://wetten.overheid.nl/BWBR0002890/2014-03-20>.

Commission Regulation (EU) 2017/1151 (on odometer readings)

The requirement laid down in Commission Regulation (EU) 2017/1151 that car manufacturers effectively deter reprogramming of the odometer readings is not covered by Dutch legislation.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

The 1994 Road Traffic Act constitutes the main piece of legislation concerning road traffic in the Netherlands. In Chapter III, it sets out general rules on “admission and approval” – including on type approval of heavy duty vehicles. These general rules are further elaborated on in the Vehicle Regulation, which provides more technical rules and requirements.<sup>686</sup>

Additionally, the Type Approval Motor Vehicles Air Pollution Decree specifically implements certain provisions of Regulation (EC) No 595/2009, including those that relate to tampering.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

As set out above, the main national pieces of legislation which relate to tampering are the following:

- The 1994 Road Traffic Act;
- The Vehicle Regulation
- The Vehicle Authority Regulation;
- The Regulation on recognition and inspection authority APK;
- The Type Approval Motor Vehicles Air Pollution Decree.

There are no other national measures which are of particular relevance in this regard.

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

They do not (the pieces of legislation set out above only refer to the EU directives and regulations they implement / cover).

<sup>686</sup> Although these legal acts thus cover the field or subject matter, some decisions and regulations were adopted specifically based on Regulation (EC) No 715/2007, for example: Besluit van 1 maart 2014 tot wijziging en intrekking van diverse besluiten ter uitvoering van verordening (EG) nr. 715/2007 van het Europees Parlement en de Raad van 20 juni 2007 betreffende de typegoedkeuring van motorvoertuigen met betrekking tot emissies van lichte personen- en bedrijfsvoertuigen (Euro 5 en Euro 6) en de toegang tot reparatie- en onderhoudsinformatie (PbEG 2007, L 171) en van verordening (EG) nr. 595/2009 van het Europees Parlement en de Raad van 18 juni 2009 betreffende de typegoedkeuring van motorvoertuigen en motoren met betrekking tot emissies van zware bedrijfsvoertuigen (Euro VI) en de toegang tot reparatie- en onderhoudsinformatie, tot wijziging van Verordening (EG) nr. 715/2007 en Richtlijn 2007/46/EG en tot intrekking van de Richtlijnen 80/1269/EEG, 2005/55/EG en 2005/78/EG (PbEG 2009, L 188) en tot een technische aanpassing van het Waterbesluit, available at <https://zoek.officielebekendmakingen.nl/stb-2014-120.html>.



- 5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The national measures set out above mostly refer to the national or EU legislative acts as the reason for their adoption, or provide a very general reasoning (e.g. “that it is desirable to redefine the rules on road traffic”<sup>687</sup>).

## Requirements and rules on tampering

### *Obligations manufacturers*

- 6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific national legal requirements on manufacturers relating to the *prevention* of tampering.

- 7. Are there any other requirements relating to tampering which manufacturers need to meet?**

The Type Approval Motor Vehicles Air Pollution Decree prohibits manufacturers (as well as repairers and operators) from tampering with systems which use a consumable reagent in the context of heavy duty vehicles.<sup>688</sup> Additionally, it generally outlaws the use of defeat strategies that reduce the effectiveness of emission control equipment (both relating to heavy duty vehicles and light passenger and commercial vehicles) – a ban which also applies to manufacturers.<sup>689</sup>

Moreover, manufacturers will need to meet the requirements set out as part of the type approval process (set out in the section below), which may relate to tampering.

- 8. Are manufacturers required to disclose information relating to tampering (resistance)?**

No.

### *Type approval*

- 9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

Implementing Chapter III of the 1994 Road Traffic Act, the Vehicle Regulation lays down requirements regarding the type approval of vehicles, the type approval of systems and components, and the approval of production processes.

In setting out the requirements in relation to type-approval of vehicles, the Vehicle Regulation solely refers to Directive 2007/46/EC. The only exceptions in this regard are:

<sup>687</sup> 1994 Road Traffic Act, preamble.

<sup>688</sup> Type Approval Motor Vehicles Air Pollution Decree, Article 3(1)(d).

<sup>689</sup> Type Approval Motor Vehicles Air Pollution Decree, Articles 2(1)(b) and (3)(1)(b).

- Vehicles of vehicle categories M, N and O, with the exception of vehicles with vehicle classification M1 or N1, as well as special purpose vehicles of vehicle categories M, N and O must comply with the requirements set out in Annex IV of the Vehicle Regulation to obtain a national small series type-approval.<sup>690</sup> However, national small series type-approvals are not provided on a large scale, are only valid for one country, and the requirements relating to this kind of approval are in accordance with those in Directive 2007/46/EC.
- The Vehicle Regulation also provides for individual approvals, for which vehicles need to adhere to the requirements in Annex IV of the Regulation.<sup>691</sup> The same considerations as for national small series type-approval apply in this regard.

Thus, these two exceptions are not further explored as part of this research.

Under the Vehicle Regulation, with regard to the approval of a system, component, separate technical unit, appliance or device for the protection of road users and passengers intended to form part of a vehicle of vehicle category M, N or O and for which type-approval can be granted independently of a vehicle, the relevant EU directives, EU regulations and UN/ECE regulations included in Annex IV or XI of Directive 2007/46/EC apply.<sup>692</sup>

Approval of the production process of vehicles with vehicle classification M1 or N1 with regard to reusability, recyclability and possible recovery, under the Vehicle Regulation, is dependent on compliance with the requirements of the relevant EU directives and EU regulations included in Annex IV or XI of Directive 2007/46/EC.<sup>693</sup>

Thus, the requirements that form part of the approval processes under Dutch law are those provided in Directive 2007/46/EC, and no specific provisions (including on tampering) are in place at national level.

## 10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?

The tests carried out to ensure approval requirements are met fall under the following categories:

- Noise measurements
- Testing braking devices
- Steering gear tests
- Applying forces to (parts of) a vehicle construction
- Tire grip on wet surfaces
- Roll-resistance tires
- Determination of the field of vision
- Functionality of (electronic) vehicle systems
- Presence and installation of vehicle parts on a vehicle (construction)

More specific information (including on the tests per category) can be found here: [www.rdw.nl/zakelijk/branches/fabrikanten-en-importeurs/typegoedkeuring-aanvragen/testen/normverwijzingen-accreditatie-rdw-testcentrum](http://www.rdw.nl/zakelijk/branches/fabrikanten-en-importeurs/typegoedkeuring-aanvragen/testen/normverwijzingen-accreditatie-rdw-testcentrum).

<sup>690</sup> Vehicle Regulation, Article 3.2.

<sup>691</sup> Vehicle Regulation, Article 3.7.

<sup>692</sup> Vehicle Regulation, Article 3.9.

<sup>693</sup> Vehicle Regulation, Article 3.10.

**11. Please list the national type approval authority<sup>694</sup> and technical services<sup>695</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

The Dutch national type approval authority is the Netherlands Vehicle Authority (RDW). The RDW is authorised to determine the manner in which type approval is requested and granted, and to decide on the tariff for this service under the 1994 Road Traffic Act.<sup>696</sup> The RDW constitutes a technical service, mandated to carry out inspections relating to type approval.<sup>697</sup> The RDW Test Department carries out inspections at the RDW Test Centre, an accredited test facility for independently conducting tests for European and national admission (including conducting experimental tests).<sup>698</sup>

Under the 1994 Road Traffic Act, the RDW may also appoint another technical service to carry out certain tests for approval on its behalf (if these services meet the required standards).<sup>699</sup> The list of technical services can be found here:

<https://ec.europa.eu/docsroom/documents/36483/attachments/1/translations/en/renditions/native>. Payment of the technical services is regulated through the 2020 Tariffs Vehicle Authority Regulation.<sup>700</sup>

**12. Are any of these parties required to disclose information on national type approval processes?**

The Vehicle Authority Regulation specifies that the RDW is responsible for providing the Commission with the information referred to in Article 20 of Directive 2014/47/EU, as well as for any other exchange of information.<sup>701</sup> Such other exchanges may relate to the information obligations the 1994 Road Traffic Act places on the RDW in relation to emissions, for example.<sup>702</sup>

The RDW makes available several data sets as Open Data for re-use. It has a database with all (non-sensitive) data from all EU vehicle type approvals since 1998. The amount of open data differs per vehicle category. For example, the data for passenger vehicles is almost complete. This does not apply with regard to buses, commercial vehicles, trailers and semi-trailers. For these EU type approvals, the RDW only registers the vehicle data when the (digital) EU Certificate of Conformity has been received.<sup>703</sup>

<sup>694</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>695</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>696</sup> 1994 Road Traffic Act, Article 22(1).

<sup>697</sup> 1994 Road Traffic Act, Article 22(1).

<sup>698</sup> See [www.rdw.nl/zakelijk/branches/fabrikanten-en-importeurs/typegoedkeuring-aanvragen/testen/uitvoering-testen](http://www.rdw.nl/zakelijk/branches/fabrikanten-en-importeurs/typegoedkeuring-aanvragen/testen/uitvoering-testen) (last accessed on 15 April 2020).

<sup>699</sup> 1994 Road Traffic Act, Article 22(b)(1).

<sup>700</sup> Regeling tarieven Dienst Wegverkeer 2020 (2020 Tariffs Vehicle Authority Regulation), available at: <https://wetten.overheid.nl/BWBR0042873/2020-04-03>.

<sup>701</sup> Vehicle Authority Regulation, Article 2(k).

<sup>702</sup> For example, the obligation to draw up a guide on fuel consumption and CO<sub>2</sub> emissions from passenger cars on the basis of Directive 1999/94/EC, and identifying information for monitoring CO<sub>2</sub> emissions and communicating that information to the Commission under Regulation (EC) No 443/2009 (1994 Road Traffic Act, Article 4(b)(r)).

<sup>703</sup> See [www.rdw.nl/over-rdw/dienstverlening/open-data/algemene-informatie](http://www.rdw.nl/over-rdw/dienstverlening/open-data/algemene-informatie) (last accessed on 15 April 2020).

**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

The RDW can withdraw a type approval or approval of the production process in case the person who has been granted approval changes a vehicle or component in a way which does not conform with the type for which approval has been granted, or acts in contravention of one or more other obligations arising from the approval.<sup>704</sup>

Moreover, the RDW can withdraw the designation of a technical service if it no longer meets the requirements for the designation, or suspend the appointment for a term which shall not exceed twelve weeks.<sup>705</sup>

*Rules on tampering*

**14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

**Tampering with the emission control design**

As laid out above, there is a general prohibition on tampering in place which stems from the Type Approval Motor Vehicles Air Pollution Decree. This Decree prohibits manufacturers, repairers and operators from tampering with systems which use a consumable reagent in the context of heavy duty vehicles.<sup>706</sup> Additionally, it outlaws the use of defeat strategies that reduce the effectiveness of emission control equipment (both relating to heavy duty vehicles and light passenger and commercial vehicles).<sup>707</sup>

Moreover, the Vehicle Regulation specifies that any modifications made to the emission control system of a vehicle must comply with the requirements laid down in Annex IV of the Regulation (to the extent that those requirements are related to the modification made) unless the emission control system is replaced by the same original system or a system which has been approved under Regulation (EC) No 715/2007 or Regulation (EC) No 595/2009.<sup>708</sup> This requirement can thus be said to specifically target and ban tampering with the emission control design.

**Tampering with aftermarket parts**

In addition to the general prohibition on tampering, Chapter 6 of the Vehicle Regulation includes provisions in relation to modifications made to a vehicle. It specifies that modifications in the construction of a registered vehicle (with the exception of the installation of an electric drivetrain or a fuel system for gas) are subject to the requirements as stated at the time of the commissioning of the vehicle.<sup>709</sup> Moreover, it provides that in the event of 1) a modification of the construction of a vehicle that causes certain vehicle data to change and after this change to no longer correspond to the vehicle registration register (e.g. the engine type), or 2) a modification of the vehicle parts (e.g.

<sup>704</sup> 1994 Road Traffic Act, Articles 25(2) and 25(d)(2).

<sup>705</sup> 1994 Road Traffic Act, Articles 22(b)(5) and 22(b)(6).

<sup>706</sup> Type Approval Motor Vehicles Air Pollution Decree, Article 3(1)(d).

<sup>707</sup> Type Approval Motor Vehicles Air Pollution Decree, Articles 2(1)(b) and (3)(1)(b).

<sup>708</sup> Vehicle Regulation, Article 6.10.

<sup>709</sup> Vehicle Regulation, Article 6(2).

the braking system), the vehicle (part) must meet the requirements set out in Annex IV of the Regulation (insofar as those requirements are related to the modification made).<sup>710</sup> Such rules may also be considered to ban tampering with aftermarket parts.

#### Tampering with the engine

In addition to the general prohibition on tampering, Chapter 6 of the Vehicle Regulation may also be considered to ban tampering with the engine.

#### Tampering with the OBD system

In addition to the general prohibition on tampering, Chapter 6 of the Vehicle Regulation may also be considered to ban tampering with the OBD system.

#### Odometer tampering (in particular on second-hand vehicles)

Under the 1994 Road Traffic Act, it is forbidden to change the odometer reading of motor vehicles that must be registered (or have it changed), or to influence or have influenced the operation of the odometer in such a way that the distance indicated on the odometer does not correspond to the distance actually travelled by that motor vehicle.<sup>711</sup>

#### Other

n/a

### 15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?

The 1994 Road Traffic Act tasks the RDW with the supervision of the conformity of vehicles, systems, components, separate technical units, equipment and devices with the type for which approval has been granted as well as the conformity of parts and appliances that have been approved with the approval.<sup>712</sup> In particular, the RDW is responsible for identifying and recording manipulation of vehicle systems and reporting of this to the competent authorities.<sup>713</sup>

The Approval Motor Vehicles Air Pollution Decree (which prohibits tampering) is based on Articles 9.5.1 and 9.5.6 of the Environmental Protection Act.<sup>714</sup> The enforcement of these provisions is thus in the hands of the Human Environment and Transport Inspectorate.<sup>715</sup>

<sup>710</sup> Vehicle Regulation, Articles 6(4) and 6(3).

<sup>711</sup> 1994 Road Traffic Act, Article 70m.

<sup>712</sup> 1994 Road Traffic Act, Article 4b(b).

<sup>713</sup> Article 4(b)(1)(6b).

<sup>714</sup> Wet milieubeheer (Environmental Protection Act), available at <https://wetten.overheid.nl/BWBR0003245/>.

<sup>715</sup> Instellingsbesluit Inspectie Leefomgeving en Transport (Institutional Decree on the Human Environment and Transport Inspectorate), available at <https://wetten.overheid.nl/BWBR0031032/2019-06-16>.

Due to the overlap, these two parties thus must closely cooperate in ensuring compliance with the legislation on tampering listed above.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

As mentioned above, the Type Approval Motor Vehicles Air Pollution Decree is based on Articles 9.5.1 and 9.5.6 of the Environmental Protection Act. The Economic Offences Act provides that violations of instructions laid down pursuant to these articles constitute economic offences.<sup>716</sup> In case of an intentionally committed offence, according to Article 6 of the Economic Offences Act, the penalty is a maximum of two years' imprisonment, community service or a fine of the fourth category (maximum EUR 21.750<sup>717</sup>). The penalty for unintentional offence is a maximum of six months' imprisonment, community service or a fourth category fine.<sup>718</sup>

The prohibition on odometer tampering can be seen as constituting criminal behaviour such as fraud or forgery.<sup>719</sup> Under the Dutch Criminal Law Code, the former is punishable with imprisonment of up to four years or a fifth category fine (maximum EUR 87 000),<sup>720</sup> and the latter with a prison sentence of up to six years or a fine of the fifth category.<sup>721</sup>

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

There are no specific national legal provisions in this regard; general principles regarding remedies apply. According to the Dutch Civil Code, a producer is liable for damage caused by a defect in his product, unless for example, it is plausible that the defect that caused the damage did not exist at the time when he put the product into circulation, or that this defect arose later.<sup>722</sup>

<sup>716</sup> Wet op de economische delicten (Economic Offences Act), Article 1a(2), available at <https://wetten.overheid.nl/BWBR0002063/>.

<sup>717</sup> See [www.rijksoverheid.nl/onderwerpen/straffen-en-maatregelen/vraag-en-antwoord/hoe-hoog-zijn-de-boetes-in-nederland](http://www.rijksoverheid.nl/onderwerpen/straffen-en-maatregelen/vraag-en-antwoord/hoe-hoog-zijn-de-boetes-in-nederland) (last accessed on 15 April 2020).

<sup>718</sup> Economic Offences Act, Article 6.

<sup>719</sup> See [www.parlementairemonitor.nl/9353000/1/i9vvij5epmj1ey0/vkzb6x8wsdro](http://www.parlementairemonitor.nl/9353000/1/i9vvij5epmj1ey0/vkzb6x8wsdro) (last accessed on 15 April 2020).

<sup>720</sup> Wetboek van Strafrecht (Dutch Criminal Law Code), Article 326, available at <https://maxius.nl/wetboek-van-strafrecht/artikel326>.

<sup>721</sup> Wetboek van Strafrecht (Dutch Criminal Law Code), Article 225, available at <https://maxius.nl/wetboek-van-strafrecht/artikel225>.

<sup>722</sup> Burgerlijk Wetboek (Dutch Civil Code), Book 6, Article 185(1), available at <https://maxius.nl/burgerlijk-wetboek-boek-6/artikel185/lid1>.

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The 1994 Road Traffic Act prescribes that an inspection certificate must be issued for a motor vehicle or a trailer for which a registration number has been or must be provided.<sup>723</sup>

During the periodic inspection (APK), an inspector assesses the vehicle in terms of road safety and the environment, among other things. After the inspection, the owner receives an inspection report containing the results of the inspection. How often an APK is required depends on the weight of the car, which fuel it uses, and when it was allowed on the road for the first time.<sup>724</sup>

The APK inspection requirements include the permanent requirements that are listed in Chapter 5 of the Vehicle Regulation (those that every vehicle must always meet). The specific requirements that are checked during the inspection can be found here: <https://handboek.rdw.nl/> - and fall under the following categories:

- Road safety – e.g. brakes, suspension, shock absorbers, tires, steering, lights;
- Environment – e.g. exhaust emissions and presence of components such as a particulate filter and catalytic converter;
- Registration – e.g. mileage, vehicle identification number and fuel used.<sup>725</sup>

Some relevant developments with regard to tampering are the following:

- The RDW has established that it is difficult for several vehicles to read the emission-related on-board diagnostic system (EOBD) during an APK. As a result, the method for reading EOBD during the APK has been adjusted;
- The RDW has found that it is becoming increasingly complex to perform a soot measurement during an APK. This has been the case since the arrival of company vehicles that comply with the Euro 6 environmental classification. The construction of the exhaust nozzle in some cases prevents the insertion of the probe and the shape of the exhaust nozzle sometimes makes it impossible to correctly position the zero-emission equipment. The RDW is currently investigating the possibility of also using the emission-related diagnostic on-board system (EOBD) in this regard.<sup>726</sup>

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

<sup>723</sup> 1994 Road Traffic Act, Article 72(1).

<sup>724</sup> See [www.rijksoverheid.nl/onderwerpen/apk/vraag-en-antwoord/hoe-vaak-moet-ik-mijn-auto-apk-laten-keuren](http://www.rijksoverheid.nl/onderwerpen/apk/vraag-en-antwoord/hoe-vaak-moet-ik-mijn-auto-apk-laten-keuren) (last accessed on 15 April 2020).

<sup>725</sup> See [www.rijksoverheid.nl/onderwerpen/apk/vraag-en-antwoord/wat-wordt-er-gekeurd-bij-de-algemene-periodieke-keuring-apk](http://www.rijksoverheid.nl/onderwerpen/apk/vraag-en-antwoord/wat-wordt-er-gekeurd-bij-de-algemene-periodieke-keuring-apk) (last accessed on 15 April 2020).

<sup>726</sup> See <https://handboek.rdw.nl/> (last accessed on 15 April 2020).



The “initial” roadside inspections are carried out by the police in the context of traffic supervision. If, in accordance with Article 10(2) of Directive 2014/47/EU, the police are of the opinion that a “further” technical inspection is necessary, the RDW will carry out that inspection.<sup>727</sup> In order to do so, the RDW has at its disposal, for example, special mobile workshop where vehicles can be weighed and measured.<sup>728</sup>

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

Under the 1994 Road Traffic Act, APK inspection reports may be issued by the RDW or an approved national or legal person.<sup>729</sup> The Recognition and Inspection Authority APK Regulation provides more rules on the requirements that need to be met for such a “person” (e.g. garages and inspection sites) to be allowed to be acknowledged as an established inspection site by the RDW. Outside of the Netherlands, APK inspections can only be carried out in Belgium and Spain.<sup>730</sup> The RDW will conduct random checks for at least three out of every hundred vehicles after an APK inspection has been carried out in order to monitor these inspections.<sup>731</sup>

The police and the RDW collaborate with regard to technical roadside inspections. The police is involved due to its role and competences in relation to the supervision of traffic.<sup>732</sup> Under the Vehicle Authority Regulation, the RDW is specifically mandated to perform further inspections and make locations and facilities available for further inspections (in the implementation of Directive 2014/47/EU).<sup>733</sup>

**21. Are any of these authorities required to disclose information on these tests and inspections?**

See question 12 on the information obligations placed on the RDW and the data sets it makes available. The RDW provides data sets on APK inspections.<sup>734</sup>

**22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

No specific penalties or sanctions relate to these tests and inspections as such; they are seen as ways to enforce the rules set out under the previous sections (on type approval and tampering).

*National strategies and initiatives*

<sup>727</sup> See <https://zoek.officielebekendmakingen.nl/stcrt-2017-26291.html> (last accessed on 15 April 2020).

<sup>728</sup> See [www.rdw.nl/over-rdw/nieuws/2018/wegcontroles-politie-en-rdw-vullen-elkaar-aan](http://www.rdw.nl/over-rdw/nieuws/2018/wegcontroles-politie-en-rdw-vullen-elkaar-aan) (last accessed on 15 April 2020).

<sup>729</sup> 1994 Road Traffic Act, Article 78(1).

<sup>730</sup> See [www.rdw.nl/particulier/voertuigen/auto/apk](http://www.rdw.nl/particulier/voertuigen/auto/apk) (last accessed on 15 April 2020).

<sup>731</sup> 1994 Road Traffic Act, Article 86.

<sup>732</sup> Politiewet (Police Act), Article 3, available at <https://wetten.overheid.nl/jci1.3:c:BWBR0031788>.

<sup>733</sup> Vehicle Authority Regulation, Article 2(k).

<sup>734</sup> See [www.rdw.nl/over-rdw/dienstverlening/open-data/algemene-informatie](http://www.rdw.nl/over-rdw/dienstverlening/open-data/algemene-informatie) (last accessed on 15 April 2020).

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

Since 1 January 2014, the RDW has registered odometer readings for passenger cars and light commercial vehicles and has supervised the reliability of these measurements. All companies in the Netherlands recognised by RDW are legally obliged to register odometer readings for these vehicles. This registration is carried out, for example, during APK inspections, and repairs and maintenance.<sup>735</sup>

The RDW manages the register of odometer readings and, based on that information, can provide an opinion on the correctness of a meter reading (e.g. if the mileage is less than during the previous APK inspection, a 'mileage illogical' message will be received).<sup>736</sup>

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

The RDW provides for two ways to check a vehicle's mileage history:

- If you are the owner / holder of a passenger car or you plan to purchase one, then you can obtain an "odometer check" from the RDW of whether the odometer reading makes sense. As part of this check, you will only receive a "logical" judgment, "illogical" judgment or "no judgment" (i.e. you will not have access to the mileage readings themselves).<sup>737</sup>
- As owner / holder of a passenger car or light commercial vehicle, you can request an "odometer report" from the RDW, which contains specific numbers and information regarding the mileage readings, and offers potential buyers of a vehicle insight and certainty about (the readings of) the car.<sup>738</sup>

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

n/a

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other public institutions?**

As part of a 2017 pilot, odometer readings were exchanged between Belgium and the Netherlands for imported and exported cars. The preliminary results of the evaluation of the pilot showed that the number of cases of a presumably manipulated odometer readings from vehicles imported from Belgium to the Netherlands and vice versa decreased significantly. Dutch authorities, including the

<sup>735</sup> See [www.automobielmanagement.nl/download/RDW.pdf](http://www.automobielmanagement.nl/download/RDW.pdf) (last accessed on 15 April 2020).

<sup>736</sup> See [www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerstanden-en-rdw](http://www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerstanden-en-rdw) (last accessed on 15 April 2020).

<sup>737</sup> See [www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerstand-controleren](http://www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerstand-controleren) (last accessed on 15 April 2020).

<sup>738</sup> See [www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerrapport-aanvragen](http://www.rdw.nl/particulier/voertuigen/auto/tellerstanden/tellerrapport-aanvragen) (last accessed on 15 April 2020).

RDW, are currently investigating possibilities to further improve the results of the pilot, as well as examining whether it is possible to extend the pilot to other EU Member States.<sup>739</sup>

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

n/a

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No.

### *Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There has been no research carried out at national level that would allow for an answer to this question.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question. However, there are a few issues relating to enforcement in this regard (see below).

Potential gaps in the legislation

Gaps in the legislation seem to arise mainly with regard to enforcement (see below).

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

The existing enforcement system seems effective. Two developments (in relation to odometer tampering) can be highlighted in this regard:

<sup>739</sup> See [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf) (last accessed on 15 April 2020).

- In 2017, it was reported that the measures taken to counter odometer fraud (i.e. the prohibition on odometer tampering as set out above) were effective and efficient, and that the number of illogical readings had sharply decreased.<sup>740</sup>
- Additionally, this measure may have resulted in the somewhat upward trend with regard to the use of criminal law to counter odometer fraud which was observed. In 2018, the public prosecutor's office handled 11 odometer fraud cases, compared to 3, 10 and 8 in 2015, 2017 and 2018 respectively.<sup>741</sup>
- The registration and comparison of odometer readings has also been efficient, and has reduced odometer fraud in the Netherlands from 48% in 1991 to 2.75% in 2018.<sup>742</sup>

### 31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?

- Currently, there is no legal basis in the Netherlands to oblige consumers to comply with a recall. The Minister of Infrastructure and Water Management is working on a regulation that obliges vehicle owners to respond to a recall. If the vehicle owner does not have the car repaired within a certain period, the car may no longer be allowed on public roads.<sup>743</sup>
- In the Netherlands, the odometer reading of a car is registered at almost every visit to the garage. However, the number of garage visits is limited, especially for young vehicles which require little to no major repairs or maintenance. In order to promote the registration of odometer readings with this group of vehicles, an amendment to the Vehicle Regulation is currently underway to repeal the limit of 150 euros for the registration of odometer readings for repairs, maintenance and tire changes. As a result, the number of registrations of odometer readings is expected to increase and the possibility of committing fraud will be further reduced.<sup>744</sup>
- Despite the fact that odometer manipulation has been made a criminal offence, there is little awareness in the Netherlands on the subject by the police and judicial authorities, and thereby a lack of broad knowledge and experience on the subject.<sup>745</sup> Additionally, there is no coordinated approach to odometer tampering by the police and the judiciary, so that the investigations of odometer tampering are placed under different expertise in different regions and there are few specialists in the field.<sup>746</sup>
- There is currently no obligation at EU level for the central registration and exchange of odometer readings between Member States. This makes it difficult to tackle tampering in import vehicles in this regard.<sup>747</sup>

<sup>740</sup> See [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf) (last accessed on 15 April 2020).

<sup>741</sup> See [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf) (last accessed on 15 April 2020).

<sup>742</sup> See [www.rdw.nl/zakelijk/nieuws/2019/fraude-met-tellerstanden](http://www.rdw.nl/zakelijk/nieuws/2019/fraude-met-tellerstanden) (last accessed on 15 April 2020).

<sup>743</sup> See <https://automotive-online.nl/management/laatste-nieuws/aftermarket/26840-minister-verplicht-voertuigeigenaren-recall-op-te-volgen;www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/01/23/zevende-overzichtsbrief-dieselfraude/zevende-overzichtsbrief-dieselfraude.pdf> (last accessed on 15 April 2020).

<sup>744</sup> See [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf) (last accessed on 15 April 2020).

<sup>745</sup> See [www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf](http://www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf) (last accessed on 15 April 2020).

<sup>746</sup> See [www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf](http://www.aanpaktellerfraude.nl/files/Teller%20Manipulatie%20-%20Nederlands.pdf) (last accessed on 15 April 2020).

<sup>747</sup> See [www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf](http://www.tweedekamer.nl/downloads/document?id=4daaaf0e-b073-495f-809a-b699faa693f9&title=Aanpak%20van%20tellerfraude.pdf) (last accessed on 15 April 2020).

- Hardly any cases of removed soot filters were found during the APK inspection in 2019. In the Netherlands, at least 20,200 cars are driving around without a filter, but this was also found in only 397 cars. The Dutch authorities thus want to introduce a particle test at the APK inspections and roadside inspections as soon as possible. However, currently the equipment is not available for this.<sup>748</sup>
- A second opinion requested by the Ministry of Infrastructure and Water Management came to the conclusion that it is not possible for the State to recover damages for, for example, health damage or damage to agricultural crops resulting from the additional air pollution from tampering with diesel engines from the relevant car manufacturers. The main reason for this is the lack of a direct interest on the part of the State, because the State as such has not suffered any damage. Other possibilities of the State to recover environmental damage were also found to be limited. For example, there is in fact no evidence that the State has taken or financed measures that are the direct result of the environmental damage that may have been caused by the tampering. The consequence of the wrongful act of an automobile manufacturer is difficult to quantify and can therefore not be directly linked to measures that the State may have taken or will take to compensate or reverse this environmental damage.<sup>749</sup>

### Other

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

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#### **RWD**

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[www.rdw.nl/over-rdw/contact/contactformulier](http://www.rdw.nl/over-rdw/contact/contactformulier)

#### **Human Environment and Transport Inspectorate**

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#### **Dutch police**

+31 - 34 357 8844

[www.politie.nl/aangifte-of-melding-doen/meldformulier.html?sid=73e515ad-feb4-4e6d-a466-069738fd1768](http://www.politie.nl/aangifte-of-melding-doen/meldformulier.html?sid=73e515ad-feb4-4e6d-a466-069738fd1768)

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

n/a

<sup>748</sup> See <https://eenvandaag.avrotros.nl/item/strengere-controle-op-roetfilterfraude-faalt-dus-worden-duizenden-vuile-diesels-apk-goedgekeurd/> (last accessed on 15 April 2020).

<sup>749</sup> See [www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/01/23/zevende-overzichtsbrief-dieselfraude/zevende-overzichtsbrief-dieselfraude.pdf](http://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/01/23/zevende-overzichtsbrief-dieselfraude/zevende-overzichtsbrief-dieselfraude.pdf) (last accessed on 15 April 2020).

## Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

Recent cases regarding vehicle tampering include the following:

### **Amsterdam Court (2019)**

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2019:8741>

The Car Claim Foundation may litigate against car manufacturers on behalf of a group of car owners as to whether they have put vehicles into circulation that contain 'cheating software' (where the engine settings were different during tests than for normal use) and whether the updates carried out on this software have led to malfunctions of the cars.

### **Amsterdam Court (2019)**

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2019:1609>

The private seller of a second-hand car must repay the buyer the purchase price of the car. It concerned a car imported from Germany by the seller. Because the odometer reading in 2017 was higher than on the purchased date in 2018, odometer fraud is demonstrated. This establishes that the car does not comply with the agreement and that there is non-conformity, which justifies termination of the agreement. The seller's appeal regarding the breach of the obligation to investigate will not be honoured. There was no reason for the buyer to further investigate the accuracy of the odometer reading.

## Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
<b>Road traffic emission factors (2019)</b>	<a href="http://www.pbl.nl/sites/default/files/downloads/tno_2019_emissiefactoren_wegverkeer_-_actualisaties_2019.pdf">www.pbl.nl/sites/default/files/downloads/tno_2019_emissiefactoren_wegverkeer_-_actualisaties_2019.pdf</a>	TNO updates the emission factors for road traffic every year. These emission factors are used in the Emission Registration, for example for international emission reporting, but also in distribution models for the calculation of concentrations of air pollutants.
<b>Possibilities to identify and reduce manipulation of AdBlue systems on trucks (2017)</b>	<a href="https://publications.tno.nl/publication/34626846/ymQ86F/TNO-2017-R11421.pdf">https://publications.tno.nl/publication/34626846/ymQ86F/TNO-2017-R11421.pdf</a>	Contracted by the Dutch Ministry of Infrastructure and Water management TNO gathered the options to reduce manipulation of emission control systems working with AdBlue. In addition, options have been investigated to detect the manipulation of these emission control systems.
<b>Programme emission tests RDW (2016)</b>	<a href="http://www.rdw.nl/-/media/rdw/rdw/pdf/sitecollectiondocuments/over-">www.rdw.nl/-/media/rdw/rdw/pdf/sitecollectiondocuments/over-</a>	The report contains the findings and conclusions from an investigation by the RDW into the use of unauthorised

Title	Reference	Short description
	rdw/rapporten/programma-emissietesten-rijksdienst-voor-het-wegverkeer.pdf	methods in emission tests by car manufacturers. These are vehicles for which the RDW itself has issued emission approval.
<b>Research report on the improvement of the effectiveness of recalls (2019)</b>	www.tweedekamer.nl/downloads/document?id=2a361845-cf14-416f-805b-a4044e6ae4f4&title=Recall%20doen%20we%20samen.%20Onderzoeksrapport%20Overbetering%20effectiviteit%20terugroepacties.pdf	The report discusses the effectiveness of vehicle recalls.
<b>Research NOx emission behaviour of a Jeep Grand Cherokee Euro 5a diesel (2019)</b>	www.tweedekamer.nl/downloads/document?id=6faba8-134d-4da9-bd7a-21dbbf72bd7b&title=Onderzoek%20NOx%20emissiegedrag%20van%20een%20Jeep%20Grand%20Cherokee%20Euro%205a%20diesel.pdf	Part of a series of investigations that was initiated in response to the discovery of fraud with emission software by Volkswagen in September 2015.
<b>Research NOx emission behaviour of a Suzuki Vitara Euro 6b diesel (2019)</b>	www.tweedekamer.nl/downloads/document?id=9564df9f-6d20-4896-be40-d227fa7f4b9f&title=Onderzoek%20NOx%20emissiegedrag%20van%20een%20Suzuki%20Vitara%20Euro%206b%20diesel.pdf	Part of a series of investigations that was initiated in response to the discovery of fraud with emission software by Volkswagen in September 2015.
<b>Effects of a software update on NOx emissions and performance of a VW Polo (2019)</b>	www.tweedekamer.nl/downloads/document?id=30986b31-a975-4561-b1f0-f658fad28e44&title=Effects%20of%20a%20software%20update%20on%20NOx%20emissions%20and%20performance%20of%20a%20VW%20Polo.pdf	Part of a series of investigations that was initiated in response to the discovery of fraud with emission software by Volkswagen in September 2015.



## Poland

### Overview of legislation

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

Directive 2007/46/EC was implemented through the Act of 10 October 2012 amending the 1997 Road Traffic Act and certain other acts<sup>750</sup>.

The Act amended the 1997 Road Traffic Act<sup>751</sup>.

Additionally, Directive 2007/46/EC was implemented by several regulations:

- (i) the Regulation of the Minister of Infrastructure of 21 February 2011 amending the Regulation setting out technical requirements for vehicles and the scope of the necessary vehicle equipment<sup>752</sup>,
- (ii) the Regulation of the Minister of Transport, Construction and the Maritime Economy of 19 March 2013 on the method to establish the number of end-of-series vehicles and model documents<sup>753</sup>,
- (iii) the Regulation of the Minister of Transport, Construction and the Maritime Economy of 21 March 2013 on the EC vehicle type-approval<sup>754</sup> (the Regulation on EC vehicle type-approval),
- (iv) the Regulation of the Minister of Transport, Construction and the Maritime Economy of 25 March 2013 on specific requirements for applicant's authorization, the method and mode of control and model assessment report<sup>755</sup>,

<sup>750</sup> Ustawa z dnia 10 października 2012 r. o zmianie ustawy – Prawo o ruchu drogowym oraz niektórych innych ustaw (the Act of 10 October 2012 amending the 1997 Road Traffic Act and certain other acts), Official Journal 2012 Item 1448, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20120001448> (last accessed on 16 June 2020).

<sup>751</sup> Ustawa z dnia 20 czerwca 1997 r. – Prawo o ruchu drogowym (1997 Road Traffic Act), Official Journal 1997 No 98 Item 602, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdU19970980602> (last accessed on 16 June 2020).

<sup>752</sup> Rozporządzenie Ministra Infrastruktury z dnia 21 lutego 2011 r. zmieniające rozporządzenie w sprawie warunków technicznych pojazdów oraz zakresu ich niezbędnego wyposażenia (Regulation of the Minister of Infrastructure of 21 February 2011 amending the Regulation setting out technical requirements for vehicles and the scope of the necessary vehicle equipment), Official Journal 2011 No 47 Item 242, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20110470242> (last accessed on 16 June 2020).

<sup>753</sup> Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 19 marca 2013 r. w sprawie sposobu ustalenia liczby pojazdów zaliczanych do końcowej partii produkcji oraz wzorów dokumentów z tym związanych (Regulation of the Minister of Transport, Construction and the Maritime Economy of 19 March 2013 on the method to establish the number of end-of-series vehicles and model documents), Official Journal 2013 Item 389, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130000389> (last accessed on 16 June 2020).

<sup>754</sup> Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 21 marca 2013 r. w sprawie dopuszczenia indywidualnego WE pojazdu (Regulation of the Minister of Transport, Construction and the Maritime Economy of 21 March 2013 on the EC vehicle type-approval), Official Journal 2013 Item 396, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130000396> (last accessed on 16 June 2020).

<sup>755</sup> Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 25 marca 2013 r. w sprawie szczegółowych wymagań, jakie powinien spełnić podmiot wnioskujący o wyznaczenie go jako jednostkę uprawnioną, sposobu i trybu przeprowadzania kontroli oraz wzoru sprawozdania oceniającego (Regulation of the Minister of Transport, Construction and the Maritime Economy of 25 March 2013 on specific requirements

(v) the Regulation of the Minister of Transport, Construction and the Maritime Economy of 25 March 2013 on approval of motor vehicles, trailers and their equipment or any part thereof<sup>756</sup> (the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof),  
 (vi) the Regulation of the Minister of Transport, Construction and the Maritime Economy of 26 March 2013 on vehicles approval<sup>757</sup>.

Directive 2014/45/EU (on periodic roadworthiness tests)

Directive 2014/45/EU has not yet been fully implemented even though under its provisions, the laws, regulations and administrative measures necessary to comply with it should have been adopted by 20 May 2017. On 25 July 2019, the Commission decided to send a reasoned opinion to Poland pursuant to Art 258 TFEU requesting the national authorities implement the Directive. The Commission claimed that Poland had only partially transposed the Directive<sup>758</sup>.

The Directive was partially implemented by:

- (i) the Act of 24 July 2015 amending the 1997 Road Traffic Act and certain other acts<sup>759</sup>,
- (ii) the Regulation of the Minister of Infrastructure of 13 September 2019 amending the Regulation on the scope and method of inspection of vehicle and model documents used for inspection<sup>760</sup>.

The draft act amending the 1997 Road Traffic Act and certain other acts<sup>761</sup> fully implementing the Directive is currently being considered. As for now, the draft act was submitted to the Sejm (the Lower House of Parliament) on 2 November 2018. The draft act was prepared by the Ministry of Infrastructure and Construction. No further actions have been taken since then.

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for applicant's authorization, the method and mode of control and model assessment report), Official Journal 2013 Item 406, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130000406> (last accessed on 16 June 2020).

<sup>756</sup> Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 25 marca 2013 r. w sprawie homologacji typu pojazdów samochodowych i przyczep oraz ich przedmiotów wyposażenia lub części (Regulation of the Minister of Transport, Construction and the Maritime Economy of 25 March 2013 on approval of a motor vehicles, trailers and their equipment or any part thereof), Official Journal 2013 Item 407, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130000407> (last accessed on 16 June 2020).

<sup>757</sup> Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 26 marca 2013 r. w sprawie dopuszczenia jednostkowego pojazdu (Regulation of the Minister of Transport, Construction and the Maritime Economy of 26 March 2013 on vehicles approval), Official Journal 2013 Item 408, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130000408> (last accessed on 16 June 2020).

<sup>758</sup> Available at [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_19\\_4251](https://ec.europa.eu/commission/presscorner/detail/EN/INF_19_4251) (last accessed on 16 June 2020).

<sup>759</sup> Ustawa z dnia 24 lipca 2015 r. o zmianie ustawy - Prawo o ruchu drogowym oraz niektórych innych ustaw (Act of 24 July 2015 amending the 1997 Road Traffic Act and certain other acts), Official Journal 2015 Item 1273, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20150001273> (last accessed on 16 June 2020).

<sup>760</sup> Rozporządzenie Ministra Infrastruktury z dnia 13 września 2019 r. zmieniające rozporządzenie w sprawie zakresu i sposobu przeprowadzania badań technicznych pojazdów oraz wzorów dokumentów stosowanych przy tych badaniach (Regulation of the Minister of Infrastructure of 13 September 2019 amending the Regulation on the scope and method of inspection of vehicle and model documents used for inspection), Official Journal 2019 Item 1787, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001787> (last accessed on 16 June 2020).

<sup>761</sup> Projekt ustawy o zmianie ustawy – Prawo o ruchu drogowym oraz niektórych innych ustaw (draft act amending the 1997 Road Traffic Act and certain other acts), available at <https://legislacja.rcl.gov.pl/projekt/12290511/katalog/12382565#12382565> (last accessed on 16 June 2020).

## Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

Poland did not implement the Directive 2014/47/EU before 20 May 2017 as required by the Directive. On 25 July 2019, the Commission claimed that Poland has not adopted, published nor communicated to the Commission the national measures taken to transpose the Directive and thus sent a reasoned opinion to Poland pursuant to Art 258 TFEU<sup>762</sup>.

Nonetheless, Directive 2014/47/EU was implemented through:

- (i) the Regulation of Minister of Infrastructure of 13 February 2018 on the modes of transport<sup>763</sup>,
- (ii) the Regulation of Minister of Infrastructure of 18 April 2018 amending the Regulation on technical conditions of vehicles and the scope of necessary equipment<sup>764</sup>,
- (iii) the Act of 13 June 2019 amending the 1997 Road Traffic Act and certain other acts<sup>765</sup>,
- (iv) the Regulation of Minister of Infrastructure of 19 September 2019 on the model form for transmission of data on results of vehicle inspection<sup>766</sup>,
- (v) the Regulation of Minister of Infrastructure of 21 October 2019 on risk assessment of entities engaged in carriage by road<sup>767</sup>,
- (vi) the Regulation of Minister of the Interior and Administration of 5 November 2019 on traffic control<sup>768</sup> (the Regulation on traffic control),
- (vii) the Regulation of Minister of Infrastructure of 31 October 2019 on training programme for controllers conducting specific technical inspection and model certificates confirming its completion<sup>769</sup>.

<sup>762</sup> Available at [https://ec.europa.eu/commission/presscorner/detail/EN/INF\\_19\\_4251](https://ec.europa.eu/commission/presscorner/detail/EN/INF_19_4251) (last accessed on 16 June 2020).

<sup>763</sup> Rozporządzenie Ministra Infrastruktury z dnia 25 stycznia 2018 r. w sprawie sposobu przewozu ładunku (the Regulation of Minister of Infrastructure of 13 February 2018 on the modes of transport), Official Journal 2018 Item 361, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000361> (last accessed on 16 June 2020).

<sup>764</sup> Rozporządzenie Ministra Infrastruktury z dnia 18 kwietnia 2018 r. zmieniające rozporządzenie w sprawie warunków technicznych pojazdów oraz zakresu ich niezbędnego wyposażenia (the Regulation of Minister of Infrastructure of 18 April 2018 amending the Regulation on technical conditions of vehicles and the scope of necessary equipment), Official Journal 2018 Item 855, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000855> (last accessed on 16 June 2020).

<sup>765</sup> Ustawa z dnia 13 czerwca 2019 r. o zmianie ustawy – Prawo o ruchu drogowym oraz niektórych innych ustaw (the Act of 13 June 2019 amending the 1997 Road Traffic Act and certain other acts), Official Journal 2019 Item 1466, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001466> (last accessed on 16 June 2020).

<sup>766</sup> Rozporządzenie Ministra Infrastruktury z dnia 19 września 2019 r. w sprawie określenia wzoru formularza do przekazywania danych dotyczących przeprowadzonych kontroli stanu technicznego pojazdów (the Regulation of Minister of Infrastructure of 19 September 2019 on the model form for transmission of data on results of vehicle inspection), Official Journal 2019 Item 1825, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001825> (last accessed on 16 June 2020).

<sup>767</sup> Rozporządzenie Ministra Infrastruktury z dnia 21 października 2019 r. w sprawie systemu oceny ryzyka podmiotów wykonujących przewóz drogowy (the Regulation of Minister of Infrastructure of 21 October 2019 on risk assessment of entities engaged in carriage by road), Official Journal 2019 Item 2123, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190002123> (last accessed on 16 June 2020).

<sup>768</sup> Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 5 listopada 2019 r. w sprawie kontroli ruchu drogowego (the Regulation of the Minister of the Interior and Administration of 5 November 2019 on traffic control), Official Journal 2018 Item 2141, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190002141> (last accessed on 16 June 2020).

<sup>769</sup> Rozporządzenie Ministra Infrastruktury z dnia 31 października 2019 r. w sprawie programów szkolenia i warsztatów dla kontrolujących przeprowadzających szczegółowe drogowe kontrole techniczne oraz wzorów zaświadczeń potwierdzających ich ukończenie (the Regulation of Minister of Infrastructure of 31 October 2019 on training programme for controllers conducting specific technical inspection and model certificates

**2. Which national measures cover the field or subject matter set out in the following Regulations?  
Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

The 1997 Road Traffic Act constitutes the main piece of legislation on road traffic in Poland. Chapter III (“Vehicles”) includes general provisions on type approval of light and commercial vehicles. These provisions have been further supplemented by the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof.

There are several other regulations which cover the subject matter set out in the Regulation (EC) No 715/2007:

- (i) the Regulation of the Minister of Infrastructure of 31 December 2002 on technical requirements for vehicles and the scope of the necessary vehicle equipment<sup>770</sup> (the Regulation on technical requirements for vehicles and the scope of the necessary vehicle equipment),
- (ii) the Regulation on EC vehicle type-approval,
- (iii) the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof,
- (iv) the Regulation of the Minister of Transport, Construction and the Maritime Economy of 10 May 2013 on the approval of the assembly plant adapting the type of vehicle to gas supply<sup>771</sup> (the Regulation on the approval of the assembly plant adapting the type of vehicle to gas supply),
- (v) the Regulation of the Minister of Economy of 30 April 2014 on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants<sup>772</sup> (the Regulation on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants).

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confirming its completion) Official Journal 2019 Item 2142, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190002142> (last accessed on 16 June 2020).

<sup>770</sup> Rozporządzenie Ministra Infrastruktury z dnia 31 grudnia 2002 r. w sprawie warunków technicznych pojazdów oraz zakresu ich niezbędnego wyposażenia (Regulation of the Minister of Infrastructure of 31 December 2002 on technical requirements for vehicles and the scope of the necessary vehicle equipment), Official Journal 2002 No 32 Item 262, available at

<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20030320262> (last accessed on 16 June 2020).

<sup>771</sup> Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 10 maja 2013 r. w sprawie homologacji sposobu montażu instalacji przystosowującej dany typ pojazdu do zasilania gazem (the Regulation of the Minister of Transport, Construction and the Maritime Economy of 10 May 2013 on the approval of the assembly plant adapting the type of vehicle to gas supply), Official Journal 2013 Item 610, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130000610> (last accessed on 16 June 2020).

<sup>772</sup> Rozporządzenie Ministra Gospodarki z dnia 30 kwietnia 2014 r. w sprawie szczegółowych wymagań dla silników spalinowych w zakresie ograniczenia emisji zanieczyszczeń gazowych i cząstek stałych przez te silniki (the Regulation of the Minister of Economy of 30 April 2014 on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants), Official Journal 2014 Item 588, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20140000588> (last accessed on 16 June 2020).

#### Commission Regulation (EU) 2017/1151 (on odometer readings)

The Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts – the Polish Penal Code<sup>773</sup>, tightened general requirements concerning odometer readings<sup>774</sup>. It imposed new obligations on the owner or the holder of the vehicle such as e.g. mandatory odometer reading within 14 days of its replacement. Additionally, the Act set forth the specific requirements for the odometer replacement.

The Act amended the Polish Penal Code<sup>775</sup>. Pursuant to the new regulations, odometer tampering is subject to the penalty of imprisonment for at least 3 months and the maximum of 5 years<sup>776</sup>.

#### Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

The 1997 Road Traffic Act constitutes the main piece of legislation on road traffic in Poland. Chapter III (“Vehicles”) includes general provisions on type approval of heavy duty vehicles. These provisions have been further supplemented by the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof.

There are several other regulations which cover the subject matter set out in the Regulation (EC) No 595/2009:

- (i) the Regulation on technical requirements for vehicles and the scope of the necessary vehicle equipment,
- (ii) the Regulation on the EC vehicle type-approval,
- (iii) the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof,
- (iv) the Regulation on the approval of the assembly plant adapting the type of vehicle to gas supply,
- (v) the Regulation on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants.

### **3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

In Poland, the main national measures which relate to tampering include the following:

- (i) the 1997 Road Traffic Act,
- (ii) the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof,
- (iii) the Regulation on the approval of the assembly plant adapting the type of vehicle to gas supply,
- (iv) the Regulation on the EC vehicle type-approval,
- (v) the Regulation on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants.

<sup>773</sup> Ustawa z dnia 15 marca 2019 r. o zmianie ustawy - Prawo o ruchu drogowym oraz ustawy - Kodeks karny (Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts – the Polish Penal Code), Official Journal 2019 Item 870, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190000870> (last accessed on 16 June 2020).

<sup>774</sup> See [www.prawo.pl/biznes/przekrecanie-licznika-i-tachografu-bedzie-przestepstwem,384928.html](http://www.prawo.pl/biznes/przekrecanie-licznika-i-tachografu-bedzie-przestepstwem,384928.html) (last accessed on 16 June 2020).

<sup>775</sup> Ustawa z dnia 6 czerwca 1997 r. - Kodeks karny ( the Polish Penal Code), Official Journal 1997 No 88 Item 553, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553> (last accessed on 16 June 2020).

<sup>776</sup> Article 306a of the Polish Penal Code.



The Polish Penal Act regulates the penalty for odometer tampering.

**4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

The Regulation on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants was introduced in order to implement the previous EU directives on EU emissions standards, e.g. Commission Directive 2012/46/EU of 6 December 2012 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery<sup>777</sup>.

The mentioned Directive is no longer in force (as of 1 January 2017 and was implicitly repealed by Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery)<sup>778</sup>.

The national measures do not directly refer to EU emissions regulations and standards, they solely indicate the EU directives which they implement.

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The national measures set out hereinabove only refer to the implementation of EU directives without providing further justification.

The supporting documentation of the draft act 2019 amending the 1997 Road Traffic Act and other acts including the Polish Penal Code provides that the need for penalisation of odometer tampering was justified as “socially unacceptable” due to the increasing number of tampering<sup>779</sup>.

## Requirements and rules on tampering

### *Obligations manufacturers*

**6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

<sup>777</sup> Commission Directive 2012/46/EU of 6 December 2012 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, OJ L 353, 21.12.2012, pp. 80–127, available at <https://eur-lex.europa.eu/eli/dir/2012/46/oj> (last accessed on 16 June 2020).

<sup>778</sup> Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, OJ L 252, 16.9.2016, pp. 53–117, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32016R1628> (last accessed on 16 June 2020).

<sup>779</sup> Supporting documentation is available at [www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=2878](http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=2878).

There are no specific national legal requirements on manufacturers of vehicles relating to the *prevention* of tampering.

## 7. Are there any other requirements relating to tampering which manufacturers need to meet?

Manufacturers are required to meet the conditions set out as part of the type approval process in line with the 1997 Road Traffic Act.

Additionally, they must comply with the Regulation on specific requirements for combustion engines limiting the emission of gaseous and particulate pollutants concerning e.g. design of compression ignition engines, the maximum emission of gaseous and particulate pollutants by compression ignition engines, design of positive-ignition engines, the maximum emission of gaseous and particulate pollutants by positive-ignition engines.

## 8. Are manufacturers required to disclose information relating to tampering (resistance)?

There is no such obligation.

### Type approval

## 9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?

The 1997 Road Traffic Act introduces the type approval of vehicles. The 1997 Road Traffic Act was implemented by the Regulation of the Minister of Transport, Construction and the Maritime Economy of 25 March 2013 on approval of a motor vehicles, trailers and their equipment or any part thereof, which sets forth specific requirements regarding the type approval of vehicles.

In setting out requirements for the type approval of vehicles, the Regulation solely refers to Directive 2007/46/EC. Pursuant to provisions of the Regulation:

(i) EC vehicle type-approval is set forth in Annex IV: Part I (except for Appendix II) and Part II of the Directive with the exception for special vehicles for which the approval is stipulated in Annex XI of the Directive.

(ii) EC type approval of the equipment or parts and ECE type approval are set forth in Annex IV: Part I (except for Appendix II) and Part II, or Annex XI of the Directive.

The Regulation provides exceptions with regards to the application of requirements set forth in Directive 2007/46/EC. For vehicles of vehicle categories M1, N1, M2, M3, N2 and N3 produced in small series, the Regulation provides for alternative requirements set out in Annex 2 of the Regulation.

The 1997 Road Traffic was further implemented by the Regulation on the approval of the assembly plant adapting the type of vehicle to gas supply. The Regulation sets forth requirements regarding the type approval in Annex I of the Regulation. They concern the requirements e.g. for parts of the assembly plant adapting the type of vehicle to gas supply, the method of adapting the vehicle to gas supply, gas emissions, etc. These requirements are only mentioned in the Regulation and are further specified in other acts as the Regulation refers to e.g. UNECE Regulations for specific criteria.



**10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

The checks or processes are set forth in Annex IV: Part I (except for Appendix II) and Part II of Directive 2007/46/EC. They include, e.g.:

- sound levels
- emissions
- fuel tanks/rear protective devices
- braking
- seat strength
- set belt requirements
- lamps requirements
- alarm systems.

These general requirements have been supplemented by the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof. The Regulation introduces additional requirements for type-approval of vehicles of vehicle categories M, N in Appendix 1 of the Regulation such as e.g.:

- digital tachograph requirements
- fire extinguisher
- safety of the driver's compartment

Appendix 2 of the Regulation includes alternative requirements for type-approval of vehicles produced in small series such as e.g. emitted electromagnetic radiations and seat anchorages, as well as alternative requirements for vehicles of vehicle categories N<sub>1</sub>, M<sub>2</sub>, M<sub>3</sub>, N<sub>2</sub> and N<sub>3</sub>.

For further details please refer to Appendix 1 and Appendix 2 of the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof.

**11. Please list the national type approval authority<sup>780</sup> and technical services<sup>781</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

The Polish national type approval authority is the Director of the Transport Technical Supervision (Transportowy Dozór Techniczny<sup>782</sup> (TDT)). The Director of TDT is authorised to grant, refuse, modify or revoke the type approval certificate in line with the 1997 Road Traffic Act. The certificate is issued by virtue of an administrative decision.

The TDT was established under the Act of 21 December 2000 on technical supervision<sup>783</sup>. The TDT is under the supervision of the Ministry of Transport. It carries out technical supervision. The Director

<sup>780</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>781</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>782</sup> More information available at [www.tdt.gov.pl/](http://www.tdt.gov.pl/).

<sup>783</sup> Ustawa z dnia 21 grudnia 2000 r. o dozorcze technicznym (Act of 21 December 2000 on technical supervision), Official Journal 2000 No 122 Item 132, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20001221321> (last accessed on 16 June 2020).

of the TDT directs the TDT and represents it externally. The Director is appointed by the Minister of Transport.

Under the Act of 21 December 2000 on technical supervision, the Office of Technical Supervision (Urząd Dozoru Technicznego (UDT)) is responsible for technical services<sup>784</sup>. It is represented by the President of UDT and remains under the supervision of the Minister of Economy.

## 12. Are any of these parties required to disclose information on national type approval processes?

There are no national provisions requiring to disclose information on national type approval process.

## 13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

The main piece of legislation regulating administrative sanctions for placing vehicles on the market without an appropriate certificate of type-approval process is the 1997 Road Traffic Act. It sets forth provisions on placing on the market: (i) vehicles without an appropriate certificate of type-approval process, (ii) vehicles withdrawn from the market, (iii) equipment or part thereof without an appropriate certificate of type-approval process, (iv) equipment of part thereof withdrawn from the market. The entity placing the vehicles on the market is subject to a monetary fine in the amount of no more than 25% of the sale value<sup>785</sup>. In addition to a monetary fine, the entity is obliged to withdraw the vehicle, equipment or part thereof at its own expense. It further specifies that an entity placing a vehicle, equipment or any part thereof without the type-approval certificate is obliged to make public information when they will be withdrawn from the market, and to buy back the vehicle from a person who has actual control over it<sup>786</sup>.

Pursuant to the Act of 21 December 2000 on technical supervision, placing in service or on the market any technical device without an appropriate administrative decision, or contrary to provisions thereof, is subject to the penalty of restriction of liberty or a fine. Additionally, the Act provides the same penalty for exploitation of petrol vapour recovery equipment without periodic inspection, or contrary to the provisions of the administrative decision, as well as for converting technical devices. The penalties set forth in the Act are of criminal nature.

### *Rules on tampering*

## 14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:

Tampering with the emission control design

There are no specific provisions at national level dealing with the post-type approval tampering with the emission control design. The 1997 Road Traffic Act constitutes the main piece of legislation regulating type-approval process. With regard to its general provisions, the Director of the TDT revokes the type-approval certificate in case of a negative compliance inspection result.

<sup>784</sup> Article 37 of the Act of 21 December 2000 on technical supervision.

<sup>785</sup> Article 140m of the 1997 Road Traffic Act.

<sup>786</sup> Article 70g of the 1997 Road Traffic Act.

### Tampering with aftermarket parts

There are no specific provisions at national level dealing with the post-type approval tampering with aftermarket parts. The 1997 Road Traffic Act constitutes the main piece of legislation regulating type-approval process. With regard to its general provisions, the Director of the TDT revokes the type-approval certificate in case of a negative compliance inspection result.

### Tampering with the engine

There are no specific provisions at national level dealing with the post-type approval tampering with the engine. The 1997 Road Traffic Act constitutes the main piece of legislation regulating type-approval process. With regard to its general provisions, the Director of the TDT revokes the type-approval certificate in case of a negative compliance inspection result.

### Tampering with the OBD system

There are no specific provisions at national level dealing with the post-type approval tampering with the OBD system. The 1997 Road Traffic Act constitutes the main piece of legislation regulating type-approval process. With regard to its general provisions, the Director of the TDT revokes the type-approval certificate in case of a negative compliance inspection result.

### Odometer tampering (in particular on second-hand vehicles)

The Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts including the Polish Penal Code introduced penalties for odometer tampering.

Pursuant to the new regulation, odometer tampering is subject to a penalty of imprisonment for at least 3 months and a maximum of 5 years.

### Other

In certain situations, tampering with a digital tachograph tracking drivers' working time is prohibited. If tampering with a digital tachograph involves odometer tampering, it is subject to a penalty of imprisonment for at least 3 months and a maximum of 5 years under the Polish Penal Code<sup>787</sup>.

## 15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?

As outlined above, the Act of 21 December 2000 on technical supervision established the TDT as the main authority dealing with the type-approval process<sup>788</sup>. The scope of the TDT's activities includes

<sup>787</sup> More information on tampering with digital tachographs is available at [www.transport-manager.pl/2020/02/05/jazda-na-magnesie-jest-przestepstwem/](http://www.transport-manager.pl/2020/02/05/jazda-na-magnesie-jest-przestepstwem/) (last accessed on 16 June 2020).

<sup>788</sup> Article 42 of the Act of 21 December 2000 on technical supervision.

e.g. technical supervision, issuing administrative decisions, as well as ensuring compliance with legislation on type-approval process, including on tampering.

The TDT's activities are governed by:

- (i) the Act of 21 December 2000 on technical supervision,
- (ii) the 1997 Road Traffic Act,
- (iii) the Regulation on approval of motor vehicles, trailers and their equipment or any part thereof.

Penalties in relation to the rules on odometer tampering under the Polish Penal Code, are imposed by the courts.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

As mentioned above, the main piece of legislation regulating type-approval process is the 1997 Road Traffic Act. It does not introduce specific penalties or sanctions with regards to tempering. Under a general provision, the 1997 Road Traffic act provides that the Director of TDT revokes the type-approval certificate in case of a negative compliance inspection result<sup>789</sup>.

The only regulation which specifically addresses tampering is the Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts including the Polish Penal Code. The amendment introduced penalties for odometer tampering. It is subject to a penalty of imprisonment for at least 3 months and a maximum of 5 years.

As mentioned above, there are also sanctions and penalties which relate to introducing vehicles on the market without an appropriate certificate of type-approval process. The 1997 Road Traffic Act sets forth that placing on the market: (i) vehicles without an appropriate certificate of type-approval process, (ii) vehicles withdrawn from the market, (iii) equipment or part thereof without an appropriate certificate of type-approval process, (iv) equipment or part thereof withdrawn from the market is subject to a monetary fine in the amount no more than 25% of the sale value<sup>790</sup>. In addition to a monetary fine, the entity is obliged to withdraw the vehicle, equipment or part thereof at its own expense. It further specifies that an entity placing a vehicle, equipment or any part thereof without the type-approval certificate on the market is obliged to make public information when they will be withdrawn from the market, and to buy back the vehicle from a person has actual control over it<sup>791</sup>.

Pursuant to the Act of 21 December 2000 on technical supervision, placing in service or on the market any technical device without an appropriate administrative decision, or contrary to provisions thereof, is subject to the penalty or restriction of liberty or a fine. Additionally, the Act provides the same penalty for exploitation of petrol vapour recovery equipment without periodic inspection, or contrary to the provisions of the administrative decision, as well as for converting technical devices. The penalties set forth in the Act are of criminal nature.

<sup>789</sup> Article 70r the 1997 Road Traffic Act.

<sup>790</sup> Article 140m of the 1997 Road Traffic Act.

<sup>791</sup> Article 70g of the 1997 Road Traffic Act.

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

The 1997 Road Traffic Act specifies that the entity placing vehicle, equipment or any part thereof without the type-approval certificate on the market is obliged to buy back the vehicle from a person has actual control over it<sup>792</sup>.

There are no other specific national provisions in this regard. Therefore, general provisions on remedies available to consumers under the Polish Civil Code<sup>793</sup> and the Act of 30 May 2014 on consumer protection rights<sup>794</sup> are applicable.

*Tests and inspections*

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The main piece of legislation setting out provisions on the periodic roadworthiness tests is the 1997 Road Traffic Act<sup>795</sup>. The general provisions are further supplemented by the Regulation of the Minister of Transport, Construction and the Maritime Economy of 26 June 2012 on technical inspection and model documents<sup>796</sup>, and the Regulation of the Infrastructure of 29 September 2014 on the fees applicable to the operation of vehicle inspection stations and the periodic roadworthiness tests<sup>797</sup>.

The owners of motor vehicles, agricultural tractor, slow-moving vehicle constituting a part of a railway, motorcycle or a trailer are obliged to submit the vehicle for the technical examination.

There are different types of vehicle inspection:

- (i) periodic inspections,
- (ii) additional inspections (set forth for specific situations under the 1997 Road Traffic Act),
- (iii) inspection of heritage vehicles.

<sup>792</sup> Article 70g of the 1997 Road Traffic Act.

<sup>793</sup> Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny (the Polish Civil Code), Official Journal 1964 No 16 Item 93, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640160093> (last accessed on 16 June 2020).

<sup>794</sup> Ustawa z dnia 30 maja 2014 r. o prawach konsumenta (the Act of 30 May 2014 on consumer protection rights), Official Journal 2014 Item 827, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20140000827> (last accessed on 16 June 2020).

<sup>795</sup> See Chapter III of the 1997 Road Traffic Act.

<sup>796</sup> Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej z dnia 26 czerwca 2012 r. w sprawie zakresu i sposobu przeprowadzania badań technicznych pojazdów oraz wzorów dokumentów stosowanych przy tych badaniach (the Regulation of the Minister of Transport, Construction and the Maritime Economy of 26 June 2012 on technical inspection and model documents), Official Journal 2012, Item 996, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20120000996> (last accessed on 16 June 2020).

<sup>797</sup> Rozporządzenie Ministra Infrastruktury z dnia 29 września 2004 r. w sprawie wysokości opłat związanych z prowadzeniem stacji kontroli pojazdów oraz przeprowadzaniem badań technicznych pojazdów (the Regulation of the Infrastructure of 29 September 2014 on the fees applicable to the operation of vehicle inspection stations and the periodic roadworthiness tests), Official Journal 2004, No 223, Item 2261, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20042232261> (last accessed on 16 June 2020).

These inspections are carried out in:

- (i) a motor vehicle inspection station – with regard to periodic and additional inspection of vehicles with a permissible maximum laden mass not exceeding 3,5 tonnes and trailers,
- (ii) a regional diagnostic station – with regard to periodic and additional technical inspection of all vehicles and heritage vehicles<sup>798</sup>.

The inspections are carried out for the first time before the first registration of vehicles on the territory of Poland (in addition to the type-approval inspection), and subsequently every year (with the exception for vehicles with a permissible maximum laden mass not exceeding 3,5 tonnes<sup>799</sup>).

There are several specific elements that are checked during the inspection:

- brakes,
- steering,
- suspension,
- engine,
- tyres,
- safety belts<sup>800</sup>.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The technical roadside inspections executed at national level are regulated by the Regulation on traffic control.

The technical roadside inspection is carried out by police in the context of traffic supervision. Pursuant to §5, technical roadside inspections include checking e.g.: the breaking system, steering, visibility, lights, tyres.

If the police decides that further inspection is necessary, the vehicle will be transported to a mobile inspection station or a designated place.

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

The national authority in charge of supervising the vehicle inspection stations (both basic and regional) is the head of the county administration (Starosta)<sup>801</sup>. Starosta is elected to the office by the council of the county administration (rada powiatu)<sup>802</sup>.

<sup>798</sup> More information available at [www.gov.pl/web/infrastruktura/badania-techniczne-pojazdow](http://www.gov.pl/web/infrastruktura/badania-techniczne-pojazdow) (last accessed on 16 June 2020).

<sup>799</sup> See Article 81 (6) the 1997 Road Traffic Act.

<sup>800</sup> More information on periodic inspection is available at <https://motointegrator.com/pl/pl/poradniki/porady-eksploatacyjne/badanie-techniczne-pojazdu-czy-przeglad-techniczny-samochodu>.

<sup>801</sup> Article 83b the 1997 Road Traffic Act.

<sup>802</sup> Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym (the Act of 5 June 1998 on the county government), Official Journal 1998 No 91 Item 578, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19980910578> (last accessed on 16 June 2020).

Under 1997 Road Traffic Act, Starosta may authorise the TDT to perform certain control activities<sup>803</sup>.

The technical roadside inspections are carried out by police in the context of traffic supervision.

**21. Are any of these authorities required to disclose information on these tests and inspections?**

There are no national provisions requiring to disclose such information.

**22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Under Article 94 of the Code of Petty Offences<sup>804</sup>, failure to comply with provisions in relation to periodic roadworthiness tests and technical roadside inspections can result in a fine between PLN 20 to 500, loss of the registration certificate, and vehicles towed away at the owners' expense<sup>805</sup>.

*National strategies and initiatives*

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

Since 1 January 2020, odometer data is gathered in the Central Register of Vehicles and Drivers (CEPiK). The system gathers data on the odometer exchange and odometer readings collected during technical inspections<sup>806</sup>.

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

CEPiK established a portal which enables the buyers of second-hand vehicles to track the vehicles' mileage<sup>807</sup>. The data is collected from foreign providers such as CarFax (data from USA, Canada, and several European countries such as Spain, Belgium, the Netherlands, Sweden and Norway), and AutoDNA (data from Germany, France, Belgium, Slovenia, Lithuania, Latvia, Estonia, Switzerland, Sweden, Austria, Norway, the Netherlands, Czech Republic, Hungary, Romania, Denmark).

<sup>803</sup> Article 83b (3) the 1997 Road Traffic Act.

<sup>804</sup> Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń (the Code of Petty Offences), Official Journal 1971 No 12 Item 114, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19710120114> (last accessed on 16 June 2020).

<sup>805</sup> More information available at [www.zadluzenia.com/mandat-za-brak-przegladu/](http://www.zadluzenia.com/mandat-za-brak-przegladu/).

<sup>806</sup> More information is available at [www.cepik.gov.pl/-/zmiany-w-przepisach-prawo-o-ruchu-drogowym-w-zakresie-drogomierzy-](http://www.cepik.gov.pl/-/zmiany-w-przepisach-prawo-o-ruchu-drogowym-w-zakresie-drogomierzy-).

<sup>807</sup> The portal is available at <https://historiapojazdu.gov.pl>



**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

n/a

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

n/a

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

n/a

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

n/a

### *Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There has been no research carried out at national level that would allow for an answer to this question.

There has been no legal commentary on the issue either.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question.

There has been no legal commentary on the issue either.

Potential gaps in the legislation

There has been no research carried out at national level that would allow for an answer to this question.

There has been no legal commentary on the issue either.

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

The existing enforcement system with regard to odometer tampering is one of the strictest jurisdictions on odometer tampering<sup>808</sup>. The amendment introducing the penalty of deprivation of liberty for up to five years was justified by the growing scale of the crime<sup>809</sup>. The AAA Auto experts estimate that odometer tampering concerned approx. 1 million of imported second-hand vehicles to Poland, which amounts to 80% of the imported vehicles<sup>810</sup>.

The amendment was introduced recently<sup>811</sup>, and there has been no study yet whether introduction of strict regulations reduced odometer fraud.

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

There has been no research carried out at national level that would allow for an answer to this question.

There has been no legal commentary on the issue either.

*Other*

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

**Transportowy Dozór Techniczny (TDT)**

[www.tdt.pl/kontakt/jednostka-inspekcyjna-tdt/wydzial-homologacji.html](http://www.tdt.pl/kontakt/jednostka-inspekcyjna-tdt/wydzial-homologacji.html)  
[homologacja@tdt.gov.pl](mailto:homologacja@tdt.gov.pl)

**Polish Police**

[www.policja.pl](http://www.policja.pl)  
 + (47) 72 102 51

<sup>808</sup> Available at <https://auto.dziennik.pl/aktualnosci/artykuly/598682,cofanie-licznikow-kara-samochod-kodeks-karny-nowelizacja.html>,

<sup>809</sup> Supporting documentation is available at [www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=2878](http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=2878)

<sup>810</sup> Available at <https://auto.dziennik.pl/aktualnosci/artykuly/598682,cofanie-licznikow-kara-samochod-kodeks-karny-nowelizacja.html>,

<sup>811</sup> By the Act of 15 March 2019 amending the 1997 Road Traffic Act and other acts – the Polish Penal Code.

### 33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?

The rules on tampering have not received much attention in legal writing nor in national studies conducted by authorities. It seems that only odometer tampering received attention and led to the tightening of general requirements concerning odometer readings, and stricter penalties for the crime.

#### Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

In Poland, the majority of criminal courts judgements are not published on publicly available portals. Information portals, however, reported that first vehicles have been investigated by the police. The most severe tampering with odometer readings amounted to a difference of 185 000 km<sup>812</sup>.

#### Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
n/a		

<sup>812</sup> More information available at <https://pomorska.pl/nowe-uprawnienia-policji-2020-sa-juz-kary-za-cofniete-liczniki-niechlubny-rekordzista-mial-krecony-licznik-o-185-tys-km/ar/c1-14700133>; [www.infor.pl/prawo/prawo-karne/przestepstwa/3594187,2,Kary-za-przekrecanie-licznikow-w-2020-r.html](http://www.infor.pl/prawo/prawo-karne/przestepstwa/3594187,2,Kary-za-przekrecanie-licznikow-w-2020-r.html).

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

- Government Ordinance no. 78/2000 on the approval, issuing of identity card and certification of the authenticity of road vehicles with a view to their marketing, registration or registering in Romania<sup>813</sup> – this is the normative act on which all the amendments in order to comply with EU law were made. The consolidated version of the G.O. no. 78/2000 incorporates the transposition of Directive 2007/46/EC – made through Law no. 289/2009<sup>814</sup> – and other subsequent modifications, last amended in May 2018.

- Order no. 211/2003 for the approval of the Regulation concerning the type approval and issue of identity card of road vehicles and the type-approval of products used therein — RNTR 2, of the Minister for Public Works, Transport and Housing<sup>815</sup> – the consolidated version of this act includes all the subsequent modifications and adaptations, including the measure notified by Romania as transposition measure for Directive 2007/46/EC (namely, Order no. 1147/2009 for the amendment of the Regulation concerning the type approval (...), of the Minister Public Works, Transport and Housing<sup>816</sup>). Order no. 211/2003 was last amended in January 2018.

- Government Ordinance no. 80/2000<sup>817</sup> on the approval and certification of products and operating material used in road vehicles and the conditions for their placing on the market and marketing – the consolidated version of this act includes the measure reported for transposition of Directive 2007/46/EC (Law no. 288/2009 on the amending and supplementing of Government Ordinance no. 80/2000 on (...)<sup>818</sup>) and was last modified in July 2013.

<sup>813</sup> Ordonanța Guvernului nr. 78/2000 privind omologarea, eliberarea cărții de identitate și certificarea autenticității vehiculelor rutiere în vederea comercializării, înmatriculării sau înregistrării acestora în România, Monitorul Oficial al României nr. 412 din 30 august 2000.

<sup>814</sup> As transposition measure on this subject matter, Romania notified Law no. 289/2009 amending and supplementing Government Ordinance no. 78/2000 on the approval, issuing of identity card and certification of the authenticity of road vehicles with a view to their marketing, registration or registering in Romania, Official Journal of Romania no. 559 of 11 august 2009 (Legea nr. 289/2009 pentru modificarea și completarea Ordonanței Guvernului nr. 78/2000 privind omologarea, eliberarea cărții de identitate și certificarea autenticității vehiculelor rutiere în vederea înmatriculării sau înregistrării acestora în România, Monitorul Oficial al României nr. 559 din 11 august 2009).

<sup>815</sup> Ordin nr. 211/2003 pentru aprobarea Reglementărilor privind omologarea de tip și eliberarea cărții de identitate a vehiculelor rutiere, precum și omologarea de tip a produselor utilizate la acestea – RNTR 2, al Ministrului lucrărilor publice, transporturilor și locuinței, Monitorul Oficial al României nr. 275 din 18 aprilie 2003.

<sup>816</sup> As transposition measure on this subject matter, Romania notified Order no. 1147/2009 (Ordin nr. 1147/2009 pentru modificarea Reglementărilor privind omologarea de tip și eliberarea cărții de identitate a vehiculelor rutiere, precum și omologarea de tip a produselor utilizate la acestea – RNTR 2, al Ministrului transporturilor și infrastructurii, Monitorul Oficial al României nr. 275 din 18 aprilie 2003).

<sup>817</sup> Ordonanța Guvernului nr. 80/2000 privind omologarea și certificarea produselor și materialelor de exploatare utilizate la vehiculele rutiere, precum și condițiile de introducere pe piață și de comercializare a acestora, Monitorul Oficial al României nr. 413 din 30 august 2000.

<sup>818</sup> Lege nr. 288/2009 pentru modificarea și completarea Ordonanței Guvernului nr. 80/2000 privind omologarea și certificarea produselor și materialelor de exploatare utilizate la vehiculele rutiere, precum și condițiile de introducere pe piață a acestora, Monitorul Oficial al României nr. 559 din 11 august 2009.

- Order no. 2135/2005 on approving the Regulation on the approval and certification of products and operating material used in road vehicles, as well as their conditions for placing on the market — RNTR 4, of the Minister of Transport, Construction and Tourism (without amendments)<sup>819</sup>.

#### Directive 2014/45/EU (on periodic roadworthiness tests)

- Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania<sup>820</sup> (last amended July 2019) – the consolidated version of this act includes 7 of the 21 transposition measures notified by Romania for Directive 2014/45/EU.

- Order no. 2133/2005 on approving the Regulation on the regular roadworthiness tests of road vehicles registered in Romania – RNTR 1<sup>821</sup> (last amended January 2020) – the consolidated version of this act includes 10 of the 21 transposition measures notified by Romania for Directive 2014/45/EU.

- Order no. 1501/2006 on the procedure for registration, registering, de-registration and issuing of the provisional movement authorisation or for the testing/trial of vehicles (last amended May 2017)<sup>822</sup> (in this act no provisions relevant or related to the questionnaire were identified). However, a terminological distinction is made here: registration (and de-registration) is a process conducted by the Ministry of Administration and Interior, through local driving licences and registration offices. Registering of vehicles refers to the procedure conducted by local councils for vehicles such as: mopeds, some tractors, constructions-used vehicles, agriculture-used vehicles, trolleybuses, tramways (RAR approval is a mandatory requirement).

- Other laws notified by Romania as transposition measures are: Government Emergency Ordinance no. 195/2002 on public road traffic, republished<sup>823</sup> and Law no. 286/2009 on the Criminal Code<sup>824</sup>.

#### Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

- Order no. 601/2017 amending and supplementing the methodological norms on how to carry out inspections and checks on road transport, related activities, the activity of centres for initial and advanced training for specialised road transport staff, the activity of driving schools and the activity of authorised driving instructors, approved by Order no. 995/2011, of the Minister for Transport and Infrastructure.<sup>825</sup>

<sup>819</sup> Ordin nr. 2135/2005 pentru aprobarea Reglementărilor privind omologarea și certificarea produselor și materialelor de exploatare utilizate la vehiculele rutiere, precum și condițiile de introducere pe piață a acestora – RNTR 4, al Ministrului transporturilor, construcțiilor și turismului, Monitorul Oficial al României nr. 1168 din 22 decembrie 2005.

<sup>820</sup> Ordonanța Guvernului nr. 81/2000 privind inspectia tehnica periodica a vehiculelor înmatriculate sau înregistrate în România, Monitorul Oficial al României nr. 413 din 30 august 2000.

<sup>821</sup> Ordin nr. 2133/2005 pentru aprobarea Reglementărilor privind inspectia tehnica periodica a vehiculelor înmatriculate sau înregistrate în România – RNTR 1, al Ministrului transporturilor, construcțiilor și turismului, Monitorul Oficial al României nr. 1160 din 21 decembrie 2005.

<sup>822</sup> Ordin nr. 1501/2006 privind procedura înmatriculării, înregistrării, radierii și eliberarea autorizației de circulație provizorie sau pentru probe a vehiculelor, al Ministrului Administrației și Internelor, Monitorul Oficial al României nr. 941 din 21 noiembrie 2006.

<sup>823</sup> Ordonanța de Urgență nr. 195/2002, republicată, privind circulația pe drumurile publice, Monitorul Oficial al României nr. 670 din 3 august 2006.

<sup>824</sup> Legea nr. 286/2009 privind Codul penal, Monitorul Oficial al României nr. 510 din 24 iulie 2009.

<sup>825</sup> Ordin nr. 601/2017 pentru modificarea și completarea Normelor metodologice privind modul de efectuare a inspecțiilor și controlului asupra transporturilor rutiere, a activităților conexe acestora, a activității centrelor de pregătire și perfecționare a personalului de specialitate din domeniul transporturilor rutiere, a activității școlilor de conducători auto și a activității instructorilor auto autorizați, aprobate prin Ordinul ministrului transporturilor și infrastructurii nr. 995/2011, Monitorul Oficial al României nr. 455 din 19 iunie 2017.

## 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

- Order no. 211/2003 for the approval of the Regulation concerning the type approval and issue of identity card of road vehicles and the type-approval of products used therein — RNTR 2, of the Minister for Public Works, Transport and Housing (last amended January 2018).
- The RNTR 2 Order specifies with regard to applicable EU legislation: ‘EU amending and implementing Regulations and Decisions for the legislative acts mentioned in the current regulation, adopted after its entry into force, are binding in their entirety and are directly applicable’.<sup>826</sup>
- Regulation (EC) no. 715/2007 is mentioned throughout this act and annexes.
- ‘Specific technical requirements for the manufacture and functioning of vehicles, as well as systems, components and separate technical units are laid down in regulatory acts exhaustively listed in Annex 2 of the present section’.<sup>827</sup>
- ‘In case of testing the provisions of the following relevant regulatory acts shall be applied’ (...) ‘For vehicles which are subject to Regulation (EC) no. 715/2007 (...) cylinder capacity of the engine is the one defined by Regulation (EC) no. 692/2008 of the Commission for implementing and amending Regulation (EC) no. 715/2007’.

Commission Regulation (EU) 2017/1151 (on odometer readings)

- Order no. 211/2003 for the approval of the Regulation concerning the type approval and issue of identity card of road vehicles and the type-approval of products used therein — RNTR 2, of the Minister for Public Works, Transport and Housing (last amended January 2018) – ‘Within the current regulation, by references to Directive 2007/46/EC, it is understood its version including all the subsequent amendments’. There is no direct mention of Commission Regulation (EU) 2017/1151 in this act.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

- Order no. 2132/2005 for the approval of the Regulation on individual type-approval, issuing of the identity card and certification of authenticity of road vehicles – RNTR 7<sup>828</sup> (last amended August 2018).
- the Regulation applies (among others) to vehicles from the M and N categories of type-approval and tractors (T category) and trailers (R) (heavy duty vehicles).

## 3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.

<sup>826</sup> Order no. 211/2003, sect. 1, cap. 2, para. 10<sup>1</sup>.

<sup>827</sup> Order no. 211/2003, sect. 2, cap. 1, para. 1 (2).

<sup>828</sup> Ordin nr. 2132/2005 pentru aprobarea Reglementarilor privind omologarea individuala, eliberarea cartii de identitate si certificarea vehiculelor rutiere – RNTR 7, al Ministrului transporturilor, constructiilor si turismului, Monitorul Oficial al Romaniei nr. 1160 din 21 decembrie 2005.

- Government Ordinance no. 82/2000 on the authorisation of economic operators providing repairs, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles (last amended March 2013).<sup>829</sup> This act regulates activities that can influence the constructive, functional and quality parameters of road vehicles as compared to regulations on the technical requirements regarding access on public roads. Such activities relevant for tampering are: a) repair, maintenance and functional adjustments of vehicles; b) repairs, reconditioning, installation/ assembly activities and calibration of components and equipment of road vehicles; c) constructive modifications and reconstruction of road vehicles; d) dismantling of end-of-life vehicles in view of selling spare parts and recycling.<sup>830</sup>

- Order no. 2131/2005 for the approval of the Regulation on the authorisation of economic operators providing repairs, maintenance, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles – RNTR 9 (last amended July 2016)<sup>831</sup>. The provisions discussed above (from G.O. no. 82/2000) are also detailed here.

#### **4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

Government Ordinance no. 82/2000 (amended):

- During repairs, constructive modifications or reconstruction of road vehicles, in case there are required interventions on systems regarding traffic safety, environmental protection, energy efficiency and protection against theft which are regulated by EU regulations / directives and ECE-UN regulations, economic operators can only use equipment, components, technical entities, spare parts and products used of origin or approved / certified according to the legislation in force. Economic operators must issue to the beneficiaries guarantee certificates, including guarantees for new or reconditioned components used, according to the law. Non-compliance with this requirement represents an administrative offense.<sup>832</sup>

- It is forbidden to sell in view of reuse systems, equipment, components, technical entities, spare parts which regard road safety.

The same provisions are detailed in Order no. 2131/2005 – RNTR 9.

#### **5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The majority of the legislation observed for the purposes of this study have as main motivation (in the articles on the reasoning for adoption) the need for compliance with EU law. As it may be observed, the main legal acts (the government ordinances or government emergency ordinances) are mechanism for adoption of legislation by the government, usually for reasons of emergency or of

<sup>829</sup> Ordonanța Guvernului nr. 82/2000 privind autorizarea operatorilor economici care desfășoară activități de reparații, de reglare, de modificări constructive, de reconstrucție a vehiculelor rutiere, precum și de dezmembrare a vehiculelor scoase din uz, Monitorul Oficial al României nr. 413 din 30 august 2000.

<sup>830</sup> G. O. no. 82/2000 (amended), art. 1 (2).

<sup>831</sup> Ordin nr. 2131/2005 pentru aprobarea Reglementărilor privind autorizarea operatorilor economici care desfășoară activități de reparații, de întreținere, de reglare, de modificări constructive, de reconstrucție a vehiculelor rutiere, precum și de dezmembrare a vehiculelor scoase din uz – RNTR 7, al Ministrului transporturilor, construcțiilor și turismului, Monitorul Oficial al României nr. 1160 din 21 decembrie 2005.

<sup>832</sup> G. O. no. 82/2000 (amended), art. 4, 5, 5<sup>2</sup>.



executive nature (transposition of EU law included). The Parliament later approves these ordinances by law. No other reasoning or strategy is provided in this legislation.

## Requirements and rules on tampering

### *Obligations of manufacturers*

#### **6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

##### Approval, issuing of identity card and certification of the authenticity of road vehicles

###### New vehicles

- **EC type-approval** of a road vehicle with regard to its systems, components and/or separate technical units is granted upon request by RAR, provided it complies with applicable regulations. RAR can refuse, based on serious grounds, granting the type-approval if, even though it is in compliance with applicable regulations, it presents a serious risk for traffic safety or it significantly damages the environment and/or public health.<sup>833</sup> If such vehicles have a EC type-approval granted in another MS, RAR can only refuse approval for a maximum of 6 month, and it informs the producer, the other MS and the Commission on the issue.

###### Used road vehicles

- An individual approval is required for a used road vehicle which was not registered in Romania (used vehicles) and for those having suffered changes in the technical characteristics mentioned in the identity card of the vehicle (tampering).<sup>834</sup> For both situations, RAR ensures the technical classification, including regarding polluting emissions' level.

- In order to keep in circulation road vehicles that are registered in Romania which have undergone changes of characteristics mentioned in the identity card of the vehicle, they must undergo mandatory individual approval and identity card revision/modification. In such situation, in case of interventions on systems regarding safety, environmental protection, energy efficiency and theft protection regulated by EU law, only equipment, components, separate technical units, spare parts and operating materials of origin or legally approved or certificated must be used.<sup>835</sup> Such interventions can only be done by economic operators authorised by RAR.

##### Approval or certification requirements for vehicle parts

- Products and operating material used in road vehicles belonging to the category relevant for traffic safety, environmental protection, energy efficiency and protection against theft can only be placed on the market provided approval or certification is granted.<sup>836</sup> If RAR finds that such products, even though in conformity with existing regulation, present serious risk for traffic safety or are significantly detrimental to environment/public safety, they can refuse approval or certification, based on reasonable grounds.

- Obligation of the producer/ importer to provide RAR, upon its request, within 30 days, official proof that the product/ operating material ensures a level of traffic safety or environmental protection that is equivalent to the national requirement for placing on the market. In such case, the right to place on the market or to sell such products ceases.<sup>837</sup>

<sup>833</sup> G.O. no. 78/2000, art. 6 (3), art. 7<sup>^</sup>1 (1), (2); Order no. 211/2003, sect. 2, cap. 1, para. 8 (3), para. 26 (1).

<sup>834</sup> G.O. no. 78/2000, art. 4 b) c), art. 2 (3).

<sup>835</sup> G.O. no. 78/2000, art. 9 (1), (2).

<sup>836</sup> G.O. no. 80/2000, art. 1 (3)-(7).

<sup>837</sup> G.O. no. 80/2000, art. 4 (3) g), and art. 5<sup>^</sup>3 f).

- Producers of road vehicles are under the obligation to ensure market supply with equipment, spare parts, operating materials and service for at least 8 years after the last lot of vehicles is sold on the market, either directly or through entitled third parties.<sup>838</sup>
- RAR guarantees, through the certification/ approval process, that the product is interchangeable with the one on the newly manufactured vehicle, and is in compliance at least with the essential and relevant requirements for traffic safety, environmental protection, energy efficiency, or theft protection as laid down by manufacturing documentation and normative technical documents. The producer also must have in place adequate measures to ensure that the manufacturing process guarantees the technical characteristics<sup>839</sup>. Testing may be used to ensure comparative performance with the original product.<sup>840</sup>
- RAR supervises that conformity of the product/ operating material is guaranteed throughout the certification/ approval.

## 7. Are there any other requirements relating to tampering which manufacturers need to meet?

Producer obligations, new vehicles:

- The holder of a type-approval has as obligations: to immediately inform RAR on any changes related to the approval file; to immediately inform RAR in the case of a recall of vehicles already sold, registered or placed on the market, because one of multiple systems, equipment, components or technical units separately installed on the vehicle present an important risk for road safety, public health or environmental protection; to propose to RAR adequate solution for elimination of the aforementioned risks (non-compliance with of any of these obligations by the producer represents administrative offense).<sup>841</sup>
- To provide RAR with information including on data and technical specifications that may lead to recall of vehicles or withdrawal of the type-approval (failure to do so is administrative offense);
- Not to use performance or functioning manipulation devices for road vehicles, except for those mentioned in applicable regulation (also an administrative offense);

## 8. Are manufacturers required to disclose information relating to tampering (resistance)?

Producer obligations, new vehicles:

- See obligations to inform RAR, Q7 above.

For vehicle parts:

- Transparency obligations require adequate markings on approval or no. of certifications on products to be placed on the market<sup>842</sup>;
- To inform immediately RAR on any modification of data in the approval/certification file;<sup>843</sup>
- To provide users with all relevant information and instructions needed to describe any special conditions or restrictions in using the product;

<sup>838</sup> G.O. no. 80/2000, art. 5<sup>^</sup>1.

<sup>839</sup> For serial manufactured products an evaluation of the formal quality management system of the producer is required (Order no. 2135/2005, chapter II 2.11)

<sup>840</sup> Order no. 2135/2005, chapter II 2.2.

<sup>841</sup> G.O. no. 78/2000, art. 13<sup>^</sup>2 a)-e) art. 14 (1) e); Order no. 211/2003, sect. 2, cap. 1, para. 28 (1)-(2).

<sup>842</sup> G.O. no. 80/2000, art. 3 (1)-(2).

<sup>843</sup> G.O. no. 80/2000, art. 5<sup>^</sup>3 a), c).

**9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

Government Ordinance no. 78/2000 on the approval, issuing of identity card and certification of the authenticity of road vehicles with a view to their marketing, registration or registering in Romania - is the main regulation with regard to type approval of road vehicles, it sets approval procedures and the main administrative provisions, including legal liability, determines the national authorities, their competence in the field and the regime of implementing/ executive acts (orders of minister) which detail these procedures. As such, G.O. no. 78/2000 mentions that RNTR 2 (Order no. 211/2003) and RNTR 7 (Order no. 2132/2005) are the implementing acts establishing the categories of vehicles for which type-approval is mandatory and detailing these procedures.

- G.O. no. 78/2000 defines the approval procedures applicable in Romania – type-approval and individual approval, further classified as: a) national type-approval of the entire vehicle, b) individual approval of a vehicle, and c) community (EC) type-approval of the entire vehicle.<sup>844</sup>

- Furthermore, RNTR 2 (Order no. 211/2003) regulates in detail the procedures and technical requirements for: a) type-approval of the entire vehicle, b) type-approval for products used in vehicles.

- RNTR 7 (Order no. 2132/2005) establishes procedures for individual approval of vehicles.

- With regard to EEC-UNO type-approval, the law does not mention a distinct procedure; RNTR 2 specifies that ‘CEE-UNO regulations to which the Community is part are an integrated in the EC type-approval procedure under the same conditions as EU directives or individual regulations’.<sup>845</sup> Also, RAR shall accept the approvals granted in compliance with CEE-UNO regulations and, accordingly, correspondent type-approval marks, instead of equivalent approvals and type-approval marks awarded in compliance with EU/EC directives and regulations.

Producer obligations (type-approval of vehicles, trailers and products used therein)

- The producer is responsible to RAR for all the aspects of the type-approval process and for ensuring the conformity of production, regardless of whether they are or are not directly involved in all the stages of the vehicle manufacturing, its system, component, or separate technical unit. (...) The producer changing the systems, components or separate technical units already approved in other stages of the type approval process, is responsible for their approval and the conformity of production of the respective systems, components, separate technical units.<sup>846</sup>

Procedures applicable to EC type-approval of vehicles are detailed in Order no. 211/2003, amended.<sup>847</sup>

- extended testing: ‘through a motivated request, RAR can ask the producer to supply any additional information needed to facilitate a decision with regard to testing or facilitate the respective testing. The same provision is included for type-approval of systems, components, and separate technical units.’<sup>848</sup>

General rules with regard to EC type-approval

<sup>844</sup> G.O. no. 78/2000, art. 3.

<sup>845</sup> Order no. 211/2003 – RNTR 2, section 2, para. 30.

<sup>846</sup> Order no. 211/2003, sect. 2, cap. 1, para. 5 (1)-(3).

<sup>847</sup> Order no. 211/2003, sect. 2, cap. 1, para. 6 (1)-(3).

<sup>848</sup> Order no. 211/2003, sect. 2, cap. 1, para. 6 (7) and para. 7 (3).

- RAR cannot grant any EC type-approval before it ensures that the procedures mentioned at point 12 are appropriately and satisfactorily applied.<sup>849</sup> (12. Measures to ensure the conformity of production).
- Measures to ensure the conformity of production: (1) RAR must take all the necessary measures to verify if all the measures needed on order to guarantee conformity of production (of vehicles or components) with the approved type are taken. (2) Also, for type-approvals granted by RAR, it must take all the necessary measures to verify whether measures form (1) continue to be adequate and if production continues to be in conformity with the approved type. (for this they can conduct testing and verifications on samples, including production facilities).<sup>850</sup>

## 10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?

EC type approval of vehicles:

- RNTR 2 (Order no. 211/2003) details a few situations in which verification / testing can be conducted by RAR. During the procedure for EC type approval of vehicles, through a motivated request, RAR can require producers to supply any additional information necessary to facilitate a decision on the necessary tests to be made or to facilitate the respective tests. As such, the producer has to supply RAR with as many vehicles as necessary in order to allow the EC type approval procedure to be conducted satisfactorily.<sup>851</sup> The same provision is included in the procedure for EC type approval of systems, components and separate technical units.<sup>852</sup> The Order includes a separate section on testing needed for EC type approval: 'compliance with the technical requirements included in the present chapter and in normative acts listed in annexes (...) is demonstrated by adequate testing conducted by RAR or notified technical services.'<sup>853</sup> The testing is conducted on vehicles, components, separate technical units that are submitted to type approval. Within this procedure, the producer may select, under agreement with RAR, a vehicle / system / component / separate technical unit that meets several of the most unfavourable characteristics with regard to the required performance level. Virtual testing methods can be used in order to facilitate decisions during the selection process. As an alternative to the testing procedures mentioned above, upon the request of the producer, with the agreement of RAR and in accordance with regulatory acts in force (with regard to general conditions to be met), virtual testing methods can be used.
- Modification of EC type approvals also require new inspections or testing. RAR will proceed with the administrative procedures for type approval modifications (revisions or extensions) only after the successful completion of the new inspections or testing required.
- For national type approvals of small series vehicles (entire vehicles, road vehicles and their trailers) similar provisions with regard to testing are included in the procedure.
- Provisions on testing also appear with regard to measures applicable to vehicles non-complaint with the approved type: 'when there is information that some types of vehicles do not maintain during use the characteristics and performance that are contained in the type approval of that vehicle, and may affect road safety or environmental protection, RAR can conduct endurance testing in conditions similar to those of use or equivalent accelerated testing, in order to take the necessary measures to restore compliance.'<sup>854</sup>

<sup>849</sup> Order no. 211/2003, sect. 2, cap. 1, para. 8 (1).

<sup>850</sup> Order no. 211/2003, sect. 2, cap. 1, para. 12 (1)-(2).

<sup>851</sup> Order no. 211/2003, sect. 2, cap. 1, para. 6 (6) and (7).

<sup>852</sup> Order no. 211/2003, sect. 2, cap. 1, para. 7 (3) and (4).

<sup>853</sup> Order no. 211/2003, sect. 2, cap. 1, para. 11.

<sup>854</sup> Order no. 211/2003, sect. 2, cap. 2, para. 15 (4).

#### Individual approval of vehicles:

- Similar requirements for testing are included in the sections on individual approval of vehicles: 'during the procedure for individual approval, RAR will not conduct destructive testing.' (further detailed in RNTR 7).
- RNTR 7 (Order 2132/2005 on individual approval) provides that RAR grants individual approval only after the necessary verifications and testing is conducted in order to assess if the constructive conditions provided for by the present regulation are met.<sup>855</sup> Type approval is granted if the results of the testing conducted by RAR demonstrate compliance with existing regulations. Technical verifications and testing are included in the procedure for individual approval of used vehicles.

#### Measures to ensure the conformity of production:

- Verifications in order to guarantee conformity of production with the approved type are limited to procedures established in Directive 2007/46/EC (Annex 10) and regulatory acts containing specific requirements. To this end, for EC type approvals given by RAR, it can conduct any of the verifications and tests mentioned in any of the applicable regulatory acts on samples collected from the headquarter of the producer, including production facilities.<sup>856</sup>

### **11. Please list the national type approval authority<sup>857</sup> and technical services<sup>858</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

#### For type-approval (EC type approval, national type approval, individual approval, for entire vehicles):

- The Autonomous Company 'Romanian Automotive Register' (RAR) is the technical specialised body designated by the Ministry of Transports, Infrastructure and Communications as competent authority in the field of road vehicles, road safety, environment protection and quality assurance, operating under the authority of the Ministry. It is the only national authority granting type-approval for the entire vehicle or for systems, equipment, spare parts, components and separate technical units of a vehicle (national, EC, and international EEC-UNO type-approval), individual approval, and certifications for road vehicles. It is designated in this capacity by law (G.O. no. 78/2000 amended, Order no. 211/2003 amended).
- RAR conducts the testing necessary to verify compliance with the technical conditions imposed for granting type-approval, it evaluates compliance of production with the type-approval granted to new vehicles, imposes remedying measures to producers. With regard to administrative offenses related to type-approval detailed in Q13, RAR, through its own staff, is the authority empowered by the Ministry of Transportation to find and sanction such offenses.
- RAR can act in its capacity of a technical service for any of the testing measures described in the law. When RAR acts as technical service it needs to prove conformity with supporting documents. These will include an evaluation conducted by RAR auditors which are independent from the activity that is under evaluation and who are managed autonomously from the personnel involved in the activity under evaluation.<sup>859</sup>
- Designation of technical services: 'RAR in its capacity as approval authority and technical service, can designate other technical services, based on an evaluation conducted by RAR. The competencies of the designated technical services need to be proven by an assessment report drawn up by RAR. It

<sup>855</sup> Order no. 2132/2005 – RNTR 7, cap. 1, subchapter 12, para. 8, 8.2, 9.

<sup>856</sup> Order no. 211/2003, sect. 2, cap. 1, para. 12.

<sup>857</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>858</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>859</sup> Order no. 211/2003, sect. 2, cap. 1, para. 34 (5) and 35 (1), (2).

may include an accreditation certificate issued by an accreditation organism. The assessment needs to comply with the provisions of Directive 2007/46/EC and it may be revised after a period of maximum 3 years.<sup>860</sup>

For vehicle parts:

- The national authority responsible for approval and certification of products and operating material used in road vehicles, as well as their marketing is RAR, designated by law (G.O. no. 80/2000 amended).

RAR grants approvals/certifications, including EC type-approval for components and technical entities according to EU law, suspends or withdrawals them, conducts the necessary testing for verification of compliance with the technical conditions required for EC type-approval for components and technical entities, conducts the role of technical service. RAR verifies the conformity of production with the holder of the approval/certification and takes the necessary measures that it is upheld throughout the manufacturing process; evaluates technical services according to the law.

## 12. Are any of these parties required to disclose information on national type approval processes?

Type approval (EC or national), producer obligations, new vehicles:

- The holder of any type approval is mandated by law to ensure immediate information of RAR on any change in the type approval file; notification of RAR is required with regard to definitive termination of production for a certain type of vehicle, cases when a type approval is about to expire and, in case of vehicle recall for safety, environmental or public health failures, the obligation to immediately inform RAR is complemented by the obligation to propose to RAR with adequate solutions to eliminate the risks.

The producer is also required to ensure general access to information based on existing legislation.<sup>861</sup>

For vehicle parts:

- Products/ operating materials found to be non-compliant and which are banned from market placement and selling are publicly disclosed by RAR.<sup>862</sup>

## 13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

- The holder of a type-approval has as obligations: to immediately inform RAR on any changes related to the approval file; to immediately inform RAR in the case of a recall of vehicles already sold, registered or placed on the market, because one or multiple systems, equipment, components or technical units separately installed on the vehicle present an important risk for road safety, public health or environmental protection; to propose to RAR adequate solution for elimination of the aforementioned risks (non-compliance with of any of these obligations by the producer represent administrative offense, punishable by fine of 1.000 to 5.000 lei).<sup>863</sup>

- The obligation of the producer to provide RAR with information including on data or technical specifications that may lead to recall of vehicles or withdrawal of the type-approval - failure to do so is administrative offense punishable by fine of 1000 to 5000 lei;

<sup>860</sup> Order no. 211/2003, sect. 2, cap. 1, para. 34 (1) and 35 (4).

<sup>861</sup> G.O. no. 78/2000, art. 13^2.

<sup>862</sup> G.O. no. 80/2000, art. 4 (6).

<sup>863</sup> G.O. no. 78/2000, art. 13^2 a)-e) art. 14 (1) e). Fine is approx. 200 to 1000 euro.



- The producer has the obligation not to use performance or functioning manipulation devices for road vehicles, except for those mentioned in applicable regulation (non-compliance with this obligation represents an administrative offense punishable by fine of 5 000 to 10 000 lei / 1000 to 2000 euro);
- Using defeat strategies, consisting in emission control strategies that reduce the efficiency of emissions control devices under environmental or engine functioning conditions occurring during/ throughout normal engine functioning or outside testing procedure for type-approval, committed by the producer of the vehicle – administrative offense punishable by fine of 5.000 to 10.000 lei.
- Modifications of the NO(x) emission control systems, committed by the producer of the vehicle, by economic operators conducting repairs, adjustments, constructive modifications or reconstruction of road vehicles or by the driver of the vehicle – administrative offense punishable by fine of 1.000 to 5.000 lei.<sup>864</sup>
- If the producers do not comply with information obligations or adopting corrective measures, RAR can suspend or ban selling of uncompliant vehicles, until remedial measures are in place, it can recall from use vehicles uncompliant with type-approval, or it can revoke type-approval.

Fines can be complemented/ replaced by other administrative measures, in cases of noncompliance with type approval procedures:

- If RAR concludes that measures to ensure the conformity of production (Q9) throughout the manufacturing process are not applied, significantly deviate from agreed upon measures or control plans or are no longer applied, even though production was not suspended, RAR will take the necessary measures, including withdrawal of the type-approval, in order to ensure that the procedure with regard to ensuring the conformity of production is correctly followed.<sup>865</sup>
- Measures applicable to vehicles, systems, components or separate technical units that are non-compliant with the approved type: 'If RAR, for EC type-approvals granted, concludes that new vehicles, systems, components or separate technical units that accompanied by a CoC or type-approval mark are not in conformity with the approved type, will take the necessary measures, including withdrawal of the EC type-approval in order to make sure that measures are taken for the products to comply with the approved type.<sup>866</sup>

For vehicle parts:

- In case of non-compliance with the approval/ certification RAR the takes the necessary remedial measures to ensure compliance with the type-approval. It can suspend market placement, ban production, marketing, use, suspend or withdrawal approval/ certification.<sup>867</sup>
- Failure to provide data or technical specifications that could lead to the withdrawal of approval/certification, using defeat devices (for product performance or functioning manipulation) and refusal to grant access to information provided by applicable regulations – are administrative offences and are sanctioned by a fine of 5.000 to 10.000 lei.<sup>868</sup>

### Rules on tampering

#### 14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:

Tampering with the emission control design

<sup>864</sup> G.O. no. 78/2000, art. 13<sup>^</sup>3 h), art. 14 (1) b).

<sup>865</sup> Order no. 211/2003, sect. 2, cap. 1, para. 27 (1).

<sup>866</sup> Order no. 211/2003, sect. 2, cap. 1, para. 12 (3).

<sup>867</sup> G.O. no. 80/2000, art. 4 (6).

<sup>868</sup> G.O. no. 80/2000, art. 5<sup>^</sup>4 f) (approx. 1000 to 2000 euro).



No specific legislation was found on this issue: the only existing rules are in regular roadworthiness tests of road vehicles legislation (Government Ordinance no. 81/2000) and in the technical roadside inspections of vehicles – regulations (Order no. 510/230/2007 - RNTR 11 and Order no. 601/2017 on inspections and checks on road transport).

Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) defines the types of tampering or malfunctions constituting major deficiencies (MaD)

- polluting emissions: - noise silencer system, b) any part of the system is weakened, missing, damaged, incorrectly installed, or obviously tampered with so that it might significantly affect the noise level (MaD);
- exhaust gas emissions: - control equipment for exhaust gas emissions: a) equipment installed by the manufacturer that is missing tampered with or obviously faulty (MaD); - gas emissions (+E): d) OBD reading indicates sub-optimal functioning (MaD).

Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11:

- Verifications relevant for tampering are included in the list under the category (...) exhaust emissions control equipment (the exhaust emissions control equipment installed by the producer is missing, tampered with, or obviously faulty); gas emissions (+E) (for vehicles equipped with an OBD, emissions can be checked by the adequate reading of the OBD and the verification of the correct functioning of the OBD; the OBD reading indicates malfunctioning, measurement indicate significant unconformity).

#### Tampering with aftermarket parts

Government Ordinance no. 82/2000 on the authorisation of economic operators providing repairs, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles (last amended March 2013):

- During repairs, constructive modifications or reconstruction of road vehicles, in case there are required interventions on systems regarding traffic safety, environmental protection, energy efficiency and protection against theft which are regulated by EU regulations / directives and ECE-UN regulations, economic operators can only use equipment, components, technical entities, spare parts and products used of origin or approved / certified according to the legislation in force. Economic operators must issue to the beneficiaries guarantee certificates, including guarantees for new or reconditioned components used, according to the law. Non-compliance with this requirement represents an administrative offense.<sup>869</sup>
- It is forbidden to sell in view of reuse systems, equipment, components, technical entities, spare parts which regard road safety.

Order no. 2132/2005 for the approval of the Regulation on the authorization of economic operators providing repairs, maintenance, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles – RNTR 9 (last amended July 2016)<sup>870</sup>:

<sup>869</sup> G. O. no. 82/2000 (amended), art. 4, 5, 5<sup>2</sup>.

<sup>870</sup> Ordin nr. 2132/2005 pentru aprobarea Reglementarilor privind autorizarea operatorilor economici care desfasoara activitati de reparatii, de intretinere, de reglare, de modificari constructive, de reconstrucie a vehiculelor rutiere, precum și de dezmebrare a vehiculelor scoase din uz – RNTR 7, al Ministrului transporturilor, constructiilor si turismului, Monitorul Oficial al Romaniei nr. 1160 din 21 decembrie 2005.

- details the provisions above (G.O. 82/2000) especially with regard to procedural aspects; economic operators must ensure that all the acquired products (including spare parts) are in compliance with the approval regulations and products found to be uncompliant are returned to the supplier or destroyed. They need to keep the documentation attesting compliance with regulation on approval and certification of products, spare parts and use materials (G.O. no. 80/2000) and the guarantees and conformity declarations issued by producers / suppliers (including for reconditioned spare parts).

#### Tampering with the engine

Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) defines the types of tampering or malfunctions constituting major deficiencies (MaD):

- engine performance: a) command unit modified, affecting safety and / or environment – MaD; b) engine modifications or its axes, affecting safety and / or environment (DD);

Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11:

- Verifications relevant for tampering are included in the list under the category ‘Chassis and chassis accessories’: engine performance (command unit is tampered with, affecting safety and/or environment; engine modifications, affecting safety and /or environment);

#### Tampering with the OBD system

Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) defines the types of tampering or malfunctions constituting major deficiencies (MaD):

- exhaust gas emissions: - control equipment for exhaust gas emissions: a) equipment installed by the manufacturer that is missing tampered with or obviously faulty (MaD); - gas emissions (+E): d) OBD reading indicates sub-optimal functioning (MaD).

Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11:

- Gas emissions (+E) (for vehicles equipped with an OBD, emissions can be checked by the adequate reading of the OBD and the verification of the correct functioning of the OBD; the OBD reading indicates malfunctioning, measurement indicate significant unconformity).

#### Odometer tampering (in particular on second-hand vehicles)

With regard to odometer verification, RAR allows access of technical inspectors conducting ITP to the previous odometer reading from the last ITP conducted in Romania.<sup>871</sup> If the odometer is tampered with or reading indicates any other manipulation, the ITP cannot be passed.

Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) defines the types of tampering or malfunctions constituting major deficiencies (MaD):

- odometer (if included by the manufacturer): a) obvious manipulation (fraud) in order to reduce mileage or falsify a vehicle’s mileage (MaD); b) obvious malfunction (MaD);

<sup>871</sup> Order no. 2133/2005 – RNTR 1, art. 16 (5<sup>^</sup>1).

Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11:

- the category 'other equipment' includes odometer verification (obvious manipulation (fraud) in order to reduce mileage or to wrongly present mileage; obvious malfunction);

Other

n/a

**15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

The Romanian Automotive Register (RAR) is the authority that must validate any modification of any vehicle registered in Romania. Between two consecutive ITPs, the owner of the vehicle has the obligation to ensure maintenance of the vehicle in a satisfactory technical state, in view of compliance with the technical norms on road safety, environmental protection and category of use.

All the specific legislation analysed here indicates RAR as competent authority (except for Order no. 601/2017 (...) on inspections and checks on road transport (...) for which the authority conducting this type of technical roadside inspection is the State Inspectorate for Road Transport Control (ISCTR)).

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

For ITP legislation and CTT legislation see Q 22.

Government Ordinance no. 82/2000 on the authorisation of economic operators providing repairs, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles:

- In repairs and other operations detailed in this act, economic operators can only use equipment, components, technical entities, spare parts and products used of origin or approved / certified according to the legislation in force. Failure to do so represents administrative offense sanctioned with a fine of 3000 to 6000 Lei (EUR 600-1200).

- Economic operators must issue to the beneficiaries guarantee certificates, including guarantees for new or reconditioned components used. Failure to do so represents an administrative offence sanctioned with a fine of LEI 3000 to 6000 Lei (EUR 600-1200).

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

Government Ordinance no. 82/2000 on the authorisation of economic operators providing repairs, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles:

- the conformity of activities conducted under this legal act need to be verified by an inspection using specialised devices, equipment and technology which guarantee that the vehicle subject to these activities is in compliance with regulations an access to public roads. The economic operators are obliged to allow the beneficiary to assist the works (from a distance, or a video system) and to register the results of verifications, to keep proof on the compliance of these activities with technical and quality legal requirements.

Order no. 2131/2005 for the approval of the Regulation on the authorisation of economic operators providing repairs, maintenance, adjustments, constructive modifications, reconstruction activities of road vehicles, as well as dismantling of end-of-life vehicles – RNTR 9:

- With regard to the possibility of using reconditioned spare parts, the economic operator conducting the repairs and other activities can only use them if it informs the beneficiary on their availability and provided the beneficiary gives a written acceptance.
- The economic operator conducting repairs and other such activities must keep records containing proof that the product for which repairs and other such activities were made was considered as 'accepted/passed' in the final inspections and verifications in accordance with the provisions of the producer of the vehicle or components, systems, equipment and the RNTR 1 methodology.
- Registrations/records must be kept proving the quality of the operations conducted. Registrations must provide the identity of the technical personnel involved.

In case the beneficiary is not satisfied with any or all of these procedures, he/she can refuse to pay, lodge a written contestation with RAR (RAR must investigate and provide a solution within seven days) or go to court (and inform RAR on the litigation).

Given the provisions on the obligations of the economic operator, the burden of proof is on the economic operator.

For the economic operator, complaints lead to audits (by RAR) and multiple audits lead to suspension of the authorisation for 30 days.

### *Tests and inspections*

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

- Government Ordinance no. 81/2000 on the regular roadworthiness tests of road vehicles registered in Romania (amended) establishes the general framework for the organisation and functioning of the system of periodic roadworthiness testing (in Romania, the periodic technical inspection - ITP).

- RNTR 1<sup>872</sup> – details the specific requirements on the organisation of the system for performing ITP and the methodology for conducting the ITP.

- Periodicity of conducting ITP: for road vehicles intended for passenger transport having, without the driver's seat, at the most 8 seated places – ITP shall be conducted every 2 years, and if the vehicle is at least 12 years old, at one year intervals. The first ITP for new cars upon their first registration to Romania is scheduled after three years. Special provisions apply to different vehicles according to their use and/or characteristics (road vehicles intended for passenger transport having, without the driver's seat, more than 8 seated places – six months; vehicles used for taxi or rental – six months;

<sup>872</sup> Order no. 2133/2005 on approving The Regulation on the regular roadworthiness tests of road vehicles registered in Romania – RNTR 1 (amended).

drivers' learning vehicles – six months; etc.) or for the first ITP after registration if they were new cars upon registration in Romania.<sup>873</sup>

- ITP cumulatively contains: technical inspection on road safety; technical inspection on environmental protection; technical inspection on classification in the use category according to its intended use. ITP is conducted with available techniques and equipment without dismantling or removing parts of the vehicle.<sup>874</sup>

- The operational plan lists all the verifications that need to be conducted, including those related to tampering (resulting in minor / MiD, major / MaD, and dangerous DD deficiencies)<sup>875</sup>:

- engine performance: a) command unit modified, affecting safety and / or environment – MaD; b) engine modifications or its axes, affecting safety and / or environment (DD);
- odometer (if included by the manufacturer): a) obvious manipulation (fraud) in order to reduce mileage or falsify a vehicle's mileage (MaD); b) obvious malfunction (MaD);
- polluting emissions: - noise silencer system, b) any part of the system is weakened, missing, damaged, incorrectly installed, or obviously tampered with so that it might significantly affect the noise level (MaD);
- exhaust gas emissions: - control equipment for exhaust gas emissions: a) equipment installed by the manufacturer that is missing tampered with or obviously faulty (MaD); - gas emissions (+E): d) OBD reading indicates sub-optimal functioning (MaD).

- In case of major or dangerous deficiencies found by the ITP, it is considered that the vehicle did not pass the roadworthiness test and a new inspection is conducted within a maximum of 30 days. Rejection upon the ITP of a vehicle for major or dangerous deficiencies leads to annulment of the still valid ITP certificate (not expired) and, according to regulations on public road traffic, it is banned from public roads traffic until obtaining a new ITP certificate.

- It is forbidden to drive on a public road a vehicle that is technically non-compliant, with suspended registration or of registered vehicles with an expired or annulled ITP. The automatic suspension of the registration of a vehicle happens also on the date of expiry of ITP or, if applicable, the date of annulment of ITP. Automatic suspension ceases at the date when the vehicle passes a new ITP<sup>876</sup> (see Q22 on sanctions).

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

- Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11, of the Minister of Transport and the Minister of Internal Affairs and Administrative Reform<sup>877</sup> (last amended October 2018).

- RAR and the Road Police conduct random controls of a technical nature for vehicles found in traffic on public roads. Such controls (abbreviated CTT in Romanian legislation) must be non-discriminatory based on nationality of the driver or state of registration of the car, while minimising costs and delays for vehicles drivers/owners. Selection is based on prioritising the stop of vehicles for which there are clues toward an uncompliant technical status.

<sup>873</sup> G. O. no. 81/2000, art. 2 (3), (3<sup>^</sup>1).

<sup>874</sup> G. O. no. 81/2000, art. 2 (5), (8).

<sup>875</sup> Order no. 2133/2005 – RNTR 1, Annex 2.

<sup>876</sup> GEO no. 195/2002 on public road traffic, art. 10 (1) and art. 11 (4<sup>^</sup>5) (section 2, cap. II).

<sup>877</sup> Ordin nr. 510/230/2007 pentru aprobarea Reglementarilor privind controlul in trafic al vehiculelor rutiere – RNTR 11, al ministrului transporturilor si ministrului internelor si reformei administrative, Monitorul Oficial al Romaniei nr. 483 din 19 iulie 2007.

- RAR inspectors can conduct the following verifications: visual inspection of the technical status of the parked vehicle; verification of a recent CTT or ITP documentation performed in the registration state; an inspection for detecting technical deficiencies on one, more or all the check points listed in the CTT report. If the RAR inspector evaluates the importance of deficiencies as capable to create a risk for road safety, especially with regard to the braking system, they can subject the vehicle to a complex inspection in an authorised ITP station.<sup>878</sup>
- The operational plan for conducting roadside inspections of vehicles is listed in the regulation. Verifications relevant for tampering are included in the list under the category ‘polluting emissions’: noise silencer (‘any part of the system is weakened, missing, damaged, incorrectly installed or obviously tampered with so that it can significantly affect the noise level’); exhaust emissions control equipment (the exhaust emissions control equipment installed by the producer is missing, tampered with, or obviously faulty); gas emissions (+E) (for vehicles equipped with an OBD, emissions can be checked by the adequate reading of the OBD and the verification of the correct functioning of the OBD);<sup>879</sup> all of these deficiencies are listed as major and dangerous deficiencies.
- Order no. 601/2017 amending and supplementing the Methodological norms on how to carry out inspections and checks on road transport (...) (transposing Directive 2014/47).
- The authority conducting this type of technical roadside inspection (in traffic technical control, CTT, in Romania) is the State Inspectorate for Road Transport Control (ISCTR). It organises and conducts unannounced technical control for commercial vehicles found in traffic. It can conduct an initial control and a detailed control. For vehicles for which a CTT was conducted, ISCTR classifies them according to the level of risk and this information can be used by the authority to verify more rigorously and more frequent enterprises and vehicles classified as higher risk categories. This information is managed by ISCTR. The controls need to be adequate (as no of controls / proportion related to the total no of vehicles registered in Romania), non-discriminatory based on nationality, it can prioritise vehicles classified as higher risk for the initial control. After the initial control, the technical inspector can decide whether a detailed control or an immediate repair of deficiencies is needed at once. The detailed control is conducted with mobile control units or in an ITP authorised station or RAR representation in proximity.
- Deficiencies are classified as minor, major and dangerous, based on their effect on the safety of the vehicle, environmental impact or road safety. The report of the CTT is filed with the ISCTR and communicated as copy to the driver (offender depending on the types of deficiencies found).
- For major and dangerous technical deficiencies the ITP is annulled and the offender receives a 24 hours proof allowing to drive on public roads in order to obtain a new ITP. For dangerous deficiencies, the document is valid only after the immobilisation of the vehicle ceases.
- The content of the inspection and methods applied, and evaluation of vehicles’ deficiencies are detailed in Annex 2 (of Order no. 601/2017).
- Verifications relevant for tampering are included in the list under the category ‘Chassis and chassis accessories’: engine performance (command unit is tampered with, affecting safety and/or environment; engine modifications, affecting safety and /or environment); the category ‘other equipment’ includes odometer verification (obvious manipulation (fraud) in order to reduce mileage or to wrongly present mileage; obvious malfunction); the category ‘polluting emissions’: noise silencer (‘a part of the system is incorrectly installed, damaged, missing, or obviously tampered with so that it can affect the noise level’); exhaust emissions control equipment (the exhaust emissions control equipment installed by the producer is missing, tampered with, or obviously faulty); gas emissions (+E) (for vehicles equipped with an OBD, emissions can be checked by the adequate reading of the OBD and the verification of the correct functioning of the OBD; the OBD reading indicates malfunctioning, measurement indicate significant unconformity).

<sup>878</sup> Order no. 510/230/2007 – RTRN 11, art. 7 (4), art. 10 (3).

<sup>879</sup> Order no. 510/230/2007 – RTRN 11, Annex 1.



**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

Periodic roadworthiness testing (in Romania, ITP)

- Government Ordinance no. 81/2000 designates RAR as competent authority and supervision organism with regard to ITP. In this capacity, RAR has the responsibility of managing the national system for periodic roadworthiness testing in Romania.

- ITPs are conducted by RAR, specialised technical body of the Ministry of Transportation through its county<sup>880</sup> representations, or by economic operators authorised and monitored by RAR, based on a franchise contract concluded with RAR.<sup>881</sup> In the activity of technical inspections RAR's authority is recognised by using the RAR registered mark by any economic operators or authorised public institutions (generally termed authorised persons), with all the rights and obligations arising from this.

- These authorised persons then operate periodic roadworthiness testing stations (SITP) and employ technical inspectors, also certified/recertified and trained by RAR.

- RAR fulfils its role by supervision of technical inspection stations (if they comply with legal requirements on infrastructure or testing devices, and authorisation procedures); ensuring professional qualifications and experience verifications for technical inspectors (RAR certifies, recertifies, ensures periodic training of inspectors); ensures audits of technical inspection stations; monitors authorised persons; withdraws or suspends authorisations and certifications of authorised persons.<sup>882</sup>

- Monitoring in an ongoing process, through electronic means, one monitoring procedure involves re-verification of the vehicle (technical inspectors must inform the person bringing the vehicle for ITP on the possibility that the vehicle is selected for reverification by RAR inspectors and all the consequences resulting from this, including additional waiting time), and the vehicle can be held for 45 minutes after the verification is completed in order for RAR inspectors (by electronic means or by delegating a RAR inspector on place) to conduct reverification (of the vehicle or of the procedural aspects). Also, vehicles can be called for reverification in RAR locations, and in traffic technical controls and incognito verifications using a faulty vehicle are mentioned as monitoring procedures.<sup>883</sup> Reverifications consist in rechecking the braking system, direction system, emissions, exhaust system, emission reduction system, exhaust silencer.<sup>884</sup>

- A specific instrument for monitoring by RAR involves the obligation for SITPs to ensure, through a video system in compliance with specified technical requirements and performance, to record all the activity conducted on the ITP line, recording that must be kept and made available upon request to RAR inspectors for 6 months, for each ITP conducted in the ITP station.<sup>885</sup>

Technical roadside inspections of vehicles (in Romania, CTT)

- RAR and the Road Police conduct random controls of a technical nature for vehicles found in traffic on public roads. Order no. 510/230/2007 on the approval of the Regulations on the technical roadside inspections of vehicles – RNTR 11 represents the legal base for conducting these procedures.

- State Inspectorate for Road Transport Control (ISCTR) organises and conducts unannounced technical controls and inspections on commercial transport vehicles (CTT), as mandated by Order no.

<sup>880</sup> Romania has 41 counties and the city capital of Bucharest. They represent the country's NUTS-3 and are part of the local administrative level (not regional).

<sup>881</sup> G. O. no. 81/2000, art. 4 (1)-(3).

<sup>882</sup> G. O. no. 81/2000, art. 4 (8).

<sup>883</sup> Order no. 2133/2005 – RNTR 1, art. 3 (7).

<sup>884</sup> Order no. 2133/2005 – RNTR 1, art. 17 (4).

<sup>885</sup> Order no. 2133/2005 – RNTR 1, art. 10, para. 21 (9<sup>1</sup>).



601/2017 amending and supplementing the methodological norms on how to carry out inspections and checks on road transport (...) (transposing Directive 2014/47).

## 21. Are any of these authorities required to disclose information on these tests and inspections?

Periodic roadworthiness testing (in Romania, ITP)

- ITP stations communicate by electronic means to RAR the information necessary for the generation of ITP certificates and RAR sends electronically to the stations conducting ITP the aforementioned certificates to be issued. After receiving information from the ITP certificates, RAR send this information in electronic form to the national registration authority. With regard to odometer verification, RAR allows technical inspectors access to the previous ITP information. RAR keeps the computerised records of ITPs conducted for road vehicles, keeping this information required for ITP certificates for at least 48 months.<sup>886</sup>

- For each vehicle subject to ITP, two digital photographic recordings (photos) are taken, one on the brake verification stand and the other upon completion of ITP (for commercial use vehicles a photo of the engine is taken). For vehicles with an odometer, a picture of the odometer indication is taken. All records are saved in the electronic system of the ITP station.<sup>887</sup>

- GEO no. 195/2002 on public road traffic institutes the National register of driving licences and registered vehicles, which also includes the updated data on ITP of registered vehicles; RAR has the legal obligation to supply by electronic means the information on the ITP of vehicles, respectively the period of validity. The Road Police has access to this data in order to verify ITP of vehicles.<sup>888</sup>

Technical roadside inspections of vehicles (in Romania, CTT)

- No requirement for disclosure of information to or by third parties was identified. RAR informs the owner of the vehicle on the annulment of ITP (if applicable), and for all technical roadside inspections conducted the original report remains with RAR, a copy is filed with the Road Police and one is communicated to the driver of the vehicle.

Order no. 601/2017 amending and supplementing the Methodological norms on how to carry out inspections and checks on road transport (...) (transposing Directive 2014/47):

- ISCTR ensures the exchange of information with similar authorities in other EU MS (Art. 32<sup>^</sup>3). When after a CTT a vehicle not registered in Romania is restricted or banned from traffic, ISCTR notifies the results of the control to the MS of registration of the vehicle.

- RAR notifies every 2 years to the Commission data on these controls (no. of vehicles, categories, registration country, for detailed controls – elements that were verified and deficiencies). To this end, ISCTR send the data collected to RAR in the format established by EU law (Art. 32<sup>^</sup>4).

- For the purpose of monitoring of ITP stations by RAR, ISCTR sends to RAR information on the vehicles for which major or dangerous deficiencies were found upon CTT.

## 22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

Periodic roadworthiness testing (in Romania, ITP)

- Government Ordinance no. 81/2000 establishes the regime of administrative offenses for authorised persons conducting ITP (economic operators or public institutions): such offenses relate

<sup>886</sup> G. O. no. 81/2000, art. 6 (10)-(12) and 6<sup>^</sup>1 (1).

<sup>887</sup> Order no. 2133/2005 – RNTR 1, art. 16 (8).

<sup>888</sup> GEO no. 195/2002 on public road traffic, art. 11 (15)

to conducting ITP without (suspended, annulled, expired) authorisation, subcontracting the activity, using inadequate devices or by personal without certification. Fines are 3.000 to 5.000 lei (the maximum amount is approx. 1.000 euro). Another category of offences are those committed by technical inspectors (conducting ITP without certification, in unauthorised inspection facilities, for vehicles falling outside their certification, without compliance with the methodology and procedures established by RAR, faulty ITP found by RAR during monitoring, using devices that have been tampered with, or without proper devices, divulging technical data to other natural or legal persons). For these offenses fines are 1.000-3.000 lei.

Fines can be complemented by other administrative measures: suspension or annulment of the technical authorisation of the authorised person or certification of the technical inspector. A separate offense refers to vehicle manufacturers' non-compliance with their obligation to provide (free of charge or at a price that does not result in limitation of access or discrimination) access to the specific technical information dataset with regard to elements that need to be tested and the recommended methods for testing of those vehicles. For this offense the fine is 1.000-3.000 lei. The offenses are found and sanctioned by RAR personnel, empowered to this end by the Ministry of Transportation.<sup>889</sup>

Technical roadside inspections of vehicles (in Romania, CTT)

- Order no. 510/230/2007 – RTRN 11: in case the dangerous technical deficiencies are with the braking system of the direction system, ITP is annulled. If ITP is annulled, the registration certificate is withheld by the Road Police and its recovery is conditioned by passing the ITP conducted by RAR (not by other authorised persons / ITP stations).

- GEO no. 195/2002 on public road traffic: establishes classes of sanctions for administrative offenses (*class 1* – 2 or 3 penalty points, *class 2* – 4 or 5 penalty points, *class 3* – 6 to 8 penalty points, *class 4* – 9 to 20 penalty points, the last one only applicable to legal persons; the value of 1 penalty point is established at 10% of the minimum gross wage, in January 2020, since the minimum wage increased, this value was capped at 145 lei / approx. 30 euro).

- Such administrative offenses included in class 1, under the law on public road traffic, are: driving on a public road a vehicle having major deficiencies (some of which are according to Art. 112, i) the noise in traffic or while parked exceeds the legal limit for the respective vehicle, j) the engine emits polluting emission exceeding the legal limit) (Art. 99 (18)). In this case, the registration certificate is withheld and is returned to the owner only after the issuing by RAR of a proof confirming that the deficiency was remedied (Art. 112);

- In class 4 of administrative offenses the law includes: driving on a public road a vehicle having major deficiencies or having an expired periodic technical inspection (ITP) (Art. 102).

### *National strategies and initiatives*

#### **23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

RAR gathers data on odometer readings determined during ITP of vehicles, by authorised ITP stations or RAR representations. While conducting the ITP, with a view to odometer verification, RAR allows access of technical inspectors conducting ITP to the previous odometer reading from the last ITP conducted in Romania.<sup>890</sup> No mention of the specific format of data. Presumably, given the fact that this data is available to the public through an online RAR application which shows 'the succession of registrations during ITP of the odometer values which should be in the format of a continuous

<sup>889</sup> G. O. no. 81/2000, art. 6<sup>^</sup>2 (1)-(8).

<sup>890</sup> Order no. 2133/2005 – RNTR 1, art. 16 (5<sup>^</sup>1).

increase of mileage', we conclude data is stored as no. of kilometres registered by the odometer for each successive ITP of a vehicle.

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

Starting March 2019, RAR (Romanian Automotive Register) launched an online application to assist the public in having access to essential information for a registered vehicle they want to purchase. It is a public initiative, free of charge, accessible from any device, including a smart phone. The app (titled Vehicle history) can be downloaded from the official website of RAR ([www.rarom.ro](http://www.rarom.ro)) and data is obtained provided the identification no. of the vehicle is introduced, then it sends by e-mail (after the generation of an access code) data on: activities conducted by RAR and the no. of kilometres registered in RAR or authorised ITP stations, the existence / validity of the identity card of the vehicle, some technical and identification data, the pollution level and ITP validity. Future extensions of data provided may include data on potential damages or repairs relevant for the resistance structure of a vehicle (but may be paid information, since RAR does not own such data).

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

No such initiatives are in place, nor public discussions about the possibility, opportunity, capacity to introduce such monitoring equipment.

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

No such specific public strategy was identified.  
Given that in Romania road transport has the greatest negative effect on air quality in urban areas, tangentially, increasing compliance with legislation described in this study appears in other national strategies (General Transport Master Plan for Romania, the National Sustainable Development Strategy of Romania 2030, The Strategy for Sustainable Transport 2007-2013 and 2020, 2030 etc.) No specific measures or objectives are defined directly related to tampering of vehicles and means to control this issue.

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

No such documents were identified, nor references to such initiatives.

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No strategies were found.

### *Effectiveness and enforcement*

#### **29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

No information is available that would provide insights into this matter.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

No information is available that would provide insights into this matter.

Potential gaps in the legislation

No clear gaps were identified as part of this research.

#### **30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

The desk research conducted revealed as the main problem of the entire system described in these regulations as prone to corruption. Bribery of ITP inspectors, including RAR inspectors is reported as very frequent, which makes the legislative measures very ineffective. Fines are considered small, not dissuasive enough. Interviews conducted with two ITP experts confirmed the fact that in Romania it is possible to tamper with a car's emissions systems and use it on public roads and still pass the next ITP and avoid CTT (the capacity to conduct such controls in traffic is very limited in Romania, due to weak control infrastructure, they are predictable, usually placed in the same places, they control very few cars from the total cars in traffic, etc.).

#### **31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

No clear obstacles were identified as part of this research.

### *Other*

#### **32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

No other stakeholders or initiatives other than the authorities identified and mentioned above.

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

n/a

#### Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

No relevant case law was found online.

#### Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
n/a		

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

[Directive](#) 2007/46/EC (establishing an approval framework)

**Act no. 106/2018 Coll. on operation of vehicles** in road traffic<sup>891</sup> adopted on 14 March 2018 and several times amended by the National Council of the Slovak Republic. This Act repealed Act no. 725/2004 Coll. on conditions of operation of vehicles in traffic on roads<sup>892</sup> adopted on 2 December 2004 and several times amended by the National Council of the Slovak Republic.

**Decree no. 140/2009 Coll.** stating details **on the approval of motor vehicles** and their trailers, systems, components and separate technical unit intended for such vehicles<sup>893</sup> adopted on 18 February 2009 and amended several times by the Slovak Government. It is effective from 29 April 2009 until 31 August 2020.

**Order no. 131/2018 Coll.** stating details **in the field of vehicles approval**<sup>894</sup> adopted on 27 April 2018 and amended several times by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

**Order no. 132/2018 Coll.** stating details **on technical requirements** for certain vehicles, systems, components and separate technical units **for approval**<sup>895</sup> adopted on 27 April 2018 and amended several times by the Slovak Ministry for transport and construction. It is effective from 20 May 2018.

**Order no. 134/2018 Coll.** stating details **on the operation of vehicles** in road traffic<sup>896</sup> adopted on 27 April 2018 and amended several times by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

**Order no. 136/2018 Coll.** stating details **on technical services**<sup>897</sup> adopted on 27 April 2018 and amended several times by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

<sup>891</sup> Zákon č. 106/2018 Z.z. o prevádzke vozidiel v cestnej premávke a o zmene a doplnení niektorých zákonov, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/106/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/106/)

<sup>892</sup> Zákon č. 725/2004 o podmienkach prevádzky vozidiel v premávke na pozemných komunikáciách a o zmene a doplnení niektorých zákonov, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/725/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/725/)

<sup>893</sup> Nariadenie vlády Slovenskej republiky č. 140/2009 Z.z., ktorým sa ustanovujú podrobnosti o typovom schvaľovaní motorových vozidiel a ich prípojných vozidiel, systémov, komponentov a samostatných technických jednotiek určených pre tieto vozidlá, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2009/140/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2009/140/)

<sup>894</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 131/2018 Z.z., ktorou sa ustanovujú podrobnosti v oblasti v schvaľovania vozidiel, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/131/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/131/)

<sup>895</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 132/2018 Z.z., ktorou sa ustanovujú podrobnosti o technických požiadavkách na niektoré vozidlá, systémy, komponenty a samostatné technické jednotky na účely schvaľovania, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/132/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/132/)

<sup>896</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 134/2018 Z.z., ktorou sa ustanovujú podrobnosti o prevádzke vozidiel v cestnej premávke, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/134/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/134/)

<sup>897</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 136/2018 Z.z., ktorou sa ustanovujú podrobnosti o technickej službe overovania, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/136/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/136/)

[Directive](#) 2014/45/EU (on periodic roadworthiness tests)

Act no. 106/2018 Coll. on operation of vehicles

**Order no. 137/2018 Coll.** stating details **on technical control**<sup>898</sup> adopted on 27 April 2018 and amended several times by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

**Order no. 138/2018 Coll.** stating details **on emission control**<sup>899</sup> adopted on 27 April 2018 and amended several times by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

**Order no. 141/2018 Coll.** stating details **on state technical supervision and technical supervision of technical services** in the field of operation of vehicles in road traffic<sup>900</sup> adopted on 27 April 2018 by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

[Directive](#) 2014/47/EU (on technical roadside inspections for commercial vehicles)

Act no. 106/2018 Coll. on operation of vehicles

**Order no. 135/2018 Coll.** stating details **on technical roadside inspection**<sup>901</sup> adopted on 27 April 2018 and amended several times by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

## 2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).

[Regulation](#) (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

Act no. 106/2018 Coll. on operation of vehicles

Decree no. 140/2009 Coll. on the approval of motor vehicles

Commission [Regulation](#) (EU) 2017/1151 (on odometer readings)

The requirements laid down in Commission Regulation (EU) 2017/1151 that car manufacturers shall (i) effectively deter reprogramming of the odometer readings and (ii) include systematic tamper-

<sup>898</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 137/2018 Z.z., ktorou sa ustanovujú podrobnosti v oblasti technickej kontroly, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/137/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/137/)

<sup>899</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 138/2018 Z.z., ktorou sa ustanovujú podrobnosti v oblasti emisnej kontroly, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/138/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/138/)

<sup>900</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 141/2018 Z.z., ktorou sa ustanovujú podrobnosti o štátnom odbornom dozore a odbornom dozore technických služieb na úseku prevádzky vozidiel v cestnej premávke, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/141/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/141/)

<sup>901</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 135/2018 Z.z., ktorou sa ustanovujú podrobnosti o cestnej technickej kontroly, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/135/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/135/)



protection strategies and write-protect features to protect the integrity of the odometer reading are not specially regulated by the Slovak legislation.

[Regulation](#) (EC) No 595/2009 (on type approval of heavy duty vehicles)

Act no. 106/2018 Coll. on operation of vehicles

Decree no. 140/2009 Coll. on the approval of motor vehicles

### 3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.

**Act no. 147/2001 Coll. on advertising**<sup>902</sup> adopted on 5 April 2001 and several times amended by the National Council of the Slovak Republic.

**Act no. 455/1991 Coll. on trade licences**<sup>903</sup> adopted on 2 October 1991 by the Federal Assembly of the Czech and Slovak republic and several times amended by the National Council of the Slovak Republic.

**Act no. 128/2002 Coll. on state control of the internal market in consumer protection**<sup>904</sup> matters adopted on 15 February 2002 and several times amended by the National Council of the Slovak Republic.

All these Acts penalise tampering. More information can be found under question 14 (rules on tampering).

Although the Slovak **Penal Code**<sup>905</sup> (adopted on 20 May 2005 and several times amended by the National Council of the Slovak Republic) does not contain a special crime of (odometer) tampering, it could be covered by the crime of fraud (Art. 221).

**Order no. 139/2018 Coll. stating details on control of originality**<sup>906</sup> adopted on 27 April 2018 and amended by the Slovak Ministry for Transport and Construction. It is effective from 20 May 2018.

### 4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?

They only refer to the implemented/covered EU directives and regulations.

<sup>902</sup> Zákon č. 147/2001 Z.z. o reklame a o zmene a doplnení niektorých zákonov, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/)

<sup>903</sup> Zákon č. 147/2001 Z.z. o živnostenskom podnikaní, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/455/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/455/)

<sup>904</sup> Zákon č. 128/2002 Z.z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/128/20200101](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/128/20200101)

<sup>905</sup> Zákon č. 300/2005 Z.z. – Trestný zákon, available at [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/300/20200101](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/300/20200101)

<sup>906</sup> Vyhláška Ministerstva dopravy a výstavby SR č. 139/2018 Z.z., ktorou sa ustanovujú podrobnosti o kontrole originality, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/139/](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/139/)

**5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The national measures set out above only refer to EU legislation as the reason for their implementation (Directives) or reliance on (Regulations).

#### Requirements and rules on tampering

##### *Obligations manufacturers*

**6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

No, the Slovak legislation does not contain any requirements on manufacturers asking them to prevent tampering.

**7. Are there any other requirements relating to tampering which manufacturers need to meet?**

There is a general ban on tampering. Art. 53, par. 1 of Act no. 106/2018 Coll. on operation of vehicles prohibits:

- a) unauthorised manipulation of the odometer,
- b) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of the odometer,
- d) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality.

Moreover, according Art. 48, par. 3, let. g) of Act no. 106/2018 Coll. on operation of vehicles in conjunction with Art. 6, par. 2, let. g), q) of Order no. 139/2018 Coll. on control of originality, manufacturers are obliged to submit the displayed value of odometers during various situations, like repair, maintenance or inspection of a vehicle or repair or replacement of an odometer to a Register of vehicle operating records (RPVZ)<sup>907</sup>.

**8. Are manufacturers required to disclose information relating to tampering (resistance)?**

No, the Slovak legislation does not require manufacturers to disclose any information relating to tampering.

##### *Type approval*

**9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

<sup>907</sup> This is a national register of vehicles set up to eliminate odometer fraud, available at: [www.rpvz.sk/Domov](http://www.rpvz.sk/Domov)

In setting out the requirements in relation to type approval processes, the Decree no. 140/2009 Coll. on the approval of motor vehicles solely refers to UN and EU legislation, including Directive 2007/46/EC.

**10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

As mentioned above, there are not special requirements and checks/processes relating to tampering in the Slovak legislation on type approval process.

**11. Please list the national type approval authority<sup>908</sup> and technical services<sup>909</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

According to Art. 135, par. 2 and Art. 136, par. 2, let. a) of Act no. 106/2018 Coll. on operation of vehicles, the Slovak Ministry of Transport performs the function of type approval authority.

According to Art. 70, par. 3 and Art. 142, par. 4 of Act no. 106/2018 Coll. on operation of vehicles, the Slovak Ministry of Transport, as a type approval authority, designates and controls technical services. According to Art. 71, par. 1, let. m) of the same Act, the evaluation and monitoring of technical services has been performed by Slovak National Accreditation Centre<sup>910</sup>.

The list of Slovak technical services can be found here:

<https://ec.europa.eu/docsroom/documents/29625?locale=en>

and even broader list updated by the Ministry of Transport here:

[www.mindop.sk/ministerstvo-1/statny-dopravny-urad-4/technicke-sluzby-a-kontroly-vozidiel/technicke-sluzby-v-sr/technicka-sluzba-overovania-vozidiel](http://www.mindop.sk/ministerstvo-1/statny-dopravny-urad-4/technicke-sluzby-a-kontroly-vozidiel/technicke-sluzby-v-sr/technicka-sluzba-overovania-vozidiel)

**12. Are any of these parties required to disclose information on national type approval processes?**

According to Art. 136, par. 2, let. a) no. 3 and 46 of Act no. 106/2018 Coll. on operation of vehicles, the Slovak Ministry of Transport:

- Makes available to the type approval authorities of the EU Member States granted/refused EU type approvals regarding whole vehicles via the European exchange type approval system;
- Fulfils information obligations in relation to EU bodies and type approval authorities of other Member States.

Moreover, according to Art. 7, par. 3 and 5 of the Decree no. 140/2009 Coll. on the approval of motor vehicles, the Slovak Ministry of Transport, as a type approval authority, shall inform without delay the type-approval authorities of the other Member States of the rejection of the application for an EU vehicle type-approval or of the withdrawal of an EU vehicle type-approval certificate granted, and of the reasons for such a decision.

<sup>908</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>909</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>910</sup> [www.snas.sk/index.php?l=en](http://www.snas.sk/index.php?l=en)

**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Art. 32, 33 of the Decree no. 140/2009 Coll. on the approval of motor vehicles lays down safeguard clauses (Chapter XII of the Framework Directive) enabling the Slovak Ministry of Transport, as a type approval authority, to refuse the registration, sale or entry into service or to withdraw a type-approval of vehicles, components or separate technical units either presenting a serious risk to road safety or seriously harming the environment or public health, or being not in conformity with the approved type.

Act no. 106/2018 Coll. on operation of vehicles sets various amounts of fines which shall be imposed by the Slovak Ministry of Transport:

1) if a manufacturer or its representative:

- **issues a Part II registration certificate or vehicle technical certificate to a vehicle (i) which is not in conformity to the whole vehicle type-approval, (ii) which does not correspond to the actual vehicle version, (iii) which has not been recognised as an EU whole vehicle type-approval or issues such a certificate to the vehicle on the basis of an invalid COC certificate of conformity or the basic technical description of the vehicle; a fine of 300 EUR shall be imposed for each Part II registration certificate or vehicle technical certificate (Art. 148, par. 1, let. b), no. 1 and 2);**
- **breaches its obligation to submit correct data to Ministry of Transport or Police in line with the issuance of a Part II registration certificate or vehicle technical certificate; a fine of 300 EUR shall be imposed for each Part II registration certificate or vehicle technical certificate (Art. 148, par. 1, let. b), no. 4);**
- **does not issue a Part II registration certificate, vehicle technical certificate or COC certificate of conformity when a new vehicle is put into service in road traffic in the Slovak Republic or violates its obligation to inform about (i) restrictions if given in the type-approval and conditions for installation or (ii) fuels in the instructions for use of motor vehicles; a fine from 500 EUR to 2,000 EUR shall be imposed (Art. 148, par. 1, let. c);**
- **breaches a condition set by the Ministry of Transport in the whole vehicle type-approval certificate or in deciding on the recognition of EU whole vehicle type-approval or does not submit to type-approval authority or technical services requested data or submits the identical proposal for EU type-approval in another Member State; a fine from 1,000 EUR to 5,000 EUR shall be imposed (Art. 148, par. 1, let. d);**
- **breaches its obligations linked to (i) conformity of production with type-approval, (ii) monitoring and taking effective measures to eliminate the failure rate of the type of vehicle, system, component, separate technical unit, dangerous part or equipment, or (iii) providing, at its own expense to the type-approval authority, a type of vehicle, system, component, separate technical unit, dangerous part or equipment to verify compliance with the conditions specified for type-approval and providing the information necessary for such verification, or (iv) providing spare parts for at least five years after the end of mass production or mass conversion; a fine from 3,000 EUR to 10,000 EUR shall be imposed (Art. 148, par. 1, let. e);**
- **does not place on the market, make available on the market or put into service on the road vehicles, systems, components, separate technical units, dangerous parts or equipment which conform to the approved type or do not comply with the obligations laid down in the specific type-approval regulations and regulatory acts, e.g.: Decree no. 140/2009 Coll. on the approval of motor vehicles, EU or UN legislation on type-approval process; a fine up to 50,000 EUR shall be imposed (Art. 148, par. 1, let. f);**

2) if a manufacturer:

- does not submit details to a Register of COC certificates of conformity on any vehicle manufactured which has been granted whole vehicle type-approval; a fine of 150 EUR shall be imposed for each vehicle (Art. 148, par. 2, let. a);
- does not issue a COC certificate of conformity or issues a COC certificate of conformity (i) with incorrect data or (ii) to a vehicle which does not conform to the type-approval granted for the whole vehicle or (iii) to a vehicle which does not correspond to the actual versions of the specific vehicle; a fine of 300 EUR shall be imposed for each certificate (Art. 148, par. 2, let. b);
- breaches its obligations linked to a multi-stage type-approval; a fine from 500 EUR to 2,000 EUR shall be imposed (Art. 148, par. 2, let. c);

3) if the holder of the trial authorisation to vehicle operation (the type-approval authority is entitled to issue a trial authorisation to vehicle operation of a vehicle for the purpose of test drives (Art. 49 of Act no. 106/2018 Coll. on operation of vehicles):

- does not notify to the type-approval authority a change of the conditions under which the trial authorisation was issued, no later than 15 days from the date on which the change occurred; a fine of 150 EUR shall be imposed (Art. 148, par. 3, let. a);
- breaches (i) conditions under which the trial authorisation was issued or (ii) any other legal conditions e.g.: having a valid insurance or a table with a special registration number; a fine from 500 EUR to 2,000 EUR shall be imposed (Art. 148, par. 3, let. b);

4) if anyone without certificate or permission, e.g. performs the activity of a manufacturer or its representative, technical service, or in an unauthorised fashion marks the vehicle, system, component, separate technical unit, dangerous part or equipment or internal combustion engine of non-road mobile machinery with an approval mark or approval number; a fine from 5,000 EUR to 100,000 EUR shall be imposed (Art. 148, par. 9);

According to the same Act, the District (State Administration) Authority shall impose a fine to:

- a vehicle operator, e.g. 498 EUR for operation of vehicle (i) not approved for operation in traffic or (ii) being non-conform with the approved type or which has been tampered with, or which is retrofitted with a non-approved system, component or separate technical unit (Art. 148, par. 14, let. c);
- anyone who makes changes or modifications to the vehicle which will result in the incapacity<sup>911</sup> or technical incapacity<sup>912</sup> of a vehicle; a fine from 1,000 EUR to 10,000 EUR shall be imposed (Art. 148, par. 20);

The same Act enables administrative bodies to impose procedural fines for non-cooperation from 99 EUR to 1,998 EUR (Art. 150);

This Act also entitles the Slovak Trade Inspection<sup>913</sup>, an internal market surveillance authority, to impose fines if rules on a vehicle, system, component, separate technical unit, subject to the type-approval procedure are breached, e.g.:

- a type-approval certificate to such vehicle, system, component, separate technical unit has not been granted, or they were not produced in conformity with granted approval, or they pose a risk

<sup>911</sup> For instance, due to non-conformity to the approved type or tampering, or retrofitting with a non-approved system, component or separate technical unit (Art. 45, par. 2, let b) of Act no. 106/2018 Coll. on operation of vehicles.

<sup>912</sup> For instance, due to exceeding the max. engine emission limits or OBD indicating failure of emission components (Art. 3, let. h), no. 3 and 4 of the Order no. 134/2018 Coll. on the operation of vehicles.

<sup>913</sup> [www.soi.sk/en/SOI.soi](http://www.soi.sk/en/SOI.soi)

to the public interest in safety and health or to another legitimate or public interest; a fine from 2,000 EUR to 300,000 EUR shall be imposed (Art. 154, par. 1, let. a), no. 1;

- a type-approval certificate is not in line with the respective regulatory act, or does not bear the type-approval mark, or a COC certificate of conformity is not attached to the vehicle, or the type-approval certificate has been withdrawn or revoked by the type-approval authority because the vehicle, system, component, separate technical unit does not meet the conditions of the relevant regulatory act or endangers the public interest in safety and health; a fine from 1,000 EUR to 30,000 EUR shall be imposed (Art. 154, par. 1, let. b), no. 1).

### *Rules on tampering*

#### **14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Odometer tampering (in particular on second-hand vehicles)

There is a general ban on tampering – Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

With regard to odometer tampering, Art. 53, par. 1, let. a), b) and d) of this Act prohibits:

- a) unauthorised manipulation of the odometer,
- b) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of the odometer,
- d) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality.

According to Art. 53, par. 2, let. a) and b) of the same Act, it is forbidden to put on the market or make available on the market in the Slovak Republic, or to offer:

- a) services which are prohibited pursuant to paragraph 1 (mentioned above),
- b) services which result in the incapacity or technical incapacity of a vehicle.

Moreover, Art. 53, par. 3 - 5 of the same Act prohibits legal entities and natural persons – entrepreneurs from putting on the market, making available or offering on the market in the Slovak Republic road motor vehicles:

- with tampered odometer or otherwise mediating their sale on the market in the Slovak Republic; this does not apply if the information on tampered odometer is published before putting on the market, making available, offering or mediating of sales and an extract from RPVZ is attached to the vehicle.
- or otherwise mediating their sale without indicating the vehicle identification number (**VIN**) and without indicating the total distance travelled by the road motor vehicle in each published price offer, as well as in all promotional materials, contracts and acceptance protocols.
- in which there is a device or other software device mounted for the purpose of unauthorised manipulation with the parameters evaluated during the technical inspection, emission control or control of originality or otherwise mediating its sale on the market in the Slovak Republic.

Art. 3, par. 6 of Act no. 147/2001 Coll. on advertising prohibits the advertisement of goods/services whose unauthorised manipulation (tampering) is prohibited by special regulations (e.g. Art. 53 of Act no. 106/2018 Coll. on operation of vehicles).



### Tampering with the emission control design

With regard to the emission control design tampering, Art. 53, par. 1, let. d) of this Act prohibits:

d) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality.

According to Art. 53, par. 2, let. a), b), d) and e) of the Act no. 106/2018 Coll. on operation of vehicles it is forbidden to put on the market or make available on the market in the Slovak Republic, or to offer:

- a) services which are prohibited pursuant to paragraph 1,
- b) services which result in the incapacity or technical incapacity of a vehicle,
- d) services which result in the unauthorised modification of the vehicle's emission system in order to affect its operation,
- e) services which result in the use of defeat device<sup>914</sup> which reduce the effectiveness or interfere with the safety features laid down in the technical requirements.

Moreover, Art. 53, par. 5 of the same Act prohibits legal entities and natural persons – entrepreneurs from putting on the market, making available or offering on the market in the Slovak Republic road motor vehicle in which there is a device or other software device mounted for the purpose of unauthorised manipulation with the parameters evaluated during the technical inspection, emission control or control of originality or otherwise mediating its sale on the market in the Slovak Republic.

Art. 3, par. 6 of Act no. 147/2001 Coll. on advertising prohibits the advertisement of goods/services whose unauthorised manipulation (tampering) is prohibited by special regulations. In this case it is Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

### Tampering with aftermarket parts

With regard to aftermarket tampering, Art. 53, par. 1, let. d) of the Act no. 106/2018 Coll. on operation of vehicles prohibits:

d) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality.

According to Art. 53, par. 2, let. a), b) of the Act no. 106/2018 Coll. on operation of vehicles it is forbidden to put on the market or make available on the market in the Slovak Republic, or to offer:

- a) services which are prohibited pursuant to paragraph 1,
- b) services which result in the incapacity or technical incapacity of a vehicle.

Moreover, Art. 53, par. 5 of the same Act prohibits legal entities and natural persons – entrepreneurs from putting on the market, making available or offering on the market in the Slovak Republic road motor vehicle in which there is a device or other software device mounted for the purpose of unauthorised manipulation with the parameters evaluated during the technical control, emission control or control of originality or otherwise mediating its sale on the market in the Slovak Republic.

<sup>914</sup> Art. 3, par. 10 of Regulation (EC) No 715/2007 and Art. 3, par. 8 of Regulation (EC) No. 595/2009



Art. 3, par. 6 of Act no. 147/2001 Coll. on advertising prohibits the advertisement of goods/services whose unauthorised manipulation (tampering) is prohibited by special regulations. In this case it is Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

#### Tampering with the engine

With regard to engine tampering, Art. 53, par. 1, let. d) of the Act no. 106/2018 Coll. on operation of vehicles prohibits:

d) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality.

According to Art. 53, par. 2, let. a), b) and e) of the Act no. 106/2018 Coll. on operation of vehicles it is forbidden to put on the market or make available on the market in the Slovak Republic, or to offer:

- a) services which are prohibited pursuant to paragraph 1,
- b) services which result in the incapacity or technical incapacity of a vehicle,
- e) services which result in the use of defeat device which reduce the effectiveness or interfere with the safety features laid down in the technical requirements.

Moreover, Art. 53, par. 5 of the same Act prohibits legal entities and natural persons – entrepreneurs from putting on market, making available or offering on the market in the Slovak Republic road motor vehicle in which there is a device or other software device mounted for the purpose of unauthorised manipulation with the parameters evaluated during the technical control, emission control or control of originality or otherwise mediating its sale on the market in the Slovak Republic.

Art. 3, par. 6 of Act no. 147/2001 Coll. on advertising prohibits the advertisement of goods/services whose unauthorised manipulation (tampering) is prohibited by special regulations. In our case it is Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

#### Tampering with the OBD system

With regard to the OBD tampering, Art. 53, par. 1, let. d) of the Act no. 106/2018 Coll. on operation of vehicles prohibits:

d) making, procuring or giving to another person equipment or software for the purpose of unauthorised manipulation of parameters evaluated during technical control, emission control or control of originality.

According to Art. 53, par. 2, let. a), b) of the Act no. 106/2018 Coll. on operation of vehicles it is forbidden to put on the market or make available on the market in the Slovak Republic, or to offer:

- a) services which are prohibited pursuant to paragraph 1,
- b) services which result in the incapacity or technical incapacity of a vehicle.

Moreover, Art. 53, par. 5 of the same Act prohibits legal entities and natural persons – entrepreneurs from putting on market, making available or offering on the market in the Slovak Republic road motor vehicle in which there is a device or other software device mounted for the purpose of unauthorised manipulation with the parameters evaluated during the technical control, emission control or control of originality or otherwise mediating its sale on the market in the Slovak Republic.

Art. 3, par. 6 of Act no. 147/2001 Coll. on advertising prohibits the advertisement of goods/services whose unauthorised manipulation (tampering) is prohibited by special regulations. In our case it is Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

Other

According to Art. 53, par. 2, let. c) and e) of the Act no. 106/2018 Coll. on operation of vehicles it is forbidden to put on the market or make available on the market in the Slovak Republic, or to offer:

c) services that result in manipulation with the speed limiters and the tachographs with which certain vehicles are required to be fitted.

Moreover, Art. 53, par. 5 of the same Act prohibits legal entities and natural persons – entrepreneurs from putting on market, making available or offering on the market in the Slovak Republic road motor vehicle in which there is a device or other software device mounted for the purpose of unauthorised manipulation with the parameters evaluated during the technical control, emission control or control of originality or otherwise mediating its sale on the market in the Slovak Republic.

**15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

According to Art. 141, par. 2 and Art. 142, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles, State professional supervision (control of compliance with this Act, implementing legal regulations, methodological instructions and decisions issued on the basis of this Act) is performed by:

- a) chief state professional supervision of the Ministry of Transport,
- b) state professional supervision of the Ministry of Transport,
- c) state professional supervision of District Authority in the seat of the Self-governing region,
- d) state professional supervision of District Authorities.

According to Art. 2, let. k) of Act no. 128/2002 Coll. on state control in consumer protection in conjunction with Art. 152, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles, the Slovak Trade Inspection performs (i) market surveillance for the purposes of this Act (when placing on the market and making available on the market a type of vehicle, system, component, separate technical unit) and (ii) control of compliance with the obligations of economic entities set out in Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

According to Art. 10, let. f) of Act no. 147/2001 Coll. on advertising, the Slovak Trade Inspection performs surveillance on compliance with the prohibition to advertise goods/services whose unauthorised manipulation (tampering) is prohibited by Art. 53 of Act no. 106/2018 Coll. on operation of vehicles.

According to Art. 58, par. 1, let. e) of Act no. 455/1991 Coll. on trade licences, Trade Licence Office acts based on the instigation of the Slovak Trade Inspection submitted due to a repeated violation of Art. 53 of Act no. 106/2018 Coll. on operation of vehicles by a natural person - entrepreneur or legal entity.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

According to the Act no. 106/2018 Coll. on operation of vehicles, the District Authority shall impose fine to:

- vehicle operator, e.g. 498 EUR for operation of vehicle (i) not approved for operation in traffic or (ii) being non-conform with the approved type or which has been tampered with, or which is retrofitted with a non-approved system, component or separate technical unit (Art. 148, par. 14, let. c);
- anyone who makes changes or modifications to the vehicle which will render the vehicle ineligible or technically incompetent; a fine from 1,000 EUR to 10,000 EUR shall be imposed (Art. 148, par. 20);

If the inspector of the Slovak Trade Inspection finds that controlled entity violates Art. 53 of the Act no. 106/2018 Coll. (representing a general ban on tampering) on operation of vehicles, prohibits (i) placing on the market, making available on the market, offering on the market or otherwise mediating on the market such vehicle, system, component, separate technical unit or (ii) providing respective service and in both cases set a reasonable deadline for the implementation of a respective measure and for reporting on its compliance (Art. 152, par. 6, let. d) and e) of the same Act). The Slovak Trade Inspection shall impose a fine from 1,000 to 30,000 EUR if a respective economic entity does not implement respective measure (Art. 154, par. 1, let. b), no. 4. of the same Act).

According to Art. 154, par. 3 of the Act no. 106/2018 Coll. on operation of vehicles, the Slovak Trade Inspection shall impose a fine from 500 to 3,000 EUR if an economic entity violates Art. 53, par. 3 of the same Act, i.e. put on the market, makes available, offers on the market or otherwise mediates the sale of road motor vehicles in the Slovak Republic without indicating the vehicle identification number (VIN) and without indicating the total distance travelled by the road motor vehicle in each published price offer, promotional materials, contracts and acceptance protocols.

Moreover, according to Art. 154, par. 2 of the Act no. 106/2018 Coll. on operation of vehicles, the Slovak Trade Inspection shall impose a fine from 3,000 to 100,000 EUR if an economic entity violates Art. 53, par. 1-3, 4 or 5 of the same Act.

According to Art. 155, par. 1, let. b) of the Act no. 106/2018 Coll. on operation of vehicles, the Slovak Trade Inspection shall impose a procedural fine of 300 EUR to anyone who does not notify an odometer tampering.

According to Art. 148, par. 6, let. b), no. 2. of the Act no. 106/2018 Coll. on operation of vehicles, the Ministry of Transport shall impose a fine from 1,000 to 10,000 EUR to technical service breaching its obligation to notify a state of odometer to RPVZ in line with Art. 48 of the same Act.

According to Art. 11, par. 1 and Art. 12, par. 3, let. c) of the Act no. 147/2001 Coll. on advertising, the Slovak Trade Inspection prohibits the advertisement of goods/services whose unauthorised manipulation (tampering) is prohibited by Art. 53 of Act no. 106/2018 Coll. on operation of vehicles and imposes fee up to 66,400 EUR to the advertiser of such advertisement.

According to Art. 58, par. 1, let. e) of Act no. 455/1991 Coll. on trade licences in conjunction with Art. 154, par. 7 and 8 of the Act no. 106/2018 Coll. on operation of vehicles, the Trade Licence Office cancels the respective Trade Licence based on the instigation of the Slovak Trade Inspection submitted due to a repeated violation of Art. 53 of Act no. 106/2018 Coll. on operation of vehicles by a natural person, entrepreneur or legal entity.

Although, the Slovak Penal Code does not contain a specific crime of tampering, it could be covered by the crime of fraud (Art. 221) - Whoever enriches himself or others to the detriment of another's property by misleading someone or using someone's mistake, and thus causes little damage (at least 266 EUR) to another's property, shall be punished by imprisonment for up to two years.

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

Certainly, in case of tampering, the consumer has a right to a reasonable discount or to withdraw from the contract.

According to Art. 597 of the Slovak **Civil Code**<sup>915</sup> (adopted on 24 February 1964 and several times amended by the Federal Assembly of the Czech and Slovak Republic and several times amended by the National Council of the Slovak republic):

(1) If a defect subsequently comes to light which the seller has not pointed out to the buyer, the buyer is entitled to a reasonable discount from the agreed price corresponding to the nature and extent of the defect; if it is a defect that makes the thing unusable, the buyer also has the right to withdraw from the contract.

(2) The buyer has the right to withdraw from the contract even if the seller has assured him that the item has certain qualities, in particular the qualities stipulated by the buyer, or that it has no defects, and this statement turns out to be untrue.

The burden of proof has to be borne by consumer but he/she has a right to compensation of necessary costs (e.g. expert testimony) incurred in connection with the exercise of rights regarding liability for defects (Art. 509, par. 1 of the Civil Code).

### *Tests and inspections*

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

According to Art. 45, par. 1, let. a), b) of the Act no. 106/2018 Coll. on operation of vehicles, the vehicle operator (the owner of the vehicle or the holder of the vehicle designated by the owner) is obliged, without calling and at his own expense, to ensure a regular technical inspection and emission control of his vehicle (the roadworthiness test) within the time limits, in the manner and to the extent specified by the implementing legal regulation (Order of the Ministry for Transport).

A technical inspection constitutes (i) an inspection and assessment of the technical condition of a vehicle, systems, components or separate technical units and (ii) performed at Technical Inspection Stations (Art. 104, par. 1 and Art. 106, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles).

An emission control of a motor vehicle constitutes (i) an inspection and control of the condition of the vehicle engine and its systems, components or separate technical units that affect the formation

<sup>915</sup> Zákon č. 40/1964 – Občiansky zákonník, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/20191201)

of pollutants in the exhaust gases, and measurement of compliance with engine conditions and emission limits established by implementing legislation; (ii) performed at Emission Control Workplaces or Technical Inspection Stations (Art. 104, par. 2, Art. 113, par. 1 and Art. 115, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles).

The Order no. 137/2018 Coll. on technical inspection:

- sets periods of regular technical inspection depending on type of vehicle, e.g. M1 and N1 vehicles shall be technically inspected four years after their registration and then each 2 years (Art. 47);
- defines the vehicle systems and components to be inspected and provides details on the recommended inspection methods and the criteria used to determine whether the condition of the vehicle is acceptable, e.g. in order to find tampering with or non-functioning of an odometer (Annex 9);

The Order no. 138/2018 Coll. on emission control:

- sets periods of regular emission control depending on type of vehicle, e.g. M1 and N1 vehicles (with the exception of vehicles with a positive-ignition engine with an incomplete emission system) shall be controlled four years after their registration and then each 2 years (Art. 51);
- defines the extent of emission control, the vehicle systems and components to be controlled and provides details on the recommended control methods and the criteria used to determine whether the condition of the vehicle is acceptable, e.g. functioning of exhaust emission control equipment, the presence of a device for additional reduction of pollutants in the exhaust system, functionality of the OBD system indicator (Art. 48 and Annex 10);
- introduces rules on monitoring (video-recording) of vehicles during their emission control (Annex 5);

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

A technical roadside inspection is an unannounced and unexpected inspection of the technical condition of a vehicle as part of the supervision of the safety and smoothness of road traffic (Art. 57, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles). The initial technical roadside inspection is carried out by a police officer or roadside inspection technician, i.e. professionally qualified person (Art. 59, par. 1 of the Act).

According to Art. 2 of the Order no. 135/2018 Coll. on technical roadside inspection, in order to carry out a technical roadside inspection, vehicles (M1, N1) are selected:

- at random or
- if there is a suspicion that:
  - a) the vehicle is technically incapable,
  - b) the vehicle may endanger safety, the environment or public health, or
  - c) the load on the vehicle does not meet the requirements for securing the load.

Based on the results of the initial technical roadside inspection, a decision shall be made as to whether the vehicle or its trailer is to be subjected to a more detailed technical roadside inspection. Subsequently, it has to be carried out as soon as possible and only by a roadside inspection technician (Art. 60, par. 1, 3 of the Act).

Annex 1 of the Order no. 135/2018 Coll. on technical roadside inspection defines the vehicle systems and components to be inspected and provides details on the recommended inspection methods and

the criteria used to determine whether the condition of the vehicle is acceptable, e.g. in order to find tampering with or non-functioning of an odometer.

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

Technical inspections are performed at Technical Inspection Stations (Art. 104, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles) while emission controls of a motor vehicles are performed at Emission Control Workplaces or Technical Inspection Stations (Art. 104, par. 2 and Art. 113, par. 1 of the Act no. 106/2018 Coll. on operation of vehicles).

Technical Inspection Stations and Emission Control Workplaces can be established only upon permission of the District Authority in the seat of the Self-governing region checking whether the legal requirements are fulfilled (Art. 82, par. 3, Art. 83, no. 1, let. a) and b) and Art. 137, let. a), no. 1 of the Act no. 106/2018 Coll. on operation of vehicles).

The holding of the permission to establish a Technical Inspection Station or Emission Control Workplace is one of the prerequisites, like employment of professionally qualified persons, to receive an authorisation to carry out a technical inspection or emission control from the District Authority in the seat of the Self-governing region (Art. 84, par. 1, 2, 4 and Art. 137, let. b), no. 1 of the Act no. 106/2018 Coll. on operation of vehicles).

A police officer is entitled to carry out an initial technical roadside inspection while a roadside inspection technician can carry out an initial and more detailed technical roadside inspection.

**21. Are any of these authorities required to disclose information on these tests and inspections?**

Technical service of technical inspection is obliged to:

- operate the national information system of technical inspections (**CIS TK**) and integrate it with the road information system<sup>916</sup> and provide to the road information system all data stated in the protocol on technical inspection (Art. 74, par. 1, let. i) of the Act no. 106/2018 Coll. on operation of vehicles) and
- operate the national information system of technical roadside inspections (**CIS CTK**) and manage all data from a technical roadside inspection in CIS CTK (Art. 74, par. 7, let. c), d) of the Act no. 106/2018 Coll. on operation of vehicles) and
- provide information on vehicle operational records, including data on current states of odometers, to the RPVZ (Art. 74, par. 1, let. q) and par. 7, let. g) of the Act no. 106/2018 Coll. on operation of vehicles).

Persons authorised to carry out technical inspections shall ensure the insertion of data on the results of technical inspections, evaluation of the technical condition of vehicles and conclusions on their capacity for operation in road traffic to the CIS TK (Art. 86, par. 1, let. f) of the Act no. 106/2018 Coll. on operation of vehicles).

<sup>916</sup> Complex Information System for Road Transport is a public administration information system, which is maintained for the purposes of actions of public authorities, performance of control, data recording, education and acquisition of professional skills in the field of road transport (established in line with Act. No. 387/2015 Coll., available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/387/20200101](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/387/20200101)), its publicly accessible part is available at: [www.jiscd.sk/en/](http://www.jiscd.sk/en/)



Police officers and roadside inspection technicians shall submit a report from a technical roadside inspection to CIS CTK (Art. 66, par. 3 of the Act no. 106/2018 Coll. on operation of vehicles).

Technical service of emission control is obliged to:

- operate the national information system of emission controls (**AIS EK**) and integrate it with the road information system and provide to the road information system all data stated in the protocol on emission control (Art. 75, par. 1 i) of the Act no. 106/2018 Coll. on operation of vehicles) and
- provide information on vehicle operational records, including data on current states of odometers, to the RPVZ (Art. 75, par. 1 q) of the Act no. 106/2018 Coll. on operation of vehicles).

Persons authorised to carry out emission controls shall ensure the insertion of data on the results of emission controls, evaluation of the technical condition of vehicles and conclusions on their capacity for operation in road traffic to the AIS EK (Art. 87, par. 1 f) of the Act no. 106/2018 Coll. on operation of vehicles).

Information systems - CIV TK and AIS EK are not publicly available (Art. 6 of the Order no. 137/2018 Coll. on technical control and Art. 6 of the Order no. 138/2018 Coll. on emission control). However, as mentioned under question 24, an ODO Pass (mileage certificate) is available on the RPVZ website.

## **22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

The District Authority shall impose a fine of 165 EUR on a vehicle operator breaching the obligation to ensure a regular technical inspection and emission control of his vehicle (Art. 148, par. 14, let. b), no. 4. and 5. of the Act no. 106/2018 Coll. on operation of vehicles).

According to Art. 72, par. 1, let. a) and b) and par. 2 of the Act on road traffic<sup>917</sup>, a police officer is entitled to detain a registration certificate part I or part II, a registration document from a vehicle issued abroad and table with registration number if:

- a) the vehicle is incapable<sup>918</sup> or technically incapable<sup>919</sup> for road traffic, or
- b) the driver has not shown that the vehicle has been subjected to a regular technical inspection or an emission control within the prescribed period.

### *National strategies and initiatives*

## **23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

<sup>917</sup> Act no. 8/2009 Coll. on road traffic adopted on 3 December 2008 and several times amended by the National Council of the Slovak Republic. Zákon č. 8/2009 Z.z. o cestnej premávke

<sup>918</sup> For instance, the vehicle has not been subject to a regular technical inspection or emission control within the prescribed period in line with Art 44, par. 1, let. b), par. 2, and Art. 45, par. 2, let. d) and e) of the Act no. 106/2018 Coll. on operation of vehicles

<sup>919</sup> The vehicle is considered technically incapable for road traffic, if dangerous faults are detected in the following areas: engine emission limits are exceeded or the OBD system indicates an emission component failure in line with in line with Art 44, par. 1, let. b) and par. 3 the Act no. 106/2018 Coll. on operation of vehicles in conjunction with Art. 3, let. h), no. 3. and 4. Of the Order no. 134/2018 Coll. on the operation of vehicles



Yes, odometer data is collected at national level. According to Art. 48 of Act no. 106/2018 Coll. on operation of vehicles in conjunction with Art. 6, par. 2, let. g), q) of Order no. 139/2018 Coll. on control of originality, Slovakia set up a Car-Pass-like-system called a Register of vehicle operating records (RPVZ) where certain subjects are obliged to register specific data on vehicles, including current states (the displayed value) of odometers. For instance, a current state (and sometimes also the photography of odometer or the method of reading data from odometer) has to be submitted to the RPVZ by:

- technical services from data received during roadworthiness tests (technical inspections and emission controls performed at Technical Inspection Stations and Emission Control Workplaces), technical roadside inspections and controls of originality;
- Police when recording a car accident or a registration changes of vehicle;
- Ministry of Transport when recording international cargo transport;
- manufacturers and their representatives during the repair, maintenance or inspection of vehicles or repair or replacement of odometers;
- auto services during the repair, maintenance or inspection of vehicle;
- insurance, auction and leasing companies, car rentals and used cars dealers/sellers.

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

As mentioned earlier, data on odometers is collected in the RPVS. Subsequently, anyone can request a report (mileage certificate) on the RPVZ website by inserting a respective VIN number and paying an 8 EUR fee:

- ODO-Pass (a history of the vehicle's odometer from the Slovak RPVZ)
- ODO-Pass EU (history of the vehicle's odometer from EUROCARIS).

**25. Are there any projects in place aimed at introducing remote [sensing equipment](#) or the use of [sniffing vehicles](#) which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

Not yet, but Bratislava, for instance, is planning (in cooperation with the Slovak Technical University) the implementation of the project "City as a laboratory" based on the measurement of various components of the environment by 400 sensors and subsequent publication of data on environmental quality<sup>920</sup>. Similarly, civic association "Cyklokoalícia"<sup>921</sup> (cycle coalition) has been voluntarily collecting some data on air quality through sensors<sup>922</sup> placed in Bratislava.

Moreover, the Slovak Hydrometeorological Institute operates a network<sup>923</sup> of 38 monitoring stations measuring the concentrations of individual pollutants in air.

<sup>920</sup> News: [www.tasr.sk/tasr-clanok/TASR:20191126TBA01750](http://www.tasr.sk/tasr-clanok/TASR:20191126TBA01750)

<sup>921</sup> Website of Cyklokoalícia: <https://cyklokoalicia.sk/2020/01/cyklokoalicia-meria-kvalitu-ovzdušia-preco/>

<sup>922</sup> Website of airtube:  
<https://airtube.info/index.php?pos=48.1389432553674,17.13772773742676,13&geohash=u2s1vhtqc2z&chart=on>

<sup>923</sup> Website: [www.shmu.sk/en/?page=224](http://www.shmu.sk/en/?page=224)

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

n/a

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

The civic association “SOVA” operates a database of vehicles (VIN) with odometers which are probably tampered with<sup>924</sup>. This association publishes many articles on tampering and provides advices in order to prevent misleading. Moreover, its website collects and informs about misleading advertisements on vehicles asking people for deposit. There is also a possibility to send them complaint on second-hand vehicle sellers.

It informs about a grant given by the Slovak Ministry of Economy in 2017 to disseminate information on tampering and buying second-hand vehicles.

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No, they did not.

### *Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

The Slovak legislation and the RPVZ are easily accessible to anyone (online) so their awareness should be sufficient. Moreover, the RPVZ has been often mentioned by media as a tool to prevent/detect an odometer tampering.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

Limited information comes only from media articles<sup>925</sup> stating that manufactures have been fighting odometer tampering by:

- recording service data in the electronic book of vehicles accessible by authorised auto services;
- blocking access to a car memory of vehicles.

<sup>924</sup> Database of SOVA: [www.zdruzenie-sova.sk/seznam-aut-s-podezrenim-na-zasah-do-stavu-tachometru?vin=tmbpy46y674060850&make=%C5%A0kofa&model=Fabia&tab=1](http://www.zdruzenie-sova.sk/seznam-aut-s-podezrenim-na-zasah-do-stavu-tachometru?vin=tmbpy46y674060850&make=%C5%A0kofa&model=Fabia&tab=1)

<sup>925</sup> For instance: <https://podkapotou.zoznam.sk/cl/1000612/1374734/Automobilky-chcu-zabranit-stacaniu-kilometrov--podvodnici-budu-bez-sance>

## Potential gaps in the legislation

There are no apparent gaps in the Slovak legislation.

### 30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?

According to the legal introduction of the RPVZ (Art. 48 of Act on operation of vehicles)<sup>926</sup>, statistics from the international exchange of data show that up to 37% of individually imported vehicles have an odometer that has been tampered with. Thus, punishment had not proven to be an effective tool to prevent odometer tampering.

Based on the consultation with some professionals, it seemed that the biggest problems were personal integrity and local connections of vehicles' operators, technicians performing emission control (measuring of emissions) and representatives of the District Authority ensuring supervision. This is the reason why Act no. 106/2018 Coll. on operation of vehicles introduced:

- a mandatory video recording of the emission controls and its storage for 2 years (Art. 114);
- a professional supervision performed by a technical service which is, inter alia, entitled to request a repeated emission control of vehicle still located in the area of the Emission Control Workplace (Art. 116, par. 10).

### 31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?

As mentioned above, the elimination of local connections would be very useful.

## Other

### 32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.

Ministry of Transport and Construction: [www.mindop.sk/en](http://www.mindop.sk/en)

S-EKA spol. s r.o. – technical service for emission controls: [www.seka.sk/](http://www.seka.sk/)

TESTEK, a.s. – technical service for technical inspections: <http://testek.sk/>

Police: [www.minv.sk/?kontakty-prezidia-policajneho-zboru](http://www.minv.sk/?kontakty-prezidia-policajneho-zboru)

Civic associations:

Cyklokoalicia: <https://cyklokoalicia.sk/>

<sup>926</sup> Dôvodová správa k návrhu zákon o prevádzke vozidiel v cestnej premávke available at: [www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=445408](http://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=445408)

SOVA: [www.zdruzenie-sova.sk/](http://www.zdruzenie-sova.sk/)

### 33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?

It would be useful to ensure a repeated emission control of any vehicle if, for example, a professional supervision has a justified suspicion that (i) a vehicle does not comply with emission limits or (ii) emission control has been performed incorrectly. Moreover, a more detailed implementing act would be useful for police officers in case he/she decides to carry out more detailed technical roadside inspection.

#### Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

#### Civil Proceedings:

The Regional Court Nitra (28.11.2018)<sup>927</sup> dismissed the action against the decision of the Slovak Trade Inspection (Administrative Body) imposing a fine of 5.500 EUR for odometer tampering. According to the brokerage contract dated 13 June 2016, the vehicle had driven 141,500 km but according to data from 27 October 2015, when it was repaired, it had driven 152,948 km.

The District Court Košice II (11.06.2018)<sup>928</sup> required a used car seller to return a purchase price as well as accompanying expenses to a buyer due to odometer tampering. The buyer refuted the guaranteed number of kilometres displayed at odometer and the user car seller was not able to provide proof of correctness of the guaranteed data.

#### Criminal Proceedings:

The Regional Court Nitra (6.9.2017)<sup>929</sup> as the Court of Appeal imposed on the defendant a penalty of one year imprisonment for committing the offense of fraud (selling a vehicle with a tampered odometer) by suspending the execution of his sentence for a probationary period of one year.

#### Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**

Title	Reference	Short description
n/a		

<sup>927</sup> Judgment available at: [www.slov-lex.sk/vseobecne-sudy-sr/-/ecli/ECLI-SK-KSNR-2018-4017200840\\_3](http://www.slov-lex.sk/vseobecne-sudy-sr/-/ecli/ECLI-SK-KSNR-2018-4017200840_3)

<sup>928</sup> Judgment available at: [www.slov-lex.sk/vseobecne-sudy-sr/-/ecli/ECLI-SK-OSKE2-2018-7217208807\\_8](http://www.slov-lex.sk/vseobecne-sudy-sr/-/ecli/ECLI-SK-OSKE2-2018-7217208807_8)

<sup>929</sup> Judgment available at: [www.slov-lex.sk/vseobecne-sudy-sr/-/ecli/ECLI-SK-KSNR-2017-4617010100\\_1](http://www.slov-lex.sk/vseobecne-sudy-sr/-/ecli/ECLI-SK-KSNR-2017-4617010100_1)

## Spain

### Overview of legislation

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

Directive 2007/46/EC was implemented through Order ITC/1620/2008 of 5 June updating Annexes I and II to Royal Decree 2028/1986 of 6 June on the rules for the application of certain EC Directives relating to the type-approval of motor vehicles, trailers, semi-trailers, motorcycles, mopeds and agricultural vehicles, as well as parts and pieces of said vehicles.<sup>930</sup>

It should be noted that there have been other subsequent Orders modifying Annexes I and II to Royal Decree 2028/1986. The latest approved order is Order ICT/397/2020, of April 30 updating Annexes I and II to Royal Decree 2028/1986 of 6 June on the rules for the application of certain EC Directives relating to the type-approval of motor vehicles, trailers, semi-trailers, motorcycles, mopeds and agricultural vehicles, as well as parts and pieces of said vehicles.<sup>931</sup> This order takes into account Regulation (EU) 2018/858 which repeals Directive 2007/46/EC.

Directive 2014/45/EU (on periodic roadworthiness tests)

Directive 2014/45/EU was implemented through Royal Decree 920/2017 of 23 October, regulating roadworthiness tests.<sup>932</sup>

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

Directive 2014/47/EU was implemented through Royal Decree 563/2017 of 2 June 2010 regulating technical roadside inspections of commercial vehicles circulating on the Spanish territory.<sup>933</sup>

<sup>930</sup> Orden ITC/1620/2008, de 5 de junio, por la que se actualizan los anexos I y II del Real Decreto 2028/1986, de 6 junio, sobre las normas para la aplicación de determinadas directivas de la CE, relativas a la homologación de tipo de vehículos automóviles, remolques, semirremolques, motocicletas, ciclomotores y vehículos agrícolas, así como de partes y piezas de dichos vehículos. Available at: [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2008-9972](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2008-9972).

<sup>931</sup> Orden ICT/397/2020, de 30 de abril, por la que se actualizan los anexos I y II del Real Decreto 2028/1986, de 6 de junio, sobre las normas para la aplicación de determinadas directivas de la CEE, relativas a la homologación de tipo de vehículos automóviles, remolques, semirremolques, motocicletas, ciclomotores y vehículos agrícolas, así como de partes y piezas de dichos vehículos. Available at: [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-4901](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4901), last accessed 22/05/2020.

<sup>932</sup> Real Decreto 920/2017, de 23 de octubre, por el que se regula la inspección técnica de vehículos. Available at: [www.boe.es/eli/es/rd/2017/10/23/920](http://www.boe.es/eli/es/rd/2017/10/23/920), last accessed 22/05/2020.

<sup>933</sup> Real Decreto 563/2017, de 2 de junio, por el que se regulan las inspecciones técnicas en carretera de vehículos comerciales que circulan en territorio español. Available at: [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2017-6512](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-6512), last accessed 22/05/2020.

**2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

Royal Decree 750/2010 of 4 June, which regulates the approval procedures for motor vehicles and their trailers, self-propelled or towed machines, agricultural vehicles, as well as the systems, parts and pieces of said vehicles.<sup>934</sup> It applies to type approval of heavy-duty vehicles, light passenger and commercial vehicles.

Specifically, Royal Decree 750/2010 regulates the documentary and administrative requirements applicable to EC type approval, national type approval, individual approval and approval of national short series. Furthermore, it regulates the technical aspects applicable to each category of vehicles for national type approval, individual approval and approval of national short series.

Commission Regulation (EU) 2017/1151 (on odometer readings)

The requirement laid down in Commission Regulation (EU) 2017/1151 that car manufacturers effectively deter reprogramming of the odometer readings seems not to be covered by the Spanish legislation.

Regulation (EC) No 595/2009 (on type approval of heavy-duty vehicles)

Royal Decree 750/2010 of 4 June, which regulates the approval procedures for motor vehicles and their trailers, self-propelled or towed machines, agricultural vehicles, as well as the systems, parts and pieces of said vehicles (see above).<sup>935</sup>

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

The following measures seem relevant in the field of tampering:

- Procedure manual for technical inspection of vehicles - ITV (roadworthiness certification/test) stations.<sup>936</sup> As will be seen in the next questions, this manual sets obligations related to tampering.
- Royal Decree 115/2017 of February 17, which regulates the marketing and handling of fluorinated gases and equipment based on them, as well as the certification of the professionals who use them and by which the technical requirements are established for facilities that carry out

<sup>934</sup> Real Decreto 750/2010 de 4 de junio, por el que se regulan los procedimientos de homologación de vehículos de motor y sus remolques, máquinas autopropulsadas o remolcadas, vehículos agrícolas, así como de sistemas, partes y piezas de dichos vehículos. Available at: [www.boe.es/buscar/doc.php?id=BOE-A-2010-9994](http://www.boe.es/buscar/doc.php?id=BOE-A-2010-9994), last accessed 22/05/2020.

<sup>935</sup> Real Decreto 750/2010 de 4 de junio, por el que se regulan los procedimientos de homologación de vehículos de motor y sus remolques, máquinas autopropulsadas o remolcadas, vehículos agrícolas, así como de sistemas, partes y piezas de dichos vehículos. Available at: [www.boe.es/buscar/doc.php?id=BOE-A-2010-9994](http://www.boe.es/buscar/doc.php?id=BOE-A-2010-9994), last accessed 22/05/2020.

<sup>936</sup> Manual de procedimiento de inspección de las estaciones ITV. Available at: [www.f2i2.net/documentos/Isi/STO\\_Vehiculos/ITV/Manual\\_de\\_procedimiento\\_de\\_inspeccion\\_de\\_estaciones\\_ITV\\_v7\\_4\\_1\\_COVID19\\_Rev1.pdf](http://www.f2i2.net/documentos/Isi/STO_Vehiculos/ITV/Manual_de_procedimiento_de_inspeccion_de_estaciones_ITV_v7_4_1_COVID19_Rev1.pdf), last accessed 22/05/2020.

activities that emit fluorinated gases.<sup>937</sup> This Royal Decree sets requirements in relation to the installation, maintenance, revision and handling of gas containers in relation to the refrigeration system in vehicles and fire protection systems that use fluorinated gases.

- Royal Decree 1417/2005 of November 25, which regulates the use, installation and operational check of speed limitation devices in certain categories of vehicles.<sup>938</sup> Specifically, Royal Decree 1417/2005 is applicable to the following categories of vehicles: M<sub>2</sub>, M<sub>3</sub>, N<sub>2</sub> and N<sub>3</sub>.
- Royal Decree 125/2017 of February 24, which establishes the technical requirements and performance standards that must be met by the technical centres of tachographs.<sup>939</sup>

#### **4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

The national measure specified above refer to the EU directives and regulations they implement / cover.

#### **5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

The national measures set out above mostly refer to the national or EU legislative acts as the reason for their adoption, or provide a very general reasoning (e.g. “In order to avoid regulatory dispersion and duplications, this Royal Decree repeals the previous regulations and establishes a single framework by which the technical inspection of vehicles is regulated”).

However, it should be noted that the objective of Royal Decree 563/2017 is to regulate the conditions of the technical road inspections with the aim of improving road safety and the environment (Article 1).

<sup>937</sup> Real Decreto 115/2017, de 17 de febrero, por el que se regula la comercialización y manipulación de gases fluorados y equipos basados en los mismos, así como la certificación de los profesionales que los utilizan y por el que se establecen los requisitos técnicos para las instalaciones que desarrollen actividades que emitan gases fluorados. Available at: [www.boe.es/buscar/doc.php?id=BOE-A-2017-1679](http://www.boe.es/buscar/doc.php?id=BOE-A-2017-1679), last accessed 22/05/2020.

<sup>938</sup> Real Decreto 1417/2005, de 25 de noviembre, por el que se regula la utilización, instalación y comprobación del funcionamiento de dispositivos de limitación de velocidad en determinadas categorías de vehículos. Available at: [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2005-19990](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2005-19990), last accessed 22/05/2020.

<sup>939</sup> Real Decreto 125/2017, de 24 de febrero, por el que se establecen los requisitos técnicos y las normas de actuación que deben cumplir los centros técnicos de tacógrafos. Available at: [www.boe.es/buscar/doc.php?id=BOE-A-2017-1935](http://www.boe.es/buscar/doc.php?id=BOE-A-2017-1935), last accessed 22/05/2020.



*Obligations manufacturers*

**6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific national legal requirements on manufacturers relating to the *prevention* of tampering.

**7. Are there any other requirements relating to tampering which manufacturers need to meet?**

No.

**8. Are manufacturers required to disclose information relating to tampering (resistance)?**

No.

*Type approval*

**9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

Royal Decree 2028/1986 and Order ICT/397/2020 set the requirements in relation to **EC type approval**. The requirements that form part of the approval processes under Spanish law are those provided in Directive 2007/46/EC and its latest applicable modifications.<sup>940</sup> No specific provisions (including on tampering) are thus in place at national level.

Royal Decree 750/2010 sets the requirements in relation to **national type approval** of vehicles, systems and components, and the approval of production processes.<sup>941</sup> This Decree does not include any specific provisions on tampering.

**10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

The list below presents some of the tests carried out to ensure that approval requirements are met:

- Noise measurements
- Emissions (Euro 5 and Euro 6) of light vehicles
- Fire risk prevention (liquid fuel tanks)
- Location and installation of rear number plates
- Steering mechanism
- Door lock and door retention components
- Acoustic warnings and acoustic signals

<sup>940</sup> Annex I to Order ICT/397/2020.

<sup>941</sup> Articles 4-10 of Royal Decree 750/2010.

- Etc.

More specific information (including on the tests per category) can be found here: [http://www.f2i2.net/documentos/lsi/STO\\_Vehiculos/CatalogoST\\_2019\\_Junio\\_V01-MINCOTUR.pdf](http://www.f2i2.net/documentos/lsi/STO_Vehiculos/CatalogoST_2019_Junio_V01-MINCOTUR.pdf)

<sup>942</sup>

**11. Please list the national type approval authority<sup>943</sup> and technical services<sup>944</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

The Spanish national approval authority is the **Ministry of Industry, Tourism and Trade**,<sup>945</sup> which has the competence to designate the technical services.<sup>946</sup> The designation shall be based on a report assessing the required skills, which shall be met by the technical services, set by the national approval authority.<sup>947</sup> Furthermore, the designation shall also comply with the requirements set in EU law.<sup>948</sup>

The list of technical services can be found here: [http://www.f2i2.net/documentos/lsi/STO\\_Vehiculos/CatalogoST\\_2019\\_Junio\\_V01-MINCOTUR.pdf](http://www.f2i2.net/documentos/lsi/STO_Vehiculos/CatalogoST_2019_Junio_V01-MINCOTUR.pdf)

<sup>949</sup>

**12. Are any of these parties required to disclose information on national type approval processes?**

There seem to be no requirements to disclose information on national type approval processes in Royal Decree 750/2010. The Royal Decree only specifies that the Ministry of Industry, Tourism and Trade (the Spanish national approval authority) is the contact point for the approval authorities of other Member States and EEA countries.<sup>950</sup>

Nevertheless, it should be noted that Royal Decree 563/2017 regulating technical roadside inspections and Royal Decree 920/2017 regulating roadworthiness tests do require the disclosing of information. Specifically, Royal Decree 563/2017 establishes that, on a monthly basis, certain information<sup>951</sup> shall be provided to the competent traffic authority, which shall communicate the information to the European Commission.<sup>952</sup> Moreover, Royal Decree 920/2017 establishes that the Directorate General for Industry and Small and Medium-Sized Enterprises is the national contact

<sup>942</sup> The test applicable to vehicles and their systems and components can be found in Page 14.

<sup>943</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>944</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

<sup>945</sup> Chapter I, Article 2.14 of Royal Decree 750/2010 and Article 3 of Law 21/1992, of 16 July, of Industry.

<sup>946</sup> Article 11.1 of Royal Decree 750/2010.

<sup>947</sup> Article 11.2 of Royal Decree 750/2010.

<sup>948</sup> Article 14.4 of Law 21/1992.

<sup>949</sup> Catálogo de servicios técnicos de vehículos (List of vehicle technical services) 2019, pgs. 5-11.

<sup>950</sup> Article 3.14 of Royal Decree 750/2010.

<sup>951</sup> Information regarding the number of commercial vehicles inspected on the road, including a classification of the vehicles based on the categories they belong to and the country of registration, Furthermore, information about the controlled points and the deficiencies found shall also be provided.

<sup>952</sup> Article 15 of Royal Decree 563/2017.

point in charge of exchanging information with the other Member States of the European Union and the European Commission regarding the application of Directive 2014/45/EU.<sup>953</sup>

**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Royal Decree 750/2010 establishes that in case of non-compliance with the provisions of the Royal Decree, sanctions set in Law 21/1992 on Industry apply<sup>954</sup>. Furthermore, if the non-compliance falls in the field of consumer protection, consumer laws<sup>955</sup> apply<sup>956</sup>.

It should be noted that Law 21/1992 on Industry sets administrative sanctions, without prejudice to civil, criminal or other responsibilities that may concur.<sup>957</sup> Furthermore, Law 21/1992 classifies infractions into three groups: very serious infractions, serious infractions, and minor infractions.<sup>958</sup> Very serious infractions are sanctioned with fines of up to EUR 100,000,000, serious infractions are sanctioned with fines of up to EUR 6,000,000, and minor infractions are sanctioned with fines of up to 60,000 EUR.<sup>959</sup> Lastly, the sanctions apply to a wide range of people (e.g. owners, directors, managers, manufacturers, sellers, importers, organisation, entities, laboratories, etc.)<sup>960</sup>.

### *Rules on tampering*

**14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

Royal Decree 920/2017 regulating roadworthiness tests sets the characteristics of the vehicle technical inspection report and the rules that must be followed for its completion.<sup>961</sup> In relation to the rules that must be followed for the completion of the technical inspection report, Royal Decree 920/2017 establishes that for each of the emissions, braking and alignment measurements, the measurement value obtained shall be recorded so that it cannot be tampered with, and in the case that extrapolation methods have been used, it shall be indicated in the observations section. For speed limitation, it shall be stated (in the case of vehicles obliged to use the speed limiter and in the case of vehicles obliged to check the maximum speed they reach) if the speed is greater, equal or less than the value established by regulation, indicating said value.<sup>962</sup> Furthermore, as will be seen in the

<sup>953</sup> Article 24 of Royal Decree 920/2017.

<sup>954</sup> Article 13.1 of Royal Decree 750/2010.

<sup>955</sup> Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias. Available at: [www.boe.es/buscar/act.php?id=BOE-A-2007-20555](http://www.boe.es/buscar/act.php?id=BOE-A-2007-20555), last accessed 22/05/2020. Real Decreto 1945/1983, de 22 de junio, por el que se regulan las infracciones y sanciones en materia de defensa del consumidor y de la producción agroalimentaria. Available at: [www.boe.es/buscar/doc.php?id=BOE-A-1983-19755](http://www.boe.es/buscar/doc.php?id=BOE-A-1983-19755), last accessed 22/05/2020.

<sup>956</sup> Article 13.2 of Royal Decree 750/2010.

<sup>957</sup> Article 30 of Law 21/1992.

<sup>958</sup> Article 31 of Law 21/1992.

<sup>959</sup> Article 34 of Law 21/1992.

<sup>960</sup> Article 33 of Law 21/1992.

<sup>961</sup> Annex II to Royal Decree 920/2017.

<sup>962</sup> Annex II Point II.C of Royal Decree 920/2017.

next questions, the procedure manual for the inspection by ITV stations (roadworthiness tests)<sup>963</sup> sets further rules regarding the tests that shall be carry out in relation to emissions.

Moreover, it should be mentioned that:

- Royal Decree 920/2017 obliges ITV stations to have the necessary equipment to carry out an OBD port diagnosis in those vehicles that support it. The diagnosis shall be made through the OBD communication port, thus accessing the vehicle's ECU to check the correct operation of the systems, the faults recorded in memory and possible tampering.<sup>964</sup> The main objective of this diagnosis is to end the tampering of anti-pollution systems such as FAP, AdBlue and EGR and security systems such as airbags or pretensioners.
- Royal Decree 920/2017 sets a general obligation applicable to all inspection equipment. Specifically, it establishes that the inspection equipment shall be protected against possible manipulations.<sup>965</sup>

#### Tampering with aftermarket parts

No specific rules have been identified. For more information, please see question above.

#### Tampering with the engine

No specific rules have been identified. For more information, please see question above.

#### Tampering with the OBD system

No specific rules have been identified. For more information, please see question above.

#### Odometer tampering (in particular on second-hand vehicles)

In relation to odometers, Royal Decree 920/2017 regulating roadworthiness tests prescribes that for mileage checking purposes, the information from previous technical inspections shall be made available to inspectors as soon as the information is available electronically. In cases where a data inconsistency is observed, and if it is found that there is manipulation of an odometer in order to reduce or inadequately represent the distance recording of a vehicle, this shall be communicated to the competent metrology authority of the Autonomous Community in which the inspection is carried out.<sup>966</sup>

<sup>963</sup> Manual de procedimiento de inspección de las estaciones ITV. Available at: [www.f2i2.net/documentos/lsi/STO\\_Vehiculos/ITV/Manual\\_de\\_procedimiento\\_de\\_inspeccion\\_de\\_estaciones\\_ITV\\_v7\\_4\\_1\\_COVID19\\_Rev1.pdf](http://www.f2i2.net/documentos/lsi/STO_Vehiculos/ITV/Manual_de_procedimiento_de_inspeccion_de_estaciones_ITV_v7_4_1_COVID19_Rev1.pdf), last accessed 22/05/2020.

<sup>964</sup> Annex III, Point I of Royal Decree 920/2017.

<sup>965</sup> Annex III Point II.6 of Royal Decree 920/2017.

<sup>966</sup> Article 10.8 of Royal Decree 920/2017.

Furthermore, the procedure manual for inspection of ITV stations (roadworthiness tests)<sup>967</sup> sets that, in the event that the vehicle has an odometer, it shall be verified through a visual inspection that the odometer is not clearly tampered with or out of service. It shall be understood that the odometer is tampered with when physical manipulation of the device and/or its connections can be observed. Moreover, it shall be understood that the odometer is out of service when it is impossible to identify the kilometers traveled.<sup>968</sup>

## Other

The procedure manual for inspection by ITV stations (roadworthiness tests)<sup>969</sup> sets further rules regarding the tests that shall be carried out. The following list presents some of the tests that seem relevant in the field of tampering:

- Visual inspection of the vehicle's frame number to check if it is illegible, tampered with or incomplete.<sup>970</sup>
- Visual inspection to verify if the coupling devices has been tampered with.<sup>971</sup>
- All connections to the tachograph that are potentially vulnerable to tampering, such as connection to the motion sensor and gearbox, will be sealed.<sup>972</sup>
- Visual inspection to check there is a tachograph installation plate and that it is properly placed and without signs of tampering.<sup>973</sup>
- Visual inspection, when possible, to check that the seals and protection devices of the connections against fraudulent tampering are intact.<sup>974</sup>
- Check if reforms have been made to the vehicle without the ITV card (i.e. certification). In the case of an annotated reform, it shall be verified that no tampering has taken place after the annotation in the ITV card on the reformed element.<sup>975</sup>

<sup>967</sup> Manual de procedimiento de inspección de las estaciones ITV. Available at: [www.f2i2.net/documentos/lsi/STO\\_Vehiculos/ITV/Manual\\_de\\_procedimiento\\_de\\_inspeccion\\_de\\_estaciones\\_ITV\\_v7\\_4\\_1\\_COVID19\\_Rev1.pdf](http://www.f2i2.net/documentos/lsi/STO_Vehiculos/ITV/Manual_de_procedimiento_de_inspeccion_de_estaciones_ITV_v7_4_1_COVID19_Rev1.pdf), last accessed 22/05/2020.

<sup>968</sup> Section I, Point 3.8 of procedure manual for inspection of ITV stations.

<sup>969</sup> Manual de procedimiento de inspección de las estaciones ITV. Available at: [www.f2i2.net/documentos/lsi/STO\\_Vehiculos/ITV/Manual\\_de\\_procedimiento\\_de\\_inspeccion\\_de\\_estaciones\\_ITV\\_v7\\_4\\_1\\_COVID19\\_Rev1.pdf](http://www.f2i2.net/documentos/lsi/STO_Vehiculos/ITV/Manual_de_procedimiento_de_inspeccion_de_estaciones_ITV_v7_4_1_COVID19_Rev1.pdf), last accessed 22/05/2020.

<sup>970</sup> Section I: INSPECTIONS CATEGORIES M, N, O (Point 1.2 Frame number). Procedure manual for inspection of ITV stations.

<sup>971</sup> Section I: INSPECTIONS CATEGORIES M, N, O (Point 2.3: Coupling devices). Procedure manual for inspection of ITV stations.

<sup>972</sup> Section I: INSPECTIONS CATEGORIES M, N, O (Point 10.4: tachograph). Procedure manual for inspection of ITV stations.

<sup>973</sup> Section I: INSPECTIONS CATEGORIES M, N, O (Point 10.4: tachograph). Procedure manual for inspection of ITV stations.

<sup>974</sup> Section I: INSPECTIONS CATEGORIES M, N, O (Point 10.5: Speed limitation). Procedure manual for inspection of ITV stations.

<sup>975</sup> Section I: INSPECTIONS CATEGORIES M, N, O (Point 10.6: Unauthorized Reforms). Procedure manual for inspection of ITV stations.

**15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

ITV stations are subject to the supervision and control of the competent body of the Autonomous Community in which they are located.<sup>976</sup> With regard to the supervision of the technical inspection activity of vehicles, the supervisory body (i.e. the competent body of the AC) may consider that the supervision is fulfilled if:<sup>977</sup>

a) In the case of ITV stations accredited by the National Accreditation Entity according to the UNE-EN ISO / IEC 17020 standard as a third-party inspection entity, the activity evaluation may be carried out according to the accreditation maintenance procedures in accordance to the aforementioned rule, without prejudice to other complementary control procedures that may be established by the competent body of the Autonomous Community, in the exercise of its powers.

b) In the case of ITV stations in which the material execution of technical inspections is carried out directly by an Administration (Public Authority), with its own personnel, the supervision of the activity may be carried out according to any of the following methods:

- i. By the Administration itself, according to the procedures that it designates, which must be communicated to the interested parties.
- ii. By a body other than the Administration.

The results of the audits will be forwarded by the owner of the ITV station to the competent body in the field of industry of the Autonomous Community in which it is located.

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Royal Decree 920/2017 regulating roadworthiness tests establishes that in case of non-compliance with the provisions of the Royal Decree, sanctions set in Law 21/1992 on Industry (more information above), or in Law on Traffic, Movement of Motor Vehicles and Road Safety, approved by Royal Legislative Decree 6/2015 apply.<sup>978</sup>

The Law on Traffic, Movement of Motor Vehicles and Road Safety<sup>979</sup> sets administrative sanctions,<sup>980</sup> without prejudice to criminal sanctions.<sup>981</sup> Furthermore, it classifies the infractions into three groups: very serious infractions, serious infractions, and minor infractions.<sup>982</sup> Very serious infractions are sanctioned with fines of up to 500 EUR, serious infractions are sanctioned with fines of up to EUR 200, and minor infractions are sanctioned with fines of up to EUR 100 EU.<sup>983</sup> Nevertheless, certain infractions can be sanctioned with higher fines, for instance the installation of radar inhibitors in vehicles or any other mechanisms designed to interfere with the proper functioning of traffic

<sup>976</sup> Article 22.1 of Royal Decree 920/2017.

<sup>977</sup> Article 22.2 of Royal Decree 920/2017.

<sup>978</sup> Article 25 of Royal Decree 920/2017.

<sup>979</sup> Real Decreto Legislativo 6/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley sobre Tráfico, Circulación de Vehículos a Motor y Seguridad Vial. Available at: [www.boe.es/buscar/act.php?id=BOE-A-2015-11722](http://www.boe.es/buscar/act.php?id=BOE-A-2015-11722), last accessed 22/05/2020.

<sup>980</sup> Article 74 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>981</sup> Article 74.2 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>982</sup> Articles 15, 76 and 77 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>983</sup> Article 80 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

surveillance systems, can be sanctioned with fines between EUR 3,000 and 20,000).<sup>984</sup> Lastly, the sanctions apply to the owners or user of the vehicles.<sup>985</sup>

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

There are no specific national legal provisions in this regard; the civil liability regime for defective products seems to apply.<sup>986</sup> In relation to the burden of proof, the injured party, who intends to obtain reparation for the damages caused, has to prove the defect, the damage and the causal relationship existing between both.<sup>987</sup>

*Tests and inspections*

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

Royal Decree 920/2017 establishes the minimum requirements in relation to the periodic roadworthiness tests for vehicles used to circulate on public roads. It also sets the minimum requirements and obligations that the ITV stations must comply with<sup>988</sup>.

- **WHERE:** To be able to circulate on public roads, vehicles registered or to be registered in Spain must undergo periodic technical inspection at an ITV station<sup>989</sup> which has been duly authorised by the competent authority.<sup>990</sup>
- **BY WHOM:** ITV stations. Each Autonomous Community designates their ITV stations, which perform the periodic tests in their territory. The Autonomous Communities assign to each ITV station an identification code. This code shall be used by each ITV station in their technical inspection reports.<sup>991</sup>
- **WHEN:** Article 6 of Royal Decree 920/2017 sets the frequency of the tests depending on the type of vehicle (e.g. M1, M2, M3, N1, N2, etc.).
- **HOW:** All the technical inspections shall be carried out according to the procedures detailed in the procedure manual for inspection of ITV stations.<sup>992</sup> The defects detected during the technical

<sup>984</sup> Article 80.2.d of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>985</sup> Article 2 of Law on Traffic, Movement of Motor Vehicles and Road Safety.

<sup>986</sup> Articles 135 et seq. of Royal Legislative Decree 1/2007 of 16 November, which approves the consolidated text of the General Law for the Protection of Consumers and Users and other complementary laws. Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias. Available at: [www.boe.es/buscar/act.php?id=BOE-A-2007-20555](http://www.boe.es/buscar/act.php?id=BOE-A-2007-20555), last accessed 22/05/2020.

<sup>987</sup> Article 139 of Royal Legislative Decree 1/2007.

<sup>988</sup> Article 1 of Royal Decree 920/2017.

<sup>989</sup> Article 4.1 of Royal Decree 920/2017.

<sup>990</sup> Article 7.1 of Royal Decree 920/2017.

<sup>991</sup> Article 4.3 of Royal Decree 920/2017.

<sup>992</sup> Article 8.2 of Royal Decree 920/2017.



inspections of the vehicles are classified as follows: minor defects, serious defects, and very serious defects.<sup>993</sup>

In relation to tampering, Royal Decree 920/2017 sets that for mileage checking purposes, the information from previous technical inspections shall be made available to inspectors as soon as the information is available electronically. In cases where a data inconsistency is observed, and if it is found that there is manipulation of an odometer in order to reduce or inadequately represent the distance recording of a vehicle, this shall be communicated to the competent metrology authority of the Autonomous Community in which the inspection is carried out.<sup>994</sup>

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

Royal Decree 563/2017 regulates the conditions under which technical roadside inspections of commercial vehicles circulating in the national territory, regardless of their country of registration, must be carried out in order to improve road safety and the environment.<sup>995</sup>

- **WHEN:** In the selection of an initial technical road inspection, priority may be given to vehicles from companies with a high-risk profile<sup>996</sup>. Other vehicles may also be randomly chosen for inspection or if they are suspected of presenting a risk to road safety or the environment.<sup>997</sup>
- **HOW:** The technical road inspection regime consists of initial technical road inspections, and more detailed technical road inspections<sup>998</sup>. Based on the results of the initial technical road inspection, the inspector decides if the vehicle or its trailer should undergo a more thorough technical inspection on the road.<sup>999</sup> The most detailed roadside technical inspections are carried out using a mobile unit or at one of the closest fixed ITV stations, depending on the availability of means and scope of the inspection.<sup>1000</sup> As a general rule, any serious or dangerous deficiency detected in an initial technical road inspection or in a more detailed technical inspection must be corrected before the vehicle can circulate on public roads again.<sup>1001</sup>
- **BY WHOM:** Initial technical road inspections are carried out by members of the Security Forces who have the status of inspector.<sup>1002</sup> The more detailed roadside technical inspections are carried out in mobile inspection units (under the direction of the competent traffic authority)<sup>1003</sup> or in the nearest fixed ITV stations.

**20. Please name the national authority or authorities which are in charge of these tests and inspections and describe the manner in which they are designated or mandated.**

<sup>993</sup> Article 9.2 of Royal Decree 920/2017.

<sup>994</sup> Article 10.8 of Royal Decree 920/2017.

<sup>995</sup> Article 1 of Royal Decree 563/2017.

<sup>996</sup> Article 7.1 of Royal Decree 563/2017.

<sup>997</sup> Article 7.2 of Royal Decree 563/2017.

<sup>998</sup> Article 4 of Royal Decree 563/2017.

<sup>999</sup> Article 8.2 of Royal Decree 563/2017.

<sup>1000</sup> Article 9.1 of Royal Decree 563/2017.

<sup>1001</sup> Article 12.1 of Royal Decree 563/2017.

<sup>1002</sup> Article 18.1 of Royal Decree 563/2017.

<sup>1003</sup> Article 18.2 of Royal Decree 563/2017.

- **Periodic roadworthiness tests** (Royal Decree 920/2017)

The periodic roadworthiness tests are carried out by the ITV stations.<sup>1004</sup> Specifically, ITV stations must be enabled by the competent body of the Autonomous Community in which they are located, prior to the start of their activity, and in accordance with the management model that said body has established.<sup>1005</sup> For the purposes of complying with the obligations derived from Directive 2014/45/EU (in relation to the monitoring of technical inspections and the provisions of Article 22), a registry of ITV stations is in place. The registry contains information in relation to the inspection activity of ITV stations in all the Autonomous Communities. This registry is attached to the Ministry of Economy, Industry and Competitiveness. The purpose of said registry is to make available to all public administrations, users and the general public the information of the ITV stations.<sup>1006</sup>

- **Technical roadside inspections** (Royal Decree 563/2017)

Initial technical road inspections are carried out by members of the Security Forces who have the status of inspector.<sup>1007</sup> The most detailed roadside technical inspections are carried out in mobile inspection units (under the direction of the competent traffic authority)<sup>1008</sup> or in the nearest fixed ITV stations.

Organic Law 2/1986 sets out the functions of the Security Forces.<sup>1009</sup> In relation to the ITV stations, they must be enabled by the competent body of the Autonomous Community in which they are located.<sup>1010</sup>

## 21. Are any of these authorities required to disclose information on these tests and inspections?

- **Periodic roadworthiness tests** (Royal Decree 920/2017)

ITV stations shall communicate the results of inspections to the Vehicle Registry of the Central Traffic Headquarters. The result of an inspection shall be communicated by electronic means the same day that the inspection took place.<sup>1011</sup>

Furthermore, the Directorate General for Industry and Small and Medium-Sized Enterprises is the national contact point in charge of exchanging information with the other Member States of the European Union and the European Commission regarding the application of Directive 2014/45/EU.<sup>1012</sup>

- **Technical roadside inspections** (Royal Decree 563/2017)

<sup>1004</sup> Article 4.1 of Royal Decree 920/2017.

<sup>1005</sup> Article 21.1 of Royal Decree 920/2017.

<sup>1006</sup> Article 15.1 of Royal Decree 920/2017.

<sup>1007</sup> Article 18.1 of Royal Decree 563/2017.

<sup>1008</sup> Article 18.2 of Royal Decree 563/2017.

<sup>1009</sup> Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad. Available at: [www.boe.es/buscar/act.php?id=BOE-A-1986-6859](http://www.boe.es/buscar/act.php?id=BOE-A-1986-6859), last accessed 26/05/2020.

<sup>1010</sup> Article 21.1. of Royal Decree 920/2017.

<sup>1011</sup> Article 10.7 of Royal Decree 920/2017.

<sup>1012</sup> Article 24 of Royal Decree 920/2017.

On a monthly basis, the data regarding the number of commercial vehicles inspected on the road shall be sent to the Central Traffic Headquarter, in order to communicate the information to the European Commission.<sup>1013</sup> Moreover, in the case of vehicles registered in another Member State, the reports of deficiencies that give rise to the prohibition to circulate shall also be sent to the Central Traffic Headquarter, in order for the Ministry of the Interior to notify the competent authorities of that Member State and, where appropriate, request the adoption of complementary measures.<sup>1014</sup>

In addition, ITV stations that have performed vehicle inspections shall send (within ten days following the inspection) the inspection report to the Provincial Traffic Headquarters.<sup>1015</sup>

Lastly, the Central Traffic Headquarters (which reports to the Ministry of Interior) is the contact point for the purpose of Directive 2014/47/EU.<sup>1016</sup>

## 22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?

- **Periodic roadworthiness tests** (Royal Decree 920/2017)

Royal Decree 920/2017 regulating roadworthiness tests establishes that in case of non-compliance with the provisions of the Royal Decree, sanctions set in Law 21/1992 on Industry or in Law on Traffic, Movement of Motor Vehicles and Road Safety, approved by Royal Legislative Decree 6/2015 apply (more information on both above).<sup>1017</sup>

- **Technical roadside inspections** (Royal Decree 563/2017)

Royal Decree 563/2017 regulating technical roadside inspections establishes that in case of non-compliance with the technical requirements, the relevant legislation on traffic and road safety (depending on the corresponding competence framework) applies, or where appropriate, Law 16/1987 of 30 of July for the Organization of Land Transport.<sup>1018</sup> Law 16/1987 sets administrative sanctions.<sup>1019</sup> Moreover, it classifies the administrative infractions into three groups (very serious infractions, serious infractions, and minor infractions)<sup>1020</sup> and sets different fines depending on the specific infractions.<sup>1021</sup>

### *National strategies and initiatives*

## 23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?

<sup>1013</sup> Article 15.1 of Royal Decree 563/2017.

<sup>1014</sup> Article 15.2 of Royal Decree 563/2017.

<sup>1015</sup> Article 15.3 of Royal Decree 563/2017.

<sup>1016</sup> Article 15.5 of Royal Decree 563/2017.

<sup>1017</sup> Article 25 of Royal Decree 920/2017.

<sup>1018</sup> Ley 16/1987, de 30 de julio, de Ordenación de los Transportes Terrestres. Available at: [www.boe.es/buscar/act.php?id=BOE-A-1987-17803](http://www.boe.es/buscar/act.php?id=BOE-A-1987-17803), last accessed 26/05/2020.

<sup>1019</sup> Article 138 of Law 16/1987.

<sup>1020</sup> Articles 139, 140, 141 and 142 of Law 16/1987.

<sup>1021</sup> Article 143 of Law 16/1987.

#### Periodic roadworthiness tests (Royal Decree 920/2017)

Royal Decree 920/2017 sets out that for mileage checking purposes, the information from previous technical inspections shall be made available to inspectors as soon as the information is available electronically. In cases where a data inconsistency is observed, and if it is found that there is manipulation of an odometer in order to reduce or inadequately represent the distance recording of a vehicle, this shall be communicated to the competent metrology authority of the Autonomous Community in which the inspection is carried out.<sup>1022</sup>

#### **24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

Along with the CARFAX report, buyers can request a report about the vehicle from the General Directorate of Traffic (DGT). If the vehicle has passed a periodic technical inspection, the report specifies where and when the vehicle has passed the inspection, as well as the mileage history of the vehicle at that time. More specific information can be found here: <http://revista.dgt.es/es/tramites/2018/0227-solicitar-informe-vehiculo.shtml#.XsZPZGgzblU>

The report costs EUR 8.5 and it is possible to request it online with an electronic ID or digital certificate). More information can be found here: <https://sede.dgt.gob.es/es/vehiculos/informe-de-vehiculo/>

Lastly, the DGT has also published specific information which help buyers of second-hand vehicles track the vehicles' mileage history: <https://itv.com.es/kilometros-reales-coche>

#### **25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

Royal Decree 920/2017 obliges ITV stations to have the necessary equipment to carry out an OBD port diagnosis in those vehicles that support it. The diagnosis shall be made through the OBD communication port, thus accessing the vehicle's ECU to check the correct operation of the systems, the faults recorded in memory and possible tampering.<sup>1023</sup> The main objective of this diagnosis is to end the tampering of anti-pollution systems such as FAP, AdBlue and EGR and security systems such as airbags or pretensioners.

#### **26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

- In 2017, the Civil Guard (Spanish Police) launched a plan to avoid odometer tampering in second-hand vehicles. The Civil Guard, through the Jaén Traffic Research and Analysis Group, in collaboration with the Provincial Traffic Headquarters and the different ITV stations in the province, launched a plan to prevent tampering of the kilometers of vehicles that are destined for second-hand sale. More information can be found here:

<sup>1022</sup> Article 10.8 of Royal Decree 920/2017.

<sup>1023</sup> Annex III, Point I of Royal Decree 920/2017.

[www.lavanguardia.com/local/sevilla/20170308/42672781147/guardia-civil-jaen-alerta-de-manipulaciones-de-odometros-en-vehiculos-ocasion.html](http://www.lavanguardia.com/local/sevilla/20170308/42672781147/guardia-civil-jaen-alerta-de-manipulaciones-de-odometros-en-vehiculos-ocasion.html)

- DGT and the National Association of Sellers of Motor Vehicles, Repair and Parts (Ganvam) teamed up to fight against odometer fraud in 2018. More information can be found here: [https://cincodias.elpais.com/cincodias/2018/05/18/companias/1526652549\\_473976.html](https://cincodias.elpais.com/cincodias/2018/05/18/companias/1526652549_473976.html).

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

- Real Automobile Club of Catalonia (RACC). Fraud by manipulating vehicle mileage (list of tips to prevent tampering). More information available at: <http://saladeprensa.racc.es/wp-content/uploads/2014/05/dp-racc-fraude-manipulacion-kilometraje.pdf>
- National Association of Automobile Manufacturers. In 2014, Mario Armero (vice-president of the National Association of Automobile Manufacturers) requested to the Road Safety Commission of the Congress of Deputies the punishment of odometer tampering. More information can be found here: <http://revista.dgt.es/es/noticias/nacional/2014/05MAYO/0509racc-fraude.shtml#.XsZoFGgzblU>
- Furthermore, the RACC stated that public administrations should be required by law to report the odometer readings to those entities that have contact with the vehicles (ITV stations, police controls, etc.). Moreover, it requested an exchange of information on mileage between countries. Lastly, it requested “odometer tampering” to be included in the Criminal Code as well as the modification of the EU vehicle type-approval regulations to require the inclusion by manufacturers of means that make the manipulation of odometers impossible. More information can be found here: <http://revista.dgt.es/es/noticias/nacional/2014/05MAYO/0509racc-fraude.shtml#.XsZoFGgzblU>

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No.

*Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

There has been no research carried out at national level that would allow for an answer to this question.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question.

Potential gaps in the legislation

There seem to be no gaps in the legislation.

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

Yes.

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

No legal or practical obstacle has been found.

#### Other

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

**Spanish Association of Automobile and Truck Manufacturers - Asociación española de Fabricantes de Automóviles y Camiones (ANFAC)**

Address: C/ Orense, 34 Planta 9ª. Edificio Iberia Mart II, 28020 – MADRID

Telephone: 91 3431343

Email: [prensa@anfacs.com](mailto:prensa@anfacs.com)

Website: <https://anfacs.com/>

**National Association of Sellers of Motor Vehicles, Repair and Parts - Asociación Nacional de Vendedores de Vehículos a Motor, Reparación y Recambios**

Address: C/ Príncipe de Vergara, 74-2ª Planta, 28006 MADRID.

Telephones: 914113663 – 914113745

Email: [ganvam@ganvam.es](mailto:ganvam@ganvam.es)

Website: [www.ganvam.es/](http://www.ganvam.es/)

**Technical services responsible for conducting approval tests - Servicios técnicos para realizar ensayos para la homologación**

Technical services responsible for conducting approval tests:  
[https://industria.gob.es/CSI/vehiculos/organismosdesignados/Organismos%20Designados/CatalogosT\\_2019\\_Junio\\_V01-MINCOTUR.pdf](https://industria.gob.es/CSI/vehiculos/organismosdesignados/Organismos%20Designados/CatalogosT_2019_Junio_V01-MINCOTUR.pdf)

### Stations in charge of technical inspections - Inspecciones Técnicas de vehículos (ITV)

ITV stations in each Autonomous Community: [www.aeca-itv.com/la-itv/listado-por-comunidades-autonomas/](http://www.aeca-itv.com/la-itv/listado-por-comunidades-autonomas/)

### Directorate General of Traffic - Dirección General de Tráfico (DGT)

Address: C/ Josefa Valcarcel, 28 y 44, CP: 28071 Madrid – España

Website: <http://www.dgt.es/es/la-dgt/>

Provincial headquarters list (Lista de Jefaturas provinciales): <http://www.dgt.es/es/la-dgt/quienes-somos/estructura-organica/jefaturas-provinciales/>

### 33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?

In Spain, there have been several police operations in relation to odometer tampering. Some examples can be found below:

- More than 100 people arrested in an operation against odometer tampering of second-hand vehicles. More information at: [www.guardiacivil.es/es/prensa/noticias/6778.html](http://www.guardiacivil.es/es/prensa/noticias/6778.html)
- 'Trucajecam' operation. A person arrested for selling second-hand vehicles with the odometer tampered. More information at: [www.europapress.es/galicia/noticia-detenido-vecino-salnes-pontevedra-manipular-cuentakilometros-mas-centenar-coches-20181026175037.html](http://www.europapress.es/galicia/noticia-detenido-vecino-salnes-pontevedra-manipular-cuentakilometros-mas-centenar-coches-20181026175037.html)

#### Case law on tampering

Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).

#### **Supreme Court - Tribunal Supremo. Sala de lo Civil - STS 735/2020 - ECLI: ES:TS:2020:735<sup>1024</sup>**

The Civil Chamber of the Supreme Court ruled on an appeal in a case in which the buyer of a vehicle claimed compensation for damages for the installation in the engine of a software that manipulated the polluting emission measurement results.

The buyer, who had the legal status of consumer, sued both the vehicle manufacturer, Seat S.A., and the car dealership who sold it. The Supreme Court upheld the plaintiff's appeal and also ordered the manufacturer, in solidarity with the car dealership, to pay the plaintiff a compensation, without prejudice to the actions that the seller may exercise against the manufacturer.

#### Sources on tampering

Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.

<sup>1024</sup> Available at: [www.poderjudicial.es/search/openDocument/273b60770e2c1f23](http://www.poderjudicial.es/search/openDocument/273b60770e2c1f23), last accessed 26/05/2020.



Title	Reference	Short description
<p>Study of Carfax and Ganvam (2018)</p> <p>Estudio realizado por Carfax en colaboración con Ganvam (2018)</p>	<p>Not available</p>	<p>Study based on the analysis of more than 100 million odometer readings by the vehicle history provider Carfax in collaboration with the National Association of Sellers of Motor Vehicles, Repair and Parts (Ganvam). The study reveals that almost two million of the 25.9 million vehicles in Spanish have some kind of irregularity in relation to the mileage.</p>
<p>Fraud by manipulating vehicle mileage (2014)</p> <p>Fraude mediante la manipulación del kilometraje del vehículo (2014)</p>	<p><a href="http://saladeprensa.racc.es/wp-content/uploads/2014/05/dp-racc-fraude-manipulacion-kilometraje.pdf">http://saladeprensa.racc.es/wp-content/uploads/2014/05/dp-racc-fraude-manipulacion-kilometraje.pdf</a></p>	<p>Report on fraud derived from the manipulation of odometers in second-hand vehicles, a problem that affects all of Europe, since the sale of second-hand vehicles between different countries is a fairly common practice. A simple manipulative operation of the vehicle can achieve a considerable increase in its value. Fraud in Spain is estimated to be equivalent to 343 million euros a year, and to around 10 billion euros a year in Europe. The impact of manipulating the odometer is not only affecting the economic field, it is also affecting other sectors (e.g. industry, road safety, environment, etc.).</p>
<p>Study on the real emissions of cars in circulation (2019)</p> <p>Estudio sobre las emisiones reales de los coches en circulación (2019)</p>	<p><a href="http://www.ocu.org/organizacion/prensa/notas-de-prensa/2019/emisionescontaminantes-131119">www.ocu.org/organizacion/prensa/notas-de-prensa/2019/emisionescontaminantes-131119</a></p>	<p>The Organization of Consumers and Users (OCU) has carried out a study on the actual emissions of cars in circulation. The main conclusion of the study is that 15% of the vehicles, the oldest without a DGT label, are responsible for more than 50% of polluting emissions.</p>
<p>European ranking of vehicles according to their emissions and energy efficiency (2019)</p> <p>Ranking europeo de vehículos según sus emisiones y eficiencia energética (2019)</p>	<p><a href="http://saladeprensa.racc.es/wp-content/uploads/2019/03/NP-Green-NCAP-esp-2.pdf">http://saladeprensa.racc.es/wp-content/uploads/2019/03/NP-Green-NCAP-esp-2.pdf</a></p>	<p>First European ranking of vehicles according to their emissions and energy efficiency.</p>

## United Kingdom

### Overview of legislation

1. Which national measures transpose or implement the following Directives? Please provide the title(s) of the relevant legal act(s), and indicate if a Directive has not been transposed at all, or if there is anything to suggest a Directive has not been fully transposed in relation to vehicle tampering.

Directive 2007/46/EC (establishing an approval framework)

Directive 2007/46/EC is transposed by:

1. The Road Vehicles (Approval) Regulations 2009 (SI 2009/717) "RVAR"<sup>1025</sup> and
2. The Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673)<sup>1026</sup>, both of which apply to England and Wales, Scotland and Northern Ireland.

Directive 2014/45/EU (on periodic roadworthiness tests)

In England and Wales and Scotland this Directive is transposed by:

1. The Goods Vehicles (Plating and Testing) (Miscellaneous Amendments) Regulations 2017 (SI 2017 No. 849)<sup>1027</sup>
2. The Motor Vehicles (Tests) (Amendment) Regulations 2017 (SI 2017 No. 850)<sup>1028</sup>
3. The Road Vehicles (Construction and Use) (Amendment) Regulations 2017 (SI 2017 No. 851)<sup>1029</sup>
4. The Road Vehicles Lighting (Amendment) Regulations 2017 (SI 2017 No. 852)<sup>1030</sup>

And in Northern Ireland by:

1. The Motor Vehicles Testing (Amendment) Regulations (NI) 2018 (SR 2018 No. 85)<sup>1031</sup>
2. The Goods Vehicles (Testing) (Amendment) Regulations (NI) 2018 (SR 2018 No. 86)<sup>1032</sup>
3. The Motor Vehicles (Construction and Use) (Amendment) Regulations (NI) 2018 (SR 2018 No. 87)<sup>1033</sup>
4. The Road Vehicles Lighting (Amendment) Regulations (NI) 2018 (SR 2018 No. 88)<sup>1034</sup>
5. The Public Service Vehicles (Amendment) Regulations (NI) 2018 (SR 2018 No. 89)<sup>1035</sup>
6. The Taxi Licensing (Amendment) Regulations (NI) 2018 (SR 2018 No. 90)<sup>1036</sup>

Directive 2014/47/EU (on technical roadside inspections for commercial vehicles)

<sup>1025</sup> [www.legislation.gov.uk/uksi/2009/717/contents](http://www.legislation.gov.uk/uksi/2009/717/contents)

<sup>1026</sup> [www.legislation.gov.uk/uksi/2018/673/contents/made](http://www.legislation.gov.uk/uksi/2018/673/contents/made)

<sup>1027</sup> [www.legislation.gov.uk/uksi/2017/849/contents/made](http://www.legislation.gov.uk/uksi/2017/849/contents/made)

<sup>1028</sup> [www.legislation.gov.uk/uksi/2017/850/contents/made](http://www.legislation.gov.uk/uksi/2017/850/contents/made)

<sup>1029</sup> [www.legislation.gov.uk/uksi/2017/851/made](http://www.legislation.gov.uk/uksi/2017/851/made)

<sup>1030</sup> [www.legislation.gov.uk/uksi/2017/852/contents/made](http://www.legislation.gov.uk/uksi/2017/852/contents/made)

<sup>1031</sup> [www.legislation.gov.uk/nisr/2018/85/made](http://www.legislation.gov.uk/nisr/2018/85/made)

<sup>1032</sup> [www.legislation.gov.uk/nisr/2018/86/made](http://www.legislation.gov.uk/nisr/2018/86/made)

<sup>1033</sup> [www.legislation.gov.uk/nisr/2018/87/made](http://www.legislation.gov.uk/nisr/2018/87/made)

<sup>1034</sup> [www.legislation.gov.uk/nisr/2018/88/made](http://www.legislation.gov.uk/nisr/2018/88/made)

<sup>1035</sup> [www.legislation.gov.uk/nisr/2018/89/made](http://www.legislation.gov.uk/nisr/2018/89/made)

<sup>1036</sup> [www.legislation.gov.uk/nisr/2018/90/made](http://www.legislation.gov.uk/nisr/2018/90/made)

In England and Wales and Scotland by:

1. The Goods Vehicles (Plating and Testing) (Miscellaneous Amendments) regulations 2017 (SI 2017 No 849)

And in Northern Ireland by:

2. The Motor Vehicles (Construction and Use) (Amendment) Regulations (NI) 2018 (SR 2018/87)

**2. Which national measures cover the field or subject matter set out in the following Regulations? Please provide the title(s) of the relevant legal act(s) (if any).**

Regulation (EC) No 715/2007 (on type approval of light passenger and commercial vehicles)

The Motor Vehicles (EC Type Approval) (Amendment) Regulations 2008 (SI 2008/2844)<sup>1037</sup> gives effect to Articles 1, 2, 3, 4 (except paragraphs 3 and 4), 5 (except paragraph 3), 10 and 13 (except Article 13(e)), Article 16, Article 17, Article 18(") of Regulation (EC) No 715/2007.

Commission Regulation (EU) 2017/1151 (on odometer readings)

Part 4 of The Road Vehicles (Defeat Devices, Fuel Economy and Type Approval) (Amendment) Regulations 2018 (SI 2018/673)<sup>1038</sup> gives effect to Commission Regulation (EU) 2017/1151.

Regulation (EC) No 595/2009 (on type approval of heavy duty vehicles)

Part 4 of The Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673) gives effect to Regulation (EC) No 595/2009.

**3. Are there any other national measures which relate to tampering? Please also include measures on e.g. advertising, trading of tampered vehicles and/or parts.**

Under the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) (Regulations 61(7) and 61A(3))<sup>1039</sup> and the Road Traffic Act 1988 (Section 42)<sup>1040</sup> it is an offence to use on a road a vehicle which has been modified in such a way that it no longer complies with the air pollutant emissions standards it was designed to meet. The Road Traffic (Northern Ireland) Order 1995<sup>1041</sup> (Article 58) applies in Northern Ireland.

Under the Road Traffic Act 1988 (Section 75) it is an offence to alter a vehicle in such a way that the use of the vehicle on a road would be unlawful. A person altering the vehicle (if they knew or believed that the vehicle would be used on the road) could be found guilty of an offence under the Act. This applies in England and Wales, and Scotland. The Road Traffic (Northern Ireland) Order 1995 (Article 83) applies in Northern Ireland.

<sup>1037</sup> [www.legislation.gov.uk/ukSI/2008/2844/contents/made](http://www.legislation.gov.uk/ukSI/2008/2844/contents/made)

<sup>1038</sup> [www.legislation.gov.uk/ukSI/2018/673/contents/made](http://www.legislation.gov.uk/ukSI/2018/673/contents/made)

<sup>1039</sup> [www.legislation.gov.uk/ukSI/1986/1078/contents/made](http://www.legislation.gov.uk/ukSI/1986/1078/contents/made)

<sup>1040</sup> [www.legislation.gov.uk/ukpga/1988/52/contents](http://www.legislation.gov.uk/ukpga/1988/52/contents)

<sup>1041</sup> [www.legislation.gov.uk/nisi/1995/2994/contents](http://www.legislation.gov.uk/nisi/1995/2994/contents)

Trading of tampered goods may be in breach of the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs')<sup>1042</sup>. These regulations apply to business to consumer practices.

The Consumer Rights Act 2015<sup>1043</sup> covers the purchase of goods, digital content and services including new and used cars from official dealers (but not private sales) as well as servicing, repairs and maintenance work. Under this Act, products must be of satisfactory quality, fit for purpose, and as described.

#### **4. To what extent do the national measures on tampering identified above refer to EU emissions regulation and standards?**

The national measures do not refer to EU emissions regulation and standards.

#### **5. What are the reasons provided for the adoption (or absence of adoption) of the national measures identified? In answering the question, please include considerations relating in particular to health and environment considerations.**

Currently there appears to be a relative absence of adoption of national measures with regard to emissions tampering. The UK has a long tradition of allowing vehicle owners relative freedom to change their vehicles to suit their specific requirements subject, of course, to ongoing compliance with the relevant UK construction standards.

In the 2019 Department for Environment, Food & Rural Affairs publication [Clean Air Strategy](#), it is stated that “new legislation will enable the Transport Secretary to compel manufacturers to recall vehicles and nonroad mobile machinery for any failures in their emissions control system, and to take effective action against tampering with vehicle emissions control systems”. This suggests that the government is focusing on legislation applying to vehicle manufacturers rather than individuals.

### Requirements and rules on tampering

#### *Obligations manufacturers*

#### **6. Are there any legal requirements on manufacturers of vehicles (or vehicle parts) to ensure that vehicles cannot be easily tampered with?**

There are no specific national legal requirements relating to the prevention of tampering.

#### **7. Are there any other requirements relating to tampering which manufacturers need to meet?**

Part 6 of The Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673) strengthens existing provisions on the use of defeat devices by making it an offence for a manufacturer to supply a vehicle with a prohibited defeat device to the UK market. It provides that if such a prohibited defeat device is found in two or more of the same model of vehicle, it will be presumed to be in place across all examples of that model, unless the

<sup>1042</sup> [www.legislation.gov.uk/ukxi/2008/1277/contents](http://www.legislation.gov.uk/ukxi/2008/1277/contents)

<sup>1043</sup> [www.legislation.gov.uk/ukpga/2015/15/contents](http://www.legislation.gov.uk/ukpga/2015/15/contents)

manufacturer can prove otherwise. This strengthening is as a result of issues identified with the regulations following the VW controversy.

#### **8. Are manufacturers required to disclose information relating to tampering (resistance)?**

No.

#### *Type approval*

#### **9. Which requirements relating to tampering are in place as part of the national type approval process (please disregard any obligations for manufacturers set out above)?**

Directive 2007/46/EC is transposed by The Road Vehicles (Approval) Regulations 2009 ("RVAR") (SI 2009/717).

Regulation (EC) No 715/2007 and Regulation (EC) No 595/2009 give effect to the EU rules on type approval for light passenger and commercial vehicles and heavy-duty vehicles, respectively.

Beyond EU law, there are no national requirements regarding tampering.

The Vehicle Certification Agency is responsible for the four vehicle type approval schemes for cars in the UK:

1. ECWVTA (European Community Whole Vehicle Type Approval) is aimed primarily at manufacturers of vehicles and bodywork producing large numbers of the same vehicle type or product each year. It can be applied to complete, incomplete or completed vehicles. Achieving ECWVTA means the manufacturer can sell the product in any EU market without needing additional national tests in another EU Member State.
2. ECSSTA (EC Small Series Type Approval) has been created for low volume car producers only, and like full ECWVTA will allow Europe wide sales but with technical and administrative requirements that are more adapted to smaller businesses.
3. NSSTA (National Small Series Type Approval) is a UK national scheme for low volume manufacturers who intend to sell only in the UK. Like ECWVTA, once the design is approved, individual vehicles do not need to be tested
4. IVA (Individual Vehicle Approval) is a UK national scheme and the most likely route for those manufacturing or importing single vehicles or very small numbers. It is a means of checking that vehicles broadly meet the technical requirements laid out in European legislation ensuring that they have been designed and constructed to modern safety and environmental standards

#### **10. Which checks or processes are carried out to ensure these requirements to be granted type approval are met?**

Many aspects of a vehicle are tested (depending on the vehicle category), all stemming from requirement in EU legislation. For example, for small series type approval for Category M vehicles:

- Noise
- Emissions

- Fuel tanks
- Rear registration plate space
- Steering effort
- Door latches and hinges
- Audible warning
- Indirect vision
- Braking
- Electro-magnetic compatibility

There are 60 aspects in total which can be found in The Road Vehicles (Approval) Regulations 2009 (SI 2009 No. 717)

**11. Please list the national type approval authority<sup>1044</sup> and technical services<sup>1045</sup> in charge of ensuring compliance (as well as any other relevant actors) in relation to national type approval processes, and describe the manner in which they are designated or mandated.**

The Vehicle Certification Agency (VCA), [an executive agency of the Department for Transport](#), is the designated UK type approval authority and technical service for type approval in relation to all automotive European Community (EC) Directives and the equivalent United Nations Economic Community for Europe (ECE) Regulations.

The VCA is authorised to designate laboratories to act as Technical Services for testing or supervising testing of vehicles, systems or components, in accordance with Article 41 of Directive 2007/46/EC as amended (the "Framework Directive"). It is also authorised to apply a similar approach to the designation of Technical Services under Article 14 of the 2002/24/EC, and Article 21 of 2003/37/EC, both as amended

Under IVA, vehicles have to be inspected by the Driver & Vehicle Standards Agency (DVSA) in Great Britain or the Driver & Vehicle Agency (DVA) in Northern Ireland. Satisfactory completion of an inspection results in the issue of an approval certificate.

**12. Are any of these parties required to disclose information on national type approval processes?**

As public bodies, the VCA, DVSA and DVA are subject to the Freedom of Information Act 2000 and The Re-use of Public Sector Information Regulations 2005 (SI 2005/1515).

**13. Please describe which penalties or sanctions exist in relation to national type approval processes and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

Pursuant to Regulation 33(4) of the Road Vehicles (Approval) Regulations 2009, it is an offence for a person to knowingly or recklessly make a false statement for the purpose of obtaining vehicle type approval.

<sup>1044</sup> National public authorities in charge of officially approving vehicles before they can be put on the EU market.

<sup>1045</sup> Test bodies and laboratories that are specifically designated by the Member States' type approval authorities to carry out the type approval tests in accordance with EU legislation.

A person guilty of an offence under paragraph (4) is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine.

Under The Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673) Part 6 Regulation 33A, the supply of a vehicle containing a prohibited defeat device a punishable offence.

A person who is a manufacturer is guilty of an offence if a motor vehicle manufactured by that person is placed on the market or registered in the United Kingdom and that motor vehicle is fitted with a defeat system which is not permitted.

A person guilty of an offence under Regulation 33A is punishable on summary conviction in England and Wales by a fine or (in the case of an individual) by imprisonment for a term not exceeding three months, or to both; or in Scotland or Northern Ireland by a fine not exceeding level 5 on the standard scale or (in the case of an individual) by imprisonment for a term not exceeding three months, or to both.

An offence is not punishable under this paragraph if the approval authority has required a person to pay a penalty in respect of that offence; and that penalty has been paid to the approval authority

#### *Rules on tampering*

#### **14. Please list and describe the (post-type approval) rules in place at national level in relation to tampering, in particular:**

Tampering with the emission control design

There are currently no national provisions relating to tampering with the emissions control design. If the emission control system fitted by the manufacturer is absent, modified or obviously defective, this may be recorded as a major deficiency in the context of MOT roadworthiness testing

Tampering with aftermarket parts

No.

Tampering with the engine

No.

Tampering with the OBD system

No.

Odometer tampering (in particular on second-hand vehicles)



Adjusting a vehicle's odometer reading to show an inaccurate mileage is potentially a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') and the Fraud Act 2006<sup>1046</sup>.

Other

Under the Road Traffic Act 1988 (Section 42) and the Road Vehicles (Construction and Use) Regulations 1986 (Regulations 61(7) and 61A(3)), it is an offence to use on a road a vehicle which has been modified in such a way that it no longer complies with the air pollutant emissions standards it was designed to meet. The Road Traffic (Northern Ireland) Order 1995 (Article 58) applies in Northern Ireland).

Under the Road Traffic Act 1988 (Section 75), it is an offence to alter a vehicle in such a way that the use of the vehicle on a road would be unlawful. A person altering the vehicle (if they knew or believed that the vehicle would be used on the road) could be found guilty of an offence under the Act. The Road Traffic (Northern Ireland) Order 1995 (Article 83) applies in Northern Ireland.

**15. Which authority or authorities are in charge of ensuring compliance with legislation on tampering listed above, and on which legal basis?**

The police forces of England and Wales, Scotland and Northern Ireland are in charge of ensuring compliance with legislation listed above.

The organisation with responsibility for compliance with MOT roadworthiness testing is the DVSA (discussed in more detail below).

**16. Please describe which penalties or sanctions exist in relation to this legislation and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

In the UK, for an offence under Section 42 of the Road Traffic Act 1988, the potential penalties are £1,000 for a car and £2,500 for a van, lorry or bus.

For an offence under Section 75 of the Road Traffic Act 1988, the potential penalty is an unlimited fine.

The driver is responsible for ensuring compliance.

The Consumer Protection from Unfair Trading Regulations 2008 prohibits commercial practices that amount to misleading acts or omissions. Engaging in prohibited practices is a criminal offence punishable by up to two years' imprisonment and/or an unlimited fine.

Section 2 of the Fraud Act 2006 makes it an offence to dishonestly make a false representation with the intention of making a gain or causing another to suffer a loss or risk of loss. The offence is punishable by up to 10 years' imprisonment and/or an unlimited fine.

<sup>1046</sup> [www.legislation.gov.uk/ukpga/2006/35/contents](http://www.legislation.gov.uk/ukpga/2006/35/contents)

**17. Are remedies available to consumers that are subject to tampering? Which party has to bear the burden of proof under national law?**

A consumer could bring a case pursuant to the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs'). A consumer could also report the business to Trading Standards, which may take action against the trader.

The burden of proof usually falls on the claimant, while the standard of proof in civil cases is the 'balance of probabilities' (rather than 'beyond reasonable doubt', as is the case for criminal cases).

*Tests and inspections*

**18. Please describe the periodic roadworthiness tests (e.g. the MOT test in the UK) executed at national level - setting out where, when, how and by whom these tests (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The statutory requirements for the MOT are contained in the Motor Vehicles (Tests) Regulations 1981<sup>1047</sup> as amended and apply to England, Scotland and Wales. In Northern Ireland, The Motor Vehicle Testing (Amendment) Regulations (Northern Ireland) 1981 (SR 1981/355)<sup>1048</sup> apply.

The purpose of the MOT test is to ensure that cars, other light vehicles (including some light goods vehicles), private buses and motor bicycles over a prescribed age (usually but not always the third anniversary of registration) are checked at least once a year to see that they comply with roadworthiness and environmental standards.

In Northern Ireland, vehicles are checked from four years old and over.

The testing of vehicles is conducted principally at commercial garages (Authorised Examiners) and by some local authorities (Designated Councils). These are authorised, or designated as appropriate, by the DVSA, and known as Vehicle Testing Stations (VTSs). MOT tests are carried out by testers who are specifically trained and approved. They record test results on the MOT database and sign official test documents.

Defects found during the MOT test shall be categorised in one of the following groups:

- minor - defects having no significant effect on the safety of the vehicle or impact on the environment and other minor non-compliances. If only defects of a minor nature are present a test certificate will still be issued;
- major - defects that may prejudice the safety of the vehicle, have an impact on the environment, put other road users at risk or other more significant non-compliances;
- dangerous - defects constituting a direct and immediate risk to road safety or having an impact on the environment.

Modifications to vehicles must be assessed on their merits, taking account of the nature of the modification and whether the component is safety critical. The main criteria to be used are:

- whether the modification adversely affects the roadworthiness of the vehicle, or
- is likely to cause injury (such as modification to the body), or
- has a disproportionately adverse effect on the environment

<sup>1047</sup> [www.legislation.gov.uk/uksi/1981/1694/contents/made](http://www.legislation.gov.uk/uksi/1981/1694/contents/made)

<sup>1048</sup> [www.legislation.gov.uk/nisr/1981/355/contents/made](http://www.legislation.gov.uk/nisr/1981/355/contents/made)

As part of the MOT, vehicles must pass an exhaust emissions test, which was made more stringent as of May 2018. An inspection of exhaust emission control equipment is carried out on components that are readily visible and identifiable, such as a diesel oxidation catalyst, diesel particulate filter, selective catalytic reduction valve, etc. Diesel particulate filters (DPF) should be checked for evidence that the DPF has been removed or otherwise tampered with.

Emission control equipment fitted by the manufacturer that is missing, obviously modified or obviously defective, an induction or exhaust leak that could affect emissions levels and evidence that the diesel particulate filter has been tampered with are all classed as major defects.

**19. Please describe the technical roadside inspections executed at national level - setting out where, when, how and by whom these inspections (in particular the checks carried out in relation to tampering) are carried out. Additionally, please set out the relevant national legal provisions in this regard.**

The Road Traffic Act 1988 (as amended) contains powers for authorised examiners to conduct roadside inspections of commercial vehicles. A police officer or a DVSA officer, or a DVA officer in Northern Ireland, can stop and carry out spot checks. Part of this check is to see that the fitted emission control devices have not been removed, disabled or modified to reduce their effectiveness by the removal or bypassing of exhaust gas recirculation (EGR), for example in the following ways:

- use of devices to stop emission control systems from working
- removal of diesel particulate filter (DPF)
- use of fake emission control devices and fluids
- illegal engine modifications.

Furthermore, a number of borough councils have been designated 'Air Quality Management Areas' allowing the local council to test vehicles at the roadside and issue fixed penalties to drivers whose vehicles fail.

**20. Please name the national authority or authorities which are in charge of these tests and inspections, and describe the manner in which they are designated or mandated.**

The Motor Vehicles (Tests) Regulations 1981 ("the 1981 Regulations") (as amended) makes provision for certain motor vehicles other than goods vehicles to be examined by persons authorised by the Secretary of State and for test certificates to be issued for vehicles that are found to meet certain requirements. These certificates are commonly referred to as "MOT Certificates". The Driver & Vehicle Standards Agency, an executive agency of the Department of Transport is in charge of the MOT in England and Wales, and Scotland.

The Road Traffic Act 1988 Section 67 sets out who may act as authorised examiners for roadside tests in England, Scotland and Wales. These include a person appointed to act by the Secretary of State; a constable authorised so to act by or chief officer of police; a person appointed by a chief officer of police in England or Wales (other than the Commissioner of Police for the City of London) to act, under the directions of that chief officer; and a person appointed by the police authority in Scotland, or by the Common Council of the City of London, to act, under the directions of the chief officer of police.,

In Northern Ireland, The Road Traffic (Northern Ireland) Order 1995 Article 61 provides for the Department of Infrastructure to authorise vehicle examiners. The Driver & Vehicle Agency, an executive agency of the Department for Infrastructure, is in charge of the MOT in Northern Ireland

Under The Road Traffic (Northern Ireland) Order 1995, a constable authorised so to act by or on behalf of the Chief Constable; and a person appointed as an examiner under Article 74 may carry out roadside tests.

**21. Are any of these authorities required to disclose information on these tests and inspections?**

As public bodies, the DVSA and DVA are subject to the Freedom of Information Act 2000<sup>1049</sup> and The Re-use of Public Sector Information Regulations 2005 (SI 2005/1515)<sup>1050</sup>

The DVSA publishes a statistical data set for MOT test results ([www.gov.uk/government/statistical-data-sets/mot-testing-data-for-great-britain](http://www.gov.uk/government/statistical-data-sets/mot-testing-data-for-great-britain)) and a disclosure log of freedom of information requests ([www.gov.uk/government/publications/dvsa-foi-disclosure-log-june-2019](http://www.gov.uk/government/publications/dvsa-foi-disclosure-log-june-2019)).

**22. Please describe which penalties or sanctions exist in relation to periodic roadworthiness tests and technical roadside inspections and specify their nature (e.g. administrative, civil or criminal), severity (e.g. amount of the fine) and recipient (e.g. manufacturer)?**

A vehicle will fail its MOT if the test result lists 'dangerous' or 'major' problems. Driving such a vehicle incurs a fine of up to £2,500, a driving ban and three penalty points on the licence.

If a vehicle fails an emissions test during a roadside check, the driver will be given a prohibition notice and ten days to fix the problem. If it is not fixed within this period the driver may be prosecuted. If the vehicle is seriously in breach of the legal emission limits, or if it has other defects which make it dangerous, the notice will come into effect immediately. The driver will not be able to use the vehicle and may also be prosecuted.

*National strategies and initiatives*

**23. Is odometer data collected at national level? If this is the case, through which processes is this done, by which actor, and in what format is odometer data gathered?**

The odometer reading is recorded during the MOT and included on the MOT test certificate. This mileage information is available at [www.gov.uk/check-mot-status](http://www.gov.uk/check-mot-status).

**24. Are there any initiatives which help buyers of second-hand vehicles track the vehicles' mileage history (e.g. CarFax is a private initiative helping European buyers of second-hand American and Canadian vehicles to track the vehicles' mileage history)?**

The National Mileage Register brings together vehicle mileages from sources such as the DVLA, V5 documents, and vehicle leasing companies. The NMR operates for the purposes of preventing fraud

<sup>1049</sup> [www.legislation.gov.uk/ukpga/2000/36/contents](http://www.legislation.gov.uk/ukpga/2000/36/contents)

<sup>1050</sup> [www.legislation.gov.uk/uksi/2005/1515/contents/made](http://www.legislation.gov.uk/uksi/2005/1515/contents/made)

across the motor trade, following legislation set out under the Consumer Protection from Unfair Trading Regulations Act 2008. It is operated by private company HPI.

**25. Are there any projects in place aimed at introducing remote sensing equipment or the use of sniffing vehicles which could measure exhaust emissions from vehicles (e.g. the Real Urban Emissions Initiative launched in London and Paris in 2018)?**

From November 2017 through February 2018, the Real Urban Emissions initiative (TRUE) conducted a project using remote-sensing technology to measure in-use exhaust emissions from vehicles at several sites in Greater London. More than 100,000 samples were collected at nine locations from passenger cars, light commercial vehicles, taxis, buses, trucks, and motorcycles.

There appears to be no current initiative in place.

**26. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by the national government, national regulatory authorities or other *public* institutions?**

In the ["Road to Zero"](#) (2018) strategy report by the UK Department for Transport, there is a commitment to "commission research into the most effective methods of detecting attempts to tamper with emissions reduction systems."

**27. Is there any other strategy, policy or research relating to vehicle tampering being implemented or carried out at national level by *private* stakeholders (e.g. the industry, consumer organisations)?**

Not that we are aware of.

**28. Did any of the national strategies or initiatives mentioned above stem from or result in national legislation?**

No.

*Effectiveness and enforcement*

**29. Do you consider the measures and provisions in place at national level regarding tampering to be effective with regard to:**

Awareness at national level of the existing rules (e.g. by manufacturers, car owners, services providers)

While consumer awareness of emissions tampering has grown since the Volkswagen 'Dieselgate' affair, it could be argued that awareness of the existing UK rules remains low.

Practical application of the rules on tampering (e.g. manufacturers have adopted internal processes to implement the rules)

There has been no research carried out at national level that would allow for an answer to this question.

Potential gaps in the legislation

It is illegal to sell a clocked car without declaring its genuine mileage, but the act of altering the car's mileometer, or odometer, is not in itself an offence.

**30. In your opinion, is the existing enforcement system (as set out in the sections above) effective (e.g. proportionate, dissuasive, non-discriminatory)?**

It would seem that the enforcement measure that most closely meets the above criteria is the new emissions test included in the MOT. The number of cars failing the MOT emissions test doubled after tougher rules were introduced.

[www.itv.com/news/2018-11-20/mot-emissions-test-failure-rate-soars-after-tougher-rules-introduced/](http://www.itv.com/news/2018-11-20/mot-emissions-test-failure-rate-soars-after-tougher-rules-introduced/)

**31. Are there legal or practical obstacles in enforcing any of the national measures relating to tampering as set out in the sections above?**

No specific legal or practical obstacles have been noted.

*Other*

**32. Should you be aware of any stakeholders involved in 1) the manufacturing of vehicles (or vehicle parts), 2) the type approval of vehicles (type approval authority or technical services), 3) national periodic roadworthiness tests and/or technical roadside inspections, 4) national strategies and initiatives relating to vehicle tampering, or 5) other aspects relating to vehicle tampering not mentioned above – please provide their name (and contact information) below.**

1. **The Society of Motor Manufacturers and Traders (SMMT)** is the trade association for the United Kingdom motor industry  
[www.smmt.co.uk](http://www.smmt.co.uk)  
 Tel: +44 (0)20 7235 7000
2. **The Vehicle Certification Agency (VCA)** is the designated UK type approval authority and technical service for type approval  
[www.vehicle-certification-agency.gov.uk/](http://www.vehicle-certification-agency.gov.uk/)  
 Tel: +44 (00300 330 5797
3. **The Driver and Vehicle Standards Agency (DVSA)** is responsible for periodic roadworthiness tests and technical roadside inspections in England, Wales and Scotland  
[www.gov.uk/government/organisations/driver-and-vehicle-standards-agency](http://www.gov.uk/government/organisations/driver-and-vehicle-standards-agency)  
 Tel: +44 (0)300 123 9000

4. **The Driver and Vehicle Agency (DVA)** is responsible for periodic roadworthiness tests and technical roadside inspections in Northern Ireland  
[www.nidirect.gov.uk/information-and-services/motoring/mot-and-vehicle-testing](http://www.nidirect.gov.uk/information-and-services/motoring/mot-and-vehicle-testing)

**33. Do you have any other comments, recommendations or thoughts in relation to the rules on tampering?**

No.

Case law on tampering

**Is there any case law relating to vehicle tampering by national courts, bodies or authorities? If this is the case, please provide a reference, link and summary of the relevant ruling(s).**

***Crossley & Ors v Volkswagen Aktiengesellschaft* (the “VW NOx Emissions Group Litigation”) [2020] EWHC 783 (QB)**

Following a two-week trial of two preliminary issues, Mr Justice Waksman found that Volkswagen’s engine software function amounts to a ‘defeat device’ for the purpose of EU law, and that previous findings of the relevant German authorities were binding on the High Court in that respect.

[www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/783.html&query=\(title:\(+crossley+\)\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/783.html&query=(title:(+crossley+)))

**Case reference: CRE-E/26641**

The OFT launched a criminal investigation into Colin Michael Ogle, suspected of unlawfully adjusting mileage. In April 2011, the OFT carried out an inspection at the premises of the Swindon based business run by Mr Ogle.

Mr Ogle subsequently pleaded guilty to five charges under the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs') and eight charges under the Fraud Act 2006 and was sentenced, on 21 November 2012, at Swindon Crown Court, to nine months' imprisonment for car clocking. This was the first time a provider of 'mileage correction services' had been convicted under consumer law.

[www.gov.uk/cma-cases/mileage-correction-services-provider-investigation-and-conviction](http://www.gov.uk/cma-cases/mileage-correction-services-provider-investigation-and-conviction)

Sources on tampering

**Are there any (legal) studies at national level that focus on vehicle tampering, or any other relevant sources? If this is the case, please add the full references, link (if available) and a short description per source in the table below.**



Title	Reference	Short description
Clean Air Strategy (DEFRA) (2019)*	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf</a>	UK government strategy for tackling air pollution
The Road to Zero (Department for Transport) (2018)*	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739460/road-to-zero.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739460/road-to-zero.pdf</a>	UK government strategy for cleaner road transport

\*It should be noted that while both these studies include recommendations on tampering, neither of these studies focus on tampering as their principle theme.

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**Adapting driver behaviour  
for lower emissions**



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 815189.