

EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SME's

Sustainable Growth and EU 2020

Sustainable Mobility and Automotive Industry

Brussels, 3 March 2015

GROW G3/RRH/as(2015)1045766

Note for the attention of the Members of the Motorcycle Working Group

Subject: Provisions applicable to end-of-series vehicles in the transition from Directive 2002/24/EC to Regulation (EU) No 168/2013

In September 2014, ACEM asked the Commission services to provide clarity on the applicable provisions regarding future decisions by national authorities on whether to permit the registration of so-called "end-of-series vehicles". In addition, ACEM requested clarity until when vehicles of categories L1e, L2e and L6e type-approved under Directive 2002/24/EC could still be registered and which would be the applicable end-of-series regime for such vehicles.

The issue was discussed with Member States and stakeholder at the Motor Cycle Working Group meetings on 17 September 2014 and 17 December 2014. In the meeting of 17 December, it was agreed that the Commission services would provide this clarification also in writing.

1. Applicability of end-of-series provisions

An "end-of-series vehicle" is defined in Article 3, point 67 of Regulation (EU) No 168/2013 as "any vehicle that is part of a stock which cannot be made available on the market or can no longer be made available on the market, registered or enter into service owing to the entry into force of new technical requirements against which it has not been approved". Directive 2002/24/EC contains no definition of such vehicles.

Both acts, Directive 2002/24/EC and Regulation (EU) No 168/2013, contain in Article 16 and Article 44, respectively, provisions regarding the exceptional registration of end-of-series vehicles; these provisions are similar, but differ in detail (maximum permissible delay and quantity of vehicles).

It is clear that for all approvals based on Regulation (EU) No 168/2013, Article 44 of that Regulation is the legal base for the end-of-series vehicles.

For all type-approvals based on Directive 2002/24/EC, Article 16 of that Directive is in principle the legal base for the end-of-series vehicles. However, Article 81 of Regulation (EU) No 168/2013 repeals in its paragraph 1 *inter alia* Directive 2002/24/EC with effect from 1.1.2016, "without prejudice to Article 77 of this Regulation".

Paragraph 2 of Article 81 of Regulation (EU) No 168/2013 declares the applicability of the corresponding provisions of that Regulation, as laid down in the correlation table annexed to it. This table states that the provision corresponding to Article 16 (1) and (2) of the Directive will be Article 44 of the Regulation.

It follows that after the date of application of Regulation (EU) No 168/2013, Article 44 of that Regulation will be the legal base for the decisions taken by national authorities on whether to permit the registration of so-called "end-of-series vehicles", unless Article 77 of that Regulation provides otherwise.

Article 77 of Regulation (EU) No 168/2013 covers in its paragraph 3 the granting of the type-approvals until 31.12.2016 to vehicle types of categories L1e, L2e and L6e and in paragraph 4 also the granting of extensions, but Article 77 does not explicitly allow for the application of the previous end-of-series regime as stipulated in Article 16 of Directive 2002/24/EC.

It is a general principle of EU law to interpret narrowly, if in doubt, exceptions to the rule. This principle applies to Article 77 of Regulation (EU) No 168/2013, which provides such an exception to the rule laid down in Article 81 of that Regulation. It follows that Article 77 of Regulation (EU) No 168/2013 cannot be interpreted as allowing for the application of Article 16 of Directive 2002/24/EC in derogation of Article 81(1) of that Regulation.

Thus, the decision taken by national authorities on whether to permit the registration of so-called "end-of-series vehicles" is not exceptionally covered by Article 77, not even for vehicles type-approved with regard to Article 77(3). It follows that Article 16 of Directive 2002/24/EC is no longer applicable to end-of-series vehicles after 1.1.2016. Instead, the corresponding provision of the new Regulation should be applied, as follows from Article 81(2). The corresponding provision is Article 44.

The decisive reference date should be the date of the decision taken by the Member State concerned, not the date of the filing of the request by the vehicle manufacturer. As of 1.1.2016, Article 44 of Regulation (EU) No 168/2013 becomes the legal base for any decision taken by a national authority of a Member State to permit the registration of end-of series vehicles within its territory.

2. Transitional regime for vehicles of categories L1e, L2e and L6e

As regards L1e, L2e and L6e vehicles, Regulation (EU) No 168/2013 provides the following:

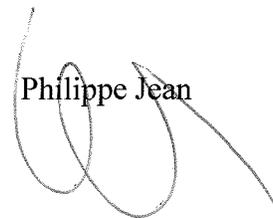
- Article 77(3) allows that **new vehicle types** of this category may still be type-approved under Directive 2002/24/EC until 31.12.2016.

- According to Annex IV to Regulation (EU) No 168/2013, **new vehicles of such types** may still be registered until 31.12.2017. Please verify for example point 1.1.2.1. (Euro 4: Annex VI A1) of Annex IV to Regulation (EU) No 168/2013. According to the column "Existing types of vehicles obligatory", vehicles not compliant with the Euro 4 environmental step may still be registered until 1.1.2018; as from that date, all newly registered vehicles must comply with the Euro 4 environmental step.

It follows that, as from 1.1.2018, such vehicles (L1e, L2e and L6e with type approvals under Euro 3) may only be registered as "end-of-series vehicles".

As stated above, Article 44 of Regulation (EU) No 168/2013 shall apply to the decisions taken by national authorities on whether to permit the registration of these end-of-series vehicles.

Philippe Jean

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.