

Commission Implementing Regulation (EU) No 725/2011 of 25 July 2011 establishing a procedure for the approval and certification of innovative technologies for reducing CO₂ emissions from passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 725/2011

of 25 July 2011

establishing a procedure for the approval and certification of innovative technologies for reducing CO₂ emissions from passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles⁽¹⁾, and in particular Article 12(2) thereof,

Whereas:

- (1) In order to promote the development and the early uptake of new and advanced CO₂ emission-reducing vehicle technologies, Regulation (EC) No 443/2009 provides manufacturers and suppliers with the possibility of applying for the approval of certain innovative technologies contributing to reducing CO₂ emissions from passenger cars. Therefore, it is necessary to clarify the criteria for determining which technologies should be eligible as eco-innovations pursuant to that Regulation.
- (2) According to point (c) of Article 12(2) of Regulation (EC) No 443/2009, technologies that are part of the Union's integrated approach outlined in the Commission Communication of 7 February 2007 entitled 'Results of the review of the Community Strategy to reduce CO₂ emissions from passenger cars and light-commercial vehicles'⁽²⁾ and the Commission Communication of 7 February 2007 entitled 'A Competitive Automotive Regulatory Framework for the 21st Century'⁽³⁾, and have been regulated in Union law, or other technologies that are mandatory under Union law, are not eligible as eco-innovations under that Regulation. These technologies include tyre pressure monitoring systems, tyre rolling resistance and gear shift indicators falling within the scope of Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefore⁽⁴⁾ and, as regards tyre rolling resistance, Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters⁽⁵⁾.

- (3) A technology that has already for some time been widely available on the market cannot be considered innovative within the meaning of Article 12 of Regulation (EC) No 443/2009 and should not be eligible as an eco-innovation. In order to create the right incentives, it is appropriate to limit the level of market penetration of a technology to that of the niche segment as defined in Article 11(4) of Regulation (EC) No 443/2009 and to use the year 2009 as a baseline. Those thresholds should be subject to review at the latest in 2015.
- (4) In order to promote technologies with the highest potential for reducing CO₂ emissions from passenger cars, and in particular the development of innovative propulsion technologies, only those technologies should be eligible that are intrinsic to the transport function of the vehicle and contribute significantly to improving the overall energy consumption of the vehicle. Technologies that are accessory to that purpose or aim at enhancing the comfort of the driver or the passengers should not be eligible.
- (5) According to Regulation (EC) No 443/2009, applications may be submitted by both manufacturers and suppliers. The application should include the necessary evidence that the eligibility criteria are fully met, including a methodology for measuring the CO₂ savings from the innovative technology.
- (6) It should be possible to measure the CO₂ savings from an eco-innovation with a satisfactory degree of accuracy. That accuracy can only be achieved where the savings are 1 g CO₂/km or more.
- (7) Where the CO₂ savings of a technology depends on the behaviour of the driver or on other factors that are outside the control of the applicant, that technology should in principle not be eligible as an eco-innovation, unless it is possible, on the basis of strong and independent statistical evidence, to make verifiable assumptions about average driver behaviour.
- (8) The standard test cycle used for type approval measurement of the CO₂ emissions from a vehicle does not demonstrate all savings that can be attributed to certain technologies. To create the right incentives for innovation, only those savings that are not captured by the standard test cycle should be taken into account for the calculation of the total CO₂ savings.
- (9) In demonstrating the CO₂ savings, a comparison should be made between the same vehicles with and without the eco-innovation. The testing methodology should provide verifiable, repeatable and comparable measurements. In order to ensure a level playing field and, in the absence of an agreed and more realistic driving cycle, the driving patterns in the New European Driving Cycle as referred to in 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⁽⁶⁾ should be used as a common reference. The testing methodology should be based on measurements on a chassis dynamometer or on modelling or simulation where such methodologies would provide better and more accurate results.

- (10) Guidelines on the preparation of the application and the testing methodologies should be provided by the Commission and be regularly updated to take into account the experience gained from assessing different applications.
- (11) According to Regulation (EC) No 443/2009, the application must be accompanied by a verification report provided by an independent and certified body. That body should be a technical service of category A or B as referred to in 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⁽⁷⁾. However, in order to ensure the independence of the body, technical services designated in accordance with Article 41(6) of that Directive should not be considered an independent and certified body within the meaning of this Regulation. The body should, together with the verification report, provide relevant evidence of its independence from the applicant.
- (12) In order to ensure efficient registration and monitoring of the specific savings for individual vehicles, savings should be certified as part of the type approval of a vehicle and the total savings should be entered into the certificate of conformity in accordance with Directive 2007/46/EC.
- (13) The Commission should have the possibility to verify on an ad hoc-basis the certified total savings for individual vehicles. Where it is evident that the certified savings are inconsistent with the level of savings resulting from the decision to approve a technology as an eco-innovation, the Commission should be able to disregard the certified CO₂ savings for the calculation of the average specific CO₂ emissions. The manufacturer should, however, be given a limited time period during which it may demonstrate that the certified values are accurate.
- (14) In order to ensure a transparent application procedure, summary information should be available to the public on the applications for approval of innovative technologies and the testing methodologies. Once approved, the testing methodologies should be publicly accessible. The exceptions to the right to public access to documents set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽⁸⁾ should apply as appropriate.
- (15) According to Article 13(3) of Regulation (EC) No 443/2009, innovative technologies may no longer be approved under the procedure set out in that Regulation from the date of application of a revised procedure for the measurement of CO₂ emissions. In order to ensure an appropriate phasing out of the eco-innovation credits approved pursuant to this Regulation, this Regulation should be reviewed not later than in 2015.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the procedure to be followed for the application for, and assessment, approval and certification of, innovative technologies that reduce emissions of CO₂ from passenger cars pursuant to Article 12 of Regulation (EC) No 443/2009.

Article 2

Scope

1 Any technology falling within the scope of the following measures covered by the integrated approach referred to in Article 1 of Regulation (EC) No 443/2009 shall not be considered as innovative technologies:

- a efficiency improvements for air-conditioning systems;
- b tyre pressure monitoring systems falling within the scope of Regulation (EC) No 661/2009;
- c tyre rolling resistance falling within the scope of Regulations (EC) No 661/2009 and (EC) No 1222/2009;
- d gear shift indicators falling within the scope of Regulation (EC) No 661/2009;
- e use of bio fuels.

2 An application may be made under this Regulation in respect of a technology, provided that the following conditions are met:

- a it had been fitted in 3 % or less of all new passenger cars registered in 2009;
- b it relates to items intrinsic to the efficient operation of the vehicle and is compatible with Directive 2007/46/EC.

Article 3

Definitions

In addition to the definitions set out in Articles 2 and 3 of Regulation (EC) No 443/2009, the following definitions shall apply:

- (a) ‘innovative technology’ means a technology or a combination of technologies with similar technical features and characteristics where the CO₂ savings can be demonstrated using one testing methodology and where each of the individual technologies forming the combination falls within the scope specified in Article 2;
- (b) ‘supplier’ means the manufacturer of an innovative technology responsible for ensuring conformity of production or its authorised representative in the Union or the importer;
- (c) ‘applicant’ means the manufacturer or supplier submitting an application for the approval of an innovative technology as an eco-innovation;
- (d) ‘eco-innovation’ means an innovative technology accompanied by a testing methodology that has been approved by the Commission in accordance with this Regulation;

- (e) ‘independent and certified body’ means a category A or B technical service referred to in points (a) and (b) of Article 41(3) of Directive 2007/46/EC meeting the requirements set out in Article 42 of that Directive, with the exception of technical services designated in accordance with Article 41(6) of that Directive.

Article 4

Application

1 An application for the approval of an innovative technology as an eco-innovation shall be submitted to the Commission in writing. The application and all supporting documentation shall also be submitted by electronic mail or electronic data carrier or uploaded in a server managed by the Commission. The written application shall list the supporting documentation.

2 An application shall include the following:

- a contact details of the applicant;
- b a description of the innovative technology and the way it is fitted on a vehicle, including evidence that the technology falls within the scope specified in Article 2;
- c a summary description of the innovative technology, including details supporting that the conditions provided for in Article 2(2) are met, and of the testing methodology referred to in point (e) of this paragraph to be made public upon submission of the application to the Commission;
- d an estimated indication of the individual vehicles that may be, or are intended to be, fitted with the innovative technology, and the estimated reductions of CO₂ emissions for those vehicles from the innovative technology;
- e a methodology to be used for demonstrating the CO₂ emissions reductions of the innovative technology, or where such methodology has already been approved by the Commission, a reference to the approved methodology;
- f evidence demonstrating that:
 - (i) the emissions reduction achieved by the innovative technology meets the threshold specified in Article 9(1), taking into account any deterioration over time of the technology;
 - (ii) the innovative technology is not covered by the standard test cycle CO₂ measurement referred to in point (c) of Article 12(2) of Regulation (EC) No 443/2009 as specified in Article 9(2) of this Regulation;
 - (iii) the applicant is accountable for the CO₂ emissions reduction of the innovative technology as specified in Article 9(3);
- g a verification report from an independent and certified body as specified in Article 7.

Article 5

Baseline vehicle and eco-innovation vehicle

1 For the purpose of the demonstration of CO₂ emissions referred to in Article 8, the applicant shall designate:

- a an eco-innovation vehicle that shall be fitted with the innovative technology;
- b a baseline vehicle that shall not be fitted with the innovative technology but that is in all other aspects identical to the eco-innovation vehicle.

2 If the applicant considers that the information referred to in Articles 8 and 9 can be demonstrated without the use of a baseline vehicle and an eco-innovation vehicle as referred to in paragraph 1 of this Article, the application shall include the necessary details justifying that conclusion and a methodology providing equivalent results.

Article 6

Testing methodology

1 The testing methodology referred to in point (e) of Article 4(2) shall provide results that are verifiable, repeatable and comparable. It shall be capable of demonstrating in a realistic manner the CO₂ emissions benefits of the innovative technology with strong statistical significance and, where relevant, take account of the interaction with other eco-innovations.

2 The Commission shall publish guidance on the preparation of testing methodologies for different potential innovative technologies meeting the criteria in paragraph 1.

Article 7

Verification report

1 The verification report referred to in point (g) of Article 4(2) shall be established by an independent and certified body that is not part of the applicant or otherwise connected to it.

2 For the purposes of the verification report, the independent and certified body shall:

- a verify that the eligibility criteria specified in Article 2(2) are met;
- b verify that the information provided in accordance with point (f) of Article 4(2) meets the criteria set out in Article 9;
- c verify that the testing methodology referred to in point (e) of Article 4(2) is appropriate for certifying the CO₂ savings from the innovative technology for the relevant vehicles referred to in point (d) of Article 4(2), and meets the minimum requirements specified in Article 6(1);
- d verify that the innovative technology is compatible with relevant requirements specified for the type approval of the vehicle;
- e declare that it meets the requirement specified in paragraph 1 of this Article.

3 For the purposes of the certification of the CO₂ savings in accordance with Article 11, the independent and certified body shall, at the request of the manufacturer, draw up a report on the interaction between several eco-innovations fitted to one vehicle type, variant or version.

The report shall specify the CO₂ savings from the different eco-innovations taking into account the impact of the interaction.

Article 8

Demonstration of CO₂ emissions

1 The following CO₂ emissions shall be demonstrated for a number of vehicles representative of the individual vehicles indicated in accordance with point (d) of Article 4(2):

- a the CO₂ emissions from the baseline vehicle and from the eco-innovation vehicle with the innovative technology in operation resulting from the application of the methodology referred to in point (e) of Article 4(2);

- b the CO₂ emissions from the baseline vehicle and from the eco-innovation vehicle with the innovative technology in operation resulting from the application of the standard test cycle referred to in point (c) of Article 12(2) of Regulation (EC) No 443/2009.

The demonstration of the CO₂ emissions in accordance with points (a) and (b) of the first subparagraph shall be carried out under testing conditions that are identical for all tests.

2 The total savings for an individual vehicle shall be the difference between the emissions demonstrated in accordance with point (a) of the first subparagraph of paragraph 1.

Where there is a difference between the emissions demonstrated in accordance with point (b) of the first subparagraph of paragraph 1, that difference shall be subtracted from the total savings demonstrated in accordance with point (a) of the first subparagraph of paragraph 1.

Article 9

Eligibility criteria

1 The minimum reduction achieved by the innovative technology shall be 1 g CO₂/km. That threshold shall be considered met where the total savings for the innovative technology demonstrated in accordance with Article 8(2) are 1 g CO₂/km or more.

2 Where the total savings of an innovative technology do not include any savings demonstrated under the standard test cycle in accordance with Article 8(2), the innovative technology shall be considered not to be covered by the standard test cycle.

3 The technical description of the innovative technology referred to in point (b) of Article 4(2) shall provide the necessary details for demonstrating that the CO₂ reducing performance of the technology is not dependant on settings or choices that are outside the control of the applicant.

Where the description is based on assumptions, those assumptions shall be verifiable and based on strong and independent statistical evidence supporting them and their applicability across the Union.

Article 10

Assessment of an eco-innovation application

1 On receipt of an application, the Commission shall make public the summary description of the innovative technology and the testing methodology referred to in point (c) of Article 4(2).

2 The Commission shall assess the application and, within 9 months from receipt of a complete application, it shall approve the innovative technology as an eco-innovation together with the testing methodology, unless objections are raised in respect of the eligibility of the technology or the appropriateness of the testing methodology.

The decision to approve the innovative technology as an eco-innovation shall specify the information required for the certification of the CO₂ savings in accordance with Article 11 of this Regulation, subject to the application of the exceptions to the right to public access to documents specified in Regulation (EC) No 1049/2001.

3 The Commission may require adjustments to the proposed testing methodology or require the use of another approved testing methodology than the one proposed by the applicant. The applicant shall be consulted on the proposed adjustment or the choice of testing methodology.

4 The assessment period may be extended by 5 months where the Commission finds that, because of the complexity of the innovative technology and the accompanying testing methodology or because of the size and contents of the application, the application cannot be appropriately assessed within the 9-month assessment period.

The Commission shall within 40 days of receipt of the application notify the applicant if the assessment period is to be extended.

Article 11

Certification of CO₂ savings from eco-innovations

1 A manufacturer wishing to benefit from a reduction of its average specific CO₂ emissions for the purpose of meeting its specific emissions target by means of the CO₂ savings from an eco-innovation shall apply to an approval authority within the meaning of Directive 2007/46/EC for an EC type-approval certificate of the vehicle fitted with the eco-innovation. The application for a certificate shall, in addition to the documents providing the necessary information specified in Article 6 of Directive 2007/46/EC, refer to the decision by the Commission to approve an eco-innovation in accordance with Article 10(2) of this Regulation.

2 The certified CO₂ savings of the eco-innovation demonstrated in accordance with Article 8 of this Regulation shall be specified separately in both the type approval documentation and the certificate of conformity in accordance with Directive 2007/46/EC, on the basis of tests carried out by technical services in accordance with Article 11 of that Directive, using the approved testing methodology.

Where the CO₂ savings of an eco-innovation for a specific type, variant or version are below the threshold specified in Article 9(1), the savings shall not be certified.

3 Where the vehicle is fitted with more than one eco-innovation, the CO₂ savings shall be demonstrated separately for each eco-innovation in accordance with the procedure set out in Article 8(1). The sum of the resulting savings determined in accordance with Article 8(2) for each eco-innovation shall provide the total CO₂ savings for the purpose of the certification of that vehicle.

4 Where interaction between several eco-innovations fitted to one vehicle cannot be ruled out because they are clearly of a different nature, the manufacturer shall indicate this in the application to the approval authority and shall provide a report from the independent and certified body on the impact of the interaction on the savings of the eco-innovations in the vehicle as referred to in Article 7(3).

Where, due to that interaction, the total savings are less than 1 g CO₂/km times the number of eco-innovations only those eco-innovation savings that meet the threshold set out in Article 9(1) shall be taken into account for calculating the total savings in accordance with paragraph 3 of this Article.

Article 12

Review of certifications

1 The Commission shall ensure that the certifications and the CO₂ savings attributed to individual vehicles are verified on an ad hoc-basis.

Where it finds that there is a difference between the certified CO₂ savings and the savings it has verified using the relevant testing methodology or methodologies, the Commission shall notify the manufacturer of its findings.

The manufacturer may within 60 days of receipt of the notification provide the Commission with evidence demonstrating the accuracy of the certified CO₂ savings. At the request of the Commission the report on the interaction of different eco-innovations referred to in Article 7(3) shall be provided.

2 Where the evidence referred to in paragraph 1 is not provided within the indicated time period, or it finds that the evidence provided is not satisfactory, the Commission may decide not to take the certified CO₂ savings into account for the calculation of the average specific emissions of that manufacturer for the following calendar year.

3 A manufacturer for which the certified CO₂ savings are no longer taken into account may apply for a new certification of the vehicles concerned in accordance with the procedure laid down in Article 11.

Article 13

Disclosure of information

An applicant requesting that information submitted under this Regulation be treated as confidential shall justify why any of the exceptions referred to in Article 4 of Regulation (EC) No 1049/2001 apply.

Article 14

Review

This Regulation and the eco-innovations approved pursuant to this Regulation shall be reviewed by 31 December 2015 at the latest.

Article 15

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 2011.

For the Commission

The President

José Manuel BARROSO

- (1) OJ L 140, 5.6.2009, p. 1.
- (2) COM(2007) 19 final.
- (3) COM(2007) 22 final.
- (4) OJ L 200, 31.7.2009, p. 1.
- (5) OJ L 342, 22.12.2009, p. 46.
- (6) OJ L 199, 28.7.2008, p. 1.
- (7) OJ L 263, 9.10.2007, p. 1.
- (8) OJ L 145, 31.5.2001, p. 43.