

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## 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 CO<sub>2</sub> emissions from light-duty vehicles**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) The objective of this Regulation is to set emission performance standards for new passenger cars registered in the Community, which forms part of the Community's integrated approach to reducing CO<sub>2</sub> emissions from light-duty vehicles while ensuring the proper functioning of the internal market.
- (2) The United Nations Framework Convention on Climate Change, which was approved on behalf of the European Community by Council Decision 94/69/EC of 15 December 1993 <sup>(3)</sup>, requires all parties to formulate and implement national and, where appropriate, regional programmes containing measures to mitigate climate

change. In this respect, the Commission proposed in January 2007 that, in the context of international negotiations, the European Union should pursue the objective of a 30 % reduction of greenhouse gas emissions by developed countries by 2020 (compared to 1990 levels) and that the Union itself should make a firm independent commitment to achieve at least a 20 % reduction of greenhouse gas emissions by 2020 (compared to 1990 levels), irrespective of reductions achieved by other developed countries. This objective was endorsed by the European Parliament and the Council.

- (3) One of the implications of those commitments is that all Member States will need to reduce significantly emissions from passenger cars. Policies and measures should be implemented at Member State and Community level across all sectors of the Community economy, and not only within the industry and energy sectors, in order to generate the substantial reductions needed. Road transport is the second largest greenhouse-gas emitting sector in the Union and its emissions continue to rise. If the climate change impact of road transport continues to increase, it will significantly undermine reductions made by other sectors to combat climate change.
- (4) Community targets for new passenger cars provide manufacturers with more planning certainty and more flexibility to meet the CO<sub>2</sub> reduction requirements than would be provided by separate national reduction targets. In setting emission performance standards, it is important to take into account the implications for markets and for the competitiveness of manufacturers, the direct and indirect costs imposed on business and the benefits that accrue in terms of stimulating innovation and reducing energy consumption.

<sup>(1)</sup> OJ C 77, 31.3.2009, p. 1.

<sup>(2)</sup> Opinion of the European Parliament of 17 December 2008 (not yet published in the Official Journal) and Council Decision of 6 April 2009.

<sup>(3)</sup> OJ L 33, 7.2.1994, p. 11.

- (5) This Regulation builds on a well-established process of measuring and monitoring the CO<sub>2</sub> emissions of vehicles registered in the Community in accordance with Decision No 1753/2000/EC of the European Parliament and of the Council of 22 June 2000 establishing a scheme to monitor the average specific emissions of CO<sub>2</sub> from new passenger cars<sup>(1)</sup>. It is important that the setting of CO<sub>2</sub> emissions reduction requirements continues to provide Community-wide predictability and planning security for vehicle manufacturers across their new car fleet in the Community.
- (6) The Commission adopted a Community Strategy for reducing CO<sub>2</sub> emissions from cars in 1995. The strategy was based on three pillars: voluntary commitments from the car industry to cut emissions, improvements in consumer information and the promotion of fuel-efficient cars by means of fiscal measures.
- (7) In 1998, the European Automobile Manufacturers' Association (ACEA) adopted a commitment to reduce average emissions from new cars sold to 140 g CO<sub>2</sub>/km by 2008 and, in 1999, the Japanese Automobile Manufacturers' Association (JAMA) and the Korean Automobile Manufacturers' Association (KAMA) adopted a commitment to reduce average emissions from new cars sold to 140 g CO<sub>2</sub>/km by 2009. These commitments were recognised by Commission Recommendation 1999/125/EC of 5 February 1999 on the reduction of CO<sub>2</sub> emissions from passenger cars<sup>(2)</sup> (ACEA), Commission Recommendation 2000/303/EC of 13 April 2000 on the reduction of CO<sub>2</sub> emissions from passenger cars (KAMA)<sup>(3)</sup> and Commission Recommendation 2000/304/EC of 13 April 2000 on the reduction of CO<sub>2</sub> emissions from passenger cars (JAMA)<sup>(4)</sup>.
- (8) On 7 February 2007, the Commission adopted two parallel Communications: a Communication setting out the results of the review of the Community Strategy to reduce CO<sub>2</sub> emissions from passenger cars and light-commercial vehicles and a Communication on a Competitive Automotive Regulatory Framework for the 21st Century (CARS21). The Communications underlined that progress had been made towards the target of 140 g CO<sub>2</sub>/km by 2008/2009, but that the Community objective of 120 g CO<sub>2</sub>/km would not be met by 2012 in the absence of additional measures.
- (9) The Communications proposed an integrated approach with a view to reaching the Community target of 120 g CO<sub>2</sub>/km by 2012 and announced that the Commission would propose a legislative framework to achieve the Community objective by focusing on mandatory reductions of emissions of CO<sub>2</sub> to reach an objective of 130 g CO<sub>2</sub>/km for the average new car fleet by means of improvements in vehicle motor technology. Consistent with the approach under the voluntary commitments adopted by manufacturers, this covers those elements that are taken into account in the measurement of the CO<sub>2</sub> emissions of passenger cars in accordance with 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<sup>(5)</sup>. A further reduction of 10 g CO<sub>2</sub>/km, or equivalent if technically necessary, will be delivered by other technological improvements and by an increased use of sustainable biofuels.
- (10) The legislative framework for implementing the average new car fleet target should ensure competitively neutral, socially equitable and sustainable reduction targets which take account of the diversity of European automobile manufacturers and avoid any unjustified distortion of competition between them. The legislative framework should be compatible with the overall objective of reaching the Community's Kyoto targets and should be complemented by other more use-related instruments such as differentiated car and energy taxes.
- (11) Appropriate funding should be ensured in the general budget of the European Union to promote the development of technologies intended to reduce radically CO<sub>2</sub> emissions from road vehicles.
- (12) In order to maintain the diversity of the car market and its ability to cater for different consumer needs, CO<sub>2</sub> targets for passenger cars should be defined according to the utility of the cars on a linear basis. To describe this utility, mass is an appropriate parameter which provides a correlation with present emissions and therefore results in more realistic and competitively neutral targets. Moreover, data on mass is readily available. Data on alternative utility parameters such as footprint (track width times wheelbase) should be collected in order to facilitate longer-term evaluations of the utility-based approach. The Commission should, by 2014, review the availability of data and, if appropriate, submit a proposal to the European Parliament and to the Council to adapt the utility parameter.
- (13) The aim of this Regulation is to create incentives for the car industry to invest in new technologies. This Regulation actively promotes eco-innovation and takes into account future technological developments. The development of innovative propulsion technologies should particularly be promoted, as they result in significantly lower emissions than traditional passenger cars. In this way, the long-term competitiveness of the European industry is promoted and more high-quality jobs are created. The Commission should consider the possibility of including eco-innovation measures in the review of test procedures pursuant to Article 14(3) of Regulation (EC) No 715/2007, taking into consideration the technical and economic impacts of such inclusion.

(1) OJ L 202, 10.8.2000, p. 1.

(2) OJ L 40, 13.2.1999, p. 49.

(3) OJ L 100, 20.4.2000, p. 55.

(4) OJ L 100, 20.4.2000, p. 57.

(5) OJ L 171, 29.6.2007, p. 1.

- (14) In recognition of the very high research and development and unit production costs of early generations of very low carbon vehicle technologies to be introduced into the marketplace following its entry into force, this Regulation seeks to accelerate and facilitate, on an interim basis, the process of introducing into the Community market ultra low carbon vehicles at their initial stages of commercialisation.
- (15) The use of certain alternative fuels can offer significant CO<sub>2</sub> reductions in well-to-wheel terms. This Regulation therefore incorporates specific provisions aimed at promoting further deployment of certain alternative-fuel vehicles in the Community market.
- (16) To provide consistency with the approach adopted under the Commission's CO<sub>2</sub> and cars strategy, in particular in relation to the voluntary commitments undertaken by the manufacturers associations, the target should be applied to new passenger cars which are registered in the Community for the first time and which, except for a limited period to avoid abuses, have not previously been registered outside the Community.
- (17) 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 <sup>(1)</sup> establishes a harmonised framework containing the administrative provisions and general technical requirements for approval of all new vehicles within its scope. The entity responsible for complying with this Regulation should be the same as that responsible for all aspects of the type-approval process in accordance with that Directive and for ensuring conformity of production.
- (18) For the purposes of type-approval, specific requirements apply for special-purpose vehicles, as defined in Annex II of Directive 2007/46/EC, and they should therefore be excluded from the scope of this Regulation. Vehicles which are classified as category M<sub>1</sub> before the entry into force of this Regulation, which are built specifically for commercial purposes to accommodate wheelchair use inside the vehicle and which meet the definition of special-purpose vehicle in Annex II of Directive 2007/46/EC should also be excluded from the scope of this Regulation in line with Community policy to help people with disabilities.
- (19) Manufacturers should have flexibility to decide how to meet their targets under this Regulation and should be allowed to average emissions over their new car fleet rather than having to respect CO<sub>2</sub> targets for each individual car. Manufacturers should therefore be required to ensure that the average specific emission for all the new cars registered in the Community for which they are responsible does not exceed the average of the emissions targets for those cars. This requirement should be phased in between 2012 and 2015 in order to facilitate the transition.
- (20) It is not appropriate to use the same method to determine the emissions reduction targets for large-volume manufacturers as for small-volume manufacturers considered as independent on the basis of the criteria set out in this Regulation. Such small-volume manufacturers should have alternative emissions reduction targets relating to the technological potential of a given manufacturer's vehicles to reduce their specific emissions of CO<sub>2</sub> and consistent with the characteristics of the market segments concerned. This derogation should be covered by the review of the specific emissions targets in Annex I, to be completed by the beginning of 2013 at the latest.
- (21) Niche manufacturers should be allowed to benefit from an alternative target which is 25 % lower than their average specific emissions of CO<sub>2</sub> in 2007. An equivalent target should be determined where information on a manufacturer's average specific emissions does not exist for the year 2007. This derogation should be covered by the review of the specific emissions targets in Annex I, to be completed by the beginning of 2013 at the latest.
- (22) In determining the average specific emissions of CO<sub>2</sub> for all the new cars registered in the Community for which manufacturers are responsible, all cars should be taken into account irrespective of their mass or other characteristics. Although Regulation (EC) No 715/2007 does not cover passenger cars with a reference mass exceeding 2 610 kg and to which type approval is not extended in accordance with Article 2(2) of Regulation (EC) No 715/2007, the emissions for these cars should be measured in accordance with the same measurement procedure as specified for passenger cars in Regulation (EC) No 692/2008 <sup>(2)</sup>. The resulting CO<sub>2</sub> emission values should be entered in the certificate of conformity of the vehicle in order to enable their inclusion in the monitoring scheme.
- (23) In order to provide for flexibility for the purposes of meeting their targets under this Regulation, manufacturers may agree to form a pool on an open, transparent and non-discriminatory basis. An agreement to form a pool should not exceed five years but may be renewed. Where manufacturers form a pool, they should be deemed to have met their targets under this Regulation provided that the average emissions of the pool as a whole do not exceed the target emissions for the pool.

<sup>(1)</sup> OJ L 263, 9.10.2007, p. 1.

<sup>(2)</sup> 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 (OJ L 199, 28.7.2008, p. 1).

- (24) A robust compliance mechanism is necessary in order to ensure that the targets under this Regulation are met.
- (25) The specific emissions of CO<sub>2</sub> from new passenger cars are measured on a harmonised basis in the Community according to the methodology laid down in Regulation (EC) No 715/2007. To minimise the administrative burden of this Regulation, compliance should be measured by reference to data on registrations of new cars in the Community collected by Member States and reported to the Commission. To ensure the consistency of the data used to assess compliance, the rules for the collection and reporting of this data should be harmonised as far as possible.
- (26) Directive 2007/46/EC provides that manufacturers are to issue a certificate of conformity which must accompany each new passenger car and that Member States are to permit the registration and entry into service of a new passenger car only if it is accompanied by a valid certificate of conformity. Data collected by Member States should be consistent with the certificate of conformity issued by the manufacturer for the passenger car and should be based on this reference only. Should Member States, for justified reasons, not use the certificate of conformity to complete the process of registration and entry into service of a new passenger car, they should put the necessary measures in place to ensure adequate accuracy in the monitoring procedure. There should be a Community standard database for certificate of conformity data. It should be used as a single reference to enable Member States to more easily maintain their registration data when vehicles are newly registered.
- (27) Manufacturers' compliance with the targets under this Regulation should be assessed at Community level. Manufacturers whose average specific emissions of CO<sub>2</sub> exceed those permitted under this Regulation should pay an excess emissions premium in respect of each calendar year from 2012 onwards. The premium should be adjusted according to the extent to which manufacturers fail to comply with their target. It should increase over time. In order to provide a sufficient incentive to take measures to reduce specific emissions of CO<sub>2</sub> from passenger cars, the premium should reflect technological costs. The amounts of the excess emissions premium should be considered as revenue for the general budget of the European Union.
- (28) Any national measure that Member States may maintain or introduce in accordance with Article 176 of the Treaty should not, in consideration of the purpose of and procedures established by this Regulation, impose additional or more stringent penalties on manufacturers who fail to meet their targets under this Regulation.
- (29) This Regulation should be without prejudice to the full application of Community competition rules.
- (30) The Commission should consider new modalities for reaching the long-term target, in particular the slope of the curve, the utility parameter and the excess emissions premium scheme.
- (31) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (32) In particular, the Commission should be empowered to amend the monitoring and reporting requirements in the light of the experience of the application of this Regulation, to establish methods for the collection of excess emissions premiums, to adopt detailed provisions concerning the derogation for certain manufacturers, and to adapt Annex I to take account of the evolution of the mass of new passenger cars registered in the Community and to reflect any change in the regulatory test procedure for the measurement of specific emissions of CO<sub>2</sub>. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (33) Decision No 1753/2000/EC should be repealed for reasons of simplification and legal clarity.
- (34) Since the objective of this Regulation, namely establishing CO<sub>2</sub> emissions performance requirements for new passenger cars in order to ensure the proper functioning of the internal market and to achieve the Union's overall objective of reducing emissions of greenhouse gases, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

#### Article 1

#### Subject matter and objectives

This Regulation establishes CO<sub>2</sub> emissions performance requirements for new passenger cars in order to ensure the proper functioning of the internal market and to achieve

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

the overall objective of the European Community of 120 g CO<sub>2</sub>/km as average emissions for the new car fleet. This Regulation sets the average CO<sub>2</sub> emissions for new passenger cars at 130 g CO<sub>2</sub>/km, by means of improvement in vehicle motor technology, as measured in accordance with Regulation (EC) No 715/2007 and its implementing measures and innovative technologies.

From 2020 onwards, this Regulation sets a target of 95 g CO<sub>2</sub>/km as average emissions for the new car fleet, in accordance with Article 13(5).

This Regulation will be complemented by additional measures corresponding to a reduction of 10 g CO<sub>2</sub>/km as part of the Community's integrated approach.

## Article 2

### Scope

1. This Regulation shall apply to motor vehicles of category M<sub>1</sub> as defined in Annex II to Directive 2007/46/EC ('passenger cars') which are registered in the Community for the first time and which have not previously been registered outside the Community ('new passenger cars').

2. A previous registration outside the Community made less than three months before registration in the Community shall not be taken into account.

3. This Regulation does not apply to special-purpose vehicles as defined in point 5 of Part A of Annex II to Directive 2007/46/EC.

## Article 3

### Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

- (a) 'average specific emissions of CO<sub>2</sub>' means, in relation to a manufacturer, the average of the specific emissions of CO<sub>2</sub> of all new passenger cars of which it is the manufacturer;
- (b) 'certificate of conformity' means the certificate referred to in Article 18 of Directive 2007/46/EC;
- (c) 'manufacturer' means the person or body responsible to the approval authority for all aspects of the EC type-approval procedure in accordance with Directive 2007/46/EC and for ensuring conformity of production;
- (d) 'mass' means the mass of the car with bodywork in running order as stated in the certificate of conformity and defined in section 2.6 of Annex I to Directive 2007/46/EC;
- (e) 'footprint' means the track width multiplied by the wheelbase as stated in the certificate of conformity and defined in sections 2.1 and 2.3 of Annex I to Directive 2007/46/EC;

(f) 'specific emissions of CO<sub>2</sub>' means the CO<sub>2</sub> emissions of a passenger car measured in accordance with Regulation (EC) No 715/2007 and specified as the CO<sub>2</sub> mass emissions (combined) in the certificate of conformity. For passenger cars which are not type-approved in accordance with Regulation (EC) No 715/2007, 'specific emissions of CO<sub>2</sub>' means the CO<sub>2</sub> emissions measured in accordance with the same measurement procedure as specified for passenger cars in Regulation (EC) No 692/2008, or in accordance with procedures adopted by the Commission to establish the CO<sub>2</sub> emissions for such passenger cars;

(g) 'specific emissions target' means, in relation to a manufacturer, the average of the specific emissions of CO<sub>2</sub> permitted in accordance with Annex I in respect of each new passenger car of which it is the manufacturer or, where the manufacturer is granted a derogation under Article 11, the specific emissions target determined in accordance with that derogation.

2. For the purposes of this Regulation 'a group of connected manufacturers' means a manufacturer and its connected undertakings. In relation to a manufacturer, 'connected undertakings' means:

- (a) undertakings in which the manufacturer has, directly or indirectly:
  - the power to exercise more than half the voting rights;
  - the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking; or
  - the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over the manufacturer, the rights or powers listed in point (a);
- (c) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, the rights or powers listed in point (a);
- (d) undertakings in which the manufacturer together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in point (a);
- (e) undertakings in which the rights or the powers listed in (a) are jointly held by the manufacturer or one or more of its connected undertakings referred to in points (a) to (d) and one or more third parties.

## Article 4

### Specific emissions targets

For the calendar year commencing 1 January 2012 and each subsequent calendar year, each manufacturer of passenger cars shall ensure that its average specific emissions of CO<sub>2</sub> do not exceed its specific emissions target determined in accordance with Annex I

or, where a manufacturer is granted a derogation under Article 11, in accordance with that derogation.

For the purposes of determining each manufacturer's average specific emissions of CO<sub>2</sub>, the following percentages of each manufacturer's new passenger cars registered in the relevant year shall be taken into account:

- 65 % in 2012,
- 75 % in 2013,
- 80 % in 2014,
- 100 % from 2015 onwards.

#### Article 5

##### Super-credits

In calculating the average specific emissions of CO<sub>2</sub>, each new passenger car with specific emissions of CO<sub>2</sub> of less than 50 g CO<sub>2</sub>/km shall be counted as:

- 3,5 cars in 2012,
- 3,5 cars in 2013,
- 2,5 cars in 2014,
- 1,5 cars in 2015,
- 1 car from 2016.

#### Article 6

##### Specific emissions target for alternative-fuel vehicles

For the purpose of determining compliance by a manufacturer with its specific emissions target referred to in Article 4, the specific emissions of CO<sub>2</sub> of each vehicle designed to be capable of running on a mixture of petrol with 85 % ethanol ('E85') which meets relevant Community legislation or European technical standards, shall be reduced by 5 % until 31 December 2015 in recognition of the greater technological and emissions reduction capability when running on biofuels. This reduction shall apply only where at least 30 % of the filling stations in the Member State in which the vehicle is registered provide this type of alternative fuel complying with the sustainability criteria for biofuels set out in relevant Community legislation.

#### Article 7

##### Pooling

1. Manufacturers, other than manufacturers which have been granted a derogation under Article 11, may form a pool for the purposes of meeting their obligations under Article 4.

2. An agreement to form a pool may relate to one or more calendar years, provided that the overall duration of each agreement does not exceed five calendar years, and must be entered into on or before 31 December in the first calendar year for which emissions are to be pooled. Manufacturers which form a pool shall file the following information with the Commission:

- (a) the manufacturers who will be included in the pool;
- (b) the manufacturer nominated as the pool manager who will be the contact point for the pool and will be responsible for paying any excess emissions premium imposed on the pool in accordance with Article 9; and
- (c) evidence that the pool manager will be able to fulfil the obligations under point (b).

3. Where the proposed pool manager fails to meet the requirement to pay any excess emissions premium imposed on the pool in accordance with Article 9, the Commission shall notify the manufacturers.

4. Manufacturers included in a pool shall jointly inform the Commission of any change of pool manager or its financial status, in so far as this may affect its ability to meet the requirement to pay any excess emissions premium imposed on the pool in accordance with Article 9 and of any changes to the membership of the pool or the dissolution of the pool.

5. Manufacturers may enter into pooling arrangements provided that their agreements are in compliance with Articles 81 and 82 of the Treaty and that they allow open, transparent and non-discriminatory participation on commercially reasonable terms by any manufacturer requesting membership of the pool. Without prejudice to the general applicability of Community competition rules to such pools, all members of a pool shall in particular ensure that neither data sharing nor information exchange may occur in the context of their pooling arrangement, except in respect of the following information:

- (a) the average specific emissions of CO<sub>2</sub>;
- (b) the specific emissions target;
- (c) the total number of vehicles registered.

6. Paragraph 5 shall not apply where all the manufacturers included in the pool are part of the same group of connected manufacturers.

7. Except where notification is given under paragraph 3, the manufacturers in a pool in respect of which information is filed with the Commission shall be considered as one manufacturer for the purposes of meeting their obligations under Article 4. Monitoring and reporting information in respect of individual manufacturers as well as any pools will be recorded, reported and available in the central register referred to in Article 8(4).

#### Article 8

##### Monitoring and reporting of average emissions

1. For the calendar year commencing 1 January 2010 and each subsequent calendar year, each Member State shall record information for each new passenger car registered in its territory in accordance with Part A of Annex II. This information shall be made available to the manufacturers and their designated importers or representatives in each Member State. Member States shall make every effort to ensure that reporting bodies operate in a transparent manner. Each Member State shall ensure that the specific emissions of CO<sub>2</sub> of passenger cars which are not type-approved in accordance with Regulation (EC) No 715/2007 are measured and recorded in the certificate of conformity.

2. By 28 February of each year, commencing in 2011, each Member State shall determine and transmit to the Commission the information listed in Part B of Annex II in respect of the preceding calendar year. The data shall be transmitted in accordance with the format specified in Part C of Annex II.

3. On request from the Commission, a Member State shall also transmit the full set of data collected pursuant to paragraph 1.

4. The Commission shall keep a central register of the data reported by Member States under this Article and by 30 June of each year, commencing in 2011, shall provisionally calculate the following for each manufacturer:

- (a) the average specific emissions of CO<sub>2</sub> in the preceding calendar year;
- (b) the specific emissions target in the preceding calendar year; and
- (c) the difference between its average specific emissions of CO<sub>2</sub> in the preceding calendar year and its specific emissions target for that year.

The Commission shall notify each manufacturer of its provisional calculation for that manufacturer. The notification shall include data for each Member State on the number of new passenger cars registered and their specific emissions of CO<sub>2</sub>.

The register shall be publicly available.

5. Manufacturers may, within three months of being notified of the provisional calculation under paragraph 4, notify the Commission of any errors in the data, specifying the Member State in which it considers that the error occurred.

The Commission shall consider any notifications from manufacturers and shall, by 31 October, either confirm or amend the provisional calculations under paragraph 4.

6. Where, on the basis of the calculations under paragraph 5, in relation to the calendar year 2010 or 2011, it appears to the Commission that a manufacturer's average specific emissions of CO<sub>2</sub> in that year exceeded its specific emissions target for that year, the Commission shall notify the manufacturer.

7. Member States shall designate a competent authority for the collection and communication of the monitoring data in accordance with this Regulation and shall inform the Commission of the competent authority designated no later than 8 December 2009. The Commission shall subsequently inform the European Parliament and the Council thereof.

8. For each calendar year in which Article 6 applies, Member States shall provide information to the Commission regarding the proportion of filling stations and the sustainability criteria in relation to E85 as referred to in that Article.

9. The Commission may adopt detailed rules on the monitoring and reporting of data under this Article and on the application of Annex II in accordance with the regulatory procedure referred to in Article 14(2).

The Commission may amend Annex II in the light of the experience of the application of this Regulation. Those measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

#### Article 9

##### Excess emissions premium

1. In respect of each calendar year from 2012 onwards for which a manufacturer's average specific emissions of CO<sub>2</sub> exceed its specific emissions target in that year, the Commission shall impose an excess emissions premium on the manufacturer or, in the case of a pool, the pool manager.

2. The excess emissions premium under paragraph 1 shall be calculated using the following formulae:

(a) From 2012 until 2018:

- (i) Where the manufacturer's average specific emissions of CO<sub>2</sub> exceed its specific emissions target by more than 3 g CO<sub>2</sub>/km:

$$((\text{Excess emissions} - 3 \text{ g CO}_2/\text{km}) \times 95 \text{ €/g CO}_2/\text{km} + 1 \text{ g CO}_2/\text{km} \times 25 \text{ €/g CO}_2/\text{km} + 1 \text{ g CO}_2/\text{km} \times 15 \text{ €/g CO}_2/\text{km} + 1 \text{ g CO}_2/\text{km} \times 5 \text{ €/g CO}_2/\text{km}) \times \text{number of new passenger cars.}$$

- (ii) Where the manufacturer's average specific emissions of CO<sub>2</sub> exceed its specific emissions target by more than 2 g CO<sub>2</sub>/km but no more than 3 g CO<sub>2</sub>/km:

$$((\text{Excess emissions} - 2 \text{ g CO}_2/\text{km}) \times 25 \text{ €/g CO}_2/\text{km} + 1 \text{ g CO}_2/\text{km} \times 15 \text{ €/g CO}_2/\text{km} + 1 \text{ g CO}_2/\text{km} \times 5 \text{ €/g CO}_2/\text{km}) \times \text{number of new passenger cars.}$$

- (iii) Where the manufacturer's average specific emissions of CO<sub>2</sub> exceed its specific emissions target by more than 1 but no more than 2 g CO<sub>2</sub>/km:

$$((\text{Excess emissions} - 1 \text{ g CO}_2/\text{km}) \times 15 \text{ €/g CO}_2/\text{km} + 1 \text{ g CO}_2/\text{km} \times 5 \text{ €/g CO}_2/\text{km}) \times \text{number of new passenger cars.}$$

- (iv) Where the manufacturer's average specific emissions of CO<sub>2</sub> exceed its specific emissions target by no more than 1 g CO<sub>2</sub>/km:

$$(\text{Excess emissions} \times 5 \text{ €/g CO}_2/\text{km}) \times \text{number of new passenger cars.}$$

- (b) From 2019:

$$(\text{Excess emissions} \times 95 \text{ €/g CO}_2/\text{km}) \times \text{number of new passenger cars.}$$

For the purposes of this Article, 'excess emissions', determined as set out in Article 4, means the positive number of grams per kilometre by which the manufacturer's average specific emissions — taking into account CO<sub>2</sub> emissions reductions due to approved innovative technologies — exceeded its specific emissions target in the calendar year rounded to the nearest three decimal places; and 'number of new passenger cars' means the number of new passenger cars of which it is the manufacturer and which were registered in that year according to the phase-in criteria set out in Article 4.

3. The Commission shall establish methods for the collection of excess emissions premiums under paragraph 1.

Those measures designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

4. The amounts of the excess emissions premium shall be considered as revenue for the general budget of the European Union.

#### Article 10

##### Publication of performance of manufacturers

1. By 31 October of each year, commencing in 2011, the Commission shall publish a list indicating for each manufacturer:

- (a) its specific emissions target for the preceding calendar year;

- (b) its average specific emissions of CO<sub>2</sub> in the preceding calendar year;

- (c) the difference between its average specific emissions of CO<sub>2</sub> in the preceding calendar year and its specific emissions target in that year;

- (d) the average specific emissions of CO<sub>2</sub> for all new passenger cars in the Community in the previous calendar year; and

- (e) the average mass for all new passenger cars in the Community in the preceding calendar year.

2. From the 31 October 2013, the list published under paragraph 1 shall also indicate whether or not the manufacturer has complied with the requirements of Article 4 in respect of the preceding calendar year.

#### Article 11

##### Derogations for certain manufacturers

1. An application for a derogation from the specific emissions target calculated in accordance with Annex I may be made by a manufacturer which is responsible for fewer than 10 000 new passenger cars registered in the Community per calendar year and:

- (a) is not part of a group of connected manufacturers; or
- (b) is part of a group of connected manufacturers that is responsible in total for fewer than 10 000 new passenger cars registered in the Community per calendar year; or
- (c) is part of a group of connected manufacturers but operates its own production facilities and design centre.

2. A derogation applied for under paragraph 1 may be granted for a maximum period of five calendar years. An application shall be made to the Commission and shall include:

- (a) the name of, and contact person for, the manufacturer;
- (b) evidence that the manufacturer is eligible for a derogation under paragraph 1;
- (c) details of the passenger cars which it manufactures including the mass and specific emissions of CO<sub>2</sub> of those passenger cars; and
- (d) a specific emissions target consistent with its reduction potential, including the economic and technological potential to reduce its specific emissions of CO<sub>2</sub> and taking into account the characteristics of the market for the type of car manufactured.

3. Where the Commission considers that the manufacturer is eligible for a derogation applied for under paragraph 1 and is satisfied that the specific emissions target proposed by the manufacturer is consistent with its reduction potential, including the economic and technological potential to reduce its specific emissions of CO<sub>2</sub>, and taking into account the characteristics of the market for the type of car manufactured, the Commission shall grant a derogation to the manufacturer. The derogation shall apply from 1 January of the year following the date of granting of the derogation.

4. An application for a derogation from the specific emissions target calculated in accordance with Annex I may be made by a manufacturer which is responsible, together with all of its connected undertakings, for between 10 000 and 300 000 new passenger cars registered in the Community per calendar year.

Such application may be made by a manufacturer in respect of itself or in respect of itself together with any of its connected undertakings. An application shall be made to the Commission and shall include:

- (a) all of the information referred to in paragraphs 2(a) and (c) including, where relevant, information about any connected undertakings.
- (b) a target which is a 25 % reduction on the average specific emissions of CO<sub>2</sub> in 2007 or, where a single application is made in respect of a number of connected undertakings, a 25 % reduction on the average of those undertakings' average specific emissions of CO<sub>2</sub> in 2007.

Where information on a manufacturer's average specific emissions of CO<sub>2</sub> does not exist for the year 2007, the Commission shall determine an equivalent reduction target based upon the best available CO<sub>2</sub> emissions reduction technologies deployed in passenger cars of comparable mass and taking into account the characteristics of the market for the type of car manufactured. This target shall be used by the applicant for the purposes of point (b).

The Commission shall grant a derogation to the manufacturer where it is demonstrated that the criteria for the derogation referred to in this paragraph have been met.

5. A manufacturer which is subject to a derogation in accordance with this Article shall notify the Commission immediately of any change which affects or may affect its eligibility for a derogation.

6. Where the Commission considers, whether on the basis of a notification under paragraph 5 or otherwise, that a manufacturer is no longer eligible for the derogation, it shall revoke the derogation with effect from 1 January of the next calendar year and shall notify the manufacturer thereof.

7. Where the manufacturer does not attain its specific emissions target, the Commission shall impose the excess emissions premium on the manufacturer, as set out in Article 9.

8. The Commission may adopt detailed provisions for the implementation of paragraphs 1 to 7, *inter alia*, on the interpretation of the eligibility criteria for derogations, on the content of applications, and on the content and assessment of programmes for the reduction of specific emissions of CO<sub>2</sub>.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

9. Applications for a derogation, including the information supporting it, notifications under paragraph 5, revocations under paragraph 6 and any imposition of an excess emissions premium under paragraph 7 and measures adopted pursuant to paragraph 8, shall be made publicly available, subject to 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 <sup>(1)</sup>.

## Article 12

### Eco-innovation

1. Upon application by a supplier or a manufacturer, CO<sub>2</sub> savings achieved through the use of innovative technologies shall be considered. The total contribution of those technologies to reducing the specific emissions target of a manufacturer may be up to 7 g CO<sub>2</sub>/km.

2. The Commission shall, by 2010, adopt detailed provisions for a procedure to approve such innovative technologies in accordance with the regulatory procedure referred to in Article 14(2). Those detailed provisions shall be based on the following criteria for innovative technologies:

- (a) the supplier or manufacturer must be accountable for the CO<sub>2</sub> savings achieved through the use of the innovative technologies;
- (b) the innovative technologies must make a verified contribution to CO<sub>2</sub> reduction;
- (c) the innovative technologies must not be covered by the standard test cycle CO<sub>2</sub> measurement or by mandatory provisions due to complementary additional measures complying with the 10 g CO<sub>2</sub>/km reduction referred to in Article 1 or be mandatory under other provisions of Community law.

3. A supplier or a manufacturer who applies for a measure to be approved as an innovative technology shall submit a report, including a verification report undertaken by an independent and certified body, to the Commission. In the event of a possible interaction of the measure with another innovative technology already approved, the report shall mention that interaction and the verification report shall evaluate to what extent that interaction modifies the reduction achieved by each measure.

<sup>(1)</sup> OJ L 145, 31.5.2001, p. 43.

4. The Commission shall attest the reduction achieved on the basis of the criteria set out in paragraph 2.

#### Article 13

##### Review and report

1. In 2010, the Commission shall submit a report to the European Parliament and to the Council reviewing the progress made towards implementation of the Community's integrated approach to reducing CO<sub>2</sub> emissions from light-duty vehicles.

2. By 31 October 2014, and every three years thereafter, measures shall be adopted to amend Annex I to adjust the figure M<sub>0</sub>, referred to therein, to the average mass of new passenger cars in the previous three calendar years.

Those measures shall take effect for the first time on 1 January 2016 and every three years thereafter.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

3. From 2012, the Commission shall carry out an impact assessment in order to review by 2014, as provided for in Article 14(3) of Regulation (EC) No 715/2007, the procedures for measuring CO<sub>2</sub> emissions as set out under that Regulation. The Commission shall, in particular, make appropriate proposals to adapt those procedures to reflect adequately the real CO<sub>2</sub> emissions behaviour of cars and to include the approved innovative technologies as defined in Article 12 that could be reflected in the test cycle. The Commission shall ensure that those procedures are subsequently reviewed on a regular basis.

From the date of application of the revised procedure for the measuring of CO<sub>2</sub> emissions, innovative technologies shall no longer be approved under the procedure set out in Article 12.

4. By 2010, the Commission shall review Directive 2007/46/EC so that each type/variant/version corresponds to a unique set of innovative technologies.

5. By 1 January 2013, the Commission shall complete a review of the specific emissions targets in Annex I and of the derogations in Article 11, with the aim of defining:

- the modalities for reaching, by the year 2020, a long-term target of 95 g CO<sub>2</sub>/km in a cost-effective manner; and
- the aspects of the implementation of that target, including the excess emissions premium.

On the basis of such a review and its impact assessment, which includes an overall assessment of the impact on the car industry and its dependent industries, the Commission shall, if appropriate, make a proposal to amend this Regulation in a way which is as neutral as possible from the point of view of competition, and which is socially equitable and sustainable.

6. The Commission shall by 2014, following an impact assessment, publish a report on the availability of data on footprint and its use as a utility parameter for determining specific emissions targets and, if appropriate, submit a proposal to the European Parliament and to the Council to amend Annex I.

7. Measures shall be adopted to provide for the necessary adaptation to the formulae of Annex I in order to reflect any change in the regulatory test procedure for the measurement of specific CO<sub>2</sub> emissions.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

#### Article 14

##### Committee procedure

1. The Commission shall be assisted by the committee established by Article 9 of Decision No 280/2004/EC <sup>(1)</sup>.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 15

##### Repeal

Decision No 1753/2000/EC shall be repealed with effect from 1 January 2010.

However, Articles 4, 9 and 10 of that Decision shall continue to apply until the Commission has submitted a report on monitoring data for the calendar year 2009 to the European Parliament.

<sup>(1)</sup> Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 49, 19.2.2004, p. 1).

*Article 16***Entry into force**

This Regulation shall enter into force on the third 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 Strasbourg, 23 April 2009.

*For the European Parliament*  
*The President*  
H.-G. PÖTTERING

*For the Council*  
*The President*  
P. NEČAS

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## ANNEX I

## SPECIFIC EMISSIONS TARGETS

1. The specific emissions of CO<sub>2</sub> for each new passenger car, measured in grams per kilometre, shall, for the purposes of the calculations in this Annex, be determined in accordance with the following formulae:

- (a) From 2012 to 2015:

$$\text{Specific emissions of CO}_2 = 130 + a \times (M - M_0)$$

Where:

M = mass of the vehicle in kilograms (kg)

M<sub>0</sub> = 1 372,0

a = 0,0457

- (b) From 2016:

$$\text{Specific emission of CO}_2 = 130 + a \times (M - M_0)$$

Where:

M = mass of the vehicle in kilograms (kg)

M<sub>0</sub> = the value adopted pursuant to Article 13(2)

a = 0,0457

2. The specific emissions target for a manufacturer in a calendar year shall be calculated as the average of the specific emissions of CO<sub>2</sub> of each new passenger car registered in that calendar year of which it is the manufacturer.

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## ANNEX II

**MONITORING AND REPORTING EMISSIONS****PART A — Collection of data on new passenger cars and determination of CO<sub>2</sub> monitoring information**

1. For the calendar year commencing 1 January 2010 and each subsequent calendar year, Member States shall record the following details for each new passenger car registered in its territory:
  - (a) the manufacturer;
  - (b) its type, variant and version;
  - (c) its specific emissions of CO<sub>2</sub> (g/km);
  - (d) its mass (kg);
  - (e) its wheel base (mm); and
  - (f) its track width (mm).
2. The details referred to in point 1 shall be taken from the certificate of conformity for the relevant passenger car. Where the certificate of conformity specifies both a minimum and a maximum mass for a passenger car, Member States shall use only the maximum figure for the purposes of this Regulation. In the case of bi-fuelled vehicles (petrol/gas) the certificates of conformity of which bear specific CO<sub>2</sub> emission figures for both types of fuel, Member States shall use only the figure measured for gas.
3. For the calendar year commencing 1 January 2010 and each subsequent calendar year, each Member State shall determine, in accordance with the methods described in Part B, for each manufacturer:
  - (a) the total number of new passenger cars registered in its territory;
  - (b) the average specific emissions of CO<sub>2</sub>, as specified in point 2 of Part B of this Annex;
  - (c) the average mass, as specified in point 3 of Part B of this Annex;
  - (d) for each version of each variant of each type of new passenger car:
    - (i) the total number of new passenger cars registered in its territory, as specified in point 1 of Part B of this Annex;
    - (ii) the specific emissions of CO<sub>2</sub> and the share of emissions reduction as a result of innovative technologies in accordance with Article 12 or alternative-fuel vehicles in accordance with Article 6;
    - (iii) the mass;
    - (iv) the footprint of the car, as specified in point 5 of Part B of this Annex.

**PART B — Methodology for determining CO<sub>2</sub> monitoring information for new passenger cars**

Monitoring information which Member States are required to determine in accordance with point 3 of Part A shall be determined in accordance with the methodology in this Part.

1. Number of new passenger cars registered (N)

Member States shall determine the number of new passenger cars registered within their territory in the respective monitoring year (N).

2. Average specific emissions of CO<sub>2</sub> of new passenger cars ( $S_{ave}$ )

The average specific emissions of CO<sub>2</sub> of all new passenger cars newly registered in a Member State's territory in the monitoring year ( $S_{ave}$ ) is calculated by dividing the sum of the specific emissions of CO<sub>2</sub> of each individual new passenger car ( $S$ ) by the number of new passenger cars ( $N$ ).

$$S_{ave} = (1/N) \times \Sigma S$$

## 3. Average mass of new passenger cars

The average mass of all new passenger cars registered in a Member State's territory in the monitoring year ( $M_{ave}$ ) is calculated by dividing the sum of the mass of each individual new passenger car ( $M$ ) by the number of new passenger cars ( $N$ ).

$$M_{ave} = (1/N) \times \Sigma M$$

## 4. The distribution by version of new passenger cars

For each version of each variant of each type of new passenger car, the number of newly registered passenger cars, the mass of the vehicles, the specific emissions of CO<sub>2</sub> and the footprint of the car are to be recorded.

## 5. Footprint

The footprint of the car shall be calculated by multiplying the wheelbase of the car by the track width of the car.

**PART C — Format for the transmission of data**

For each year, Member States shall report the data described in point 3 of Part A for each manufacturer in the following formats:

Aggregated data:

Year:				
Manufacturer	Total number of new passenger cars registered	Average specific emissions of CO <sub>2</sub> (g/km)	Average mass (kg)	Average footprint (m <sup>2</sup> )
(Manufacturer 1)	...	...	...	...
(Manufacturer 2)	...	...	...	...
...	...	...	...	...
Total all manufacturers	...	...	...	...

Detailed data at manufacturer level:

Year	Manufacturer	Type of car	Variant	Version	Innovative technology (*) or group of innovative technologies, or alternative-fuel vehicle (**)	Make	Commercial name	Total new registrations	Specific emissions of CO <sub>2</sub> (g/km)	Mass (kg)	Foot-print (m <sup>2</sup> )	Emissions reduction through innovative technologies (*) or alternative-fuel capability (**)
Year 1	(Name of manufacturer 1)	(name of type 1)	(name of variant 1)	(name of version 1)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	(name of type 1)	(name of variant 1)	(name of version 2)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	(name of type 1)	(name of variant 2)	(name of version 1)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	(name of type 1)	(name of variant 2)	(name of version 2)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	(name of type 2)	(name of variant 1)	(name of version 1)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	(name of type 2)	(name of variant 1)	(name of version 2)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	(name of type 2)	(name of variant 2)	(name of version 1)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	(name of type 2)	(name of variant 2)	(name of version 2)		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	...	...	...		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)			...		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)		...	...		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)		...	...		...	...	...	...	...	...	...
Year 1	(Name of manufacturer 1)	...	...	...		...	...	...	...	...	...	...

(\*) In accordance with Article 12.

(\*\*) In accordance with Article 6.