

GUIDANCE

ON THE IMPLEMENTATION OF ARTICLE 35 OF REGULATION (EU) 2016/1628

JULY 2024

Type-approval of engines incorporating new technologies or new concepts incompatible with one or more requirements of the Regulation



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Only the text of the Regulation and of the relevant supplementing legislation is authentic in law.

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1 INTRODUCTION

Engines that incorporate new technologies or concepts may be incompatible with one or more of the requirements of Regulation (EU) 2016/1628.

Such engines may be temporarily placed on the market for the purposes of field testing under Article 34 (4) of Regulation (EU) 2016/1628. In this case the requirements of Regulation (EU) 2017/654 Annex XI also apply.

To permanently place these engines on the market, a manufacturer must apply for an engine type-approval under Article 35 of the Regulation (EU) 2016/1628 – an exemption for new technologies or new concepts.

The procedure and conditions for gaining an Article 35 type-approval differ from those of the traditional type-approval route. This document aims to provide guidance on making an application for type-approval using Article 35 and provide recommendations for the consistent use of Article 35 by all involved actors.

To supplement this guidance document, EUROMOT intends to release targeted annexes to address specific new technologies, and the parts of the Regulation with which they cannot comply, as well as potential alternative processes that may be used.

2 ARTICLE 35 REQUIREMENTS AND LIMITATIONS

Applications under Article 35 of Regulation (EU) 2016/1628 differ in both the requirements, and in the potential limitations of the resulting EU type-approval.

Where authorised by the European Commission, an approval authority must grant an ordinary EU type-approval, valid in all EU territories and others that recognise those approvals, if information addressing the points below has been provided by the manufacturer in their application:

- a) That the reasons why the new technology is incompatible with the requirements of the Regulation are identified.
- b) That the new technology has a level of environmental protection that is at least equivalent to the level that would be achieved if the Regulation were fully met.
- c) That evidence can be provided to prove the environmental performance of the new technology.

European Commission authorisation is granted through the publication of an implementing act. The timeframe for this publication after an application is received, is not defined. EUROMOT notes that the evaluation of an application will need to take place promptly to ensure that the outcome is known well in advance of the end of the 36-month minimum period of validity of the provisional type-approval noted in section 3 of this document thereby providing certainty for all parties.

3 ISSUE OF A PROVISIONAL EU TYPE-APPROVAL

In the interim, whilst awaiting the decision from the European Commission the approval authority may issue a provisional EU type-approval that is valid:

- a) Only in the territory of the granting Member State.
- b) Only in respect of the engine type or engine family that is covered by the Article 35 new technology exemption.
- c) For a minimum period of at least 36 months.

The regulation sets no maximum validity period for the provisional EU type-approval. To reduce administrative burden on all parties, EUROMOT recommends that provisional EU type-approvals are granted for an unlimited period as for an ordinary type-approval.

Upon the issue of a provisional EU type-approval, Regulation (EU) 2016/1628 requires that the issuing approval authority notify the European Commission and the other Member States, sharing the documentation that supported the provisional type-approval. The regulation considers such notification to have been achieved when the relevant information has been uploaded onto the IMI (internal market information) database. However, in the absence of a fully operational NRMM article 35 module in the IMI database and to ensure that notifications are processed efficiently, EUROMOT recommends that the required notification is sent directly to the European Commission unit responsible for Regulation (EU) 2016/1628 (DG-GROW I2 – mobility) and to the contact point for each approval authority responsible for NRMM engine emission type-approval (Link: <https://ec.europa.eu/docsroom/documents/45362>).

4 RECOGNITION OF A PROVISIONAL EU TYPE-APPROVAL

Approval authorities other than the issuing authority may also decide to permit engines with a provisional EU type-approval to be placed on the market in the territory of the member state for which they are responsible. This is decided on a Member State-by-Member State basis. EUROMOT recommends that when informing the approval authority of another member state that a provisional type-approval has been granted, the issuing approval authority requests that each of the other member state approval authorities accept that type-approval. Regulation (EU) 2016/1628 requires that each approval authority that accepts the provisional type-approval within its territory, notify the European Commission and the issuing approval authority of that acceptance. This could be achieved by communicating with the issuing approval authority and the European Commission unit identified in the previous paragraph. Given that the regulation requires a positive response to enable the type-approval to be used in those additional member states, EUROMOT emphasises the benefit to all parties from approval authorities communicating in a timely manner their acceptance or rejection of such provisional type-approval.

5 VALIDITY OF THE PROVISIONAL TYPE-APPROVAL

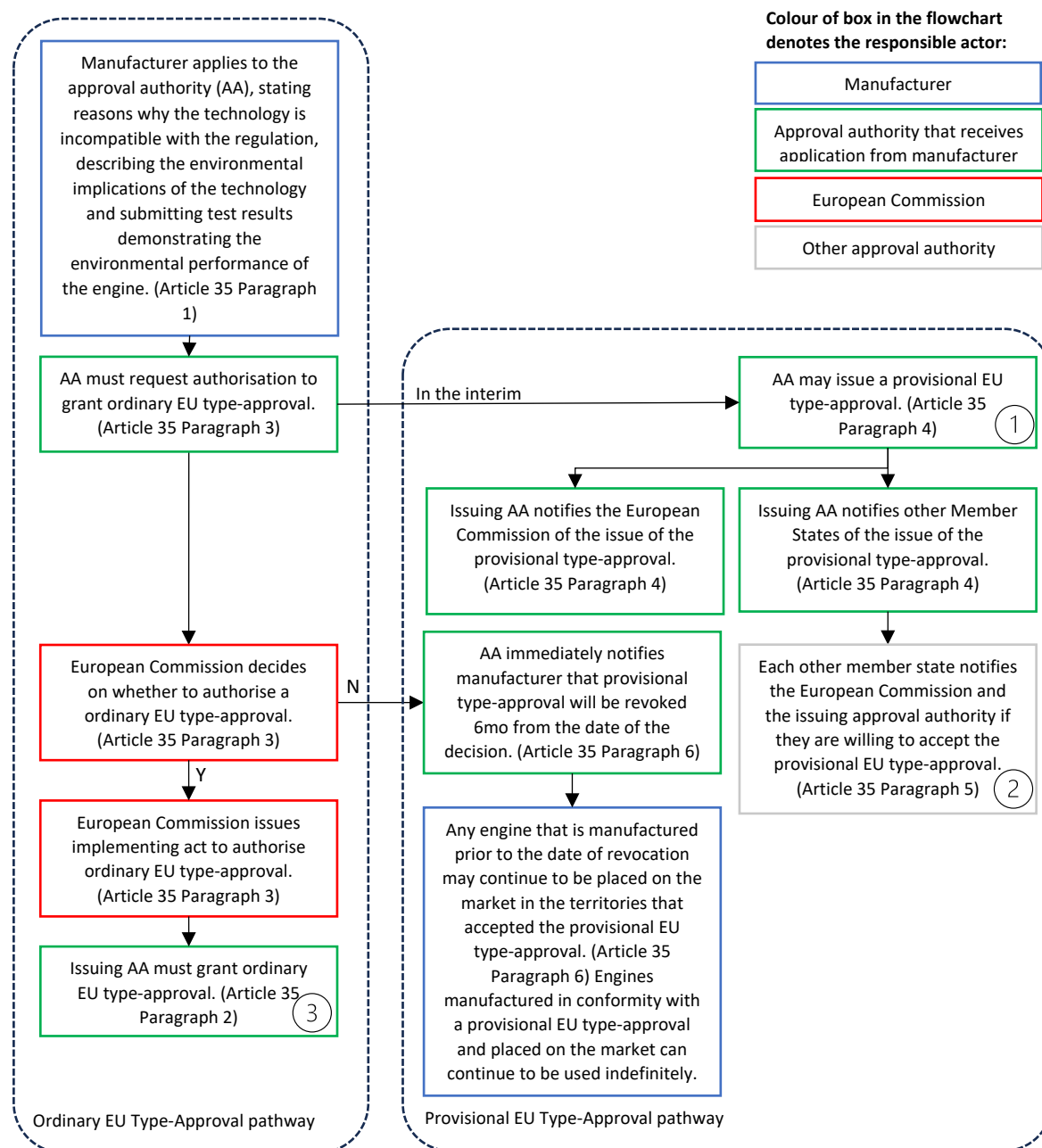
Article 30 of Regulation (EU) 2016/1628 sets out the duration of validity of an EU type-approval and the conditions under which an EU type-approval ceases to be valid. It is important to note that when the validity of an EU type-approval ceases this prevents any further engines being placed on the EU market on the basis of that type-approval, but it does not invalidate the installation and use of engines already placed on the EU market, which can continue indefinitely.

In the case of a provisional EU type-approval the duration of validity is set by the issuing member state but is no less than 36 months (see section 3 of this document). Should the European Commission decide NOT to authorise the approval authority to issue the ordinary type-approval by means of an implementing act the provisional EU type-approval must be revoked six months after the Commission's refusal. In that case it is stated that engines manufactured in conformity with the provisional EU type-approval before it ceases to be valid may be placed on the market in any Member State the approval authorities of which accepted the provisional EU type-approval. Installation and use of engines already placed on the market can continue indefinitely (i.e. the revocation is not retrospective).

6 SUMMARY OF THE ARTICLE 35 PROCESS

A flowchart of the process is provided in Figure 1. This is intended to summarise the sequence of actions by all involved actors, and the consequent outcomes.

Figure 1. Article 35 application process



Outcomes

- Engine can be placed on the market in the territory of the issuing approval authority, when appropriately marked and accompanied by the relevant statement of conformity.
- Engine can be placed on the market in the territory of the issuing approval authority and that of any other approval authority that has notified the European Commission that the provisional type-approval is accepted, when appropriately marked and accompanied by the relevant statement of conformity.
- Engine can be placed on the market in the territory of any EU Member State using the ordinary type-approval and corresponding marking. The provisional EU type-approval, marking that corresponds with the provisional EU type-approval and statement of conformity are no longer required.

7 STATEMENT OF CONFORMITY AND STATUTORY MARKINGS

As required by Regulation (EU) 2016/1628 Articles 31 and 32 and the corresponding supplementing regulations, engines that are placed on the market on the basis of a provisional type-approval must be accompanied by a statement of conformity for a 'New Technology Engine' and must have a corresponding statutory marking. In Figure 1, this applies to engines placed upon the market at points ① or ②. Engines are placed on the market at point ③ on the basis of an ordinary type-approval, for which ordinary Stage V engine marking requirements apply, and no statement of conformity is required.

The requirements for the statement of conformity and statutory marking of are laid out in Commission Implementing Regulation (EU) 2017/656 in the following locations:

- Statement of conformity: Annex II Appendix 1 Section 1
- Statutory marking: Annex II Appendix 2 Table 1

8 AMENDMENTS OF THE PROVISIONAL TYPE-APPROVAL

Articles 27 – 29 of Regulation (EU) 2016/1628 set out the provisions for revising or extending EU type-approvals. The Regulation does not distinguish between ordinary or provisional EU type-approvals and consequently EUROMOT assumes that the process for amending both is the same, as set out in these articles. The Regulation does not contain any provision requiring either (a) the approval authority that issued the provisional EU type-approval to re-notify the European Commission or other approval authorities, or (b) those other approval authorities that have chosen to accept the provisional EU type-approval to re-notify the other parties of their continued acceptance of that type-approval in its revised or extended form.

9 SUBSEQUENT ADAPTATION OF DELEGATED AND IMPLEMENTING ACTS

Article 36 of 2016/1628 is triggered when an ordinary EU type-approval is authorised through the Article 35 process. This directs the Commission to begin the process of adapting the Regulations to enable the type-approval of the new technology that was the subject of the Article 35 type-approval without the need to follow the Article 35 process.

10 REFERENCES

Regulation (EU) 2016/1628 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, Articles 27 – 30, 35 and 36.



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