# Regulation (EC) No 78/2009 of the European Parliament and of the Council of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users, amending Directive 2007/46/EC and repealing Directives 2003/102/EC and 2005/66/EC (Text with EEA relevance)

REGULATION (EC) No 78/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(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 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital must be ensured. To that end a Community type-approval system for motor vehicles is in place. The technical requirements for the type-approval of motor vehicles with regard to pedestrian protection should be harmonised to avoid the adoption of requirements that differ from one Member State to another and to ensure the proper functioning of the internal market.

(2) This Regulation is one of the separate regulatory acts in the context of the Community type-approval procedure under 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 (Framework Directive)[(3)]. In order to achieve the aims set out in recital 1 of this Regulation, Annexes I, III, IV, VI and XI to Directive 2007/46/EC should be amended.

(3) Experience has shown that legislation concerning motor vehicles has often been of a highly detailed technical content. It is therefore appropriate to adopt a regulation instead of a directive in order to avoid discrepancies between transposing measures and an unnecessary level of legislation in the Member States, as there will be no need for transposition into national legislation. Therefore, Directive 2003/102/EC of the European Parliament and of the Council of 17 November 2003 relating to the protection

of pedestrians and other vulnerable road users before and in the event of a collision with a motor vehicle[(4)] and Directive 2005/66/EC of the European Parliament and of the Council of 26 October 2005 relating to the use of frontal protection systems on motor vehicles[(5)] which provides requirements for the installation and use of frontal protection systems on vehicles and thus a level of protection for pedestrians, should be replaced by this Regulation in order to ensure consistency in this area. This implies that Member States repeal the transposing legislation of the repealed Directives.

(4) The requirements for the second phase of implementation of Directive 2003/102/EC have been shown not to be feasible. In this respect, Article 5 of that Directive requested the Commission to submit any proposals necessary to overcome the problems of feasibility of these requirements and possibly make use of active safety systems, whilst ensuring there was no reduction in the safety levels provided to the vulnerable road user.

(5) A study commissioned by the Commission shows that pedestrian protection can be significantly improved by a combination of passive and active measures which afford a higher level of protection than the previously existing provisions. In particular, the study shows that the active safety system 'brake assist', combined with changes to passive safety requirements, would significantly increase the level of pedestrian protection. Providing for the obligatory installation of brake assist systems in new motor vehicles is therefore appropriate. However, this should not replace, but rather complement, high-level passive safety systems.

(6) Vehicles equipped with collision avoidance systems may not have to fulfil certain requirements laid down in this Regulation to the extent that they will be able to avoid collisions with pedestrians rather than merely mitigate the effects of such collisions. After assessing whether such technology can effectively avoid collisions with pedestrians and other vulnerable road users, the Commission may present proposals amending this Regulation to allow for the use of collision avoidance systems.

(7) With the increasing number of heavier vehicles being used on urban roads, it is appropriate that provisions on pedestrian protection apply not only to vehicles of maximum mass not exceeding 2 500 kg, but also, after a limited transitional period, to vehicles of categories $M_1$ and $N_1$ exceeding that limit.

(8) In order to enhance the protection of pedestrians at the earliest possible stage, manufacturers who wish to apply for a type-approval in compliance with new requirements before they become mandatory should be able to do so under the condition that the necessary implementing measures are already in force.

(9) 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[(6)].

(10) In particular, the Commission should be empowered to adopt technical provisions for the application of the test requirements and implementing measures based on the results of monitoring. 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-

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EC) No 78/2009 of the European Parliament and of the Council. (See end of Document for details)*

essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(11) In order to ensure a smooth transition from the provisions of Directives 2003/102/EC and 2005/66/EC to this Regulation, the application of this Regulation should be deferred by a certain period after its entry into force.

(12) Since the objective of this Regulation, namely the realisation of the internal market through the introduction of common technical requirements concerning pedestrian protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale, 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:

## CHAPTER I

## SUBJECT MATTER, SCOPE AND DEFINITIONS

### *Article 1*

### Subject matter

This Regulation lays down requirements for the construction and functioning of motor vehicles and frontal protection systems in order to reduce the number and severity of injuries to pedestrians and other vulnerable road users who are hit by the fronts of vehicles and in order to avoid such collisions.

### *Article 2*

### Scope

1 This Regulation shall apply to the following:

- a motor vehicles of category $M_1$ as defined in Article 3(11) of Directive 2007/46/EC and in point 1 of Section A of Annex II thereto, subject to paragraph 2 of this Article;
- b motor vehicles of category $N_1$ as defined in Article 3(11) of Directive 2007/46/EC and in point 2 of Section A of Annex II thereto, subject to paragraph 2 of this Article;
- c frontal protection systems fitted as original equipment to the vehicles referred to in points (a) and (b) or supplied as separate technical units intended for fitting to such vehicles.

2 Sections 2 and 3 of Annex I to this Regulation shall not apply to:

- a vehicles of category $N_1$; and
- b vehicles of category $M_1$ derived from $N_1$ and of maximum mass exceeding 2 500 kg;

where the driver position ‘R-point’ is either forward of the front axle or longitudinally rearwards of the front axle transverse centreline by a maximum of 1 100 mm.

**Changes to legislation:** *There are currently no known outstanding effects for the Regulation (EC) No 78/2009 of the European Parliament and of the Council. (See end of Document for details)*

*Article 3*

**Definitions**

For the purposes of this Regulation:

1. ‘A-pillar’ means the foremost and outermost roof support extending from the chassis to the roof of the vehicle;

2. ‘brake assist system’ means a function of the braking system that deduces an emergency braking event from a characteristic of the driver’s brake demand and, under such conditions:

   (a) assists the driver to deliver the maximum achievable braking rate; or

   (b) is sufficient to cause full cycling of the Anti-lock Braking System;

3. ‘bumper’ means any front, lower, outer structures of a vehicle, including attachments thereto, which are intended to give protection to a vehicle when involved in a low speed frontal collision with another vehicle; it does not include, however, any frontal protection system;

4. ‘frontal protection system’ means a separate structure or structures, such as a bull bar, or a supplementary bumper which, in addition to the original-equipment bumper, is intended to protect the external surface of the vehicle from damage in the event of a collision with an object, with the exception of structures having a mass of less than 0,5 kg, intended to protect only the vehicle’s lights;

5. ‘maximum mass’ means the technically permissible maximum laden mass stated by the manufacturer pursuant to point 2.8 of Annex I to Directive 2007/46/EC;

6. ‘vehicles of category $N_1$’ derived from $M_1$’ means those vehicles of $N_1$ category which, forward of the A-pillars, have the same general structure and shape as a pre-existing $M_1$ category vehicle;

7. ‘vehicles of category $M_1$’ derived from $N_1$’ means those vehicles of $M_1$ category which, forward of the A-pillars, have the same general structure and shape as a pre-existing $N_1$ category vehicle.

CHAPTER II

**OBLIGATIONS OF THE MANUFACTURERS**

*Article 4*

**Technical requirements**

1 In accordance with Article 9, manufacturers shall ensure that vehicles placed on the market are equipped with a type-approved brake assist system in accordance with the requirements of Section 4 of Annex I and that such vehicles comply with the requirements of Sections 2 or 3 of Annex I.

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2 In accordance with Article 10, manufacturers shall ensure that frontal protection systems either fitted as original equipment to vehicles placed on the market or supplied as separate technical units comply with the requirements of Sections 5 and 6 of Annex I.

3 Manufacturers shall provide to the approval authorities appropriate data on the specifications and test conditions of the vehicle and frontal protection system. The data shall include information required to check the functioning of any active safety devices installed in the vehicle.

4 In the case of frontal protection systems to be supplied as separate technical units, manufacturers shall provide to the approval authorities appropriate data about the systems specifications and test conditions.

5 Frontal protection systems, as separate technical units, shall not be distributed, offered for sale or sold unless accompanied by a list of vehicle types for which the frontal protection system is type-approved, as well as by clear assembly instructions. The assembly instructions shall contain specific installation prescriptions, including fixing modes for the vehicles for which the unit has been approved, to enable the approved components to be mounted on that vehicle in a manner that complies with the relevant provisions of Section 6 of Annex I.

6 The Commission shall adopt implementing measures laying down technical provisions for the application of the requirements set out in Annex I. Those measures, designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 40(2) of Directive 2007/46/EC.

*Article 5*

**Application for EC type-approval**

1 The manufacturer shall submit to the approval authority the information document, established in accordance with the model set out in Part 1 of Annex II, when applying for EC type-approval of a type of a vehicle with regard to pedestrian protection.

The manufacturer shall submit to the technical service responsible for conducting the type-approval tests a vehicle which is representative of the vehicle type to be approved.

2 The manufacturer shall submit to the approval authority the information document, established in accordance with the model set out in Part 2 of Annex II, when applying for EC type-approval of a type of a vehicle with regard to it being fitted with a frontal protection system.

The manufacturer shall submit to the technical service responsible for conducting the type-approval tests a vehicle which is representative of the vehicle type to be approved fitted with a frontal protection system. At the request of that technical service, the manufacturer shall also submit specific components or samples of materials used.

3 The manufacturer shall submit to the approval authority the information document, established in accordance with the model set out in Part 3 of Annex II, when applying for EC separate technical unit type-approval of a type of a frontal protection system.

The manufacturer shall submit to the technical service responsible for conducting the type-approval tests one sample of the type of frontal protection system to be approved. Where that technical service considers it necessary, it may request further samples. The sample(s) shall be clearly and indelibly marked with the applicant's trade name or mark