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DRAFT REPORT

on the inquiry into emission measurements in the automotive sector
(2016/2215(INI))

Committee of Inquiry into Emission Measurements in the Automotive Sector

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DRAFT CONCLUSIONS

of the inquiry into emission measurements in the automotive sector (2016/2215(INI))

The Committee of Inquiry into Emission Measurements in the Automotive Sector,

- having regard to Article 226 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament’s right of inquiry¹,
 - having regard to the European Parliament decision of 17 December 2015 on setting up a Committee of Inquiry into emission measurements in the automotive sector, its powers, numerical strength and term of office²,
 - having regard to 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 information³,
 - having regard to 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 vehicles⁴,
 - having regard to its resolution of 27 October 2015 on emission measurements in the automotive sector⁵,
 - having regard to its resolution of 13 September 2016 on the inquiry into emission measurements in the automotive sector (interim report)⁶,
 - having regard to the third subparagraph of Rule 198(10) of the European Parliament’s Rules of Procedure,
- A. whereas, on the basis of a proposal by the Conference of Presidents, Parliament decided on 17 December 2015 to set up a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to emission measurements in the automotive sector;
- B. whereas a contravention implies the existence of illegal conduct, namely an action or omission in breach of the law, on the part of Union Institutions or bodies or Member

¹ OJ L 113, 19.5.1995, p. 1.

² Texts adopted, P8_TA(2015)0462.

³ OJ L 171, 29.6.2007, p. 1.

⁴ OJ L 263, 9.10.2007, p. 1.

⁵ Texts adopted, P8_TA(2015)0375.

⁶ Texts adopted, P8_TA(2016)0322.

States when implementing Union law;

- C. whereas maladministration means poor or failed administration that occurs for instance if an institution fails to respect the principles of good administration, and whereas examples of maladministration include administrative irregularities and omissions, abuse of power, unfairness, malfunction or incompetence, discrimination, avoidable delays, refusal of information, negligence, and other shortcomings that reflect a malfunctioning in the application of Union law in any area covered by this law;

has adopted the following conclusions:

Laboratory tests and real-world emissions

1. Available emission control technologies (ECTs), when properly applied, allowed diesel cars to meet the Euro 5 NO_x emission limit of 180 mg/km and the Euro 6 NO_x emission limit of 80 mg/km by the date of their respective entry into force, in real world conditions and not only in laboratory tests.
2. There are large discrepancies between the NO_x emissions of most Euro 3-6 diesel cars measured during the type-approval process with the New European Driving Cycle (NEDC) laboratory test, which meet the legal limit, and their NO_x emissions measured in real driving conditions, which substantially exceed the limit. Those discrepancies affect most diesel cars and are not limited to Volkswagen vehicles equipped with prohibited defeat devices.
3. The existence of the discrepancies, and their significant negative impact on attaining air quality objectives, in particular with regard to urban areas, had been known to the Commission, to the responsible authorities of the Member States and to many other stakeholders since at least 2004-2005 when the Euro 5/6 Regulation was being prepared. The discrepancies have been confirmed by a large number of studies by the Joint Research Centre (JRC) and other researchers since 2010-2011.
4. Before September 2015, the discrepancies were generally attributed to the inadequacy of the NEDC laboratory test, which is not representative of real world emissions, and to the optimisation strategies put in place by car manufacturers to pass the laboratory test, not to the use of prohibited defeat devices.
5. The mandate for the Commission to keep test cycles under review, and revise them if necessary to adequately reflect the emissions generated by real driving on the road, included by the legislators in 2007, resulted in the development and introduction of real driving emission (RDE) testing with Portable Emission Measurement Systems (PEMS) into the EU type-approval procedure as of 2017.
6. The excessive length of the process leading to the introduction of regulatory RDE tests can be explained only in part by the complexity of the development of a new test procedure, the time needed for the technological development of PEMS, and the length of the decision-making and administrative processes at the EU level. The delays were also due to choices of political priorities, such as the focus of the Commission and the Member States on avoiding burdens on industry in the aftermath of the 2008 financial crisis.

Responsibilities of the Member States

7. The Member States' failure to take an active part in the "Real Driving Emissions - Light Duty Vehicles" (RDE-LDV) working group constitutes maladministration. With the exception of a few Member States, such as the UK, the Netherlands, Germany, France, Denmark and Spain, the vast majority did not participate in the RDE-LDV working group, despite voicing criticisms of the Commission's proposals. Given the lead role played by the Member States in the enforcement of the Regulation, and given the known discrepancies in the NO_x emissions of diesel vehicles and their significant negative impact on air quality objectives, Member States should have participated in the group's proceedings. This would also have helped to achieve a better balance with the other participants in the working group.
8. The analysis of the minutes of the RDE-LDV working group and of the Technical Committee on Motor Vehicles (TCMV) shows that some Member States, including in particular France, Italy and Spain, acted on several occasions to delay the adoption process of the RDE tests and to favour less stringent testing methods. In addition, several Member States prevented the formation of a qualified majority in the TCMV, resulting in a postponement of the vote on the first RDE package.

Responsibilities of the Commission

9. The Commission did not use all possible means at its disposal, at the level of the TCMV and of the RDE-LDV working group, to ensure a timely adaptation of the type-approval tests to reflect real world conditions, as required by Article 14(3) of Regulation (EC) No 715/2007.
10. As the entity responsible for the process and agenda of the RDE-LDV working group, the Commission should have steered the RDE-LDV working group towards an earlier choice of the option of PEMS testing, as that option was suggested in Recital 15 of the Euro 5/6 Regulation, was widely supported within the RDE-LDV group, and the JRC had already concluded in November 2010 that PEMS testing methods were sufficiently robust. This constitutes maladministration.
11. Better coordination between the different Commission departments involved could have been instrumental in accelerating the process of adapting the tests.
12. Over half of the RDE-LDV working group participants consisted of experts from car manufacturers and other automotive industries. This can *inter alia* be attributed to the lack of sufficient technical expertise in the Commission departments. While the Commission consulted a wide range of stakeholders and ensured open access to the RDE-LDV group, it should have taken further steps to "as far as possible, ensure a balanced representation of relevant stakeholders, taking into account the specific tasks of the expert group and the type of expertise required", as required by the horizontal rules for Commission expert groups of 10 November 2010.
13. The Commission should have consistently taken meaningful and complete minutes of the RDE-LDV working group meetings. This constitutes maladministration.

Defeat devices

14. Defeat devices were generally not considered among the possible reasons behind the discrepancies between laboratory and on-road NO_x emissions and it was not generally suspected that they could be in actual use in any passenger car produced in the EU before the Volkswagen revelations in September 2015.
15. The ban on defeat devices has never been disputed by anyone. No Member State or car manufacturer ever questioned or asked for clarification on the provisions on defeat devices, including the implementation of the ban, until the Volkswagen case.
16. Some emission control strategies applied by car manufacturers point towards the possible use of prohibited defeat devices. For instance, some manufacturers decrease the effectiveness of ECTs outside specific “thermal windows” close to the temperature range prescribed by the NEDC test, which are not justifiable by the technical limitations of the ECTs. Others modulate ECTs to decrease their efficiency after a certain time from the start of the engine, close to the duration of the test, has elapsed. Moreover, in many cases, emissions measured on a test cycle after a certain period following engine start are unjustifiably higher than on the same cycle with measurements done immediately after engine start.
17. No authority searched for defeat devices or proved the illegal use of defeat devices before September 2015. No Member State authority or technical service performed any tests other than the NEDC in the scope of type-approval, which in itself cannot point to the use of a defeat device. The vast majority of car manufacturers present on the EU market declared that they use the derogations to the ban on defeat devices foreseen in Article 5(2) of Regulation (EC) No 715/2007. The legality of the use of the derogations is subject to ongoing investigations and court cases.
18. Unlike in the case of heavy-duty vehicles, car manufacturers were not required to disclose or justify their emission strategies. Without such an obligation, identifying with certainty a defeat device implemented in software by reverse engineering is a lengthy and burdensome operation with no guarantee of success. Even with RDE tests, the risk that defeat strategies are used cannot be completely excluded in the future.

Responsibilities of the Member States

19. Member States contravened their legal obligation to monitor and enforce the ban on defeat devices set out in Article 5(2) of Regulation (EC) No 715/2007. None of them found the defeat devices installed in the Volkswagen vehicles. Moreover, according to our investigations, most Member States, and at least Germany, France, Italy and Luxembourg, had evidence that irrational emission control strategies, based on conditions similar to the NEDC test cycle (temperature, duration, speed), were used in order to pass the type-approval test cycle. Ongoing investigations and court cases at national level will decide if emission control strategies used by car manufacturers constitute an illegal use of defeat devices or a lawful application of the derogations.
20. Member States do not seem to apply comparable approaches to assessing and evaluating compliance with Union law on defeat devices, in particular as regards Article 5(2) of Regulation (EC) No 715/2007.
21. Most Member States did not take steps to better understand the large discrepancies

between emissions levels measured in the laboratory and on the road by carrying out additional tests outside of the NEDC conditions. This constitutes maladministration.

Responsibilities of the Commission

22. The Commission had no legal basis to search for defeat devices itself, but had the legal obligation to oversee the Member States' enforcement of the ban on defeat devices. However, in spite of the awareness of, and communication between the relevant Commission services on, possible illegal practices by manufacturers, the Commission neither undertook any further technical or legal research or investigation on its own nor requested any information or further action from the Member States to verify whether the law may have been infringed.
23. The emissions legislation for heavy-duty vehicles has always been stricter on defeat devices than that for light-duty vehicles. It remains unclear why the Commission did not transpose these more stringent provisions from heavy- to light- duty vehicles legislation.
24. The Commission should have ensured that the JRC's research findings and concerns discussed among the Commission services with regard to possible illegal practices by manufacturers reach the level of the hierarchy.

Type-approval and in-service conformity

25. Type-approval in the EU is a complex process, with several options available to car manufacturers for providing information to one of the 28 national type-approval authorities in order to obtain a vehicle type-approval certificate recognised in the whole Union.
26. No specific EU oversight of vehicle type-approval is provided for in the current framework, and the rules are subject to a variety of interpretations across the Member States, partly on account of the absence of an effective system for exchanging information among type-approval authorities and technical services.
27. The level of technical expertise and human and financial resources may vary substantially between type-approval authorities and technical services, and the lack of a harmonised interpretation of the rules can lead to competition among them. Car manufacturers are, in principle, free to address the type-approval authority and technical service with the most flexible and least stringent interpretation of the rules, as well as the lowest fees.
28. Directive 2007/46/EC states that the Commission has to be notified by the type-approval authority when it decides to reject a type-approval application. However, it is not clear what actions the Commission should take after such notification and how such follow-up actions are to be coordinated with the Member States. There is no clear and effective system in place to prevent a car manufacturer from applying for a type-approval in one Member State after an application for type-approval has been rejected by another Member State, or for a test to be conducted in another technical service after a model has failed to pass at a first technical service.
29. There is an evident lack of control after type-approval, which is partly due to the current

rules and partly due to uncertainty as to which authority is in charge of market surveillance. Effective conformity of production, in-service and end-of-lifecycle conformity checks to uncover cases where production vehicles and vehicles in use do not conform to the type-approved vehicle are often not in place or verified only through documents instead of physical tests carried out in the presence of the authorities.

30. In-service testing for emissions is mostly conducted in the laboratories of car manufacturers and is currently limited to the NEDC laboratory tests required for type-approval.

Responsibilities of the Member States

31. The Member States should have ensured that their type-approval authorities have sufficient human and financial resources to perform in-house testing. They should have not relied on tests performed in the car manufacturers' certified laboratories under the supervision of technical services. The potential conflicts of interest arising from the contracting of technical services by car manufacturers for carrying out tests is a direct result of the current system set out in the EU type-approval framework directive and cannot therefore be considered maladministration. The Commission proposal for a new market surveillance and type-approval regulation addresses this weakness by proposing a fee structure for the financing of type-approval tests.
32. However, where technical services also offer consultancy services to car manufacturers on obtaining type-approval, as is the case in certain Member States, a potential conflict of interest arises due to the existence of an additional financial link between technical services and car manufacturers related to the provision of advice on how to successfully acquire type-approval. Member States should have investigated such potential conflicts of interests. This constitutes maladministration.
33. The Member States should have ensured that type-approval authorities adequately audit technical services. This constitutes maladministration. The choice of the technical service is primarily the choice of the car manufacturer, and the role of the type-approval authority is often just to validate the procedure at the end. The possibility available to type-approval authorities to audit technical services and to challenge the choice of technical service is very rarely used.
34. The Member States' failure to organise an efficient market surveillance system constitutes a contravention of EU law. The verification of the conformity of production and in-service conformity of light-duty vehicles is often based only on laboratory tests performed on the car manufacturers' premises.
35. The Member States should have communicated to the Commission, and kept it updated on, the name and powers of their bodies responsible for market surveillance. This constitutes maladministration. There is an unjustifiable uncertainty as to which bodies in the Member States are responsible for market surveillance.

Responsibilities of the Commission

36. The Commission should have taken a more prominent coordinating role to ensure the uniform application of the EU legislation on type-approval, as the EU type-approval

process is very complex and largely depends on the exchange of information among Member States.

37. Also in the light of its internal deliberations and of external requests, the Commission should have requested information from the Member States on how they dealt with those vehicles in the existing fleet that do not comply with the legal emission limits under real driving conditions.

Enforcement and penalties

38. The governance structure in place in the automotive sector, where the EU merely has regulatory power and the responsibility to implement EU law on car emission measurement lies primarily with the Member States, prevents the efficient enforcement of EU legislation. The enforcement powers of the Commission are limited to initiating infringement procedures against Member States where a Member State has failed to apply EU law correctly.
39. There is no unified practice in the EU for transparent access by consumers to information on recalls.

Responsibilities of the Member States

40. The Member States were very reluctant to share the results of their investigations and the technical test data with the Commission and this committee of inquiry.
41. The Member States started to enforce the EU law on emissions from light-duty vehicles as required only after the Volkswagen emissions case broke in September 2015, by conducting additional tests in the laboratory and on the road, and by launching several national investigations into pollutant emissions from passenger cars. Following these efforts, ongoing judicial proceedings will either confirm or not the possible illegal use of defeat devices.
42. Member States have applied neither financial nor legal penalties to car manufacturers in the aftermath of the emissions case. No mandatory initiatives to recall or retrofit non-conform vehicles were taken, and no type-approvals were withdrawn. Where recalls or retrofitting took place, this was done as a voluntary initiative by car manufacturers, following political pressure.
43. Member States did not monitor and enforce appropriately the application of Regulation (EC) No 715/2007, notably in contravention of Article 5(1) on the obligation for manufacturers to design cars which comply with the regulation in normal use.
44. Most Member States did not adopt an effective, proportionate and dissuasive penalty system, notably in relation to the illegal use of defeat devices, in contravention of Article 13 of Regulation (EC) No 715/2007.
45. Several Member States did not notify the Commission in time (by 2 January 2009 and 29 April 2009) about the penalty regime in place to enforce the ban on defeat devices, in contravention of Article 13 of Regulation (EC) No 715/2007, and about the penalty regime under Article 46 of the framework Directive 2007/46/EC.

46. For the aforementioned reasons, Member States have contravened their obligations to implement the EU law on car emissions under the current system.

Responsibilities of the Commission

47. Following a strict interpretation of Regulation (EC) No 715/2007, the Commission considered that it is the sole duty of the Member States, and not part of its responsibility as guardian of the Treaties, to investigate the possible illegal use of defeat devices. On this basis, the Commission did not undertake further technical research, did not request additional information from the Member States and did not ask the responsible national type-approval authorities to undertake further investigative and corrective actions.
48. The Commission did not launch infringement procedures against those Member States that have not put in place effective market surveillance on pollutant emissions from vehicles.
49. The Commission did not sufficiently supervise the deadlines by which Member States had to report on the penalties put in place under Article 13 of Regulation (EC) No 715/2007 and Article 46 of Directive 2007/46/EC. This constitutes maladministration.

Powers and limitations of the committee of inquiry

50. The current legal framework for the operation of committees of inquiry is outdated and falls short of providing the necessary conditions under which the exercise of Parliament's right of inquiry can effectively take place.
51. Despite the lack of summoning powers, the committee eventually succeeded in hearing most witnesses which it deemed necessary to call in order to properly fulfil its mandate. However, this lack of powers significantly hampered and delayed the work of the inquiry in view of the temporary nature of its investigation. Institutional actors, in particular from the Member States, were in general more reluctant to accept the invitation than private actors.
52. In the absence of clear requirements and specific deadlines to accept an invitation or deliver the information requested, the preparation of the public hearings was very time-consuming. Apart from the principle of sincere cooperation between institutions laid down in Article 4(3) TFEU, the main tools at the disposal of the committee of inquiry to overcome these problems were political and media pressure.

Cooperation with the Commission

53. The participation of some former Commissioners was further complicated by the lack of a clear obligation in the current Code of Conduct for Commissioners that former Commissioners cooperate with ongoing inquiries and in general remain accountable for actions undertaken during their term in office.
54. Delays in the delivery of requested documentation represented a major obstacle in the work of the committee. The lengthy internal procedure in the Commission, which requires the College's approval to react to requests from the committee, together with gaps in its archiving system, delayed the collection of evidence during the time

available. Furthermore, the transmission of the information requested was not structured in a user-friendly way, which made it more complicated to retrieve the information.

55. The procedure followed to grant access to the minutes of the regulatory committee (based on explicit consent by the 28 Member States) was unnecessarily cumbersome, lengthy and based on a very narrow interpretation of the law. It should not be followed again in the future.

Cooperation with the Member States

56. Cooperation with most of the national ministries was highly unsatisfactory, particularly as regards difficulties in obtaining their confirmation that representatives would appear before the committee. This was obtained only after many months of political and media pressure.
57. Also, Member States felt no obligation to cooperate with the committee in the transmission of specific evidence, in particular as regards the committee's request to send the full data sets from the national investigations and test programmes conducted in the aftermath of the Volkswagen case.
58. The obligation under Article 5 of Decision 95/167/EC to contact the Member States through the Permanent Representations created an unnecessary additional layer and in some cases complicated and slowed down the communication procedure.

Cooperation with other parties

59. The collection of written evidence via questionnaires from non-institutional parties was in general satisfactory. The practice of sending written questions ahead of the hearings, and sending subsequent follow-up questions, proved essential to maximise the information obtained during the hearings and to clarify issues that could not be answered during the hearing due to time constraints or lack of information.

Internal rules and procedures

60. The requirement to produce an interim report six months after the start of the committee's work, as per its mandate, was superfluous, as this timeframe was insufficient to gather evidence which could represent a sound basis for conclusions.
61. Given the temporary nature of committees of inquiry, collecting evidence in an efficient and timely manner is essential. The approach taken by the committee to devote the first months of its mandate to hearing technical experts before moving on the political level proved successful. Ideally, the hearings should start only once the first phase of evidence collection is concluded.

EXPLANATORY STATEMENT

This document contains draft conclusions for the final report of the Committee of Inquiry into Emission Measurements in the Automotive Sector.

The draft conclusions, as well as the accompanying draft recommendations included in a separate motion for a European Parliament recommendation, reflect the state of the inquiry at the moment of writing. They may therefore need to be updated on the basis of further evidence gathered by the Committee of Inquiry during the remaining part of its mandate.

The final report of the Committee of Inquiry will consist of:

- the final conclusions adopted by the committee;
- a “factual part” setting out the methodology of the inquiry and collecting and analysing the factual evidence that the committee gathered in order to reach the conclusions; the factual part thus provides an “explanatory statement” for the draft conclusions contained in this document, as well as for the draft recommendations included in a separate motion for a European Parliament recommendation.

For technical reasons, the 7 chapters and 5 appendices making up the factual part of the report are subdivided into 12 working documents at the draft stage¹. An informal consolidated version of the factual part is maintained on the committee’s home page:

<http://www.europarl.europa.eu/committees/en/emis/home.html>

¹ List of working documents making up the factual part of the report:

- Chapter 1: Introduction
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.071>)
- Chapter 2: Technical background
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.072>)
- Chapter 3: Laboratory tests and real-world emissions
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.073>)
- Chapter 4: Defeat devices
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.074>)
- Chapter 5: Type-approval and in-service conformity
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.075>)
- Chapter 6: Enforcement and penalties
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.076>)
- Chapter 7: Powers and limitations of the committee of inquiry
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.077>)
- Appendix A: The mandate of the committee of inquiry
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.078>)
- Appendix B: The committee of inquiry
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.079>)
- Appendix C: Activities of the committee of inquiry
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.080>)
- Appendix D: Timeline
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.081>)
- Appendix E: Glossary
(<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=PE594.082>)

The “publications” section of the committee’s website includes links to the publically available evidence gathered by the inquiry and to additional supporting documents:
<http://www.europarl.europa.eu/committees/en/emis/publications.html>