

## Corporate Europe Observatory (CEO) responses to questions for the 16/6/2016 EMIS hearing

*1. In the article "Leak shows Commission giving inside information to car lobby on new emissions tests" published on your website on 16 March 2016 you noted that the Commission has extended the legal deadline to answer your request of access to documents as developed in Regulation 1049/2001. Have you received an answer in the meantime? If so please provide the answer and an evaluation of the answer.*

The initial access to document request was made on 11 February, with the deadline to respond to it being extended to 14 March. It was then extended again to the 7 April (as published in the article). On 7 April it was extended yet again, with some of the documents being made available on 11 April. You can see all correspondence between CEO and the Commission online, as well as all the subsequent documents that were made available, at [www.asktheeu.org](http://www.asktheeu.org):

[https://www.asktheeu.org/en/request/specific\\_documents\\_concerning\\_ca](https://www.asktheeu.org/en/request/specific_documents_concerning_ca)

In relation to the first part of the request for access to documents ("please send me any minutes and records of the meeting between DG Grow Policy Officer Nikolaus Steininger and ACEA Emission and Fuels Director Paul Greening, which took place on the 11. January 2015 and was not listed in the initially disclosed meetings list"), the Commission response was that "No meeting between Nikolaus Steininger and Paul Greening took place on 11 January 2015."

In relation to the second part of the request ("please disclose all documents and correspondence concerning the ACEA draft for the RDE test presented to the DG in December (we have seen reference to this draft dated 17.12.2014)"), a relevant document was identified and provided.

In relation to the third part of the request ("please also review and complete the initially provided list of documents and correspondence exchanged between the ACEA (and/or its members and/or its associated organisations) with DG Grow on the introduction of new car emission testing system (WLTP) and/or the introduction of the new real-world driving test on air pollution to be implemented with new Euro 6 vehicles (RDE) to make sure no further documents have been left out. Please consider especially the period between 01.11.2014 and 01.03.2015 as well as the period between 01.04.2015 and 01.07.2015"), seven meetings were identified and listed. According to the Commission minutes were identified for only two of them. "For the other five meetings listed, no minutes have been identified." It also "identified one meeting which erroneously was not listed" in the previous disclosure of documents.

<https://www.asktheeu.org/en/request/2565/response/9427/attach/4/GESTDEM%202016%20666%20Heise%20Reply.pdf>

There was then a further response, a month later (May 10th), disclosing "contents of discussions" from the five meetings where no minutes were taken. "Such information is newly drafted and is based on recollections and in some cases, taken from personal notes

made in the meetings.”

(<https://www.asktheeu.org/en/request/2565/response/9788/attach/2/letter.pdf>)

The statement that there was no meeting between Steininger and Greening, two months after the initial inquiry was made, suggests that the date outlined within the leaked ACEA presentation may have been inaccurate. However, when the article was initially published and journalists asked the Commission for confirmation of the meeting, the initial denial that it took place later changed to 'having no knowledge of the meeting'. According a second source, an informal meeting between ACEA and Steininger did take place, although there is no certainty of the date, which is corroborated by the leaked document (i.e. that while the date may be equivocal, the information gained from the meeting led to a hardening of strategy). Equally, looking at the list of meetings provided by the Commission

(<https://www.asktheeu.org/en/request/2237/response/8181/attach/4/GESTDEM%202015%204551%20Heise%20Meeting%20list.pdf>), there is no meeting listed between 4.12.2014 and 25.02.2015 involving ACEA and the Commission, which suggests that even if the meeting was not on that specific day (Sunday), the meeting was not one of the meetings recorded by the Commission and was still therefore an informal meeting. While the Commission found no trace of that particular meeting, they did uncover another one that was previously omitted, which shows that the current policy – of disclosing meetings when asked to do so, rather than pro-actively publishing them – has serious shortcomings and limits transparency.

The Commission also later pro-actively wrote up and disclosed minutes of old meetings so they could be shared, the first time to our knowledge we've heard of such a practice. On most occasions, if there are no minutes the Commission leaves it at that, as freedom of information legislation is in relation to existing documents, rather than producing new ones. It also underlines the uneven and problematic practice of transparency and disclosure within the Commission, with the majority of meetings happening without official note taking. And given the “recollections” recount the Commission standing up to pressure from the car industry, it could be interpreted as an attempt to put some distance between them and the car lobby following the attention received from the leaked presentation – but without an effective and transparent system in place it makes it difficult to verify beyond speculation.

*2. CEO website is not very transparent with regard to your interests: no further explanation about the members on the advisory board, no explanation about the expertise of your staff, no explanation why only one annual report has been published (in 2014), no explanation about your goals and your statues is given. Please provide us detailed information on these points.*

Our website presents what we believe is a clear description of CEO's mission (as a research and campaign group with a clear progressive vision), our legal status and other essential information (see <http://corporateeurope.org/about-ceo>). The staff section mentions the area of responsibility of each staff member, the main issues they work on and a photo (see <http://corporateeurope.org/staff>). The website lists the names of our advisory board members and their countries of origin. The website currently presents the two latest

completed annual reports (the annual report for 2015 is being finalised); annual reports for other years were available on the website at that time and are available upon request. The website also explains that CEO is registered as a not-for-profit foundation under Dutch law and provides a link to the [Amsterdam Chamber of Commerce](#) where the statutes can be requested. We have now also uploaded our statutes (with a translation into English) directly on our website. Please note that CEO's entry in the Transparency Register presents detailed information about the lobbying activities of CEO and its staff (going far beyond the disclosure requirements of the register).

*3. When looking at the income of CEO, many of your donors do not display much transparency: The Isvara Foundation for example. Its website does not give further information about its members. It seems that a representative of Caterpillar Middle East and thus agribusiness is behind this foundation- corporate business that you try to "control" in its lobbying activities. Please explain why you received 199,990 Euros in 2015 from this sector as the biggest single donation in 2015 and how this is in line with your activities? Please provide detailed information on the financing of the CEO over the last five years.*

The CEO website presents a full financial overview for the years 2005-2015 ([CEO accounts 2005-2015](#) – see [http://corporateurope.org/sites/default/files/ceo\\_profits\\_and\\_losses\\_2007-2015.pdf](http://corporateurope.org/sites/default/files/ceo_profits_and_losses_2007-2015.pdf)), providing a level of detail on our income that, to our knowledge, is unmatched by most other organisations active on EU issues in Brussels. CEO is primarily funded by grants from a number of trusts and grantmaking foundations. The CEO website provides a full list of all these trusts and grantmaking foundations (14 at the moment), with links to their websites (with the exception of one funder that does not have a website). A detailed overview of our funding sources is also available in our entry in the EU Transparency Register (see <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=5353162366-85>). To preserve our independence, CEO does not receive any EU or member state government funding, nor any corporate funding. The mentioned foundation was set up by a progressive philanthropist and is not a corporate foundation. As is clear from the foundation's website (listed in the overview of CEO's funders), it is a progressive trust that supports civil society projects on issues such as excessive corporate power and “safeguarding environmental sustainability and biodiversity”.

*4. Your NGO has found out that an important meeting between a DG GROW Commission official and ACEA took place over a weekend. Have you been able to ascertain the impact that this exchange has had on the RDE proposals? How many of the legal requirements finally adopted correspond to the requests of the automotive industry? Have you contacted the European Commission in regard to this meeting? Have you contacted the EC official in question? Have you received any feedback?*

It is difficult to ascertain the impact of a single informal meeting when, as the ACEA leaked document showed, there was a highly sophisticated and concerted campaign being waged at national and European level to weaken and delay the RDE proposal. The contents of the meeting as outlined by the leaked document suggests that previous ACEA lobbying efforts at both the Commission and the Member State level had an impact in weakening

the RDE proposal, specifically on the boundary condition for temperature (with the possibility of more) and a 2-step approach to conformity factors.

However, according to the leaked document, it suggests that the information received in the informal meeting allowed ACEA to shift its lobbying position in reaction to having a clearer idea of the Commission's negotiating position. Regarding total legal requirements corresponding to the requests of the automotive industry, it is also difficult to give an exact answer as there are still remaining RDE packages which can cover things initially dropped, such as cold starts, which industry lobbied against. Industry demands were at least partially accommodated on, among others, boundary conditions relating to the average time spent in different driving environments (urban, rural or motorway), not counting emissions after prolonged stops, the maximum speed of tests and the scrapping of high speed tests.

CEO contacted the European Commission to ask for any minutes or records of the meeting between the Commission official and ACEA (see answer above), but did not directly contact the official in question, as the information we had was based on a leaked document and we did not want to endanger our source by revealing the content to the Commission. However, working with journalists in advance of publishing the article ensured that attempts were made to contact ACEA, the Commission and the individual in question, while protecting the source of the information.

*5. Are you aware of any other meetings that took place between the car industry and DG GROW related to the introduction of the new testing regime? If so, do you have any records of those?*

According to the information provided by the European Commission following freedom of information requests using [www.asktheeu.org](http://www.asktheeu.org), between 1 September 2014 and 1 February 2016 there were 21 meetings between ACEA and/or its members and DG GROW (see a list of 13 of the meetings before 13 October here:

<https://www.asktheeu.org/en/request/2237/response/8181/attach/4/GESTDEM%202015%204551%20Heise%20Meeting%20list.pdf>; all other meetings here:

<https://www.asktheeu.org/en/request/2565/response/9427/attach/8/GESTDEM%202016%20666%20Heise%20Meeting%20list.pdf>), as well as extensive correspondence (see here

<https://www.asktheeu.org/en/request/2237/response/8181/attach/7/GESTDEM%202015%204551%20Heise%20Document%20register.pdf> and

[https://www.asktheeu.org/en/request/specific\\_documents\\_concerning\\_ca](https://www.asktheeu.org/en/request/specific_documents_concerning_ca)). However, ACEA was also involved in the RDE expert group with DG GROW and therefore was in regular contact

([https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal: idcl=navigationLibrary&FormPrincipal\\_SUBMIT=1&org.apache.myfaces.trinidad.faces.STA TE=DUMMY&id=3f621cde-ee5e-4993-ad4a-b915cace8b29&javax.faces.ViewState=rO0ABXVyABNbTGphdmEubGFuZy5PYmpIY3Q7kM5YnxBzKWwCAAB4cAAAAAN0AAE3cHQAky9qc3AvZXh0ZW5zaW9uL3dhaS9uYXZpZ2F0aW9uL2NvbnRhaW5lci5qc3A%3D](https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal: idcl=navigationLibrary&FormPrincipal_SUBMIT=1&org.apache.myfaces.trinidad.faces.STA TE=DUMMY&id=3f621cde-ee5e-4993-ad4a-b915cace8b29&javax.faces.ViewState=rO0ABXVyABNbTGphdmEubGFuZy5PYmpIY3Q7kM5YnxBzKWwCAAB4cAAAAAN0AAE3cHQAky9qc3AvZXh0ZW5zaW9uL3dhaS9uYXZpZ2F0aW9uL2NvbnRhaW5lci5qc3A%3D)).

*6. Are you aware of any lobbying strategies from the side of the car industry as regards the two forthcoming RDE packages?*

Given the complexity of the strategy around the previous RDE packages and the resources invested, it would be logical that the strategy stretched across the entire RDE proposal, but to date we do not have any specific documents outlining ACEA's strategy for the forthcoming RDE packages. We will continue to monitor lobbying on these issues, but many documents we obtain – either from the European Commission or through leaks – often relate to past rather than future events.

*7. According to the reports in German media the German government had initially agreed on a conformity factor of 1.4, but on the day before the decisive meeting of the TCMV in Brussels, the German Association of the Automotive Industry (VDA) protested. The association insisted that the factor should be initially set at between 2.5 and 3. On the morning of the Commission meeting, several of those involved say, Merkel called Commission President Jean-Claude Juncker. At the end of the conversation, the discrepancy to conformity factor had been decided upon: 2.1. Do you have any information that could support this claim?*

CEO does not have any further information on this topic.

*8. You have claimed in social media that 'EU Commission knew in 2012 but failed to act'. Can you elaborate this statement further? What are the main causes for this failure to act?*

Our tweet on 17 February 2016 referred to the findings of a German TV documentary program that had been broadcast the evening before and which we wanted to inform our twitter followers about. It was the program Frontal21-Dokumentation "Die Abgaslüge". The website of German public broadcasting company ZDF mentions that the program deals "with the question whether other carmakers are entangled in the exhaust scandal and why the authorities did not intervene in time" ("Die Frontal21-Dokumentation geht der Frage nach, ob auch andere Autobauer in den Abgasskandal verstrickt sind und warum die Behörden nicht rechtzeitig eingeschritten sind"). The program is available online here: <http://www.zdf.de/ZDFmediathek/beitrag/video/2671832/Frontal21-Dokumentation-Die-Abgasluege#/beitrag/video/2671832/Frontal21-Dokumentation-Die-Abgasluege>

The tweet pointed to the findings of the ZDF documentary and we do not ourselves at this stage have other specific insights into the question what exactly the Commission knew when or why it failed to act.

*9. Corporate Europe Observatory 'is a research and campaign group working to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy making'. As such you inform about links of different lobby organisations to EU institutions. What is generally your source of information?*

Our sources of information include the websites and databases of the EU institutions (including the Transparency Register, the Register of Expert Groups, lists of meetings with lobbyists disclosed online, etc.), civil society websites that enable easier analysis of EU

lobbying data (such as lobbyfacts.eu, integritywatch.eu, lobbyplag.eu, lobbycloud.eu, etc.), media reports, websites of companies and organisations, EU documents released as a result of Access to Documents requests, interviews with lobbyists, decision-makers (including MEPs) and other relevant persons, direct phone and email inquiries, attending public meetings and conferences organised or attended by lobbying organisations and – occasionally – leaks. While the amount of information on lobby groups that is available online today is bigger than five or ten years ago, it is far from sufficient to comprehensively monitor the role of lobbying in EU decision-making.

*10. In your opinion what are the necessary measures needed to further curb the influence of the automobiles lobby within the European institutions? A wide range of measures have been taken to promote transparency, but nevertheless the influence of this particular lobby remains tremendous, as we have seen.*

As a first observation, it should be said that lobbying transparency is a crucial condition to understanding and monitoring the role of lobbying in decision-making and detecting problems, but it is not in itself sufficient to prevent undue influence, regulatory capture and other problems.

The EU institutions have introduced a range of lobbying transparency measures in the recent years, but these suffer from shortcomings that render them inefficient.

Necessary measures in our opinion to solve these transparency shortcomings include:  
- to secure clear information about who is lobbying, on whose behalf, with what budgets and with what issues, the Transparency Register should become mandatory (and ideally legally binding) and changes to the rules are needed to ensure that the information that is disclosed is up-to-date and reliable. Major improvements can (and should) be achieved as part of the negotiations between the European Commission, Parliament and Council on an Inter-Institutional Agreement that are expected to start later this year.

- the European Commission should expand its online disclosure of Commission officials' meetings with lobbyists (beyond the small top-layer of the Commission that is covered by the current transparency rules). All meetings that Commission officials have with lobbyists should be disclosed. Such pro-active transparency will enable scrutiny of who gets access to decision-making and detect the risk of privileged access. Minutes/reports should be prepared for all meetings with lobbyists (too many meetings currently take place with no official record of what was discussed).

As mentioned, transparency cannot by itself prevent problems in the area of privileged access and regulatory capture: additional measures are needed for this, including in the following areas:

- beyond transparency, it is crucial that EU officials get a clear political signal from the top about the importance of avoiding undue influence and regulatory capture and of securing diverse expertise, with a strong emphasis on securing expertise that is financially independent from the sector whose regulation is at stake. When entering office, Commission President Jean-Claude Juncker instructed his Commissioners to "ensure an appropriate balance and representativeness in the stakeholders they meet." Whereas this appears not to have been ambitiously implemented so far, a more specific instruction of

this kind towards all Commission officials (complemented with specific instructions per DG), would be a logical step in the right direction.

- in addition to securing diverse and independent expertise, a clearer set of rules for engagement of Commission officials with lobbyists would be recommendable, defining more precisely in which stages of decision-making consultation should happen and how.
- strengthening of the Commission's access to independent expertise on automotive sector regulation (including increasing in-house expertise) to avoid over-dependency on the regulated industry.
- a further strengthening and fine-tuning of the European Commission's rules for its expert and advisory groups (which often play an important role in the regulatory and policy-making process from the earliest stages), to avoid that such groups are dominated by industry lobbyists.
- improved post-employment rules for EU officials ('revolving door' rules), including a clearly defined cooling-off period before officials can move into jobs that involve EU lobbying or other risks of conflicts of interests. This should be complemented with enhanced transparency around such job moves.

These measures are needed for the European Commission (with its crucial role in initiating and preparing draft laws and regulations), but similar measures should be considered for the other European institutions, not the least the Council (as well for the national governments of EU member states).

*11. Following your analysis of ACEA and Commission documents related to the process of developing RDE testing legislation, how much (and which?) of the legal requirements finally adopted correspond to the requests of the automotive industry? How would you assess the automotive industry involvement and influence in the drafting of the legal requirements compared to other stakeholders, and their impact on the requirement of RDE legislation? Have you made a similar analysis for the involvement of the automotive industry during the adoption of the Euro5/6 regulation?*

Regarding the legal requirements being adopted, please see the answer given to question 4. Regarding the involvement and influence of the car industry, it can be seen at every stage and at all levels of law making. From expert groups in the European Commission at the beginning of the legislative process (e.g. CARS21) to once legislation reaches the Parliament via MEPs (e.g. through MEP-industry fora like the Forum for Mobility and Society; friendly MEPs putting down amendments; hiring ex-MEPs once they've left office, such as Holger Kraemer becoming Director of European Affairs, Public Policy and Government Relations for the Opel Group), or during the comitology phase and the writing of implementing acts (through lobbying at national level, for example via ACEA's 'RDE road show' or hosting a dinner for civil servants; as well as through the RDE-LDV working group, which often drafts or influences regulations that are then discussed and voted on in the TCMV).

The leaked ACEA lobbying strategy shows how complex and sophisticated their approach is, targeting national capitals as well as Brussels in a coordinated fashion to ensure they

stand the best chance of influencing regulations in their interest, working at both the high political level (Commissioners, the Commission President, national Ministers or Chancellors or Prime Ministers) and the technical level.

Other public interest stakeholders are important in trying to balance the power of car manufacturers, but there is a huge imbalance in resources and capacity, with only very few NGOs in Brussels following decision-making on these issues on a continuous basis. Equally, the highly-technical nature of the debate makes it far harder to participate, while it appears only car manufacturers can lobby the Commission on such a technical level, giving them even further advantage. Meanwhile the transparency register shows car manufacturers and their trade associations spent more than €18 million on lobbying Brussels in 2014, with figures remaining similar (where available) for 2015. The top five spenders in Brussels collectively had more than a hundred declared lobbyists who spent at least some of their time trying to influence Brussels policy making, with Volkswagen alone accounting for 43 lobbyists.

The reason for their influence is not limited to the lobbying of the car industry, but also the institutional culture within both the European Commission as well as at national level. The pro-active attitude towards the inclusion of the car industry in preparing legislation by the European Commission and member states has ensured their involvement in all stages. They have been seen as an important partner, driving growth and competitiveness (and jobs), and therefore their interests have been prioritised. The phenomenon of prioritising the economic interests of the car industry can also be seen in the introduction of self-testing in 2007, as documented in an investigation by EUobserver (“How the car industry won the EU's trust”, Peter Teffer, EUobserver, 28 April 2016). The EUobserver article points to the role of the CARS21 high-level group (which was heavily dominated by car industry representatives) in promoting more self-testing, as part of moving towards “better regulation”. More recently, relating to RDE, it can be seen in the Commission's questionnaire to ACEA on short-term technical improvements to current vehicles and what the “burden of implementation” would be for meeting them. This approach continues despite research on the Commission's own website showing that the car industry regularly over-estimates the cost of compliance with new regulations ([http://ec.europa.eu/clima/events/docs/0103/evaluation\\_en.pdf](http://ec.europa.eu/clima/events/docs/0103/evaluation_en.pdf)). The Commission's Better Regulation agenda has also been regularly cited by ACEA and its members within the disclosed documents as a reason to simplify legislation and avoid costs for industry. The close relationship between the car industry and governments at national level – not to mention the lax attitude of national Type Approval Authorities towards monitoring car manufacturers – shows the phenomenon of prioritising and protecting car industry interests is not limited to Brussels.

Regarding a similar analysis of lobbying into Euro 5/6, we have not yet been able to do one, but in September CEO will be releasing a new investigation into the impact of the Better Regulation Agenda on the emissions regulation regime for cars (with a specific focus on Euro5/6 and RDE), and will gladly submit it to the inquiry.



*12. What do you consider as the key priorities in terms of solutions for the future?*

Of the above-mentioned measures, we consider online disclosure of meetings with lobbyists, instructions to avoid imbalance in who gets access, clearer rules for engagement with lobbyists and strengthening of the Commission's in-house expertise to be the most important.

*13. According to the documents you've exposed, car industry representatives succeeded in heavily influencing the drafting of the RDE test procedure and in forcing the introduction of two conformity factors of 2,1 and 1,5 to be applied to the emission limits for Euro6 on RDE testing. Based on your analysis, do you think that a better transparency on the contacts between representatives of European institutions and those of car industry could have prevented the adoption of so generous albeit unnecessary conformity factors? If the contact between the Commission and car industry lobbies were more transparent, how do you think it could have affected the adoption of RDE procedures taking into account that car industry interests have been defended at different level by the Commission, member states and the European Parliament? What, on your opinion, has to be done to balance the influence of private lobbies against public interests?*

Better transparency about the contacts between representatives of European institutions and those of the car industry would have enabled public scrutiny and encouraged debate about the risk of undue influence on these issues. It would not in itself have been sufficient to prevent excessive influence of the regulated industry on EU decision-making. For this purpose, measures that go beyond transparency are needed, such as the ones presented above. It should be stressed that EU member state governments played a key role in the final decision to enlarge the conformity factors, which underlines the need for stronger