



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Deputy Director-General

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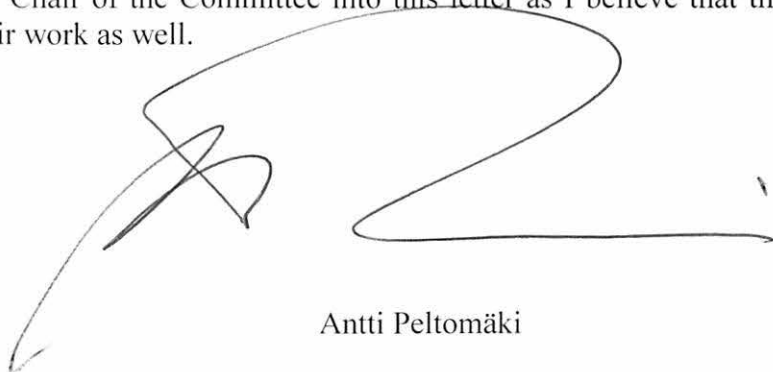
**Subject: Responses to your questions – Inquiry Transport Select Committee**

Dear Ms Ellman MP,

Please find attached the responses to the questionnaire, which you sent me following my evidence session on vehicle type approval on 14 March 2016.

As you might be aware, the European Parliament has established the Committee of Inquiry into Emission Measurements in the Automotive Sector (EMIS). I take the opportunity of copying the Chair of the Committee into this letter as I believe that the replies are of interest to their work as well.

Yours sincerely,



Antti Peltomäki

CC: Ms Kathleen Van Brempt MEP, Chair of the European Parliament's Committee of Inquiry into Emission Measurements in the Automotive Sector (EMIS)  
Ms Jacqueline Minor, Head of the European Commission Representation in the United Kingdom

Enclosures: Responses to your questionnaire

## **Replies to UK Transport Committee – Letter from Louise Ellman MP**

### **1. Please could you provide more detail on the timetable and contents of the remaining RDE measures?**

The 3<sup>rd</sup> regulatory RDE (Real Driving Emissions) measure will address Portable Emission Measurement System (PEMS) testing for particle numbers (PN), the inclusion of the cold start and after-treatment system regenerations in the RDE test procedure, special provisions for RDE hybrid testing and the inclusion of the Conformity Factors (CF) in the Certificate of Conformity (CoC). Its technical preparation has started and the text is due to be voted at the Technical Committee on Motor Vehicles (TCMV) in the 4<sup>th</sup> quarter of 2016.

The 4<sup>th</sup> regulatory RDE measure will cover in-service-conformity and surveillance testing (by independent parties such as Type Approval Authorities (TAAs) not involved in the initial type approval or NGOs). Its technical preparation will start in September 2016 and it should be voted at TCMV in the 1<sup>st</sup> half of 2017 and subsequently adopted by the Commission.

### **2. The RDE test was scheduled to be introduced for monitoring purposes during January 2016. Have national type approval authorities started applying the new RDE test for monitoring purposes?**

Regulation (EC) 2016/427 providing the rules for the RDE monitoring has been published in the Official Journal of the EU (OJEU) on 31 March 2016. National type approval authorities therefore should have started applying the new RDE test for monitoring purposes by now.

### **3. Will the data on emissions collected under RDE monitoring be made available to the public?**

Points 3.1.3.3 and 3.1.3.4 of Annex IIIA of Regulation (EC) 692/2008 as amended by Regulation (EC) 2016/427 require the vehicle manufacturer and the type approval authority to communicate the RDE test results to any interested party. The Commission services plan to propose relevant legislation making this information publicly available (e.g. through a database) without the need of explicitly contacting the vehicle manufacturer.

### **4. What scientific evidence is there to support the claim that the proposed conformity factors are set at the right level and are therefore compliant with the EU's own legal framework?**

The conformity factors (CF) applicable to the new RDE test procedure define the maximum level of emissions allowed during a single RDE test. The proposed conformity factors have been set on the basis of an in-depth analysis of several error sources of the PEMS equipment. There are inherent uncertainties due to the random nature of the RDE process as well as deviations coming from the technical uncertainties of the PEMS equipment. The analysis provides a range of CFs, which are considered to be compliant with the legal requirements set by Regulation (EC) 715/2007. The CFs voted by the TCMV are within this range.

**5. How will those reviews work in practice and what will have changed in a years' time that means the second conformity factor could be lowered then but not now?**

An annual revision clause was introduced in the 2<sup>nd</sup> regulatory RDE measure for the CF for the 2<sup>nd</sup> step of RDE implementation. This revision should reflect the reduction in measurement uncertainties of the PEMS equipment, based on experience with the application of the procedure and expected improvements over time due the technical progress. Therefore it is justified that the error analysis described in point 4) is repeated annually to take into account these improvements.

If technically justified, after each such annual analysis the Commission intends to adopt legislation (via a delegated act or the Comitology procedure), which will reduce the CF for the 2<sup>nd</sup> RDE step accordingly.

**6. Please could you provide the Committee with more information on the Commission's work on the car labelling directive, timescales and the provisions being considered? In particular, I would be grateful to know which pollutants the Commission is considering to include in any reforms to car labelling.**

Directive 1999/94/EC ('Car Labelling Directive') aims to raise consumer awareness on fuel use and CO<sub>2</sub> emission of new passenger cars. By doing so consumers should be incentivised to purchase or lease cars which use less fuel and thereby emit less CO<sub>2</sub>. In turn it should provide an additional incentive to manufacturers to take steps to reduce the fuel consumption of new cars and offer more fuel efficient cars.

The Car Labelling Directive as a demand-side policy is considered an important complementary measure to help car manufacturers meet their specific CO<sub>2</sub> emission targets as set under Regulation (EC) 443/2009. In 2015, the Commission launched an ex-post evaluation of the Car Labelling Directive to examine its actual implementation and achievements compared to what was expected. The evaluation's main objectives are to better understand where and why the Car Labelling Directive has worked well or not so well, identifying factors which have helped or hampered the achievement of its objectives, as well as to quantify and qualify the impact of the legislation, particularly in terms of progress towards achieving its objectives. This included the question whether a requirement to include information on air pollutants would have made the Directive more effective.

The evaluation is expected to be concluded in July 2016 with the publication of a Commission Staff Working Document that will summarise the main findings of the evaluation and identify any potential follow-up. Independently of the evaluation results, before the end of 2016 the Commission may provide further guidance to Member States on how to address the introduction of the new Worldwide Harmonized Light-Duty Vehicles Test Procedure (WLTP) in the context of the Car Labelling Directive.

In order to accelerate the positive effects on urban air pollution hotspots from the introduction of RDE tests, the Commission is also exploring a voluntary mechanism to identify vehicles with significantly low pollutants emissions, including of NO<sub>x</sub>. In addition to providing consumers with more accurate information on cars' emissions, such a mechanism would also support manufacturers who already supply cleaner vehicles.

**7. The proposals to reform the type approval structure foresee more stringent performance criteria for technical services. What does that mean?**

The proposal includes stricter rules regarding the independence of technical services (separation of testing/consulting activities, subcontracting of activities). The main novelty concerns the designation of technical services, which would not be exclusively in the hands of one Member State but would be based on the results of joint audits by experts from other Member States and the Commission. These audits would include on-site visits to testing facilities and provide the Commission or Member States with the right to oppose to the designation of a technical service. The performance of technical services would also be reviewed on a periodical basis.

The proposal includes detailed provisions on the first designation of a technical service which involves experts from at least two other Member States and the Commission as part of the joint assessment team and the circulation of an assessment report to be reviewed by all Member States and Commission. Thereafter, every 30 months, a monitoring including an on-site visit by the type approval authority would be mandatory. Every five years, a reassessment by the type-approval authority together with the joint assessment team would be required. In addition, the type approval authority would be obliged to continuously monitor the technical service and in particular take action in case it receives any information that the technical service no longer complies with the requirements. As a result, the designation of the technical service would no longer be valid which might, in return, affect the certificates it had issued before.

**8. The Commission is aiming to sever the financial link between the auto industry and technical services by creating national funding pools. On what criteria will remuneration be then allocated from the pools to designated technical services for their testing work?**

Like for many other products, manufacturers currently pay a fee directly to the technical services for the type approval testing that these technical services carry out for them. Technical services are dependent on these revenues and compete for this work. Under the new Regulation, technical services may no longer receive direct payments from manufacturers but instead all fees would be collected by the Member States. The way this would be done is still very open in the proposal to allow a thorough discussion with Member States. Several options are possible (fee based on the number of tests, number of sales, etc) and could be further developed once Member States and the European Parliament agree on the principle of this independent financing. The basic idea is that instead of paying directly the technical service, the manufacturer would have to pay the type-approval authority on the basis of what is charged today by the technical services.

**9. National type approval authorities will be subject to peer reviews to ensure that the relevant rules are implemented and enforced rigorously across the EU. What will this entail and how will it be different to the existing Type Approval Authority Meetings (TAAM)?**

Member States should periodically – at least every four years - review and assess the functioning of their type-approval activities and communicate the results of such reviews to the other Member States and the Commission. A summary of the results should be published

and include the number and the names of the applying manufacturers of type-approvals issued.

More specifically with regard to the role of the type-approval authorities, the proposal introduces more peer review elements insofar as it involves the type approval authorities of other Member States in the decision-making process with regard to the delegation of technical services. It would furthermore oblige type approval authorities to consult each other and the Commission on horizontal questions concerning the assessment, designation and monitoring of technical services, with the objective to ensure the development of a harmonised practice.

The creation of the Forum for Exchange of Information on Enforcement would also strengthen the peer-review elements.

While under the existing system, an exchange of information between type-approval authorities already takes place in different fora, i.a. TAAM, the proposal formalises these elements in a detailed manner and empowers the Commission to lay down further details in this respect.

**10. The Commission would like the power to suspend or withdraw the designation of technical services that are underperforming. What evidence is there that Technical Services have been too lax in applying the rules on type approval standards?**

In the relevant provision, a procedure is established to ensure that appropriate action is taken in case the Commission has been informed about non-compliance of a technical service. Primarily, the Commission should request the responsible Member State to take restrictive measures including the suspension, restriction or withdrawal of the designation, where necessary. Only if the Member State fails to do so, the proposal provides that the Commission may take action. As the Commission would act through an implementing act, this implies that the comitology procedure involving all Member States would have to be followed.

The reasoning of the proposed provision is to further reinforce the robustness and trustworthiness of the type approval system as a whole.

**11. How much do type approval testing standards vary across the EU? How does the UK compare to other Member States?**

With 28 different Member States, it is possible that rules are implemented in different ways throughout Europe although the legislation is fully harmonised. The Commission does not deliver Type Approval certificates (only Member States do) and therefore does not have statistics on the quality of certificates delivered by Member States.

**12. What will be the remit of the Enforcement Forum and when will it be established?**

The Forum would coordinate the network of national authorities responsible for type approval and market surveillance. It would also have an advisory role to the Commission to promote, for example, good practices, exchange of information on enforcement problems and penalties, cooperation on market surveillance, development of working methods and tools, development of an electronic information exchange platform, evaluation of harmonised enforcement projects and joint audits. Member States would nominate their representatives to the Forum. The Commission would chair the Enforcement Forum. The tasks and composition of the

Forum would be further specified by a Commission delegated act. Existing market surveillance platforms, such as Rapid Alert System (RAPEX) and the Information and Communication System on Market Surveillance (ICSMS) would be further used and strengthened for exchange of information of market surveillance activities.

**13. The Commission has proposed that technical services are regularly and independently audited to obtain and maintain their designation. How will this be done?**

See question 7.

**14. The Commission has said that it will carry out ex-post verification testing through its Joint Research Centre and, if needed, initiate recalls. How much will this cost and how will it be paid for? Will additional funding be allocated to the Joint Research Centre for this purpose?**

It is foreseen that these verifications would be financed by additional budget allocated to JRC in the future. JRC would be supported by a redeployment of resources within the Commission. Appropriate testing infrastructure would be rolled out by the time of entry into force of the Regulation.

**15. The proposal contains a measure that would allow the Commission to impose fines on manufacturers who attempt to cheat emissions tests. How would that work? What would be the mechanism for a fine to be imposed?**

Car manufactures who are in breach of type approval legislation (e.g. defeat devices or fake declarations) would risk administrative fines of up to €30,000 per vehicle which could be levied by the Commission if no fine was being imposed by the Member State. Fines could also be imposed on technical services if they failed to carry out the tests rigorously. The level of fines would depend on an assessment of the gravity and extent of the non-compliance. The system of administrative fines and their calculation would need to be specified by a Commission delegated act, which would be scrutinised by the European Parliament and the Council of the EU.

The proposal maintains the existing obligation for Member States to lay down rules for effective, proportionate and dissuasive penalties. In the future, Member States would have to inform the Commission every year on the penalties they imposed. The type approval specific legislation complements the general civil and criminal law of Member States that may be applicable if allegations of fraud are confirmed.

**16. What is the Commission's vision for in-service surveillance? What would constitute best practice?**

The definition of in-use-conformity testing will be included in the 4<sup>th</sup> regulatory RDE measure. It is envisaged that it will consist of two elements:

- a) In-service-conformity (ISC) testing to be done by the manufacturer and the authority responsible for issuing the type approval, which is first of all intended to assess the durability of emission control systems over a certain period of use. This work can largely follow the principles for the current ISC testing, even though the participation of the type

approval authority must be strengthened and the specific statistical conditions of the PEMS testing must be taken into account.

- b) Market surveillance testing that may be done by either the Member State or a “third party”, i.e. an authority not involved in the initial type approval process or independent parties like NGOs or the manufacturers’ peers. The possibility of such independent surveillance testing is particularly important, if not decisive, for the effectiveness of the RDE test procedures, since the latter contain random elements and are based on the legal requirement that conformity factors are not exceeded for a whole variety of different PEMS trips.

A comprehensive yearly testing programme containing both elements would constitute best practice. Member States, who are not responsible for Type Approvals, should still implement the surveillance testing part for vehicles circulating in their territory.

### **17. Will in-service surveillance be mandatory for Member States?**

In-service conformity testing in the sense of point a) of the answer to question 16 is mandatory according to the requirements of Regulation (EC) 715/2007, i.e. it constitutes an obligation for the manufacturer and the responsible type approval authority.

Independent market surveillance testing in the sense of point b) of the previous answer currently is not mandatory, but is it expected to be so, with the adoption of the 4<sup>th</sup> legislative RDE measure. Also, under the new type approval framework legislation market surveillance testing in this later sense would become mandatory. Its results would then also have immediate legal effect, e.g. bringing the sale of non-compliant vehicles to a hold until a final decision is being taken, etc.

### **18. How much in-service surveillance is currently carried out by Member States?**

Vehicle manufacturers, audited by type approval authorities, are currently performing the in-service conformity testing (in the meaning of point a) of the answer to question 16 and 17) of their own vehicles according to the legal requirements (see Annex XV of Regulation (EC) 715/2007).

Independent market surveillance testing of vehicles (in the meaning of point b) of the answer to question 16 and 17) is not performed in a systematic manner by Member States until now. Only some Member States (e.g. Netherlands, Sweden and German programmes) have performed some tests in this respect in the past.

### **19. Does the Commission have an opinion on the legality of Volkswagen’s emissions control software for testing? Does it constitute a ‘defeat device’?**

The Commission does not have enough evidence on the legality or illegality of the VW emission control software. All such information lies with the relevant Type Approval Authorities, who have the authority and obligation to investigate any such cases and act accordingly. The Commission will carefully analyse the results of the national investigations before deciding on possible next steps.

**20. What is the legal process for resolving this question? Is it just a dispute between the German type approval authority and VW - or do EU institutions have a role?**

It is for the Member State, which has type-approved a vehicle, to investigate further and negotiate with the manufacturer. More specifically, Article 30(1) of Directive 2007/46/EC states that if a Member State, which has granted an EC type-approval, finds that new vehicles do not conform with the type it has approved, it should take the necessary measures to ensure that the production of vehicles is brought into conformity with the approved type, including the withdrawal of the type-approval, where necessary.

Under the current legislation, the power to impose sanctions for infringements to the car legislation lays with the Member States. More importantly, Member States have the obligation to ensure that manufacturers take all necessary measures to put an end to the infringement and to remedy to the situation. If the Commission has reasons to believe that the Member States did not ensure that all the necessary corrective measures are taken, it may start infringement procedures for incorrect application of EU legislation.

**21. Is the EU's definition of a defeat device too narrow?**

The current definition of defeat devices in the European legislation is adequate. Furthermore, the application of defeat devices will be limited by the 2<sup>nd</sup> regulatory RDE measure which obliges manufacturers to declare their Base and Auxiliary Emission Strategies. This will be a good possibility for Member States to clearly identify not-permitted emission strategies. Together with the implementation of the RDE legislation, this should significantly reduce the risk of defeat devices being used. This does not mean that the definitions and reporting requirements may not be revisited in the future.

**22. What investigations are being conducted into the Volkswagen emissions scandal at EU level? What penalties might those investigations lead to?**

The Commission is monitoring the situation closely and offered to assist the Member States who are investigating the possible presence of defeat devices in vehicles circulating on their territory. In addition, the Commission's Joint Research Centre is facilitating the exchange of technical information between Member States and working with them on the development of common testing methods. As explained in answer 20, the Commission has no legal power to conduct investigations or impose penalties to manufacturers under the current type approval framework but keeps a close eye on the national investigations to ensure that Member States comply with their legal obligation under European law, both Euro standards and type approval.

**23. The Committee has received a written submission from the International Council on Clean Transportation (ICCT) which assesses the approaches to prohibiting defeat devices in the EU and the US and makes recommendations for how the prohibition in Europe could be made more stringent. I have enclosed the submission and I would be grateful for your comments on it.**

The ICCT report on defeat devices provides their views of the situation in Europe and in the USA and related recommendations. In our view, most of the statements made in the ICCT report are accurate.



As stated in point 21 the Commission might revisit the definitions and reporting requirements in the future.