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From: General Secretariat of the Council

To: Council

Subject: **Any other business**

Implications of the emissions irregularities – the need for new road vehicle legislation governing the type approval procedure

- Information from the German delegation

Delegations will find attached an information note from the German delegation on the above-mentioned subject for consideration under "Any other business" at the meeting of the Council (Transport, Telecommunications and Energy) on 7 June 2016.

Please note that this item will be discussed jointly with the Policy Debate on "NOx emissions by diesel cars".

Information from the German delegation for the Transport Council on 7 June 2016

Agenda item:

Implications of the emissions irregularities – the need for new road vehicle legislation governing the type approval procedure

A commission of inquiry was appointed in Germany at the Federal Ministry of Transport and Digital Infrastructure immediately after the allegations against VW in the US had emerged. The remit of the Commission of Inquiry was to investigate the manipulations – which VW had admitted – on certain diesel vehicles manufactured by the VW Group. VW was ordered to remove the defeat device used on these vehicles, because this device was designed as a prohibited test cycle recognition system. In addition, the Commission of Inquiry was tasked with examining commercially available diesel vehicle types produced by other manufacturers in Germany and abroad to determine whether comparable test cycle recognition systems such as those in the case of VW were being used. To this end, it conducted an extensive field test using over 50 vehicles.

The outcome of this test was that no other cycle recognition systems such as the one used by Volkswagen were discovered. However, it became clear that for many vehicle types, real driving emissions are significantly higher than on the dynamometer. One of the main reasons for this is that the manufacturers adapt the effectiveness of their emissions control systems to driving and/or environmental conditions in different ways. This is done primarily by means of the "temperature window", outside which the manufacturers reduce the effectiveness of the emissions abatement.

Such adaptations are legally permissible if they are necessary in terms of protecting the engine. Regulation (EC) No 715/2007 states that the use of defeat devices that reduce the effectiveness of emission control systems is normally prohibited. In certain exceptional cases, however, this prohibition does not apply. Such a case exists, for instance, "if the need for the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle".

In the case of some of the vehicle types investigated, the manufacturers concerned were able to convince the Federal Ministry of Transport and Digital Infrastructure's Commission of Inquiry that the exhaust after treatment control system used by them appropriately reflects the need for engine protection.

In the case of other manufacturers, however, the Federal Ministry of Transport and Digital Infrastructure's Commission of Inquiry had doubts as to whether the controls chosen, especially the temperature window, could be fully and solely justified by the need for engine protection. The Federal Ministry of Transport and Digital Infrastructure's Commission of Inquiry has called on all the manufacturers concerned to take measures to limit the temperature window to the extent that is actually necessary. With regard to the type approvals issued in Germany, this has been implemented by the manufacturers making a voluntary commitment to improve the emissions strategies used for their ongoing production and by recalling vehicles already on the road as part of a service action.

During the investigations, it emerged that European legislation governing acceptable and prohibited forms of influencing exhaust after treatment is interpreted in different ways.

Against this background, Germany believes that the following measures are necessary:

1. The rule in the first and second sentences of Article 5(2) of Regulation (EC) 715/2007 should be reworded as soon as possible to read as follows (amendments in bold and italics):

"(2) The use of defeat devices that reduce the effectiveness of emission control systems shall be prohibited. The prohibition shall not apply where:

- a) ***even if the best available technologies are included, no other technology is available*** to protect the engine against damage or accident and for safe operation of the vehicle:"

Reasons:

This would make it clearer that defeat devices are only acceptable if, using the best available technology, they are necessary to protect the engine. Whether such other best available technology is available, must be checked at the time the type approval is issued. Wording this exception more precisely would increase legal certainty with regard to the application of the prohibition of controls to reduce exhaust after treatment that are not necessary in terms of engine protection and make it easier to legally enforce this prohibition, using incisive measures if necessary. Germany believes that this re-wording should be done during the ongoing co-decision procedure on the adaptation of Regulations (EC) No 715/2007 and No 595/2009.

2. Notwithstanding this, the European Commission should, at the same time, continue to analyse the lessons learned in the US from regulations on the distinction between acceptable and prohibited defeat devices and take them into account, in a suitable form, for updating the European legal acts.
3. Regardless of these measures, the activities to adopt the supplementary rules governing real driving emissions (RDE, 3rd and 4th Packages) must be brought to a speedy and comprehensive conclusion.
4. Moreover, the European provisions must be further improved in terms of the conduct of follow-up checks of vehicles on the road in order to establish a qualitative and quantitative framework so that re-testing is carried out with a uniform degree of stringency in Europe and a potential competitive situation between the type approval authorities is avoided. To this end, the apparatus and extent of testing have to be enshrined in the individual provisions for uniform application. This also involves developing and introducing suitable testing procedures with laboratory tests and on-road tests using portable emissions measuring systems, in order to detect prohibited defeat devices in the future and obtain proof of their use that is as evidential as possible.

5. The European Commission is invited to explore whether a rotation of the technical services could be introduced and what period would be appropriate for this.
 6. As an immediate action, type approval authorities are, before they issue a type approval, to systematically demand that manufacturers provide a declaration as to whether they use engine protection equipment, as is now a mandatory requirement in the RDE regulations. If this is the case, the manufacturers are, on a case-by-case basis, to reveal its precise function, the specific software it uses and the way it works as well as describing the reasons why they believe the engine protection equipment is necessary. In addition, this procedure should also be used retroactively for existing type approvals in all Member States. The type approval authorities must check the information provided.
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