

Scandal-hit car industry in the driving seat for new emissions regulations

Corporate Europe Observatory (with contributions from Susana Duarte Coroado)

In the wake of Volkswagen's diesel emissions scandal, Corporate Europe Observatory has obtained documents that show how the car industry has continued to undermine Europe's proposed new emissions test standards. Close relations between the European Commission and the car industry in the drafting ensured numerous loopholes in the first package, which has already been approved by the Parliament. Most worryingly, pressure from Member States in the yet-to-be-approved second package, provides a loophole so big the car industry will be able to exceed proposed standards by at least 50% for the foreseeable future. A vote in Parliament on 3rd February against approving the second package offers the chance to put public health before short-term profit.

The #VWgate scandal exposed not just Volkswagen but the entire car industry's huge discrepancy between their diesel emissions under laboratory conditions vs those out in the real world, where emissions are on average [five times higher](#) than legal limits. The European Environment Agency has [estimated](#) that approximately 75,000 premature deaths have occurred in Europe in 2015 alone as a result of nitrogen dioxide (NO₂) pollution, a form of nitrous oxide which largely comes from diesel vehicles.

The European Commission and the car industry were well aware of the discrepancy, and new 'real driving emissions' (RDE) tests, to come into force in 2019 for all cars sold, were intended to fix the problem outside of the lab, ensuring diesel cars complied with 2007's Euro 6 Standards, keeping NO_x emissions in the real world below 80mg/km.

The resulting RDE tests have been widely criticised, and documents acquired by Corporate Europe Observatory through freedom of information requests¹ reveal just how close European car manufacturers were to the Commission in crafting the RDE test procedures, as well as the aggressive lobbying towards the Commission when it wasn't giving in to the enormous loopholes now being voted on.

Loophole of all loopholes up for the vote

As testing conditions have a big impact on emissions – road gradient, weather, speed, altitude etc. – they were key lobbying targets, as the documents show (see below), but the biggest victory for the car industry was securing the loophole of all loopholes, a high 'conformity factor'. The conformity factor determines to what extent the 'not to be exceeded' emissions limits have to actually be conformed to, or by how many times can they be exceeded. In this case, by a lot.

The current draft proposal has been signed off by member states eager to protect their car industries, and is awaiting approval by Parliament, who vote on 3rd February. In it the agreed conformity factor is 2.1 until 2021, which means surpassing the original 80mg/km 2.1 times despite the technology being [widely available and feasible](#). A further loophole is that it would legalise any level of NO_x emissions until the limit at 168mg/km, rather than 80mg/km, for all vehicles sold in 2019. In 2021 the conformity factor would then fall to 1.5, meaning they would still surpass the original limit by 1.5 times, or 50%, so 120mg/km. A more appropriate name may be the non-conformity factor.

To put this into context, the RDE tests should come into force more than ten years after the Euro 6

Standards were first agreed with industry, ample time for research and development of new technologies to reduce NOx emissions. Yet even current technology, selective catalytic reduction (SCR) systems, was never rolled out, according to ACEA, explaining the high levels of air pollution and discrepancies between real world and lab emissions.

But how did the car industry achieve this? Besides providing technical information, the documents obtained by CEO show the European Automobile Manufacturers' Association, (ACEA), threatening that rising costs and more stringent tests could see "social and other costs associated with closure of engine production lines",² i.e. job losses. In today's Europe Union such a threat is a powerful weapon, particularly from an industry that employs over 12 million people and accounts for 4% of EU GDP. Near the end of the process, ACEA went as far as telling the Commission that meeting the Euro 6 standards under the new RDE tests "may be impossible", instead calling for a "sensible approach".

As well as playing the competitiveness card, ACEA attempted two more strategies to weaken the Commission's position on conformity factors, one technical and one legal. On the technical level, ACEA dismissed the Commission's own approach to calculating them, claiming they were based on "taking test results from a few vehicles that have been adapted as one-off projects in order to simply show that low conformity factors are possible".³ That this is what the car industry has been doing to pass laboratory tests since the Euro 6 Standards were introduced appeared lost on ACEA.

On the legal front, ACEA had commissioned a legal analysis, which it sent to the Commission on July 31st 2015. The study called into question the validity of more demanding targets for industry. It was carried out by Van Bael & Bellis, a Brussels law firm involved in lobbying (but not in the lobbying register).⁴ The analysis concludes that the Commission cannot introduce new emissions limits through the RDE without conformity factors, as the limits in the legislation were only valid in laboratory tests not on the road. In short, a legal argument for the car industry to not meet the new levels. The analysis is questionable as the law (Regulation (EC) 715/2007) in fact explicitly requires the limits to be met "in normal use".

The Commission stuck to its original conformity factors of 1.6 and 1.2 respectively, yet meanwhile Member States became increasingly more receptive. In Germany, a country particularly wary of impacting its car industry, Angela Merkel [intervened directly](#) on the behalf of German car manufacturer lobby, VDA, to weaken the conformity factor, according to Der Spiegel.

Successful national level lobbying transformed the situation from a position where, according to DG Grow Director General Calleja in a letter to Ford, "preliminary views of Member States were not in favour,"⁵ to one in which those same Member States were adding extra loopholes to the proposed second package during a technical meeting in late October 2015 – only a month after the Volkswagen scandal broke – because existing conformity factors of 2.1 and 1.5 were "too stringent" on industry.⁶ Ultimately the power of ACEA and its members ensured their interests were listened to, despite the public health implications, but it was by far the only instance, with their finger prints all over the technical specifications for the RDE test itself, many of which were already passed in the first package, voted through in May.

Not-so-normal driving conditions

The documents clearly reveal how ACEA and its members were actively trying to weaken the RDE tests through technical challenges to the testing conditions. They attempted to ensure 'normal' test conditions excluded scenarios when cars would emit more NOx, such as starting the engine cold, driving at high speed, driving in towns rather than rural areas or doing things like turning on the air conditioning, lights or windscreen wipers.

In a document emailed from ACEA to the Commission on On 7 October 2014,⁷ cc'ing German manufacturers Daimler and Audi (owned by VW), it outlined industry's amendments:

- Stop tests in temperatures below 9°C being classified as 'moderate' driving conditions (the Commission proposed 0°C as its lower limit, but changed it to 3°C);

<p>5.2.2. Moderate altitude conditions: Altitude lower or equal to 700 meters above sea level.</p> <p>5.2.3. Extended altitude conditions: altitude higher than 700 meters above sea level and lower or equal to 1300 meters above sea level.</p> <p>5.2.4. Moderate temperature conditions: greater than or equal to 273K (0°C) and lower than or equal to 303K (30°C)</p> <p>5.2.5. Extended temperature conditions: greater than or equal to 266 K (-7°C) and lower than 273 K (0°C) or greater than 303 K (30°C) and lower than or equal to K (35°C)</p>	<p>altitude) is extended.</p> <p>2.2.1. Moderate altitude conditions: Atmospheric pressure greater than or equal to 91,7 kPa.(700m)</p> <p>2.2.2. Extended altitude conditions: Atmospheric pressure greater than 91 kPa and lower than 84,1 kPa (1300 m)</p> <p>2.2.3. Moderate temperature conditions: greater than or equal to 282K (9°C) and lower than or equal to 303K (30°C)</p> <p>2.2.4. Extended temperature conditions: greater than or equal to 276 K (3°C) and lower than 282 K (9°C) and greater than or equal to 303 K (30°C) and lower than 308 K (35°C)</p>
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- Not include emissions from a cold start in any evaluation before the engine had warmed up (accepted);
- Stop the use of the air conditioning or other devices being obligatory, changing the Commission's proposed text from "shall be" to "may be" and "should be" (not accepted);
- Reduce how much time was spent during each test driving in urban areas and motorways compared to rural areas, where the average speed would produce lower emissions; (partially accepted, with loopholes)
- Not counting emissions after prolonged stops (accepted);
- Reduce the maximum speed a car would be tested at from 160 km/h to 130 km/h; (145km/h was agreed, but high-speed tests were scrapped);
- Scrap special high-speed tests for fast cars, particularly sports cars (accepted);

Couched in technical language, ACEA was making sure all the things normal people do when driving should not in fact be considered 'normal' because they would make it harder to meet the Euro 6 standards.

Volkswagen leads the charge for weaker regulations

The following month ACEA's influential member Volkswagen, who also owns Porsche Lamborghini and Audi, sent another email to the Commission – DG GROW, the department responsible for creating the RDE tests – demanding that high-speed tests and cold starts "must be deleted" from the RDE tests.⁸ They subsequently were.

From: [REDACTED] (EAMG/1) [mailto:[REDACTED]@volkswagen.de]
Sent: Monday, November 17, 2014 5:36 PM
To: [REDACTED] (ENTR)
Cc: [REDACTED]@acea.be; [REDACTED]@daimler.com; [REDACTED] (EAMG/1)
Subject: ACEA recommendations Annex IIIa as asked on Thursday

Dear Mr. [REDACTED],

On Thursday last week you asked ACEA for some comments. Attached you'll find them.

Other

- ACEA cannot agree to a regulation including undefined topics like cold start or high speed part. Such topics must be deleted.
- ACEA kindly asked you to discuss the Chapter 7 to10 before the next TCMV.

Kind regards

When [accused of lobbying](#) by *New York Times* journalists who had seen the emails, VW claimed the email was “part of the normal exchange of expertise that is part of every lawmaking in the EU” and therefore “should not qualify” as lobbying despite clearly representing the narrow interests of Volkswagen and other car manufacturers.⁹

Conflicts of interest going unnoticed

At the Commission-level, the car industry masked much of its lobbying as the provision of ‘expertise’ and technical advice. As a result, it was allowed to play a key role in the Commission’s technical groups tasked with working out the fine details of new vehicle engine emission tests.¹⁰

For example, ACEA’s demand that less testing time should be spent in towns or on motorways had nothing to do with realistic car use as they claimed, and everything to do with emissions being higher in those scenarios and therefore avoiding them would mean less costly compliance. The Commission even accuses them of doing so in correspondence with ACEA, Daimler, Audi and BMW, saying “the completeness or reliability of these data [provided by ACEA on the balance between urban, rural and motorways]... are unknown or ambiguous.”¹¹ Yet despite revealing the political nature of the expertise being given, the car industry remained a key player in crafting the regulation.

Unfortunately for the public, this is yet another example of the Commission failing to acknowledge the conflict of interest that occurs when those being regulated are put in charge of regulations. In this instance, the car industry used its position as expert as an opportunity to lobby against more stringent and therefore expensive-to-comply-with testing, as well as generally weakening and delaying the procedure.

Delay tactics

ACEA and its members managed to introduce delays into the process at all stages. The agreed date between a regulation coming into force and industry compliance was already set at five years by the Commission’s expert group, CARS 2020, in order to ensure sufficient ‘lead in time’.¹² But even with such a distant date, the documents show ACEA has still consistently tried to either:

Delay important votes on the proposal, e.g.

“Industry strongly recommends that a vote should not be taken”¹³

Change or add to the proposal at the last minute, without which they claimed they couldn't agree to it, e.g.

“The first package is not complete and cannot be accepted by ACEA”¹⁴

According to ACEA, even a delay of a few months could put back implementation by an entire year (from 2017 to 2018), so these tactics can have a huge pay-off for the car industry.

Another delay tactic employed has been one of diversion: a week before the Commission's proposal was officially presented, ACEA claimed it “simply adds complexity and stringency when there are other valid approaches for RDE that will achieve the same end result”,¹⁵ and instead offered a counter-proposal that it didn't present but assured would soon be ready. Despite all this, ACEA consistently claims that “our industry is supporting the Commission's efforts.”¹⁶

Commission in the passenger seat?

Rather than accepting that there should be a healthy distance between regulators and their those being regulated, correspondence suggests a relationship of co-workers, with ACEA claiming “our industry is supporting the Commission's efforts” and that it wants “to work together with your services to get a full package completed in the shortest possible time”.

The language used by ACEA is often personal, such as addressing the Director General for DG GROW as “Dear Daniel”, or a Ford executive thanking Commission staff for their “kind assistance at the recent meeting with the team of Commissioner Bienkowska” and to “Have a nice weekend!”

Yet the tone and language used by ACEA and its members can also border on the aggressive and arrogant, from Ford telling the Commission the RDE process is “not acceptable”¹⁷ to Volkswagen claiming ACEA “cannot agree” to certain parts of regulation and “such topics must be deleted”.¹⁸ When the Commission contacted ACEA with “serious concerns” from Member States about their suggestions, ACEA's response was that it “does not see a reason for these ‘serious concerns’” and suggests they are dropped.¹⁹ Elsewhere there numerous things it “cannot accept”, while Ford finds a proposal “unacceptable for the automotive industry”.²⁰ ACEA even goes as far as to tell the Commission that it “could not impose a blanket elimination of diesel vehicles of a certain ‘unacceptable technology’”.²¹

Industry in the driving seat – but for how long?

The loopholes included in both the first and the second package of the RDE test mean it is not going to transform air quality or get car companies to comply with Euro 6 Standards. The special role of the car industry in Europe, and the relationship it has with EU regulators and Member States, means it has both hands on the steering wheel. However, if the second package goes through – which contains the sky-high conformity factors – then that will be that for the rest of the decade. But European Parliamentarians have an opportunity to not just stop it but continue the momentum they built by launching their [committee of inquiry](#) into the VW scandal.

On 3rd Feb, the whole Parliament will vote on whether or not to adopt the second RDE test package, conformity factors and all. The Environment Committee has already vetoed it, and recommends

others to do so, but pressure is mounting on MEPs from their national level governments as well as the car industry. Yet in the wake of the Volkswagen scandal, there has never been a better time to stand up to the power of the car lobby in the interest of Europe's citizens. A veto would be a clear sign to the car industry and the Commission that emissions limits are there to be met, not avoided.

If successful, the Parliament will seriously challenge the way of doing business, at the Commission and Member State level, and not just in the world of automobiles but across all legislative dossiers. In order to have public interest law-making, we need our regulators to be independent from those they are regulating, and this could be a step in that direction.

All documents can be found at

http://www.asktheeu.org/en/request/car_industry_lobbying_on_testing

- 1 Freedom of Information Requests related to correspondence and meetings between DG GROW (responsible for designing the real driving emissions tests) and the European car manufacturers lobby, ACEA, as well as all of its members. You can see the request and all documents at http://www.asktheeu.org/en/request/car_industry_lobbying_on_testing.
- 2 [Letter from ACEA to the European Commission](#), 31 July 2015.
- 3 Ibid.
- 4 The only reference to Van Bael & Bellis in the Lobby Transparency Register is under [the entry of their client, the Association for Asia Pacific Airlines](#), where they are listed as the official address (accessed 29 January 2016).
- 5 [Letter from Director General Calleja to Ford](#), 21 April 2015.
- 6 European Commission, [Summary Record of the 51st Meeting of the 'Technical Committee - Motor Vehicles' \(TCMV\) Meeting](#), Brussels, 1 December 2015 (meeting was actually held 28 October 2015).
- 7 All emails are available to download at http://www.asktheeu.org/en/request/car_industry_lobbying_on_testing.
- 8 [Volkswagen to DG GROW on behalf of ACEA](#), 17 November 2014.
- 9 [VW Argued for Easing New EU Tests on Emissions](#), New York Times, 1 December 2015.
- 10 The key Expert Group was the [Real Driving Emissions – Light Duty Vehicles subgroup of the Working Group on Motor Vehicles](#) and the key Comitology Group is the [Technical Committee on Motor Vehicles \(TCMV\)](#).
- 11 [Email from the European Commission to ACEA, Daimler, Audi and BMW](#), 13 March 2015.
- 12 The prioritisation of industry needs over public health can be traced back to the Better Regulation agenda, whereby competitiveness and growth of business is made the primary goal of regulation.
- 13 [Letter from ACEA to DG GROW](#), 18 March 2015.
- 14 [Email from ACEA to DG GROW part 1](#) and [part 2](#), 15 April 2015.
- 15 [Letter from ACEA to Director-General of then-DG Enterprise, Daniel Calleja Crespo](#), 8 October 2014.
- 16 Ibid.
- 17 [Letter from Ford to DG GROW Director General Calleja](#), 19 March 2015.
- 18 [Email from Volkswagen to DG ENTR](#), 17 November 2015.
- 19 [Email from ACEA to DG GROW](#), 16 March 2015.
- 20 [Letter from Ford to DG GROW Director General Calleja](#), 19 March 2015.
- 21 [Email from ACEA to DG GROW](#), 31 July 2015.