



*European Economic and Social Committee*

**INT/888**

**Emissions/light passenger and commercial vehicles**

## **OPINION**

European Economic and Social Committee

**Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 715/2007 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 information**

[COM(2019) 208 final – 2019/0101 (COD)]

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Consultation	European Parliament, 15/07/2019 Council, 24/06/2019
Legal basis	Article 114 TFEU
Section responsible	Single Market, Production and Consumption
Adoption in section	03/09/2019
Adoption in plenary	25/09/2019
Plenary session No	546
Outcome of vote (for/against/abstentions)	107/1/1

## 1. **Conclusions and recommendations**

- 1.1 The EESC notes that the cities of Paris, Brussels and Madrid have, in the General Court, contested Commission Regulation (EU) No 2016/646<sup>1</sup>, resulting in a decision of 13 December 2018 by that Court to partially annul that regulation.
- 1.2 The EESC notes that the Court granted the Commission sufficient time to rectify the shortcomings allegedly found in the regulation in a way that would not prevent the market from operating normally — by February 2020, irrespective of the appeal lodged by the Commission.
- 1.3 The EESC wishes to highlight the scale of Dieselgate, which it has already addressed in a number of opinions and regrets that the Commission was not able to anticipate these events by means of effective measures from the outset.
- 1.4 The Committee also remains mindful that, despite its insistent calls for more than 20 years, the EU has not been able (or willing) to adopt an effective instrument for group action capable of dealing with situations such as this.
- 1.5 The EESC further considers that the solution put forward in this proposal should not be limited to dealing with an issue of form, without genuinely serving the applicants' interests.
- 1.6 The Committee also fears that, by empowering the Commission to issue delegated acts under the terms it sets out, the proposal would undermine not only the effectiveness of the legislation but also the intentions of the legislator when establishing these delegated acts. The EESC therefore believes that it should revisit its opinions on secondary acts in a new own-initiative opinion in the light of the most recent interinstitutional agreement.
- 1.7 The EESC also hopes that the Commission will ensure that Regulations (EU) 2017/1154<sup>2</sup> (3rd package) and (EU) 2018/1832<sup>3</sup> (4th package) will not be subject to the same procedure as that currently in force.
- 1.8 The EESC, in view of the number of legislative measures adopted in this field (around 100), calls on the Commission, in accordance with the principles of the Better Regulation Agenda, to consider the possibility/need for a compilation/codification in this area.
- 1.9 Lastly, the EESC calls on the Commission to consider the proposals it makes in this area, with a view to ensuring greater speed of implementation and legal certainty.

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1 [OJ L 109, 26.4.2016, p. 1.](#)

2 [OJ L 175, 7.7.2017, p. 708.](#)

3 [OJ L 301, 27.11.2018, p. 1.](#)

## 2. **The Dieselgate scandal and collective redress for consumers**

- 2.1 In September 2015, it was made public that the VW Group appeared to have manufactured and sold vehicles that it had equipped with software designed to manipulate laboratory tests for monitoring motor vehicle emissions<sup>4</sup>.
- 2.2 By doing so, the company was harming millions of consumers across the world who had purchased such vehicles, believing that these complied with legal pollutant emissions limits and that they would be more sustainable, in terms of both the environment and fuel consumption. Through its conduct, the company will also have caused serious damage to people's health and to the environment in general.
- 2.3 It was established that as a result of the company's actions and on the basis of requirements for laboratory testing, the difference between emissions values for laboratory tests and those carried out in real driving conditions corresponded to an increase of between 10 and 40 times for nitrogen oxide emissions.
- 2.4 The company also admitted that it had installed this device in some 11 million diesel vehicles worldwide. As a result of this scandal, the European Commission and a number of Member States opened administrative and criminal proceedings to sanction the company for its behaviour.
- 2.5 The EESC points out that millions of consumers have not been properly compensated for the damage they have suffered, and that there is still no information on the effects of the monitoring measures carried out by the Member States' authorities. Nor is information available on the recall procedures put in place by the company, in particular as regards the effects that remedying the lack of conformity will have on vehicles' subsequent performance.
- 2.6 A number of European-level consumer and environmental organisations have used collective redress schemes and have brought legal cases against Volkswagen and SEAT, but only at national level and by means of differing judicial procedures.
- 2.7 Without prejudice to these cases, many of these consumers may never be compensated for the damage they have suffered, due to the lack of a European collective redress scheme. Moreover, the Commission's recent proposal for a directive on representative actions for the protection of the collective interests of consumers<sup>5</sup> does not fully address the need for consumers to be properly compensated. Such a response would have been crucial in this particular case, as it would make it possible to compensate consumers who have suffered harm and who are fully reliant on the measures and decisions taken in the Member States. It is hoped that the ongoing negotiations with the EP and the Council will soon be completed, providing a more useful version of the proposal.

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<sup>4</sup> These tests had been carried out by the US Environmental Protection Agency (EPA) and the company was forced to admit that it had installed a "defeat device" in vehicles, which would use a software algorithm to detect when the vehicle was going to be tested for polluting emissions.

<sup>5</sup> COM(2018) 184 final – 2018/0089 (COD); EESC opinion: [OJ C 440, 6.12.2018, p. 66](#).

### 3. European Commission measures and EESC opinions

- 3.1 To deal with this scandal, the EU institutions have tried to tackle, remedy and put an end to this situation<sup>6</sup>.
- 3.2 Following on from the work of the European Parliament's Committee of Inquiry into Emission Measurements in the Automotive Sector (EMIS), which started on 17 December 2015 and concluded on 2 March 2017<sup>7</sup>, the Commission has adopted several flagship measures, including the Real Driving Emissions (RDE) test procedure<sup>8</sup>, established and developed by Commission Regulations (EU) 2016/427 (1st package)<sup>9</sup>, (EU) 2016/646 (2nd package)<sup>10</sup>, (EU) 2017/1154 (3rd package)<sup>11</sup> and (EU) 2018/1832 (4th package)<sup>12</sup>.
- 3.3 The EESC has, especially since 2006, stated its views on the issue of exhaust emissions, specifically particulates (PM), nitrogen oxides (NOx), carbon monoxide (CO) and hydrocarbons (HC), highlighting some of the shortcomings of the schemes successively proposed and advising on more reliable testing measures<sup>13</sup>.
- 3.4 However, as regards the regulations referred to in point 3.2 above, the EESC was not asked to issue an opinion, as this is not mandatory for acts of the type adopted by the Commission under Articles 296 and 297 TFEU (in contrast, for example, to Articles 38, 46, 95, 113, 115, 164, 166, 169, 177, 182, 188, 192, 194, 203, 336 and, in particular, Article 304 of that Treaty).
- 3.5 Nevertheless, on 26 June 2016, the Ville de Paris (Case T-339/16), on 29 June 2016, the Ville de Bruxelles (Case T-352/16) and on 19 July 2016, the Ayuntamiento de Madrid (Case T-391/16), brought actions against the Commission under Article 263 TFEU, **seeking the annulment of Regulation (EU) 2016/646 amending Regulation (EC) No 692/2008** as regards emissions from light passenger and commercial vehicles (Euro 6) because, in their view and to summarise, the Commission is found to lack competence due to its inappropriate use of the regulatory procedure with scrutiny instead of the ordinary legislative procedure; there has been an infringement of an essential procedural requirement by amending an essential element of a basic act in breach of the formalities laid down for its adoption and an infringement of primary and secondary legislation

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<sup>6</sup> See the list of legislative measures at [https://ec.europa.eu/growth/sectors/automotive/legislation/motor-vehicles-trailers\\_en](https://ec.europa.eu/growth/sectors/automotive/legislation/motor-vehicles-trailers_en).

<sup>7</sup> EP Report A8-0049/2017, which concluded, in summary, that "the Commission lacked the political will and decisiveness to act upon the seriousness of the high NOx emissions and to give priority to the protection of public health of citizens that was at stake;" and in particular "failed to use the means at its disposal, at the level of the TCMV and of the RDE-LDV working group, to advance the decision-making process and 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."

<sup>8</sup> This test procedure is supposed to better reflect the actual emissions on the road and reduces the discrepancy between emissions measured in real driving conditions and in a laboratory, and uses portable on-board emission analysers to measure emissions during an on-road test.

<sup>9</sup> [OJ L 82, 31.3.2016, p. 1.](#)

<sup>10</sup> [OJ L 109, 26.4.2016, p. 1.](#)

<sup>11</sup> [OJ L 175, 7.7.2017, p. 708.](#)

<sup>12</sup> [OJ L 301, 27.11.2018, p. 1.](#)

<sup>13</sup> See, in particular: [OJ C 311, 12.9.2014, p. 55](#); [OJ C 251, 31.7.2015, p. 31](#); [OJ C 227, 28.6.2018, p. 52](#); [OJ C 367, 10.10.2018, p. 32](#) and [OJ C 440, 6.12.2018, p. 95.](#)

and general principles of EU law, e.g. Articles 3, 11, 114(3) and 191 TFEU and Articles 35 and 37 of the Charter of Fundamental Rights, along with Directive 2008/50/EC, Article 4 of Regulation 715/2007 and Regulation (EC) 692/2008 (EC); and lastly, it has misused its powers insofar as the Commission's aim to increase NOx emission limit values does not reflect the provisions of EU law or those issued by the Commission and does not correspond to EU legislation.

3.6 In its judgment of 13 December 2018, the General Court decided to combine the three cases and, in summary, to **uphold the actions with regard to** the following points:

- "[the only provision which must be annulled] is point 2 of Annex II [...], in so far as it sets, in points 2.1.1 and 2.1.2 of Annex IIIA to Regulation No 692/2008 [of 18 July 2008, implementing Regulation (EC No 715/2007)], the value of the final CF pollutant conformity factor and the value of the temporary CF pollutant conformity factor for the mass of the oxides of nitrogen."
- "[Orders] the effects of the provision annulled pursuant to paragraph 1 of the operative part of this judgment to be maintained pending the adoption, within a reasonable period, of new legislation replacing those provisions; that period may not exceed 12 months from the date on which the present judgment takes effect."

#### 4. **The Commission Proposal**

##### 4.1 **Rationale and basis for the proposal**

4.1.1 In May 2017, the European Commission presented a series of measures to modernise European transport and mobility, which included reducing CO<sub>2</sub> emissions, air pollution and congestion, as well as removing red tape for businesses.

4.1.2 Regulation (EC) No 715/2007 had already been adopted in 2007, laying down rules for the type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6), requiring new light vehicles to comply with certain emissions limits.

4.1.3 As a result of the Dieselgate scandal, the Commission carried out a detailed analysis of the testing procedures and type-approval requirements and concluded that the emissions generated in real on-road driving conditions by Euro 5 and 6 vehicles significantly exceeded the emissions measured in the New European Regulatory Driving Cycle, in particular as regards NOx emissions from diesel vehicles.

4.1.4 The Commission deemed it necessary to set quantitative RDE requirements in order to limit exhaust emissions under all normal conditions of use, in accordance with the emission limits laid down in Regulation (EC) No 715/2007. This led to the adoption of Regulation (EU) 2016/646 which amended Regulation (EC) No 692/2008 by revising the values for conformity factors on the basis of the emissions measured in the tests, using a comitology procedure to do so.

4.1.5 This amendment, relating to the second phase of the RDE procedure, required tests measuring NOx emissions to be mandatory for new vehicle-types from September 2017 and for all vehicles from September 2019, and it was accepted by the EP and the Council<sup>14</sup>.

4.1.6 In December 2018, following an appeal by the cities of Paris, Madrid and Brussels, the General Court annulled some of the provisions of Commission Regulation (EU) 2016/646 on the specific grounds that **the so-called "conformity factors" should not have been adopted by a comitology procedure, but under the ordinary legislative procedure.** The annulment was partial and did not affect the testing procedure for real-condition driving, which remains in force.

4.1.7 However, the Court postponed the effects of the partial annulment until February 2020 in order to enable the Commission to comply with the judgment.

## 4.2 Content and purpose of the proposal

4.2.1 In order to avoid placing an excessive burden on manufacturers who have already designed their vehicles under the previously adopted RDE procedure, the Commission has submitted this legislative proposal, with the aim of:

- **restoring the previously adopted conformity factors;**
- **granting the Commission the power to revise down the conformity factors** set by the legislator **annually**, in order to reflect progress made on the accuracy of portable measuring equipment.

4.2.2 The Commission argues that, in its annulment, the General Court did not call into question the technical justification of the conformity factors. Therefore, and as there is still a discrepancy between the emissions measured under real driving conditions and those measured in the laboratory, conformity factors are proposed, thereby amending Regulation (EC) No 715/2007.

4.2.3 The conformity factors would be introduced in two stages: in the **first stage**, a temporary conformity factor should be applied, while in the **second stage**, only the **final conformity factor** should be used, with the Commission then having the task of regularly monitoring the final conformity factors in line with technical developments.

4.2.4 Furthermore, the Commission **would be empowered to adopt delegated acts** in accordance with Article 290 TFEU in respect of the detailed rules on the specific procedures, tests and requirements for type-approval. The Commission would also be delegated the power to supplement Regulation (EC) No 715/2007 with these revised rules, as well as the test cycles used to measure emissions. The proposal also includes the possibility to amend this Regulation in order to revise the final conformity factors downwards, to recalibrate particulate mass-based limit values and to introduce particle number-based limit values.

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<sup>14</sup> See ECA Briefing paper February 2019 — EU Response to the "Dieselgate" scandal: [https://www.eca.europa.eu/Lists/ECADocuments/BRP\\_Vehicle\\_emissions/BRP\\_Vehicle\\_emissions\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/BRP_Vehicle_emissions/BRP_Vehicle_emissions_EN.pdf).

4.2.5 This proposal would again oblige manufacturers to demonstrate that all new vehicles sold, registered or put into circulation in the European Union comply with the limits set.

4.2.6 Even before presenting its proposal, **the Commission appealed against the decision of the General Court of the CJEU**, considering that its previous regulation did not affect essential elements, namely the conformity factors set, but only the criteria for their measurement.

## 5. **General comments**

5.1 It does not fall within the role or the competence of the EESC to meddle in a legal conflict between EU institutions, in particular where the issue is the subject of an appeal pending before the CJEU. The EESC does have the right, however, to state its views on the framework put forward in the Commission's proposal and to what extent it achieves the proposed objectives.

5.2 It is true that the proposal in question amends formal shortcomings relating to the lack of competence and the infringement of various provisions of primary law concerning the improper use of an unlawful procedure.

5.3 As far as substantive aspects are concerned, the EESC, in accordance with its opinions on delegated acts<sup>15</sup>, doubts that the chosen solution of giving the Commission the power to **adopt delegated acts in areas where the General Court has considered that only the legislator may amend essential elements**, a power that the Commission seems to want to claim for itself, reflects the legal aim of delegated acts.

5.4 The EESC is pleased to note that the time limits have been maintained for the implementation of the proposal, and will continue covering new types of vehicles as has been the case since 1 September 2017 and be applicable to new vehicles from 1 September 2019.

5.5 It questions the legal effectiveness of the measures, however, given that this legislative procedure lacks certainty, which may in fact, jeopardise the measure's entry into force in September, not to mention the questions already surrounding the retroactive effects of the measure.

5.6 This situation becomes even more complex as the appeal that has been lodged now means that a final decision on the issue raised before the General Court has been postponed indefinitely. The very need for approval of the current proposal may even be questioned, whether or not the CJEU rules in favour of the Commission.

5.7 The only justification for the proposal lies in its attempt to ensure a degree of legal security and certainty for manufacturers, who may then, if they wish, continue with the production of their vehicles; **it does** not, however, eliminate the effects that the CJEU ruling could have on its duration, which could place orders and the supply of components at risk.

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<sup>15</sup> [OJ C 67, 6.3.2014, p. 104](#); [OJ C 13, 15.1.2016, p. 145](#); [OJ C 288, 31.8.2017, p. 29](#); [OJ C 345, 13.10.2017, p. 67](#).



- 5.8 In any event, the EESC highlights the need for RDE tests already published on official websites<sup>16</sup> to allow consumers access, to enable them to cross-reference this information with that on the environmental performance of vehicles stemming from Directive 1999/94/EC<sup>17</sup>. The inclusion of this information could help consumers make their choices based on the environmental impact of vehicles that have been purchased.
- 5.9 The EESC also hopes that the Commission will be able to ensure the proposal's compatibility with the different RDE acts, bearing in mind that the proposal refers to the second package and therefore does not call into question the two subsequent acts, which include the particle number coverage in tests, the refinement of testing methods (RDE act 3) and the possibility of independent third-party testing for checks on vehicles already in circulation (Act 4 RDE).
- 5.10 Without prejudice to the specific nature of the proposal, the EESC urges the Commission to take into account the practices adopted in countries outside the European area, in particular the US-experience, specifically in terms of compliance criteria and penalties for non-compliance by manufacturers<sup>18</sup>.
- 5.11 The EESC recognises that the Dieselgate scandal has not only highlighted a set of flaws with regard to NOx emissions, but it has also shown that millions of consumers have purchased vehicles that do not match the information provided on them, with the vast majority not having been individually compensated for the damage they have suffered.
- 5.12 It is important that the Commission ensure full compensation for the damage of all injured parties or at least the existence of a European collective redress scheme that is effective, useful and timely and includes compensation to consumers for damage to environmental health. This cannot be said of the scheme provided for in the proposal for a Directive on representative actions.

## 6. Specific comments

### 6.1 Article 1(3):

- 6.1.1 The EESC considers that the conformity factors set out in Table 2 of Annex I could still be deemed unambitious with regard to ensuring a reduction in NOx emissions, given that the scientific evidence and the factors proposed in 2018 today look rather conservative.
- 6.1.2 The Committee also emphasises the importance of these factors being assessed on a regular basis, no less than once per year, in order to ensure that technological developments are taken into account.

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<sup>16</sup> See <https://www.acea.be/publications/article/access-to-euro-6-rde-monitoring-data>.

<sup>17</sup> [OJ L 12. 18.1.2000. p. 16.](#)

<sup>18</sup> Article 85 of the new Regulation (EU) 2018/858 currently allows the Commission to impose fines on producers of up to EUR 30 000 per vehicle.

## 6.2 **Article 1(4):**

6.2.1 The EESC acknowledges the need for the manufacturer to equip vehicles in such a way that components likely to affect emissions are designed, constructed and installed so as to enable the vehicle, in normal use, to comply with this proposal, but stresses that this information should be available not only to consumers at the time of sale, but also to the administrative authorities, for monitoring purposes.

6.2.2 The EESC recommends that, as the term "normal use", is a conformity requirement, and in order to avoid any uncertainty about its interpretation, it should be defined in a legal text and not merely in subjective interpretations by the Commission itself<sup>19</sup>.

## 6.3 **Article 1(5):**

6.3.1 The EESC considers that the six-month deadline for manufacturers to provide conformity information seems excessive, given the sector's environmental protection obligations, and therefore suggests that the deadline should not exceed 3 months.

Brussels, 25 September 2019.

Luca JAHIER

The president of the European Economic and Social Committee

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<sup>19</sup> See for example the answer given by Commissioner Bienkowska to a parliamentary questions (question P-006693-16): [http://www.europarl.europa.eu/doceo/document/P-8-2016-006693-ASW\\_EN.html](http://www.europarl.europa.eu/doceo/document/P-8-2016-006693-ASW_EN.html).