

## Replies to the written questions to Mr. Günter Verheugen - EMIS hearing of 30/8/2016

No	Question
1.	<p>As former-Commissioner for industry and entrepreneurship you are the legislative father of the in the context of the EMIS inquiry committee highly controversial discussed Regulation (EC) No. 715/2007. Did you at any time of this legislative process receive expressions of concern in any form from the involved institutions, Member States' Ministers and authorities, other stakeholders from industry or civil society on a possible vagueness of the definition of a defeat device or terms such as 'in normal use' or 'justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle'? Why have you drafted this part of the regulation in such a way?</p> <p><i>I do not recall to have received any expression of concern on a possible vagueness of the definition of a defeat device or of terms such as 'in normal use' or 'justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle'.</i></p> <p><i>The Euro 5/6 co-decision Regulation (EC) 715/2007 relates the regulatory emission limits to 'normal conditions of use'. While it was common knowledge at the time that the New European Driving Cycle (NEDC) no longer represented normal conditions of use accurately enough, there was a decision not to delay the introduction of Euro 5/6 until a new test was developed (also see response 5). A mandate was given to the Commission by the European Parliament and the Council to develop test procedures applicable to the manufacturer at type approval, which ensure that the emissions of vehicles comply with regulatory emission limits when they are actually used on the road. This mandate has been fulfilled with the development of the RDE test procedure and of the Worldwide Harmonized Light-Duty Vehicle Test Procedure (WLTP), which will replace the NEDC.</i></p> <p><i>The definition of 'defeat devices' including the exemptions of their prohibition has been carried over from previous Euro 3 and 4 legislation that was put in place in 1998 and is equivalent to the respective definition in the US legislation. The definition was not considered to be vague when undergoing repeated scrutiny by the co-legislator nor was it ever challenged in 18 years of application.</i></p>

No	Question
2.	<p data-bbox="271 268 1783 300">Why did you invite only very few NGOs and other representatives of the civil society to your high-level working group CARS21?</p> <p data-bbox="271 352 2056 587"><i>The CARS 21 (Competitive Automotive Regulatory System for the 21th Century) High Level Group was originally set-up in February 2005, based on the findings of the Competitiveness report 2004 with the aim to assist the Commission to develop a strategic vision up to 2020 as well as to formulate mid-term policy recommendations for a competitive automotive industry and sustainable growth. Invited to participate in the HLG were 3 members of the European Commission, 5 representatives of Member States at ministerial level, 2 members of the European Parliament, 7 representatives from the industry, among which 3 European business associations and 4 CEO's of car manufacturers. Furthermore, 3 representatives from civil society were participating (1 Trade Union, 1 environmental organisation, 1 international federation of car users (see IP/05/31)</i></p> <p data-bbox="271 627 2056 986"><i>The composition of the HLG provided a fair balance in the representation of different groups. It should be noted that for objective reasons the membership in the HLG was subject to certain constraints (conference room restrictions, time limitations for discussions, the need to reach a final agreement within specified time-line). Nevertheless, it should also be stressed that the Commission did not only rely on the work of CARS 21 but organized a Public Hearing in April 2005, to which all stakeholders were welcome (for example ETSC and T&amp;E made presentations). Furthermore the Commission organized a public consultation (published on the Commission's web site) in March-April 2005. The public input received was taken into account in the work of CARS 21. The Commission presented its conclusions on the result of CARS 21 in a Communication to the European Parliament and the Council entitled "A Competitive Automotive Regulatory Framework for the 21st Century: Commission's position on the CARS 21 High Level Group Final Report – A contribution to the EU's Growth and Jobs Strategy" (COM/2007/0022 final). The European Parliament strongly endorsed the EU environmental standards for the automotive sector, referred to in this Communication, in its Resolution of 15 January 2008 (2007/2120(INI))<sup>1</sup>.</i></p>

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<sup>1</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0007&language=EN>

No	Question
3.	<p>When exactly have you requested the JRC study “Analyzing on-road emissions of light-duty vehicles with Portable Emission Measurement Systems (PEMS)” drafted by Martin Weiss, Pierre Bonnel which was published in 2011?</p> <p><i>Generally, it should be noted that I was politically concerned as regards real life emissions. Consequently this has been reflected in the relevant legislation (Regulation 715/2007) and my DG had to take appropriate actions.</i></p> <p><i>Concerning Light Duty Vehicles (LDV) the JRC started to carry out PEMS tests on a regular basis in the course of 2007. Previous activities performed by the JRC with prototype PEMS instruments (provided by the PEMS manufacturers) were focussed on Heavy Duty Vehicles (HDV) and provided a good basis for an effective adaptation of PEMS to LDV. Thus since 2007 the JRC was able to commit to perform PEMS tests on the road on LDV using the equipment developed for HDV, which was however still very bulky and distorted measurements due to its weight and would not have been suitable for a regulatory test (only for research purposes).</i></p> <p><i>The first results were obtained on Euro 3 and Euro 4 vehicles (the only available at that moment), In accordance with the requirements of Regulation (EC) No. 715/2007 it was clear that PEMS tests would also have to be carried out on Euro 5 vehicles once they were introduced on the market.</i></p> <p><i>DG ENTR, which was under my responsibility at the time, and the JRC signed an Administrative Arrangement (AA) in December 2007 which, among other tasks, included the continuation of the development of the PEMS tests for Off-Cycle Emissions (OCE) – i.e. real driving emissions - for Light Duty Vehicles. As Euro 5 vehicles started to become available for testing in 2009, a new Administrative Arrangement was agreed between my DG and the JRC, explicitly mentioning tests on Euro 5 vehicles. This new AA (No. 31603-2009-12 NSF ISP) was signed in December 2009.</i></p> <p><i>The JRC report “Analysing on-road emissions of light-duty vehicles with Portable Emission Measurement Systems (PEMS)”, published in 2011, showing the first results of PEMS tests conducted on Euro 5 vehicles, but also some previous tests on Euro 3 and Euro 4 vehicles, is related to the two above mentioned AAs.</i></p>

No	Question
4.	<p>Deutsche Umwelthilfe claim that they provided evidence to the relevant German authorities (Federal Ministry of Transport and the Federal Motor Transport Authority (KBA)) of the use of test cycle recognition tools and defeat devices as early as 2007. As a German Commissioner and in your capacity as chairman of the CARS21 high level group, was this information ever transmitted to you or discussed with the German authorities or in the CARS 21 group?</p> <p><i>This question must be addressed with the German authorities. I can exclude that the matter was ever discussed between me and the German authorities. Such information was also neither transmitted to me nor transmitted to or discussed in CARS 21.</i></p>
5.	<p>According to the JRC, “[t]he risk that NOx emissions of diesel vehicles would be significantly higher outside the regulatory test cycle was known to the European Commission as well as to a wider audience of stakeholders and based on laboratory tests with alternative driving cycles when the Euro 5/6 Regulation (EC) No. 715/2007 was drafted in 2006”. What actions did you take personally to address this problem? Why was more not done to effectively and immediately address the issue in the Euro 5/6 Regulation (EC) No. 715/2007?</p> <p><i>The Commission, together with the Council and the Parliament, did in 2007 what was possible at this stage.</i></p> <p><i>As far as real driving emissions of regulated pollutants (in particular NOx) were concerned, in 2005/2006 only a very limited and insufficient amount of data was available to substantiate any quantitative assessment of the gap between NEDC and real driving emissions. The only way to conduct this review and to know the extent of the problem was to carry out the comparison between the emissions measured over the NEDC with those measured in real driving conditions on Euro 5 vehicles, which employed new emission control technologies. Due to this technology shift respective measurements on pre-Euro 5 vehicles would have been of limited technical value. Obviously meaningful measurements were only possible once Euro 5 vehicles started being produced and placed on the market, i.e. around 2010.</i></p> <p><i>Consequently Article 14(3) of Regulation (EC) No. 715/2007 requires the Commission to keep under review the procedures, tests and requirements referred to in Article 5(3) as well as the test cycles used to measure emissions and to adapt them so as to adequately reflect the emissions generated by real driving on the road, <b>if the review finds that these are no longer adequate or no longer reflect real world emissions.</b></i></p>

No	Question
6.	<p>Could you explain why the Commission proposed to foresee exceptions to the ban of defeat devices when it proposed Euro V and VI? What did the Commission had in mind as possible exceptions? Do you consider that the practices which have been disclosed could fit into what you expected from these exceptions?</p> <p><i>I assume that you refer to Euro 5 and Euro 6 legislation on Light Duty Vehicles. When proposing this legislation the Commission followed to a large extent the US requirements as well as the previous Euro 3 and Euro 4 legislation. The legal logic has always been that defeat devices are prohibited. Exceptions were meant to ensure the safe functioning of the vehicle in order not to endanger the health of the driver or any citizen. Of course I did not expect that a European manufacturer would violate this legislation.</i></p>

No	Question
7.	<p>Commissioner Bienkowska said during the meeting of transport ministers on 7 June 2016 that <i>“the problem of manufacturers understating the actual emissions of their cars isn’t due to loophole in the existing legislation, but the failure of national authorities to catch—and punish—cheaters.”</i></p> <p><a href="http://www.wsj.com/articles/eu-rejects-call-to-tighten-car-emissions-control-law-1465299116">http://www.wsj.com/articles/eu-rejects-call-to-tighten-car-emissions-control-law-1465299116</a></p> <p>Do you share this view? Do you consider that Article 5(2) of the Regulation (EC) No. 715/2007 is so clear that it does not allow different interpretations?</p> <p><i>Generally, all internal market rules are based on the understanding that the manufacturers comply with the legislation. The starting point of all legislation in the internal market is not, that market participants are cheaters. That is for example the reason why the EU has a system of self-certification for most products. That said, during my term as Commissioner, no market surveillance authority, technical service or car manufacturer officially requested from the Commission legal guidance with respect to defeat devices prior to the current emission scandal, yet the provision has been in place essentially as it stands for the last 18 years. In line with its mandate and based on the legal framework that is currently in force, the Commission has always been ready to provide assistance in how to interpret the legislation in practice and to ensure a harmonised approach across the Single Market.</i></p> <p><i>In accordance with the principle of Better Regulation, any review of the current legislation and its interpretation should be based on sound evidence. This requires the transparent exchange of technical information between national competent authorities and the Commission, yet does not automatically imply that the legislation must be changed. This technical information can only be gathered in applying the rules in practice, i.e. it is the task of market surveillance authorities and technical services of the Member States to collect the technical data and evidence. The Commission cannot replace the national market surveillance authorities.</i></p> <p><i>You will understand, however that I do not find it appropriate to comment on the position of the current Commissioner in charge.</i></p>

No	Question
8.	<p>The Commission's Joint Research Centre (JRC) have told this committee that they were aware of the possible use of defeat devices as far back as 1998 (when the US-EPA accused several US heavy-duty vehicle manufacturers of violating the Clean Air Act by installing illegal defeat). Were these suspicions ever communicated during your time as Commissioner and were they ever followed up? Did the aforementioned case in the U.S. - in the resulting settlement with the EPA, the guilty manufacturers received heavy fines and were subjected to new emissions standards which included on-road testing - inform the work on the Euro 5/6 regulation and the provisions on defeat devices?</p> <p><i>I can confirm that the US scandal on the use of defeat devices on several Heavy Duty Vehicles was known to the Commission as declared by the JRC. As a consequence of that scandal the Commission immediately prepared an amendment to Directive 88/77/EC on emissions from Heavy Duty Vehicles introducing definitions and limitations of Defeat Device and Auxiliary Control Device (Commission Directive 2001/27/EC). For the Light Duty sector the concept and prohibition of defeat device was introduced already in Directive (EC) 59/1998 (Euro 3 and 4 emission steps) and was further confirmed in Regulation (EC) No 715/2007. I would also like to highlight that this regulation foresees penalties, to be implemented by Member States, including explicitly the use of defeat devices (Art 13d).</i></p>

No	Question
9.	<p>It has been clearly stated by many experts and witnesses in front of the EMIS inquiry committee that the Commission was aware about insufficiencies in the existing testing procedures during the Barroso Commission. Yet nothing was done to solve the issue. Why did not the Commission initiate any further investigation to further study the first information on the higher than “expected” NOx emissions from diesel cars. The Commission clearly knew or at least suspected there being a risk of causing harm to the public and to the environment. In the absence of scientific consensus the Commission should have been precautionary about this and launch an investigation. How do you explain the lack of any investigations to the EMIS inquiry committee and more importantly to the European citizens?</p> <p><i>I can only refer to the situation during my mandate (i.e. 2004-2010) and the truth is that at that time a very limited and insufficient amount of data was available to substantiate any quantitative assessment of the gap between NOx emissions measured under the laboratory test cycle and in real driving conditions. This situation has been recognised in the hearings before this committee. For reasons of precaution, the Commission launched the JRC scientific studies (in 2007 and 2009) with the view to further examine the reasons why the NOx emissions of diesel cars were higher than expected and on the basis of the outcome to act accordingly. As you know, laboratory tests are designed to ideally approximate real driving conditions; however, the results of the JRC studies showed that this discrepancy was in fact quite large. The Commission was indeed precautionary and acted on the basis of reliable scientific data. I would like to add that at the time of the adoption of Reg. 715/2007, the Commission, the Parliament and the Council were commonly of the opinion that we should and we would substantially bring down environmental emission from cars with the new Euro 5 and Euro 6 standards. This is clearly stated in the considerations of Reg. 715/2007.</i></p>

No	Question
10.	<p>The Directorate General that you were responsible for as Commissioner was aware of the discrepancies in real world driving of diesel vehicles type approved in Europe. JRC started testing diesel vehicles with portable emissions measurement systems in 2008 - after PEMS had already been used since late 90s by the US regulators to control emissions of (diesel) heavy duty vehicles. Did you as the Commissioner responsible, or the 2004-2010 college, have a political rationale to delay the introduction of additional harmonised European implementing regulation to control eventual defeat devices and NOx emissions “in normal use” despite the explicit mandate in the Euro5/6 Regulation agreed in 2006 (Regulation (EC) No. 715/2007)?</p> <p><i>I, as Commissioner responsible for industry and entrepreneurship during the 2004-2010 college, have not delayed anything. In the contrary, it was my policy to develop a regulatory framework for the automotive industry that would make EU cars the most fuel efficient and environmental friendly cars of the world. My conclusion from Cars 21 was that the EU automotive industry would only maintain its strong global position if it would be the most innovative in terms of technical and environmental performance standards. The mandate in the Euro 5/6 Regulation explicitly requires the Commission to keep under review the procedures, tests and requirements referred to in Article 5(3) as well as the test cycles used to measure emissions. The mandate also calls on the Commission to adapt measures under Article 5(3) so as to adequately reflect the emissions generated by real driving on the road, if they are no longer adequate or no longer reflect real world emissions. And that is exactly what was done. The regulation 715/2007 is crystal clear as regards defeat devices (see Art. 5). They are forbidden as a rule and the exceptions are clearly and narrowly defined. There was no problem with legislation, but with manufacturers' compliance with the legislation</i></p>
11.	<p>Do you see any shortcomings of the Member states with regard to market surveillance and the type approval procedure? If so please specify those shortcomings? Did you, at your tenure as Commissioner, call on the European Commission or any other EU institution or other Member States, as a matter of urgency and of high importance, to address the issue of NOx emissions that were multiples of the legal limits?</p> <p><i>Under the current type approval system we have in the EU, market surveillance is organised at national level and Member States are required to ensure an appropriate set of infrastructures for that purpose and to prepare national market surveillance programmes. The level of the sanctions and their enforcement is also determined at national level. Weaknesses in the market surveillance systems of Member States were identified only after I ended my mandate as Member of the Commission in February 2010</i></p> <p><i>With regard to the issue of NOx emissions, as I already mentioned above (see also reply to Question 3), during my term DG ENTR signed in December 2007 and 2009, respectively, Administrative Arrangements (AA) with the JRC for testing of Euro 3 and 4 vehicles as well as of Euro 5 vehicles, once they became available on the market. Those tests were necessary in order to know the extent of the problem and to conduct the review mandated to the Commission under Article 14 of Regulation (EC) No 715/2007.</i></p>

No	Question
12.	<p>After you left the Commission have you or your consultancy had any work related to the car industry? If yes, how did you avoid any conflict of interest?</p> <p><i>From March 2012 to March 2016 I was a non-executive member of the board of directors of Ford Otosan (Turkey). In accordance with Turkish corporate law I was one of two independent members of the board, thus not representing one of the shareholders but representing the public interest. A conflict of interests could not occur because I was not allowed to accept instructions from any of the shareholders. As chairman of the audit committee of the board of the Ford Otosan I was fully informed about irregularities of every kind. During my term no issues were reported related to EU emission regulations. Since I left the Commission in February 2010 I have had no other contacts with the automotive industry and that is also the case for the European Experience Company GmbH, which I have co-founded.</i></p>