

Written questions to Mr Alexander Dobrindt, Federal Minister of Transport and Infrastructure of Germany – EMIS hearing of 20/10/2016

Question 1:

Back in 2007 your Government, together with other European governments, agreed on legislation on defeat devices. Back then you took all the enforcement of this ban (Article 5(2) of Regulation (EU) No 715/2007) to the national level, in the case of Germany to type-approval authority Kraftfahrtbundesamt (KBA). Did your government raised the issue of ambiguity of the rules back then and asked for more clarity from the Commission? If not - why didn't you take the steps to enforce the ban and check if carmakers are manipulating the defeat device derogations you agreed as member of the Council?

Frage 1:

2007 hat Ihre Regierung gemeinsam mit anderen europäischen Regierungen Rechtsvorschriften zu Abschaltvorrichtungen vereinbart. Damals haben Sie die gesamte Durchsetzung des Verbots (Artikel 5 Absatz 2 der Verordnung (EU) Nr. 715/2007) der nationale Ebene übertragen, im Falle von Deutschland an die Typgenehmigungsbehörde Kraftfahrtbundesamt (KBA). Hat Ihre Regierung die Mehrdeutigkeit der Regelungen damals thematisiert und die Kommission um Klarstellung gebeten? Wenn nicht – warum haben Sie nicht die entsprechenden Maßnahmen getroffen, um das Verbot durchzusetzen und zu kontrollieren, ob die Automobilhersteller die Freistellungen zu Abschaltvorrichtungen, die Sie als Mitglied des Rats vereinbart haben, manipulieren?

Answer:

Germany, i. e. the Federal Motor Transport Authority (KBA) as the competent type approval authority, has taken all measures that were deemed necessary in accordance with the obligations for Member States under Regulation (EC) No 715/2007. During the approval procedures, where the KBA acted as the competent type approval authority, there was, until the end of September 2015, no reason to believe that a manufacturer would use an illegal defeat device in violation of the wording of Article 5(2) of the Regulation. Moreover, there was also no indication that carmakers would make unlawful use of defeat device derogations.

Question 2:

The KBA claims that FIAT in certain light-duty vehicles (such as the Fiat 500x) uses defeat devices within the meaning of Article 5 of Regulation (EU) No 715/2007 without any justified reason. Your Ministry for Transport and Digital Infrastructure and you personally have even addressed this issue with the European Commission. Can you please comment on the results of your investigations on this alleged illegal defeat device, as well as on the reactions of European Commission and Italy?

Frage 2:

Das KBA behauptet, dass FIAT bei bestimmten leichten Nutzfahrzeugen (wie dem Fiat 500x) Abschaltvorrichtungen im Sinne von Artikel 5 der Verordnung (EU) Nr. 715/2007 ohne sachlich berechnete Gründe einsetzt. Ihr Ministerium für Verkehr und digitale Infrastruktur und Sie selbst haben dieses Thema sogar bei der Europäischen Kommission zur Sprache gebracht. Können Sie bitte zu den Ergebnissen Ihrer Untersuchungen zu dieser mutmaßlichen illegalen Abschaltvorrichtung Stellung nehmen sowie zu den Reaktionen der Europäischen Kommission und Italiens?

Answer:

High NOx emissions had already been found in FCA vehicles during the KBA's investigations in the field. Further hints then prompted the Federal Ministry of Transport and Digital Infrastructure (BMVI) to commission in-depth investigations to be carried out by the Federal Motor Transport Authority (KBA). The KBA found that, all in all, the exhaust gas recirculation of five Fiat models had been manipulated by using illegal defeat devices. During several NEDC measurements, it was found that NOx levels would increase with each test cycle in all analysed vehicles. It was demonstrated that the exhaust gas recirculation turns off after approximately 22 minutes and the regeneration of the storage catalytic converter after approximately six regeneration cycles. Italy does not consider this as proof.

The BMVI has asked the European Commission to initiate the mediation procedure that is applicable in such cases to find a solution.

Question 3:

Your tests on some of the Opel models that your authority has approved showed that some cars switch off emission control in as high temperatures as 17C. Under the current rules you're the only government that can take action and require compliance/changes to these vehicles as you've approved them - what action have you taken? Will you let Opel sell vehicles that don't clean their exhaust below 17C in Europe?

Frage 3:

Die Prüfungen an einigen der Opel-Modelle, die von Ihrer Behörde genehmigt wurden, haben ergeben, dass einige Fahrzeuge schon bei Temperaturen von 17 °C die Emissionskontrolle abschalten. Nach den aktuell geltenden Vorschriften sind Sie die einzige Regierung, die Maßnahmen ergreifen und die Einhaltung der Vorschriften/Änderungen an diesen Fahrzeugen vorschreiben kann, da Sie diese genehmigt haben – welche Maßnahmen haben Sie ergriffen? Werden Sie es Opel erlauben, Fahrzeuge in Europa zu verkaufen, die ihre Abgase bei unter 17 °C nicht reinigen?

Answer:

As soon as the VW exhaust gas scandal was revealed, the Federal Ministry of Transport and Digital Infrastructure (BMVI) set up a commission of inquiry. This commission was to investigate, inter alia, how the defeat devices in the vehicles of the Volkswagen group worked exactly and whether vehicles of other manufacturers were using similar defeat devices.

For some vehicles of Opel – and some models of other manufacturers – the KBA found that the effectiveness of the emission control system is reduced at temperatures below 17 °C. The manufacturers state that this happens to protect the engine. During the talks of the commission of inquiry or the KBA with the relevant manufacturers, this statement turned out to be a very generous interpretation of the engine protection idea. As a result of the talks, Opel and the other manufacturers with KBA type approvals agreed to implement improvement measures for their vehicles as part of a voluntary recall.

Currently no manufacturer (including Opel) with a KBA type approval is granted new or extended type approvals that would allow registering vehicles in Germany which do not clean exhaust emissions below 17 °C. The KBA analyses the emission strategy of every manufacturer that applies for a new type approval or the extension of an existing one. In the event of doubts, the KBA performs additional checks in the framework of the current type approval legislation, even if Regulation (EC) No 715/2007 does not provide for this.

Question 4:

According to Commissioner Bieńkowska, the Commission is waiting for information from Germany before it can provide guidance on the legality of defeat devices. Commissioner Bieńkowska told EMIS that “in order to be able to properly assess the content of the national reports and to compare their findings, the Commission would however require the detailed data behind the aggregated results which are not public and up to now these have not been submitted. I have asked the relevant Member States to transmit this additional information to Commission services. I am expecting further input from Member States and I will take all necessary steps to obtain the information.” However, according to you, the German authorities have already provided everything. Can you explain the reason behind this conflict? What information has been requested from the Commission and why is it being withheld?

Frage 4:

Laut Kommissarin Bieńkowska wartet die Kommission auf Informationen aus Deutschland, bevor sie Leitlinien zur Rechtmäßigkeit von Abschaltvorrichtungen bereitstellen kann. Kommissarin Bieńkowska hat EMIS Folgendes mitgeteilt: „Um den Inhalt der nationalen Berichte sachgemäß beurteilen und ihre Ergebnisse vergleichen zu können, benötigt die Kommission jedoch die bislang unveröffentlichten detaillierten Daten, auf denen die aggregierten Ergebnisse beruhen, und diese wurden bislang noch

nicht vorgelegt. Ich habe die betreffenden Mitgliedsstaaten gebeten, diese zusätzlichen Informationen an die Kommissionsdienststellen zu übermitteln. Ich erwarte weitere Angaben von den Mitgliedstaaten und ich werde alle notwendigen Schritte vornehmen, um diesen Informationen zu erhalten.“ Ihren Angaben zufolge haben die deutschen Behörden jedoch bereits alles zur Verfügung gestellt. Können Sie die Gründe für diesen Widerspruch erklären? Welche Informationen wurden von der Kommission angefordert und warum werden diese zurückgehalten?

Answer:

Immediately after the US authorities' allegations against Volkswagen were revealed, the Federal Ministry of Transport and Digital Infrastructure (BMVI) set up a commission of inquiry at the end of September 2015. The objective of the investigations was to detect illegal defeat devices used by other carmakers, where appropriate. A total of 53 models with a diesel engine was subjected to tests by the KBA. As soon as the tests were completed and the final report was published in April 2016, the results of the commission of inquiry were made available to the European Commission by the BMVI. Additional information – some data is subject to commercial and industrial confidentiality – was disclosed by KBA experts to staff members of the European Commission in the context of talks held on 21 June 2016.

Question 5:

As part of the German national investigation into the emissions scandal, the KBA tested 53 different vehicles and found that carmakers were making liberal use of what you described as ‘thermal window’ strategies. Despite these suspicious results, the German transport ministry accepted the justification provided by the carmakers: “Concerning the lawfulness of the broad interpretation of the temperature range used to protect the engine, the manufacturer says, and substantiates, that this is necessary to protect the engine from damage”.

This does not give any details of how the manufacturers justified their claims, based on the exemption provided in the legislation. Why not? Do you think the wide temperature discrepancy used by manufacturers to turn off (or reduce) EGR shows that some manufacturers are doing so unnecessarily? Why was this not followed up in the investigation?

Frage 5:

Als Teil der deutschen nationalen Untersuchungen zum Emissionsskandal hat das KBA 53 unterschiedliche Fahrzeuge getestet und herausgefunden, dass die Automobilhersteller von dem, was Sie als „Thermofenster“-Strategien beschreiben, umfassend Gebrauch machen. Trotz dieser verdächtigen Ergebnisse hat das deutsche Verkehrsministerium die von den Automobilherstellern angeführte Begründung akzeptiert: „Hinsichtlich der Zulässigkeit der weiten Auslegung des Temperaturbereichs für den Motorschutz wird vom Hersteller angeführt und begründet, dass diese notwendig ist, um den Motor vor Beschädigung zu schützen“.

Hier werden keinerlei Angaben dazu gemacht, wie die Hersteller ihre Behauptungen auf Grundlage der in den Rechtsvorschriften vorgesehenen Freistellung begründeten. Warum nicht? Glauben Sie, dass die große Temperaturabweichung, die von den Herstellern genutzt wird, um die Abgasrückführung (AGR) abzuschalten (oder zu reduzieren) zeigt, dass einige Hersteller dies tun, ohne dass dies erforderlich ist? Warum wurde dies im Rahmen der Untersuchungen nicht weiter verfolgt?

Antwort:

The report of the commission of inquiry lists (group II) vehicles where strikingly high levels of NO_x were found that could not be explained technically. During the talks with the affected manufacturers, the commission of inquiry asked them to take measures. All affected German manufacturers have declared that they will undertake appropriate optimization efforts. This applies to Audi, Mercedes, Opel, Porsche and VW. These manufacturers will organize a voluntary recall in form of service actions. This recall will affect a total of about 630,000 vehicles. Before that, the KBA will examine the effectiveness of their improved emission reduction strategies.

Type approval authorities in other countries will be informed about the results of the investigations and asked to perform accordingly.

Question 6:

As reported by the Deutsche Welle (link below), the Industry Commissioner Bienkowska said during the EMIS hearing on 12.09.2016 that she “had called upon EU member states to investigate how defeat devices were used on their soil and asked them to report back to her. Only four states - Denmark, Britain, France and Italy - have done so thus far”. Bienkowska announced further that “any country that is found to have turned a blind eye to emission violations would be investigated themselves for breaches of EU law and could possibly face fines. If they do not honor these rules, there must be consequences,” the commissioner said. As Germany does not seem to have yet reported back to the Commissioner, do you feel to dishonor the EU law? Do you expect to be facing any consequences? <http://www.dw.com/en/eu-to-crack-down-on-states-over-vw-scandal/a-19547811>

Frage 6:

Wie von der Deutschen Welle berichtet (siehe Link unten), sagte Industriekommissarin Bienkowska während der EMIS-Anhörung am 12.09.2016, dass sie die EU-Mitgliedsstaaten aufgefordert hatte zu untersuchen, wie Abschaltvorrichtungen in ihren Ländern eingesetzt werden und sie gebeten hat, ihr darüber Bericht zu erstatten. Bislang haben nur vier Staaten - Dänemark, Großbritannien, Frankreich und Italien – dies getan. Bienkowska kündigte darüber hinaus an, dass „ gegen jedes Land, bei dem festgestellt wird, dass es bei Emissionsverstöße ein Auge zugeedrückt hat, wegen Verstößen gegen EU-Recht ermittelt werden wird und möglicherweise Strafen verhängt werden. Wenn sie diese Regeln nicht einhalten, muss es Konsequenzen geben, “ sagte die Kommissarin. Da Deutschland der Kommissarin bislang nicht Bericht erstattet zu haben scheint, meinen Sie, dass Sie gegen EU-Recht verstoßen? Erwarten Sie diesbezüglich Konsequenzen? <http://www.dw.com/en/eu-to-crack-down-on-states-over-vw-scandal/a-19547811>

Antwort:

As set out in the answer to question 4, the Federal Ministry of Transport and Digital Infrastructure already submitted the findings of the German investigations to the European Commission. Moreover, an exchange between experts of the European Commission and the KBA already took place. In this context, it was also made clear that the Federal Ministry of Transport and Digital Infrastructure as well as the Federal Motor Transport Authority would be available at any time to clarify additional issues.

Question 7:

How do you understand the purpose of the type approval procedure? Is this procedure meant to verify the capacity of the vehicle to comply with the requirements for the use (on the road) or to comply with the laboratory test conditions under predefined cycle tests on bench whose nature does not correspond anymore to the real-driving conditions for many years. Would you deny that the cars should comply, regarding the purpose of EURO 5 / 6 Regulation, with the emission limits under in the real-driving conditions? Would you support the view that type approval procedure is then to certify the readiness and durability of the vehicle and all of his devices for the operation on the road under normal conditions of use to guarantee all device are constructed in a way that ensures full function ‘in normal use’, in normal European ambient temperatures and heights and over the whole normal life time of the vehicle (respectively corresponding to 160.000 km of use)? Would you confirm this conclusion?

Frage 7:

Welchen Zweck hat Ihrer Meinung nach das Typgenehmigungsverfahren? Soll das Verfahren die Fähigkeit des Fahrzeugs, die Nutzungsanforderungen (auf der Straße) zu erfüllen, überprüfen oder die Einhaltung unter Laborprüfbedingungen bei vordefinierten Zyklustests auf dem Prüfstand, die schon seit vielen Jahren nicht mehr mit den realen Fahrbedingungen übereinstimmen. Würden Sie verneinen, dass die Fahrzeuge im Hinblick auf den Zweck der EURO 5/6-Verordnung die Emissionsgrenzwerte unter realen Fahrbedingungen erfüllen sollten? Teilen Sie die Ansicht, dass das Typgenehmigungsverfahren demnach dazu dient, die Einsatzfähigkeit und Belastbarkeit des Fahrzeugs

und aller seiner Einrichtungen für die Nutzung auf der Straße unter normalen Nutzungsbedingungen zu bestätigen, um sicherzustellen, dass alle Einrichtungen so gebaut sind, dass die volle Funktionsfähigkeit ‚bei normaler Nutzung‘, bei in Europa üblichen Umgebungstemperaturen und Höhen und über die gesamte übliche Lebensdauer des Fahrzeugs (entsprechend einer Nutzung von 160,000 km) hinweg gewährleistet ist? Würden Sie diese Feststellung bestätigen?

Antwort:

The technical measures implemented by the manufacturers are to make sure that the emission values of a vehicle are effectively limited during the complete normal life span and under normal conditions of use as stipulated in this Regulation. To verify the compliance of vehicles with the corresponding provisions, Regulation (EC) No 715/2007 contains defined test procedures that are to be applied in the type-approval framework on a mandatory basis. For example, the durability of emissions abatement equipment is tested for a mileage of 160,000 km using the defined testing mechanisms. Exhaust emissions are determined in the laboratory under defined conditions by means of the type 1 test of the New European Driving Cycle (NEDC). It became clear that “normal operating conditions” were not represented adequately by the NEDC and its test procedures and, as a result, there are discrepancies between the values identified during type approval and real world emissions. Therefore, Germany emphatically advocated for an amendment of the provisions with the control of real driving emissions (RDE). With RDE, for the first time, the “normal operating conditions” beyond the limits of the NEDC can be specified and controlled by means of a test procedure.

Question 8:

According to the testimony made by Deutsche Umwelthilfe (DUH) in front of the EMIS Committee, DUH informed the German authorities of irregularities regarding the NOx lab tests and RDE emissions measurement by diesel passenger cars already back in 2011, but no investigation followed. Could you comment on those statements and confirm or deny that any contacts have been made by DUH regarding this issue to the Federal Ministry? If yes, what was the follow-up or conclusions made?

Frage 8:

Laut der Zeugenaussage der Deutschen Umwelthilfe (DUH) vor dem EMIS-Ausschuss hat die DUH die deutschen Behörden bereits 2011 über Unregelmäßigkeiten bei den NOx-Laborprüfungen und RDE-Messungen bei Dieselpersonenkraftwagen informiert, aber es wurden keine Untersuchungen eingeleitet. Würden Sie bitte zu diesen Aussagen Stellung nehmen und bestätigen oder in Abrede stellen, dass die DUH das Bundesministerium in dieser Frage kontaktiert hat? Falls es Kontakte gab, wie wurde diese weiterverfolgt oder welche Schlussfolgerungen wurden gezogen?

Antwort:

The Federal Ministry of Transport and Digital Infrastructure and non-governmental organisations regularly exchange ideas and experience; this was also the case with regard to the Deutsche Umwelthilfe (German Environmental Aid, DUH) in the given period. DUH did not present tangible indications and proof of the use of illegal defeat devices.

Question 9:

It seems that the type approval authority KBA has come out clean of the VW scandal. Is this really the case? Based on your ‘Report by the “Volkswagen” Commission of Inquiry’ we have following questions relating to the measures taken on the national level in Germany:

1. Emission re-examinations by the KBA: the KBA will regularly take vehicles from the market and check them for regularity. How will the funding of these activities, especially taking vehicles from the market, be carried out?
2. State-backed Test Facilities for Re-examinations - Additional and independent checks conducted by the KBA at its own test stations are intended to become part of an independent

inspection process. Could this be a model for other member States also? How do you see the role of KBA being a possible leading independent inspector in wider than context of Germany? Would it be possible for the other Member States to purchase services from KBA?

Frage 9:

Es scheint, dass die Typgenehmigungsbehörde KBA sauber aus dem VW-Skandal herausgekommen ist. Ist dies wirklich der Fall? Auf Grundlage Ihres Berichts der „Untersuchungskommission Volkswagen“ haben wir folgende Fragen zu den auf nationaler Ebene in Deutschland ergriffenen Maßnahmen:

- 1. Nachprüfungen der Abgasemissionen durch das KBA: Das KBA wird regelmäßig Fahrzeuge aus dem Markt entnehmen und sie auf Vorschriftsmäßigkeit kontrollieren. Wie werden diese Maßnahmen finanziert, insbesondere die Entnahme der Fahrzeuge aus dem Markt?*
- 2. Staatliche Prüfeinrichtungen für Nachprüfungen - Zusätzliche und unabhängige Prüfungen, die vom KBA in seinen eigenen Prüfeinrichtungen durchgeführt werden, sollen Teil eines unabhängigen Inspektionsverfahrens werden. Könnte dies ein Modell auch für die anderen Mitgliedstaaten sein? Wie sehen Sie die Rolle des KBA als möglichem führenden unabhängigen Prüfer in einem über Deutschland hinausgehenden Kontext? Wäre es für die anderen Mitgliedsstaaten möglich, Dienstleistungen des KBA einzukaufen?*

Antwort:

Unlike the re-examinations required by the type approval procedure (COP, IUC), these re-examinations are not limited to vehicle models with a KBA type approval. Rather, they are comparable to field or market investigations; i. e. all models registered in the German market are accounted for. The re-examinations will be funded from the Federal Budget. The Federal Ministry of Transport and Digital Infrastructure considers it very important that a public authority such as the KBA can perform investigations independently and autonomously.

The procedure that was defined by the BMVI for Germany and that is already being implemented could and, in my judgement, should be applied on a uniform basis in Europe.

Question 10:

The investigation performed by UK, IT, FR and by your Ministry this year found out that a large proportion of cars performed much worse when tested on NEDC cycles at hot start rather than at cold start (cold start being the condition of the NEDC homologation cycle). According to the Financial Times(1), a CARB official from the US involved in uncovering the use of defeat device in the US was quoted to say that "it became "abundantly clear" something was off, because the car being tested was running "more cleanly when it was cold than when it was hot, contrary to all tenets of automotive engineering," ". With abundant evidence of the same type of behaviour of vehicles tested in EU since one year, why are you not suspecting the potential presence of defeat devices or unlawful emission control strategies that render inactive or partially inactive the emission control system outside the scope of the test, i.e. outside the "cold start" conditions? Are you performing further investigations regarding this "hot start" paradoxical behaviour, to identify whether manufacturers are making use of illegal defeat strategies? (1) <https://www.ft.com/content/9bac3826-76af-11e6-bf48-b372cdb1043a>

Frage 10:

Die von UK, IT, FR und Ihrem Ministerium durchgeführten Untersuchungen haben ergeben, dass ein großer Teil der Fahrzeuge sehr viel schlechter abschneidet, wenn sie im NEFZ mit Warmstart im Vergleich zu einem Kaltstart geprüft werden (wobei Kaltstart die Bedingung für den NEFZ-Homologationszyklus ist). Laut der Financial Times (1) wurde ein an der Aufdeckung der Verwendung der Abschaltvorrichtung in den USA beteiligter CARB-Mitarbeiter mit folgenden Worten zitiert: „es wurde „mehr als deutlich“, dass etwas nicht stimmte, da das geprüfte Fahrzeug „kalt sauberer lief als warm, entgegen allen Grundsätzen der Kraftfahrzeugtechnik“. Warum haben Sie angesichts der seit einem Jahr vorliegenden umfangreichen Nachweise desselben Verhaltens bei in der EU getesteten Fahrzeugen nicht den Verdacht, dass, außerhalb des Prüfrahmens, d.h. außerhalb der „Kaltstart“-

Bedingungen, Abschaltvorrichtungen vorhanden sein oder unrechtmäßige Emissionskontrollstrategien zum Einsatz kommen könnten, die das Emissionskontrollsystem ganz oder teilweise außer Kraft setzen? Führen Sie derzeit weitere Untersuchungen zu diesem paradoxen Verhalten beim Warmstart durch, um herauszufinden, ob Hersteller illegale Abschaltstrategien einsetzen? (1)

<https://www.ft.com/content/9bac3826-76af-11e6-bf48-b372cdb1043a>

Antwort:

It is true that the Federal Ministry of Transport and Digital Infrastructure and the Federal Motor Transport Authority, during their examinations within the context of the Volkswagen commission of inquiry, tested the vehicles using the NEDC (warm and cold start).

The fact that NOx emissions are higher in the warm start NEDC than they are in the cold start NEDC, if considered individually, is no secure legal evidence of the existence of an illegal defeat device, since even in field investigations of the KBA some VW vehicles – which demonstrably used a defeat device – showed lower NOx emissions in the warm start NEDC than in the cold start NEDC.

Question 11:

Germany has stated that it found emission cheating software in Fiat cars and has asked the help of the European Commission to clarify the issue. Are you planning to support changes to the type approval framework allowing national authorities in the future to ask for explanations about cars they didn't type approve? Would you support the possibility for national authorities to ban those cars from their markets?

Frage 11:

Deutschland hat mitgeteilt, dass es Emissionsbetrugssoftware in Fiat-Fahrzeugen gefunden hat und hat die Europäische Kommission um Hilfe bei der Klärung der Angelegenheit gebeten. Planen Sie, Änderungen des Typgenehmigungsrechtsrahmens zu unterstützen, die es nationalen Behörden in Zukunft erlauben würden, Erklärungen zu Fahrzeugen anzufordern, die nicht von ihnen selbst typgenehmigt wurden? Würden Sie es unterstützen, dass nationale Behörden die Möglichkeit erhalten, das Inverkehrbringen solcher Fahrzeuge in ihrem Markt zu verbieten?

Antwort:

The tried and tested system of mutual recognition of type-approvals among the Member States should be maintained. In view of the irregularities that were revealed with regard to the approved emission levels of Volkswagen, during the Transport Council meeting on 7 June 2016, Minister Dobrindt made the following proposals to improve existing rules:

- The rule in the first and second sentences of Article 5(2) of Regulation (EC) 715/2007 should be reinforced and it should be made clear that the use of defeat devices is only legal if – even when the best technologies available are included – there is no other technology available to protect the engine against damage or accident and guarantee safe operations of the vehicle. A more precise wording of this rule 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.
- At the same time, the European Commission should 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.
- 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.
- 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.

- The European Commission should investigate whether it is possible to introduce a rotation system of the technical services for the type approval procedure.
- As an immediate action, type approval authorities should consequently ask manufacturers about their emission strategy prior to granting the new type approval. If a manufacturer makes arrangements for a defeat device, they 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 describe the reasons why they believe the defeat device is necessary.
- For existing type approvals, it should be examined in all Member States whether optimizations can be carried out in the context of service actions if strikingly high NO_x levels are found in investigations. All affected German manufacturers have already declared that they will undertake appropriate optimization efforts.

The Federal Ministry of Transport and Digital Infrastructure considers these proposals suitable to better prevent cases such as the VW scandal from happening and will continue to work on this objective at a European level.

Question 12:

What is your understanding of the definition of defeat devices and the ban, which is imposed on their use? How would you differ them from the so called cycle beating or defeat strategies? Are those one covered by the definition in the Article 5(2) of the 715/2007 Regulation? In light of KBA findings on Fiat Chrysler vehicles, do you consider that switching off the emissions control system of a vehicle after operating the vehicle for 22 minutes of (slightly exceeding the 20-minute duration of the NEDC test) must be considered a defeat device? What are the technical reasons for disabling exhaust gas recirculation after 20 minutes of driving which is the explanation you accepted from the car manufacturer? What are the technical reasons to have triple or quadruple nitrogen oxide emissions in real driving conditions higher than measured in laboratory conditions? Which of the derogations outlined above do you consider to apply in these situations according to the Article 5(2)?

Frage 12:

Wie verstehen Sie die Begriffsbestimmung der Abschaltvorrichtungen und das für ihre Nutzung geltende Verbot? Wie würden Sie diese von dem sogenannten Cycle Beating (Manipulation der Messungen) oder von Abschaltstrategien abgrenzen? Werden diese von der Begriffsbestimmung in Artikel 5 Absatz 2 der Verordnung 715/2007 abgedeckt? Meinen Sie angesichts der Ergebnisse des KBA zu Fahrzeugen von Fiat Chrysler, dass die Abschaltung des Emissionsbegrenzungssystems eines Fahrzeugs nach 22-minütigem Betrieb (leicht über der 20-minütigen Dauer des NEFZ-Tests) als Abschaltvorrichtung anzusehen ist? Was sind die technischen Gründe für die Deaktivierung der Abgasrückführung nach 20 Minuten Fahrzeit, d.h. die Erklärung, die Sie von dem Automobilhersteller akzeptiert haben? Welche technischen Gründe gibt es dafür, dass die gemessenen Stickoxidemissionen unter realen Fahrbedingungen drei- oder viermal so hoch sind wie die unter Laborbedingungen gemessenen Emissionen? Welche der oben genannten Freistellungen gelten Ihrer Meinung nach in diesen Situationen nach Artikel 5 Absatz 2?

Answer:

All the above devices are subject to the prohibition of defeat devices. Therefore, the Federal Ministry of Transport and Digital Infrastructure has not approved of limited operation times of emissions abatement equipment and does not consider such equipment to be legal.