

Stalemate fixing dirty diesels: Countries putting carmakers' needs before those of citizens to breathe clean air

November 2016

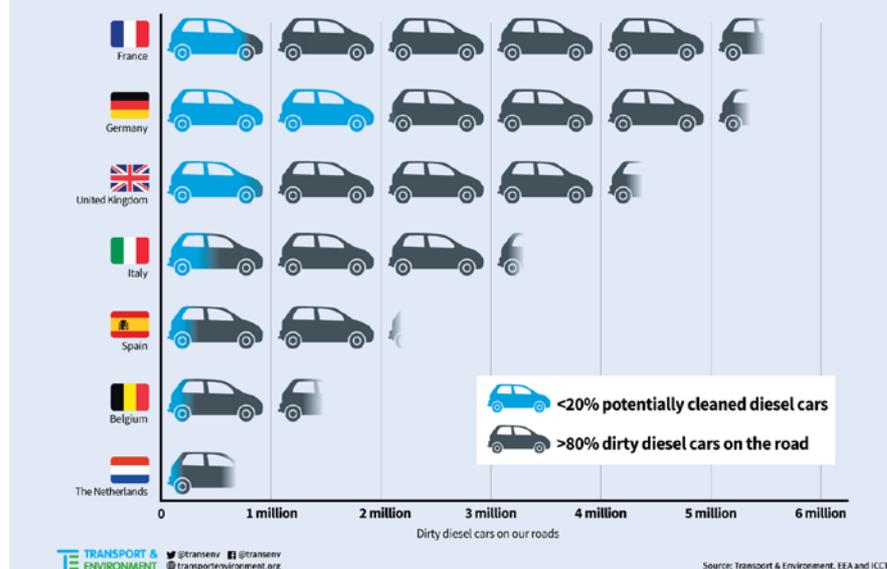
Summary

More than a year since the VW scandal broke and almost a year since the new reform of EU testing system was proposed, there is minimal progress to tackle the legacy of dirty diesel cars on the road. Despite numerous Dieselgate investigations proving the illegality of the toxic NOx emissions only small numbers of cars have been cleaned up. No action whatsoever has been taken to reduce the emissions of 80% of the most grossly emitting diesel cars. Out of the 20% of cars subject to some recalls, only the VW cars fitted with illegal defeat devices are guaranteed to be fixed; the action on the remaining cars is left up to customers to opt in for. Most will be unaware of their rights or concerned about the impact of the fix on the driveability and fuel economy of the car.

The latest leaked documents reveal that the majority of Member States are also trying to block and weaken any future reform on the newly proposed Type Approval Framework Regulation, stripping the Commission of any powers to do independent checks on in-use vehicles. Instead Germany supported by the UK is passing the buck to the Commission and blaming the so-called "vaguely written" laws that they agreed in 2007 and subsequently failed to enforce. The Commission, despite some delays, appears to have finally lost patience and is expected to bring forward the infringement procedures before the end of 2016.

The Competitiveness Council meeting on 28/29 November will consider the new post-Dieselgate testing reform. A few days later Transport Council will demand changes to the EU rules instead of enforcing the current cheating ban. This scandalous stalemate and lack of action has been created by a Mexican style stand-off between the national governments that refuse to act against their home carmakers and instead point their finger at others. Meanwhile no one is enforcing the rules or acting in the interest of consumers and public health. Regulators in Europe have been captured by the car industry.

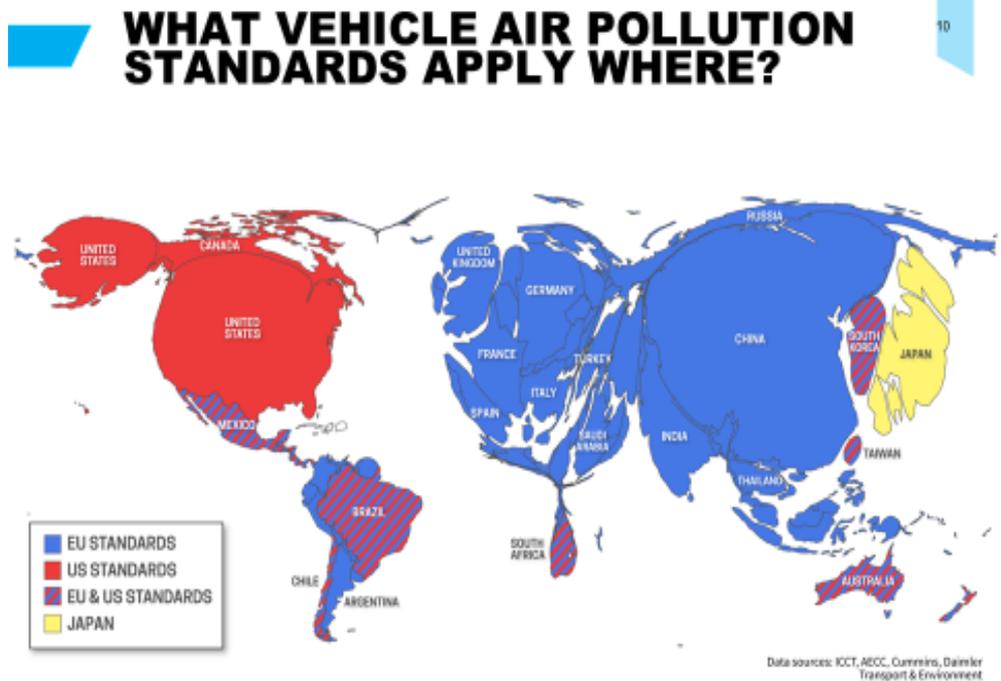
At least 80% of dirty diesel cars remain on our roads



Regulatory failure

On the 28th of November Industry Ministers from EU Member States will meet in Brussels for a Competitiveness Council. Amongst other issues they will consider is progress in rebuilding confidence in Europe's failed and discredited system for testing cars.

Historically EU car regulations have been used globally (excluding North America and Japan) as the benchmark for how to manage air pollution emissions. The EU's export of regulations has given its carmakers a competitive advantage as designing and selling cars for the EU market has largely ensured they are able to sell the same model in most other global markets. This is now coming to an end, as the Dieselgate scandal exposes the obsolescence of the EU system of testing; and the failure of regulatory and testing authorities to enforce the rules. As a result, countries like China, are now turning away from EU regulations and developing their own system eroding the advantage the EU once had.



Map is distorted to illustrate the relative size of the new car market in each country

The Competitiveness Council should be worried, but rather than debate the problems they have decided the issues arising from Dieselgate are unimportant and have reduced the topic to an “information point” for which the Slovakian Presidency of the EU will simply report on progress in fixing the broken system of car regulation. It is likely to be a very short report as very little has been achieved. This briefing outlines the paucity of progress and underlying cause – the fear that by enforcing and strengthening controls on emissions domestic carmakers will be competitively disadvantaged as other Member States may not act against their own national carmakers.

The Competitiveness Council will be followed on the 1st of December by Transport Council where EU Transport Ministers will discuss the fallout from the Dieselgate scandal and the rules around “defeat devices” (the illegal software carmakers use to detect that a car is being tested and cheat tests). But once again, rather than member states working together to fix the dirty diesels already on the road, the focus will be on passing the buck back to the Commission to table new legislation instead of implementing that which already exists and already bans cheating. Through this member states hope to circumvent responsibility.



Governments are unwilling to create a level playing field on which the automotive industry competes. Neither will they act to clean up the cars their regulators have approved for fear they disadvantage national champions as they fear other countries will not follow. In reality there is a Mexican standoff in which member states protect “their” carmakers. Meanwhile the 26 million grossly polluting dirty diesel cars on the EU’s roads¹ (29 million including vans) continue to pollute with impunity and 467 thousand² EU citizens are dying each year from the effects of air pollution – equivalent to wiping out the population of Liverpool or Gdansk each year. It is a shameful statistic that Ministers should not overlook as they discuss the fallout from dieselgate.

No action on dirty diesels

Over a year since the #Dieselgate scandal broke in the US, in Europe there has been much testing but virtually no action to clean up dirty diesel cars and vans. The tests have revealed the shocking scale of abuses involving virtually every carmaker. They demonstrate that the scandal engulfing VW is the tip of an oily iceberg with most carmakers systematically manipulating cars performance to pass emissions tests through highly questionable and probably illegal means.³ The result is that regulatory limits are met in a lab

¹ Dieselgate: Who? What? How? <https://www.transportenvironment.org/publications/dieselgate-who-what-how>

² European Environmental Agency, <http://www.eea.europa.eu/highlights/stronger-measures-needed/table-10-1-premature-deaths>

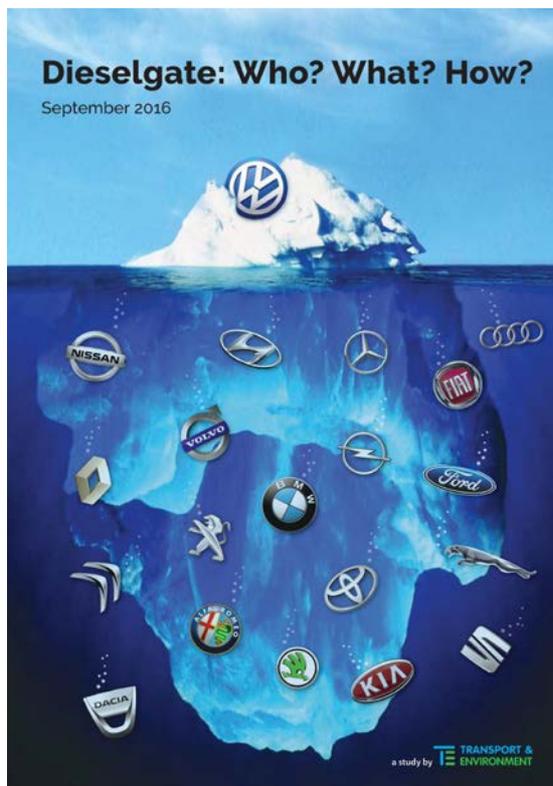
³ For a list of those, please refer to T&E’s earlier briefing :

https://www.transportenvironment.org/sites/te/files/publications/2016_05_Dieselgate_continues_briefing.pdf

but hugely exceeded on the road, or in conditions even slightly divergent from those prescribed in the EU test procedure. These Euro 5 and 6 cars are relatively new - up to 6 years old; and will continue to pollute the air for a decade to come unless action is taken.

Whilst in the US VW has faced fines of \$15 bln, in Europe it has got away without penalties or compensating drivers. Germany, that approved its cars and therefore is the only country that can apply fines for failure to correctly implement the emissions rules, has conveniently failed to fully transpose EU regulations into national law therefore making it impossible to act. But at least the German approval authority (KBA) is requiring VW to fix the 8.5 million cars throughout the EU fitted with the illegal “defeat device” software. The fix conditions may be opaque and very limited but Germany is doing something in stark contrast to most other countries.

T&E analysis shows that just 20% of the 26 million grossly polluting diesel cars on Europe’s roads could be fixed based on the recalls planned so far. The vast majority of these are the VW Group cars with the illegal software, first uncovered in the US. In addition to VW just a handful of carmakers have agreed to voluntarily recall their cars for repair, despite many models emitting much higher amount of NOx emissions than the VW brands. The planned and possible recalls so far are summarised per key countries below:



Planned and possible recalls

	Total dirty diesel cars on our roads (in thousands)	Planned VW recalls (in thousands)	Other possible recalls (in thousands)	All potentially cleaned diesel cars (in thousands)	Maximum percentage of cleaned diesel cars
France	5,527	665	198	863	16%
Germany	5,321	1,874	131	2,005	38%
United Kingdom	4,310	822	95	918	21%
Italy	3,139	452	72	524	17%
Spain	1,897	327	48	375	20%
Belgium	1,378	297	32	329	24%
The Netherlands	536	149	13	161	30%
The EU	25,894	4,478	660	5,138	20%

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Source: Transport & Environment, EEA and ICCT

More than four in five cars of the Euro 5 standard cars sold between 2010-14 produce more than three times the NOx standard (180g/1000km) when driven on the road. Two-thirds of Euro 6 cars (most on sale since 2015) still produce more than three times the 80g/1000km limit when driven on the road. 69% of these dirty diesel cars were sold in France, Germany, Italy and the UK. These member states also approved most of the polluting vehicles for sale and thus are the ones that can mandate recalls and upgrades. But as the figures above illustrate recall actions taken so far are a drop in the ocean compared to the number of polluting vehicles that need fixing. Furthermore (with the exception of VW) it is entirely discretionary and the choice of the customer whether the car is fixed. Renault and Fiat only provide the fix if asked and are doing little to make customers aware. **In total, 17 % of the dirty diesel cars will be fixed as they are all by the VW Group, and a further 3 % could be fixed in voluntary recalls by Renault, Fiat, Opel and Mercedes.** The national Type Approval Authorities are presently doing nothing to inform customers and ensure steps are taken. Almost 70,000 Europeans die prematurely each year as a result of NO2 exceedances, 94% of which are caused by traffic.⁴ Yet member states fail to take action to clean up the fleet.

“Nyet” to reform of car approvals

Member States are not only failing to clean up the dirty diesels on the road. They are also seeking to derail proposals from the European Commission to strengthen the system of car approvals. The EMIS⁵ hearings conducted by the European Parliament has brutally exposed the failure of national type approval authorities to enforce the rules. A compilation of verbal and written evidence provided by national regulators from France, Germany, Italy, Luxembourg and the Netherlands has shown Member States cannot be trusted to enforce the rules in an even-handed way. The authorities are in denial of the pan-industry cheating despite the overwhelming evidence from their own tests. Instead they protest EU rules that they agreed and that have been on the table for a decade are too vaguely worded to be enforced.

The new Type Approval Framework Regulation (TAFR) proposed by the Commission in January 2016 tabled many reforms needed to improve the system going forward. Its key element is the new power for the Commission’s Joint Research Centre (JRC) to test cars on the road to verify they meet the standards. No one does any such independent tests today – carmakers test in-use compliance of their vehicles themselves, often in their own labs and on the cars they select. Yet EU Member States (with the notable exception of France and Denmark) plan to weaken the proposals according to leaked documents of the Working Group obtained by Transport & Environment. They want to prevent the Commission conducting independent tests and taking action when wrongdoing is found – effectively maintaining the failed status quo. Member States also plan to dilute the already weak peer review requirements that would for the first time allow for checking how individual authorities conduct their activities. In the latest Council draft, such reviews would be steered by the member states stripping the testing system of any independent oversight. If they succeed in the future negotiations between the European Council, Parliament and Commission that are expected to commence early in 2017, Europe will miss the chance to strengthen its rules and instil much needed confidence in its regulation of vehicles. If this happens it will lose the pre-eminent position it has in setting global car rules.

Passing the buck

Whilst the slow implementation of Real-world Driving Emissions (RDE) tests by the European Commission undoubtedly contributed to the Dieseltgate scandal, it is not the primary reason for the crisis that resides with carmakers abuse of the rules and member states unwillingness to enforce them. But Member States rather than taking responsibility are attempting to pass the buck back to the Commission and blame loosely drafted legislation. At the forthcoming Transport Council, Germany is expected to re-table proposals to

⁴ European Environmental Agency, <http://www.eea.europa.eu/highlights/stronger-measures-needed/table-10-1-premature-deaths>

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amend the rules on defeat devices. It is a cynical ploy to ensure they cannot be asked to mandate the recall of dirty diesels but instead await new rules that will not apply retrospectively. Germany is fearful that the Commission will shortly issue infringement proceedings for its failure to enforce the current type approval rules and fine VW. EU Industry Commissioner Elzbieta Bienkowska promised these infraction actions back in September this year when she gave evidence to the European Parliament VW Enquiry Committee (EMIS) on the current Commission's involvement in the Dieselgate scandal. Bienkowska assured concerned MEPs that she would take action against a number of member states that today fail to take action and address the widespread emissions non-compliances. The Commissioner has several legal grounds for taking infringement action against the member states:

- Firstly, Germany, France, the UK and Italy reportedly sit on suspicious emissions evidence that potentially proves suspected cheating by some of the carmakers, such as Opel, Fiat and Renault. They refuse to share this data with the Commission fearing action against their home carmakers. This is where the “Mexican stand-off” is most obvious.
- Secondly, some Member States are yet to fully transpose the previous Type Approval Framework Directive into their national law which dates back to 2007. Notably, no effective penalties have been put in place in many cases. This only exemplifies the lack of political will to go after any manufacturer and bring them to account. No any carmaker has ever been fined in Europe, in stark contrast to the US EPA which sanctioned numerous companies for breaches of environmental rules.⁶
- The use of defeat devices, the falsifying of test results or withholding data or technical specifications are also infringements by European law.

In EMIS the Commissioner promised the legal action “in the coming weeks” but the wheels of the Commission grind slowly and the Juncker Cabinet has been minimising infringement proceedings on member states for fear they are promoting anti-EU sentiments by nationalist parties.⁷ Despite this, action is expected before the end of 2016.

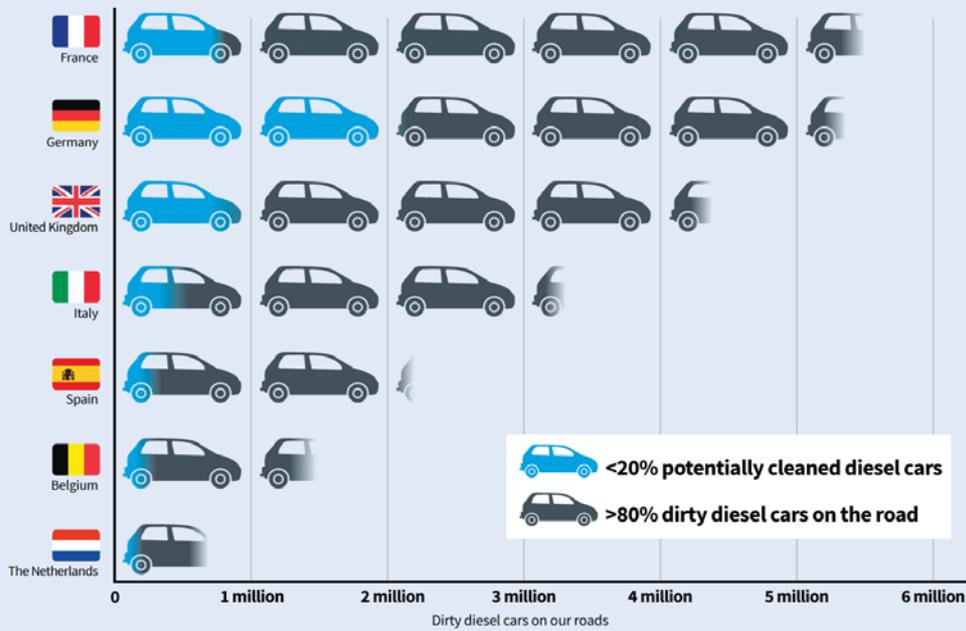
Regulatory capture

One year since the Dieselgate scandal erupted in Europe the progress to tackle the problems have stalled in member states that are refusing to take action, plotting to stop meaningful reform and seeking to pass the blame to the Commission. Their actions demonstrate a frightening level of regulatory capture by the automotive industry of national type approval authorities and their government masters. Either through unhealthy business relationships or a desire by member states to give an unfair advantage to their national car companies (which in some cases they partly own); the system has been shown to be corrupt. The current Mexican style stand-off between the EU governments with no one taking action against their fraudulent carmakers unless another one goes first is illustrative of the failed system and need for reform. The EU urgently needs to create an independent body to check how cars perform on the road (not lab), to levy sanctions and to control the way in which the national regulators carry out their duties. The Competitiveness and Transport Councils in coming days will provide an indication of whether member states are finally taking their responsibilities seriously or seeking to blame the Commission. There are few signs of Ministers taking responsibility making infringement action ever more likely.

⁶ US EPA database of infractions, <https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-casesolutions>

⁷ Politico, <http://www.politico.eu/pro/uber-complaint-falls-into-jean-claude-junckers-black-hole/>

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Further information

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