

For member states Dieselgate never happened: Council opposes strengthening of vehicle testing reform

April 2017

1. Final negotiations

It has been more than a year since the European Commission presented its type approval proposals (or TAFR) to reform the current system of vehicles testing following the Dieselgate scandal. Following extensive consideration by the European Parliament and Council of Ministers, the final negotiations to agree the changes are imminent. The Parliament voted its position on 4 April; the Council is expected to agree most technical details at a working group meeting on the 26th and 27th of April and reach a final agreement at the Competitiveness Council on 29 May. But as member states also hammer out their final position, clear battle lines are being drawn between those seeking to reform the discredited system of car approval and those seeking to retain the status quo.

The exhaustive enquiry into the VW emissions cheating by the European Parliament gathered a wealth of evidence of the failures in the current type approval system and resulted in a plenary vote to significantly strengthen EU oversight of the type approvals granted by member states. Most governments in contrast are reluctant to introduce strong checks and balances into the system to make it more independent and rigorous. Such reforms would make it difficult for national testing regulators to favour their home industry or treat approvals as a commercial activity. Instead, the reforms proposed by the Parliament would finally force member state authorities to go after carmakers and require them to meet standards in real world.

Consistent application of the rules is essential since the current framework enables cars approved by any of the EU's 28 national type approval authorities (TAAs) to be sold throughout the EU. Carmakers select the approval authority that is paid to provide the services, creating a market for vehicle approvals. Some TAA's act as a commercial provider of car approvals; others specialise in approving cars produced by their domestic car industry. The tests are usually performed in carmakers' own labs and only "witnessed" by technical services (TS) which are paid for their work. The enforcement of the rules is the sole responsibility of the granting TAA (and its government), with neither the Commission nor non-type approving authorities having any powers to order recalls or remedy action from carmakers. The current Dieselgate scandal in Europe, with at least 29 million grossly polluting vehicles on the road¹, contributing to 72,000² premature deaths from breathing nitrogen dioxide, has laid bare the human cost of the current inadequate system. The glaring lack of action against carmakers, despite evidence they turn down the exhaust treatment system when the car is on the road, demonstrates that member states are acting in the interests of carmakers not citizens. Their decisions on how and whether to approve vehicles are not aimed at enforcing the rules rigorously. The current TAFR reform is once in a decade opportunity to reform this failed system but Council seems determined to retain the status quo.

The infographic below summarises the key position differences between the Parliament and national governments.

¹ T&E's Dieselgate report,

https://www.transportenvironment.org/sites/te/files/publications/2016_09_Dieselgate_report_who_what_how_FINAL_0.pdf

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

Reforming the EU's vehicle approval system

Commission's proposals

What MEPs voted for

What EU governments want



Independent EU spot checks of cars after sale

+
In favour

+
In favour

-
Against



EU fines against cheating carmakers

+
In favour

-
Weakened
only member states can fine



Oversight of national regulators

+
Strengthened
peer reviews become independent audits

-
Weakened
regulators easily exempt



National market surveillance on "adequate scale"

+
Strengthened
with mandatory target of 20% of new models to be tested

+
In favour
1 in 50,000 vehicles tested

-
Against



Joint audits of testing companies by Commission and governments

+
In favour
and strengthened

-
Weakened
testing companies can be exempt



Possibility to sell outdated vehicles

+
In favour

-
Weakened
no need for new approval



Real-world CO₂ tests

+
In favour

-
Deleted

2. EU checks and penalties

To end the collusion between carmakers and TAA's and inject independence into the decision making, the key reform proposed by the Commission are **new powers to conduct spot checks on cars and penalize carmakers at EU level**. This will allow the Commission and all member states to police compliance with emissions and safety rules and take EU-wide action.

The Parliament supports the Commission proposals. In its plenary vote on 4 April the overwhelming majority of MEPs voted in favour of and strengthened unrestricted powers of the European Commission to carry out in-service conformity checks on vehicles on the road and punish non-compliance carmakers; in particular in response to complaints or when a member state is not fulfilling its market surveillance obligations. However, despite the Maltese Presidency attempts³ to retain these powers (in a slightly weaker form) many member states continue to object to independent controls preferring that there are no checks on their work. Based on the feedback from the last meeting (and early submissions) these include: Germany, Italy, Spain (that approve vehicles for domestic carmakers); and Romania, Bulgaria and the Czech Republic (that consistently support the car industry position on legislation). These countries claim that checks at national level are sufficient despite the failure of the German KBA to detect the VW cheating.

The current Dieseldate scandal puts into spotlight the inability of today's type approval system to effectively deal with serious industry infringements and cheating:

- VW have not been fined by Germany, neither Skoda by the UK or Seat by Spain (where those vehicles were approved)
- Italy continues to defend Fiat against the suspected cheating and has recently reached a shameless deal with Germany not to pursue the switching down of the exhaust treatment system after 22 minutes
- Only a fraction of the millions of grossly polluting vehicles across Europe have been recalled so far, and even then the national authorities let the carmakers get away with mere voluntary action.

Without independent EU checks this lax enforcement of the rules will continue.

3. Consistent application of the rules

Parliament's enquiry into the VW scandal (EMIS) rightly points the finger of blame at the member states for failing to enforce the rules. More than a year of hearings has demonstrated⁴ that these have failed to check vehicles' performance or rigorously search for illegal defeat devices. This is also in line with the Commission's impact assessment accompanying TAFR, which highlights divergent interpretation of type approval rules across the EU as one of the main failures of the current system. To address these failing the Commission proposed a weak system of peer reviews – relying on member states to police one another. This is inherently flawed since TAA's who are in competition with one another for the business of approving cars cannot provide an effective means to verify how well individual authorities enforce the rules. It would be ludicrous to ask VW to peer review the workings of Renault – but German car regulators are being entrusted to review their French peers. This system will not work on a fair basis.

MEPs widely voted to **replace peer reviews with independent audits of national authorities**, carried out by external experts and coordinated by the Commission, to ensure they implement rigorously their obligations. Further to that, the Commission is given powers to suspend authorities' power to issue type approvals if serious maladministration is found; but Council remains implacably opposed. Pushed in particular by Germany, Spain, Italy, Sweden, Poland, Finland and the Czech Republic, the latest text even exempts TAA's from peer reviews in cases where technical services are accredited by national accreditation bodies (many supporting this fall under this category). The technical services themselves – both private and

³ The latest presidency text is available from T&E on request

⁴ https://www.transportenvironment.org/sites/te/files/publications/2016_11_EMIS_evidence_briefing.pdf

public companies carrying out tests required to certify compliance – are similarly exempt from audits designed to verify their expertise and quality. Governments are thus opposing any checks aimed at ensuring level-playing field across the EU and harmonized application of rules.

Those supporting the exemption claim that peer evaluations of national accreditation bodies are already foreseen under Regulation 765/2008 on accreditation and market surveillance in the EU.⁵ However, this is incorrect and has not worked until now. Firstly, the 2008 regulation clearly states that it is to ‘complement and strengthen’ the existing rules and not to “apply in place of provisions” that exist in other areas such as motor vehicles. Secondly, the law has been in place since 2008, years before the VW cheating was uncovered, and failed to prevent the mass manipulation of EU emissions rules. Since 2011⁶ at least 29 million grossly polluting vehicles have been sold on EU market, without any action by TAA’s, a number growing every day. Given the current Dieselgate scandal, it seems obvious that the old rules should not be copied. Instead TAFR can and should introduce new controls and oversight of the approval system.

The EMIS enquiry showed member states have dismally failed to enforce the EU emissions rules. Now they want to hide their continuing mismanagement. Citizens need to be protected and independent audits of their operations are essential to ensure a level playing field and re-establish trust and confidence in the discredited system.

4. It’s market surveillance, stupid

One issue on which all decision-makers agree is that there is a lack of effective market surveillance to check vehicles’ performance on the road. As the EMIS findings have shown, no national authority in Europe has conducted independent market surveillance checks until the VW scandal broke in 2015.⁷ Responsibility to perform market surveillance checks rests solely with the 28 member states, but most lack either the resources, expertise, or will to check the compliance of vehicles and parts. Most member states perform no checks, delegating responsibility to carmakers themselves. For example, the German authority (KBA) only checked 24 vehicles in use in the years preceding the VW scandal.⁸

The Commission has tried to address this failure in the current system by making market surveillance obligatory, but stopped short of proposing quantitative targets instead referring to requiring testing of “an adequate scale.” The Parliament voted to strengthen this provision and want the member states to put in place **annual market surveillance programmes to check at least 20% of vehicle types on their territory**. Such programmes shall take into account complaints and third-party test results and shall be approved by the Commission. This level of ambition is comparable with the amount of vehicle checks in the US, where the US Environmental Protection Agency re-tests 15-20% of cars on the road each year. Even the Council, pushed by the Maltese Presidency to show some ambition, has the wording to oblige each country **to check 1 in 50,000 new vehicles registered on their territory annually**. This would result in around 50 vehicles in a country the size of France and zero in Latvia. This is a much lower level of ambition than Parliament, and it remains to be seen whether the current Maltese draft will have the backing of the majority. While some member states support this ambition, Germany, Italy and Spain remain undecided while Poland, Bulgaria, the Czech Republic and Latvia are strongly opposed. The Council also fails to include any funding provisions to ensure that sufficient resources to conduct the checks are available.

The key member states objecting to the type approval reform proposed – Germany, Italy and Spain – are opposed to EU-level checks claiming that national action will suffice; but are unwilling to commit to an obligatory level of checks at national level. The outcome of this will be no action at all, no new tests, and a

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0030:0047:en:PDF>

⁶ T&E Dieselgate report,

https://www.transportenvironment.org/sites/te/files/publications/2016_09_Dieselgate_report_who_what_how_FINAL_0.pdf

⁷ https://www.transportenvironment.org/sites/te/files/publications/2016_11_EMIS_evidence_briefing.pdf

⁸ https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/#searchResults

continuation of the system where carmakers continue to cheat emissions tests and the EU relies on the US EPA to police its cars.

5. Too old to be on the road

Even after new emissions and safety rules come into force (usually more than 5 years after they have been agreed) carmakers are allowed to continue selling vehicles that no longer meet these new safety or environmental rules using the “end-of-series” arrangement to sell off remaining stocks. The length of this flexibility today is in the hands of the granting TAA that often is on the side of the carmaker rather than a consumer. The manufacturers are thus incentivised to produce more of the vehicles in the last year knowing that they can continue selling those even when the new rules come into force.

To ensure fair competition in the single market and for the sake of clarity for consumers, the Commission has proposed to harmonise the end-of-series provisions and limit the flexibility to a maximum of 12 months for all carmakers. To benefit from the flexibility, they need to apply to the authority of the member state where the vehicle was approved. Other member states can however decide not to accept the end-of-series vehicles, in case they consider them no longer safe or appropriate. The proposed time limit would end the current privileges some manufacturers enjoy, hence a strong lobby from those against it. The European Parliament has upheld the time limits in its final position. However, the Council wants to delete the existing powers of individual member states to stop circulation of such old vehicles on their territory, giving the granting TAA, often acting on behalf of national carmakers, unrestricted power to grant flexibility.

6. Conclusions

While the latest compromise text proposed by the Maltese Presidency of the Council in early March is better than earlier texts, it still refuses to accept any effective oversight to ensure consistent application of the rules. It also lacks ambition – particularly in the area of market surveillance. Crucially, the current text is not yet supported by a majority of countries who find it *overly ambitious*. This includes Germany, Italy and Spain who want to continue protecting their home champions, and do not want to see rigorous checks and balances that would expose both carmakers’ lack of compliance and their regulators’ mismanagement. Only France, the UK, the Netherlands and Denmark support meaningful reform.

The European Parliament sees the need for comprehensive reform. In their plenary vote on 4 April, the overwhelming majority of all MEPs voted for robust EU checks on vehicles as well as independent controls of national authorities. Following their Dieselgate enquiry, MEPs know very well that without proper EU controls over vehicles and oversight of national regulators at EU level, the current stalemate on emissions compliance and collusion with the car industry will persist.

To date no carmaker in Europe has ever been fined by any national regulator. This regulatory capture necessitates a strong European oversight system of both carmakers and national authorities. It will bring an end to the current capture of the system by the car industry. Independent, rigorous and transparent type approval system as called for by the European Parliament will ensure that vehicles perform as intended by legislation and consumers finally get the clean and safe products promised to them years ago.

Further information

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