

Fixing Dieselgate in Europe:

With the number of dirty diesels growing, Germany opposes the reform to clean them up

May 2017

1. One year on & 6 million more dirty diesels poison the air

It has been 18 months since the VW emissions scandal broke leading to the discovery of 11 million diesel vehicles of the VW Group fitted with illegal software designed to cheat emission tests. Since then a raft of national investigations into diesel emissions in Europe – notably Germany, France, UK and Italy – have exposed the problem to be endemic affecting virtually every carmaker. The majority of diesel cars on Europe's roads are fitted with cheap and inadequate exhaust after-treatment technologies that are switched off most of the time the car is used on the road but the cars pass obsolete laboratory tests.

In September 2016 Transport & Environment analysed the various emission test results from national enquiries as well as independent organisations to conclude that around 80% - or 29 million – of Euro 5 & 6 diesel cars and vans sold in Europe between 2011 and 2015 are grossly polluting, exceeding the NOx limits by at least 3 times. No effective action such as recalls or approval withdrawals have taken place on the vast majority of these dirty diesels that continue to pollute urban air unpunished. In fact, their number is growing every day as more and more of the same polluting models are sold. Following on its previous research of diesel sales up to 2015¹, Transport & Environment has reanalysed the 2016 sales data to conclude that **an additional 6 million dirty cars have been added to the car fleet in the last year, raising the total number of dirty diesels to almost 35 million**. These switch off and down their emission controls in most conditions outside the prescribed test cycle resulting in excessive NOx emissions. The excess NOx emissions alone have recently been calculated to cause nearly **7,000 premature deaths in Europe in 2015**.² In total nitrogen oxides are estimated to annually kill 70 thousand people in Europe.

The inaction in Europe compared to that other side of the Atlantic is shocking. The US EPA has severely punished VW and has now started proceedings against the FCA group. But the continuing Dieselgate scandal in Europe has shone a spotlight on the inability or unwillingness of the 28 national car regulators to effectively deal with serious industry infringements and cheating:

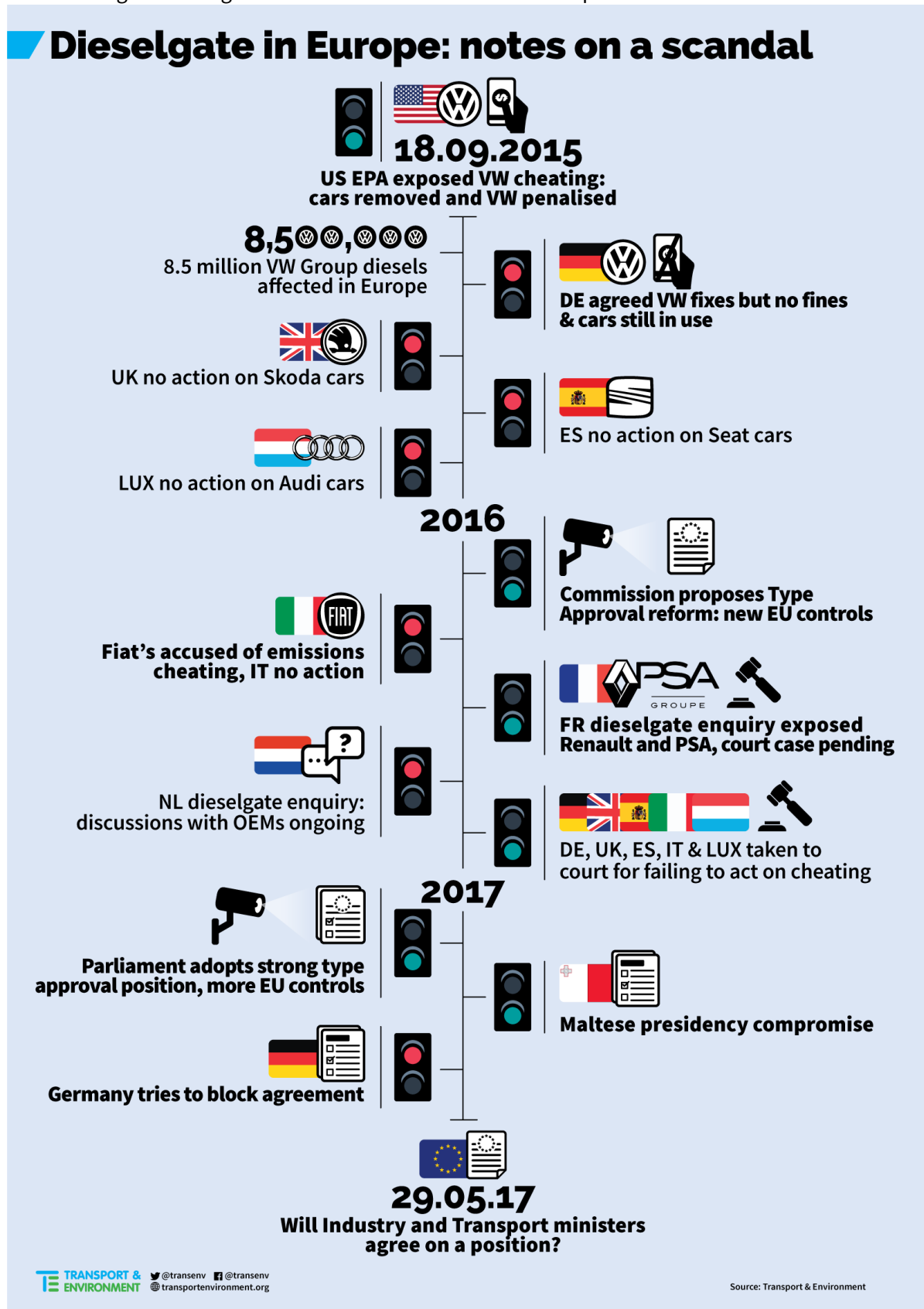
- VW have not been fined by Germany, neither Skoda by the UK or Seat by Spain (where those vehicles were approved)
- Italy continues to defend Fiat against the suspected cheating whereby some Euro 6 models switch off the exhaust treatment system after 22 minutes
- Only a fraction of the millions of grossly polluting vehicles across Europe have been recalled so far, and even then the national authorities let the carmakers get away with mere voluntary action.

¹ For methodology and more information, see the Dieselgate report :

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

² https://www.nature.com/articles/nature22086.epdf?referrer_access_token=rypj4rFUOjf-UZ_eZ2npedRgN0AjWel9jnR3ZoTv0PttlDs1RuvjUu0emELU3B0FdhXZOLAGnykph6mApWQUpW2-xej-wQZdBrYx7T8cYAzpBN-X0pKH5ocDOBWQdx1xDuRRD0VSZiq_Ym6D5fChMPRBPZJuZWDXJII-GXH4ks2XmOZMyBjw-p6YBk24q3Ze6ZVC9_R_UAhJuiaPx7DEDjfc0p2QYQaVuywvV7Rh77J5uixCo7IAFN0LSs6-rMuEqKrBR7IhlqgnzLMIbgB8k2ZyUWho5G-u0568aZ0X8YegiMHV5WaT5vFcjUPp&tracking_referrer=www.theguardian.com

As the discussions on the proposed Dieselgate reform – or type approval framework regulation – near a conclusion the below image summarises the timeline of actions and illustrates that it is EU member states that are blocking and failing to take action in contrast to the European Commission³ and Parliament⁴.



³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0031>

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0097&language=EN&ring=A8-2017-0048>

2. The discredited car approval system at the heart of Dieselgate

The underlying cause of the dieselgate scandal is the inadequate system of vehicle testing and approval in Europe, known as type approval. Under the current system national regulators are responsible for approving cars and taking action where rules are breached such as fines and recalls. The glaring lack of action against carmakers, despite evidence they turn down exhaust after-treatment systems when the car is on the road, demonstrates that the national agencies 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.

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), both 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 currently having any powers to order recalls or remedy action from carmakers.

Realising the failures, the **European Commission proposed the reform of type approval**, or the Type Approval Framework Regulation (TAFR) in January 2016. The proposal is a once in decade opportunity to reform this failed system. It introduces independent EU controls over vehicles on the road, allowing the Commission (as well as all member state authorities) to re-test cars and penalize carmakers found abusing the rules. It boosts market surveillance by obliging member states to check an 'adequate samples' of cars in use each year. It also introduces oversight – albeit ineffectively – of the national regulators themselves, through the system of peer reviews whereby one TAA would be reviewed by two others. It attempts to reform funding structures as well as harmonising the procedure that allows carmakers to sell off their old stocks that are no longer in compliance with new rules.

The **European Parliament supports the reform** – its exhaustive enquiry into the VW emissions cheating 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. In April MEPs voted to reinforce the EU controls and checks of cars proposed by the Commission. Notably, they turned weak peer reviews (one authority checking the work of another) that are open to abuse and deal-making into independent audits of TAA's coordinated by the Commission. MEPs also introduced a mandatory target of 20% to check vehicles in use and significantly boosted transparency and involvement of third parties in what is today an opaque system shrouded in secrecy.

3. Member States move forward but fall short of ambition

Now the ball is in the hands of the Member States of the EU who are expected to **agree their position at the Competitiveness Council on 29 May**. Most member states, despite previous reluctance to introduce strong checks and balances into the system to make it more independent and rigorous, are recognizing the need for reform. Under the skillful direction of the Maltese Presidency of the EU, the national transport and industry ministers are scheduled to adopt their position next week, following 18 months of hard negotiations. The majority of member states – originally led by France, the Netherlands and the UK – support the compromise text hammered out so far. This will allow the Commission and all member states to police compliance with emissions and safety rules and take EU-wide action. Notably, after long discussions the compromise leaves the Commission powers to conduct tests and levy fines, albeit with some conditions. It also introduces a mandatory in-use surveillance target for each country. However, the compromise is weaker than the Parliament's position, notably:

- **No controls of authorities:** pushed in particular by Germany, Spain, Italy, Sweden, Poland, Finland and the Czech Republic, the latest text falls short of introducing any oversight of the work of the approval authorities themselves. Instead, the focus is moved to technical services, or labs that carry out tests on behalf of the regulators. And even then, choice/designation of those labs is exempt from any checks if these are accredited by national accreditation bodies. Unsurprisingly, the countries falling under this category include those pushing for the exemption. Governments are thus opposing any checks aimed at ensuring level-playing field across the EU and harmonized application of rules.
- **Funding remains unchanged:** the Commission proposal to break the financial link between testing labs and carmakers is deleted, with the current financial procedures intact and not reformed.
- **Third parties denied scrutiny:** while Parliament calls for bigger involvement of third parties to increase independent scrutiny - especially in the newly proposed Forum designed to discuss issues around compliance and enforcement - the Council denies actors such as independent research organisations, consumer groups and NGOs even an observer status. Instead, the Forum remains a member state only club, with those at the heart of the current emissions scandal continuing unaffected.
- **No real-world CO2 tests:** Member states also delete Commission powers to introduce new on-road tests for CO2 emissions and fuel efficiency, which following the Dieselgate scandal are the only way to realistically measure vehicles performance and provide accurate information for drivers.

While not as strong as the Parliament's position, the Council compromise is a step forward and will enable meaningful negotiations between the three institutions to agree the final law; and Ministers should agree the position without delay at their Council meeting to pave the way for these negotiations to start. However, one big obstacle remains – Germany.

4. Germany: the champion for dirty diesel

Germany is actively blocking the reform of type approval. Its government is against new EU controls fearing it will take away its powers to protect domestic carmakers. At the last meeting to prepare the Council compromise on 12 May **Germany was the only country to officially oppose the compromise** that has been discussed for nearly 18 months, claiming it wants more time and discussion.

This is a repeat of the 2013 scandal, when Germany tried to derail agreement on a car CO2 regulation. Back then Germany intervened to block the deal reached between the European Parliament, the Commission and the Council on the 2020 CO2 target for cars. Chancellor Merkel got directly involved to stop the then Irish presidency of the EU from putting the deal to a final vote. She then bribed and bullied other member states to change their position. This led to a one year delay in the regulation's application. Germany's behavior on type approval bears striking resemblances to 2013:

- Just as now, the late intervention on car CO2 happened just before the election, with the CDU keen to be seen as fighting publically for German interests
- The German government failed to influence the Council discussions due to an internal split between the transport and environment ministries leading it to become isolated in the Council. In fact the 27-page position paper on type approval sent to the national experts just days before the meeting last week was a true embarrassment to transport minister Alexander Dobrindt, who was exposed in media as acting of his own accord without environment minister Barbara Hendricks' agreement.
- Germany used threats and inducements to other member states to gain support in 2013. There are already reports of Germany offering to support extra EU funds for countries willing to back its demands. No doubt threats will follow if history repeats itself.

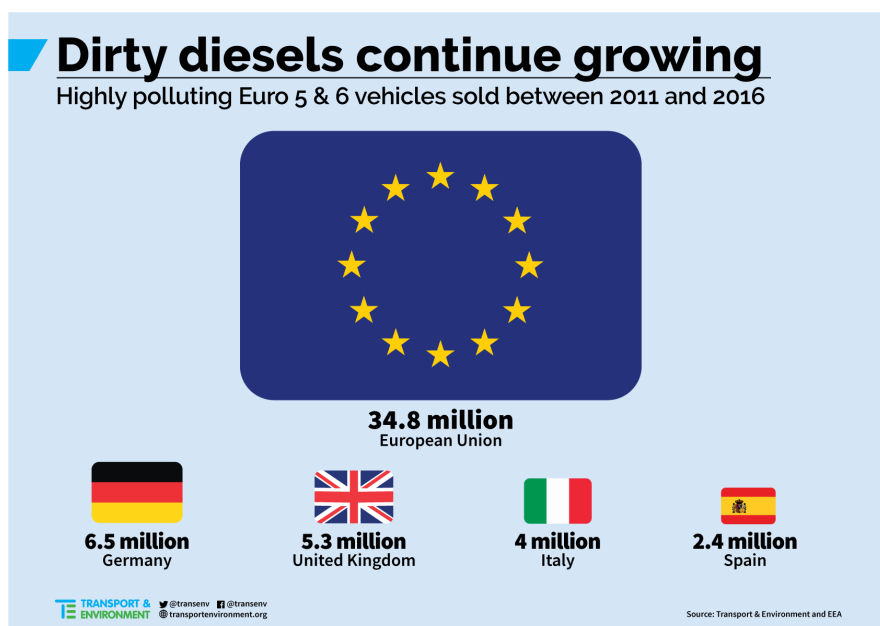
While many countries, notably Italy, continue turning a blind eye to emissions cheating by their home carmakers, only Germany is actively lobbying to retain the failed status quo in Europe that would continue allowing carmakers to cheat. It is opposing the Maltese compromise because it would make it difficult for

its car regulator (KBA) to favour VW, Daimler and others in the future. The number of **dirty diesels in Germany grew to 6.5 million** in 2016. These are responsible for the continuing failure to meet the EU NOx limits and the resulting infraction procedure by the Commission.

So far the other member states have resisted Germany's opposition but the pressure is growing. The Council is right not to let Germany stand in the way of the hard fought compromise and instead agree the position on 29 May. Germany should not be allowed to bully others into changing the position or delaying the negotiations and retain the failed status quo. Its continuing failure to take action against VW and Opel is anything demonstrate why strong EU controls are necessary to stop national regulatory capture.

5. Conclusions

1.5 years since the VW and ensuing Dieselgate scandal erupted, continuing inaction by Europe's 28 car regulators have resulted in almost 35 million dirty diesels on Europe's roads. These will continue to pollute the air for decades to come and already result in nearly 7,000 premature deaths annually which could have been avoided if the EU air pollution limits were met.



Reform of how cars are approved for sale and checked once in use is urgently needed. After the Commission and Parliament presenting their views, it is now Council's turn to agree its position. The latest compromise text is less ambitious than desired, but it does recognize need for reform. Its prompt adoption at the Competitiveness Council next week is essential to start the final negotiations to agree the new law. Only Germany is actively opposing independent, rigorous and transparent controls of vehicles

proposed.

Having failed to penalize VW or scrutinize other carmakers with illegally high emissions, Germany wants to retain the status quo and continue defending industry's cheating. If it succeeds in derailing the deal, the current stalemate on emissions compliance and collusion with the car industry will persist. Only independent EU checks and increased transparency can turn around the current lax enforcement of the rules. It is time Europe put the interests of its consumers and their health above the purse of carmakers.

Further information

Julia Poliscanova
Manager, Clean Vehicles & Air Quality
Transport & Environment
+32 (0) 2 851 02 18
julia.poliscanova@transportenvironment.org