BEUC The European Consumer Organisation

The Consumer Voice in Europe

QUESTIONS & ANSWERS

The VW scandal and what actions are needed in Europe

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1. What has Volkswagen done wrong?

On the 18th September 2015 the US Environment Protection Agency (EPA) announced that Volkswagen had confessed to using so called 'defeat device' software in a number of vehicles in order to meet US air pollutant emissions standards. The devices can sense when the car is being tested under official conditions and in turn will switch on emissions control systems to their fullest. When the car is not being tested and the car is being used on the road, emissions control systems will work at a lower capacity and in turn will lead to higher emissions.

2. How many and which vehicles have been affected?

The Volkswagen Group (including Volkswagen, Audi, Skoda and Seat) has stated that 11 million vehicles have been affected globally, including an estimated 8 million vehicles in Europe. It has been reported that 5 million Volkswagen branded vehicles, 2.1 million Audis, 1.2 million Skodas, and 1.8 million vans in addition to 700,000 Seats have been affected. According to the Volkswagen Group a 'service procedure' will be required for all vehicles that have a diesel EA 189 EU5 engine. Although owners of Volkswagen, Audi, Skoda and Seat diesel cars can go to the respective car company websites in several countries to check if their car has been equipped with the manipulation software, it is unclear whether this is the case for owners in all European countries.

3. Why do air pollutant emissions matter?

The exhaust gasses emitted from motor vehicles include many air pollutants including nitrogen oxides (known as NOx for short – including nitric oxides and nitrogen dioxide). The amount of NOx that can be emitted by passenger cars are regulated under both US and European legislation and in high concentrations have been linked to the development of respiratory conditions such as asthma, reduced lung growth in children and bronchitis[1]. NOx also contribute to eutrophication and can mean for severe environmental damage including reductions in water quality. Some affected Volkswagen Group diesel cars have been found to exceed US emission limits. Authorities in Europe are investigating if EU NOx emission limits have also been exceeded.

4. Why didn't authorities spot the defeat devices?

Evidence indicating the use of defeat devices was discovered by the International Council on Clean Transportation (ICCT) and West Virginia University after conducting emissions tests on vehicles using on-the-road emissions testing equipment. This evidence was presented to US authorities who in turn secured a confession from VW that defeat devices had been used. One of the problems with both US and EU testing regimes as things stand is that cars are only tested in laboratories which makes it difficult, if not impossible for authorities to discover the use of 'defeat devices' without conducting additional investigations.

[1] WHO (2005) http://apps.who.int/iris/bitstream/10665/69477/1/WHO_SDE_PHE_OEH_06.02_eng.pdf; EEA (2015) http://www.eea.europa.eu/data-and-maps/indicators/eea-32-nitrogen-oxides-nox-emissions-1

5. Why should the installation of defeat devices concern consumers?

For consumers, buying a passenger vehicle can be a complex process where upon multiple criteria will be considered. For many consumers the environmental and health impacts that can result from the emissions of air pollutants will be an important factor. In this regard, many consumers will have bought a vehicle based on the green claims made by car makers and in the understanding that the vehicle would have legally met emissions limits. They would also have bought the vehicles in the belief that the car's emissions control systems would function in normal use as they would under official tests. In Europe, VW has admitted that diesel vehicles have been fitted with this defeat device software. There have also been reports that this software is able to recognise EU regulated tests.

6. What is the possible impact on an owner with an affected vehicle?

Aside from the likelihood that vehicles with installed defeat devices will emit higher amounts of air pollutants than otherwise expected, a consequence of the use of the devices means that the vehicles will need to undergo some form of alteration or repair work in order to remove the devices and ensure that the car's performance matches standards as laid out in promotional materials, the contract held with the owner, or as required under law. Such work should come at no extra cost to the consumer and if such work should negatively impact on other performance features such as fuel consumption, or the requirement for more service checks to be carried out, then consumers should also be compensated in that regard (please see below the answer to question 7).

7. What rights do EU consumers have if their vehicles have been affected?

First and foremost, consumers have the right to receive the vehicle with the specifications promised in the contract. Any repair work or alterations needed to accomplish conformity with the contract and to meet standards set out in marketing material or required under law, must be free of charge for consumers. Depending on the Member States' law, consumers may be entitled to get compensated for the decreased vehicle (resale) value or have the contract rescinded. On top of that, consumers are potentially entitled to seek financial compensation for damages, including increased cost for fuel and taxes or costs associated with future repair, caused by or related to the 'defeat devices' installed in vehicles. Besides, national legislation might provide for additional rights.

8. Should we expect other car makers of using defeat devices?

Until a full investigation is conducted into the possible use of 'defeat devices' amongst all car makers, it is not possible to say with any certainty that the use of defeat devices is restricted only to the Volkswagen Group. Such an investigation should be conducted at the European level and also inspect the use of defeat devices or similar tools for the purpose of influencing fuel consumption/CO_2 emissions testing programmes. What is clear is that results from on-the-road tests have shown that diesel cars of different car

makers are on average approximately seven times higher than the limits set by the Euro 6 emission standard (whereby cars are measured in laboratory conditions)[2]. And for fuel consumption, recent evidence shows that on average motorists across Europe are achieving a fuel consumption performance almost 40% higher on the road than when it is tested under official laboratory conditions[3].

9. Is the deception of consumers limited to air pollutant emissions??

The discovery of the defeat devices has added to longstanding concerns about manipulation of vehicle testing programmes. For example, concerning the measuring of CO_2 emissions and fuel consumption in the EU, there are numerous tactics that car makers can employ to improve their official values such as over inflating tyres, using special lubricants and removing the car's alternator which will all improve test results and in turn meaning car owners end up paying more in fuel costs than otherwise expected (see 'the Great Fuel Consumption Scam' for more info). Over the past 15 years the situation has been getting worse as research undertaken by the ICCT has shown that the gap between official figures and real-world figures has grown from 8% in 2001 to 38% in 2014. Altroconsumo, our Italian member, tested two cars (a VW Golf and a Fiat Panda) following the official testing procedure resulting in emission figures up to 50% above the car makers' advertisements – a difference which could not be explained with known test flexibilities.

10. What legislative action is needed to improve vehicle testing?

In Europe, it is essential that for air pollutant emissions testing, on-the-road tests must be swiftly introduced and conducted in order to better measure emissions. For fuel consumption and CO_2 emissions testing, there is the need for a new testing procedure to be adopted by 2017. This should mean that official values are more reliable. However the process will only involve laboratory based testing and thus will not solve issues surrounding test manipulation on its own. On top of this, the European Commission needs to develop an on-the-road testing protocol of a car's fuel consumption and CO_2 emissions and also to develop a more robust market surveillance mechanism. On this latter point, there needs to be requirements for conformity testing in-use vehicles (i.e. not just type approval vehicles as currently is required) and involving spot checks conducted by independent testing services and overseen by EU authorities[4].

11. What must Volkswagen do to restore trust amongst consumers?

- Stop immediately the distribution and sale of any vehicles that have been equipped with the 'defeat devices' across Europe;
- Fully disclose which specific vehicles have had the 'defeat devices' installed in Europe;

[2] ICCT (2014) http://www.theicct.org/news/press-release-new-icct-study-shows-real-world-exhaust-emissions-modern-diesel-cars-seven-times
[3] ICCT (2015) http://www.theicct.org/sites/default/files/Fact%20sheet_FromLabToRoad_2015.pdf
[4] For more information on all our policy recommendations, see our position paper: 'The Great Fuel Consumption Scam'

- Ensure that a full recall of the vehicles affected in Europe will be communicated in a consistent and transparent way to the owners, providing a full and detailed information on the nature, content and purpose of the technical analysis and modifications to be made and on their aftermath and effects on the performance, safety and standard requirement (namely the ones on gas emissions) of the vehicles concerned;

- In relation to these technical interventions, ensure that the owners of vehicles which are recalled are not only exempted from any costs related to the alterations or repair work that would be needed to meet standards set out in marketing material, the contract or required under law, but also adequately compensated in case the necessary technical intervention would produce a negative impact on the performance of the cars (e.g. the fuel consumption performance); in parallel, ensure that a courtesy car is provided to owners whilst any alterations or repair work are carried out;

- Offer in any case timely financial compensation for any damages caused by or related to the 'defeat devices' installed in vehicles purchased by consumers – including the depreciation of the value of the affected vehicles;

- Ensure that any alterations or repair work conducted on affected cars will result in the emissions performance matching EU emissions limits based on real world performance, or, where lower, the advertised emission levels for the relevant vehicle;

- Ensure the fulfilment of any other consumer claim based on consumer sales law, including cancellation and repayment of the purchase price or proportionate reduction of the purchase price and damages for any loss.

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