

Cleaning up the legacy of the Dieselgate scandal

Policy proposals for the EU and the UK

Auto manufacturers that have been selling cars and vans with prohibited defeat devices must take responsibility for their actions and help to clean up their toxic legacy, which is still being felt across Europe.

Too many car and van owners have unknowingly bought vehicles that are far dirtier on the roads than they are in laboratory tests – because of the use of prohibited defeat devices – and people are paying the price with their health.

However, whilst billions have been put aside globally by some auto companies to settle class actions and rightfully compensate consumers in the wake of the 2015 Dieselgate scandal, very little action has been taken by national governments in the EU and the UK to ensure manufacturers actually clean up the excessively polluting vehicles that they sold. In fact, in [new analysis by the ICCT](#), it is estimated that more than 19 million cars and vans likely to be fitted with illegal defeat devices are still being used on roads across the EU and the UK.

By contrast, [federal authorities in the US](#) have forced the manufacturer that was first caught using such devices in 2015, Volkswagen, to offer effective emissions fixes or buy-back vehicles and pay almost US\$3 billion into funds to help US states implement action to reduce pollution from road transport, as well as invest US\$2 billion into promoting Zero Exhaust Emission Vehicles (“ZEEVs”) and investing in charging infrastructure. This enforcement action was taken in relation to the sale of approximately 590,000 vehicles in the US.

Given the scale of the problem in the EU and the UK, ClientEarth, [France Nature Environnement](#), [CLCV \(Consommation, Logement, Cadre de Vie\)](#) and [Deutsche Umwelthilfe \(DUH\)](#) have decided to act by sending [legal complaints to the French, German and UK Governments](#). The complaints could set in motion a ripple effect across the EU.

This document outlines the action ClientEarth would like to see implemented in response.

National governments in the EU and the UK must hold auto manufacturers to account

By failing to hold auto manufacturers to account for their use of illegal defeat devices, national governments across the EU and the UK have also failed to protect people's health and help the owners of these excessively polluting cars and vans. We urge them to finally come clean with the public and act by:

1. Fulfilling their legal responsibilities to properly investigate whether auto manufacturers have been using prohibited defeat devices and require them to urgently implement retrofit programmes to genuinely clean up any excessively polluting vehicles that are found to be fitted with such devices. This corrective action must be fully funded by each respective manufacturer without imposing any costs on vehicle owners.
2. Requiring auto manufacturers that are found to have been using prohibited defeat devices to pay into a publicly managed 'Dieselgate Clean Up Fund'. This should cover the true costs of the harm caused by the excessive emissions from the Dieselgate legacy in the EU and the UK, and should be used to accelerate the transition to a cleaner transport future, with fewer and cleaner vehicles.
3. Standing up for consumers and people's health by ensuring that robust laws are in place and enforced to prevent further similar abuse by the auto industry and to urgently reduce air pollution and greenhouse gas emissions from road transport.

These points are discussed in more detail below.

1. Identifying and correcting the use of prohibited defeat devices

There are laws in the EU and the UK that limit vehicle emissions and prohibit manufacturers from using 'defeat device' technologies that reduce or disable emissions control systems during normal use.¹ Recent rulings from the Court of Justice of the EU ("CJEU") in 2020 and 2022² have made it clear that this kind of defeat device technology can only be justified in a narrow set of circumstances and subject to strict conditions, specifically: where they are necessary to protect the engine from immediate risk of damage to ensure the safe operation of the vehicle and no other technical solution is possible to avoid that risk. The rulings also make clear that a defeat device can never be justified if it would mean that emissions control systems would be reduced for most of the year, as allowing this would undermine the purpose of emissions limits to improve air quality and protect people's health.

Governments across the EU and in the UK³ need to act in response to these rulings. They have legal responsibilities to make sure auto manufacturers clean up the excessively polluting vehicles they have already put on our roads, irrespective of where and when they received vehicle type approval, and to

¹ EC Regulations 715/2007, 2017/1151, and 2018/858

² Cases C-693/18, C-128/20, C-134/20 and C-145/20

³ The 2020 CJEU ruling still applies in the UK as it was handed down before the end of the Brexit transition period so is considered retain EU law. The 2022 CJEU rulings are not technically binding across the UK but do still apply in Northern Ireland. Moreover, they relate to the interpretation of exactly the same rules that continue to apply in the UK so should inform the UK Government's approach.

prevent further use of prohibited defeat devices. These duties include carrying out regular checks and targeted evaluations to ensure that car manufacturers are not using prohibited defeat devices, and, where they are found to be doing this, governments must require corrective action (i.e. recalls and/or retrofits). Immediate corrective action must be taken in relation to vehicles that present a serious risk to public health or safety (e.g. produce extreme emissions of air pollutants).

Public authorities should apply appropriate and dissuasive sanctions on car manufacturers where they have been found to use prohibited defeat devices — only if they have to pay real sanctions will they be discouraged from using similar illegal technologies or techniques in future.

Auto manufacturers that have been using prohibited defeat devices must bear the full costs of any corrective action, such as recalling affected vehicles to remove the prohibited defeat device and bring vehicles into compliance, as is required by law and has also been done in the US. Where retrofit solutions are not possible or lead to other non-compliance issues, such as increased carbon dioxide emissions, vehicle owners should be able to exchange their cars or vans for genuinely cleaner equivalents, or be able to return their vehicles and get a refund that they can use towards the use of alternative options (e.g. car club membership, public transport season tickets, e-bikes, etc).

National governments should coordinate with each other so that, where an auto manufacturer has been found to be using prohibited defeat devices, similar corrective action is taken across Europe to support vehicle owners and protect the wider public from the impacts of the excessive emissions.

- In the EU, Member States that require corrective measures from an auto manufacturer must, by law, notify the EU Commission and other national governments in the EU without delay.⁴
- The UK is no longer required to coordinate with the EU but it would make sense for the UK Government to collaborate with its EU counterparts to ensure that UK car and van owners receive the same treatment given that any affected vehicles will have received type approval under the same regime.

2. Setting up a ‘Dieselgate Clean Up Fund’ paid for by industry

In addition to requiring corrective action to address the use of prohibited defeat devices, it is only right that any implicated auto manufacturer also be required to pay into a publicly managed ‘Dieselgate Clean Up Fund’ (the “Fund”). The size of the Fund should cover the true costs of the harm caused by the excessive emissions from the Dieselgate legacy in the EU and the UK and accelerate the transition to a cleaner transport future, with fewer and cleaner vehicles. The Fund should be used strategically by national governments to reduce emissions from road transport — prioritising the most polluted areas — through, for example:

- Help and support schemes, prioritising people on low incomes and small businesses, so that they can access genuinely cleaner vehicles (e.g. electric cars and vans) and alternatives (e.g. car club membership, public transport season tickets, e-bikes and cargo bikes).

⁴ Article 53(1) Regulation 2018/858

- Investment in public transport networks to expand services and make them more reliable, accessible and affordable so that communities have public transport options that they can depend on. Any new public transport vehicles should be ZEEVs (e.g. electric buses).
- Retrofitting programmes for diesel buses and other heavy duty vehicles to upgrade them to the highest emissions standards or electrify them.
- Area-based pollution reduction schemes (e.g. Clean Air or Low Emission Zones, School Streets) to address sources of air pollution in pollution hotspots and/or protect vulnerable groups, including around schools, playgrounds, hospitals and care homes.

3. Adopting and enforcing robust laws to protect consumers and people's health

National governments need to stand up for consumers and people's health by ensuring that robust laws are in place and enforced to prevent further similar abuse by the auto industry and to urgently reduce air pollution and greenhouse gas emissions from road transport. Including:

- Increasing transparency in the vehicle type approval process, especially to expose and avoid the use of defeat devices.
- Ensuring that excessively polluting vehicles found to contain prohibited defeat devices are not displaced to other countries by working together with other national governments, for example, to prohibit the exportation of affected vehicles unless they have been effectively fixed.
- Improving clean air legislation to drive greater action to tackle air pollution at all levels of government and help to set a clear pathway for businesses to invest to reduce emissions and innovate to create solutions for clean and green growth:
 - In the EU, we need to see an ambitious revision of the Ambient Air Quality Directive that includes new legal limits which align with World Health Organization ("WHO") recommendations, alongside a robust legal framework that ensures that governments act to protect people's health and that citizens can hold them to account.
 - In the UK, the government should bring forward the deadline for its new fine particulate matter (PM_{2.5}) target from 2040 to 2030 at the latest, set further new legal limits for other pollutants to align with WHO recommendations, and adopt a new clean air duty to ensure that government and authorities at all levels have to act to protect people's health.
- Facilitating measures that discourage the use of the most polluting vehicles — regardless of whether defeat devices are being used — and help set a pathway to a zero emission road network, with fewer and cleaner vehicles (e.g. Low Emission/Clean Air Zones, Zero Emission Zones). These should be complemented by help and support for people and businesses.
- Developing ambitious new Euro 7 vehicle emissions standards that tackle exhaust and brake and tyre emissions to ensure that new petrol and diesel vehicles produced before the agreed phase out dates for the sale of new petrol and diesel vehicles are genuinely cleaner than current regulations require.

- Accelerating a sustainable and fair transition to ZEEVs by legislating for the phase out of the sale of new diesel and petrol vehicles (cars and vans by 2030 and heavy duty vehicles by 2040) and providing help and support to people on low incomes and small businesses, in particular, to access ZEEVs. This should be done as part of a wider strategy that mitigates the full life cycle health, environmental and social impacts of these vehicles.

Andrea Lee

Campaigns and Policy Manager, Clean Air

alee@clientearth.org

Katie Nield

Lead lawyer, European Transport Systems

kniel@clientearth.org

Beijing Berlin Brussels London Los Angeles Luxembourg Madrid Warsaw

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number 00045547057-10. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.