

PRESS RELEASE

Environmental Action Germany demands fines of at least 20 billion euros against fraudulent car manufacturers for installing illegal defeat devices in diesel cars

Environmental Action Germany calls upon the Federal Transport Minister Scheuer to take bold action with “Three Billboards Outside BMVI” as part of its eye-catching guerrilla campaign in front of the ministry – The responsible Federal Motor Transport Authority has to impose a fine of 5,000 euros per fraudulent diesel vehicle against Audi, BMW, Daimler, Opel, Porsche, VW and foreign manufacturers such as Fiat for the use of illegal defeat devices and enforce applicable law – New legal opinion confirms that fines are also possible and necessary against foreign vehicle manufacturers such as Fiat – Manufacturers must be required to retrofit the fraudulent diesel vehicles at their own expense – Revenues from the long-overdue fines to be used to finance the transformation of transport in Germany

Berlin, 18.7.2018: Environmental Action Germany (DUH) calls on Federal Transport Minister Andreas Scheuer to finally enforce applicable law and to impose fines in the amount required under EU law against the fraudulent car companies whose diesel cars are verifiably equipped with an illegal defeat device. It has been officially proven that approximately four million diesel cars have been fitted with fraudulent default devices. Further Euro 5 and 6 diesel passenger car models with fraudulent software will follow. DUH expects a total of eleven million diesel passenger cars to be affected in Germany.

In spite of the clear legal situation, the Federal Motor Transport Authority (KBA) has not yet demanded fines. The KBA would also be responsible for those car manufacturers that have not yet been investigated by the German public prosecutor, especially those foreign manufacturers who sell cars in Germany. To draw attention to this deplorable state of affairs, DUH installed three large advertising panels in front of the Ministry of Transport in Berlin in the early morning of 18.07.2018. They carry the message “12,860 DEAD, 800,000 SICK, 11 MILLION CHEATED DIESEL-OWNERS”; “AND STILL NO REAL FINES OR FIXES?”; “HOW COME, MINISTER SCHEUER?”. To the press photo: <http://l.duh.de/p180718>.

DUH is underpinning its demand with a fresh legal opinion by Remo Klinger presented during the campaign. This demonstrates the possibilities available under national law to impose fines on manufacturers of motor vehicles which have placed vehicles with inadmissible defeat devices on the market. The fine of one billion euros imposed on Volkswagen by the Braunschweig public prosecutor relates to other serious violations of the law. As the legal opinion shows, the fine resulting from the placing on the market of 2.6 million fraudulent VW diesel vehicles alone amounts to 13 billion euros.

“While Federal Transport Minister Scheuer, like his predecessors, is unwilling to impose the legally prescribed penalties on the corporations, the French anti-fraud authority, for example, is demanding fines of 18 billion euros from domestic and Italian car manufacturers. But it is not only the observance of legal requirements that is being disregarded by Minister Scheuer; the implementation of the political agreement of the coalition agreement, for instance the

enforcement of effective hardware retrofitting for all fraudulent diesel vehicles, is also making no progress. Whereas a private individual who travels three times by bus without a ticket faces a prison sentence, Diesel Minister Scheuer is unilaterally protecting the car companies and leaving the cheated car owners alone in the diesel haze”, says Jürgen Resch, Executive Director of DUH. “The fines which are also demanded by the EU Commission should be used to finance the transformation of transport. We must strengthen collective transport, railways, buses and trams, and to a great extent ban private motorised transport from the city centres, following the example of Vienna and Zurich.”

DUH assumes that a total of approximately eleven million Euro 5 and Euro 6 diesel cars in Germany are equipped with an illegal defeat device and are contaminating our inner cities with the toxic diesel exhaust pollutant nitrogen dioxide (NO₂). 12,860 premature deaths per year in Germany are caused by exposure to NO₂. According to calculations by the German Environment Agency, the pollutant also causes more than 800,000 respiratory and cardiovascular diseases and diabetes every year – children, the elderly and people with health problems are especially at risk.

The KBA is not only waiving fines – it has also not imposed any effective reductions in exhaust emissions, and has even approved the implementation of new, now “legal” defeat devices, such as the so-called “thermal windows”. In this way, German manufacturers are getting away with largely ineffective laughable software updates even in cases of detected fraud. And this despite the fact that CDU/CSU and SPD had agreed in the coalition agreement to “examine” the technical retrofitting of the more than eleven million fraudulent diesel vehicles in Germany and implement this in line with the findings of Expert Group 1 in the Federal Ministry of Transport.

The present legal opinion on the “setting of fines against motor vehicle manufacturers for the use of illegal defeat devices” by lawyer Remo Klinger shows that fines can not only be imposed under national law against domestic automobile manufacturers such as Volkswagen, Daimler or Opel who have used illegal defeat devices.

Foreign manufacturers, such as Fiat, can also be fined for the sale of vehicles with illegal defeat devices in Germany. The KBA, which is subject to the Ministry of transport and which is responsible for imposing fines, is not able to influence the EC type-approval issued to foreign manufacturers abroad. However, this does not mean that administrative offences committed in Germany cannot be punished in Germany.

From DUH's point of view, the legal situation is clear: as the illegal defeat devices were not specified in the type-approval, the vehicle's certificates of conformity are invalid. They have been sold with this invalid certificate. On this basis, a fine of €5,000 per vehicle must be imposed.

For the almost four million diesel cars made by VW, Audi, Porsche, Daimler, BMW and Opel, which have been equipped with illegal defeat devices, the fine to be imposed by the KBA amounts to 20 billion euros. Despite years of investigations into Opel, there has still been no official recall, for which DUH has been conducting various legal proceedings before the Higher Administrative Court in Schleswig. This too should have happened long ago.

In addition to the recall of 2.6 million manipulated VW vehicles, the KBA has now also recalled the Mercedes Vito, Mercedes C-Class, Mercedes GLC SUV, Audi A6, A7 and A8, BMW 5 and 7 Series, Porsche Cayenne and Macan, and a large proportion of VW diesel passenger cars. DUH has therefore filed four separate applications with the KBA for fines for the use of illegal defeat devices on these vehicles.

If no fines are imposed by German state authorities, this would be in breach of the obligation under EU law to impose dissuasive sanctions for infringements of the type-approval framework for motor vehicles. As the German authorities have not yet fulfilled this obligation, the EU Commission initiated infringement proceedings against Germany in December 2016.

The conclusion drawn by lawyer Remo Klinger, who prepared the expert opinion, is: *“There has been a clear breach of the law. Illegal defeat devices have been fitted which the authorities have confirmed with their recalls. Yet this has still not had any legal consequences, fines have still not been imposed by the competent authorities. This is clearly unlawful and illegal on the part of the authorities, first and foremost the Ministry of Transport. Like his predecessor Alexander Dobrindt, Andreas Scheuer refuses to enforce current law. Our national law clearly provides for the imposition of fines on motor vehicle manufacturers for the use of illegal defeat devices.”*

Links:

Press photo of the campaign: <http://l.duh.de/p180718>

Legal opinion: <http://l.duh.de/p180718>

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