

Assessment of Volkswagen's reply to the common position of CPC Authorities

In their common position of September 2011, CPC Authorities stated their concerns regarding the repair of the diesel cars of Volkswagen that were affected by the use of a particular non-authorized defeat software and which belong to consumers residing in the European Union. More explicitly, they asked Volkswagen to improve their communication directed at consumers about the repair and their Trust Building Measure, speed up the repairs of the affected cars and guarantee to resolve any potential problem arising after the repairs.

In this document, CPC Authorities reiterate all demands of the common position and assess Volkswagen's reply. The points for which Volkswagen reply was considered insufficient are written in italics.

1. Communication and transparency issues

CPC Authorities asked Volkswagen to provide the following (material) information about the repair to consumers in an individual letter, possibly via its network, in order to provide them with enough information to make a well-informed decision:

- The precise and clear reason why the car has to be repaired,
- What the repair entails,
- What they have to do to get their car repaired,
- What can or will happen if they do not have their cars repaired,
- In which Member States, cars which have not been repaired will stop to be roadworthy and when.

Volkswagen has adjusted their Q&A's on their websites for all brands (Volkswagen, Audi, Škoda and SEAT) in all EU28 countries. Volkswagen now informs consumers on most of the above listed points, the exceptions being detailed below. Volkswagen informed us that in some member states up to four letters were sent to consumers to inform them about the details of the upgrade. CPC Authorities have received examples of these letters, for different brands and different member states.

Volkswagen explained to CPC Authorities how they informed their network of National Sales Companies on the technical measure and the communication with owners of an affected car. Volkswagen added an explanatory video on the diesel issue (on after treatment of diesel exhaust gas, the task of the engine control, the remedies and the refitting process) to *almost* all websites of all brands that were affected. Volkswagen has suggested to all brand dealers in EU28 to add subtitles to the video in their national language. Volkswagen stressed that beyond 2017, the fix will still be available without charges at any moment in time, all over the EU.

However, on the reason for the repair, Volkswagen is not clear enough. Volkswagen explains that the defeat software at stake can, depending on the driving curve, switch the engine controller to two different modes: mode 1 with an optimum NOx level for testing conditions or mode 2 for optimum levels of particulate matter in use on the road. CPC Authorities have asked to add wording that would make it clear that the use of that particular software was prohibited according to EU-law.

Volkswagen has considered the consequences which might arise for the owner of an affected EA 189 type engine vehicle where that vehicle has not yet had the technical measure implemented and is registered in an EU 28 country in which the technical measure is not mandatory if that owner wishes to travel to an EU 28 country where the technical measure is mandatory. Volkswagen holds the view that those vehicle owners shall not be confronted with any negative consequences in the countries where the technical measure is mandatory since the regulatory competence for those vehicles remains within the competence of the authorities where the car is registered. The German Ministry of Transport has confirmed that view. Volkswagen will now ask authorities in other countries with a mandatory recall if they share this view and inform consumers about this.

2. Trust Building Measure (TBM)

CPC Authorities asked Volkswagen

- to provide detailed information about the ‘Trust Building Measure’ and its conditions to consumers, make those conditions simple and straightforward, and to communicate more clearly and publicly to consumers, CPC Authorities and consumer organisations about the ‘Trust Building Measure’,
- to not limit the TBM to specific components but to extend it to all parts as well as the performance of the cars; after all, Volkswagen is confident that the repair does not affect the other parts or performance of the car,
- to not limit the TBM to a certain time period from when the vehicles were repaired,
- to clearly inform consumers about the steps they have to take in case of problems after the repair, e.g. who the contact would be,
- to also inform those consumers whose cars have already been repaired, of the measure so that they can confidently go to their workshop should they have a problem and obtain possible repairs free of charge,
- to explain to the CPC-network how the measure was communicated to the dealers and will be monitored in order to ensure that consumers who need it can effectively call upon it.

In their adjusted Q&A’s, Volkswagen informs the consumer on the TBM in a clearer manner. They also made this information easier to find on most of their websites.

Volkswagen does not agree to reduce the conditions to qualify for the Trust Building Measure or improve the legal situation for owners of an affected car in any other way. In the view of Volkswagen, the TBM cannot be qualified as a guarantee or a legal assurance. It is rather a

customer-facing measure to reassure customers that the technical measure will not negatively affect their vehicle.

Consumers have several channels at their disposal in case they have a complaint; they can contact their local workshop or call the diesel hotline. Volkswagen emphasized that they instructed their dealers that all complaints should be investigated.

Volkswagen did not agree to share details about complaints they have received in different member states. According to Volkswagen, the vast majority of consumers (99%) has been satisfied about the performance of their car after the update.

3. Repairs

CPC Authorities asked Volkswagen

- to facilitate with all possible means the work of the sellers to ensure the cars can be repaired.
- to offer consumers (on request) that have bought their vehicles outside the Volkswagen dealership network or are maintaining it outside of such a dealership a solution; this concerns in particular second-hand cars but also cars bought directly from importers. We ask Volkswagen to maximise their efforts to inform these car owners.
- to confirm to CPC authorities the timeframe in which all cars will be repaired or car owners, in case they have a choice, can let their cars be repaired.
- to ensure that the repair has no adverse impact on any components or the performance of the cars such as fuel consumption figures, CO2 emissions figures, engine output, torque, noise emissions, or durability of the engine and its components.
- to commit to extending the period of the waiver regarding claims made in relation to the software issue as long as necessary in order to respect its duty to put cars in conformity.
- to consider the specific situation of consumers that may have incurred additional losses due to exceptional circumstances during this long process and to make communication with Volkswagen for these consumers easy.

The repair rate has now risen to 79,3% of all affected cars in Europe. According to Volkswagen, this is a good result for a recall. Volkswagen has confirmed end 2017 that the technical measure will continue to be offered free of charge in 2018 and that the Trust Building Measure will also apply to those updates.

The KBA has confirmed to the CPC Authorities that the KBA approved the recall and the technical solution to update all affected cars.¹ Volkswagen was instructed by KBA to remove the prohibited

¹ Of which the KBA had granted the type approval. Based on their findings the KBA requested the European Approval Authorities, which granted approvals for vehicles or exhaust emissions for the manufactures AUDI AG, AUDI Hungaria Motor KFT, SKODA Auto a.s. and SEAT S.A. to initiate the necessary measures according to article 30 of directive 2007/46/EC.

defeat device from all affected vehicles fitted with the EA189 Euro 5 engine circulating in the EU. Volkswagen had to provide evidence that all technical requirements (i.e. regarding key performance and emissions of the car) of the relevant single legal acts of Directive 2007/46/EC were fulfilled once the prohibited defeat device was removed. The KBA stated that for all the kinds of affected vehicles this evidence was provided in relation to the proposed technical measure.

Volkswagen stated that it is not possible to extend the limitation period any further than the end of 2017; customer satisfaction with the technical measure is high and Volkswagen is completely confident in the effectiveness of the technical measure, based on the experiences of over 6 million customers who have had the technical measure implemented worldwide.

Volkswagen did not provide the CPC Authorities enough information on how they would maximise their effort to inform car owners that bought their car outside of the Volkswagen dealership. Volkswagen did not take any steps towards consumers that may have incurred additional losses due to exceptional circumstances during this long process.