

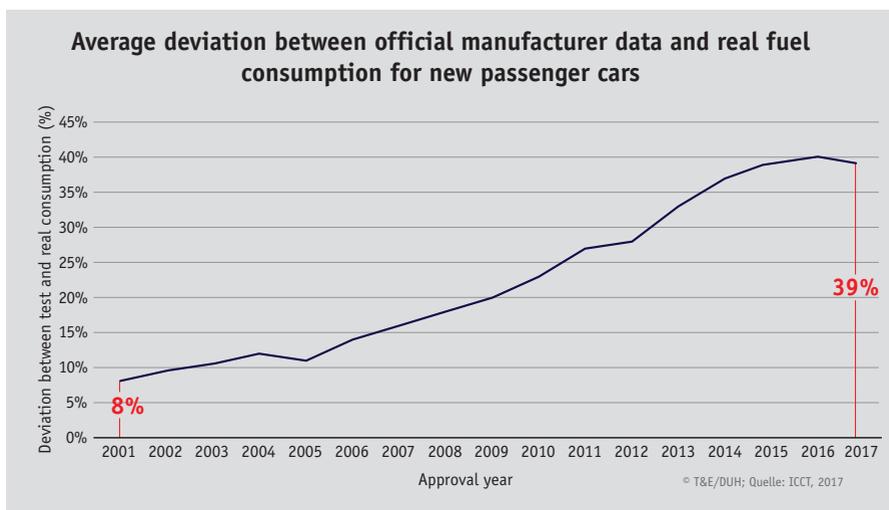


Did you know?
**Consumer tips for dealing with the additional fuel consumption
of passenger cars**

The fuel economy lie

The official fuel consumption data of car manufacturers have scarcely any relation to actual fuel consumption figures.

A modern car now consumes on average 39%¹ more fuel than specified by the manufacturer. In contrast, the average increased fuel consumption of new cars in 2001 was around 9%. This audacious deception of consumers harms the climate and means high hidden costs for customers.



According to the manufacturer, vehicles are becoming more economical and more climate-friendly every year. Regrettably, the reality on the streets looks quite different. The vehicles are not only a sham in terms of climate protection. Filling up at the petrol station is also much more expensive than one originally assumed when buying a car: the International Council on Clean Transportation (ICCT), a research organisation, states that an average car driver has to expect to spend roughly an extra € 400 per year on account of his new car. And that's only because the actual consumption data do not correspond to reality.

¹ https://www.theicct.org/sites/default/files/publications/Lab_to_Road_2018_fv_20190110.pdf

How can this be?

How does the difference between the manufacturers' data and actual fuel consumption figures come about?

Manufacturers' fuel consumption figures for the type approval of a car are based on measurements done in a laboratory. The competent authorities accept the information supplied by the manufacturers without checking them. There are no checks, something which is urgently needed; to date, no effective penalties in the event of breaches have been imposed. That is why car manufacturers have been able to ramp up their type-approval manipulations completely unhindered in the last few years.



© don57/Fotolia

The gap between the fuel consumption measured on a roller type dynamometer & that measured on the road is widening.



© abrozinio/Fotolia

This cannot continue! Other countries are already way ahead of us: the US sets great store by independent controls, transparency and consumer information.

- Over in the US, consumers can rely on official data, because the US EPA Environmental Protection Agency checks existing and production vehicles.
- Moreover, car buyers have access to actual consumption values of current and older vehicle models: in the USA, there is an official website on the subject of fuel consumption and vehicle emissions. Drivers can enter their actual fuel consumption values there. www.fueleconomy.gov
- In the USA, injured consumers can jointly bring a class action to obtain financial compensation.

The new test procedure of the WLTP (Worldwide Harmonised Light Vehicles Test Procedure), introduced in the EU in September 2017, also provides for laboratory measurements. It will not end manufacturers' manipulations and will not close the gap between actual and glossed-over consumption data. **What is important is the adjustment of the official type approval procedure by the checking of the CO₂ emissions in real driving conditions (RDE measurements).**

Are you affected, too?

**Does your car also consume more than specified by the manufacturer?
Then do something about it!**

→ **Get a good idea of how much fuel your car really consumes! Using a handwritten driver's logbook or a fuel consumption app², you can calculate** how economical your car actually is in everyday use and how your driving behaviour or tyres affect fuel consumption. You can enter how often you fill up and calculate your individual CO₂ emissions based on these figures. Moreover, you can also detect defects in the vehicle, e.g. loose trim parts or a clogged air filter, which affect fuel consumption, at an early stage.

→ **Share your consumption data with others via an online platform such as www.spritmonitor.de³.** This way, you will contribute to a large pool of real fuel consumption data that everyone can access. What's more, you can compare your consumption data with the consumption data of other drivers of the same or a similar model.



Fotolia/Sandor Jackal

-
- 2 In the meantime, there are also so-called OBD Bluetooth adapters on the market, which access the diagnostic interface of the cars and send the fuel consumption data to your smartphone via Bluetooth.
 - 3 Spritmonitor.de is also available as an app for your mobile. A number of other apps are now available on the market that regularly record your own fuel consumption and compare your data with others.

→ **Don't say nothing – fight back! If you want to get compensation due to false fuel consumption data for your vehicle, there are various legal remedies available to you.** In the case of an **individual action**, you bear the full cost risk – both for the costs of an expert and for the proceedings themselves. Since 1 November 2018, there have been so-called model declaratory actions in Germany, but they are only aimed at obtaining a declaratory judgment. Before an individual can receive compensation, an additional individual procedure downstream is required. A genuine class action, whose direct aim is the payment of compensation, is not yet an option in Germany. Consumers can only transfer their rights to so-called legal service providers, such as „myRight“, who then bring several cases together before a court.

From the point of view of the consumers concerned, the most effective and least costly instrument for asserting one's own rights is a genuine collective action for damages. The chance to bring such an action is currently being negotiated at European level. One key element of this EU proposal is the class action suit. Injured parties, represented by consumer protection organisations, can jointly bring an action against a company. This proposal goes far beyond the German model declaratory action and would be a great improvement for consumer protection in Europe.

The advantage of **collective redress mechanisms** (e.g. class actions) is that they gather the claims of many individual consumers who have suffered a loss. If a class action suit is successful, it gives rights to not just the plaintiff, but also to the people who are equally affected by the facts in question and who joined the original class action lawsuit. In some cases, people do not even have to join the class action lawsuit: they benefit automatically.

Collective redress procedures are already in place in some EU countries. As a consumer there, you first have to check whether you can join an existing class action or whether you want to initiate one yourself.

→ **Take part in our online petition for honest fuel information** – we need every vote: www.change.org/p/herr-verkehrsminister-schluss-mit-klimakillern-und-verbrauchert%C3%A4uschung

The main features of a class action

Is there already a class action suit of similar cases?

Check the public register of actions or check with consumer associations or associations that are entitled to sue. In addition, information is disseminated via appropriate actions or via public appeals.



No

Yes

Can you still join the class action?

You have to prove that your claim is sufficiently similar to the claim asserted in the class action. In all countries, the principle of the free evaluation of evidence applies.



No

Yes

Can you initiate a class action yourself?

Depending on the how the class action lawsuit in your EU country is designed, a group of consumers, a consumer association or an eligible association may file a suit.

No

No

Has the class action been filed, successfully reviewed and made public?

In a class action, admissibility must basically be proved.



No

Yes

You can try to assert your claims individually with an **INDIVIDUAL ACTION.**

Put your name on the register of actions.

Depending on how the class action is designed, this is usually possible until the end of the day before the first hearing.



LEGAL PROCEEDINGS IN PROGRESS



AWAIT JUDGMENT



DAMAGES

Positive judgment:

- Consumer is compensated; claim for payment from firms.
- The judgment automatically applies to all consumers concerned in a similar case, even if they did not join the action (opt-out) or the judgment applies to consumers who joined the lawsuit (opt-in).



Negative judgment:

Consumer receives no compensation. Association may be required to pay the costs of the procedure.

DECLARATORY ACTION

Positive judgment:

- Damage is found; compensation is not paid.
- Consumer has to individually assert claims against the company (claim for damages).

Negative judgment:

Is binding on consumers.

The legal starting position

The following questions and answers are intended to show the legal options available to you in Germany, for example. As a consumer, you first have to prove that you own the vehicle and when you bought it.

What rights do consumers in Germany have vis-à-vis the seller?

Under certain circumstances, you are entitled to:

- **Repair or a new delivery**
- **Reversal of the contract (money back against the return of the car) or a price reduction.**

These are so-called warranty claims due to a material defect. Deficiencies in the legal sense also include deviations from the car's characteristics expected by consumers on account of comments made by the car dealer, the manufacturer or the respective current information in sales brochures. A fuel consumption value is regarded as such a guaranteed property. If what is guaranteed in the advertising is not true, then a material defect is said to exist.

- **Compensation for the resulting additional fuel costs**

In contrast to the other claims, compensation also depends on the seller's own fault. The seller will usually rely on the manufacturer's data.

What is the right of consumers vis-à-vis the manufacturer?

A corresponding guarantee can even give rise to a claim against the manufacturer if it takes into account the additional fuel consumption.

How old can a car be at most for a consumer to file an action?

When it comes to material defects, the seller in Germany is liable for new cars for up to two years from the date of delivery. If you want to complain of fraudulent misrepresentation regarding fuel consumption figures, then the period of liability is up to 10 years. However, it is hard to prove that the seller had such intentions. In the case of used cars, liability can be reduced to one year. If a manufacturer's warranty is referred to, the period agreed there applies.

How does the additional consumption have to be documented?

Consumers have to be able to prove in court that they are entitled to the claim they are asserting. Unfortunately, fuel receipts, the values of the on-board computer and even road tests are not sufficient. As proof of the additional consumption, consumers generally have to obtain an expert opinion.

In Germany, only a measurement carried out under laboratory conditions on the so-called roller type dynamometer is recognised as suitable evidence of additional consumption. This is because the manufacturer's consumption values were also measured under these conditions. It is, therefore, important that the deviation is determined under comparable conditions.

According to several courts, consumers have to assume that the on-road values differ from those measured under laboratory conditions. However, buyers should be able to expect that the values stated in the brochure can be achieved under comparable test conditions.⁴ However, if it can be proven that a vehicle consumes more fuel than stated even under laboratory conditions, then a material defect is said to exist.

Consumers may, at their own expense, call in an expert to preserve fuel consumption evidence even before bringing an action. According to case law of the Federal Court of Justice, the costs of obtaining the expert's evidence can be claimed.⁵ Re-measurement on a test bench is usually carried out, at the latest, in the course of the legal proceedings by a recognised testing institution (e.g. TÜV or DEKRA). However, in order to encourage or apply for judicial evidence, there must be enough other evidence of irregular additional fuel consumption.

How big does the difference in consumption have to be for an action for rescission to have a chance of succeeding?

If you want to withdraw from the purchase contract and return the vehicle, a significant defect has to exist. The Federal Court of Justice in Germany has ruled that if the fuel consumption figures of a new car sold deviate from the manufacturer's specifications by at least 10%, the deviation is considered to be significant. This presupposes a fuel consumption measurement under laboratory conditions on an accredited exhaust test bench.⁶

How big does the difference in consumption have to be for an action for a discount to have a chance of succeeding?

The right to demand a reduction in price (so-called „purchase price reduction“) exists even with minor deviations from the official information clearly below 10%.⁷ Basically; however, a tolerance range of insignificant deviations (of up to 2%) and any measurement inaccuracies (of up to 2%) has to be taken into consideration. The amount of the reduction in price depends on the actual depreciation of the vehicle. For this purpose, the actual additional fuel costs are decisive.

4 Higher Regional Court Hamm, judgment of 7 Feb. 2013 - Ref. I-28 U 9412.

5 Federal Court of Justice, judgment of 30 Apr. 2014 - VIII ZR 27513.

6 Federal Court of Justice, resolution of 8 May 2007 - VIII ZR 19/05, DAR 2007, p. 516); Higher Regional Court Düsseldorf judgment 18 Aug. 2008 - 1 U 238/07 - Juris, marginal note 40; Higher Regional Court Hamm, judgement of 7 Feb. 2013 - I-28 U 94/12, NJW-RR 2013, p. 1146 (1147)

7 Regional Court Kiel, judgment of 29 Dec. 2015 - Ref. 9 O 69/15, Local Court Michelstadt, judgment of 23 Dec. 2009 - Ref. 1 C 140/09.

Costs for the consumer

Belgium

Low individual cost risk

The plaintiff association shall finance the initiation and administration of the class action. Ultimately, however, the individual members of the group bear all the costs for the entire procedure together.

Germany

Low individual cost risk in the event of a model declaratory judgment lawsuit

The costs of the proceedings shall be borne by the applicant association and not by the individual consumer.

The registration for the model declaratory action is free of charge.

High to very high individual cost risk in the event of an individual lawsuit

The costs depend on the circumstances of the individual case. Consumers can consult an expert before filing an action to preserve evidence of consumption (at least € 5,000). These costs of the expert evidence can be claimed according to the case law of the Supreme Court. Remeasurement on the test bench is regularly carried out late in the course of the legal proceedings by a recognised testing institution. These costs shall be borne as part of the costs of the proceedings by the unsuccessful party. There is no fixed cost framework.

France

Low individual cost risk

A plaintiff wishing to join a class action in accordance with the criteria laid down by the court and within the prescribed time frame has no costs. There is no obligation to join the association bringing the action and to pay membership dues.

General procedural costs for the association: a first instance procedure would cost between € 2,000 and € 4,000 without the involvement of an expert. The same is true of a complaint procedure. If a court expert is appointed, around € 6,000 will be added. In a successful case, the expert fees will be reimbursed in full, as will part of the legal fees.

Italy

Low individual cost risk the event of a class action lawsuit

Joining a class action is usually free of charge for the consumer. In addition, by participating in the class action, the consumer does not assume any risk with respect to legal costs in the event of a negative outcome of the proceedings, which is entirely borne by the plaintiff (association).

High individual cost risk in the event of an individual lawsuit

The costs to be borne by the individual consumer are mainly expenses for legal representation, technical tests and advice. Legal fees vary depending on the value of the case. If the claim is less than € 5,000, a simplified procedure can be applied before the so-called "Justice of Peace", which reduces costs. The average cost of such a procedure is € 2,500 to € 5,000. These costs can easily double if the value exceeds € 5,000.

If the outcome of the procedure is positive, costs and fees will be reimbursed to the consumer at the end of the trial. If the outcome of the proceedings is negative, the consumer may be ordered to pay the defendant's costs.

Netherlands

Low individual cost risk in a class action lawsuit

Austria

Low individual cost risk

In the case of an "Austrian-style class action" or an action brought by an association, consumers assign the claim to a third party or association. In this respect, the costs do not affect the individual consumer, but those to whom the claim has been assigned.

We fight on your behalf!

Consumers must no longer be left to cope with this alone.

Environmental Action Germany (DUH) has initiated the European campaign „Get Real: For Honest Fuel Consumption Figures“. We are committed to ensuring that the fraudulent deception of consumers that has gone on for years is finally stopped.

We call for better consumer protection:

- **Contact point for incorrect fuel consumption data**

Establishment of an independent contact point for consumers, which collects detected deviations in fuel consumption figures and makes them publicly and transnationally accessible. The contact point should be the place to go to ask questions relating to the giving of evidence in legal proceedings and should thus assume the individual costs of the expert opinions required to date for the provision of evidence.

- **Correction of official fuel consumption values**

Courts in Europe should make exemplary decisions as to which level of deviation constitutes a relevant defect that gives rise to warranty claims. If, during an independent follow-up check, a relevant deviation in fuel consumption of more than 4% between the manufacturer's data and the test result is determined, the official consumption values must be corrected accordingly.

- **Sanctioning of fraudulent practices**

Besides compensating consumers, manufacturers must be sanctioned through effective, proportionate and dissuasive means in order to prevent consumer fraud in the long term. That is why the application of existing sanction mechanisms along with further legal options in future is desirable.

Environmental Action Germany (DUH) together with its project partner Transport & Environment (T&E) has launched the campaign „Get Real: Demand fuel figures you can trust“. The aim is to improve consumer rights, to advocate against misleading practices in the frame of type approval, and to strengthen market surveillance. Please visit the campaign website to find out more: www.get-real.org

“Get Real” is a joint campaign by:



Deutsche Umwelthilfe

Environmental Action Germany

Hackescher Markt 4
10178 Berlin | Germany

www.duh.de

Eva Lauer
Project Manager
Phone: +49 (0)30 2400 867-76
e-mail: lauer@duh.de

Anna Breitzkreuz
Project Manager
Phone: +49 (0)30 2400 867-735
e-mail: breitzkreuz@duh.de



Transport & Environment

2nd floor, 18 square de Meeüs
Brüssel, 1050, Belgium

www.transportenvironment.org

Yoann Le Petit
Clean Vehicles and Emobility Officer
Phone: +32 (0)2 851 02 08
e-mail: yoann.lepetit@transportenvironment.org

„Get Real: Demand fuel figures you can trust“ (LIFE15 GIC/DE/00029, Close the gap)
is funded by the EU Commission within the framework of the LIFE programme.



April 2019

www.get-real.org

