Honest fuel consumption figures of passenger cars
For consumer rights and climate protection
Background

Car manufacturers are obliged to issue honest fuel consumption and CO₂ emissions figures that can be verified under real-world (on-road) driving conditions. The corresponding Regulation (EC) No. 715/2007 stipulates that type-approval fuel consumption must correspond to in-use fuel consumption throughout the lifetime of the vehicle under normal conditions of use.

However, long-term studies by the Environmental Action Germany (Deutsche Umwelthilfe, DUH), the European umbrella organisation Transport and Environment (T&E), and the independent research organisation International Council on Clean Transportation (ICCT) reveal a very different picture. The actual fuel consumption of new passenger car models increasingly differs from the official specifications of the manufacturers. While the average deviation from type-approval fuel consumption levels in 2001 was about 9%, in 2017 it reached an average value of 39%. While it is true that the driving behaviour influences the fuel consumption of a vehicle, the systematic growth of the gap cannot be attributed to this.

Until 2008, a voluntary commitment by the automotive industry to reduce average CO₂ emissions of new passenger cars ran in the EU. According to it, average CO₂ emissions were to be cut to 140 grams CO₂ per kilometre (g CO₂/km) by 2008. However, manufacturers missed the target. They failed to take the measures necessary to increase vehicles’ fuel-efficiency. As a result, the European Commission introduced mandatory CO₂ emissions targets for new passenger cars in 2008; the regulation was adopted in April 2009. Climate-damaging CO₂ emissions of passenger cars have since been regulated by a EU-wide regulation: Regulation (EC) No. 443/2009.

According to the regulation, the average CO₂ emissions value of all new passenger cars sold by a manufacturer in a year must be below a certain limit. Failure to comply with the limit values is punishable by payment of fines. These are manufacturer-specific limits, which depend on the average weight of the new cars sold: heavy fleets are allowed to emit more CO₂ than lighter ones. By 2021, phased in from 2020, the fleet average to be achieved by all new passenger cars is 95 g CO₂/km. This means a fuel consumption of around 4.1 l/100 km of gasoline or 3.6 l/100 km of diesel. If a manufacturer exceeds his specific CO₂ limit value, he must pay € 95 for every gram of CO₂ above his target value and for each vehicle sold.
Since the introduction of mandatory CO₂ emission reduction targets in 2008, official CO₂ emissions figures of new passenger cars have been declining. Since then, however, the deviation between the official fuel consumption data and the actual performance of new vehicles has risen particularly sharply. The success of the allegedly declining CO₂ emissions in the past few years is thus becoming less and less real. In fact, average CO₂ emissions of new passenger cars in everyday operation have remained virtually unchanged since 2009. The target of 130 g CO₂/km set by the European Commission for 2015 has been met on paper, but in reality it has not yet been reached, as the following overview for Germany shows.

The main reason for this development is that, at present, there is no consistent monitoring of official fuel consumption data by any independent body in Germany or in other EU member states. The competent authorities accept the information supplied by the manufacturers without confirmatory tests. There are no checks, something which is urgently needed; to date, there have been no effective penalties in the event of breaches. That is why, in the last few years, car manufacturers have been able to optimise their vehicles for type approval without hindrance and to extend their test manipulations in a very deliberate manner. Meanwhile, in some cases, certain software is installed in the vehicles that can detect when the car is undergoing emissions testing and can thus employ a mode that uses less fuel than outside the laboratory. That is why CO₂ emissions values measured in the laboratory are significantly lower than average CO₂ emissions in everyday operation. No adequate measures have as yet been implemented on the part of the authorities to prevent these inadmissible practices in the automobile industry.
The problem of the increasing discrepancy between official data and real-world fuel consumption figures is not limited to certain car manufacturers, but is, rather, systemic. In its “From Laboratory to Road” study, the ICCT analysed the fuel consumption gap levels of various manufacturers and vehicle segments and detected marked differences between some of them. The umbrella organization T&E, that is cooperating with the DUH in this campaign, has supplemented this information by providing figures for additional manufacturers. Premium vehicles stand out on account of their particularly high deviations. For example, in 2016, new Daimler and Audi car models consumed on average around 50% more fuel than officially stated.

The DUH has been pointing to the discrepancy between the official and real-world values for years. In 2007, it disclosed the fraud perpetrated by the car manufacturers and explained in detail how it came about. Manufacturers are creating enormous advantages for themselves with these ‘sugar-coated’ fuel consumption data: the lower the official fuel consumption and CO2 emissions figures, the more easily the car manufacturer can meet its EU CO2 target and thus avoid punitive fines. A lower value also makes a car more attractive to customers, as the amount of car tax levied in many EU member states is calculated based on the CO2 type-approval data, among other vehicle parameters. Last but not least, the vehicle in question appears to the consumer to be cost-effective in operation due to allegedly low fuel consumption figures.

The supposedly fuel-saving car is thus not only deceptive in terms of climate protection, but also causes frustration at the gas station, as consumers have to deal with unexpected fuel expenses.
How is this fraud possible?

Type-approval CO₂ emissions are measured on a roller test bench, where a defined driving cycle and defined driving conditions are simulated. The aerodynamic and rolling resistance and the inertia of the test vehicle are determined in advance on an outdoor track by letting the vehicle roll out (so-called coast down test). The results of the coast down test are used to set the resistance values of the roller test bench.

The reason for the ever-increasing gap between laboratory values and actual fuel consumption values lies primarily in the increasingly absurd manipulations on the part of the manufacturers – both on the roller test bench and during the coast down test. In the meantime, manufacturers prime the test vehicle for the test in such a way that it has hardly anything in common with the later production vehicle.

The aerodynamic and rolling resistance values of a test vehicle are significantly lower than the average of the corresponding production vehicles. In order to minimize the weight and drag of the test vehicle, several hundred kilos of interior equipment, seats, linings, brake pads, and exterior mirrors are often removed. The cracks in the doors and radiator grilles are taped up; the tyres are overinflated and hardened with heat.

On the roller test bench, the motor control software detects that the car is being subjected to a test and, in some cases, switches to a low-consumption mode. A further example is the switching off of the alternator during the test to prevent the car battery from charging. Other manufacturers are suspected of having manipulated fuel consumption values with steering wheel angle recognition. One such software program has been documented by the Californian environmental authority CARB (California Air Resources Board) for a model with automatic transmission: according to CARB findings, a fuel-saving mode was activated when the steering wheel was not turned after starting up – as it is the case when the vehicle is on the roller test bench. As soon as the steering wheel was turned by more than 15 degrees, another switching program was activated, and the vehicle consumed significantly more fuel and had higher CO₂ emissions.

Further, since vehicles are to be tested without extra equipment, manufacturers tend to offer ordinary equipment as extra equipment. For example, replacement tyres, the air-conditioning system or the radio are often offered as extra features rather than these items being part of the basic equipment. Some models have only two doors in their basic configuration; other vehicle models have a small fuel tank, which, for an extra charge, can be exchanged for a fuel tank of standard size.

In addition, car manufacturers can specify a CO₂ value that is up to four percent lower than actually measured in the laboratory. In the meantime, the high level of precision of the existing measuring devices allows this leeway to be exploited to almost its full extent. Other measurement tolerances, e.g. with regard to the speed profile or temperature, are similarly exploited.

This is not a matter of legal tricks or the exploitation of loopholes, but cases of deliberate manipulation.

Here is an overview of the ways in which manufacturers can manipulate official data (page 6):
Using higher gears according to a test-optimized gear shift program allows the engine to operate more efficiently than on the road (valid for vehicles with automatic transmission).

Disconnecting the alternator prevents the battery from charging and reduces energy use.
Carmakers can optimize the engine control strategy to reduce fuel consumption under test conditions.
Careful lubrication and use of special lubricants help the car run more efficiently.
Altering wheel alignment reduces rolling resistance.
Fitting special tyres with a lower rolling resistance.
Overinflating the tyres reduces rolling resistance.

For NEDC testing, the lightest available version of a vehicle model is tested. No optional vehicle equipment or payload is taken into account.

Taping over indentations or protrusions on the body reduces aerodynamic drag.
Pushing the brake pads fully into the calipers reduces rolling resistance.

CO2 results declared by the manufacturer can be up to 4% below the actual test results.
Carmakers can optimize the engine control strategy to reduce fuel consumption under test conditions.
Disconnecting the alternator prevents the battery from charging and reduces energy use.

Taking advantage of test tolerances and adjusting the results header.
Laboratory instrumentation: exploiting the tolerances for laboratory instruments provided for the test.
Optimizing the coast-down test track and ambient conditions (e.g., high test temperature).

CO2 results declared by the manufacturer can be up to 4% below the actual test results.

This picture shows how manufacturers have manipulated official fuel consumption data of passenger cars under the NEDC (New European Driving Cycle) certification procedure. As of September 1, 2017, new car models have to pass a newly developed lab test procedure, the WLTP (Worldwide Harmonized Light Vehicle Test Procedure), before they can be driven on EU roads. While the WLTP reduces some of the loopholes available in the NEDC, it has the potential for manipulation and exploitation of flexibilities, as does any lab test procedure. Unless effective surveillance mechanisms are introduced, carmakers will be able to exploit the loopholes in the WLTP and the discrepancy between official and real-world fuel consumption values will continue to increase.
The consequences of the growing gap are manifold

» **Climate protection efforts are being undermined:** As a result of the higher fuel consumption of the vehicles, significantly more CO₂ emissions than officially assumed and prescribed within the framework of the CO₂ emissions regulation enter into the atmosphere. As a result, EU climate protection efforts for the transport sector are effectively being undermined.

» **Consumers are also victims of the scam:** In the meantime, misleading fuel consumption and CO₂ emissions data issued by car manufacturers lead to car drivers experiencing increased fuel costs of up to € 7,000 per vehicle. The DUH documented these additional costs when it evaluated the real-world fuel consumption of the 30 vehicle models with the highest number of new registrations (January 2017) over an assumed lifetime of 200,000 kilometres, based on on-road fuel consumption estimates reported by the ICCT. According to the ICCT, the additional annual cost for the average car driver is now about € 400 per vehicle. Consumers are being left to deal with this problem by themselves.

» **The economy is being harmed:** An increasing number of companies are trying to reduce the average CO₂ emissions of their fleets. The EU CO₂ fleet limit values for passenger cars serve as a benchmark with regard to this. The efforts of these companies are being undermined by actual additional fuel consumption figures. Additional fuel costs which were previously not taken into account thus arise. Moreover, the European automotive industry neglects genuine innovations for efficient vehicles so long as the evidence of low CO₂ emissions on paper is sufficient. However, the industry should be developing fuel-saving technologies in order to keep pace with global competition.

» **Shortfalls in tax revenue for governments:** Since 2009, type-approval CO₂ emissions of cars have been used to calculate motor vehicle taxes in Germany and other member states, among other car parameters such as the cylinder capacity. Accordingly, if a vehicle consumes more fuel than stated by the manufacturer, the state would have to charge higher motor vehicle taxes. As a result of the increasingly brazen fuel lie, the Federal Ministry of Finance in Germany has lost out on over ten billion euros in motor vehicle tax since the motor vehicle tax has been based on official CO₂ emissions data. For 2017, the DUH estimates a tax shortfall of 2.4 billion euros in Germany alone.

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**Tax revenue losses in Germany due to false manufacturer data on CO₂ emissions from new passenger cars**

<table>
<thead>
<tr>
<th>Registration year</th>
<th>Annual tax loss</th>
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</thead>
<tbody>
<tr>
<td>2009</td>
<td>€ 0.4 billion</td>
</tr>
<tr>
<td>2010</td>
<td>€ 0.8 billion</td>
</tr>
<tr>
<td>2011</td>
<td>€ 1.2 billion</td>
</tr>
<tr>
<td>2012</td>
<td>€ 1.6 billion</td>
</tr>
<tr>
<td>2013</td>
<td>€ 2.0 billion</td>
</tr>
<tr>
<td>2014</td>
<td>€ 2.4 billion</td>
</tr>
<tr>
<td>2015</td>
<td>€ 2.1 billion</td>
</tr>
<tr>
<td>2016</td>
<td>€ 1.7 billion</td>
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<tr>
<td>2017*</td>
<td>€ 1.4 billion</td>
</tr>
<tr>
<td>2017*</td>
<td>€ 1.1 billion</td>
</tr>
<tr>
<td>2017*</td>
<td>€ 0.8 billion</td>
</tr>
<tr>
<td>2017*</td>
<td>€ 0.4 billion</td>
</tr>
</tbody>
</table>

The adjustment of the motor vehicle tax to CO₂ data became effective on July 1, 2009 and only affects newly registered vehicles as of that date. As a result, the annual tax shortfall was initially low and has been rising steadily ever since. * When calculating the tax loss for 2017, it was assumed that the average difference between official and real-world CO₂ emission values is be the same as in 2016.

DUH calculations on the basis of vehicle registration figures published by the Federal Motor Transport Authority since 2009 and under consideration of the results of the ICCT report “From Laboratory to Road: A 2017 update.”
National authorities tacitly accept fraud

To date, no adequate mechanism has been put in place by the authorities to prevent the unacceptable practices of the car industry. The underlying EU regulation (Regulation (EC) No. 715/2007) stipulates that the officially declared fuel consumption data must be aligned with in-use surveillance test results. When a significant discrepancy is identified, sanctions should be imposed that are „effective, proportionate and dissuasive“. For years, though, national authorities have remained idle.

Manipulations carried out by manufacturers cannot be ruled out if the emissions data provided by them are not checked by an independent body.

A different approach is being followed in the U.S., where there is a strong focus on independent checks. Both prototypes and in-use vehicles are randomly selected and tested. The US Environmental Protection Agency (EPA) forces car manufacturers to correct their data if the deviations ascertained exceed four percent, publishes the frauds detected, and can order recalls and demand fines of up to three-digit million sums. Moreover, in the U.S., great importance is attached to data transparency and consumer information. For example, an official website on the topics of fuel consumption and vehicle emissions targeted at consumers (www.fueleconomy.gov) is maintained there. Consumers have access to the actual fuel consumption values of current and older vehicle models. Furthermore, car drivers can enter their actual fuel consumption values.

Will the new test cycle bring about a turning point?

In September 2017, the new test procedure WLTP (Worldwide Harmonized Light-Duty Vehicles Test Procedure) was introduced in the EU. For now, the WLTP is only relevant for new model types. From September 2018, the WLTP will apply to all new cars registered in the EU. Compared to the previous NEDC (New European Driving Cycle) test cycle, the new cycle introduces certain changes that should lead to more realistic fuel consumption values: the new test cycle is longer and more dynamic, and it prescribes a higher average and maximum speed. To determine the test weight, extra equipment and the payload of the vehicle are considered to make the simulation of the vehicle’s rolling resistance more realistic. Moreover, the external temperature at which the engine is started is lower than in the previous test cycle.
However, merely switching over to a new lab test procedure is not a long-term solution. The basic problem remains. Despite all the improvements with the introduction of the WLTP, it cannot fully depict real-world driving conditions and it will likely have legal pitfalls, which manufacturers will exploit to reduce CO₂ emissions on paper. Further, it will still be possible for manufacturers to fit vehicles with software to optimise vehicle emissions in the laboratory but not under real driving conditions. Additional control mechanisms are required to reduce the discrepancy between official and real-world data sustainably.

Including CO₂ emissions in the EU RDE (Real Driving Emissions) regulation is therefore indispensable. RDE tests provide information on the real emission behaviour of vehicles, as measurements are conducted under real-life driving conditions. For this purpose, vehicles must be tested on the road during normal operation using mobile measurement equipment (Portable Emission Measurement System, PEMS). This is to prevent vehicles from being calibrated in the laboratory only for a narrowly defined operating range instead of for real driving conditions.

Since September 2017, RDE measurements have been part of the type-approval procedure of new vehicle models. From September 2019, they will supplement the type approval of all new passenger cars. So far, however, only the particulate number and the concentration of nitrogen oxides are to be determined in RDE.

<table>
<thead>
<tr>
<th>Test cycle</th>
<th>NEDC (Euro 6)</th>
<th>EU WLTP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cycle</td>
<td>NEDC</td>
<td>WLTP</td>
</tr>
<tr>
<td>Cycle length</td>
<td>11.03 km</td>
<td>23.27 km</td>
</tr>
<tr>
<td>Duration</td>
<td>19.66 minutes</td>
<td>30 minutes</td>
</tr>
<tr>
<td>Average speed</td>
<td>34 km/h</td>
<td>47 km/h</td>
</tr>
<tr>
<td>Top speed</td>
<td>120 km/h</td>
<td>131 km/h</td>
</tr>
<tr>
<td>Percentage of idle time</td>
<td>24%</td>
<td>13%</td>
</tr>
<tr>
<td>Shifting system</td>
<td>Fixed gear shift points</td>
<td>Vehicle-specific</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rollout test</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Tread depth</td>
<td>50% to 90%</td>
<td>80% to 100%</td>
</tr>
<tr>
<td>Tyre pressure</td>
<td>Not defined</td>
<td>Vehicle-specific</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vehicle weight</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Test mass</td>
<td>Kerb weight + 100 kg</td>
<td>Kerb weight + 100 kg + extras + pay-load</td>
</tr>
<tr>
<td>Inertia (classification of test vehicles according to inertia behaviour)</td>
<td>Discrete classes</td>
<td>No classes, vehicle-specific</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Temperature</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Outdoor temperature of the preconditioning hall and test cell</td>
<td>20°C to 30°C</td>
<td>14°C / 23°C</td>
</tr>
<tr>
<td>Starting temperature of engine</td>
<td>Cold</td>
<td>Cold</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other parameters</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mileage of the test vehicle</td>
<td>Max. 3,000 km</td>
<td>3,000 to 15,000 km</td>
</tr>
<tr>
<td>Battery charge level</td>
<td>Not defined</td>
<td>Is not allowed to be charged before the cycle</td>
</tr>
</tbody>
</table>
tests. In order to close the growing gap between manufacturer CO₂ data and real-world emissions, on-road CO₂ emissions tests must be included in the certification procedure. The deviation between the results of on-road measurements and the laboratory values must then be capped. The Commission must therefore set a limit value for real-world CO₂ emissions and it should not be more than four percent above the limit value for the laboratory measurements.

In addition, independent spot checks of on-road CO₂ emissions from vehicles in operation are indispensable. In May 2018, the WLTP Regulation (EU Regulation 2017/1151) was amended so that in future there will be official in-use conformity tests of air pollutant emissions (nitrogen oxides and particulate number) under real driving conditions. For CO₂ emissions, however, only WLTP checks in the laboratory are planned. The amendment introduces, for the first time, a minimum number of administrative checks on vehicles while they are in use during their normal life. Previously, such checks were entirely in the hands of car manufacturers and concerned only air pollutant emissions, not CO₂. The amendment shifts part of the responsibility to the type approval authorities of the member states which have to carry out both WLTP and RDE checks (the latter only for nitrogen oxide and particulate emissions). In-use conformity tests by type approval authorities supplement manufacturers’ compulsory WLTP lab checks of vehicles in operation. In addition, third parties may commission in-use conformity tests, provided that an accredited laboratory or designated technical service carries out the tests on their behalf.

So long as the gap between official laboratory values and actual fuel consumption figures is not drastically reduced, governments must be held responsible. They have an obligation to ensure that consumers can rely on the manufacturer’s data in the future.

The changeover from the NEDC to the WLTP and its impact on CO₂ emissions standards after 2021

Despite the introduction of the WLTP in September 2018, the NEDC average target value of 95 g CO₂/km remains valid and will be used to derive manufacturer-specific CO₂ targets for the years 2020/21. CO₂ standards will not be converted to WLTP values until 2021.
In order to be able to verify compliance with the NEDC CO₂ limit value in 2021, the Joint Research Centre of the European Commission has developed a correlation tool called CO₂MPASS to convert CO₂ emissions measured in the WLTP to NEDC-equivalent values. According to an amendment of the CO₂ regulation in 2014 (EU/333/2014), the requirement for the correlation was that the stringency of the standards for CO₂ reduction should not be affected by the introduction of the WLTP.

However, car manufacturers have been rewarded for exploiting the loopholes of the old test, as some of these are included in CO₂MPASS. As a result, the difference between WLTP CO₂ emission values and the correlated NEDC values is artificially high. In addition, the procedure for converting the values is extremely non-transparent. Only type-approval authorities and manufacturers have access to the corresponding input data of CO₂MPASS and can trace the resulting conversion factor. It’s no use that the software code is publicly accessible.

The conversion between NEDC and WLTP values therefore entails risks in terms of setting the WLTP CO₂ target value for 2021, which shall be the starting point of the CO₂ percentage reduction proposed by the EU Commission for the period 2021 to 2030. It is to be feared that this value, which will be derived from the NEDC target of 95 g CO₂/km, will be artificially increased by excessive conversion factors, which will lead to a factual softening of the reduction targets, as the EU Commission’s proposal contains only a percentage reduction requirement instead of absolute targets.

Example: Car manufacturer X has an average measured CO₂ emission value of 110 g/km according to WLTP and an average correlated NEDC CO₂ emission value of 92 g/km in 2020. This results in an average conversion factor of approx. 1.2. The WLTP fleet limit value for the year 2021 for this manufacturer is determined as follows: NEDC limit value for 2020 x 1.2 = WLTP limit value for 2021

As the example shows, the adjustment creates a strong incentive to achieve a high ratio between WLTP and NEDC-equivalent emission values in 2020 in order to achieve the highest possible WLTP target value, which in turn translates into less stringent CO₂ targets for 2025 and 2030, if the Commission maintains the percentage reduction targets.

A value as high as possible on the basis of the WLTP in 2021 with percentage reduction targets for 2025 and 2030 based on this value automatically leads to the result that also in the coming years CO₂ emissions reductions will remain far below the requirements of climate change mitigation policies and, according to various studies, also below what is technically feasible.

Furthermore, the change in the type-approval procedure does not change the effectiveness of the regulation up to and including 2019. There is an incentive for manufacturers to continue optimising for the NEDC and the conversion with CO₂MPAS and thus to meet the „95 g“ target with rather low effectiveness in terms of real CO₂ emissions reduction.

„Car manufacturers are using the changeover from the NEDC to the WLTP as a gateway to water down post-2021 CO₂ emissions standards. In order to meet climate protection goals, the Commission and the German authorities must not only set more ambitious and, above all, absolute CO₂ targets, but also significantly improve their enforcement and once and for all sanction violations. A reduction in CO₂ emissions just on paper protects the climate as little as an exhaust gas aftertreatment system which only works in the laboratory protects the health of citizens. “

Barbara Metz, Deputy Executive Director, Environmental Action Germany (DUH)
We call for an 8-point program for honest fuel consumption figures:

1. **Effective market surveillance:** establishment of an official body independent of the automobile industry and the registration authorities to control official fuel consumption values of randomly selected production vehicles as well as other parameters specified by manufacturers for laboratory measurements (e.g. rolling resistance). So far, these parameters are not publicly accessible and therefore cannot be monitored by third parties. The independence of in-use conformity tests is indispensable inasmuch as the current type approval involves financial links between automobile manufacturers and technical services. That is to say that in principle, manufacturers are free to commission a technical service of their choice for the type-approval procedure.

2. **Correction of the official fuel consumption values in the event of a deviation of four percent or more** between the manufacturer data and the measurement result of the independent follow-up control.

3. **Sanctioning fraudulent practices:** any infringements found must be made public and subject to effective, proportionate, and dissuasive penalties.

4. **Determination of CO₂ emissions in real driving conditions:** amendment of the official type-approval procedure to include on-road CO₂ emissions tests, as is already mandatory for nitrogen oxides and particulate matter as part of the RDE regulation. A suitable test procedure must be developed in the short-term.

5. **Official fuel consumption values should be corrected if the deviation between type-approval fuel consumption and the ex-post control measurement exceeds four per cent.**

6. **Transparency:** disclosure of all CO₂ and emissions-related data by the Federal Motor Transport Authority. The automotive industry must explicitly agree to the publication of all vehicle data necessary for the follow-up control of CO₂ and pollutant emissions values.

7. **Designation of an authority responsible for false fuel consumption information,** which collects and makes publicly available any detected deviations in fuel consumption and helps consumers to enforce their rights towards the car companies. Affected consumers must not be left alone. According to a landmark decision of the Federal Court of Justice, any car owner with verifiably increased fuel consumption of over 10 percent on the basis of laboratory measurements can demand the reversal of the transaction and damage compensation in Germany. In reality, affected car owners have to deal with several years of litigation with specialized corporate lawyers and high costs without receiving any support from the authorities.

8. **Introduction of the class-action lawsuit into German law** in order to give consumers better rights against fraudulent practices by companies.
Our demands at a glance

Group actions for better consumer protection

In June 2013, the European Commission called on all Member States to introduce collective redress mechanisms such as class actions into their legal systems. In June 2018, the model case procedure (“Musterfeststellungsklage” in German) was passed in the German Parliament.

Allegedly, the model case procedure has been introduced to protect consumers from unfair practices by companies. But instead of strengthening consumers, Germany’s federal government is once again protecting the industry.

In future, associations with a right to sue may file collective actions on behalf of consumers with similar cases at the Higher Regional Court. The limitation period for consumer claims is suspended with the filing of the action.

Several conditions must be fulfilled both on the part of the consumers and on the part of the associations in order to be able to bring a model case procedure. The requirements for associations to be entitled to bring actions are relatively arbitrary and do not reflect the association’s expertise in the respective field. Only associations will be authorized to litigate that:
» have as their members at least ten associations working in the same area of responsibility or at least 350 members who are natural persons,

» have been on the list pursuant to section 4 German Act on Injunctive Relief (Unterlassungsklagengesetz – UklaG) for at least four years,

» do not defend consumers’ interests for commercial gain,

» will not achieve any profit from the lawsuit and

» do not receive more than five percent of their financial means from company donations.

By setting these restrictive requirements, the government leaves many environmental and nature conservation associations, including the DUH, without rights to bring proceedings, even if the associations have a high level of expertise and experience in certain areas of consumer protection. This is done under the pretext of a supposedly threatening “lawsuit industry”.

Also, not every aggrieved individual can simply file a model case procedure via a qualified association. First of all, the association must be presented with at least ten similar cases. An action can then be filed on the basis of these claims. If the court considers the complaint to be admissible, it is published and a register of complaints is opened at the Federal Office of Justice. At least 50 further aggrieved consumers with similar cases must register themselves within two months. Otherwise, the model case procedure “fails”. If enough consumers join the register, the procedure comes about and further affected consumers have the choice to enter the register of claims until the end of the oral hearing.

No costs are incurred for the model case procedure itself. If it comes to a judgement, that judgement is binding for the defendant and the consumers who registered for the case. Subsequently, however, each individual aggrieved consumer has to invoke the model judgement and claim his or her compensation individually. Therefore, the model declaratory judgement only lays the foundation for the individual action. If only small amounts are involved, many consumers will continue to let their claims expire.

A model case procedure considerably reduces the individual cost risk and can thus lead to significantly more consumers deciding to take action against car manufacturers. This, in turn, should provide an incentive for manufacturers to provide honest fuel consumption data.

The EU Commission also intends to set the path for the binding introduction of collective redress actions in all member states and presented a proposal for a directive in April 2018. The European Parliament has not yet taken a decision and the member states still have to be consulted. So far, however, the plans of the EU have been more stringent and far-reaching than the arrangements of the model case procedure in Germany. The German law merely aims at establishing the (non-)existence of factual and legal conditions for the (non-)existence of claims or legal relationships between consumers and an enterprise, while the EU plans provide for a subsequent remedy. It is certainly intended that money will also be paid in the event of a successful action.

A future directive at EU level could therefore mean that the German model case procedure has to be amended in a number of respects. We are committed to ensuring that German law is brought into line with European requirements and improved in the interests of consumer protection.
We stand up for honest fuel consumption figures!

The DUH is counteracting this development with the consumer protection campaign „Get Real: Demand fuel figures you can trust“. Together with our project partner Transport & Environment (T&E), we will intensify our efforts towards ending consumer deception in the coming years. Car buyers have to be able to rely on honest fuel consumption figures in the future.

WHAT IS OUR CAMPAIGN ABOUT?

The aim of the campaign is to make public the illegal practices of the manufacturers, such as using test vehicles that deviate significantly from the production models. At the same time, authorities and political decision-makers are to be encouraged to enforce existing regulations and to carry out official investigations. Any discrepancies ascertained shall be published and, in the event of fraudulent practices, sanctions shall be imposed which are „effective, proportionate and dissuasive“.

This is what we have in mind:

» We will improve consumer rights. In the future, consumers should be able to make a sound purchase decision and should be able to fight back against misleading fuel consumption data.

» We will encourage the establishment of an official contact point, which will collate any deviations from fuel consumption, make them publicly available, and help to enforce consumer rights.

» A comparative study on consumer rights in various EU countries will be published. A compilation of frequently asked questions and tips regarding how to deal with misleading fuel consumption data will provide legal guidance for aggrieved consumers. Drivers will thus receive essential support for greater legal security in order to counteract distorted fuel consumption figures.

» Over the next few years, we will carry out our own emissions and fuel consumption tests with representative new cars and evaluate the new WLTP test procedure. In addition to making the findings available, we will draw attention to the independent checks that are needed to ensure honest fuel consumption figures.

» We will promote the exchange of experiences between major players in the EU on the subject of fuel consumption. In expert talks and conferences, we will discuss the technical, administrative, and legal aspects together with representatives from politics, science, industry, and other NGOs in order to establish effective control mechanisms and ensure that existing legislation is actually implemented.

» By carrying out intensive press and public relations work, we will continue to inform the public about the topic and create greater awareness of the problems. This includes media events and background discussions, as well as social media activities.

» The campaign provides background information in various languages.
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 project between:

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