



Mr. Karmenu Vella  
Commissioner for Environment, Maritime Affairs and Fisheries  
European Commission  
Rue de la Loi 200  
1049 Brussels

Brussels, 28 July 2017

Dear Commissioner,

We are writing on behalf of the European Environmental Bureau, Air Clim, ClientEarth, Health and Environment Alliance and Transport & Environment, concerning the requests made by Austria, Belgium, Germany, Denmark, Spain, Finland, France, Ireland and Luxembourg to adjust their emission inventories for air pollutants for the year 2015, using the new provisions of Directive 2016/2284 (article 5) on the reduction of national emissions of certain atmospheric pollutants.

We would like to remind the European Commission about the negative impacts of such adjustments on human health and the environment. Regardless of their justifications, all nine emission inventory adjustments would result in higher absolute emissions compared to what was agreed when the Directive was adopted, thereby causing increased air pollution and associated health impacts<sup>1</sup>. More specifically, air pollution is responsible for more than 430 thousands premature deaths in the EU28 every year, including 436 000 attributed to fine particulate matter (PM<sub>2.5</sub>); 71 000 to nitrogen dioxide (NO<sub>2</sub>) and 17 000 to ozone. Ten times more people are killed by air pollution than by road accidents and it is the first cause of death from environment-related matters worldwide). The consequent health-related economic costs of air pollution are estimated at between €330 - €940 billion for the EU annually, which is equivalent to 3 - 9% of the EU's GDP.

Some of the adjustments, in particular those related to higher than expected NO<sub>x</sub> emissions from light duty and heavy duty vehicles, are particularly concerning. Most of the governments applying for such flexibility are continuously and significantly exceeding the NO<sub>2</sub> limit values set under Directive 2008/50/EC (the "Air Quality Directive"). By allowing NO<sub>x</sub> emissions to exceed the ceilings originally set under the 2001 NEC Directive, Austria, Belgium, France, Germany and Spain are delaying compliance with the Air Quality Directive's limit values for NO<sub>2</sub> and particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>) and exposing thousands of citizens to unlawful and harmful levels of NO<sub>2</sub> and PM, in contrast with the obligation to achieve compliance in the shortest time possible (Article 23 Air Quality Directive).

Moreover, the governments involved had already tools at their disposal to foresee and address the higher than expected on road NO<sub>x</sub> emissions. Notably, it is the responsibility of the national vehicle authorities

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<sup>1</sup> European Environment Agency's briefing '[NEC Directive reporting status 2017](#)'.

to enforce Regulation (EC) No. 715/2007 (the Euro Standards Regulation), by ensuring that approved vehicles meet the emission limits in “normal use”, do not use illegal defeat device and continue to comply when in use.

Given that the evidence on serious exceedances of the Euro standards was available long before the Dieselgate scandal, the authorities had much time at their disposal to require carmakers to comply, including mandatory recalls and withdrawal of approvals to take the polluting vehicles off the road. Had the authorities of Germany, France, Spain and Luxembourg (who approve most vehicles in the EU) taken action in line with the Euro Standards Regulation, the inventory adjustments – as well as high NOx emissions in those countries – could have been avoided. In this regard, it must be underlined that the Commission has started infringement proceedings under Article 258 TFEU against the German, Luxembourg and Spanish governments for having failed to enforce the Euro Standards Regulation and to penalise the Volkswagen Group for the use of illegal defeat devices. Lastly, on 17 July, European Commissioner for industry Elzbieta Bienkowska addressed a letter to EU governments requesting stronger action “to remove non-compliant cars from the market and circulation as soon as possible”.

The high dieselisation of Member States’ car fleets has been largely due to national policies, such as tax incentives or company cars regulation. This could easily have been avoided, and should therefore never be accepted as a reason for emission adjustments.

We therefore call upon the European Commission, when assessing the requested emission inventory adjustments, to:

- Limit the use of emission inventory adjustment to the strict minimum – bearing in mind the negative effects on human health and on the environment and the failure of the member states to use tools at their disposal to limit the problem, i.e. taking action against the discrepancy between laboratory and real world NOx exceedances by diesel vehicles in line with Euro Standards Regulation and interpreting the Directive’s conditions in a restrictive way (exceptions to EU law must be construed and applied strictly<sup>2</sup>).
- Conduct an evaluation of the adjustment requests which is independent from the one conducted at UNECE level by the Expert Review Team of the Centre for Emission Inventories and Projections of the LRTAP Convention that is subsequently endorsed by the EMEP (European Monitoring and Evaluation Programme) Steering Body. The approval of an adjustment under the LRTAP Convention should not influence the decision at EU level.
- Consider whether Member States have taken action to compensate for possible unforeseen emissions from one sector before applying for an adjustment of emission inventories.
- Consider impacts of such approvals on human health and the environment.

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<sup>2</sup> [Case T-105/95](#), *WWF UK vs. European Commission*



In case some of the requested adjustments are approved, we call upon the European Commission to demand immediate action by those Member States in order to ensure the respect of the legally binding limits and to prevent the reiteration of the adjustment request for the following periods.

We look forward to receiving your reply.

Yours sincerely,

Jeremy Wates, EEB Secretary General

on behalf of:

European Environmental Bureau  
AirClim  
ClientEarth  
Health and Environment Alliance  
Transport & Environment

Cc: Mr. Vytenis Andriukaitis, EU Commissioner for Health and Food Safety  
Ms. Elżbieta Bieńkowska, EU Commissioner for Internal Market, Industry, Entrepreneurship and SMEs  
Ms. Violeta Bulc, EU Commissioner for Transport  
Mr. Daniel Calleja Crespo, DG Environment Director-General  
Mr. François Wackenhut, Head of Air Unit in DG Environment  
Ms. Joanna Szychowska, Head of Automotive Unit in DG Grow  
Ms. Ms. Adina-Ioana Vălean, Member of the European Parliament and Chair of the ENVI Committee  
Ms. Catherine Bearder, Member of the European Parliament  
Mr. Ivo Belet, Member of the European Parliament  
Mr. Seb Dance, Member of the European Parliament  
Mr. Bas Eickhout, Member of the European Parliament  
Mr. Gerben-Jan Gerbrandy, Member of the European Parliament  
Mr. Jens Gieseke, Member of the European Parliament  
Ms. Julie Girling, Member of the European Parliament  
Ms. Katerina Konecna, Member of the European Parliament  
Mr. Piernicola Pedicini, Member of the European Parliament  
Ms. Kathleen Van Brempt, Member of the European Parliament

## Annex

Comments on [country specific applications](#)

Country	Pollutant(s)	The European Commission should not approve the adjustment request because:
Austria	NOx - NH3	<p>As regards NOx from road vehicles, Austria should have requested – within the EU type approval framework – the authorities of the Member states in charge of approving the models found on Austria’s roads to take action against the exceedances, such as recalls and withdrawal of approvals.</p> <p>In addition, Austria is subsidising diesel through this <a href="#">law</a>. A resolution request targeted to end the diesel privilege is available <a href="#">here</a>. In practice: the tax on diesel is 39,7 cent per liter and on gasoline is 48,2 cent per liter. The diesel privilege is therefore 8,5 cent per liter, and considering VAT it goes up to 10,2 cent. The gross price for diesel in Austria is 12 cent below EU average. This system is stimulating the so called “tanktourismus”: people driving from one country to another only to refuel because of the relevant difference in diesel price.</p> <p>Moreover, Austria is in breach of the obligation to keep concentrations below the NO<sub>2</sub> limit values set under the Air Quality Directive. By allowing NOx emissions to exceed the ceilings originally set under the 2001 NEC Directive, Austria is delaying compliance with the Air Quality Directive’s limit values and exposing thousands of citizens to unlawful and harmful levels of NO<sub>2</sub>, in contrast with the obligation to achieve compliance in the shortest time possible (Article 23 Air Quality Directive).</p>
Belgium	NOx - NMVOC	<p>As regards NOx from road vehicles, Belgium should have requested – within the EU type approval framework – the authorities of the member states in charge of approving the models found on Belgium’s roads to take action against the exceedances, such as recalls and withdrawal of approvals.</p> <p>The high dieselisation of the fleet is due to national policies, such as tax incentives and company cars regulation, which could have also been avoided.</p> <p>Moreover, Belgium is in breach of the obligation to keep concentrations</p>

		<p>below the NO<sub>2</sub> limit values set under the Air Quality Directive. By allowing NO<sub>x</sub> emissions to exceed the ceilings originally set under the 2001 NEC Directive, Belgium is delaying compliance with the Air Quality Directive's limit values and exposing thousands of citizens to unlawful and harmful levels of NO<sub>2</sub>, in contrast with the obligation to achieve compliance in the shortest time possible (Article 23 Air Quality Directive).</p>
Denmark	NH <sub>3</sub> - NMVOC	<p>Denmark can meet the NH<sub>3</sub>-goals with very little efforts e.g. by recalling the just decided political actions that allow farmers to emit even more NH<sub>3</sub> and by continuing the reductions successfully implemented by the existing regulation.</p> <p>If other countries implement the same regulation to reduce NH<sub>3</sub> as Denmark has already implemented, they would fulfill their 2020 - and 2030 - goals. If they get permission to weaken their goals this would be discriminating towards front-runners like Denmark.</p>
Finland	NH <sub>3</sub>	<p>As regards NH<sub>3</sub> from manure management, Finland should show emission data for 2015 and provide information when it will meet its emission ceiling for NH<sub>3</sub>.</p> <p>By allowing NH<sub>3</sub> emissions to exceed the ceilings originally set under the 2001 NEC Directive, Finland is delaying compliance with the Air Quality Directive's limit values and exposing terrestrial and aquatic ecosystems to further eutrophication as well as promoting formation of tropospheric ozone (O<sub>3</sub>), in contrast with the obligation to achieve compliance in the shortest time possible (Article 23 Air Quality Directive).</p>
France	NO <sub>x</sub>	<p>France issues type approvals to many of the vehicles circulating on its roads, it should have thus required to fix or to remove the polluting diesels off its roads; the high dieselisation of the fleet is due to national policies, such as tax incentives and could have also been avoided.</p> <p>Moreover, France is in breach of the obligation to keep concentrations below the NO<sub>2</sub> limit values set under the Air Quality Directive. By allowing NO<sub>x</sub> emissions to exceed the ceilings originally set under the 2001 NEC Directive, France is delaying compliance with the Air Quality Directive's limit values and exposing thousands of citizens to unlawful and harmful levels of NO<sub>2</sub>, in contrast with the obligation to achieve compliance in the shortest time possible (Article 23 Air Quality Directive).</p>

Germany	NOx - NH3 - NMVOV	<p>Germany issues approvals for most of the vehicle models found across Europe, thus it should have taken action to upgrade or remove the polluting diesels off its roads. The German failure to penalise the Volkswagen Group for the use of illegal defeat devices is the subject of an ongoing Commission's infringement procedure.</p> <p>The high dieselisation of the fleet is due to national policies, such as tax incentives and could have also been avoided.</p> <p>Despite calls from several local, regional and state authorities, the German Federal Government has failed to update the national framework for Low Emission Zones.</p> <p>Moreover, Germany is in breach of the obligation to keep concentrations below the NO<sub>2</sub> limit values set under the Air Quality Directive. By allowing NOx emissions to exceed the ceilings originally set under the 2001 NEC Directive, Germany is delaying compliance with the Air Quality Directive's limit values and exposing thousands of citizens to unlawful and harmful levels of NO<sub>2</sub>, in contrast with the obligation to achieve compliance in the shortest time possible (Article 23 Air Quality Directive).</p>
Ireland	NOx - NMVOC	<p>As regards NOx from road vehicles, Ireland should have requested – within the EU type approval framework – the authorities of the member states in charge of approving the models found on Irish roads to take action against the exceedances, such as recalls and withdrawal of approvals. It also offers generous tax incentives to diesel vehicles, the high dieselization of its fleet leading to air quality impacts could thus have been avoided.</p>
Luxembourg	NOx - NMVOC	<p>Luxembourg issued approvals to many vehicles found on its roads; its authorities should have taken remedy action against the discrepancies between laboratory and on road emissions; it should have also asked the authorities of other EU countries to take action in line with Directive 46/2007/EU to remove the polluting vehicles that cause air quality exceedances.</p> <p>The failure by the Luxembourg government to penalise the Volkswagen Group for the use of illegal defeat devices is the subject of an ongoing Commission's infringement procedure.</p>
Spain	NOx - NH3	<p>Spain issued approvals to vehicles found on its roads; its authorities</p>

		<p>should have taken remedy action against the discrepancies between laboratory and on road emissions; the country should have also asked the authorities of other EU countries to take action in line with Directive 46/2007/EU to remove the polluting vehicles that cause air quality exceedances.</p> <p>The failure by the Spanish government to penalise the Volkswagen Group for the use of illegal defeat devices is the subject of an ongoing Commission's infringement procedure.</p>
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