



## VW: Dieseldate, a scandal on multiple fronts

VW's systematic cheating of emission tests led to billions in punishments in the USA, but almost no penalty in Europe due to differences in law enforcement and opportunities for remedy under the law.

### Problem Analysis

The Dieseldate scandal became the automotive industry's equivalent of the financial crisis, comparable to the BP Deepwater Horizon disaster in terms of the way in which it has fundamentally changed the public's perspective on VW and the broader industry.

In the USA, Volkswagen received the highest fines ever applied to an automotive manufacturer in US history. There the scandal became one of the first examples of criminal charges being filed against individual staff members in addition to the imposing of corporate fines in a high profile corporate misconduct case.<sup>1</sup> In Europe, punishments were almost non-existent, because of large differences in the strictness and enforcement of regulations and apparent enforcement failures by the European Commission and several EU member states.

### Company

**Company:** Volkswagen Group AG

**Head office:** Germany  
Volkswagen AG, Berliner Ring 2, 38440 Wolfsburg, Germany

**Subsidiary involved in violations:**

Audi, SEAT, Skoda, Porsche

**Other companies investigated for emissions cheating:** BMW, Germany; Daimler, Germany; PSA Group, France; Renault-Nissan, France & Japan; Ford, USA.

### Company background

**Public company**

**Top 5 shareholders (institutions):** Government Pension Fund of Norway – Global (1.11%), Vanguard Group Inc (0.14%), BlackRock Fund Advisors (0.12%), Dimensional Fund Advisors LP (0.04 %) and BlackRock Advisors (UK) Limited (0.03%)<sup>2</sup>

**CEO:** Matthias Müller<sup>3</sup> (Income: €7.25 million<sup>4</sup>)

**Annual profit:** €5,379 million earnings after tax<sup>5</sup>

**Annual turnover:** €217,267 million sales revenue<sup>6</sup>

**Presence:** >100

**Number of employees:** 626,715 employees at Dec. 31 2016.<sup>7</sup>

### Company activity

**Company activity:** Car manufacturer

**Business sector:** Secondary sector of industry (manufacturing and construction)

### Country and location in which the violation occurred

Primary country in which the violation took place: United States and Europe

### Summary of the case

Volkswagen is one of the largest car manufacturers in the world and the biggest in Europe. In 2015, it was caught selling diesel cars that emitted up to 40 times more NOx (Nitrogen oxides) than they were legally allowed to. The California Air Resources Board (CARB) exposed Volkswagen's defeat device to the US Environmental Protection Agency (EPA) who held a press conference on the 18th September 2015, accusing the company of using software "known in the industry as a 'defeat device' to cheat the emissions standards tests. A defeat device circumvents emissions testing for certain air pollutants".<sup>8</sup> The EPA and CARB showed VW had programmed the software that controls the emissions filtering and neutralising systems in their vehicles to recognise the driving patterns of twenty-minute laboratory test conditions, and to only operate the emissions controls fully during tests. The defeat device was first developed by Audi, and was then used in vehicles across the VW Group including VW brand, SEAT, Skoda and Porsche.<sup>9</sup> The cars performed better in laboratory tests than they did on the road. Following an International Council on Clean Transportation (ICCT) report looking at road emissions performance, CARB had been liaising with Volkswagen to investigate discrepancies between VW

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vehicle emissions in the laboratory and on the roads for over a year, and Volkswagen representatives had denied knowledge of the 'defeat device', which was labelled in the software as an 'acoustic function'.<sup>10</sup> In the US, VW executives denied knowledge of the cheating to the Californian authorities for over a year, and the defeat device was used in vehicles sold between 2009 to 2015.<sup>11</sup>

Worldwide 11 million cars were affected<sup>12</sup>, of which 580,000 were sold in the US<sup>13</sup> and 9 million in Europe<sup>14</sup>. Since the revelation, Volkswagen has paid fines and compensation amounting to over 20 billion US dollars in the USA – and stopped selling new diesel cars in the US market – but has refused to take responsibility for its actions in Europe. Even after Dieselgate became public in September 2015, VW continued to introduce new models that had an even more sophisticated defeat device – this time hidden in the gearbox software.<sup>15</sup> On average the NO<sub>2</sub> emissions of the models sold in 2017 by VW and its subsidiaries continued to be about twice the legal limit of 80mg/km when measured on the road.<sup>16</sup>

The urgency of the air pollution problem for the health of people living in cities makes the Dieselgate scandal even more outrageous. Exposure to high levels of air pollution can have potentially irreversible impacts on our health.<sup>17</sup> An MIT study shows that VW's excess emissions will lead to 1,200 premature deaths across Europe, as they amounted to nearly 1 million tonnes of extra pollution.<sup>18</sup>

In the months following the revelations, car owners in the US tried to sell back their affected vehicles to dealers, sometimes at as little as 50% of the sale value<sup>19</sup>. In Europe the affected vehicles were recalled for the software to be fixed, but correspondence between VW and German authorities shows that many Audi and SEAT vehicles (brands within the VW Group) didn't show "any significant difference" in the emissions produced before and after the fix.<sup>20</sup>

The US Department of Justice, Federal Trade Commission, the state of California and vehicle owners who had filed a class action lawsuit against VW pursued a settlement with VW to compensate customers and dealers, buy back affected vehicles, and set up emissions reduction schemes.<sup>21</sup> The US Department of Justice also pursued three criminal felony counts as well as civil claims from the EPA and the US Customs and Border Protection.<sup>22</sup>

French, German, British and Italian authorities launched investigations into the case; however, EU law does not offer the kind of penalties available to law enforcers in the US.<sup>23</sup> The European Parliament is investigating the European Commission for its role in allowing the scandal to occur

unchecked.<sup>24</sup> The European Commission has started an infringement procedure against seven EU nations including Germany and Britain for failing to fulfil their obligations under EU vehicle type approval legislation.<sup>25</sup> The German government, which has oversight over the Kraftfahrtbundesamt (KBA), which approved all VW models for the European market, has acted leniently on VW and failed to deal with this case in a timely and appropriate manner across the continent. The KBA only required VW to scrap the defeat device from the code of the motor control unit in a way that would ensure that the cars still met the standards in a roller bench test. The KBA accepted that this would only marginally improve on-road exhaust treatment. Despite being told by VW that in RDE tests cars would continue to exceed emissions by a factor of 3 to 5, the KBA signed off on the software fix.<sup>26</sup> Having granted the type approval, the KBA is the only authority to withdraw it, thus making it difficult for other member states to restrict sales of affected VW diesel cars.

In the USA, Volkswagen agreed to spend up to \$10 billion buying back vehicles and compensating owners and dealers, and \$4.7 billion on programs to offset excess emissions and clean vehicle programmes.<sup>27</sup> Volkswagen paid criminal fines of \$2.8 billion and civil fines of \$1.5 billion.<sup>28</sup>

James Robert Liang was sentenced to a 40-month prison sentence and a \$200,000 fine.<sup>29</sup> Oliver Schmidt, general manager in charge of VW's environmental and engineering office in Michigan, pled guilty to a charge of defrauding the government and violating the Clean Air Act<sup>30</sup> in August 2017 and will be sentenced in December 2017.<sup>31</sup> His expected penalty is a prison term of 7 years and fine of between \$40 to \$400,000.<sup>32</sup>

In the EU, VW spends millions on EU lobbying, coming 22nd in the list of highest corporate spenders, the 3rd highest-spending German company behind only Deutsche Bank and Siemens.<sup>33</sup> VW also has the highest number of lobbyists in Brussels of all the car companies – 43 in 2015, well above Daimler's 14 and BMW's 8.<sup>34</sup> Since the mid-90s VW has used its power and influence at the European level to delay and water down legally binding emissions reduction targets, as well as delay testing procedures.<sup>35</sup>

The US government acted quickly and forcefully in response to the scandal. The EPA and Department of Justice pushed for settlements, civil and criminal charges.<sup>36</sup> European governments have failed to seriously hold the company accountable, and the UK, France and Germany all lobbied to weaken emissions standards.<sup>37</sup>

## Endnotes

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