

## Chapter 10 The Legal Environment

### Case Study Questions:

1. Why did car firms make such efforts to cheat the emissions regulatory systems?

Students could start by identifying major objectives of car firms such as raising profits by increasing revenues and bearing down on costs. Emissions targets, when effectively enforced by the authorities, add to car makers' costs by forcing them to modify their production processes. Meeting stringent targets can also pose technological challenges which could cause them to spend more on R&D. If firms are unable to pass on these extra costs to consumers, profitability could be adversely affected.

Firms will also be tempted to cheat when one or more of them manage to do so without penalty, thereby potentially gaining a competitive advantage over those complying with the emissions rules.

<https://www.smmmt.co.uk/wp-content/uploads/sites/2/SMMT-New-Car-Co2-Report-2018-artwork.pdf>

2. **Identify which of the following areas of law are being applied to the case in the USA:**

- **common law**
- **civil law**
- **criminal law**

Justify your answer.

Students could be advised to refresh their understanding of common, civil, and criminal law. The US legal system, with the exception of Louisiana, is based on common law which was applied in this case. As the case shows, the criminal law led to VW being fined. Students carrying out further research will find that. In 2018, the former CEO of VW was charged, under criminal law, with conspiring to defraud the United States, wire fraud and violating the Clean Air Act. (see <https://www.reuters.com/article/us-volkswagen-emissions-trial/former-volkswagen-boss-dragged-feet-in-emissions-scandal-judge-idUSKCN1LR1QR>). Students may also note that VW was being pursued by VW dealers (and also investors) for a tort.

3. Discuss reasons why
  - a. the US regulatory authorities have adopted a harsher approach to the cheating of emissions regulations.
  - b. the EU and some of its member states adopted a laxer approach to the case.

Students could be advised to carry out more research carry out these two tasks.

Historically, the US legal system has been less lenient than those in the EU. Commentators put this down, amongst other things, to the incentives prosecutors are given to obtain the maximum number of convictions, the politicised nature of the legal system where judicial appointments are made on the basis of judges' political views, harsher mandatory minimum sentences, and the fact that prosecutors do not need to prove criminal intent on the part of the accused.

Students might speculate that the USA will be ready to adopt a harsh approach to foreign MNCs breaking the rules.

Students may raise the issue that some of the bigger EU states have large car industries. These make substantial contributions to the economy and this may make authorities in the EU reluctant to apply the law for fear of damaging these important economic players. The claim by T&E that the car industry lobby is a powerful influence on EU policy and the issue of regulatory capture could also be included in the explanation.

(See: <https://www.quora.com/Why-is-criminal-justice-in-the-UK-much-more-lenient-than-the-USA>; <http://bostonreview.net/books-ideas/carol-s-steiker-why-we%E2%80%99re-so-tough-crime>; <https://www.businessinsider.com.au/vera-institute-european-american-prison-report-2014-5>.)

4. 'The gaming of defeat device regulations has gone on for far too long in the EU. It is time for the charade to stop.' (German, J. International Council on Clean Transportation, blog 10 February 2017). In the light of the number of premature deaths caused by NOx emissions, advance a case for a more rigorous system of emission regulation in the EU.

Students could research data on the external costs/the impact of emissions e.g. with regard to various health conditions such as asthma, bronchitis, cancer, heart attacks, strokes, and mental health as well as numbers of premature deaths, and the costs imposed on individuals, health care systems and GDP in terms of lost production. Students could also look at the cross-border effects of emissions in one country in addition to the contribution of emissions to global warming.

(See: <https://www.theicct.org/news/nature-impacts-diesel-nox-may2017>;  
<https://phys.org/news/2018-09-emissions-diesel-cars-europe-greatly.html>;  
<https://bmjopen.bmj.com/content/6/6/e010004.full>.)

5. [In 2016 the House of Commons Transport Committee concluded that VW had acted with, ' a cynical disregard for emissions limits ...undermined consumer confidence in vehicle standards...\(and\) brought its own integrity into disrepute' \(p. 3\).](#)

[a. Assess the impact of the scandal on VW's:](#)

- [sales](#)
- [profits](#)
- [customers](#)
- [share price](#)

- top executives

Students could look at the impact on VW in the short term and subsequently. Their analysis should include: fines levied on VW; the costs of recalling cars; the compensation to VW owners in the US; the costs arising from law suits; the reaction of customers and investors.

Students could call up annual reports on the VW website.

*The Guardian* in 2016 reported that VW profits and revenues had taken a hit (<https://www.theguardian.com/business/2016/may/31/vw-volkswagen-profits-down-20-diesel-emissions-scandal>). But then see the Bloomberg article at <https://www.bloomberg.com/gadfly/articles/2017-11-02/vw-s-40-billion-recovery-is-nothing-to-celebrate>.

See also: <https://www.wsj.com/articles/volkswagen-group-sales-drop-for-first-time-in-13-years-1452275074>; <https://www.bloombergquint.com/business/vw-fights-investors-as-diesel-scandal-cost-could-top-35-billion#gs.y5naxeU>.

**c. In the light of your answers to a) and bearing in mind your answer to question 4, assess whether the punishment levied on VW by the US fits the crime.**

Students could start off by identifying what judicial penalties are trying to achieve e.g. are the penalties sufficiently proportionate to the crime, and will they deter similar behaviour in future by the guilty party and others (see:

<https://www.sciencedaily.com/releases/2011/10/111014095629.htm> )—to address this question they could discuss whether the punishments levied on VW outweigh the benefit to the company (see: <https://blog.volkovlaw.com/2012/07/measuring-deterrence-how-big-a-fine-will-deter-corporate-crime/>).

Refer to the following web sites: VW's website

<https://www.volkswagenag.com/en/InvestorRelations/news-and-publications.html>; Forbes; The Guardian; Fortune

For videos of evidence to the transport committee see:

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/transport-committee/news-parliament-2015/volkswagen-emissions-ev2-15-16/>

MD of VW UK plus others giving evidence:

<http://parliamentlive.tv/Event/Index/205c2a9a-37c5-404f-9d32-0eccdc8d31ed6>