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In an article in the US-magazine, Corporate Counsel, you say, that Volkswagen is another Compliance 1.0 train wreck. What do you mean by Compliance 1.0?

In the early days of Compliance, when it was a new profession evolving to help companies prevent and detect misconduct, companies tended to adopt a flawed model, which we call Compliance 1.0. That model was based on an incorrect assumption that compliance could be operated or managed as a captive arm of Legal, [as I noted here](#). But that is not the case at all. As we can see in some very big Compliance headlines, a GC or law firm partner rarely has Compliance subject matter expertise or experience to be able to design and oversee a modern compliance program that will achieve its goals. In fact, the legal mandate through which they see their work is so different from the mandate of compliance that Compliance 1.0 systems are often “detoured” and managed in such a way that they fail.

Which other recent cases would you consider to be a result of this maybe out-dated thinking?

[I've written about GM](#) where a CMS designed and operated by an employee imported from the law department failed to find and fix the ignition switch defect that the company had known about for a decade. Nearly every other Compliance disaster can be attributed [to this flawed model](#).



What leads you to this impression that VW falls into this category, after all on the first glance all the necessary elements of a working CMS are in place?

That's the problem when Legal drives Compliance: the idea that a CMS can be constructed by following a "checklist" of required elements. The Compliance profession has spent over 20 years understanding how all the elements work together, developing the principles of supporting an ethical culture, and ensuring that problems are detected and raised to appropriate levels in the organization so they can be fixed. Rather than hiring a compliance specialist as their Group Chief Compliance Officer, VW decided to employ a labor law specialist, which underlies the problem with the Compliance 1.0 model.

If you had been asked – what would you have done different from the start?

I would have [ensured that the Board understood](#) the options it had and its role as overseer of Compliance and culture. I would have encouraged the CEO to find the best Group Chief Compliance Officer with a proven track record of successfully designing and overseeing an effective global program and to structure the Compliance function for success. As I have written, a modern Compliance function that is structured to succeed is not a captive arm of Legal, but has a separate and independent mandate, and is empowered to achieve that mandate [with line of sight, seat at the table](#), and [resources to do the job well](#).



Let's talk about some specifics of Volkswagen. The company is eventually owned by two families (Porsche and Piech) which – according to various press publishings – don't really go on and play a dominant role in the "Aufsichtsrat". Another relevant factor in this "Aufsichtsrat" are German politicians because VW is partly state owned. In which way do you think this might influence the investments in Compliance and in the ongoing investigation of the actual case?

With so many constituencies involved, the Board may want to assign one of its members the direct responsibility of reforming its CMS and ensuring that any investigation is conducted thoroughly and independently in order to present all the relevant facts to authorities – as anticipated by the Yates Memo.

VW is said to be very strictly ruled from the top. Is that a culture that has a positive effect on Compliance?

Culture is very complex topic with an enormous impact on individual employee behavior which is why it is [the #1 topic for boards today](#). Culture drives behavior, and experienced Compliance 2.0 professionals know that a “command and control” culture that is driven by fear and retaliation is not likely to encourage employees to raise their concerns.

Volkswagen has initiated an internal investigation and promised to co-operate. What exactly will US-officials probably expect?

Under the Yates memo, the DOJ will be expecting the company to conduct a thorough investigation that captures all the relevant facts, including the individuals involved. That is because the DOJ intends to hold individual executives accountable as a condition of any settlement.



Might VW become the first company to be treated by the DoJ according to the so-called Yates-Memorandum – and what would that mean?

See above. I would expect the VW case to be a good high-profile case for the DOJ to test its new approach of individual accountability.

From your experience and compared to other cases in the industry where technical faults led to fatal accidents - is VW in the eyes of the US-officials and the public more or less serious and why?

VW should be concerned about reports that both a supplier (Bosch) in 2007 and a company engineer in 2011 tried to warn management that use of the “defeat software” in emissions testing was illegal. The fact that such a large-scale cheating enterprise could flourish undetected will raise serious concerns about the effectiveness of the compliance program and the culture of the company.

Which consequences would you expect when it comes to altering the CMS?

The Supervisory Board may want to commission an independent evaluation by a qualified outside expert so it can show good faith in fixing the gaps in its CMS. I would expect to see VW put in place a new CCO and a compliance team with appropriate credentials and experience, and give them a direct line to the Supervisory Board. Additionally, they must appoint a member of that Board responsible for overseeing the CMS.