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Summary of the European Anti-Fraud Office (OLAF) report on the European Investment Bank (EIB) loan “Antrieb RDI” to Volkswagen AG

On 19 November 2015, OLAF opened an investigation regarding alleged misuse of EIB loans by Volkswagen AG for the development and/or implementation and/or purchase of devices aiming at deceiving the regulatory bodies on the real level of gas emissions of vehicles and automotive components manufactured by Volkswagen AG; and alleged misrepresentations created by representatives of Volkswagen AG in order to obtain these EIB loans.

The OLAF investigation was closed on 19 July 2017 and the underlying report and recommendation were received by the EIB on 27 July 2017.

Background information

“In September 2015, U.S. Environmental authorities issued a Notice of Violation of the Clean Air Act to Volkswagen AG (VW) for producing and selling diesel cars that featured sophisticated software which aimed at circumventing US emissions standards for air pollutants, in particular nitrogen oxides (NOx). For the ease of reference this software is referred to in the present report as ‘defeat device’.

The violation concerned VW vehicles equipped with the EA 189 diesel engine that were sold between 2008 and 2015 in the US.

The ‘defeat device’ deployed on the EA 189 engine detected if the car was operated under testing conditions and accordingly activated and deactivated certain functionalities in order to meet emission standards during tests while offering full performance of the vehicle under normal driving conditions.

The issue was picked up by the international press and became known as the ‘diesel scandal’. Some of these articles hinted at the possibility that European Investment Bank (EIB) funds had been used for the development of the illegal software given the vast number of EIB loans accorded to VW for research and innovation purposes.

In the light of these revelations, OLAF requested the EIB in October 2015 for additional information on its lending operations with VW to identify possible connections with the development and implementation of the ‘defeat device’.

Following this review the EIB Identified the ‘VW Antrieb RDI’ project that involved Research and Development activities carried out by VW in the drivetrain area (engines and transmissions).”

The loan “VW Antrieb RDI” was granted to Volkswagen AG by the EIB in February 2009 for an amount of EUR 400 million for the purpose of co-financing the project “Antrieb RDI”. The objective of EIB loan “Antrieb RDI” was to contribute financing means and measures for the development of power engines and power train components for passenger cars and commercial vehicles as well as investments for the introduction of such means and measures in vehicles and their production. The loan was based on 12 sub-projects, amongst others automotive lightweight construction, double clutch gears, on-board diagnostic concepts, and

new technology to improve fuel efficiency (i.e. reduction of CO2 emissions) as well as the reduction of other emissions (i.e. NOx, particles, etc.) for both diesel and petrol engines. From the total 12 sub-projects, one sub-project 'Diesel motoren nach EUV und ULEV standards' was related to technology used in engine EA 189.

OLAF's findings

In the context of the approval process of the loan, the EIB requested Volkswagen AG in October 2008 to provide relevant information on the environmental impact of the sub-project 'Diesel motoren nach EUV und ULEV standards' and on all important circumstances or important risks that could influence the operational results of the project (change of environmental regulations, changes in the Research and Development Strategy).

OLAF established that at the time the EIB loan was disbursed, VW was aware of the serious difficulties encountered to meet the stringent emissions standards during the development of the EA 189 engine and the use and implementation of a "defeat device" on the EA 189 engine to overcome this problem in a fraudulent manner. The investigation established that the information Volkswagen AG provided to the EIB, did not refer to the above serious difficulties encountered to meet the stringent emissions standards during the development of the EA 189 engine and did not reveal that a 'defeat device' had been used and implemented on the EA 189 engine to overcome this problem in a fraudulent manner.

This OLAF's findings holds true for the entire duration of the loan:

"The investigation established that VW never informed the EIB throughout the duration of the loan from 24 February 2009 to 24 February 2014 about the continuous use and implementation of this 'defeat device' on the EA 189 engine in the context of the Research and Development activities financed by the EIB loan.

Furthermore, upon completion of the project implementation in December 2010 and in line with its contractual requirements, VW shared information with the EIB on 9 February 2011 regarding the outcome of the project. This information did not refer to the use and implementation of the 'defeat device'."

OLAF's report further indicates that this information should have been communicated to the EIB and, had EIB been informed of this relevant information, the EIB would not have granted the loan or would have requested full repayment.

The OLAF report therefore establishes the following:

"The investigation established that the information provided by VW to the EIB in November-December 2008:

- *Did not refer to the serious difficulties encountered to meet the stringent emissions standards during the development of the EA 189 engine;*
- *Did not reveal the fact that a 'defeat device' had been used and implemented on the EA 189 engine to overcome the aforementioned problems by bypassing the engine emission control system in order to meet the emission standards in a fraudulent manner.*

Additionally and contrary to its contractual obligations stemming from the finance contract, VW:

- *Did not inform the EIB throughout the duration of the loan from 24 February 2009 to 24 February 2014 about the continuous use and implementation of this 'defeat device' on the EA 189 engine in the context of the Research and Development activities financed by the EIB loan."*

OLAF invited Volkswagen AG to comment on its findings:

“In this reply Volkswagen AG does not contest the established facts. However it is stated that these facts do not substantiate that Volkswagen AG acted to the detriment of the financial interests of the EU or committed a criminal offence.”

OLAF's conclusions

OLAF concluded that Volkswagen AG deceived the EIB by omitting these pertinent facts to obtain and maintain the EIB loan. This omission of relevant information indicates that Prohibited Conduct has occurred in the context of the loan, according to the OLAF report. In accordance with Section IV of the EIB Anti-Fraud Policy, Prohibited Conduct includes a fraudulent practice, which is defined as: “any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation”.

In particular:

“The investigation brought to the fore that one of the main goals of the EIB loan was to support Research and Development activities that aimed at reducing emissions.

To confirm compliance of the project proposed by VW with the EIB's environmental goal VW was explicitly requested in the frame of the approval process of the loan in 2008 to provide relevant information on the environmental impact of the funded project activities and all important circumstances or important risks that could influence the operational results of the project.

It was substantiated that, despite the fact that this information was known within VW, [...] VW did not inform the EIB of the apparent difficulties encountered to comply with stricter emission levels during the development of the EA 189 engine and of the subsequent use of the 'defeat device' to circumvent these problems in a fraudulent manner.

This information should have been communicated to the EIB during the approval phase of the loan in 2008 and throughout the duration of the loan until February 2014. It is therefore concluded that [...] VW made misrepresentations to the EIB in order to obtain and maintain the EIB loan.”

Recommendation

Based on the above conclusions, OLAF recommended that:

“The European Investment Bank apply all relevant measures vis-à-vis Volkswagen AG as provided for in Section V, Measures to prevent and deter prohibit conduct, of its Anti-Fraud Policy, including entering into a negotiated settlement with Volkswagen AG, in order to safeguard the EU financial interests and reputation.

In this respect, it is recommended that the EIB, in its actions towards Volkswagen AG takes into consideration-the possible financial advantage VW benefitted from, by obtaining the loan at an advantageous interest rate compared to the market conditions applicable at the time of the conclusion of the finance contract.”