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## JAPAN'S NEIGHBOURS ARE RAISING CONCERN ABOUT CONTROVERSIAL SECURITY BILL...



## VW NEEDS TO EXPLAIN AWAY SOFTWARE

By David Ingram and Joel Schectman

**V**olkswagen AG will probably have to show there was some legitimate reason to install software that led to false vehicle emissions tests if it is to avoid US criminal charges, lawyers said on Tuesday. The German automaker has admitted to US clean air regulators that in some of its diesel cars it used a so-called "defeat device," software designed to defeat emissions tests. As a result it is almost certainly exposed to very large civil penalties that could be imposed by the US government, said attorneys with expertise in environmental prosecutions though not involved in the Volkswagen case.

The criminal probe, which was confirmed by a source familiar with the matter on Tuesday, is likely to examine not only possible violations of the US Clean Air Act but also of broader statutes against wire fraud, false statements to regulators and other crimes, the lawyers said. Individual employees are also likely to be investigated and could potentially face criminal charges if wrongdoing is discovered, the lawyers added.

A Justice Department spokesman declined to comment. A Volkswagen spokesman did not respond to requests for comment on what the company's legal strategy would be. Deliberately faking emissions results could be seen by prosecutors as a multi-layered fraud against consumers, regulators and auto dealers, the lawyers said. But there will likely be a debate between the Justice Department and Volkswagen's legal team over what the company and its

employees intended by installing the software. US prosecutors generally must find evidence of intent to commit a crime - such as incriminating emails or information from cooperating witnesses - before they can charge someone.

The installation of the devices is not necessarily evidence of intentional misconduct, said Bruce Pasfield, a former environmental prosecutor. Automakers sometimes install such devices to allow vehicles to be tested under differing standards required by overseas regulators, said Pasfield, now at the law firm Alston & Bird. "You cannot draw the conclusion that this is intentionally criminal," he said.

The Volkswagen investigation could end up as one of the first test cases of tougher new Justice Department guidelines that could lead to an increase in the number of prosecutions of corporate executives. David Uhlmann, former chief of the Justice Department's environmental crimes section, said criminal charges were almost certain if the allegations against Volkswagen are true, but he added the company could still find a defense. "If the software were installed for other purposes, Volkswagen would not have a defense in any civil penalty action but could in a criminal case," said Uhlmann, now a University of Michigan law professor. It was not immediately clear whether Volkswagen would invoke such a defense.

It was also not clear who is leading Volkswagen's defense. The law firm Kirkland & Ellis, which was copied on a letter on Friday from the US Environmental Protection Agency to the automaker, declined to comment.

Volkswagen is the third major automaker to face a US criminal investigation in recent years. Last year, Toyota Motor Corp agreed to pay \$1.2 billion to settle a charge that it concealed a problem in its vehicles that caused them to accelerate suddenly. This month, General Motors Co agreed to pay \$900 million for hiding an ignition-switch defect from regulators and the public.

Both GM and Toyota signed deals known as deferred prosecution agreements that effectively put them on probation and will allow the criminal charges to be dropped later. It may be difficult for Volkswagen to negotiate similar treatment depending on which Justice Department office takes the lead in its investigation, Uhlmann said. The environmental crimes section has historically required companies to either plead guilty or take their chances at a trial, he said.

Prosecutors are likely to consider criminal charges against individual executives at the company, lawyers said. This month, US Deputy Attorney General Sally Quillian Yates said that under a new Justice Department policy companies would no longer get credit for helping prosecutors discover misconduct unless they turn over the executives responsible. Under that policy "it would be hard to see how they could not carefully examine how individuals could be held criminally accountable," said David Buente, a former prosecutor of environmental crimes who is now at the law firm Sidley Austin. "One of the key questions for prosecutors is how high up in the company this goes," Buente said. —Reuters

## ORBAN MOBILIZES TROOPS, PRISONERS, JOBLESS

By Balazs Koranyi

**B**uilt in a matter of weeks by soldiers, prison labourers and cadres of the unemployed, a vast new wall along Balkan frontiers is a monument to the ruthless efficiency with which Prime Minister Viktor Orban has mobilised Hungary against migrants. Orban describes the arrival of hundreds of thousands of refugees and other migrants in Europe this year from Asia, Africa and the Middle East as an attack on the continent's Christian welfare model. Until last week, most trekked through Hungary, the main overland entry route into the EU's border-free Schengen zone from the Balkan peninsula, which they cross after arriving by dinghy in Greece.

While Europe dithered over a collective response, Hungary took matters into its own hands, shutting off the route with a new fence along its entire 175 km border with Serbia, topped with razor wire and guarded by helmeted riot police. It was erected at a cost of 22 billion forints (about \$80 million), a rare example of efficiency in a country which built its last underground metro line ten years behind schedule at triple the projected cost.

The government says it put the military in charge of the construction so that it could act more quickly. By swiftly mobilising state resources, the authorities also managed to turn the fence into a national project, immensely popular at home even as it is denounced by European partners. "It took a while but the government's campaign to rouse public opinion against the refugees is bearing fruit, and having brought much of the media under control is paying dividends," said Richard Szentpeteri Nagy, an analyst at Centre for Fair Political Analysis. "By properly filtering the message through public television, what viewers at home see is that this is a mob, throwing stones and attacking police."

In just days since it shut the Serbian frontier, Hungary has already moved even faster to shut the border with Croatia, which is inside the European Union but outside the Schengen zone. A 41-kilometre temporary fence was thrown up within four days. Work is already underway on a permanent barrier, with machines clearing the land, fence posts driven into the ground and razor wire rolled out.

### No Emotion in Steel

The logistics are themselves a demonstration of Orban's vision of a powerful state flexing its muscle. The military initially called in private contractors, but after Orban forced out his defence minister over the slow pace of work, soldiers swiftly took over most of the project. Janos, a dis-

patcher for a construction firm specialising in earth moving equipment, described a frenzied start. "They found us through the Internet, I just got a call from the military asking if I could do the job," he said, asking that his surname not be used while discussing the process. "They had something like two dozen private companies in the project then. But we're down to maybe a quarter of that as the military is getting its house in order and replaces us with their own capacity."

His firm gets paid 500 forints (\$1.82) to drive a fence post into the ground. A crew needs to complete at least 200 in a day, 3 m apart, to break even. The military schedule means working seven days a week. During the crunch when the defence minister was dismissed, his team put in more than 48 hours straight. Parts of the fence have been made by firms using prison labour. Convicts receive a small portion of the wages paid for their work; the rest goes to cover prison costs.

Inmates from a prison on the outskirts of Dunaujvaros, Hungary's top steelmaking town, make up about a third of the 500-strong workforce at DAK Acelszerkezeti Kft., which worked on steel fence posts. Managing Director Gabor Tarany said his company did not care about politics; an order is an order. "There's no emotion in steel; we build things and don't ask or care what it's used for." The state has also mobilised unemployed people who collect government benefits through a public works program.

"Public works people have an obligation to work, otherwise they could lose their benefits," said Marta Varga, a spokeswoman for the Csongrad county government offices. They have been paid at a monthly wage of around \$220 for work on the fence, around half Hungary's minimum wage. She said no one had refused.

### Fences, Dogs, Cops and Guns

The project has become a defining achievement for Orban, a square-jawed former student activist who emerged in the early days after Communism at the helm of Hungary's main centre-right political party Fidesz. Now 52, Orban has made a career of defying what he considers a weak-willed European consensus. Jean-Claude Juncker, head of the EU's executive commission, jokingly greeted him as "Dictator" at an EU summit in May, offering a smile and a slap on the neck.

From 2010 until this year, Fidesz held a two-thirds supermajority in parliament which allowed Orban to amend the constitution, consolidating his authority. He drew fire for steps which EU officials said undermined the independence of the courts, central bank and the media. Realising early that migration would be a major issue, he moved quickly to stir public opinion this year with a series of campaigns, amplified by friendly media, including a new state controlled news channel.

The tactic has worked. A survey out on Monday showed Orban's Fidesz party leading its nearest rival by 10 percentage points. Another showed 82 percent supported tighter immigration rules. In recent weeks he has been denouncing European leaders for accelerating Europe's migration crisis by abandoning any pretence of defending its external borders. He reserves particular blame for Germany, which suspended normal EU rules to announce in August it would welcome Syrian refugees no matter where they enter the bloc. Orban's speeches and interviews have included warnings that Europe's Christian culture is in jeopardy from Muslim migrants, a tone critics say crosses a line into xenophobia.

After the fence went up last week and Hungarian riot police used tear gas and water cannon on stone-throwing migrants, Romania's Prime Minister Victor Ponta even evoked the continent's darkest era - the rise of the Nazis. "Fences, dogs, cops and guns; this looks like Europe in the 1930s. And did we solve the refugee problem with this? No, we didn't," Ponta said. "Erecting a fence only throws the problem into Serbia, into Croatia, into Romania."

Orban's opponents abroad say Hungary should be more compassionate, not least because of its own history, including a 1956 uprising against the Soviet Union when Russian guns and tanks drove nearly 200,000 Hungarians to flee. But many Hungarians are having none of it. They say that even if today's migrants include refugees who have fled war, they have all arrived through safe countries such as Turkey and the Balkan states and are no longer in peril. "Did the Hungarian refugees ever attack the police in a violent mob, throwing stones?" said Zoltan Nogradi, the mayor of Morahalom, a small town on the Serbian border. "There's no comparison because if there was no fence, my town would have already been swept away."

### More Discreet

The government says putting the military in charge was the only way to build the fence quickly, exempting the state from cumbersome procurement laws. Some who worked on the project say there are other benefits: Details can be kept secret, and the army itself has learned from the work. "It's not just cheaper and quicker, it's also more discreet," said an engineer working on the Croatian border, who asked not to be identified because he was not authorised to speak to the media. "Soldiers don't talk, prisoners can't talk and public works employees know it's not in their best interest to talk. Politics aside, this is the best logistical exercise the army had in years," he added. —Reuters



**Hungary's Prime Minister Viktor Orban (center) arrives to attend an European Union (EU) emergency summit on the migration crisis with a focus on strengthening external borders at the EU headquarters in Brussels yesterday, a day after interior ministers agreed a deal on refugee relocation quotas. —AFP**

### Focus

## FOREIGN MEDIA RUSH TO RELINQUISH RUSSIAN ASSETS

By Germain Moyon

**A** new Russian law limiting foreign ownership of media has upended the sector, forcing companies to scramble to comply and throwing into doubt the fate of TV channels, glossy mags and news dailies. Adopted swiftly in an atmosphere of increased distrust of the West fuelled by the Ukraine crisis, the law signed by President Vladimir Putin last October orders media companies to have no more than 20 percent foreign ownership as of Jan 1, 2016.

The legislation was allegedly needed to prevent "foreign meddling" and its patriotic undertones are forcing international media groups to relinquish Russian assets by the end of the year or leave the once-booming market altogether. German publishing giant Axel Springer announced last week that it had sold all of its Russian assets including GEO, OK! and the Russian version of Forbes, to local publisher Alexander Fedotov.

The owner the Bild tabloid, Germany's most-read newspaper, said that it has to leave Russia because being limited to a minority stake was "not acceptable." "When we entered the Russian market (in 2004), we believed in the further economic development and liberalisation of the country," president Ralph Buechi said in a statement last week. "We regret that we now have to leave."

Finland's Sanoma media group sold its 33 percent stake in Vedomosti business daily in April to Russian businessman Demyan Kudryavtsev. The newspaper is one of Russia's few remaining independent publications with op-eds frequently critical of the government's policies. The fate of the remaining shares in Vedomosti, which are owned by the Financial Times and The Wall Street Journal, is yet to be determined.

The legislation has sparked fears that the independent and liberal-leaning Forbes and Vedomosti publications, as well as the Ekho Moskvy radio station, could be stifled and face increasing pressure to tow the Kremlin's line. Columnist Andrei Babitsky said the law stripped private media outlets of their "last defence against arbitrariness", and market experts predicted it would decrease the number of publications, including entertainment magazines. The law "is a political declaration: we want to be sovereign, we want media outlets to be controlled by patriots", said Yekaterina Schulmann of the Russian Academy of National Economy and Public Administration.

### Growing Market

Russia's RBK news site reported in June that authorities were pondering softening the law - especially for apolitical entertainment outlets - fuelling uncertainty among industry observers. The Nasdaq-listed CTC media, a Russian independent broadcaster, has yet to decide on a July offer by UTH holding of Russian billionaire Alisher Usmanov to acquire a 75-percent stake in the company. Pushed to the wall with few options, many foreign-owned media groups will be forced to accept knock-down prices to comply with the law before it comes into effect as the country grapples with a crippling economic crisis.

Media companies have hurried to reduce their stakes or get rid of their Russian assets in recent weeks. Swiss publisher Edipresse parted with 40 magazines in the country, while US-based Disney and Discovery decided to remain on the Russian market, reducing ownership to required levels, with the remainder of shares going to local partners. American mass media giant Viacom could also be forced to relinquish its control of 12 television stations that broadcast in Russia, including Nickelodeon, to a conglomerate belonging to Russian billionaire Viktor Vekselberg, RBK reported.

"Russia is the fourth largest market in the world for pay television in terms of the number of subscribers," said Olga Paskina, head of Discovery for North-East Europe, in an interview with RBK. "The market is growing (in Russia), as opposed to the United States where it is on the decline, or in Europe, where it is practically not growing at all." —AFP

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