

GERMANWATCH RAISES COMPLAINT AGAINST VOLKSWAGEN

CLIMATE DAMAGING BUSINESS STRATEGY
VIOLATES OECD GUIDELINES FOR
MULTINATIONAL ENTERPRISES

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Summary

Due to its climate damaging product range, the automotive company Volkswagen contributes to anthropogenic climate change to a great extent. The business strategy - including lobby activities - is inconsistent with the EU's policy goal to reduce global earth warming to less than two degrees compared to the pre-industrial level. Hence, VW violates the OECD Guidelines for Multinational Enterprises. The Guidelines are supposed to implement corporate accountability, in the field of environmental protection amongst others, and it provides multinational enterprises with detailed instructions on how to act.

As a consequence of violations of the Guidelines through VW, on 7 May 2007, Germanwatch filed a complaint against VW at the Federal Ministry of Economics. This background paper shortly illustrates some of the reasons. The extended official version of the complaint can be downloaded at www.germanwatch.org/corp/vw.htm.

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A Climate Change

In February 2007, the first part of the newest report by the IPCC¹ (Intergovernmental Panel on Climate Change) was published. This report, at the latest, made clear to a broader public that climate change represents a huge problem for mankind. In fact, however, this report does not present basically new correlations. During the last decades, there has rather been increasing evidence for climate change, its causes and effects. This is the case at least since the first IPCC report published in 1991, and in Germany also since the report “Preventive measures to protect the Earth’s atmosphere“ published by the Enquete-Commission² in 1988 which was based on documented scientific consensus and which contained demands for greenhouse gas reductions that were accepted across all parties.

Since the publication of these scientific studies, the correlation between the emission of CO₂ as most relevant greenhouse gas and increasing global warming could not be seriously denied any longer. Explicitly and binding under international law, the Climate Change Convention (UNFCCC)³, which was passed in 1992 and came into force in 1994, acknowledged this relation. According to this convention, all parties are obliged under international law to avoid “dangerous climate change“⁴. Parties to the convention include almost all countries of the world, including all OECD countries as well as basically all developing and emerging nations. The first groups includes countries like the USA and Australia which have not ratified the later Kyoto Protocol. China and India belong to the latter.

The EU has already clearly defined that dangerous climate change can only be avoided if in the 21st century the temperature rise can be limited to less than two degrees compared to the pre-industrial level. This is consistent with increasing consensus among climate scientists. To achieve this goal with sufficient probability, a strategy is needed to reduce, until 2050, worldwide emissions by 50 percent compared to the level in 1990. By Council decision in March 2007, the EU accepted to reduce emissions by 30 percent until 2020. Even if a post-2012-agreement⁵ cannot be accomplished, the EU will endeavour to achieve an unilateral reduction of 20 percent compared to 1990.

Since 1997, the Kyoto Protocol (ratified in the EU in 2001, in force since 2005) stipulates a reduction by eight percent on average below the level of 1990 for the EU-15 and the period from 2008 to 2012. According to the equalisation of burdens within the EU, the target for Germany is a reduction by 21 percent.

Independent of these concrete goals and commitments, the need for drastic reductions of greenhouse gas emissions has been scientifically undisputed during the past 15 years since the UNFCCC was passed. Additionally, it has become more and more evident in recent years that the measures and political decisions adopted so far have not been sufficient to achieve climate protection goals and avoid dangerous climate change. Especially, the increase in emissions in the transport sector has significantly impeded the achievement of the established targets.

¹ IPCC (2007): Working Group I. The Physical Basis of Climate Change. www.ipcc.ch

² Enquete-Kommission "Vorsorge zum Schutz der Erdatmosphäre" des Deutschen Bundestages

³ UNFCCC (1992): Climate Change Convention. <http://unfccc.int/resource/docs/convkp/convger.pdf>

⁴ *ibid.*, Article 2.

⁵ The period of commitment of the current Kyoto Protocol ends in 2012. A new protocol for the following period is supposed to be negotiated until 2009.

B The role of the transport sector

In 2000, the transport sector was responsible for 20 to 28 percent of worldwide CO₂ emissions⁶. Thus, the transport sector - besides energy, industry and households - is one of the main producers of worldwide greenhouse gas emissions. What is more alarming, though, is the enormous dynamic increase of emissions in the transport sector which drastically conflict with reduction requirements. This has to be highlighted since the OECD Guidelines call upon companies to contribute to sustainable development. In order to substantiate this demand, it is decisive to which degree the company accounts for the problem (here: climate change).

At the end of 2006, the UN Climate Secretariat raised an alarm due to fast increasing emissions in the transport sector in industrialised countries. The secretariat pointed out that CO₂ equivalent emissions in the transport sector increased by 23.9 percent between 1990 and 2004 in industrialised countries⁷.

This increase of emissions in the transport sector is in sharp contrast to necessary climate protection goals and is even more dramatic on the global level. Overall, CO₂ emissions in the transport sector increased by 27 percent between 1990 and 2000, according to the third IPCC assessment report which was quoted by the Financial Times.⁸ Data provided by the International Energy Agency⁹ even show that globally transport related CO₂ emissions increased by 40.2 percent between 1990 and 2004. This is mainly due to the extremely fast increase of emissions in the transport sector in developing and emerging nations (faster than worldwide average). It should be emphasised that the international activities of VW play an important role in this context, and therefore the behaviour patterns of VW are covered by the OECD Guidelines. The future largest increase in vehicles and transport related emissions is expected to occur in those emerging nations VW is dealing with. The International Energy Outlook 2005¹⁰ expects the transport sector to increase by 3.6 percent per annum (EIA, 2005) in emerging nations, with particularly high growing rates in China, India, Thailand and Indonesia. In China, the number of cars is increasing by one fifth per annum, according to the IPCC assessment report quoted by the Financial Times.¹¹

According to the assessment report, with 50 percent the individual, and automobile traffic respectively, is the main producer of these transport related emissions. Thus, road traffic - depending on the calculation method - is directly responsible for ten percent of the emis-

⁶ The data varies mainly due to different calculation methods. Fulton and Eads assume for the year 2000 6.3 giga tons of CO₂-equivalent emissions on the basis of a life-cycle approach. In the light of an overall output of 22.6 giga tons of CO₂-equivalent emissions, this is almost 28 percent of all the greenhouse gases. The OECD guidelines suggest in chapter V.3. a life-circle approach as well. L. Fulton and G. Eads (2004): IEA/SMP Model Documentation and Reference Case Projection.

<http://www.wbcsd.org/web/publications/mobility/smp-model-document.pdf>

Contrary, in 2004 the International Energy Agency (IEA) calculated only the immediate petroleum usage in the transport sector, which equals a transport related petroleum usage of 4.762 giga tons CO₂ in 2002 in contrast to 23.116 giga tons of energy related CO₂ output. This corresponds to 20.6 percent. IEA (2004): World Energy Outlook 2004.

⁷ UNFCCC (2006): 2006 UNFCCC greenhouse gas data report points to rising emission trends. Press release 30.06.06.

http://unfccc.int/files/press/news_room/press_releases_and_advisories/application/pdf/20061027_ghg_press_release_final_english.pdf

⁸ Financial Times Deutschland (20.03.2007).

⁹ IEA (2006): CO₂ Emissions from Fuel Combustion.

¹⁰ IEA (2005): World Energy Outlook 2005.

¹¹ Quoted from Financial Times Deutschland, 20.03.2007.

sions. Taking the whole life cycle into account, starting with the development and production of the car, it is responsible for 14 percent.

In the future - if political frameworks are not modified significantly or if automotive companies do not change their strategies voluntarily - the transport sector is expected to account for 60 percent of worldwide greenhouse gas emissions until 2025 compared to 2002.¹² Other often quoted projections expect the energy usage of the transport sector to increase by 80 percent until 2030 compared to 2002.¹³ In the year 2058, transport related emissions - if this trend is elongated - would be 160 percent above the 2002 level, and they would amount to 60 percent of today's worldwide level.

C The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises¹⁴ represent a code of conduct for worldwide responsible entrepreneurship. In ten chapters, governments provide enterprises with recommendations concerning human rights, transparency, employment, industrial relations, environment, corruption, consumer interests, technology transfer, competition and taxation.

The Guidelines for Multinational Enterprises were passed by the OECD in 1976. In 2000, they were considerably revised and extended, especially those parts concerning environmental protection. The Guidelines are attached to an OECD Council Decision and binding for the OECD member states, but - unlike the Kyoto Protocol from 1997 - they do not represent a treaty under international law. Nevertheless, the Guidelines refer to international agreements, such as the Rio Declaration, and they emphasise the principle of sustainable development as well as the precautionary principle. Enterprises are also supposed to consider international agreements, which means also the UNFCCC and the Kyoto Protocol, amongst others.

The Guidelines address all transnational enterprises with headquarters in one of the signatory states, and they are valid worldwide for these enterprises. The OECD Guidelines have been signed by the 30 OECD countries so far, as well as Argentina, Brasil, Chile, Estonia, Israel, Latvia, Lithuania, Slovenia and Romania.

By signing the Guidelines each government commits itself to setting up a National Contact Point (NCP). The NCP is supposed to be established at a governmental body. Thus, governments are involved in the implementation of corporate accountability. In Germany, the NCP is located in the Federal Ministry of Economics and Technology. The contact points are supposed to support the implementation of the Guidelines, to inform the public about them and to handle complaints. The complaint mechanism is specified in the "Procedural Guidance" of the OECD Guidelines and is being attended and monitored by an OECD committee. A complaint can be raised at the NCP, if an enterprise is breaching the

¹² Asian Development Bank (2006): Energy Efficiency and Climate Change Considerations for On-road Transport in Asia, MAIN REPORT, S. 2.

¹³ International Energy Agency (IEA) (2005): World Energy Outlook 2005; World Business Council on Sustainable Development (2004): Mobility 2030: Meeting the Challenges to Sustainability. <http://www.wbcsd.ch/plugins/DocSearch/details.asp?type=DocDet&ObjectId=NjA5NA>

¹⁴ Complete version http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html

Guidelines. After reviewing and accepting the complaint, the NCP conducts a mediation process between the complainant and the company. If this fails, the NCP must execute an official statement including recommendations on the implementation of the Guidelines.

Since the revision of the Guidelines in 2000, more than 130 complaints have been raised worldwide, which were mainly submitted by unions and NGOs¹⁵. Germanwatch has used this mechanism for several times and has raised OECD complaints against Continental¹⁶ and Bayer¹⁷, amongst others. Germanwatch is also focussing on promoting better implementation of the Guidelines on national and international level and was one of the co-founders of the international civil society network OECD Watch¹⁸. Five years following the revision of the OECD Guidelines, OECD Watch published an extensive analysis and assessment of their implementation so far.¹⁹ Together with other German NGOs, Germanwatch elaborated a list of demands for improved implementation of the Guidelines in Germany and submitted it to the Germany Parliament end of 2006.²⁰

D The Volkswagen Corporation and its violations of the OECD Guidelines

Volkswagen (below VW) is one of the largest car producers in the world. As measured by the number of produced cars, with 4.979.487 VW was third in international comparison in 2005, behind Toyota and General Motors.²¹ The company's production is very international: Only 38 percent of the production are conducted in Germany²², most of the cars are produced by worldwide VW establishments or by VW subsidiary companies like Audi, Seat, Skoda or Bugatti. During the last years, the production of VW increased significantly: In the period from 1990 to 2003, worldwide car production increased by eleven percent, while VW's production increased by 47 percent.²³ Apart from this economic importance, VW plays a significant role for the environment. In 2005, the cars produced by VW were accountable for 15 million tons of CO₂ emissions.²⁴ This is one and a half times as much as the total CO₂ emissions of a big country like Kenya.²⁵ Thus, VW is also in charge of the effects of their products on climate change.

The OECD Guidelines want the companies to align their business practices with the necessities of global sustainable development, especially international activities like in-

¹⁵ OECD (2006): OECD Guidelines for Multinational Enterprises. 2006 Annual Meeting of the National Contact Points. <http://www.oecd.org/dataoecd/23/33/37439881.pdf> and www.oecdwatch.org

¹⁶ <http://www.germanwatch.org/tw/continental.htm>

¹⁷ <http://www.germanwatch.org/tw/bayer.htm>

¹⁸ <http://www.oecdwatch.org>

¹⁹ http://www.oecdwatch.org/docs/OECD_Watch_5_years_on.pdf

²⁰ <http://www.germanwatch.org/corp/oecd-bt06.pdf>

²¹ OICA (2006): World Motor Vehicle Production by Manufacturer. <http://www.oica.net/htdocs/Main.htm>

²² Own calculations, data source: see above.

²³ Data from 1990 from the car catalogue; data from 2003: <http://www.oica.net/htdocs/Main.htm>²³

²⁴ Own calculations based on the assumption that every produced car runs for approx. 13.000 km and consumes 7,7l/100 km, which means 1000l/year. Due to the fact that the consumption of one litre causes 2,5 kg CO₂, one vehicle produces 2,5 tons of CO₂ per year. The production of 4,9 mio. cars per year (<http://www.oica.net/htdocs/Main.htm> for 2005) thus results in more than 12 mio. tons of CO₂ per year per armada. But this only covers the 80 percent of the CO₂ which is produced during usage. If the CO₂ is added which is caused during the production, in 2005 one armada accounted for 15 mio tons of CO₂.

²⁵ IEA (2006): CO₂ Emissions from Fuel Combustion.

vestments and trade.²⁶ The OECD expects the companies to meet the Guidelines everywhere the companies are performing business activities.²⁷ The OECD further says that the Guidelines are valid for the multinational enterprises' transactions worldwide.²⁸ Thus, this complaint does not only refer to the production of cars through VW, but also to the sale, marketing etc. - hence to all business activities. Furthermore, the complaint addresses the company's activities in Germany, because on the one hand the effects of CO₂ emissions on climate change will be global and do not stop at national borders. On the other hand, the strategic decisions of VW are made in the head quarter in Germany, and research as well as product development mainly take place in Germany.

Reasons for the complaint against Volkswagen:

Germanwatch decided to raise a complaint against Volkswagen due to the following reasons:

1. On the way to implementing the self commitment of the automotive industry with the EU to reduce the CO₂ emissions of their cars, VW and Audi have achieved less progress (expressed as a percentage) than the other two big German automotive companies, DaimlerChrysler and BMW.
2. We found more violations of the OECD Guidelines through VW than through other automotive companies.
3. VW produces globally: only 38 percent of the production is carried out in Germany, the large majority of cars is produced worldwide in various VW subsidiaries, including several developing countries. VW is market leader in China, which is a country of high importance for the future of our climate. However, in this country, VW and Audi are massively thrusting themselves into the fuel intensive "premium" sector which is particularly relevant for greenhouse gas emissions.
4. During the last months, the company was significantly less willing to co-operate and discuss with Germanwatch than DaimlerChrysler and BMW.
5. Germanwatch has got the notion that VW has been aggressively lobbying against necessary climate protection regulations worldwide.
6. Public authorities own approximately one fifth of the shares. Hence, VW should especially be committed to common welfare and support policies of those countries in which the company operates.

Germanwatch is currently investigating OECD complaints against BMW and Daimler-Chrysler.

Germanwatch raises this complaint in the context of global climate change and facing the fact that the transport sector as the sector with the most dynamic emissions growth represents one of the main problems opposing necessary greenhouse gas reductions to avoid

²⁶ OECD: The OECD Guidelines for Multinational Enterprises. Revision 2000. Preface. para. 4. http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html

²⁷ *ibid.*, chapter 1, paragraph 2.

²⁸ *ibid.*, Statement by the Chair of the Ministerial, Juni 2000.

dangerous climate change.²⁹ The concrete behaviour of VW is - according to the evaluation of Germanwatch - in a number of cases inconsistent with the OECD Guidelines. The deficits in the performance can be grouped like this:

- 1) Given the problem of climate change and the two-degree-limit for global temperature rise, which was defined by the EU on the basis of scientific studies, a company like VW must formulate and regularly evaluate detailed climate protection goals for single products as well as for the whole product range. The number of cars sold by VW, especially of fuel intensive cars, is increasing in OECD as well as in non OECD countries. Neither sales and marketing, nor investments in production capacities have been geared to climate protection goals so far.
- 2) VW does not regard sufficiently dangers for the climate emerging from their products. Otherwise, beyond only declaring kilometre related consumption, they would have to forecast and evaluate the actual long lasting emissions of their produced cars and include those data in the management ("Only what is measurable can also be managed.")
- 3) VW does not follow the self-commitment the company entered into through the European association ACEA. Facing the existent and published strategy as well as the current product range, it is not clear how VW intends to achieve the self-commitment to reduce the total fuel consumption of its products to 140g CO₂/km until 2008. In fact, the value of emissions produced by VW's cars amounted to 162.5g CO₂/km³⁰ at the end of 2006. Referring to the initial value of 185g CO₂/km³¹ in 1995, VW is still far away from achieving its goal. VW, according to a survey by Transport and Environment³², had only achieved 48 percent of its reduction commitment in 2005, Audi only 35 percent.³³ Thus VW would have been even less active than the two other big companies in Germany: DaimlerChrysler and BMW.³⁴
- 4) VW massively advertises vehicles with high fuel consumption, while at the same time users are not informed about the climate relevance of cars in a transparent way. The extend of marketing for fuel-efficient car types is incommensurable with the marketing for fuel intensive luxury types.
- 5) VW has directly and indirectly (through association memberships) been involved in the distribution of wrong information about climate change or planned policy measures.
- 6) VW has directly and indirectly been active in lobbying against climate policy frameworks of different governments - for example in China, California and the EU. This, amongst others, regards legislation approaches that have been intended to limit the consumption of new passenger cars and thus to contribute to climate protection.

²⁹ UNFCCC (1992). Article 2.

³⁰ University of Applied Sciences Gelsenkirchen (Fachhochschule Gelsenkirchen): CO₂ emissions of new cars sold in Europe in 2006. In: Capital: preliminary notice 03/2007. (CO₂-Emissionen der 2006 verkauften Neuwagen in Europa. In: Capital: Vorabmeldung 03/2007). www.capital.de/div/100005642.html

³¹ Volkswagen (2005): Sustainability Report 2005/06. S. 30.

³² Transport & Environment (2006): How clean is your car brand. www.transportandenvironment.org/Article250.htm

³³ Even if the valuation was based on the self-commitment of all companies to reduce emissions by 20 percent on average, in the first eleven years since Volkswagen had agreed on the commitment, the company would only have achieved 12.2 percent. According to VW's Sustainability Report 2005/06, the initial value amounted to 185g/km in 1995. Until the end of 2006, referring to the University of Applied Sciences Gelsenkirchen, with 162.5g/km VW was still far away from its reduction goal of 140g/km.

³⁴ Transport & Environment (2006): How clean is your car brand.

In the opinion of Germanwatch, these behaviour patterns represent extensive violations of the principles written down in the OECD Guidelines. Those principles are not only valid for the company, but VW also explicitly committed itself to these rules.³⁵ The complaint concerning the implementation of these principles mainly refers to four chapters of the Guidelines: the main focus is on chapter V - Environment. Additionally, the complaint alludes to chapter II - General Principles, III - Information Disclosure and VII - Consumer Protection. In the context of the intended proceedings, Germanwatch - in the role of the complainant - raises the above questions and argues that, in 15 exactly specified cases, VW has not or not sufficiently implemented the Guidelines.

This complaint regards the company's business activities on three levels:

- investments and sales in big emerging nations like China, Brazil, Argentina, Mexico, South Africa, and India, for which the largest growth of car consumption can be expected (among these are OECD countries like Mexico, signatory states to the OECD Guidelines like Argentina and Brazil, and non-members like China and South Africa),
- investments and sales in all other OECD countries (including the EU and the USA),
- investments and sales in Germany.

These levels cannot always be clearly separated, for example if car types are developed in Germany but produced worldwide. Where possible, these regional differentiations will be regarded.

E Expectations towards the National Contact Point

- Germanwatch expects the NCP to open and enforce the proceedings for the solution of conflicts and problems arising from the implementation of the Guidelines in accordance with the "Procedural Guidance".
- Germanwatch expects the NCP to accomplish fair proceedings with the goal to make VW implement the OECD Guidelines.
- Germanwatch expects the NCP to execute an official statement if the company fails or is not able to adapt its business activities to the Guidelines.
- Germanwatch expects the NCP to ensure maximum possible transparency of the proceedings.
- Since this complaint notably deals with environmental protection, Germanwatch expects the NCP to involve the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety in the proceedings. Furthermore, Germanwatch expects the "Working Party on the OECD Guidelines" to be involved in the considerations promptly.

³⁵ Volkswagen: Sustainability. Strategy. Sustainability Management: „We regard the conventions of the International Labour Organization (ILO) as well as the OECD Guidelines for Multinational Enterprises as compulsory for our actions.“ http://www.volkswagen-nachhaltigkeit.de/nhk/nhk_folder/de/strategie/nachhaltigkeitsmanagement.html (accessed 05.02.2007).

F Expectations towards VW

Germanwatch expects VW to adapt its business practices to the Guidelines and to international law (Art. 2 UNFCCC) to contribute to combating dangerous climate change.

Hence, the following steps are necessary:

Providing a strategy plan for adapting the business strategy to the two-degree-limit

The company should provide a strategy plan. This plan should demonstrate how the products and services of VW contribute to achieving the obligation under international law to avoid dangerous climate change (Art. 2 UNFCCC). The EU (Council, Parliament and Commission) leaves no doubt that this means to limit global temperature rise to two degrees. The German government also feels constrained to this goal.

Providing a development plan for remodelling the product range and the mobility concept

The company should provide a development plan for its own product range to align its sale projections and mobility concept with the two-degree-limit. Particularly, the development plan should demonstrate how the company's business strategy contributes to limiting and - from 2020 - reducing greenhouse gases in the transport sector in emerging nations.

The development plan should also include a concept for systematically linking the status symbol car to low fuel consumption and a mobility service concept which is based on low CO₂ consumption. The company should commit itself to enhancing the image of fuel effective car types within design development and marketing.

The development plan should also define measures for technology transfer to developing and emerging nations to make climate protecting technologies available as fast as possible in these countries.

Informing customers

The company should commit itself to changing the declaration of CO₂ consumption so that customers can assess the fuel consumption and emissions of cars at first view - and support political frameworks accordingly.

The company should further commit itself to focussing its marketing on fuel effective car types. Moreover, VW should commit itself not to publish wrong or misleading arguments in public relations as well as in business associations. Besides, it should commit itself to supporting the two-degree-limit as business goal.

Accepting and following necessary binding and self assumed rules

The company should commit itself to supporting political frameworks consistent with the two-degree-limit and to refraining from lobbying against such frameworks. It should also commit itself to efficiently implementing respective frameworks.

VW should support frameworks that allow to develop innovative business models with fuel efficient car types and to place incentives for customers to change to fuel efficient models.

The company should commit itself to, in the context of the ACEA, effectively implementing the voluntary self-commitment and to motivating other ACEA-members to do the same.

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Our central goals are:

- Effective and fair instruments as well as economic incentives for climate protection
- Ecologically and socially sound investments
- Compliance of multinational companies with social and ecological standards
- Fair world trade and fair chances for developing countries by cutting back dumping and subsidies in world trade.

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