

## PRESS FILE

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# Popular Action for compensation of Portuguese consumers harmed by the Daimler/Mercedes-Benz “dieselgate”

*A popular action has been filed today at the District Court of Lisbon, by consumer protection association Ius Omnibus. Ius Omnibus is seeking compensation for all consumers who own Mercedes-Benz vehicles, with diesel engines, in accordance with Euro 5 and Euro 6 (up to Euro 6c) – for Daimler’s use of illegal cheat devices, the prohibition of which was confirmed by the European Court of Justice on 17<sup>th</sup> of December 2020 (Case C-693/18).*

*If it succeeds, this action will cause Daimler/Mercedes-Benz to pay compensations estimated at a minimum of €4.200,00 per vehicle.*

### 1. What is the object of this action?

This is a popular action for the defense of diffuse and individuals’ homogenous interests, brought by Ius Omnibus.

It is an action to defend consumers’ rights infringed by the unlawful commercial practices adopted by Mercedes-Benz, in violation of the EU Regulation for the approval of vehicle types. This action is being brought under the Popular Action Act (Law no 83/95) and under the Consumers Protection Act (Law no 24/96).

### 2. What are Daimler/Mercedes-Benz’s unlawful behaviors?

The action is based on the six cheat devices in the SCR information control system and two cheat devices in the ECR outgoing control system, prohibited by the Emissions Regulation no. 715/2007 of the European Parliament and of the Council of 20 June 2007.

The prohibition of cheat devices was clarified by the Court of Justice of the European Union, in its judgment delivered on 17 December 2020 in Case C-693/18.

Through the installation of the cheat devices, Daimler/Mercedes-Benz obtained the approval of the affected vehicles, despite, in normal conditions of use, them emitting much more nitrogen oxide (NOx) than allowed by the Emissions Regulation, harming the population's health and the environment.

### **3. Who is represented in this action?**

This popular action represents all consumers residing in Portugal who own Mercedes-Benz diesel vehicles, approved in accordance with European emission standards Euro 5 and Euro 6 (up to Euro 6c), which have been placed on the market for the first time between 1 January 2009 and 31 December 2019, and which were registered in Portugal between 1 January 2009 and the date of the final judgment in this case.

Consumers do not have to do anything to be represented and to be entitled to compensation if the action is successful.

Any consumer who does not wish to be represented in this action can exercise the right to opt-out, communicating this intention to the Court. Consumers may also decide to intervene in the legal proceedings in support of Ius Omnibus.

### **4. How have Portuguese consumers been harmed by the practices of Daimler/Mercedes-Benz?**

Daimler/Mercedes-Benz behavior harmed all Portuguese citizens by releasing greater amount of NOx into the atmosphere than legally permitted, damaging the environment and health of the population.

Daimler/Mercedes-Benz behavior caused damage per vehicle of at least €4,200.00.

Daimler/Mercedes-Benz's unlawful behavior artificially increased the purchase price of the vehicles and reduced their resale value, and caused moral damage to their owners.

## **5. What is sought in this action?**

Ius Omnibus asks that the Court declare that Daimler/Mercedes-Benz continuously violated the Emissions Regulation since 2009, and that it be ordered to remove all cheat devices and to compensate affected consumers.

## **6. How does this popular action and consumer compensation work?**

The collective redress mechanism for consumers used in this case and provided for in the Portuguese popular action rules has never been tested in practice until the last step.

However, according to the law, the following will happen if the Court agrees with Ius Omnibus' claim:

- 1) the Court will set the global amount of compensation to be paid by Daimler/Mercedes-Benz to consumers, to be deposited in a compensation fund;
- 2) the Court will designate an entity responsible for the management of the compensation fund, including the receipt, management and payment of compensations to the harmed consumers;
- 3) the Court will set a deadline for consumers to claim their share of the compensation and that information will be publicized in various ways;
- 4) consumers will be invited to contact the entity that manages the compensation fund, and to provide the evidence determined by the court and payment instructions, so as to receive their share of the compensation;
- 5) at the end of the legally established period, the part of the global compensation remaining not requested by consumers:
  - (i) will be used to pay the expenses incurred by Ius Omnibus as a result of the action; and
  - (ii) what remains will be handed over to the Ministry of Justice, to be assigned to support access to justice, including the promotion of popular actions.

## 7. How is this action financed?

Preparing an action of this type, in an appropriate way that allows success to be achieved, is extremely expensive, involving the hiring of lawyers and specialized consultants. The success of the action is dependent on adequately dealing with a broad and very technical factual matter and an extremely complex area of technical knowledge, as well as being able to react effectively to the large financial and human resources that will be deployed by the other side, which benefits from a profound information asymmetry.

The lack of financial resources of consumer protection associations is one of the main factors that explains why these legal mechanisms are almost never used. Indeed, as public funds are not available to finance popular actions of this kind for the time being (they may become available after one of these actions is won), it is impossible for an individual consumer or a consumer association to bear the costs of several hundreds of thousands of euros that are inevitably at stake in these actions.

The only way to be able to promote such an action is to obtain financing for the legal expenses necessary for the litigation. This practice, referred to as litigation funding, is already common practice in other Member States of the European Union and is now beginning to be used in Portugal. It was litigation funding that made it possible to organize an opt-out action to compensate consumers against Mastercard in the United Kingdom and several others since then. The Competition Appeal Court of the United Kingdom confirmed that the action would have been impossible without such financing and that, therefore, to refuse the possibility of such financing and the funder's remuneration would be to refuse access to justice and the exercise of the rights in question.

The present action is financed by the Consumer Justice Network B.V., a funder composed of lawyers and litigation funders from the Netherlands and the United States of America, with proven experience in funding representative actions related to “dieselgate”.

The funder assumes all costs of litigation and takes all the risks. The funder will only recover its investment if the action is successful, only if and to the extent that the court

authorizes it, and only if there is a sufficient amount left over from the global compensation after distribution to all consumers who request their share.

Under the above-mentioned conditions, Ius Omnibus committed to return to the funder the money invested, plus a fair remuneration for the risk and the during which its capital was unavailable, the proportionality of which will be controlled by the court. This funding scheme is based on the reality that there always tends to be a percentage of consumers who do not claim their share of the compensation.

The funding agreement guarantees the prevention of money laundering and financing of terrorism and transparency before the Court regarding the source of the funds. This funding mechanism guarantees that consumers will not have to bear any costs with the pursuit of this action, and that any consumer who asks for his/her share of the compensation at the end of the case will be entitled to 100% of his/her compensation.

## 10. About Ius Omnibus

Ius Omnibus is a non-profit association, created in March 2020, with the aim of protecting consumers in the European Union. It is based and registered in Portugal and has members from several European countries.

The board of Ius Omnibus is composed by the following members:



Sandra Passinhas  
President  
Professor at the University of Coimbra



Julia Suderow  
Vice-President  
Professor at the da University of Deusto



Maria José Azar-Baud  
Vice-President  
Professor of University Paris-Sarclay

Ius Omnibus is represented in this action by Pais de Vasconcelos & Associados Law Firm.

# iusomnibus

The pursuit by Ius Omnibus of this action is being carried out in the scope of a multijurisdictional effort, in partnership with the Diesel Emissions Justice Foundation.

