

Annual Report 2020 of the Board of Stichting Diesel Emissions Justice

Introduction

1. The Foundation was established in the Summer of 2019 in response to the Diesel Emissions Scandal. Public indignation arose due to the circumvention by several car manufacturers, including Volkswagen AG, Daimler/ Mercedes Benz, and Fiat Chrysler (currently named Stellantis NV) of the intensified EU- emission standards, primarily by using cheat devices to falsify test results, with all the associated consequences for the environment, public health and the (financial) harm caused to parties who bought the vehicles in question. The Foundation's aim is to support the interests of the Affected Owners in both the Netherlands and abroad in their quest for compensation for damages resulting from this behaviour.
2. By making this second report ('bestuursverslag') on the Foundation's activities available on its website, the Foundation's board (the **Board**) fulfils its obligation to comply with Sec. 3:305a(2)(d)(4) of the Dutch Civil Code. This report covers (i) the Foundation's inception and functioning, (ii) its activities and (iii) its 2020 Financial Statements. For a description of the Foundation's governance and compliance with the Dutch Claim Code 2019, we refer to the Claim Code Compliance report / Foundation's Governance Statement 2020 that can be downloaded from the Foundation's website.

The Foundation's inception and functioning

3. The Foundation has, following a careful selection process for the necessary expertise after its inception in 2019, and in accordance with the Foundation's Governance Statement 2020 mentioned above, secured the participation of a wide range of leading experts whose names and resumes can be found on the Foundation's website. These were, first of all, the Board Members and Supervisory Board members. In addition, the Foundation retained legal Counsel and other advisers in several European countries in order to determine further legal strategy as well as a number of other professionals assisting the Foundation for promoting and PR-services. Given the Foundation's considerable workload, which is due in part to its activities in multiple jurisdictions, it also has a full-time director who is in charge of daily operations. The Foundation's director is Femke Hendriks.
4. The Board, Supervisory Board and managing director have held frequent Board meetings via conference calls to discuss the Foundation's strategy and operational activities, including an in-person meeting in Paris. Regarding specific topics, frequent email correspondence and bilateral calls took place between Board members, the managing director and the Foundation's advisors, such as local counsel.

Activities

5. The Foundation has investigated the Diesel Emissions Scandal in detail by, among other things, holding exploratory talks with parties involved in proceedings against one or more Vehicle Manufacturers in Germany, the Czech Republic and the United Kingdom; it also has provided and continues providing funding for research / technical evidence on how the Manipulation system(s) in the various cases operate(s).

6. In 2020, the Foundation has brought three separate collective proceedings before the District Court of Amsterdam after having sent notification of liability / demand letters to various responsible parties. The first writ of summons was filed on 13 March against Volkswagen AG, Audi AG, Seat SA, Skoda Auto AS, Dr. Ing. H.c. F. Porsche AG, Robert Bosch GmbH, Pon's Automobielhandel B.V. and individual car dealers. The Volkswagen case shocked the world in 2015 when it was revealed that vehicles, produced by Volkswagen, Audi, SEAT, Škoda and Porsche were equipped with software in order to systematically and fraudulently circumvent legal emissions standards. In real driving conditions, these cars emitted 10 to 40 times more NOx (nitrogen oxide) than in test situations. Although Volkswagen admitted in October 2015 that it was ashamed of its own behaviour and promised to resolve the problems for each affected customer, the Foundation unfortunately had to conclude that Volkswagen has not fulfilled its promise and that it has left its European customers out in the cold.

7. On 23 June, the Foundation issued its second writ of summons against Daimler AG, producer of Mercedes-Benz vehicles, its Dutch importers and individual dealers for damages resulting from the use of manipulation software to falsify emissions testing. The German authorities (KBA) have established defeat devices in a range of Mercedes models and ordered a series of recalls. An additional investigation by the Foundation's retained expert revealed the mechanics behind these defeat devices and uncovered an astonishing number of -at least- eight illegal defeat devices that limit the operation of the vehicle's emission control system. These defeat devices activate only outside the type approval testing environment. By doing so, Daimler circumvented the ever more stringent Euro 5 and 6 standards at the expense of their customers, public health and the environment.

8. On 31 August 2020, the Foundation has served its third writ of summons against Fiat Chrysler Automobiles NV, FCA Italy SPA, Alfa Romeo SPA, FCA US Ltd, the Dutch importer FCA Netherlands BV and a number of individual dealers. Globally, between 2009 and the present, inter alia the following FCA brands: Fiat, Alfa Romeo and Jeep, installed impermissible "defeat device software" in millions of their diesel vehicles. The nature of the defeat device is simple: the vehicles operate in a clean mode that is compliant with regulatory testing and switches to an alternative, "dirty mode", after the standardized twenty-minute NEDC test cycle would be complete. In a real- world driving test, that takes longer than the NEDC test time, the affected vehicles grossly exceed the legal limits for NOx emissions. This was done to inter alia decrease maintenance costs, increase performance, and to make the vehicles more competitive in the market.

9. The Foundation pursues all of these proceedings under the Dutch Act on redress of mass damages in a collective action, effective as of 1 January 2020. This (WAMCA-) legislation provides for a unique and efficient mechanism for collective redress.
10. The Foundation has requested the Amsterdam District Court in all three proceedings be appointed as Lead Plaintiff in order to lead the litigation against defendants mentioned above. All defendants have appeared before the Dutch Court and are vigorously defending themselves against the claims brought.
11. At the end of 2020, the Foundation entered into a Cooperation Agreement with the Portuguese Consumer Association Ius Omnibus. In close collaboration with the Foundation, Ius Omnibus filed two opt-out actions ('Popular Actions') in Portugal in the first half of 2021, representing all consumers who purchased Mercedes and Fiat Dieselgate- affected cars in Portugal.
12. Simultaneously, the Foundation continues to participate in the public debate. In 2020, it has drawn significant attention, in the Netherlands, Belgium and France, to the position of the car owners in the Diesel Emissions Scandal and the need to come up with a solution for all affected owners. This has yielded meaningful media coverage in the Netherlands, Belgium, France, and across the EU.
13. The Foundation has also actively cooperated with environmental and consumer organisations. One result, started in 2019, but with effect in 2020, was a round table and press conference held in France on 23 January 2020 together with the French consumer organisation *Familles Rurales* and the environmental organisation *France Nature Environnement*. In the Netherlands, the Foundation enjoys the support of *Milieudefensie* (Friends of the Earth Netherlands).

Financial year 2020

14. As regards funding for the separate actions, the Foundation decided to raise funds with an external litigation funder and concluded -after the Volkswagen funding agreement in 2019- two additional litigation funding agreements with Consumer Justice Network B.V., in order to finance the Daimler/Mercedes and Fiat Chrysler litigation, rather than demanding an upfront fee from its participants.
15. The Foundation's expenditure over 2020 concerns legal costs as instructing – and taking legal advice from legal Counsel in The Netherlands, Belgium, France and other jurisdictions, book building efforts, claim verification costs, PR- costs with a view to raising public awareness regarding the Diesel Emissions Scandal and the Foundation's actions for full compensation of those affected in particular.

Conclusion

The Board takes the view that the Foundation's activities in 2020 and its expanded scope towards two other Car manufacturers and related parties have further strengthened the interests of its constituency, which has grown significantly in 2020.

The Board will keep a close eye on developments around other Car Manufacturers who seem to have been engaging in similar unlawful behaviour as regards emission-standards, and will assess potential next steps in accordance with the Foundation's purpose.

Based upon the Financial Statements, we are happy to state that the financial position of the Foundation is solid and healthy, and forms a sound basis for the Foundation's future efforts to protect all affected by Dieselgate across Europe.

Amsterdam, 16 June 2021

Andrew Goodman, Chairman

Maria José Azar-Baud

Miguel Sousa Ferro