

Stichting Diesel Emissions Justice
Amsterdam

Annual report 2021

Stichting Diesel Emissions Justice Amsterdam

BOARD REPORT ON 2021

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 behavior.
2. By making this third report ('bestuursverslag') on the Foundation's activities available on its website, Foundation's board (the Board) fulfills 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 the functioning, (ii) its activities and (iii) its 2021 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 PR-services. Given the Foundation's considerable workload, which is in part due to its activities in multiple further legal strategies, it had a full-time director who was in charge of daily operations, as well as a number of other professionals assisting the Foundation. Once the Foundation was up and running, Mrs. Femke Hendriks resigned in 2021 as it was cost efficient and no longer required to have a full time director.
4. The Board, Supervisory Board and managing director have held frequent Board meetings via conference calls and in-person meetings to discuss the Foundation's strategy and operational activities regarding specific topics, frequent email correspondence and bilateral calls took place between Board members, the managing director and the Foundation's advisers, 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 to provide funding for research and technical evidence on how the manipulation system(s) in the various cases operate.
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 March 13th against Volkswagen AG, Audi AG, Seat SA, Skoda Auto AS and Dr. Ing. H.c. F. Porsche AG.
7. On June 23rd, 2020, the Foundation issued its second writ of summons against Daimler AG, producer of Mercedes-Benz's 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 the presence of 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 inside the 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.

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Activities

8. On August 31st, 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 the defendants mentioned above. All defendants have appeared before the Dutch Court and are vigorously defending themselves against the claims brought forward.
11. At the end of 2020, the Foundation entered into a Cooperation Agreement with the Portuguese Consumer Association lus Omnibus. In close collaboration with the Foundation, lus Omnibus filed two opt-out actions ('Popular Actions') in Portugal in the first half of 2021, representing all consumers who purchased Mercedes and Fiat Dieselpgate-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 January 23rd 2020 together with the French consumer organization Families Rurales and the environmental organization France Nature Environnement. In the Netherlands, the Foundation enjoys the support of Milieudefensie (Friends of the Earth Netherlands).

Financial year 2021

14. With regard to the funding of 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 2021 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.

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Conclusion

The Board takes the view that the Foundation's activities in 2021 and its expanded scope towards two other car manufacturers and related parties have further strengthened the interests of its constituency.

The Board will keep a close eye on developments around other car manufacturers who seem to have been engaging in similar unlawful behaviour with regards to emission-standards, and will assess potential future 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, September 14th, 2022

A.D. Goodman

M.J. Azar-Baud

J.L. Suderow

L.J. Tiesinga