

role decision

AMSTERDAM COURT

private law department

Roll call of May 7, 2025

in joined cases C/13/686493 / HA

ZA 20-697 of

the foundation
DIESEL EMISSIONS JUSTICE FOUNDATION,
based in Amsterdam, e i
s e r e s,
lawyer mr. J.D. Edixhoven in Amsterdam,

against

1. the company incorporated under
foreign law MERCEDES-BENZ GROUP AG,
based in Stuttgart, Germany,
3. the private company with limited liability MERCEDES-
BENZ NEDERLAND B.V.,
based in Nieuwegein,
attorney at law Mr. J.S. Kortmann of Amsterdam,
4. the private company with limited liability ASV
AUTOMOBIELBEDRIJYEN B.V.,
based in Veghel,
5. the private limited liability company
AUTO KÖKCÜ B.V.,
based in Vijfhuizen,
6. the private company with limited liability AUTO WÜST
DORDRECHT B.V.,
based in Oud-Beijerland,
7. the private company with limited liability AUTO WÜST
HELLEVOETSLUIS B.V.,
based in Oud-Beijerland,
8. the private company with limited liability AUTO WÜST
B.V.,
based in Oud-Beijerland,
9. the private company with limited liability VAN DRIEL
AUTOBEDRIJF B.V.,
based in Liempde,
10. the private company with limited liability LOUWMAN
MB G B.V.,
based in The Hague,

11. the private company with limited liability LOUWMAN MB R B.V.,
based in The Hague,
12. the private company with limited liability AUTOSERVICE VAN DEN AKKER B.V.,
based in Uden,
14. the private limited liability company **JOB TWENTE B.V.**,
established in Zuna, municipality of Wierden,
15. the private limited liability company **COR MILLENAAR B.V.**,
based in Amstelveen,
16. the private limited liability company GOMES NORTH HOLLAND B.V.,
based in Alkmaar,
17. the private company with limited liability LOUWMAN MB B.V.,
based in The Hague,
18. the private company with limited liability MERCEDES-BENZ DEALER BEDRIJVEN B.V.,
based in The Hague,
19. the private company with limited liability SMEETS M.B. EINDHOVEN B.V.,
based in Heerlen,
20. the private company with limited liability SMEETS M.B. VENLO B.V.,
based in Heerlen,
21. the private company with limited liability SMEETS M.B. **ZUID-LIMBURG B.V.**,
based in Heerlen,
22. the private limited liability company **HEDIN AUTOMOTIYE 1M B.V.**,
(formerly STERN 1 M B.V.),
based in Utrecht,
23. the private company with limited liability VAN MOSSEL MB B.V.,
based in Rotterdam,
24. the private company with limited liability WENSINK AUTOMOTIVE B.V.,
based in Apeldoorn,
attorney at law Mr. B. Kemp of Amsterdam,

g e d a a g d e n,

and

C/13/695611 / HA ZA 21-60 of

the foundation
CAR CLAIM FOUNDATION,
based in Rotterdam, e i
s e r e s,
Advocate mr. P. Haas in Rotterdam,

against

the aforementioned defendants.

Diesel Emissions Justice Foundation will hereinafter be referred to as SDEJ, Car Claim Foundation will hereinafter be referred to as Car Claim. Defendants 1 and 3 will hereinafter be collectively referred to as Mercedes. Defendants 4 to 12 and 14 to 24 will hereinafter be collectively referred to as the Partners.

1. The conduct of proceedings

1.1. By judgment dated Nov. 13, 2024, the District Court granted Mercedes an order pursuant to Section 22 Rv.

1.2. Mercedes filed a challenge request on February 27, 2025, regarding Mr. R.H.C. Jongeneel. This was denied by judgment on April 10, 2025.

1.3. Mercedes took the Deed on March 5, 2025 after interlocutory judgment of November 13, 2024 containing Article 22 Rv injunction, with exhibits.

2. The **review**

2.1. Mercedes repeated and elaborated on its objections to the order granted under Section 22 Rv in the deed mentioned in 1.3 above.

2.2. The court sees no reason herein to reverse this order. The court does note, however, that to the extent that reference was made to the applicable regulations and the case law of the CJEU in explanation of the order, its interpretation should be regarded as a preliminary judgment of the court, which can be responded to in the statement of reply and at the substantive oral hearing.

2.3. Mercedes has answered some of the questions raised by the court. It also explained that it considers it impossible to answer the questions in the Article 22 Rv injunction for all the Vehicles Involved. It has instead chosen to answer the questions based on sample parameter sets. To select these example parameter sets, Mercedes looked, within each engine type and per emission class (Euro 5 and Euro 6), at the vehicle type that was most frequently registered new in the Netherlands with the RDW during the relevant period. This resulted in 30 example parameter sets, which are estimated to be representative of approximately 18% of the Vehicles Involved. It answered the questions for those sample parameter sets.

2.4. For some of the questions, Mercedes relied on the business confidential and competition-sensitive nature of the requested data and therefore refused to submit them. It has therefore submitted Production 49 on SDEJ/37 on Car Claim in two versions: one in which only the non- (or at least no longer) confidential data can be read (Production 49a on SDEJ/37a on Car Claim), and one complete version, password protected (Production 49b on SDEJ/37b on Car Claim). Therefore, Production 49b on SDEJ/37b on Car Claim cannot be viewed by SDEJ, Car Claim or the court.

2.5. Mercedes suggests that the court should have Mercedes' appeal for weighty reasons assessed by a different chamber within the court than the chamber hearing the main case. The background to this is that if the chamber hearing the main case were to do this assessment itself and, in that context, wanted to take cognizance of Mercedes' trade secrets as contained in Production 49b on SDEJ/37b on Car Claim, there is the real possibility that the main case would then have to be referred to another chamber (see Article 22 paragraphs 4, 5 and 6 Rv). In view of the litigation debate that has already taken place so far before the chamber currently hearing the main case handles, it does not seem efficient to Mercedes that the main case should be referred to another chamber. Having Mercedes' appeal for weighty reasons heard by another chamber prevents that situation from occurring.

2.6. After the court makes a decision on the further procedural steps for the assessment of Mercedes' weighty cause appeal, Mercedes will provide the password of Production 49b on SDEJ/37b on Car Claim to the chamber that will conduct the assessment (if that chamber needs access to the data).

2.7. Should the court pass (in part) Mercedes' reliance on weighty reasons for not providing the information requested in the injunction to SDEJ and Car Claim, Mercedes' subsidiary request is that, pursuant to Article 28(1)(b) Rv, SDEJ and Car Claim and the experts and lawyers engaged by them must keep Production 49b on SDEJ/37b on Car Claim and its contents confidential and thus not share them with, for example, their litigation funders. Mercedes also asks the court to reinforce this obligation with a penalty payment of € 2,500,000 per violation.

2.8. The court will give SDEJ and Car Claim the opportunity to respond in writing (up to 10 pages) solely to Mercedes' refusal to bring part of the requested data into the proceedings due to its business confidentiality and competitive sensitivity, and to the subsidiary request for an order of confidentiality pursuant to Article 28(1)(b) Rv (Chapters 5 and 6 of Mercedes' deed). These requests will be decided on next.

2.9. In doing so, the court does not consider it necessary for Mercedes to provide the password, because in this case, in order to assess the need to keep the data in question secret, it is sufficient to rule on the nature of that data, without taking cognizance of the content of the data itself. Therefore, a reference to another chamber is also not necessary, because the situation cannot arise that the court would rule that the data should be kept secret, but that it already has knowledge of it

has taken. Therefore, the situation referred to in Article 22 paragraph 6 Rv cannot arise either.

2.10. Any further decision will be stayed.

3. The decision

The court:

3.1. refers the cases to the **June 4, 2025** roll for the taking of a deed by plaintiffs referred to in paragraph 2.8 of law,

3.2. reserves any further decision.

This roll call decision was issued by Mr. R.H.C. Jongeneel, Mr. F.L. Bolkestein and Mr. M.L.S. Kalff, Judges, assisted by Mr. A.A.J. Wissink, Registrar, and pronounced in public on May 7, 2025.

This roll call decision was signed in the absence of the chair by Mr. Kalff

