

ABBREVIATIONS AND DEFINITIONS

ACEA	The Automotive Industry Guiding Principles to Enhance Sustainability Performance in the Supply Chain issued by the European Association of Automobile Manufacturers.
Van Gent Amendment	Amendment by MPs Van Gent, Van der Staaij and Van Dam of December 2018 (Parliamentary Papers II 2018/19, 34608, no. 13, Exhibit 61).
Audi	Audi Aktiengesellschaft, one of the Defendants.
Vehicle Manufacturers Board of Directors	Volkswagen, Audi, SEAT, Škoda and Porsche. The Foundation's Board of Directors.
Bosch	Robert Bosch GmbH.
Fining Decision	The Netherlands Authority for Consumers & Markets' decision of 18 October 2017 to impose a fine on Volkswagen in case number ACM/17/003870 (Exhibit 15), which was upheld in the decision on an objection dated 25 October 2018 (Exhibit 16).
Recast Brussels Regulation	Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
CARB	The California Air Resources Board.
Consumer	A person to whom legal consumer protection applies – whether or not through so-called consequential effect – and who purchased or leased an Affected Vehicle.
CoC	The Certificate of Conformity is documentary evidence issued by the manufacturer or importer of a vehicle, which serves to demonstrate that the type of vehicle produced meets all the required admission requirements at the time of production, including the technical requirements in the context of the EC type-approval (as prescribed in Article 6 et seq. of the Framework Directive). The CoC contains vehicle identification information, such as the make, type, model, version, Commercial Name, VIN, the name of the Vehicle Manufacturer, the European type-approval number, the vehicle specifications/features (dimensions, mass, performance, colour) and the official test results for noise, exhaust emissions and fuel consumption, all of which take into account EU standards, in particular the Emissions Regulation.
Dealer	One of the car dealers based in the Netherlands which sold or delivered one or more Affected Vehicles to one or more Affected Parties and which is a co-defendant in these legal proceedings.

Diesel Emissions Scandal	The widespread and systematic use of Defeat Devices in diesel vehicles, including those of the Vehicle Manufacturers, which have been used to mislead authorities and vehicle owners.
ECU	The Engine Control Unit. This is the part of the car that controls almost all of the vehicle's functions and which, among other things, controls the engine and mixes fuel and other substances in the engine. It is also referred to as the vehicle management system. The ECU is made up of firmware; simply put: the tangible device plus the software.
Emissions Regulation	Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.
EPA	The United States Environment Protection Agency, the body responsible for enforcing vehicle emission standards in the United States.
Funder	Consumer Justice Network B.V., the funder of the Foundation's activities under its articles.
Funding Agreement	The litigation funding agreement that the Foundation and the Funder entered into on 19 September 2019 and which contains the conditions for the funding of the Foundation's activities under its articles.
Defendants	The defendants in these legal proceedings, namely the Vehicle Manufacturers, Pon and the Dealers.
Affected Parties	The legal or natural persons, including Consumers, Corporate Buyers and Lessees, who have been harmed by the Diesel Emissions Scandal because they bought or leased an Affected Vehicle.
Affected Vehicle	A diesel vehicle manufactured by the Vehicle Manufacturers, fitted with a type EA 189, EA 897 or EA 288 diesel engine and a Defeat Device.
Reprogramming	The reprogramming of the software offered by the Vehicle Manufacturers in the context of the Recalls and which was supposed to lead to the removal of the Defeat Device.
Framework Directive	Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive).
<i>Kammergericht</i>	The Kammergericht, i.e. the court of appeal in the Court District of Berlin.

KBA	The German Federal Motor Transport Authority [<i>Kraftfahrt-Bundesamt</i> (KBA)], the German organisation responsible for testing and approving vehicle types submitted for type approval in Germany. The KBA is the equivalent of the Dutch National Vehicle and Driving Licence Registration Authority (RDW).
Lessee	A Consumer or a Corporate Buyer who leased an Affected Vehicle.
Lessee Buyer	A Lessee who acquired his or her Affected Vehicle under a financial lease and will become the legal owner after the expiry of the lease.
Defeat Device	The respective Defeat Devices developed by Bosch (among others) and incorporated in the Affected Vehicles by the Vehicle Manufacturers. A Defeat Device is any element of design which senses the temperature, the turning of the steering wheel, vehicle speed, engine speed (RPM), transmission gear, intake depression or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system that reduces the effectiveness of the emission control system under conditions which may reasonably be expected in normal vehicle operation and use.
Narrowly Defined Group	The narrowly defined group referred to in Article 1018e(2) of the Dutch Code of Civil Procedure (“DCCP”), which is further defined in paragraphs 337-340.
NEDC	New European Driving Cycle, a test procedure designed to measure the emission levels and fuel consumption of cars.
NO _x	The collective name for various nitrogen oxides.
Agreement(s)	The purchase agreement(s) or lease(s) under which the Affected Vehicles were made available to the Affected Parties.
Transition Act	New Dutch Civil Code Transition Act (<i>Overgangswet Nieuw Burgerlijk Wetboek</i>).
Pon	Pon’s Automobielhandel B.V., one of the Defendants.
Porsche	Dr. Ing. h.c. F. Porsche Aktiengesellschaft, one of the Defendants.
Court	The Amsterdam District Court
UCP Directive	Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’).

Supervisory Board	The Foundation's Supervisory Board.
Rome I Regulation	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations
Rome II Directive	Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations came into effect on 11 January 2009.
SEAT	Seat SA, one of the Defendants.
Škoda	Škoda Auto a.s., one of the Defendants.
Foundation	The Diesel Emissions Justice Foundation, the claimant.
VCCF	Volkswagen Car Claim Foundation.
Recall(s)	The so-called recall campaigns that were carried out by one or more of the Vehicle Manufacturers and which were aimed at 'removing' the Defeat Device through reprogramming.
Test Regulation	Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending the Emissions Regulation and on access to vehicle repair and maintenance information.
Rome Convention	Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (80/934/EEC).
Equivalent Type	A vehicle that is similar to the Affected Vehicle in terms of performance (including environmental performance), driving style, appearance and value, assuming that there was no Defeat Device in the Affected Vehicle.
Volkswagen	Volkswagen Aktiengesellschaft, one of the Defendants.
Volkswagen Group	The group of companies headed by Volkswagen, and that also includes the other Vehicle Manufacturers.
Unlawful Act (Conflict of Laws) Act	The Dutch Unlawful Act (Conflict of Laws) Act (<i>Wet conflictenrecht onrechtmatige daad</i>)
Road Traffic Act 1994	The Dutch Road Traffic Act 1994 (<i>Wegenverkeerswet 1994</i>)
Corporate Buyer	A legal or natural person, who is not a Consumer, who bought an Affected Vehicle.

I. INTRODUCTION AND CORE OF THE MATTER

I.A. The core of the matter

1. In September 2015, it was discovered that the Volkswagen Group had misled its customers and the government agencies involved for many years. The company had advocated the “clean power of its diesel engines”, had stated that its diesel vehicles were “super fuel-efficient and as clean as a petrol engine” and that they “reduced fuel consumption and had lower emissions”. For instance, the SEAT Ibiza, one of the many cars involved, was presented as “one of the most environmentally friendly cars in its sector”. This was all a lie. Cars manufactured by Volkswagen AG (**Volkswagen**) and its subsidiaries Audi AG (**Audi**), SEAT SA (**SEAT**), ŠKODA AUTO a.s. (**Škoda**) and Porsche AG (**Porsche**), all jointly referred to hereinafter as the **Vehicle Manufacturers**, turned out to be equipped with a sophisticated, programmed detection system (the **Defeat Device**).
2. This system could tell when the car was being tested in the context of the so-called “type-approval test”. The system kept the engine running in a clean mode when the vehicle was being tested. On the road, the system switched to a more polluting mode in which significantly higher levels of nitrogen oxides (**NO_x**) and other harmful substances were emitted than permitted by law.

Nitrogen monoxide (NO) is a gas that is produced during all kinds of combustion processes. Chemical reactions occur at high temperatures, for instance, in the interaction between nitrogen (N²) and oxygen (O²) from the air. In the air, the nitrogen monoxide (NO) emitted is converted fairly quickly into nitrogen dioxide (NO²). Nitrogen monoxide (NO) and nitrogen dioxide (NO²) together is referred to as nitrogen oxides (NO_x). Nitrogen oxides (NO_x) are mainly released when fossil fuels are burned, for instance in traffic.

Source: <https://www.rivm.nl/stikstof/stikstofoxiden-nox>

3. Car owners and authorities were misled, all for the sole purpose of financial gain and gaining competitive advantage for the Vehicle Manufacturers, to the detriment of their customers and the environment. The Foundation hereinafter refers to the vehicles that are the subject of these legal proceedings as the **Affected Vehicles**. By its own admission, Volkswagen stated that it was “highly embarrassed” and that it would do everything to regain public confidence:



Allesbehalve trots op onze nieuwste kleur.

Het zal u niet ontgaan zijn.

Bij Volkswagen hebben we een flinke fout gemaakt: we hebben uw vertrouwen geschonden. Iets waar we ons diep voor schamen. Daar koopt u niet veel voor, dat beseffen we. Onze woorden zullen dan ook niet

zonder daden zijn. We beloven dat we dit probleem oplossen voor elke klant die erdoor geraakt wordt.

En gaan er alles aan doen om uw vertrouwen terug te winnen. U heeft ongetwijfeld vragen. Die beantwoorden we graag op info.volkswagen.com/nl



4. Many Affected Parties feel cheated: the value of their cars tumbled dramatically. Thanks to the illegal Defeat Device, these cars have emissions that are far above the permitted maximum levels, and they were supplied with an incorrect Certificate of Conformity (**CoC**), as a result of which the Affected Vehicles are in principle not allowed on the road.
5. The affected parties (**Affected Parties**) have also been faced with increased wear and tear on their cars and the associated maintenance costs, partly as a result of recalls (**Recalls**), which in some cases have been enforced by the regulatory authorities supervising the Vehicle Manufacturers. Moreover, the introduction of environmental zones across cities in Europe means that polluting diesel vehicles are being banned from inner cities, which has led to a collapse of the market for second-hand and new diesel vehicles at home and abroad. The debate on nitrogen and particulate matter, which has also been raging in the Netherlands, suggests that these negative effects are set to intensify.
6. The Vehicle Manufacturers have since been punished and fined in many jurisdictions. They have been the subject of orders issued in an increasing number of court decisions, especially in Germany. The Vehicle Manufacturers have also reached settlements in favour of large groups of vehicle owners in the United States, Canada, Australia, South Korea and other countries, and have recently also reached a settlement in Germany amounting to EUR 830 million, albeit for a relatively small group of affected parties (Exhibits 1 and 2). Despite this, the Vehicle Manufacturers are doing their utmost to resist the Affected

Parties' claims, even though they were the ones that put an illegal product on the market while covering up their own large-scale deception. This has caused major damage to their customers. Affected Parties in the Netherlands and most other countries in the European Union have been left empty-handed. And yet the Vehicle Manufacturers are denying all responsibility.

7. It is high time this changed. To achieve this, the Foundation wishes, principally, to initiate a class action under the new right of class action in the Netherlands, which came into force on 1 January 2020. Its aim is to conduct these proceedings on an opt-put basis on behalf of Affected Parties in the Netherlands. In addition, the Foundation will ask this Court to allow non-Dutch Affected Parties residing or based in other EU Member States to participate in these proceedings by giving them the opportunity to issue an opt-in statement.

I.B. Synopsis and plan of action

8. The Foundation outlines the key facts in Section II. In broad outlines, the case is as follows.
9. The Vehicle Manufacturers market vehicles with diesel engines. This summons concerns the models that are equipped with diesel engines of the following types:

EA 189 (manufactured from 2008 to 2015) of which there are three variants: the 1.2 litre TDI, the 1.6 litre TDI and the 2.0 litre TDI.

EA 897 (manufactured after 2010); and

EA 288 (manufactured after 2015).

10. For a model of car to be put on the market, it has to meet strict conditions set out in regulations, directives and laws. These include increasingly stricter regulations for the protection of the living environment, which are laid down in the following European regulations, among others:

Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6, the **Emissions Regulation**);

Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles (the **Framework Directive**); and

Commission Regulation (EC) No 385/2009 of 7 May 2009 replacing Annex IX to the Framework Directive.

11. This regulatory framework also includes the conditions for the testing of a car model for type approval purposes. If a car passes the test, the approval is recognised throughout the European Union. To confirm that a car type complies with these environmental standards, among other things, the car manufacturer or importer issues a Certificate of Conformity (**CoC**).
12. Together with Bosch, Volkswagen and Audi developed and produced the EA 189 engine, which was used by Volkswagen, SEAT, Škoda and Audi. Volkswagen developed the EA 288 engine as the successor to the EA 189. In

addition, Audi together with Bosch developed and produces the type EA 897 3-litre engine, which was fitted in Audi and Porsche vehicles. The systems developed by Volkswagen, Audi and Bosch ensured that the Affected Vehicles met the applicable emission standards in the NEDC test situation prescribed under European law.

13. When the Affected Vehicles were driven on the road, the engine switched to a mode in which they emitted significantly more NO_x than permitted by law. According to the German Federal Motor Transport Authority (**KBA**), this mandatorily constitutes a defeat device as referred to in Article 3.10 of the Emissions Regulation, which also implies that the CoC issued by the Vehicle Manufacturers or the importer was incorrect. The combination of software and hardware that ensured that emissions during the NEDC test situation remained within standards has become known in the media as “cheating software”, a term that will also be used in this summons.
14. The large-scale and systematic use of Defeat Devices by the Vehicle Manufacturers was in stark contrast to the environmental awareness and alleged sustainability that they prided themselves on in their advertising. This large-scale deception of authorities and car owners, which has attracted publicity since September 2015, is also known as the diesel emissions scandal or diesel emissions fraud. In the rest of this summons, the Foundation will refer to it simply as the **Diesel Emissions Scandal**.
15. Things came to light on 18 September 2015 when the United States Environmental Protection Agency (**EPA**) sent a notice of violation to Volkswagen, Audi, and Volkswagen Group of America Inc. to the effect that the EPA had determined that Volkswagen had fitted a defeat device in certain models fitted with a 2.0 litre diesel engine, and that these defeat devices disable the exhaust gas control system. This only concerned EA 189 engines.
16. Subsequently, regulators, prosecuting authorities and consumer and other organisations at home and abroad descended on the Vehicle Manufacturers and revealed their practices. This triggered a flood of court orders, settlements, lawsuits and admissions of guilt. Revelations came thick and fast. Despite initial protestations on Volkswagen’s part, it became apparent that EA 288 engines (the successor to EA 189 engines) were also fitted with Defeat Devices. Porsche’s fine in May 2019 concerned the use of EA 897 type engines, which were also fitted with Defeat Devices.
17. In total, the Volkswagen group has already paid more than EUR 30 billion in fines and damages, and investigation and litigation costs. Although this may seem like a large sum of money, the multitude of decisions, settlements and announcements contrasts sharply with what the Defendants were prepared to do for the Affected Parties. The provisional final agreement seems to be the settlement arrived at with difficulty in Germany between Volkswagen and the German consumer association, the Federation of German Consumer Organisations [*Verbraucherzentrale Bundesverband (VZBV)*]. Volkswagen is making EUR 830 million available to the 230,000 VZBV customers (Exhibits 1 and 2). That leaves approximately 95% of the owners of an Affected Vehicle with an EA 189 engine in Europe empty-handed, not to mention the Affected Parties who have an Affected Vehicle with EA 288 and EA 897 engines. No

settlement has yet been offered to them. The damages suffered by Affected Parties is immense; last year the public prosecutor in Braunschweig estimated the damages suffered by car owners worldwide at EUR 77 billion (Exhibit 3).

18. Volkswagen said they would address the Affected Parties' problems and it has tried to regain its customers' confidence, at least that's what they promised in their advertising which spoke of their 'shame'. That said, the settlement they reached with such a small portion of the Affected Parties is a drop in the ocean.
19. Those that the Foundation represents have suffered damages due to the Diesel Emissions Scandal, and they continue to do so to this day. They bought cars fitted with a Defeat Device that they would not have bought had they known about the Defeat Device and its effects, or had they done so, it would have been under other conditions. They were issued with incorrect CoCs when they bought their vehicles. All these years they have been driving (and many still do) a car that was many times more polluting than what they had been told. The residual value of the Affected Vehicles fell drastically as the Diesel Scandal became public. In addition, it seems that Affected Vehicles consume more fuel, have higher maintenance costs and offer poorer driving performance than what we have been led to believe. And the Affected Vehicles are in danger of becoming obsolete due to the introduction of environmental zones in inner cities and increasing nitrogen problems in general. The Vehicle Manufacturers are systematically avoiding the spectre of having to compensate the Affected Parties. The Defendants' response to the letters from the Foundation (Exhibits 3, 4, 5 and 6) is evidence of this. The Defendants are not even going to the trouble of talking to them.
20. In Section III, the Foundation sets out the legal bases for its claims. In brief, these claims are based on:
 - unfair commercial practices;
 - error;
 - non-compliance and non-performance;
 - an unlawful act, including a collective unlawful act:
 - product liability.

These claims lead to the following remedies:

- annulment, termination and cancellation of the purchase agreement(s) concluded between the Dealers and the Affected Parties, or lease(s) on the basis of which the Affected Vehicles were made available to the Affected Parties (the **Agreements**);
 - the provision of a new vehicle that, in terms of performance (including environmental performance), driving style, appearance and value – assuming that there was no Defeat Device in the Affected Vehicle – is similar to the Affected Vehicle (**Equivalent Type**); and
 - damages.
21. In Section IV, the Foundation sets out its reasons for considering that there are grounds for conducting these legal proceedings under the new right to bring a

class action. The reason for this is that the Defendants' unlawful acts were not limited to the period before 15 November 2016. These acts are still occurring to a large extent, and are still coming to light, right up to the present. For this reason, the Foundation is accusing the Defendants of a continuous string of related unlawful acts, as will be explained in Section III, which, according to applicable transitional law, means that it is the new right of class action that applies, not the former right.

22. In the alternative, the Foundation invokes the former right of class action, to the extent that this Court finds that the former right of class action applies. In this respect, the Foundation will – out of necessity – limit its claims to a request for a declaratory decision and to claims that do not extend to monetary compensation. The factual and legal bases for these claims do not in themselves differ materially from the claims under the new right.
23. In Section IV, the Foundation discusses the damages suffered by the Affected Parties.
24. In Section V, the Foundation also discusses the scope and definitions of the classes, as well as the claims it is filing, and whether they lend themselves to being combined.
25. In Section VI, the Foundation discusses the admissibility conditions pursuant to Article 3:305a DCC. The Foundation begins by discussing the conditions for the new right. Should this Court wish to apply the former right, then it may decide in line with the less stringent admissibility requirements that apply to legal proceedings under the former right.
26. Section VII discusses the Defendants' known defences.
27. In Section VIII, the Foundation focuses on several procedural aspects, such as the jurisdiction of this Court and the applicable law.
28. Sections IX and X relate to the offer of evidence and procedural costs. A list of exhibits is included after the claim for relief.