

WRIT OF SUMMONS

This day, the two thousand twenty one, at the request of **Stichting Emission Claim**, having its registered office and principal place of business at Molenwerf 16 (1014 BG) Amsterdam, the Netherlands, choosing domicile in this matter at Molenwerf 16 (1014 BG) in Amsterdam at the offices of Kennedy Van der Laan N.V., from which office Dr. C. Jeloschek will be appointed as lawyer in this matter and will act as such:

SUMMONSED:

1. The company established under foreign law **Renault S.A.** , having its registered office and principal place of business at 13-15 Quai Alphonse le Gallo, Boulogne-Billancourt, 92100 in France, to which I, pursuant to Article 56 (2) of the Code of Civil Procedure, in my capacity as a transmitting agency within the meaning of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 ('**EC regulation on service of documents**') serve this writ in the following manners:
 - i. **First**, pursuant to paragraph 2 of the said Article 56 of the Code of Civil Procedure and in accordance with Article 15 of the EC Regulation on the service of documents, by sending two copies of the present document, with a translation into English , to the receiving agency in France at the address:

Debilly & Jolivet
6 Place Bellecour
FR-69002 Lyon
France

This dispatch was effected today by me, the bailiff, by UPS, together with the form referred to in Article 4(3) of the EC Regulation on the service of documents, which was completed by me, the bailiff, in the French language .

I requested the receiving agency to serve this writ with translation into the English language in accordance with the law of the country in which the defendant's address is situated and to return one copy of this writ with the certificate as referred to in Article 4, fifth paragraph in conjunction with Article 10 of the EC Regulation on service of documents;

- ii. **Secondly**, pursuant to paragraph 3 of the aforementioned Article 56 of the Code of Civil Procedure and in accordance with Article 14 of the EC Regulation on the service of documents, by directly sending a copy of the said document, with a translation thereof into the English language, and simultaneously accompanied by the model form referred to in Article 8(1) of the EC Regulation on the service of documents in Annex II.

This dispatch was effected today by me, the bailiff, by UPS and was sent to the aforementioned address of the defendant with the notice that the defendant may refuse to accept these documents sent directly by returning the aforementioned standard form and the documents served to me, the bailiff, within one week of receipt, if they are not drawn up in or accompanied by a translation into one of the following languages:

- a. a language the defendant understands; or
 - b. the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.
2. The private company with limited liability **Renault Nederland N.V.**, having its registered office and principal place of business at Boeingavenue 275 (1119 PD) in Schipol-Rijk , the Netherlands, delivering my writ at this office address and leaving a copy with:
3. **Robert Bosch GmbH** , a company incorporated under foreign law, with its registered office and principal place of business at Robert-Bosch-Platz 1, 70839 Gerlingen-Schillerhöhe, Germany, to which I hereby serve this notice pursuant to Article 56 (2) of the Code of Civil Procedure and in my capacity as the transmitting agency within the meaning of the EC Regulation on Contracts for the International Sale of Goods and the EC Regulation on Contracts for the Implementation of Services, in the following manners:
- iii. **First**, pursuant to paragraph 2 of the aforementioned Article 56 of the Code of Civil Procedure and in accordance with Article 15 of the EC Regulation on the service of documents, by sending two copies of the present document, with a translation thereof into English, to the receiving agency in Germany at the address:

Amtsgericht Ludwigsburg

Schorndofer Strasse 39
71638 Ludwigsburg
Germany

This dispatch was effected today by me, the bailiff, by UPS, together with the form referred to in Article 4(3) of the EC Regulation on the service of documents, which was completed by me, the bailiff, in the German language.

I requested the receiving agency to serve this writ with translation into the English language in accordance with the law of the country in which the defendant's address is situated and to return one copy of this writ with the certificate as referred to in Article 4, fifth paragraph in conjunction with Article 10 of the EC Regulation on service of documents;

- iv. **Secondly**, pursuant to paragraph 3 of the aforementioned Article 56 of the Code of Civil Procedure and in accordance with Article 14 of the EC Regulation on the service of documents,

by directly sending a copy of the said document, with a translation thereof into the English language, and simultaneously accompanied by the model form referred to in Article 8(1) of the EC Regulation on the service of documents in Annex II.

This dispatch was effected today by me, the bailiff, by UPS and was sent to the aforementioned address of the defendant with the notice that the defendant may refuse to accept these documents sent directly by returning the aforementioned standard form and the documents served to me, the bailiff, within one week of receipt, if they are not drawn up in or accompanied by a translation into one of the following languages:

- a. a language the defendant understands; or
- b. the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

and further, in respect of:

- a. defendants 1 to 2 by sending a Dutch and English copy by e-mail to Yvette Borrius, LL.M. who according to her response of 16 April 2021 (Exhibit 2) will act as lawyer for the defendants via Yvette.Borrius@florent.nl ;
- b. defendant 3 by sending a Dutch and English copy by e-mail to Daan Beenders, LL.M. whose (earlier) response to Kennedy Van der Laan's liability claim dated 22 December 2020 (Exhibit 82) in the already pending proceedings of Stichting Emission Claim against Mercedes and (inter alia) Bosch (C/13/686493 / HA ZA 20-697) will act as the defendant's lawyer via daan.beenders@debrauw.com <mailto:daan.beenders@debrauw.com>

TO:

On Wednesday 1 September, two thousand and twenty-one in the morning at 10:00 am, not in person but represented by a lawyer, to appear at the court session of the District Court of Amsterdam, which will be held at the courthouse at Parnassusweg 280 (1076 AV) in Amsterdam.

WITH THE EXPRESS NOTICE THAT:

- a. if a defendant fails to appoint a lawyer or to pay the court fee mentioned below in due time, and the prescribed time limits and formalities have been complied with, the court shall give default judgment against that defendant and grant the claim described below, unless it considers the claim to be unlawful or unfounded;
- b. if at least one of the defendants appears in court and has paid the court fee in time, a single judgment shall be rendered between all the parties, which shall be regarded as a judgment in a defended action;
- c. if each of the defendants appears in court, a court registry fee will be charged, to be paid within four weeks from the time of appearance;
- d. the amount of the court fees is stated in the most recent annex to the Civil Cases Court Fees Act, which can be found on the website, among other places www.kbvg.nl/griffierechtentabel;
- e. a court fee for impecunious persons fixed by or pursuant to the law shall be levied on a person who is impecunious, if he has submitted at the time when the court fee is levied:

1. a copy of the decision to grant legal aid, as referred to in section 29 of the Legal Aid Act, or if this is not possible due to circumstances which cannot reasonably be attributed to him, a copy of the application as referred to in section 24, second paragraph, of the Legal Aid Act, or
 2. a statement from the Board of the Legal Aid Board, as referred to in section 7(3)(e) of the Legal Aid Act, showing that his income does not exceed the incomes referred to in the Order in Council under section 35(2) of that Act;
- f. defendants appearing before the same lawyer and submitting identical submissions or defending the same cause of action are subject to a joint court fee only once on the basis of Article 15 of the Civil Cases Court Fees Act; and
 - g. that the Foundation is obliged, on pain of inadmissibility, to register this summons in the central register for collective actions as referred to in Article 3:305a(7) of the Dutch Civil Code;
 - h. that the effect of that entry is that - unless the Court declares the Foundation inadmissible immediately - the Court will stay the proceedings until a period of three months has elapsed since the entry was made in the central register;
 - i. that after the expiry of this period, the case shall continue to be dealt with as it stands, unless this period has been extended pursuant to Section 1018d subsection 2 of the Dutch Code of Civil Procedure or another collective claim has been instituted for the same event; that the cause list date on which the court is to hear the defence, as referred to in Section 128 subsection 2 of the Dutch Code of Civil Procedure, shall be fixed by the District Court at six weeks after the period referred to in Section 1018c subsection 3 of the Dutch Code of Civil Procedure has expired.

IN ORDER TO:

To take cognizance at the hearing of the following claims and grounds of plaintiff, the Emission Claim Foundation, against which defendants may put forward a defence.

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Deel I. INTRODUCTION

1. INTRODUCTION

The dispute in a nutshell

1.1. This is the writ of summons from the Emission Claim Foundation ("**Foundation**") to:

- Renault S.A. as the manufacturer of vehicle brands that include Renault and Dacia ("**Renault**");
- its Dutch importer which puts the vehicles on the Dutch market and is (jointly) responsible for marketing and advertising in the Netherlands ("**Importer**"); and
- Robert Bosch GmbH which supplies an essential component for Renault (diesel) vehicles ("**Bosch**").

By means of this writ of summons, the Foundation seeks, in short, collective damages for the losses suffered by the victims of the diesel fraud committed by Renault and Bosch in the Netherlands, as well as several declaratory decisions with regard to the consequences of this diesel fraud. This is the second writ of summons¹ that the Foundation has issued in the Netherlands in accordance with its objective of representing the interests of victims of diesel fraud, i.e. natural or legal persons that have purchased or leased one or more manipulated (diesel) vehicles.

- 1.2. Diesel engines emit extremely harmful nitrogen oxides ("**NOx**"). To reduce emissions of this unwanted by-product of diesel combustion, Renault diesel vehicles primarily use exhaust gas recirculation (EGR), which directs exhaust gases back to the engine intake and mixes them with fresh incoming air. In addition, after-treatment technologies ensure that emissions are further reduced. This is done by means of a diesel particulate filter and the so-called *Lean NOx Trap* in which NOx is 'captured' and subsequently converted into less harmful substances by means of a catalytic reaction.
- 1.3. When Renault introduced its *Lean NOx Trap* in 2008, it proudly announced that this technology would contribute to the reduction of harmful emissions.

"Renault's long-standing efforts have made it one of Europe's three most carbon-efficient car manufacturers. Its achievements in CO₂ reduction are paramount, but it considers that it is just as critical to curb pollutant emissions. The NOx Trap unveiled at the Environment Workshop is proof of its efforts to counter pollution.

(...)

The NOx Trap fits firmly with Renault's determination to reduce pollutant emissions. This chemical process captures harmful nitrogen oxides, then converts them into neutral gas. [emphasis added by lawyer]

- 1.4. In 2011, Renault then claimed on its website that, with the emission control systems it had developed, it had ensured that the concentration of NOx in exhaust gases had been reduced by almost 99%. In addition, the *Lean NOx Trap* technology would ensure that *future* emission standards would be met (which were already known at the time and had therefore already been 'taken into account' by Renault when rolling out this technology).

¹ Case number C/13/686493 / HA ZA 20-697

- 1.5. In addition, Renault applied an eco-label, telling potential buyers in the Netherlands from 2008 that its '*diesel engines will qualify for the Renault eco2 label*', which would be a clear indication of their '*sound ecological and economical credentials*'.
- 1.6. This all turned out to be a huge deception. Tests of actual emissions have shown that NOx emissions from Renault diesels are sometimes up to 16 (!) times higher than (i) the maximum emission levels allowed by European emission standards, (ii) what a consumer would expect from the emission control systems applied by Renault, and (iii) what Renault (and its Importer) advertised. In reality, Renault diesel cars are among the most polluting diesels tested by various bodies in Europe and the official emissions tests on the roller bench have been deliberately manipulated by Renault to appear clean (only) on paper. Renault's diesel cars are therefore also referred to in this writ of summons as **Rigged diesels**.
- 1.7. Renault thus joins the ranks of European car manufacturers who have committed large-scale, and possibly collaborative, fraud with regard to the emission levels of their diesel engines. In 2015/16, this diesel scandal (also known as Dieselgate) came to light involving Volkswagen, Audi, Porsche and Fiat Chrysler, among others. Later it turned out that Daimler, among others, had also rigged diesel engines. In all cases, the car manufacturers circumvented the legally required emissions standards by using prohibited defeat devices, developed in part by their supplier Bosch, which (partially) disabled emission control systems when the vehicles were not in a test environment.
- 1.8. It is now almost an established fact that this manipulation has taken place on a large scale. This is evident from numerous investigations, rulings and actions by regulators, courts and public prosecutors in (among others) the US and the EU, including Germany as the country where Dieselgate originated. In France, too, investigations were - and still are - being carried out into (among other things) Renault's role in the Dieselgate scandal. These government investigations, as well as various tests by independent institutes, show that the rigged diesels used prohibited defeat devices: devices with the sole purpose of manipulating emissions tests to achieve good test results. The Renault cars did this - among other things - by signalling at what point the car was tested on the roller bench and at what point the car was actually in use. Also relevant was whether the car was tested 'cold' or with an already warm diesel engine.
- 1.9. However, this was not the only manipulation applied. The aforementioned investigations and Renault's (admitted) response also revealed that Renault turned off its emission control systems when the outside temperature was 17 degrees Celsius or lower, thereby allowing all harmful substances to be emitted unfiltered and unhindered by Renault. According to Renault, in short, this was necessary to protect the engine. This 'statement' has not only been declared unlawful by a judgment of the Court of Justice of the EU of 17 December 2020, but is also irreconcilable with the fact that the average monthly temperature in the Netherlands never exceeds 17 degrees Celsius and the *highest* monthly temperature only occurs in the 4 summer months.
- 1.10. Renault did not act alone; its supplier Bosch is behind the diesel scandal in Europe and the United States. In fact, Bosch supplies an essential component for diesel vehicles to (among others) Volkswagen, General Motors, Mercedes and Fiat Chrysler America, namely the *Electronic Diesel Control* ("**EDC**" or "**EDC17**")² which enabled the car manufacturers to implement the defeat devices. Without Bosch's active cooperation in the development of the EDC17 and associated software, Renault would not have been able to commit the large-scale diesel fraud. Bosch develops, manufactures and supplies the EDC17 not only to Renault, but also works closely with Renault in

² The EDC 17 is also referred to as ECU(*Electronic Control Unit*) in various reports.

testing, calibrating, parameterizing or setting the software in the EDC17 that controls the entire combustion process.

- 1.11. Renault has refused to disclose its motives for committing this large-scale fraud. However, it is suspected that Renault was cheating during official emissions testing on the roller bench so that its users did not suffer any inconvenience from limiting harmful NOx emissions, such as higher fuel consumption and a different driving experience. In this way Renault is trying to have the best of both worlds: by only (fully) activating its emission control systems during the official test conditions, Renault seems to be offering clean cars, while still being able to offer its users full user comfort outside the test environment. However, this full user comfort is - without the knowledge of its users - at the expense of NOx emissions that are up to 16 times higher than legally permitted. In this way, through systematic fraud and infringement of the Emissions Regulation³, Renault was able for years to maximise its profits at the expense of its customers, the environment and public health.
- 1.12. The consequences of this balancing of interests are enormous. Experts have calculated that around 44,000 healthy years of life were lost in Europe as a result of Volkswagen's fraud alone, due to excess mortality and illnesses caused by inhalation of the particulate matter formed by the additional emissions of nitrogen oxides (NB: Renault is hard on Volkswagen's heels, as number two, in terms of diesel sales in Europe). This number would rise to 116,000 lost healthy years of life if Volkswagen were not to modify its rigged software through recalls.
- 1.13. At first glance, this seems like an abstract way of framing the consequences of Rigged diesels. However, it has now become concretely clear how damaging the car manufacturers' actions have been; in December 2020, for the first time, a pathologist in London established that NOx emissions from road traffic had been the direct cause of death of a nine-year-old girl⁴
- 1.14. Despite the fact that the focus in 2015 was on Volkswagen in particular, Renault is just as guilty of large-scale fraud through the use of rigged software in its diesel vehicles. Unlike Volkswagen, however, Renault has not taken any responsibility. On the contrary. Renault has remained silent and continues to this day to endanger people's lives with its Rigged diesels. Although in response to the various investigations (by the government) it had indicated that it would (be willing to) switch on its emission-reducing systems from 10 degrees Celsius upwards, this promise also falls short. Not only is it completely unclear whether (and how) Renault has modified these systems in the meantime, but this would mean that these systems would still be inoperative for over 7 months given the fact that the average temperature during this period in the Netherlands is below 10 degrees. In addition, researchers have found that emission control systems do not work at speeds below 50 km/h, i.e. in urban situations and during the daily traffic jams in the Netherlands. Moreover, in its response to the liability claim, Renault contested the Foundation's assertion that its diesel vehicles had at any time failed to comply with the applicable emissions regulations and disclaimed any liability in that regard (**Exhibit 2**). In view of all the investigation results to date, which the Foundation will discuss in detail in this writ of summons, this is obviously an untenable position and demonstrates that Renault is not prepared to take responsibility for its part in the extensive fraud.
- 1.15. In addition to the obvious damage to the environment and public health, users of Renault's Rigged diesels have suffered financially as a result of Renault's fraudulent actions: they have paid too much

³ Regulation (EC) No 715/2007 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 ("**Emissions Regulation**").

⁴ S. Laville, 'Air pollution a cause in girl's death, coroner rules in landmark case', *The Guardian* 16 December 2020(**Exhibit 1**).

for cars that are not the clean diesels that were promised but rather flout all the applicable emission standards. This is even more serious because Renault belongs to the middle segment of the car market and is known as a "family car", among other things. It is therefore precisely middle-income earners who are affected by this fraud. The extent of the effect of this on vehicle usage is gradually becoming clear. Some of these diesel cars are already being banned from certain European cities because of the extreme risk they pose to human health.

- 1.16. With this writ of summons, the Foundation wants to force Renault, her Importer and Bosch to compensate victims for the damage suffered (in the Netherlands). The Foundation believes that it is the most appropriate party to do this as it has already taken collective action in the Netherlands against Mercedes. It also involved both the car manufacturer and Bosch, as these parties are *jointly* responsible for the diesel fraud. In this context, the Foundation can also benefit from its close ties with the US law firm Hagens Berman, which has brought a similar class action in the United States on behalf of US purchasers or users of rigged diesels against various car manufacturers and Bosch, including Volkswagen, Fiat Chrysler, General Motors and Mercedes.
- 1.17. The Foundation therefore believes that, because of this concrete experience and settlement results with various car manufacturers and Bosch in the United States, as well as its access to and experience with its own investigations into rigged diesels and the expertise built up during the civil lawsuit, it is the best placed party to represent the interests of all aggrieved parties affected by the rigged diesels in the Netherlands.

Writ of summons format

- 1.18. In Part I of this writ of summons, the Foundation will first consider the parties involved (§2) and its own background (§3).
- 1.19. Part II then deals with the facts. Against the background of the danger posed by diesel engines and the need for stringent emission standards to reduce emissions (§4), Renault's commitment to achieving these standards through various emission control systems (including its *Lean NOx Trap* technology) (§5) will be discussed. The Foundation will explain that this commitment has not been fulfilled, however, because Renault has knowingly circumvented the emissions standards, as is clear from various reports and investigations carried out by independent bodies (§6) and (ongoing) investigations by public authorities in France and elsewhere in Europe (§7). The Foundation will also address Bosch's role as the supplier of the rigged software (§8).
- 1.20. In Part III, the Foundation will discuss the legal qualification (§9) and consequences of the Defendants' actions. It will also address the damage as to be assessed later during separate follow-up proceedings (§10). The Foundation will then demonstrate that all admissibility requirements have been met and request appointment as Exclusive Representative Entity (§11). Finally, the Foundation briefly discusses the (known) defences (§12).
- 1.21. In Part IV, the Foundation will conclude with some comments on relevant IPR aspects (§13) and evidence (§14).
- 1.22. For a complete listing of all topics covered, the Foundation refers to the table of contents of this writ of summons following the citations.

2. THE PARTIES CONCERNED I - THE DEFENDANTS

- 2.1. The defendants have already been introduced in the introduction. The background of all defendants will be briefly discussed below.

Renault SA

- 2.2. Renault SA is the largest French car producer with annual sales in 2020 of 43.5 billion euros and net profits of 139 million euros (**Exhibit 3**: Renault SA Articles of Association and **Exhibit 4**: Annual Report 2020). The headquarters of Renault, a "multinational with French roots" according to its own words, is in Paris. Renault S.A. is, according to its website (concerning the 'automotive' part of its business) responsible for '*design, production and distribution of products through a sales network (among others, by the Renault Retail Group subsidiary)*'. It does this not only in France, but worldwide and therefore also in the Netherlands.
- 2.3. Renault S.A. is the producer of - as far as relevant for these proceedings - passenger cars, (transport) vans and other (small) commercial vehicles of the Renault and Dacia brands.
- 2.4. As already pointed out in the introduction, and to be discussed at length, Renault has manipulated its diesel vehicles in various ways so that they emit far higher emissions than permitted and advertised. As the manufacturer, Renault is (ultimately) responsible for this and is therefore liable for all damage resulting from it.
- 2.5. Renault S.A. is the parent company of the Renault group and therefore has control over virtually all aspects of the Rigged diesels that were distributed in the Netherlands. This includes marketing, advertisements and other commercial communications intended for and aimed at the Dutch market. It is therefore responsible for the (specific) deception of the Dutch market.

Renault Nederland N.V.: importer for the Dutch market

- 2.6. Renault Nederland is the importer based in Schiphol Airport of Rigged diesels (Renault and Dacia) destined for the Dutch market. (**Exhibit 5**: Renault Nederland NV Articles of Association). It is a subsidiary of Renault S.A.S. and Renault Group B.V. and therefore part of the Renault group. It sells passenger cars as well as vehicles for the commercial market. In its own words, it is the number 2 and number 4 respectively on the Dutch market for these (**Exhibit 6**: annual report 2018).
- 2.7. The Importer played a central role in the marketing, advertising and other commercial communications with regard to Rigged diesels throughout the Netherlands. It is therefore jointly and severally liable (alongside Renault) for the false and misleading marketing strategies.

Robert Bosch GmbH

- 2.8. Robert Bosch GmbH is a German electronics company with 2018 annual sales of 77.9 billion euros. The head office is located in Gerlingen-Schillerhöhe (near Stuttgart) in Baden-Württemberg⁵ With some 340 affiliated companies, the Bosch Group is divided into four business sectors: *Mobility Solutions, Industrial Technology, Consumer Goods, and Energy and Building Technology*.
- 2.9. The *Mobility Solutions* business sector supplies components to the automotive industry, including the Diesel Systems division. Through this division, Bosch develops, manufactures and supplies the hardware and software (the previously mentioned EDC17) and associated services at issue in these proceedings.
- 2.10. At least from 2005⁶ onwards, Bosch was actively involved in the development and implementation of illegal defeat devices specifically designed to enable diesel vehicles sold in the EU (and therefore

⁵ Extract from Robert Bosch GmbH Trade Register, Stuttgart City Court, dated 14 December 2020 (**Exhibit 7**).

⁶ At that time still with the predecessor of its hardware and software, the EDC16, which was succeeded by the EDC17 in 2007.

also in the Netherlands) and America to evade emissions standards. These vehicles also include the Rigged diesels made by Renault.

3. THE PARTIES CONCERNED II - THE EMISSION CLAIM FOUNDATION

- 3.1. The Foundation was set up to resolve the problem described in the introduction, namely to ensure that all aggrieved parties receive compensation for the damage they suffered as a result of Renault and Bosch's unlawful actions in, in short, overpaying for the Rigged diesels of which they were or are owners and/or lessees. This involves finding a solution for the efficient settlement of the claims of those represented by the Foundation which, on the one hand, achieves the greatest possible degree of finality and, on the other, does as much justice as possible to the actual situation and the interests of all parties involved.
- 3.2. The Foundation believes it can achieve this by directing its claims exclusively at the parties *primarily* responsible. These are Renault and Bosch, who together have ensured that software in the Rigged diesels can be, or was, tuned in such a way that it allowed the emission reduction systems to be operational during the official certification tests, but disabled them in various situations on the road. Renault and its importer have also misled the whole market by advertising the Rigged diesels as "clean" (and using an eco-label as well) although in practice they were not (and never will be) because recovery does not lead to the right emission values.
- 3.3. It was also Renault and Bosch who could have stopped the diesel fraud, but consistently failed to do so. Although claims against other parties, such as the official dealers in the Netherlands, are also conceivable, for reasons of efficiency and effectiveness the Foundation has decided not to involve them in this procedure. One of the reasons for this is that the Foundation assumes that Renault dealers in the Netherlands were not aware of Renault and Bosch's unlawful actions. In addition, the impact on the market of challenging the dealer purchase agreements in terms of non-conformity (by virtue of their capacity as vendors of the diesel) would, in the Foundation's view, be too great. This issue must be resolved in damages and to this end, the Foundation addresses the Defendants as the parties primarily responsible for the damage. In this way, the Foundation aims to achieve the greatest possible finality for the damage caused by Renault and Bosch in the most efficient way, without unreasonably harming the interests of third parties who are in all likelihood unaware of this.
- 3.4. The Foundation was established on 11 December 2020. According to its articles of association, it has the following objectives:
 - "The Foundation's purpose is to represent the interests of the Aggrieved Parties who purchased or leased one or more Manipulated Vehicles, including but not limited to:
 - (a) to determine and investigate the course of events that led to and relate to (i) the development and installation of one or more defeat devices in Manipulated Vehicles and (ii) the sale and/or delivery of Manipulated Vehicles to the Aggrieved Parties;
 - (b) To promote the interests of the Aggrieved Parties and to represent the Aggrieved Parties in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as the case may be;
 - (c) represent the interests of the Aggrieved Parties worldwide;
 - (d) to obtain and distribute financial compensation for (part of) the loss that the Aggrieved Parties assert they have suffered;

(e) to represent the collective interests of the Aggrieved Parties in environmental cases, in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as the case may be;

(f) do all that which is connected with or conducive to the foregoing, all in the broadest sense;"⁷

- 3.5. In these proceedings, the Foundation represents the interests of all (first and subsequent) buyers and all lessees of Rigged diesels equipped with the Bosch EDC17 and imported into the Netherlands, registered in the Netherlands (with the RDW - [National Vehicle and Driving Licence Registration Authority]) and/or sold or leased in the Netherlands in the period between 1 September 2009 and 1 September 2019 (the "**Relevant Period**")⁸, always with the exception of Defendants. This group consists of both consumers and professional parties (such as rental companies, lease companies, companies with their own vehicle fleet or taxi companies), collectively referred to as "**the Aggrieved Parties**".
- 3.6. Promoting the interests of the Aggrieved Parties is one of the Foundation's objectives under its articles of association. Although the definition of Aggrieved Parties implies that the Foundation also represents the interests of persons or entities located in other jurisdictions, the vast majority of the Aggrieved Parties will be resident or established in the Netherlands and will therefore have suffered loss or damage here. Of course, this does not affect the possibility for foreign Aggrieved Parties to *opt-in* to a settlement or collective settlement of the damage.
- 3.7. The Foundation has brought its claims primarily under the Settlement of Large-scale Losses or Damage (Class Actions) Act ("**WAMCA**"), which came into effect on 1 January 2020. In section 11 it will discuss that this law applies, that it is admissible in these proceedings, and that it should be designated as an Exclusive Representative Entity. In the alternative - in so far as the WAMCA is not applicable - the Foundation submits its claims under the Collective Mass Claims Settlement Act, as it applied before the WAMCA entered into force.

⁷ Articles of Association of Foundation Emission Claim dated 11 December 2020 (**Exhibit 8**).

⁸ This period is linked to the introduction of the applicable emission standards for diesel cars in Europe, namely the Euro 5 standard in September 2009 and the temporary Euro 6.d TEMP standard in September 2019.

Deel II. FACTS

4. STRICT EMISSION STANDARDS TO COMBAT DANGEROUS DIESEL EMISSIONS

- 4.1. Diesel engines have been a major challenge for car manufacturers for many years. On the one hand, these engines are very powerful and fuel efficient, but on the other hand, they emit many dangerous and polluting substances during combustion. In a general sense, the greater the power and fuel efficiency of the diesel engine, the dirtier and more harmful the emissions become.

Hazardous by-products from diesel (engine) combustion

- 4.2. Diesel fuel differs from petrol to a significant degree. Due to longer hydrocarbon chains, diesel contains more energy and can also be converted into energy more efficiently. Diesel engines can convert more than 45% of the fuel energy to mechanical energy, while petrol engines only convert 30% of the fuel to mechanical energy. Diesel therefore has a considerably higher efficiency than petrol.⁹
- 4.3. The differences between petrol and diesel mean that a diesel engine functions significantly differently from a petrol engine. In a diesel engine, air is forced under high pressure into the combustion chamber, causing the air to heat up and the diesel present in the engine's combustion chamber to combust spontaneously. This is in contrast to spark ignition (through a spark plug) in the typical petrol engine. The more powerful compression of the pistons of a diesel engine produces greater torque, and thus more mechanical power.
- 4.4. This greater energy and fuel efficiency comes with the significant drawback of diesel combustion: diesel produces dirtier and more dangerous emissions, including soot and particulates. However, another harmful by-product of diesel combustion is particularly relevant to this writ of summons; the NOx (i.e., nitrogen oxides), already mentioned in the introduction, which include various nitrogen- and oxygen-containing chemical compounds that are only formed at high temperatures, such as in the combustion of diesel oil.
- 4.5. The hazardous substances emitted by diesel engines are not a new phenomenon. In 2012, the World Health Organization declared diesel vehicle emissions as carcinogenic and about as dangerous as asbestos.¹⁰ Particularly in urban areas, diesels cause significant health problems through emissions of soot, particulate matter and nitrogen oxides. Diesel engines are therefore subject to increasingly strict standards in order to reduce harmful emissions as much as possible.
- 4.6. The nitrogen problem is not unknown in the Netherlands and has had a much greater impact than in surrounding countries. Since the Council of State drew a line under the Programme to Combat Nitrogen in 2019, far-reaching measures have been taken in the Netherlands to limit the emission of harmful nitrogen oxides, including the nationwide reduction of the speed limit on motorways to 100 km/h, the halting of more than 18,000 permit procedures and the halting of numerous construction projects. The consequences are enormous and have led to major protests.
- 4.7. The fact that the Netherlands is taking such far-reaching measures to reduce NOx is not without reason, however. NOx pollution contributes to the formation of nitrogen dioxide and particulate matter, and reacts with sunlight in the atmosphere to form the greenhouse gas ozone. Exposure to these pollutants leads to serious health risks, including asthma attacks and other respiratory

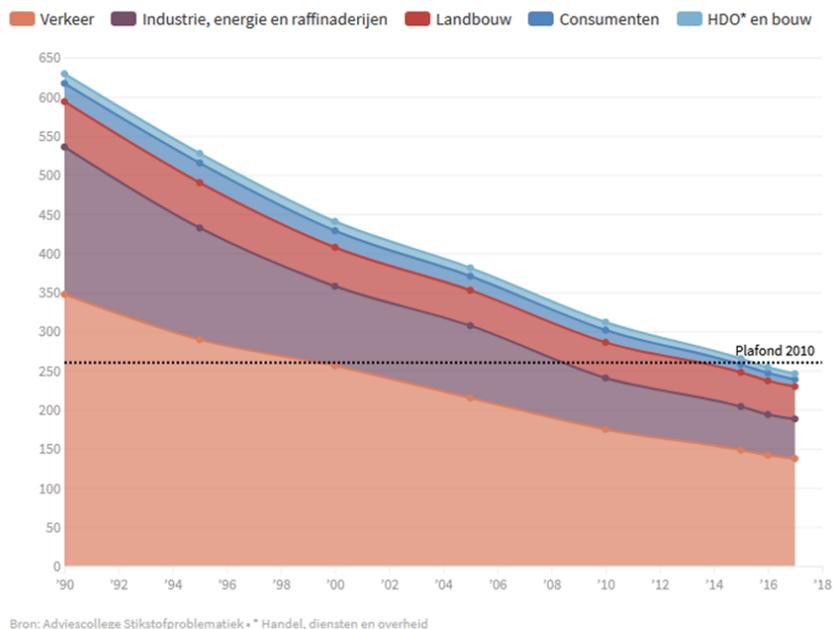
⁹ U.S. Department of Energy, "Just the Basics: Diesel Engine" (https://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb_diesel_engine.pdf) August 2003 (Exhibit 9).

¹⁰ WHO, IARC: Diesel Engine Exhaust Carcinogenic, Press Release No. 213, 12 June 2012 (Exhibit 10).

diseases. Exposure to ozone and particulate matter can lead to premature deaths from respiratory or cardiovascular diseases. Children, the elderly and people with existing respiratory diseases are at risk of health effects from these pollutants. NOx can also cause respiratory problems, headaches, chronically impaired lung function, eye irritation and corroded teeth. Elevated NOx concentrations are even associated with increased infections and more severe progression of COVID-19¹¹

- 4.8. In 2018, 16 EU Member States (including the Netherlands) recorded NOx concentrations above the jointly agreed annual limits. The European Environment Agency noted here that the transport sector was responsible for 47% of NOx emissions in the EU in 2018. In particular, road transport had a significantly higher impact on the exposure of the population to dangerous nitrogen dioxide. This is because emissions from road transport are close to the ground and distributed over densely populated areas. For this reason, the European Environment Agency has stated that the reduction of NOx concentrations must be focused on traffic and urban locations in order to meet the annual limit value.¹²
- 4.9. A graphical representation of the emissions of harmful nitrogen oxides in the Netherlands shows how large the share of traffic (with diesel engines as the largest polluter) is in the emissions of harmful nitrogen oxides: at least since the 1990s, road traffic has been the largest source of harmful emissions, while emissions from road traffic have been dominated by diesel engines.¹³

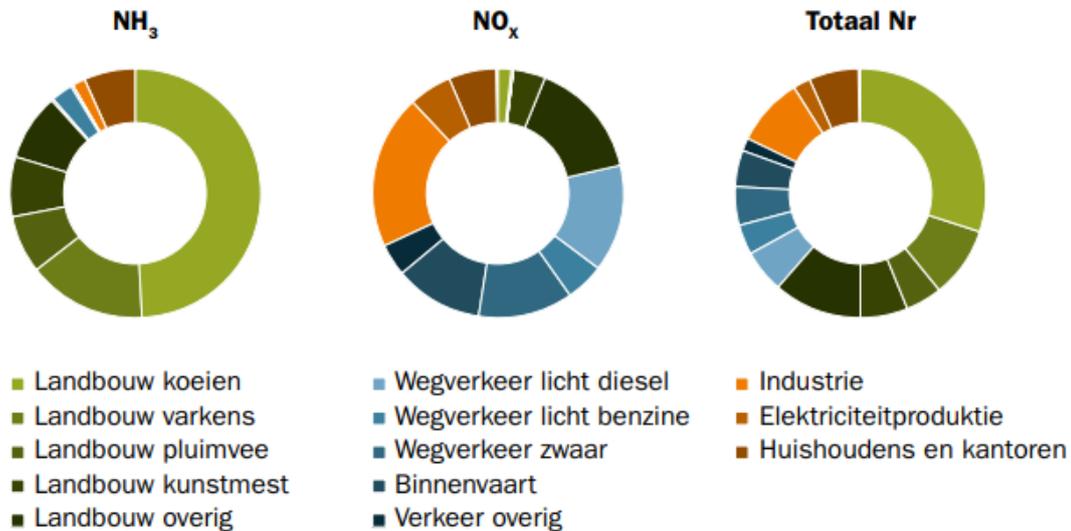
Uitstoot stikstofoxiden (NOx) in kiloton



¹¹ S. van Mersbergen, "Corona blijkt stuk harder toe te slaan in gebieden met intensieve veehouderij", Het Parool 30 April 2020(Exhibit 11).

¹² EEA, Air quality in Europe - 2020 report, ISSN 1977-8449, September 2020(Exhibit 12).

¹³ TNO, "Fact sheet emissions and deposition of nitrogen in the Netherlands," October 2019(Exhibit 13).



Figuur 1. Herkomst van de emissies van ammoniak (NH₃), stikstofoxiden (NO_x) en totaal reactief stikstof (Nr)¹ naar sector in 2017⁴.

Consequences of pollution by diesel cars: public health and the environment

- 4.10. Diesel engines therefore account for an unprecedented large share of NO_x emissions in the Netherlands. The impact of harmful NO_x emissions from diesel cars was calculated specifically in relation to the Volkswagen diesel scandal which exposed the fraudulent practices of car manufacturers. Research by the University of Nijmegen shows that nine million Volkswagen cars, sold in Europe and the United States between 2009 and 2015, emitted as much as 526 kilotons of nitrogen oxide more than was legally allowed. The diesel fraud committed by Volkswagen has had by far the greatest impact on public health in Europe due to the significantly higher number of European diesel vehicles sold and the higher population density. The environmentalists calculated that as a result of the extra emissions of nitrogen oxides caused by Volkswagen's fraud, a total of almost 45,000 (!) healthy years of life were lost, particularly in urban areas, of which over 44,000 in Europe and almost 700 in the United States. This was due to excess mortality and illnesses caused by inhalation of the particulate matter formed by the extra emissions of nitrogen oxides from the diesels that were rigged. Moreover, if Volkswagen does not recall these cars, an additional 72,000 healthy years of life will be lost in Europe due to the emissions over and above the legal limit.¹⁴
- 4.11. Researchers at the Massachusetts Institute of Technology came up with a similar calculation, calculating that the excess NO_x emissions attributable to Volkswagen's 2.6 million rigged diesels will cause 1,200 premature deaths in Europe. That study did not take into account the impact of the remaining 6 million Volkswagen diesels sold in Europe, let alone the millions of other rigged diesels sold by other manufacturers such as Renault¹⁵
- 4.12. A later study also examined the effect of the combined NO_x emissions of all the rigged diesels sold in Europe. According to that study, nearly 10,000 premature deaths can be attributed to NO_x emissions from diesel cars in the European Union in the year 2013 alone. About 50% of these deaths

¹⁴ R. Oldenkamp et al, 'Valuing the human health damage caused by the fraud of Volkswagen', *Elsevier* vol. 212, p. 121-127(**Exhibit 14**).

¹⁵ P.C. Guillaume et al, 'Public health impacts of excess NO_x emissions from Volkswagen diesel passenger vehicles in Germany', *Environmental Research Letters* 12 (2017) 034014 dated. 03 March 2016(**Exhibit 15**).

could have been avoided if the rigged diesels had complied with mandatory emissions legislation and if car manufacturers had not committed widespread emission test fraud.¹⁶

- 4.13. How concrete the effects of harmful NO_x emissions on human health are is shown by a December 2020 ruling by a London court, which found for the first time that the cause of death of a nine-year-old girl in Lewisham in South-East London was NO_x emissions from the nearby road. In this groundbreaking ruling, NO_x was thus not so much identified as the cause of a lost healthy year of life or of other respiratory problems, but as the *concrete* cause of death of a nine-year-old girl.¹⁷ The ruling confirms the consequences of harmful NO_x emissions, which should not be underestimated, and underlines the seriousness of the many years of systematic fraud committed by Rigged diesel manufacturers such as Renault.
- 4.14. Followers of the case and experts see the verdict as a milestone for individuals and organizations fighting against NO_x pollution, which is particularly severe in urban areas and caused by diesel vehicles.
- 4.15. In addition to the particularly harmful effects on human health, emissions of nitrogen oxides are also particularly damaging to the environment. NO_x contributes to climate change through the formation of ozone. Moreover, NO_x leads to acid rain and vulnerable Natura 2000 areas are permanently affected by emitted nitrogen oxides due to soil acidification. The U.S. Environmental Protection Agency ("EPA"), charged with protecting public health and the environment, aptly summarizes the environmental and public health hazards of NO_x in the illustrations below:

Acid Rain - NO_x and sulfur dioxide react with other substances in the air to form acids which fall to earth as rain, fog, snow, or dry particles. Some may be carried by the wind for hundreds of miles. Acid rain damages forests; causes deterioration of cars, buildings, and historical monuments; and causes lakes and streams to become acidic and unsuitable for many fish.

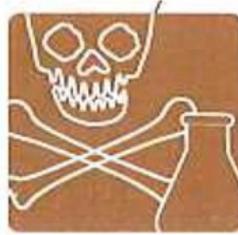


Water Quality Deterioration
- Increased nitrogen loading in water bodies, particularly coastal estuaries, upsets the chemical balance of nutrients used by aquatic plants and animals. Additional nitrogen accelerates "eutrophication," which leads to oxygen depletion and reduces fish and shellfish populations. NO_x emissions in the air are one of the largest sources of nitrogen pollution to the Chesapeake Bay.



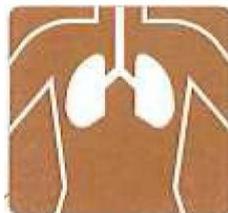
¹⁶ J.E. Jonson, J. Borcken-Kleefeld, D. Simpson, A. Nyiri, M. Posch and C. Heyes 'Impact of excess NO_x emissions from diesel cars on air quality, public health and eutrophication in Europe', *Environmental Research Letters* 12 (2017) 094017 dated 24 March 2017 (**Exhibit 16**).

¹⁷ S. Laville, 'Air pollution a cause in girl's death, coroner rules in landmark case', *The Guardian* 16 December 2020 (Exhibit 1).



Toxic Chemicals - In the air, NO_x reacts readily with common organic chemicals, and even ozone, to form a wide variety of toxic products, some of which may cause biological mutations. Examples of these chemicals include the nitrate radical, nitroarenes, and nitrosamines.

Ground-level Ozone (Smog) - is formed when NO_x and volatile organic compounds (VOCs) react in the presence of heat and sunlight. Children, the elderly, people with lung diseases such as asthma, and people who work or exercise outside are susceptible to adverse effects such as damage to lung tissue and reduction in lung function. Ozone can be transported by wind currents and cause health impacts far from the original sources. Millions of Americans live in areas that do not meet the health standards for ozone. Other impacts from ozone include damaged vegetation and reduced crop yields.



Particles - NO_x react with ammonia, moisture, and other compounds to form nitric acid vapor and related particles. Human health concerns include effects on breathing and the respiratory system, damage to lung tissue, and premature death. Small particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and aggravate existing heart disease.



Global Warming - One member of the NO_x family, nitrous oxide, is a greenhouse gas. It accumulates in the atmosphere with other greenhouse gases causing a gradual rise in the earth's temperature. This will lead to increased risks to human health, a rise in the sea level, and other adverse changes to plant and animal habitat.

European efforts to reduce harmful emissions from diesel vehicles

- 4.16. The European Union has long recognised the problematic emissions from diesel cars in various health programmes and legislation. In 2001, the European Commission announced the Clean Air

For Europe ("**CAFE**") programme¹⁸ The aim of this programme was to promote public health by focusing on air quality and reducing harmful (diesel) emissions. In order to meet EU air quality objectives, the CAFE programme set further reductions in harmful vehicle emissions and required car manufacturers selling vehicles in the EU to meet these stringent emission targets.

4.17. To reduce NOx and other harmful emissions, EU emission standards have become increasingly stringent over time. When the Emissions Regulation was introduced, the European Commission noted that there had been more than 24 directives on vehicle emissions and fuel consumption in the last 35 years. In particular, the very harmful NOx is subject to increasingly strict maximum emission values. The Emissions Regulation was replaced by Regulation 2019/61 on 1 January 2020. Replacement was necessary, according to recital 10, because of the significant differences between emission values in test situations and emission values in daily use of vehicles.

4.18. Because the Rigged Diesels that are the subject of this writ of summons were sold prior to the entry into force of this new 2019 regulation, this writ of summons is based on the various emission standards contained in the Emissions Regulation as it applied prior to 1 January 2020. Relevant here are the following so-called Euro standards for diesels, which lowered the NOx limit values (and thus continuously reduced the permitted emissions):

- in the Euro 3 standard (in force from January 2000), the NOx limit values were 500 mg/km;
- in the Euro 4 standard (from January 2005) the NOx limit values were lowered to 250 mg/km;
- the Euro 5 standard (from September 2009) further lowered the limit value to 180 mg/km;
- finally, with the Euro 6 standard (from September 2014), the permitted level of NOx was lowered to 80 mg/km.

Note: the Euro 5 and Euro 6 standards are included in the Emissions Regulation.

4.19. These strict NOx standards clearly show how seriously the EU takes the NOx problem; in the period 2000 - 2014, the maximum permitted NOx emissions under the Euro 6 standard were more than six times lower than those still allowed under the Euro 3 standard. Manufacturers were informed of these strict environmental requirements well in advance so that they could adapt their production processes to them; the Euro 6 standard, which would apply from 2014, had therefore already been set in 2007.¹⁹

4.20. The regulation of vehicle emissions in the EU and the Netherlands is further governed mainly by the EC directive 2007/46/EC ("**Framework Directive**"), EC regulation 692/2008 ("**Test Regulation**") and in article 22 (4) of the Dutch Road Traffic Act [Wegenverkeerswet] 1994 ("**WWV**"). The main provisions are summarised in the following paragraphs.

Summary of relevant legal provisions in the EU and the Netherlands

4.21. A car manufacturer who wants to market his car in the EU must, in accordance with Article 22 paragraph 4 of the Dutch Road Traffic Act, guarantee that the car complies with the relevant emission standards and other requirements. Every car has to undergo a type approval before it can be put on the market. Article 4 of the Framework Directive requires each EU Member State to designate or establish an approval authority to deal with matters relating to EC type approval. Each Member State is then competent to grant type approval to vehicles submitted to its approval authority. After

¹⁸ EC, 'The Clean Air for Europe (CAFE) Programme - Towards a Thematic Strategy for Air Quality, COM(2001) 245 final dated. 04 May 2001(**Exhibit 17**).

¹⁹ Within the Euro 6 standard, a further distinction is made between Euro 6b, 6c, 6d-TEMP and 6d. The emission limits are the same for all these variants, but it is the way of testing that makes the difference.

successful type approval in a Member State, the car is deemed suitable for delivery throughout the EU.

EC type approval process and emissions tests

4.22. EC type approval is granted by the issuing of an EC type approval certificate in accordance with Chapter IV of the Framework Directive. Renault, a French company, chooses to obtain type approval for its EU vehicles through the French *Centre national de réception des véhicules* (CNRV). In the Netherlands, the approval authority is the RDW. An EC type approval can only be granted by an approval authority when the vehicle complies with all applicable regulatory acts listed in Annex IV of the Framework Directive. The Emissions Regulation also forms part of this. The starting point, according to Article 5 of the Framework Directive, is that the manufacturer is responsible for all aspects of the approval process and for ensuring conformity of the production, whether or not the manufacturer is directly involved in all stages of vehicle construction.

4.23. In the development of the Emissions Regulation, the EU has already been wary of manufacturers showing different results during approval procedures than in normal use. Therefore, Article 4(2) of the Emissions Regulation explicitly requires manufacturers to comply with the type approval procedures for verifying conformity of production and durability of the emission control system. And even more relevant: emissions must be limited and in compliance with the Emissions Regulation "*throughout the normal life of the vehicles under normal conditions of use*".

"Art 4 para 2: "Manufacturers shall ensure that type approval procedures for verifying conformity of production, durability of the emission control system and in-service conformity are met.

In addition, the technical measures taken by the manufacturer should be such as to ensure that the exhaust and evaporative emissions are effectively limited, in accordance with this Regulation, throughout the normal life of the vehicles under normal conditions of use. For that purpose, in-service conformity measures shall be checked until the vehicle reaches the age of 5 years or 100,000 km, whichever is the sooner. Durability testing of the emission control systems for type approval covers 160,000 km. To comply with this durability test, manufacturers shall have the possibility to use bench ageing tests, provided that they are in conformity with the implementing measures referred to in paragraph 4.

Conformity of in-service vehicles shall be checked in particular against the emission limit values set out in Annex I. In order to improve the control of evaporative emissions and of emissions at low ambient temperatures, the Commission shall revise the test procedures."

4.24. Article 5(1) of the Emissions Regulation reiterates that emission control systems must comply with the Emissions Regulation not only during testing but also under normal conditions of use:

Art. 5 paragraph 1: "Manufacturers shall equip their vehicles so that the components likely to affect emissions are designed, constructed and assembled to enable the vehicle, under normal use, to comply with this Regulation and its implementing measures."

4.25. A similar provision can be found in the Test Regulation. All vehicles for which EC type approval is required in the European Union must be tested in accordance with the test requirements laid down in the Test Regulation. Article 3(5) then requires vehicle manufacturers to take technical measures to ensure that the exhaust and evaporative emissions are effectively limited throughout the normal life of a vehicle and under normal conditions of use.

Art. 3 paragraph 5: "The manufacturer shall take technical measures to ensure that the exhaust and evaporative emissions are effectively limited, in accordance with this Regulation, throughout the normal life of the vehicle and under normal conditions of use.

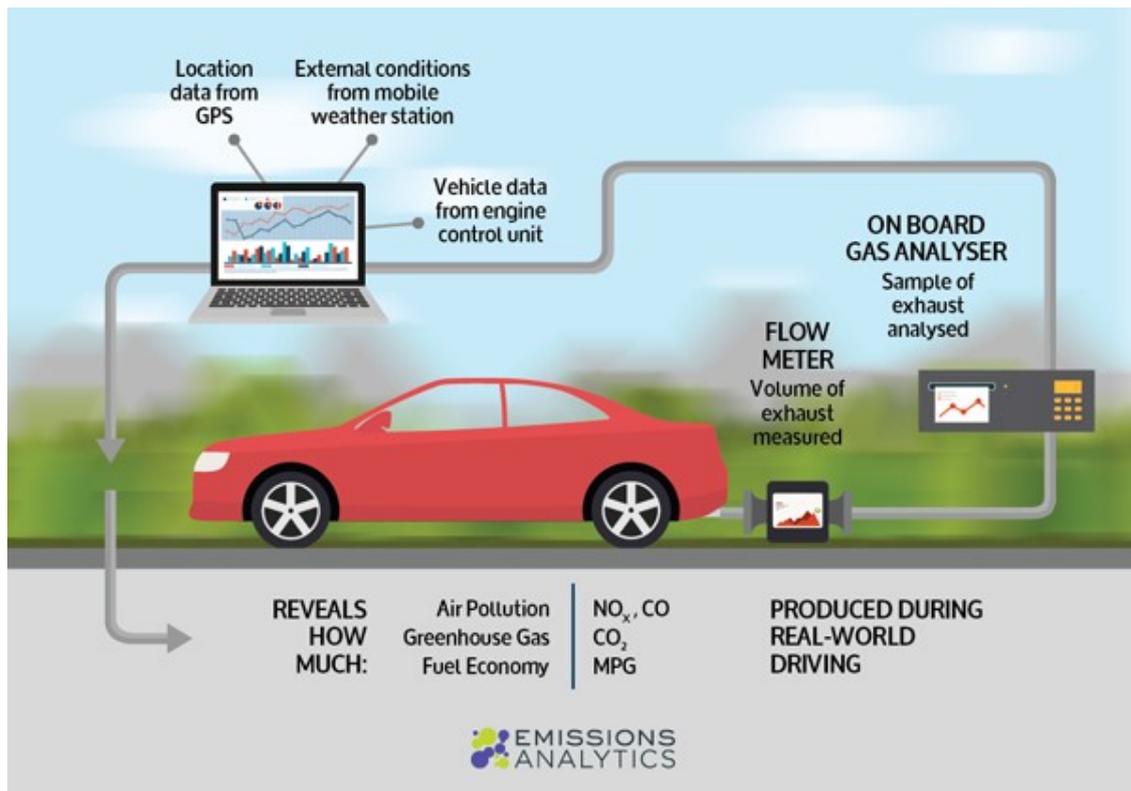
These measures include ensuring that the hoses, gaskets and fittings used in emission control systems are constructed so as to conform to the original design intent."

- 4.26. Paragraph 6 of the same Article adds that manufacturers must ensure that the results of emissions tests comply with the applicable limit values under the test conditions laid down in the Test Regulation. This test procedure was until recently the *New European Driving Cycle ('NEDC')*, which in accordance with Annexes III and VIII of the Test Regulation takes place on a roller bench and not on a real road. The roller bench is a kind of 'treadmill' on which the wheels of the tested car are placed. Because the roller bench is driven by (the wheels of) the test vehicle, it simulates the car driving on a real road. On the roller bench, four driving cycles in the city and one driving cycle outside the city are simulated. A characteristic of the roller bench is that the steering is not used. The standardized NEDC test enabled the manufacturers of rigged diesels to develop software that recognized when the car was on a roller bench and when it was actually being used for its intended purpose: driving on the road.

The NEDC test was intended to measure fuel consumption and emissions, including the emission of soot, particulates and NOx, as objectively as possible. However, the standardised parameters of this test have led to car manufacturers cheating on the NEDC test to achieve clean test results, when in reality they were not clean. Volkswagen, Renault and other manufacturers were able to calibrate the software in the emission control systems in such a way that the cars achieved clean test results, while in reality they emitted dozens of times the allowed NOx limits. New emissions testing protocols in response to Dieselgate

- 4.27. As a result of the diesel emissions scandals, the EU has introduced new emissions testing protocols in the hope of ending emissions distortions. For example, with the introduction of the Euro 6c standard in 2018, the NEDC test was replaced by the *Worldwide harmonized Light vehicles Test Procedure ('WLTP')*, which has much more realistic test conditions and should therefore be able to more accurately determine whether the vehicle actually meets emissions regulations. However, the WLTP is also a test that takes place on a roller bench in a laboratory with a constant temperature, and therefore remains susceptible to cheating by car manufacturers.
- 4.28. In order to prevent a repeat of the diesel scandal in question, Euro 6d-TEMP vehicles²⁰ will therefore also be tested with a *Real Driving Emissions ('RDE')* test from September 2019. Crucially, this is a test conducted on the road for two hours under normal operating conditions using a *Portable Emissions Measurement System ('PEMS')*. Such a portable emissions measurement system captures the emissions from the car during normal operation, and measures the harmful pollutants present in them, as shown in the image below.

²⁰ Euro 6d-TEMP is the emissions standard that all newly registered diesels must meet from 1 September 2019.



4.29. The RDE test is intended to rule out emission fraud, as occurred on a large scale with Renault diesel cars during the NEDC roller bench tests. Because there is no illusion that the same emission values are achieved during normal driving as during the NEDC test on the roller bench, the RDE test of Euro 6d-TEMP temporarily allows an increased NO_x emission of 168 mg/km, 2.1 times 80 mg/km (the Euro 6 standard in NEDC tests). From January 1, 2021, NO_x emissions from diesel vehicles in the RDE test may only be 1.43 times the Euro 6 standard in the NEDC test, which amounts to 114 mg/km.

Certificate of conformity for each vehicle sold in the EU

4.30. If the car passes the type approval test for the model in question, and thus complies with all the prescribed emission standards and other requirements, the manufacturer receives what is referred to as a certificate of conformity. In concrete terms, the certificate shows that the vehicle in question complies with the emission standards laid down. The certificate therefore contains information regarding the identification and specifications of the type of vehicle and the corresponding determined emission values and fuel consumption. Every vehicle sold in the EU must have such a certificate of conformity before it can be sold. In addition, the certificate obliges all other EU Member States to register the vehicle covered by the declaration of conformity and to permit its sale in accordance with Article 26(1) of the Framework Directive.

4.31. All cars sold in the Netherlands are therefore provided with a certificate of conformity showing that the vehicle has been manufactured in accordance with the applicable EC type approval for the model in question. Without this certificate, the rigged diesels could not have been sold and registered in the Netherlands (or the rest of the EU). However, because the Rigged diesels were wrongly type-approved, the certificate of conformity was also wrongly issued.

Additional emission standards for the use of (diesel) vehicles

- 4.32. In practice, moreover, it can be seen that even meeting European emission standards is nowhere near enough to achieve acceptable air quality, particularly in urban areas. In order to protect the health of its citizens, the Netherlands (and other EU countries) have established what are called environmental zones, including in Amsterdam, Arnhem, Rotterdam and Utrecht. Under this regime, certain vehicles are not allowed in certain areas. For example, from November 2020 onwards, Amsterdam will only allow diesels of Euro 4 and later. From 2025, these Dutch standards will be tightened further²¹
- 4.33. The restrictions on harmful diesel emissions also apply in France, where a number of cities only allow diesels of Euro 5 and later under certain conditions. In this context it is relevant - as will be demonstrated later in this writ of summons - that Renault cars, which on paper meet the Euro 6 standard of 80 mg/km, in practice do not even meet the Euro 5 standard of 180 mg/km, as a result of which these Rigged Diesels should be banned from the environmental zones.
- 4.34. Not only have the Aggrieved Parties paid for a car that violates emission standards and is therefore not clean at all, but they are also faced with the risk that their Rigged Diesels will be partially or totally banned from driving, as is already apparent in European inner cities.

The EU legal ban on defeat devices

- 4.35. Despite the fact that there is broad scientific consensus on the harmfulness of NOx emissions, car manufacturers regularly try to push the limits. The manipulation of type approvals by car manufacturers has been a well-known phenomenon for years. Cars have been produced since the 1990s that were able to detect when a vehicle was being tested in order to circumvent emissions standards. At the time, the EPA had already discovered that trucks built between 1993 and 1998 by Renault, Volvo and Caterpillar activated a special mode to make the vehicle meet emission standards at the time of testing, and turned off these emission control systems in daily use, among other things, to save fuel.²²
- 4.36. The international community has recognised the need for effective regulation of emissions and, in doing so, has explicitly recognised the great danger posed by the circumvention of emission standards by car manufacturers. To this end, the United Nations Economic Commission for Europe ('**UNECE**', which includes all European countries, the United States, Canada and Russia) has explicitly stipulated that car manufacturers must not install 'defeat devices' in their cars. These defeat devices are defined as components of the vehicle that retard or disable the operation of the emission control system under conditions encountered during normal vehicle use.
- 4.37. Regulation No 83 of the UN/ECE on "Uniform provisions concerning the approval of vehicles with regard to the emission of pollutants according to engine fuel requirements" ("**UN Regulation**") states the following on this matter:

"Art. 2.16: "defeat device" means any element of design which senses temperature, vehicle speed, engine speed, transmission gear, manifold vacuum 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 to be encountered in normal vehicle operation and use. Such a structural component is not considered a defeat device if:

²¹ Information on environmental zones in the Netherlands - cars and delivery vans, <https://www.milieuzones.nl/personen-en-bestelautos> (**Exhibit 18**).

²² M. Hijink & C. Houtekamer, "Not only Volkswagen tries to pretend to be clean and economical," *NRC* September 22, 2015(**Exhibit 19**).

2.16.1. it is necessary to protect the engine against damage or accident and to ensure the safe operation of the vehicle, or

2.16.2. it functions only when the engine is started; or

2.16.3. its use is substantially included in the Type I or Type VI test procedures;'

4.38. The UN Regulations then prohibit such defeat devices in Art. 5.1 and further provide (in Art. 3.1.1. that the car manufacturer himself has to provide information as part of the application for approval on the measures taken to prevent manipulation and modification of the emission control computer.

4.39. The Emissions Regulation codifies these provisions in the UN Regulation and uses almost the same definition for 'defeat devices' as for 'manipulation facilities'.

Art. 3 paragraph 10: "defeat device" means any element of design which senses temperature, vehicle speed, engine speed, transmission gear, intake vacuum or any other parameters for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system such that the effectiveness of the emission control system is reduced under conditions likely to be encountered in normal vehicle operation and use;"

4.40. The Emissions Regulation prohibits the use of defeat devices that reduce the effectiveness of emission control systems except under strictly prescribed conditions, including when the device is *"necessary to protect the engine against damage or accident and to ensure safe operation of the vehicle"*. Article 5(2) of the Emissions Regulation provides as follows:

"The use of defeat devices that reduce the effectiveness of emission control systems is prohibited. This prohibition shall not apply if:

i. the device is necessary to protect the engine against damage or accident and to ensure safe operation of the vehicle;

ii. the device functions only when the engine is started, or

iii. the conditions were substantially included in the test procedures for verifying evaporative emissions and average exhaust emissions."

4.41. Car manufacturers, such as Renault, which place on the market vehicles containing such defeat devices are therefore in breach of their obligations under Articles 5.1 and 5.2 of the Emissions Regulation. Crucially, both the UN Regulation and the Emissions Regulation consider all devices to be prohibited defeat devices if they disable emission control systems at times that *are to be expected during normal vehicle operation*. This addition was made in a precise attempt to make it clear that car manufacturers must not make emissions appear more favourable in emissions tests than they actually are, as Renault (in close collaboration with Bosch) has done on a large scale.

4.42. As will be discussed in detail later, Renault turns off its emission control systems (among other things) when the outside temperature is below 17 degrees Celsius. This is higher than the average Dutch temperature in any (!) month of the year, and therefore means that the emission control systems are out of action for the vast majority of the year. The fact that emission control systems are turned off by Renault for practically the whole year just because of the outside temperature shows that the prohibited defeat devices, as defined by the UN regulation and the Emissions Regulation, are being used.

5. RENAULT'S EMISSIONS TECHNOLOGY AND PROMISES

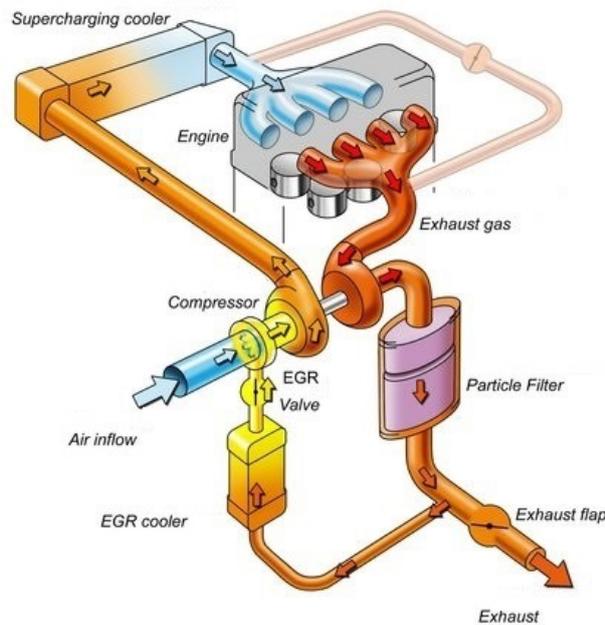
Introduction: different systems for limiting emissions

- 5.1. Due to the international tightening of diesel emission regulations and rising petrol prices, almost all major car manufacturers have developed "clean diesel" engines. They then unanimously claimed that modern diesel cars were no longer highly polluting, as they had always previously been. On the contrary, the new diesel vehicles were promoted as environmentally friendly and "clean" and, in many cases, would even be cleaner than petrol cars. So Volkswagen, Renault, Mercedes, General Motors, Fiat Chrysler America and other manufacturers began selling diesel cars and trucks as a more powerful, but also as a more environmentally friendly alternative to petrol-powered vehicles. And the marketing worked, as millions of diesel vehicles were purchased across Europe and around the world between 2009 and 2019.
- 5.2. In order to reduce emissions from diesel engines, car manufacturers have to think of different ways to achieve emission standards. As described earlier in this writ of summons, diesel engines are more efficient, but also considerably more harmful due to emissions of NO_x, particulate matter and soot particles. One way to reduce NO_x emissions is to lower the pressure and temperature of the air fed into the combustion chamber of the diesel engine, but this in turn produces additional particulate matter and/or soot, which is equally undesirable.

Exhaust gas recirculation method

- 5.3. Another way to reduce NO_x emissions is to use an *Exhaust Gas Recirculation* system ("**EGR**"). As explained in Figure 1 below, the exhaust gases are returned to the engine intake and mixed with fresh incoming air. Exhaust gas recirculation returns a portion of the exhaust gases to the engine intake using a controllable valve that directs exhaust gases from the exhaust manifold, through an EGR cooler, to the engine intake. The mixture of exhaust gas and fresh incoming air reduces the NO_x generated in the cylinder during engine operation. Exhaust gas recirculation reduces the amount of NO_x produced by reducing the available oxygen and lowering the maximum combustion temperature; however, EGR also leads to an increase in harmful particulate matter emissions, so this solution does not solve the problem of harmful emissions.

Exhaust Gas Recirculation through Cold Loop



- 5.4. Both Renault and other car manufacturers applied EGR in all its Euro 5 and Euro 6 diesel engines. However, the use of EGR alone is not enough to meet the stringent European and North American emission standards.

Selective catalytic reduction method

- 5.5. In order to further reduce NO_x emissions, various expensive exhaust gas after-treatment methods have been developed in the automotive industry in addition to EGR systems. A relatively costly after-treatment method for diesel vehicles to meet the Euro 6 standards is selective catalytic reduction ("**SCR**"). A catalyst is used to filter NO_x from the emissions and convert it into nitrogen gas (N₂) and water by means of a urea solution. The obvious disadvantage of such an after-treatment method is - in addition to its cost - the need for an extra tank in the car to store the urea solution and to be able to use this for NO_x reduction. In addition, users must refill this tank on a regular basis.
- 5.6. Renault has chosen - until 2018 - *not to* use the SCR method in its diesel vehicles. From this date, the SCR method has been gradually applied in Renault and Dacia models.

Lean NO_x Trap method

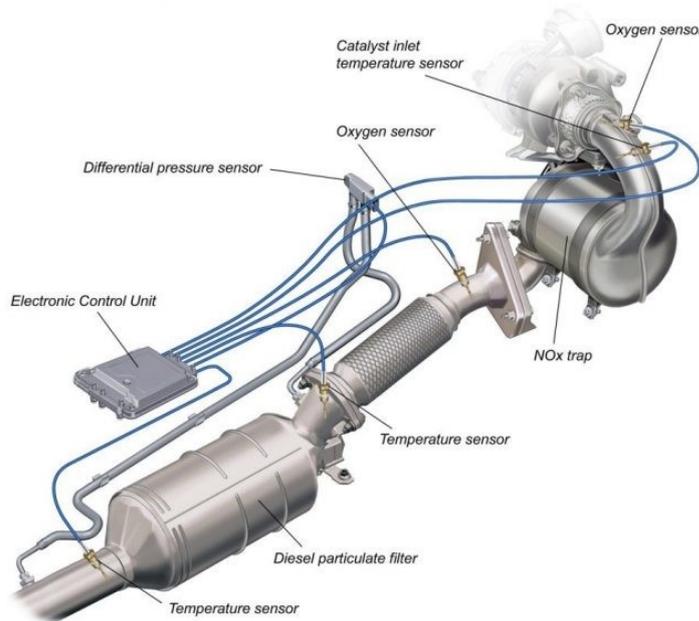
- 5.7. Instead of using the SCR system, Renault chose to implement a less costly and more user-friendly system in the Euro 6 models; a NO_x storage catalyst referred to as the *Lean NO_x Trap* ("LNT"). When this technique is used, NO_x is captured in the catalyst and - when the temperature of the LNT falls within a certain combustion range - reduced to harmless substances such as NO₂. When the catalyst is full, the NO_x is converted to nitrogen (N₂) through a catalytic reaction. However, the catalytic converter can only capture a limited amount of NO_x. If too much NO_x is emitted before the catalytic reaction takes place, then the catalyst is over-saturated and no longer works until a successful reduction takes place.

Summary of the different emission control systems at Renault

- 5.8. To treat emissions in the diesel engine, Renault diesels thus primarily use exhaust gas recirculation (EGR), whereby the exhaust gases are returned to the engine intake and mixed with fresh incoming

air. After-treatment technologies include the already mentioned LNT system and a diesel particulate filter. The latter captures and removes soot emissions, while the LNT system uses a catalytic reaction to convert NO_x into less harmful substances.

- 5.9. When these systems are operating optimally (shown graphically below), 85% of NO_x emissions are eliminated by the EGR and the remaining 15% by the LNT.



The manipulation of emissions in Renault's Rigged diesels

- 5.10. All of Renault's Rigged diesels controlled emissions in the following way: after the combustion by-products leave the engine, part of the exhaust is cooled and returned to the combustion chamber using exhaust gas recirculation (EGR). This is the first step in reducing NO_x emissions from the engine and was used by Renault in all Euro 5 and Euro 6 diesels.
- 5.11. The Euro 6 diesels also have the LNT system in addition to the EGR. In this second step, after the exhaust gases have passed through a particulate filter, the exhaust gases are stored ('captured') in the LNT to convert NO_x into less harmful substances, such as nitrogen.
- 5.12. When this entire emission control system is fully engaged, as when a Renault is tested via a classic NEDC test (i.e. on a roller bench), it results in cleaner emissions that comply with the Emissions Regulation. However, when this emission control system is switched off, as is apparently the case when the car is used every day under 'normal driving conditions', Renault's Rigged diesels produce extremely high levels of NO_x well above the maximum permitted emission values.
- 5.13. The exhaust gas recirculation (EGR) system can be shut down by Renault by completely closing the valve that allows the exhaust gases to enter the intake. The extent to which EGR is active can be controlled by opening this valve to a greater or lesser extent. A lower percentage of EGR indicates that the valve is more closed, limiting the amount of exhaust gas that passes through the EGR system. Conversely, a high percentage indicates a large amount of exhaust gas passing through the EGR system. A high EGR percentage results in a more significant reduction of NO_x emissions. The EGR percentage is controlled by an engine management system, in this specific case the Bosch EDC17 (also generically referred to as Electronic Control Unit or ECU). This component determines

the conditions under which the EGR system may be partially activated or deactivated and is thus programmed and set by Renault technicians in collaboration with Bosch, the supplier.

- 5.14. In a Renault press release on the LNT system dated 25 June 2008 (**Exhibit 20**), Renault states that the data from various sensors is sent to the EDC17 which then controls the operation of the LNT:

"To ensure the NOx Trap operates smoothly, additional (oxygen and heat) sensors are positioned at the intake manifold and on the tailpipe.

- 5.15. If the Bosch EDC17 limits or even disables the operation of the EGR system (or the LNT), the amount of NOx emitted will increase and the vehicle will no longer meet the applicable emissions standards.

- 5.16. Despite the fact that Renault had the means to reduce harmful NOx emissions with its emission control systems, it chose not to do so. The independent International Council on Clean Transportation ("ICCT") has published that the reason that manufacturers of Rigged diesels resorted to emissions fraud, when the clean diesel combustion technology was basically in place, was to reduce fuel consumption, reduce engine noise and in a general sense improve the 'feeling of performance'.²³ In particular, the ICCT explained:

- When the EGR is turned off, more oxygen is available, allowing more fuel to be burned immediately - if needed - and greatly improving the car's responsiveness. In short, deactivating the EGR leads to an improvement in the overall driving performance of the Rigged diesel .:

"more excess oxygen is available, more fuel can be burned immediately if necessary"²⁴

- Reducing the operation of the LNT system can save fuel:

"LNT-equipped vehicles have to periodically inject extra fuel into the exhaust to reduce the NOx stored on the LNT. Turning off or modulating this LNT regeneration process can . . . improve fuel economy by 2%-5%."²⁵

- A diesel particulate filter is expensive. Calibrating the engine for high NOx emissions can reduce soot particle emissions, meaning the filter will need to be changed less often, a less expensive filter can be used, and fuel consumption could be reduced:

"Calibrating the engine for high NOx emissions can reduce particulate emissions. Lower particulate emissions means the particulate filter would require fewer periodic regenerations, which in turn would allow for the use of a cheaper, less durable filter and could reduce fuel consumption."²⁶

- Given the interaction between fuel efficiency and NOx emissions, opting for higher NOx engine emissions can improve fuel economy by 2%-5%.

"calibrating for higher engine-out NOx emissions can improve fuel economy by 2%-5%"²⁷

- Proper calibration of the EDC17 is difficult and time consuming. The use of defeat devices allows the user to save time and focus on other priorities that may seem noticeable to the user, such as improving fuel economy, while the user does not realize that the Rigged diesel is exceeding emission values.

²³ Y. Bernard et al, "White Paper: 'Catching defeat devices - How systematic vehicle testing can determine the presence of suspicious emissions control strategies', ICCT June 2019(**Exhibit 21**).

²⁴ *Ibidem*, p. 4.

²⁵ *Ibidem*, p. 4.

²⁶ *Ibidem*, p. 4.

²⁷ *Ibidem*, p. 4.

"Proper calibration is difficult and time-consuming. The use of defeat devices allows calibration engineers to save time and focus on other priorities, such as fuel economy improvement which - unlike air pollutant emissions performance - can be perceived by the user of a vehicle."²⁸

- 5.17. Disabling the emission control systems outside of emissions testing therefore has the advantage for Renault of slightly lower fuel consumption, lower maintenance and development costs, and optimal ease of use. Through its systematic fraud and violation of the Emissions Regulation, Renault was thus able for years to maximise its profits at the expense of the environment and public health.

The market positioning of Renault; producer of clean diesels with eco label

- 5.18. The Renault website²⁹ makes almost no reference to the LNT system announced in 2008 to reduce emissions (or to other emission-reducing measures). In fact, it seems that Renault has carefully removed any notable LNT-related information. Meanwhile, Renault's new diesel engines are fitted with so-called 'Blue dCi' diesel engines, which are equipped with the (already mentioned) emission control system 'Selective Catalytic Reduction', which would have replaced the LNT system. Eco2 label (for "sound ecological and economical credentials")
- 5.19. This toning down is in sharp contrast to Renault's emphasis on clean or green diesels in the past. From various press releases and old cache files (which can still be found) it is clear that from 2008 Renault told potential buyers in the Netherlands that 'the dCi diesel engines *will qualify for the Renault eco2 label*', which would be a clear indication of their '*sound ecological and economical credentials*'.
- 5.20. The eco2 label, introduced by Renault in 2007 for its cars, was intended to show its customers that Renault was committed to making ecological and economical cars that protect the environment. If a model (i) is produced in an ISO 14001-certified factory, (ii) emits less than 140gCO₂/km and (iii) is 95% recyclable, it qualifies for the eco2 label. Renault also gives 'energy labels' to various models, so that the customer can see at a glance how sustainable the car is.
- 5.21. What is not a criterion for obtaining the eco2 label, however, is the amount of NO_x that the car in question emits. This while high NO_x emissions - as explained in detail above - are one of the most, if not the most, harmful substance for the environment. Where customers think they are making a sustainable choice by purchasing a car with an eco2 label, the cars in question can emit an infinite amount of NO_x, with all the consequences this has for the environment and health. This while Renault is well aware of the harmful impact of NO_x on the environment and public health - given that Renault describes in its 2008 annual report that '*the NO_x trap reflects Renault's objective of reducing pollutant emissions*'.³⁰

Statements on the LNT system and other emission control systems

- 5.22. In the previously mentioned press release of 25 June 2008 on the LNT system it has developed, Renault announces the LNT system as follows:

"Renault's long-standing efforts have made it one of Europe's three most carbon-efficient car manufacturers. Its achievements in CO₂ reduction are paramount, but it considers that it is just as critical to curb pollutant emissions. The NO_x Trap unveiled at the Environment Workshop is proof of its efforts to counter pollution.

(...)

²⁸ *Ibidem*, p. 5.

²⁹ <https://www.renault.nl/>

³⁰ Print screen of annual report 2008 Renault (p. 27), **Exhibit 22**.

The NOx Trap fits firmly with Renault's determination to reduce pollutant emissions. This chemical process captures harmful nitrogen oxides, then converts them into neutral gas." [underlining added by lawyer]

5.23. On the operation of the LNT system, Renault goes on to state that it is capable of converting NOx into the harmless NO₂:

"The NOx Trap operates by capturing and storing NOx (for 10minutes/10km) then releasing it - a five-second process that vehicle occupants do not notice.

During the capture phase, the NOx Trap traps the nitrogen oxide contained in the exhaust gas on a porous carrier in the catalytic converter which is impregnated with chemicals - platinum, barium, rhodium. The platinum converts nitrogen oxide into nitrogen dioxide (NO₂). The barium, which oxidises into barium oxide, traps and holds NO₂ as part of an aqueous barium nitrate solution-Ba(NO₃)₂.

In the release phase, a chemical process known as reductive elimination purges the NOx Trap of the stored NOx, with the engine operating in rich-burn mode, i.e. when the air-fuel mixture has just enough air for complete combustion of the diesel. The nitrogen oxides are converted into neutral gases, mainly nitrogen. In this way the NOx Trap is regenerated and is ready to go on trapping more NOx."

5.24. In its 2010 annual report, Renault even describes several diesel engines as '*the Renault ECO2 champions*'.³¹

5.25. In 2011, Renault claims on its website that the emission control systems it has developed have reduced the concentration of NOx in exhaust gases by almost 99%. In addition, the LNT system would ensure that future emission standards would be met.³² The emission standards in force at the time (and in the future, already announced well in advance) were therefore very much in the back of Renault's mind when it rolled out the LNT system in Europe (and thus also in the Netherlands). Renault therefore promised purchasers, as from the introduction of LNT technology, vehicles which met all legal requirements and were even well ahead of them, even though it knew that this was not the case.

Diesels are said to be "economical and clean"

5.26. Renault also frequently advertises on its website that its diesel engines perform 'economically and cleanly'. However, only the amount of CO₂ emitted by the engines is mentioned, not the amount of NOx. This while these very engines produce a lot of polluting exhaust fumes and are considerably less clean than Renault makes them seem.³³

5.27. In the years to follow Renault unabashedly continues this deception. For example, Renault continues to propagate that its cars are environmentally friendly:

"Environmentally conscious choice

Renault's future models are not the only ones to make sustainable mobility accessible to everyone; our current cars are also kinder to the environment - and to your wallet. The Dutch government levies less tax on cars with low CO₂ emissions. Since our eco² models have low CO₂ emissions as standard, you benefit from a significant advantage."

Although the CO₂ reduction is indeed a fact, Renault fails to mention that in practice the emission of nitrogen oxides does not fall within the European standards at all. Consumers are thus led to believe,

³¹ Print screen of annual report 2010 Renault (p. 32), **Exhibit 23**.

³² Printscreen Wayback Machine, 16 August 2011, **Exhibit 24**.

³³ Printscreen Wayback Machine, 6 June 2011, **Exhibit 25**.

on the basis of half information, that the Rigged diesels are environmentally friendly, which is not the case.

5.28. In 2013, Renault even posts on its website the energy labels that belong to cars with the *eco2* label. Renault does not hesitate to give a large number of diesel engines energy labels A or B, which gives the impression that the engines are 'clean'. However, (again) no information is given on the amount of NOx emitted by the models concerned.³⁴ The reason why Renault did not do this is obvious: if the NOx emissions of the diesels were reported, considerably different (read: lower) energy labels could be issued to the diesels.

5.29. In 2016, a year after 'the dieselgate scandal' was first mentioned in the media, Renault suddenly changed its tune:

* The relative consumption figures have been measured using the official European test method (NEDC) which allows you to compare cars in terms of their fuel consumption, but does not aim to accurately reflect the actual consumption. Actual fuel consumption depends on operating conditions, equipment and driving style."³⁵

5.30. However, Renault still did not clarify that cars emitted significant amounts of NOx in addition to the stated CO₂. Instead of providing transparency, Renault (again) failed to inform its customers that its diesel engines were emitting significantly high levels of NOx and therefore did not meet emission standards.

6. DIESELGATE AND THE REAL EMISSIONS FROM RENAULT'S RIGGED DIESELS

Introduction to Dieselgate

6.1. The European diesel scandal came to light primarily because of the role of Volkswagen. In 2014, the ICCT discovered that the exhaust from diesel cars in daily use contained significantly more pollutants than European and American standards allowed.³⁶ The ICCT, along with West Virginia University, conducted additional testing targeting the suspected type of diesels. This was done with three rented diesel cars, two from the VW group and a third from BMW.

6.2. After the U.S. *Environmental Protection Agency* (EPA) and the *California Air Resources Board* sought clarification from Volkswagen, Volkswagen initially claimed that the issue was technical defects in the cars tested. Volkswagen organized a large-scale recall in December 2014, but tests showed that adjustments made during that procedure brought only partial improvements.

6.3. After constantly denying fraud, Volkswagen admitted to the EPA in 2015 that it used prohibited defeat devices to fool emissions tests.³⁷ This led to a formal accusation by EPA two weeks later that the software³⁸ (supplied by Bosch) of Volkswagen's diesel engines was fraudulent and made the engine produce more favourable emissions on the test bench than it did on the road.

6.4. On 22 September 2015, Volkswagen also publicly admitted that diesel engine software, found in some 11 million cars worldwide, was fraudulent. Information from sensors allowed the software to know when the vehicle was on the test bench, thus activating emission control systems at that time.

³⁴ Printscreen Wayback Machine d.d. 15 November 2012(**Exhibit 26**).

³⁵ Printscreen website Renault via Wayback Machine, 17 November 2016(**Exhibit 27**).

³⁶ V. Franco and others 'Real-world exhaust emissions from modern diesel cars (Part 1 - Aggregated results)', ICCT 11 October 2014 (**Exhibit 28**).

³⁷ T. Gardner, P. Lienert, D. Morgan, 'After year of stonewalling, Volkswagen stunned U.S. regulators with confession' *Reuters* 24 September 2015(**Exhibit 29**).

³⁸ C. Houtekamer, 'Everything you want to know about the Volkswagen scandal', *NRC* 23 September 2015(**Exhibit 30**).

On the road, the reduction mechanism was switched off and the engine emitted 10 to 40 times more NOx than allowed by European standards. According to an estimate by *The Guardian*, this would have caused an additional 237,161 to 948,691 tons of harmful NOx to be discharged in the United States alone.³⁹

- 6.5. The scandal spread like an oil slick across the United States and Europe when it emerged that virtually all European diesel car manufacturers were defrauding emissions tests, choosing to protect their own profitability at the expense of public health and the environment. The scandal involving the use of rigged software was subsequently referred to in the media as 'Dieselgate'.

Renault's actual emission values are up to 16 (!) times too high

- 6.6. Renault is one of these manufacturers of Rigged diesels. From scientific and other literature, the tests carried out and Renault's own admissions in response to investigations by the French authorities (among others) show unambiguously that Renault's supposedly clean (and green) diesel vehicles cause far more emission pollution than tests have shown, with the result that - contrary to what Renault claimed - the Rigged diesels do not meet emission standards.
- 6.7. The French newspaper *Le Monde* reported in 2016 that Renault admitted that the software in the Rigged diesels was set so that the EGR system only worked when the ambient temperature was between 17 and 35 degrees Celsius.⁴⁰ Renault has stated that this was done to protect the engine from wear, according to the same article from *Le Monde*. As will be explained below, on 17 December 2020, the Court of Justice of the EU put an end to this 'excuse' and ruled that it concerns the use of (illegal) defeat devices under the Emissions Regulation.
- 6.8. For the record, Renault's Rigged diesels produce far higher NOx emissions than permitted: various independent tests show that under normal driving conditions, the Rigged diesels emit up to *16 (!) times* more NOx than permitted under current emissions standards, putting Renault head and shoulders above other manufacturers. . As will be explained in more detail in this chapter, numerous independent tests from respected sources have shown that both Euro 5 and Euro 6 diesels from Renault no longer have any bearing on applicable emissions standards outside the test environment.

TNO study October 2016

- 6.9. A study commissioned by the Dutch Ministry of Infrastructure and the Environment and carried out by TNO in October 2016 confirms that the Renault Megane - a Euro 6 diesel - emits around thirteen (!) times more NOx in daily use than when tested on the roller bench, while the Renault Clio - also a Euro 6 diesel - emits over ten times more NOx in daily use than when tested on the roller bench.⁴¹
- 6.10. The actual values tested by TNO are also considerably higher than the Euro 6 standard of 80 mg/kg allows. More specifically, TNO has established that the NOx emissions of the Renault Megane during a test on the roller bench at a temperature of 23 degrees Celsius remained below the Euro 6 standard of 80 mg/kg, while the NOx emissions of the same car during the same test on the roller bench at a temperature of 15 degrees Celsius were about *seven* times higher. Reducing the temperature by 8 degrees meant that NOx emissions rose from 71 mg/km to 488 mg/km, according to the TNO report:

³⁹ K. Mathiesen & A. Neslen, 'VW scandal caused nearly 1m tonnes of extra pollution, analysis shows', *The Guardian* 23 September 2015(**Exhibit 31**).

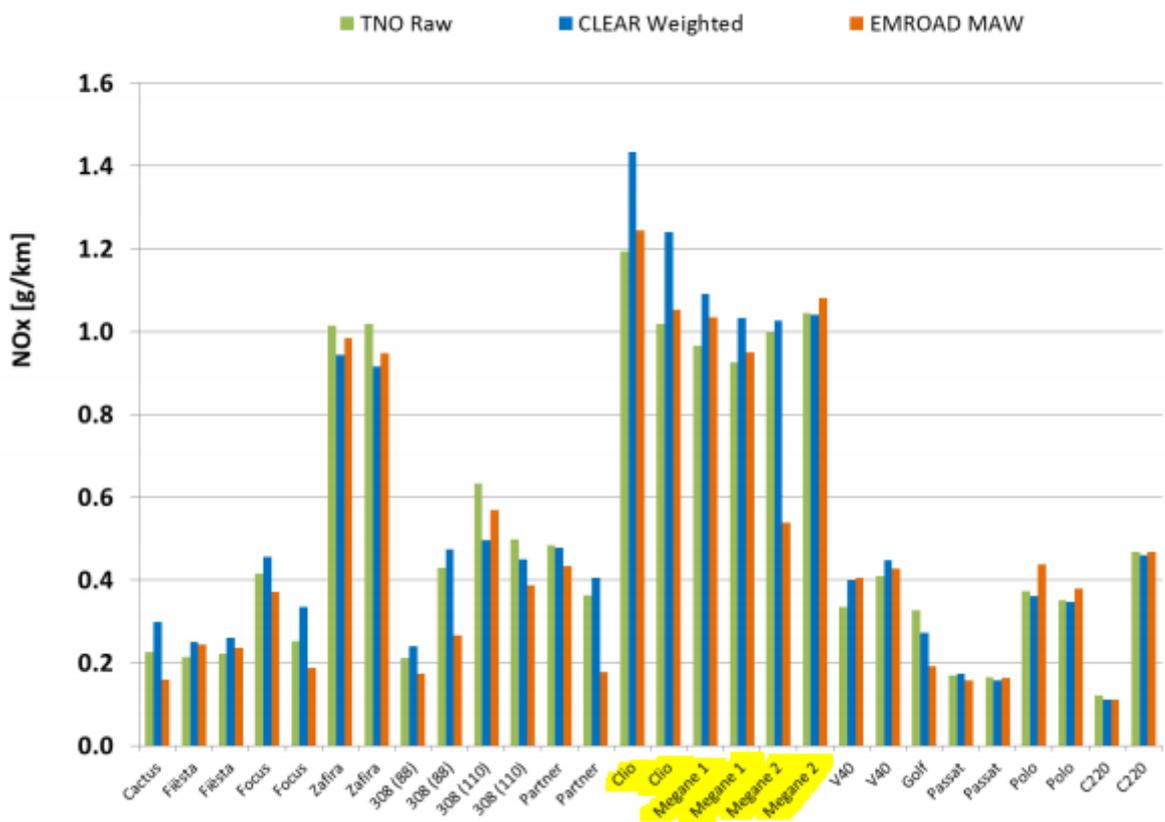
⁴⁰ L. Van Eeckhout and Philippe Jacqué, 'Renault contraint de s'expliquer sur les failles de son moteur diesel', *Le Monde*, 19 January 2016. (**Exhibit 32**).

⁴¹ TNO Report 2016 R11177 dated 10 October 2016. (**Exhibit 33**).

"In order to get more insight into the temperature dependence of emission behaviour, one vehicle was tested on a chassis dynamometer in an NEDC-test with cold start with two different ambient temperatures (soak and test cell at 23 and 15 °C). Due to this temperature drop of 8 °C the NOx emission increased from 71 to 488 mg/km."

- 6.11. The NOx emissions during normal driving conditions were, if possible, even more frightening: the NOx emissions after the use of the LNT system varied between 921 and 1050 mg/kg, where the emission standard was 80 mg/kg. Renault's Rigged diesels scored by far the worst of all fifteen diesel cars tested by TNO, none of which remained within the prescribed emission limits when used daily at .
- 6.12. The TNO study also clearly shows that Renault scores significantly better on the roller bench both with and without the LNT system. The Rigged diesels therefore emitted considerably more NOx during real road journeys than during a type approval test in the laboratory. So it seems very likely

Figure 51 Raw and normalised (CLEAR Weighted and EMROAD MAV) urban NOx emissions (in g/km) for all 28 RDE trips.



that the vehicle signals when it is tested on the roller bench, at least when the environmental conditions are within the range of an official test. At that moment emission control systems are turned on, so that optimal test results can be obtained. However, this does not limit the actual emission of harmful NOx. According to TNO, these test results are in line with the results of other studies:

"These test results confirm the results of earlier studies: Diesel cars comply with type approval requirements in the standardised laboratory test, but real-world NOx emissions of these vehicles are far higher."

Emission tests of the Deutsche Umwelthilfe

- 6.13. Other European organisations have also investigated and reported on Renault's diesel fraud. The German environmental organisation *Deutsche Umwelthilfe* has subjected various Euro 6 diesels

from Renault to emission tests and (also) found alarmingly high NOx values. In November 2015, in collaboration with the University of Bern, it subjected a Euro 6 diesel, the Renault Espace, to emissions tests.⁴² Despite the fact that these tests took place on a roller bench, the NOx emissions of the car far exceeded the emission standards (up to 2061 mg/kg) when the test was done when the engine was warm (where during type approval tests it is cold when the test starts). Only when the car was tested with a 'cold' engine, were NOx emissions much lower, remaining within the Euro 6 standard of 80 mg/kg.

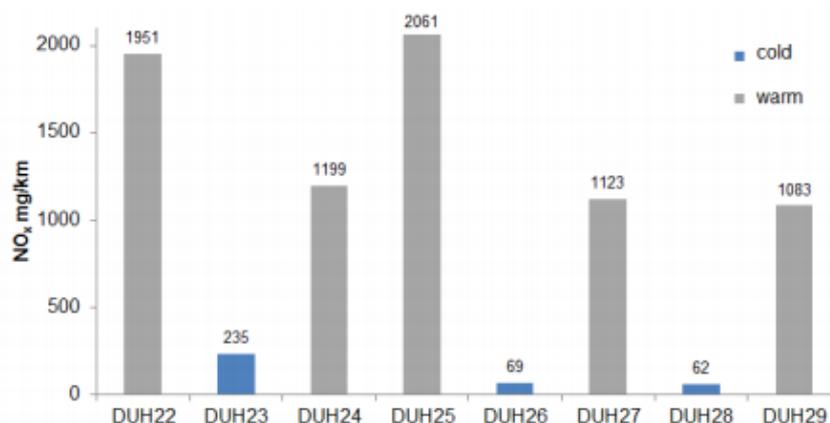


Fig.4: Resultate NEFZ (Rohresultate ohne Verschlechterungsfaktor)

- 6.14. The *Deutsche Umwelthilfe* then conducted a number of further tests in 2016 and 2017 on various Renault models, this time by subjecting the cars to an RDE test (**exhibit 35**). For example, the Renault Scenic 1.6 dCi emitted 14.9 times more NOx than the allowed Euro 6 standard of 80 mg/km, while the Renault Captur 1.5 dCi 110 emitted 16.5 times more NOx.

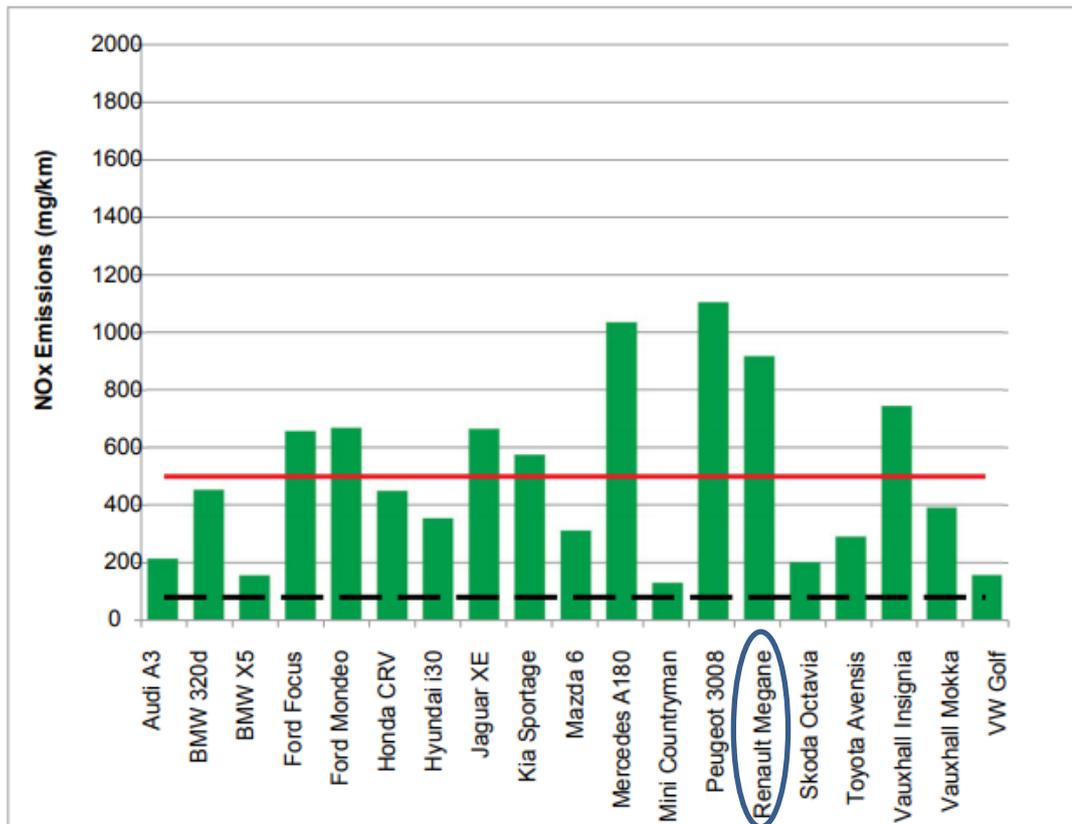
REPAIRER/MODEL	NOX EMISSIONS	NOX FACTOR*
Renault Captur 1.5 dCi 110	1316 mg/km	16.5
Renault Kadjar 1.5 dCi 110 (white)	706 mg/km	8.8
Renault Kadjar 1.5 dCi 110 *****	872 mg/km	10.9
Renault Megane ENERGY dCi 110	435 mg/km	5.4
Renault Scenic 1.6 dCi	655 mg/km	8.2
Renault Scenic 1.6 dCi	1192 mg/km	14.9

British Department for Transport

- 6.15. In April 2016, the UK '*Department for Transport*', also published the results of a study on various diesel engines, including the Renault Megane (**Exhibit 36**). This test again showed that Renault's

⁴² Berner Fachhochschule, 'NOx-Emissionsmessung von einem Personenwagen Renault Espace Diesel, EURO 6b auf dem Rollenprüfstand', November 2015 (**Exhibit 34**).

Euro 6 diesel emitted almost twelve times more NOx than is allowed according to the Euro 6 standard in force at the time.



6.16. In the report, the *Department for Transport* also indicated that the cars investigated used software that switches the EGR system on or off at a certain temperature:

"We have learned through this investigation that manufacturers are using a temperature dependent strategy to regulate the amount of Exhaust Gas Recirculation (EGR) as part of their emissions control. These temperature based systems are used in both the older Euro 5 designs and the very latest Euro 6 engines. Manufacturers argue that temperature based control of the EGR system is essential to ensure the emissions control works reliably during normal vehicle use and over the extended conditions of 100,000 miles."

ICCT report

6.17. In a September 2017 report, the ICCT (*International Council on Clean Transportation*) (already mentioned) also concluded that Renault's Euro 5 and Euro 6 diesels emitted much more NOx than was allowed under the current Euro standards⁴³. The ICCT has compiled the data from various studies on the NOx emissions of 541 Euro 5 and Euro 6 diesels from various government agencies from different countries in the report. The ICCT then mapped the difference between the NOx emissions of a certain type of diesel car on a roller bench and the NOx emissions under normal driving conditions.

⁴³ The International Council on Clean Transportation, 'Road Tested: 'Comparative Overview of Real-World Versus Type-Approval NOx and CO₂ Emissions from Diesel Cars in Europe', September 2017 (**Exhibit 37**).

6.18. In its report, the ICCT concludes that Renault's Rigged diesels - and Euro 6 diesels in particular - are among the biggest NOx polluters. For example, the NOx emissions from Renault's Euro 5 diesels of all types were at least *six* times higher than the Euro 5 standard of 180 mg/kg, while apparently only Land Rover, Nissan and Jeep were bigger NOx polluters where Euro 5 diesels were concerned.

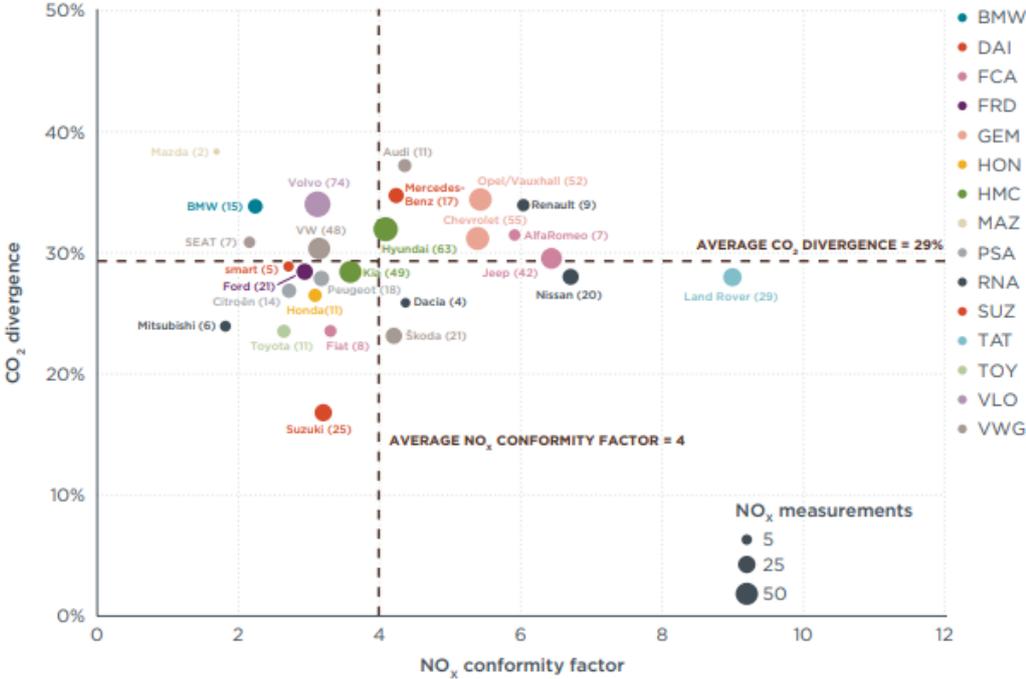


Figure ES-2: Euro 5 diesel passenger car gap between real-world and type-approval CO₂ emission values vs. on-road NO_x emissions conformity factors by manufacturer.³

6.19. According to the report, the situation is even worse for Renault's Euro 6 diesels: according to ICCT, NOx emissions from Renault's Euro 6 diesels are on average almost *twelve* times higher than the Euro 6 standard. The Foundation does note, however, that although from a legal perspective exceeding the permitted standard by a factor of 12 is probably worse than exceeding the standard by a factor of 6, in absolute numbers the Euro 6 diesels were (slightly) less polluting than the Euro 5 diesels. Indeed, six instances of exceeding a standard of 180 mg/km lead to higher total emissions (1080 mg/km) than 12 instances of exceeding a standard of 80 mg/km (960 mg/km).

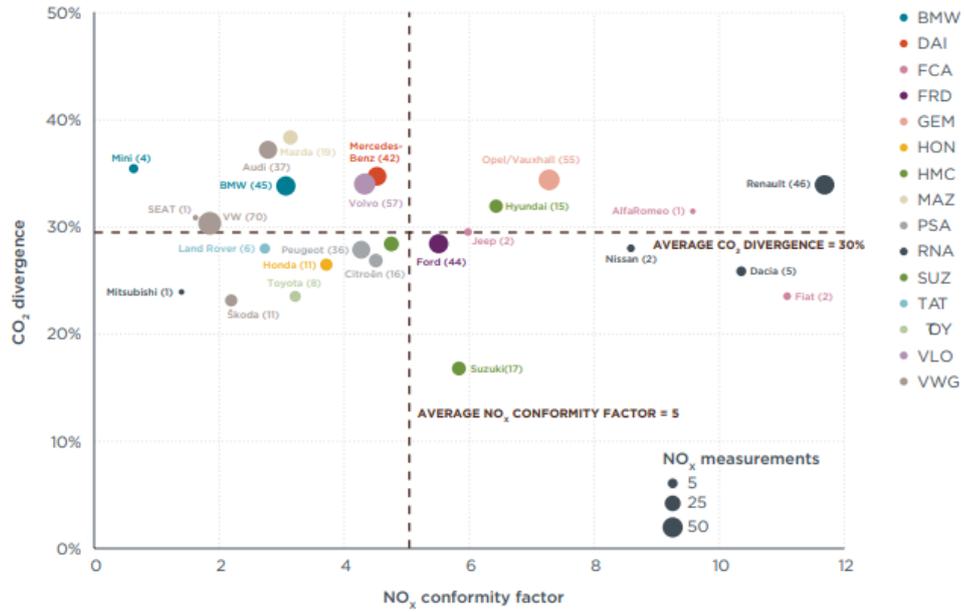


Figure ES-3: Euro 6 diesel passenger car gap between real-world and type-approval CO₂ emission values vs. on-road NO_x emissions conformity factors by manufacturer.⁴

6.20. Incidentally, the report again shows that not a single car manufacturer met the emission standards:

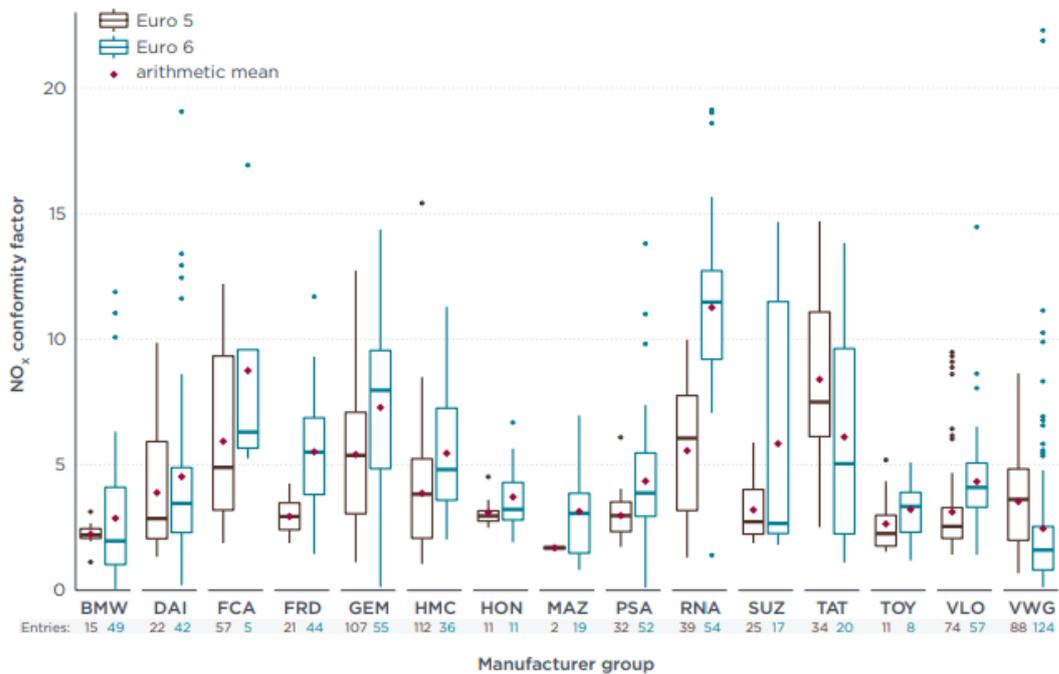


Figure 1: Boxplots of on-road NO_x conformity factors of individual vehicle tests by manufacturer group and emissions standard.¹²

Transportation and Environment Organisation

6.21. In a September 2015 report, the *Transportation and Environment Organisation* ("T&E"), a European group focused on promoting sustainable transport, compiled data from "respected testing bodies

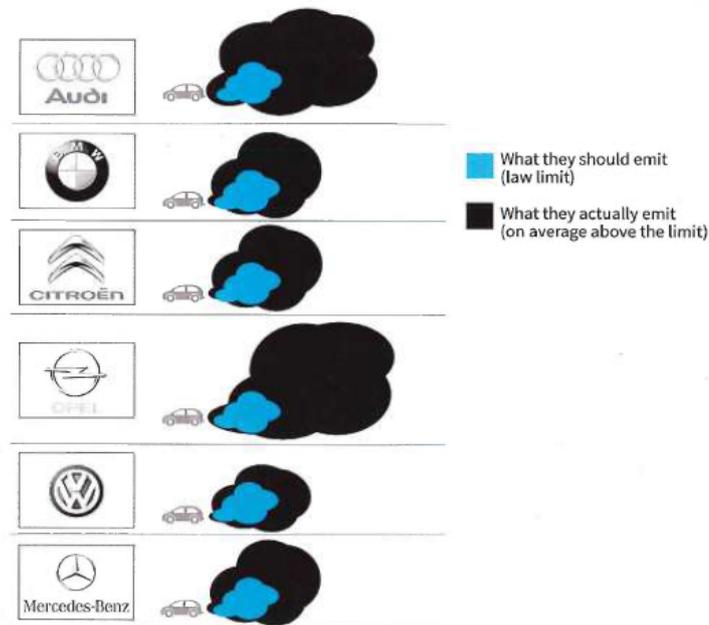
across Europe" showing that diesels from different manufacturers produce high levels of emissions.
44

- 6.22. T&E stated that testing of actual emissions revealed drastic differences from laboratory tests, such that the models tested emitted significantly more pollutants such as CO₂ and NO_x on the road than in their laboratory tests. "Testing conducted by the independent International Council on Clean Transportation (ICCT)⁴⁴ found a typical modern Euro 6 diesel emits 7-10 times more nitrogen dioxides (NO_x) on the road than the Euro 6 limit achieved in tests (80mg/km)", the report said.
- 6.23. In summary, T&E graphically depicted the widespread deception by the manufacturers of Rigged diesels to meet Euro emissions standards as follows:

2. The problem is endemic across the car industry – but the performance of individual models and manufacturers varies widely

In tests by the ICCT⁴⁴ 12 out of 13 modern diesel cars failed to achieve the Euro 6 limit in on the road. The worst vehicle, an Audi, emitted 22 times the allowed limit. Emissions are highest in urban areas where most people are exposed to the pollution. On average a new diesel car emits **over 800mg/km** of nitrogen oxides driving in town compared to the limit of 80mg/km. Data obtained on around 20 modern diesel cars by T&E shows every major manufacturer is selling cars that fail to meet Euro 6 limits on the road. A minority of vehicles do meet the limits – but most don't. This is because the industry uses cheaper less effective exhaust treatment systems or fails to configure the best systems in a way that minimizes emissions. The cost of a modern diesel after treatment system is just €300.

Above and beyond the safe limit



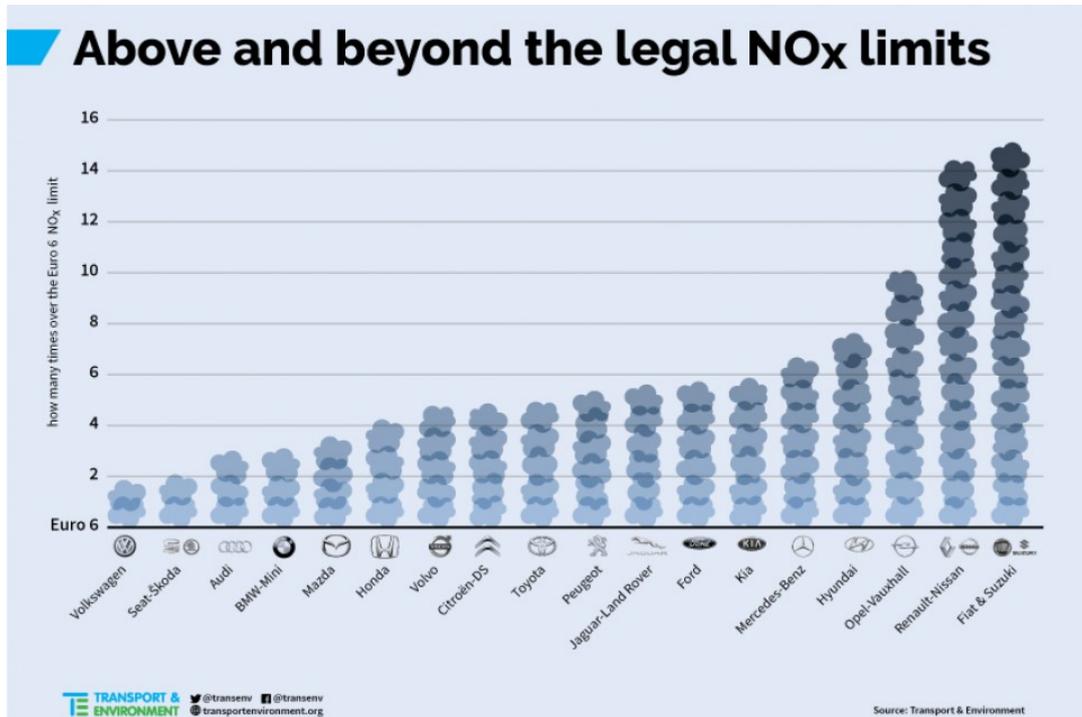
Source: T&E

Transport & Environment

- 6.24. The T&E report also found that the system then in place for testing cars in a laboratory with the NEDC test gave 'meaningless results', as actual emissions are a multiple of the test results. Whereas the September 2015 report did not yet include specific data for Renault diesel engines, T&E published a new report in September 2016 that also included several Renault models in emissions testing. T&E again collected data from mostly national studies showing that Renault diesels produce unlawfully

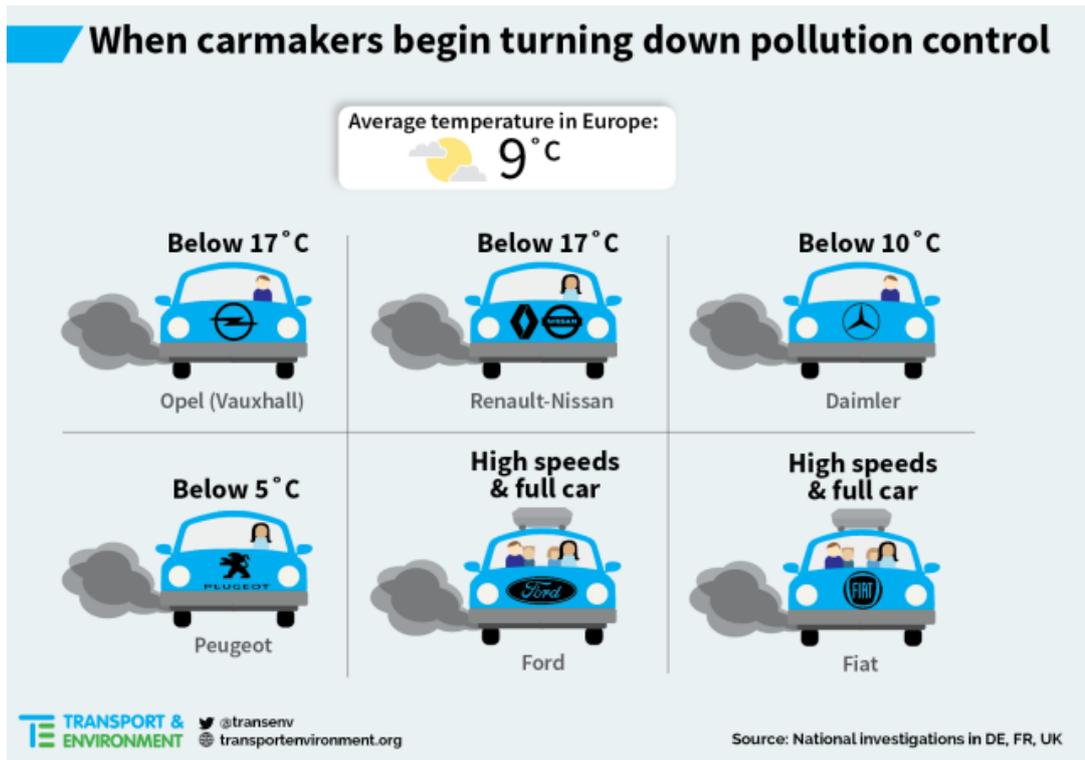
⁴⁴ Five facts about diesel the car industry would rather not tell you, *Transport & Environment* September 2015 (Exhibit 38).

high levels of emissions.⁴⁵ T&E states that the tests have shown that Renault, with its Euro 5 and Euro 6 diesels, produces the highest NOx emissions of all car manufacturers after Fiat and Suzuki. For example, T&E states that NOx emissions from Renault's Euro 5 diesels (and Dacia) averaged 7.9 times the emissions standard during testing, while NOx emissions from Renault's Euro 6 diesels (counting in its Dacia subsidiary and partner Infiniti and Nissan), averaged 14.4 times the emissions standard.



6.25. In its (second) report, T&E states that Renault's rigged software causes emission control systems to switch off at temperatures below 17 °C in all the models tested.

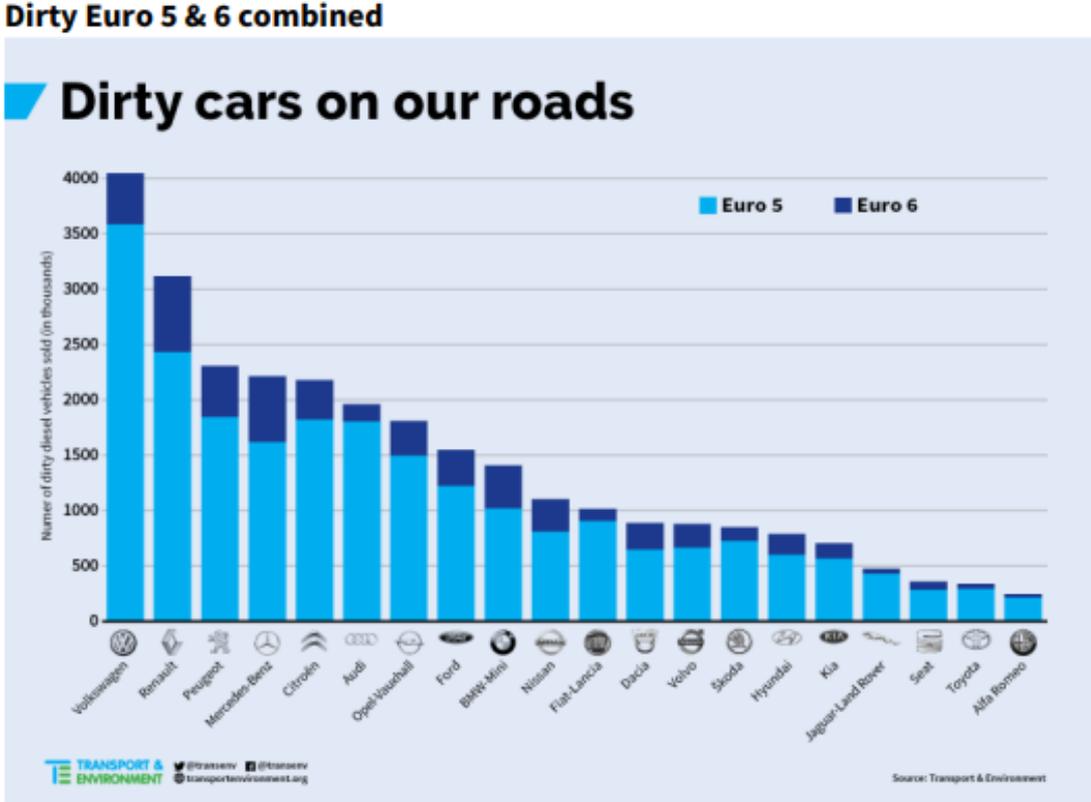
⁴⁵ Dieselgate: Who? What? How?, *Transport & Environment*, September 2016 (Exhibit 39).



6.26. T&E also indicates that the rigged software on some Renault models is most likely causing the emission control systems to work better at low engine temperatures (as in the tests used for type approval) than when the engine is warmed up.

"High warm start emissions are highly suspicious and possibly suggest that during a cold start a different and more effective engine and exhaust calibration is being used (as the EU test mandates cold starts). If so this would constitute an illegal defeat device."

6.27. Finally, T&E's report also shows that Renault has the second most polluting diesel cars sold and on the road after Volkswagen



British Emissions Analytics

6.28. The British *Emissions Analytics* came to a similar conclusion. The organization was established to provide honest information on fuel consumption and emissions of different cars. PEMS tests conducted by *Emissions Analytics* in 2017 also show that Renault's Megane and Captur models emit, on average, 16 times more NOx on the road than allowed by emissions standards⁴⁶

6.29. In an earlier news release, *Emissions Analytics* stated that the problem has spread throughout the diesel industry: ⁴⁷

"[I]n the European market, we have found that real-world emissions of the regulated nitrogen oxides are four times above the official level, determined in the laboratory. Real-world emissions of carbon dioxide are almost one-third above that suggested by official figures. For car buyers, this means that fuel economy on average is one quarter worse than advertised. This matters, even if no illegal activity is found."⁴⁸

British consumer organisation Which?

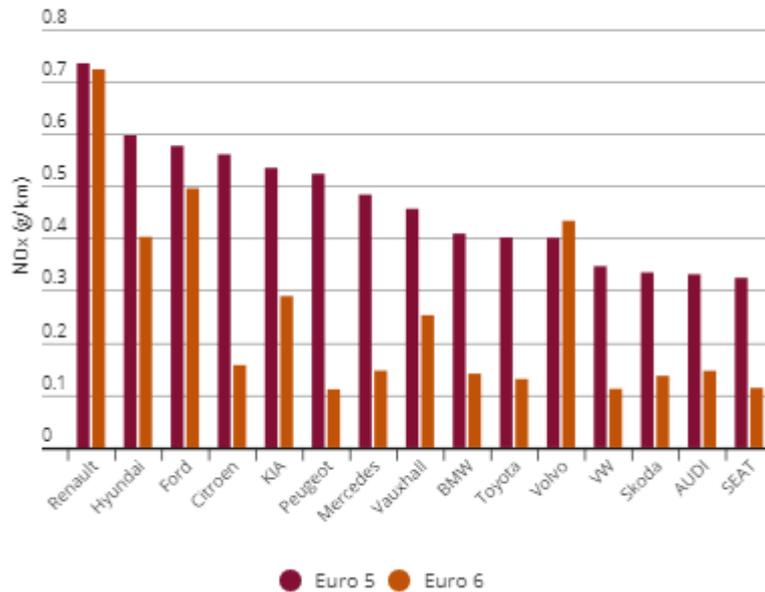
6.30. Finally, the British consumer organisation *Which?* (effectively the UK Consumers' Association) on 22 March 2017 published the results of its own research into the NOx emissions of diesel engines from

⁴⁶ Damian Carrington, 'Extremely polluting Nissan and Renault diesel cars still on sale, data reveals', *The Guardian*, 26 May 2017. (Exhibit 40).

⁴⁷ Air quality... it's hotting up, Emission Analytics(<https://www.emissionsanalytics.com/news/air-qualityits-hotting-up>) (Exhibit 41).

⁴⁸ Consumers being mislead on emissions - with or without illegal acts, Emission Analytics (<https://www.emissionsanalytics.com/news?year=2015>) 27 August 2015 (Exhibit 42).

various manufacturers.⁴⁹ *Which?* tested 16 different Renault rigged diesels and concluded that Renault was the biggest NOx polluter of all diesels tested from different car manufacturers.



6.31. *Which?* then concludes that on average Renault's Euro 6 diesels emit even more NOx than the average Euro 5 diesel from other manufacturers:

"Renault and Dacia

- For brands on which we've collected data for both Euro 5 and Euro 6 diesel cars, Renault is the biggest polluter in our tests.
- From the 16 diesel Renault cars we've tested, there is very little difference between the averages of its Euro 5 and Euro 6 cars.
- In our tests, Renault's newer Euro 6 diesels are, on average, dirtier than the averages of Euro 5 diesel cars from other brands.
- The two Euro 6 Dacia cars we tested proved to have comparably high NOx emissions to Renault. Which may not be a coincidence, as Dacia is owned by Renault."

7. THE CRIMINAL AND OTHER INVESTIGATIONS BY VARIOUS AUTHORITIES INTO RENAULT

7.1. Following the disclosure of the Volkswagen diesel scandal in 2015, the French government launched several investigations into NOx emissions from various Renault diesel vehicles. As will be explained below, in line with the investigations and reports quoted above, the investigations carried out by the French and German authorities, among others, revealed that Renault had rigged its NOx emissions to be below the applicable emission standards when subjected to type-approval testing.

Royal Commission

7.2. The first investigations by the French government into the diesels of various car manufacturers were carried out at the request of the (then) French Minister for Ecology, Sustainable Development and Energy, Ségolène Royal. An independent investigation committee was appointed (the '**Royal Commission**'), consisting of parliamentarians, consumer organisations, NGOs and various

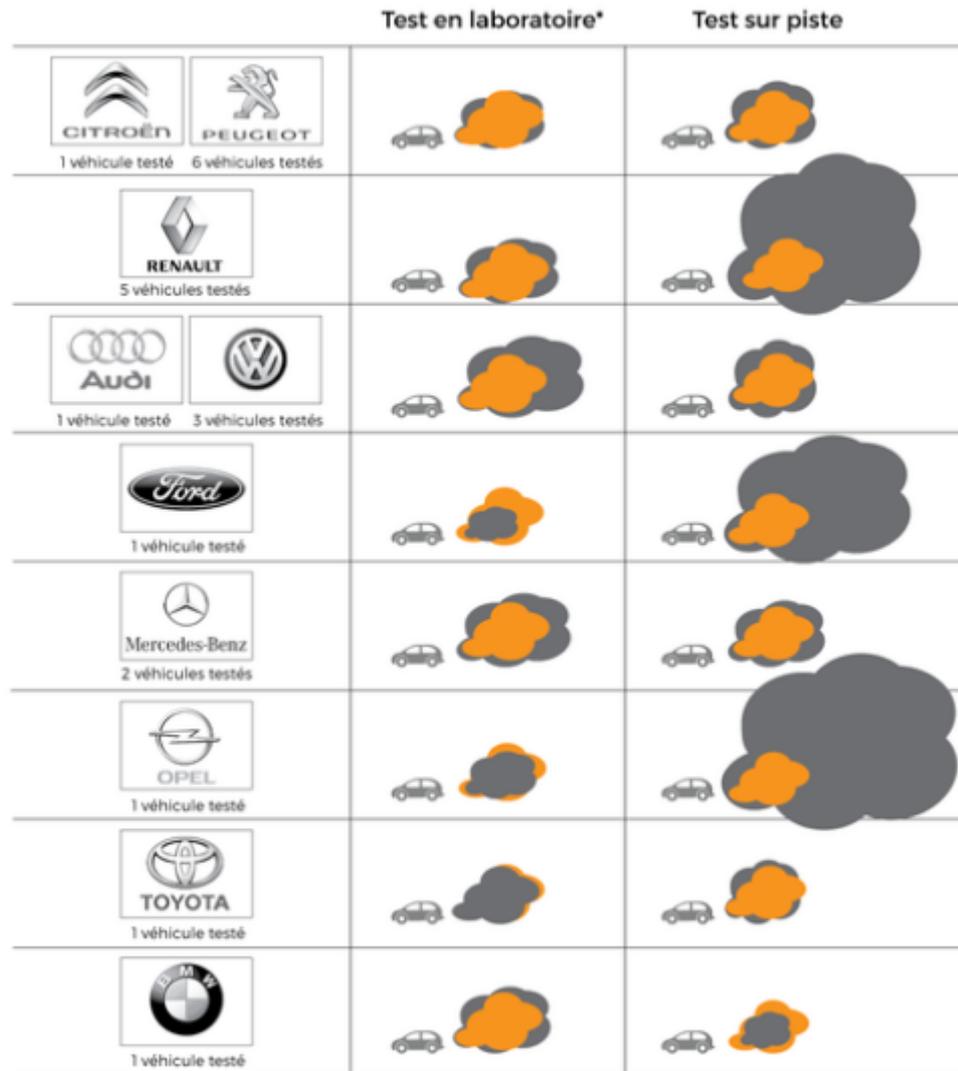
⁴⁹ Adrian Porter, '*Which? Test reveal the worst diesel cars for air pollution*', 22 March 2017 (**Exhibit 43**).

ministries. The Royal Commission was formed in October 2015 and began investigating 86 of the best-selling diesel vehicles in France, including a number of Renault models.

- 7.3. In February 2016, two NGOs that are part of the Royal Commission, in collaboration with T&E, announce the first test results of 22 diesels⁵⁰. They do so in anticipation of the first official findings of the Royal Commission. These first results show that there is a large discrepancy between the emission values measured during the type approval test of the diesels concerned and those measured when the diesels are actually driven on the road. With 5 tested diesels, Renault is one of the biggest polluters in the test.

⁵⁰ Eoin Bannon, 'French probe uncovers more misleading emissions data', *T&E*, 29 February 2016, (**Exhibit 44**).

Résultats NOx des 22 premiers véhicules testés par l'UTAC



 Limite imposée par la loi
 Résultat des premiers tests

Sur les 100 véhicules prévus, 22 ont été testés par l'UTAC ce 11 février 2016 dans le cadre de la Commission Royal. S'ils méritent d'être complétés, ces résultats révèlent déjà d'inquiétantes différences entre contrôles en laboratoire et sur piste. Ces derniers, plus proche des conditions réelles, ne sont pourtant pas exigés par la loi avant 2017.

*Test en laboratoire légèrement tronqué et avec démarrage à chaud.

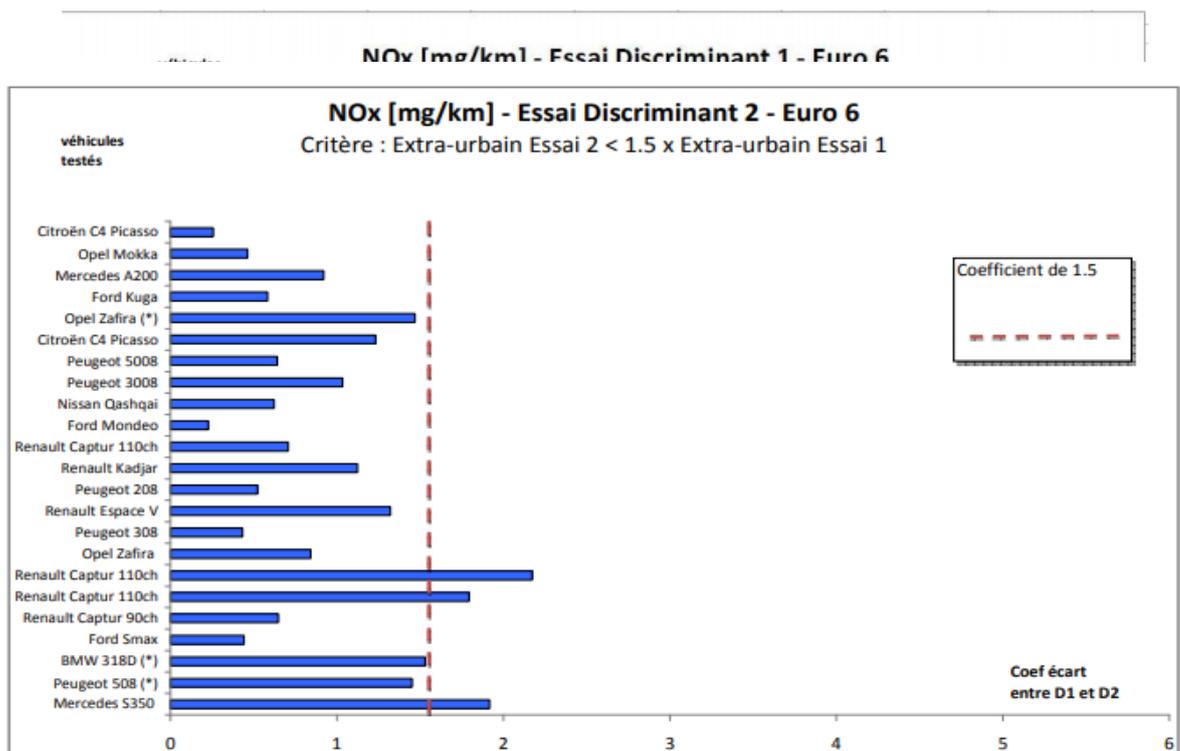
Research by *L'union technique de l'automobile*'

- 7.4. On 28 April 2016, the Royal Commission published its first report showing the test results of the first 52 diesels (**Exhibit 45**). To this end, the Royal Commission contracted the *L'union technique de l'automobile*' (**UTAC**), to test diesels from different car manufacturers. UTAC designed three different tests for the Royal Commission's examination, all of which would have to be conducted under different conditions that differ somewhat from the type approval tests on a roller bench. The purpose of this is to detect any possibly present rigged software. The Royal Commission approved these various tests.

- The first test is called 'D1'. In this test a roller bench is used and in principle the NEDC test is performed as it is mandatory under the Test Regulation, except that the various parameters are slightly modified (e.g. the position of the bonnet, the position of the wheels, etc.).
- The second test is called 'D2' and also takes place on the roller bench. This time the NEDC test is taken as a starting point again, but the first part of the test cycle (in which driving in the city is simulated) is slightly adjusted. The second part of the test is exactly the same as the second part of the official NEDC test, in which driving conditions outside the city are simulated. If no rigged software is present, the emission values for the suburban part of D1 should be virtually the same as the emission values observed for the suburban part of D2 if no rigged software is present there either, the Commission states in its report. The Commission has assumed that a difference of 1.5 times the emission value between D1 and D2 is considered acceptable.
- In the third test ('D3') UTAC wanted to reproduce a NEDC test on the road (i.e. without the use of a roller bench). NOx emissions from the vehicles are measured during this third test using a PEMS (see section 4.28 above).

7.5. UTAC then subjected 52 diesels from different car manufacturers - including Volkswagen, Mercedes, Opel, Citroen and Renault - to the three different tests. The report shows that one of the Renaults tested (the Captur 110) emits more than 200 mg/kg NOx in the first test (D1), far above the applicable Euro 6 standard of 80 mg/kg. Renault's other models also emitted significantly more NOx than permitted under the applicable emissions standards.

Résultats pour les véhicules relevant de la norme Euro 6



(*) Inférieur à 40 mg

7.6. The report then shows that the Renaults in question emitted more than 1.5 times more NOx during the D2 test than during the D1 test.

7.7. The results of the D3 test also show that the various Renault diesels tested by the UTAC emit far more NOx than permitted. It appears that different (versions of the) Renault Captur 110 emit up to 900 mg/kg NOx (almost 10 times more than allowed).

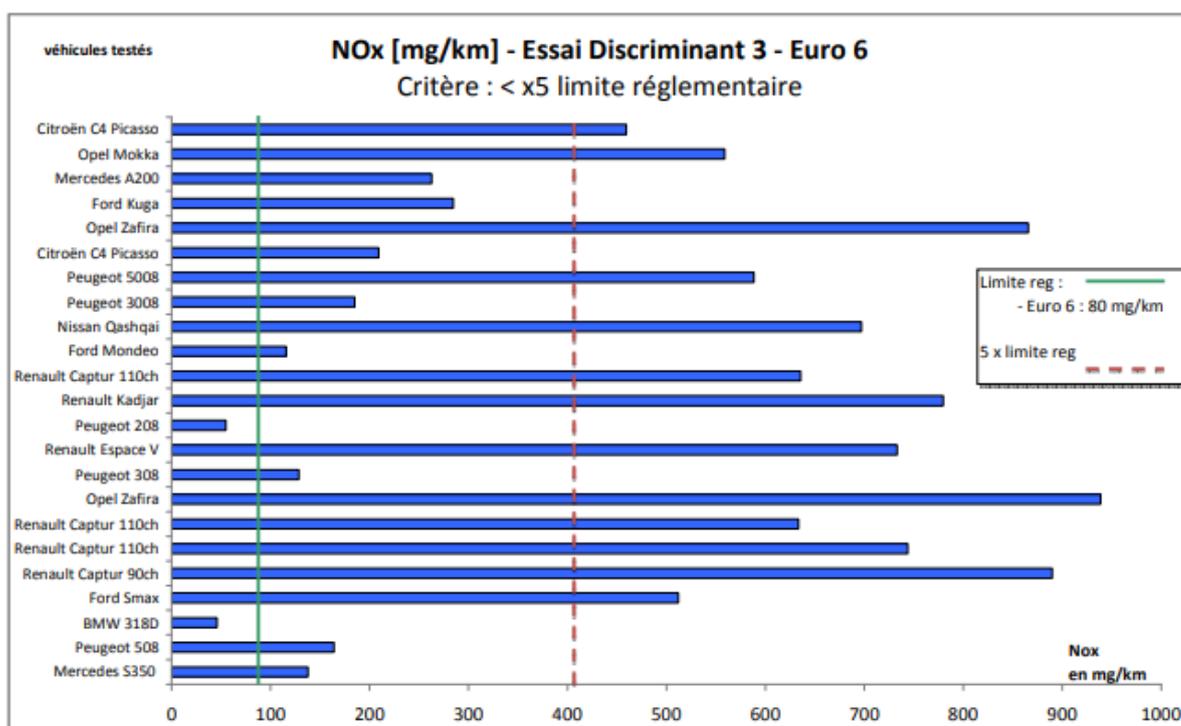
Final report of the Royal Commission

7.8. In July 2016, the Royal Commission's final report is published (**Exhibit 46**), which includes the test results of all 86 diesels. It emerges from page 8 of the report that the Royal Commission included 16 diesel cars produced by Renault in its investigation. The diesels tested are the Euro 6 Renault Captur (with 1.5L engine), the Euro 5 and Euro 6 Renault Scenic 3 (with 1.3L engine), the Euro 5 Renault Kangoo (with 1.5L engine), the Euro 5 Renault Laguna (with 2.0L engine), the Euro 5 Clio IV (with 1.5L engine) and the Euro 6 Renault Talisman (with 1.5L and 1.6L engines). All models tested are equipped with an EGR system, the Euro 6 models are also equipped with an LNT system.

7.9. The results of the July 2016 final report build on the results of the April 2016 report: Renault's tested diesels emit far more NOx than is allowed under emissions standards and, in fact, are among the most polluting diesels tested. The results show that especially during the D3 test significantly higher NOx emissions are measured than allowed. For example, the various Euro 5 diesels tested by Renault during the D3 test emit the following amounts of NOx:

- Clio IV: 1090 mg/km;
- Kangoo: 982 mg/km;
- Laguna: 1367 mg/km;

Résultats pour les véhicules relevant de la norme Euro 6



- Scenic 3: 1227 mg/km;
- Scenic Captur: 1044.5 mg/km;

- Espace: 1358 mg/km.

7.10. The D3 tests on Renault's Euro 6 diesels show that various models emit (far) too much NOx:

- Captur (90 hp): 890 mg/km;
- Captur (110 hp): 744 mg/km;
- Espace dci: 733.1 mg/km;
- Kadjar: 780 mg/km;
- Talisman (1.5L): 926.1 mg/km;
- Talisman (1.6L): 768.6 mg/km.

7.11. The Royal Commission then concluded in its final report that the Euro 5 and Euro 6 diesels tested by Renault exceeded the NOx values. The report shows that Renault was given the opportunity to comment on the Royal Commission's findings and that it provided an explanation for the abnormal values. Renault indicated that the EGR system is indeed only active within a certain temperature range (from 17 °C to 35 °C) to protect the engine. In addition, the '*purification conditions of the LNT system* are set *too restrictively*', so that in situations where a lot of NOx is produced on average (areas outside the city, higher speeds) it does not have the possibility to convert the NOx into less harmful substances. This would result in the diesels emitting more NOx at those times.

7.12. The Royal Commission concludes its report with recommendations to Renault. Part of the recommendations is that Renault further extends the temperature range for the operation of the EGR system and that the LNT system is tuned to be less restrictive (and therefore also works at higher speeds).

Additional research by IFP Energie Nouvelles'

7.13. Following the Commission's (final) report in July 2016, additional research was carried out by the organisation '*IFP Energie Nouvelles*' ("**IFPEN**"), an organisation which carries out frequent research in the fields of energy, transport and the environment. In the process, the D1 and D2 tests are being redone, this time with "additional instrumentation" with the aim of seeking an explanation for the high NOx levels documented in the Commission's July 2016 report, IFPEN said. Therefore, the D3 tests were *not* performed again in this additional study. A total of 10 vehicles were tested in this additional study, two of which were from Renault.

7.14. The 'additional instrumentation' used by IFPEN in this research consisted of sensors and actuators which relayed certain signals from the ECD17 linking the various 'computers' present in the vehicles. This instrumentation provided IFPEN with some insight into the operation of the EGR system in the Euro 5 Renault Clio and the Euro 6 Renault Captur and the LNT system in the Renault Captur.

7.15. The IFPEN report of May 2017 (**Exhibit 47**), shows that the Euro 5 Renault Clio emits too much NOx under different conditions and that the values shown by the D1 and D2 test are not in line with the NOx emitted during official test conditions. In the part of the D2 test that simulates suburban areas, the emission values were 2.6 times higher than the Euro 6 standard allowed at that time (80 mg/kg). IFPEN concludes in its report that this is due to the fact that the EGR system is deactivated during this part of the test. IFPEN concludes that rigged software may have been responsible for this.

7.16. IFPEN's test also shows that the Euro 6 Renault Captur has even higher emission values. Indeed, this vehicle emits 4.1 times more NOx during the D1 test than is allowed under the emissions standards, and 2.6 times more during the part of the D2 test that simulates extra-urban areas. The

Commission concludes that the increased NOx emissions in the D1 test can be attributed to the reduced operation of the LNT system at lower speeds.

Reaction of Renault to the Royal Commission results

7.17. In response to the results of the Royal Commission, Renault issued a statement on 19 January 2016, announcing that it had initiated a worldwide recall campaign for 15,000 Renault Captur and Kadjar equipped with dCi 110 engines (**Exhibit 48**). According to Renault, the recall is for the purpose of updating the calibration of the arithmetic unit of cars produced between February and September 2015. In the Netherlands, it would involve 163 Renault Kadjar models and 17 Renault Captur models.

7.18. In addition, Renault has undertaken to extend the temperature range for operation of the EGR system in all its Euro 6 diesels so that it will operate at temperatures of 10-45 degrees Celsius in existing models and 5-60 degrees Celsius in new models to be launched. In this regard, Renault states:

"In parallel, and independently, we have prepared a plan to reduce NOx emissions in customer usage on all Diesel Euro 6b line up. After a specific validation process that we had carried out since July 2015, we can expand the EGR temperature window to 10-45°C for current models, and up to 5-60°C for new products launched from now on. This improvement will also be proposed to all our customers driving a Euro6b vehicle, as communicated in medias in April 2016."⁵¹

7.19. In addition, Euro 6 diesels would be 'voluntarily' corrected by having the LNT system clean the stored NOx at regular intervals. Owners of Euro 6 diesels could have this software update performed free of charge at their local Renault dealer.⁵² According to Renault, the modifications would make a significant contribution to reducing nitrogen oxide emissions from diesel vehicles.

7.20. This response confirms the view that the emission control systems in *all* Euro 5 and Euro 6 diesels manufactured by Renault were inadequate, and therefore qualify as Rugged diesels. It is unclear, however, whether the measures announced have been implemented at all. Be that as it may, the recall concerns only two Renault models, a reduction from 17 to 10 degrees Celsius (for existing models) still leads in the Netherlands to the EGR being inoperative for most of the year, and the correction of the LNT system has not been demonstrated. Moreover, a (complete) 'recovery' of the Rugged diesels is not possible, at least not leading to a car that meets the expectations of the buyers. After all, always turning the diesel engine's emission control measures "on" leads to higher fuel consumption and a different driving experience (including noise), which in turn generates independent defects.

Research by the DGCCRF in France

7.21. In the meantime, the '*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*' ("**DGCCRF**"), part of the French Ministry of Finance (which carries out work similar to the Dutch Authority for the Consumer and Market), launched its own investigation into Renault's Rugged Diesels in 2016. The DGCCRF then raided several Renault sites in France, seizing computers belonging to senior Renault officials.

7.22. In March 2017, the DGCCRF issued a report stating that Renault had been manipulating type approval tests for its diesel and petrol engines for more than 25 years.⁵³ According to that report, the

⁵¹ https://www.europarl.europa.eu/cmsdata/112679/20160713-Renault_.pdf (**Exhibit 49**).

⁵² Olivier Duquesne, Renault: free adaptation of Euro 6n diesel engines', *Autogids.be*, 6 April 2016 (**Exhibit 50**).

⁵³ Jean-Michel Hauteville, 'Report: 'Renault Accused of Decades of Emissions Cheating', *Handelsblatt*, 16 March 2017 (**Exhibit 51**).

entire management layer up to French CEO Carlos Ghosn would have been involved in these fraudulent practices. Although this report is not public, its contents have been leaked to several newspapers.

- 7.23. According to the French daily *Libération*, the DGCCRF has stated in its 'damning' report that the Euro 5 Renault Clio IV and the Euro 6 Renault Captur exceed the emission standards by 305% and 377% respectively. DGCCRF reputedly stated in the report that these results "suggest a fraudulent device" that "*specifically adjusts engine operation to reduce NOx emissions under test conditions*". The Renault Kadjar and the Renault Talisman are also said to emit illegal amounts of NOx.⁵⁴
- 7.24. The report also states that the car's on-board computer would know when the car is in a test situation. Under these conditions, NOx produced by the engine would be stored in some sort of reservoir. The LNT system then signals that the substance needs to be detoxified before it is emitted. However, according to DGCCRF, under 'normal driving conditions' the cars would fill up the LNT's reservoir and the gas would go straight out without purification. DGCCRF also concludes that the EGR system would only function at temperatures between 17 and 35 degrees Celsius. According to the DGCCRF report, the 'fraudulent systems' have been found in 898,557 K9 (Euro 5 and Euro 6) diesel cars sold in France since at least January 2011.⁵⁵
- 7.25. DGCCRF would also have stated in the report that the measured NOx values were not random findings. In support of this position, an email dated 25 November 2015 is quoted which was allegedly exchanged between Renault's Head of Legal Affairs, the Director of Communications and the Head of Institutional Relations, in which it was allegedly discussed that the '*emission control system would be rendered inoperative very quickly on the road, but would work well during testing*'.
- 7.26. The report also mentions the fact that a former Renault employee (an engineer who is said to have left Renault in 1997) is said to have stated that the first generation of Renault Clio cars launched in 1990 already contained devices which could detect whether they were on a roller bench (as in type approval tests) or not⁵⁶. The DGCCRF concludes that the documents in their possession 'testify to the presence of fraudulent practices surrounding the operation of emission control systems for more than seven years'.⁵⁷

Criminal investigation in France

- 7.27. In January 2017, in response to the DGCCRF report, the French prosecutor launched a criminal investigation into emissions from Renault diesels, with a focus on the public health implications of Renault's actions.⁵⁸
- 7.28. Part of the criminal investigation is the tests carried out by the French '*Institut Supérieur de l'Automobile et des Transports*' ('ISAT') to confirm the presence of rigged software. According to the French newspaper '*Le Monde*', which has had access to ISAT's investigation, the technical report would confirm that some of Renault's diesels are set up to emit more NOx when they are outside of a test environment. Specifically, the rigged software would have been set up so that the EGR system would only work at a temperature of 17 to 35 degrees Celsius and that the LNT system would be

⁵⁴ Jean-Christophe Féraud and Franck Bouaziz, 'Renault : des voitures option pollution incluse', *Libération*, 14 March 2017 (**Exhibit 52**).

⁵⁵ Peter Vermaas, 'Report: '25 years of fraud with Renault engines'', *NRC Handelsblad* 16 March 2017 (**Exhibit 53**), Exhibit 51.

⁵⁸ Achille Prick, 'French justice starts criminal investigation Renault over diesel fraud', *NOS*, 13 January 2017 (**Exhibit 54**).

deactivated when the speed of the car was below 50 km/h, so that this system does not work in the city.⁵⁹

- 7.29. For the time being, Renault has not been officially charged, but this is to be expected based on the above-mentioned developments.

Actions taken in other countries

Germany

- 7.30. The KBA, the authority that provides vehicles with EU type approval in Germany, also published a report in April 2016 in which it tested NOx emissions from several Renault models. The report published by the KBA shows that for the Euro 6 Renault Kadjar (1.6L and 1.5L) the NOx emissions remained well below the emissions standard of 80 mg/kg during a test conducted under the same conditions as the official type approval test. However, when the test was carried out at an ambient temperature of 10 degrees Celsius, or under 'normal driving conditions' (i.e. not on a roller bench), NOx emissions were sometimes up to 14 times higher than the emission standard. Also the tested Dacia Sandero, equipped with a 1.5L engine from Renault, showed similar values.⁶⁰
- 7.31. This prompted the KBA to enter into talks with Renault, among others, in April 2016 to issue recalls for its Rigged diesels⁶¹ According to the media, Renault has agreed with other manufacturers to 'voluntarily' recall a relatively small number of vehicles as a result of the KBA tests.
- 7.32. In Germany, a number of individual civil lawsuits have also been filed against Renault dealers, as well as against the car manufacturer itself⁶² Furthermore, in May 2018, the KBA recalled the Mercedes Vito allegedly equipped with a Renault engine, and the Renault Master (III) Combi with the M9T engine from the construction period 12 May 2015 to 15 December 2016 was allegedly recalled due to excessive NOx emissions.⁶³

France

- 7.33. In late 2019, a class action was filed by '*V pour Verdict*' against Renault in France on behalf of aggrieved owners of rigged diesels, based on the above-mentioned investigations. In this collective action, 40% of the purchase price of the car is reclaimed from Renault.

South Korea

- 7.34. Finally, a South Korean court has also found Nissan (Renault's engine cooperation partner) guilty of deactivating the EGR system on a diesel using a Renault 1.6L diesel engine when the temperature is 35 degrees Celsius or higher.⁶⁴

Renault confesses to using defeat devices at low temperatures

- 7.35. As explained above, in 2016 Renault admitted to the Royal Commission (also) that the EGR system in Renault's Euro 5 and Euro 6 diesels is deactivated when the ambient temperature falls below 17

⁵⁹ Laurence Frost, 'Renault diesel allegations upheld by court study: report', *Reuters* 13 May 2019 (**Exhibit 55**).

⁶⁰ Bundesministerium für Verkehr und digitale Infrastruktur, 'Bericht der Untersuchungskommission "Volkswagen"', April 2016 (**Exhibit 56**).

⁶¹ Annika Grah and Anne-Beatrice Clasmann, 'Rückruf von 630,000 Autos, *Sächsische DE*, 22 April 2016(**Exhibit 57**).

⁶² **Exhibit 58**: Overview of Litigation.

⁶³ <https://www.bussgeldkatalog.org/renault-diesel-skandal/> (**exhibit 59**).

⁶⁴ Jim Holder, 'Nissan has been found guilty of using a cheat device in South Korea', *Autocar*, 9 February 2017 (**Exhibit 60**).

degrees Celsius. However, Renault claimed that this would be justified because the shutdown of the emission control systems was necessary to protect the engine.

- 7.36. With this explanation, Renault apparently tries to invoke the exception of Article 5(2) of the Emissions Regulation which states that components which disable emission control systems are not considered defeat devices if *'the device is necessary to protect the engine against damage or accident and to ensure safe operation of the vehicle'*.
- 7.37. Renault forgets that defeat devices are defined precisely as those which reduce the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use. Reaching 17 degrees Celsius is not a normal temperature to be expected, especially in the Netherlands. The driver could therefore expect the emission control system to work normally when the vehicle is in normal use, i.e. just below 17 degrees.
- 7.38. Indeed, KNMI figures show that the average monthly temperature in De Bilt throughout the year does not exceed 17 degrees Celsius. In the Netherlands, this means that the emission control systems were generally turned off, and therefore the emissions were unrestrained. Incidentally, the proposed reduction to 10 degrees Celsius for Euro 6 diesels (the status of which is unclear) would not provide any solution either. Even then, the emission control systems would be out of action for about seven months of the year.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year
Max.	7.1	7.6	8.8	13.1	16.0	18.8	22.3	20.5	17.9	14.2	10.2	7.3	11.7
Average	1.4	2.5	4.7	8.2	12.3	15.2	16.9	16.7	14.2	10.0	5.5	2.7	9.2
Min.	-7.0	-6.7	-2.3	4.3	7.5	11.2	13.9	13.5	10.7	6.0	0.6	-5.7	6.5

Average temperature in De Bilt by month

- 7.39. Renault's claim is therefore untenable, and was also dismissed by the EU Court of Justice in December 2020.⁶⁵

CJEU: the Emissions Regulation contains manipulative devices

- 7.40. The case concerned a preliminary referral at the request of the French investigating judge to the interpretation of the Emissions Regulation and prohibited defeat devices. Advocate General Sharpston's conclusion leaves no stone unturned in Renault's argument, stating unequivocally that the exceptions to the EU ban on defeat devices in Article 5(2) Emissions Regulation *"must be read strictly so as not to invalidate the general rules"*.

132. "I would point out that, according to settled case law, exceptions must be construed narrowly in order to avoid undermining general arrangements.(45) In this respect, the interpretation of exceptions cannot go beyond the cases expressly provided for by the provision in question.(46)"

- 7.41. According to AG Sharpston, the exception for devices necessary to protect the engine from damage or accidents relate to an unforeseen, sudden event that results in damage or danger, such as injury or death, and not to *"wear and tear, loss of efficiency, depreciation of the vehicle due to ageing and gradual clogging of the engine."* Following the logic of AG Sharpston's opinion, the limit at which the emission technology is switched off when the temperature falls below 17 degrees Celsius is a defeat device that is not permitted under the Emissions Regulation.

135. "As to the literal reading, I note that it is generally accepted that the term 'accident' refers to an unforeseen, sudden event that results in harm or danger, such as injury or death.(48) The term

⁶⁵ Concl. AG Sharpston 30 April 2020, ECLI:EU:C:2020:323 (C-693/18) (**Exhibit 61**).

"damage", in turn, refers to a detriment that generally has a violent or sudden cause.(49) This meaning is in my view not contradicted by the terms 'accident' and 'damage' used in the English version of Regulation 715/200750)"

[...]

137. "Thus, a defeat device can only be justified, under Article 5(2)(a) of that regulation, if that device is necessary to protect the engine from sudden damage."

138. "The Italian Government's broad interpretation according to which the concept of 'damage' must be stretched to include wear and tear, loss of efficiency and loss of value of the vehicle due to the ageing and gradual fouling of its engine must therefore, in my view, be rejected."

- 7.42. AG Sharpston continues that it is the responsibility of the vehicle manufacturers to ensure that vehicles comply and continue to comply with the limits set by the emissions legislation throughout their normal operation. While it cannot be excluded that the functioning of an emission control system can have a negative effect on the desirability or reliability (in the long term) of the engine, this circumstance does not justify that the emission control system is deactivated during the normal use of the vehicle under normal conditions of use for the sole purpose of protecting the engine against ageing or normal wear and tear.

139. "As the Commission and the French Government have rightly argued, the ageing and fouling of the engine or of an engine component are the inevitable result of normal use of the vehicle. These are the normal and foreseeable consequences of the progressive accumulation of dirt in the engine throughout the normal life of the vehicle under normal conditions of use, which can be counteracted by regular maintenance scheduled over a long period. So it does not include accidents, damage and risks that affect the safe operation of the vehicle."

- 7.43. AG Sharpston then concludes that the Italian Government's explanation should be rejected, the important consideration being that a broad interpretation of the exception to defeat devices would result in the effectiveness of emission values being negated. After all, manufacturers can then always easily argue that emission control systems lead to additional wear and tear, which effectively leaves the manufacturers at liberty to be permitted defeat devices.

140. "Then I come now to the teleological aspect of this question. Having regard to the objectives of Regulation No 715/2007 and, in particular, the objective of protecting the environment and improving air quality in the European Union,(52) the broad interpretation advocated by the Italian Government is, in my view, in no way justified.

141. With that interpretation, the general rule (that defeat devices that reduce the effectiveness of emission control systems are prohibited) would no longer have any effect.

142. Indeed, vehicle manufacturers have to ensure that throughout their normal lifetime (53) , vehicles comply with the limit values laid down in the regulatory framework on emissions and that they operate safely without exceeding them. Even if it cannot be ruled out that the operation of an emission control system may adversely affect (in the long term) the life and reliability of the engine, that finding in no way justifies the deactivation of that system during the normal operation of the vehicle and under normal conditions of use for the sole purpose of retarding the ageing process or fouling of the engine."

- 7.44. The European Court of Justice fully confirmed AG Sharpston's reading in its landmark ruling of 17 December 2020, and cut short FCA' s contrived claim that the defeat devices were necessary for engine protection⁶⁶ According to the European Court of Justice, permissible engine protection

⁶⁶ ECJ 17 December 2020, ECLI:NL:EU:C:2020:1040 (C-693/18) (**Exhibit 62**).

devices can only be used in exceptional situations and not in situations which can be expected to occur in normal operation:

"109 Par conséquent, un dispositif d'invalidation qui réduit l'efficacité du système de contrôle des émissions est justifié dès lors que, en vertu de l'article 5, paragraphe 2, sous a), du règlement no 715/2007, il permet de protéger le moteur contre des dommages soudains et exceptionnels.

110 À cet égard, il y a lieu de relever que l'encrassement et le vieillissement du moteur ne sauraient être considérés comme un « accident » ou un « dégât », au sens de cette disposition, dès lors que, ainsi que le fait observer la Commission, ces événements sont, en principe, prévisibles et inhérents au fonctionnement normal du véhicule.

[...]

115 Eu égard aux considérations qui précèdent, il y a lieu de répondre à la troisième question, sous a), et à la quatrième question que l'article 5, paragraphe 2, sous a), du règlement no 715/2007 doit être interprété en ce sens qu'un dispositif d'invalidation, tel que celui en cause au principal, qui améliore systématiquement, lors des procédures d'homologation, la performance du système de contrôle des émissions des véhicules aux fins de respecter les limites d'émissions fixées par ce règlement, et ainsi d'obtenir l'homologation de ces véhicules, ne peut relever de l'exception à l'interdiction de tels dispositifs prévue à cette disposition, relative à la protection du moteur contre des dégâts ou un accident et au fonctionnement en toute sécurité du véhicule, même si ce dispositif contribue à prévenir le vieillissement ou l'encrassement du moteur.

- 7.45. According to the Court of Justice, the defeat devices used 'to protect the engine' are therefore illegal.
- 7.46. Although the ruling concerns a different car manufacturer, Renault uses exactly the same argument to justify its systematic use of defeat devices. Because of the clear position of the European Court of Justice as the highest court that can judge on the interpretation of the Emission Regulation, it is clear that Renault's defence does not stand up, and that Renault has therefore also used illegal defeat devices in its Rigged Diesels.

8. UNLAWFUL CONDUCT BY BOSCH

- 8.1. As mentioned above, Bosch developed and supplied the hardware and software (namely the EDC17) used to control the emission reduction systems of the Rigged diesels. It supplied this EDC17 not only to Renault, but also to other major car manufacturers, including Volkswagen, Audi, Mercedes, Porsche, General Motors and Fiat Chrysler. It is now known that the diesel vehicles they produce have in practice much higher NOx emissions than those produced in the official certification tests and that the EDC17 supplied by Bosch was used to circumvent the emission standards.
- 8.2. Bosch is no 'innocent bystander' in this matter that only supplied a part for the engine control. On the contrary, the Foundation will demonstrate in these proceedings that Bosch was not only fully aware of the fact that the EDC17 it developed facilitated defeat devices, but that it also knew that its firmware was being used by car manufacturers, including Renault in particular, in practice to circumvent emissions regulations. If it has not actively cooperated with Renault and other car manufacturers to that end, it has in any event done nothing to put an end to that use, even though it had the means to do so as the manufacturer and copyright holder of the software. Bosch thus breached at least one duty of care in failing to prevent its software from being used to circumvent emissions regulations.

Bosch's role in Dieselgate

- 8.3. First of all, it is relevant to note that a large part of the business activities of Bosch (which is perhaps more familiar to the wider public in the Netherlands for household appliances) is focused on the diesel

technology sector. This is the *Mobility Solutions* business area (already mentioned when the parties were introduced), which has its own diesel systems division and competes with other large car suppliers.⁶⁷ An article from 27 January 2016 on the autonews.com website states that about 50,000 of Bosch's approximately 375,000 employees work in this sector.⁶⁸ The sector is thus responsible for a large proportion of Bosch's annual sales.

- 8.4. The control systems that Bosch develops for this sector are complex and very valuable. So it's no wonder that Bosch keeps a tight rein on the development and use of its hardware and software. An engineer for a car manufacturer stated in 2015 about the extent to which Bosch oversees the use of its software as follows:

"I've had many arguments with Bosch, and they certainly own the dataset software and let their customers tune the curves. Before each dataset is released it goes back to Bosch for its own validation.

Bosch is involved in all the development we ever do. They insist on being present at all our physical tests and they log all their own data, so someone somewhere at Bosch will have known what was going on.

All software routines have to go through the software verification of Bosch, and they have hundreds of milestones of verification, that's the structure

The car company is never entitled by Bosch to do something on their own."⁶⁹ [underlining added by lawyer]

- 8.5. On 28 February 2006 Bosch published a press release in which it presented its new EDC - the Bosch EDC17.⁷⁰ In it Bosch states that the EDC17 is "*the brain of diesel injection*" "*that controls every parameter that is important for effective, low-emission combustion*". Bosch further presented the EDC17 as an important contribution to meeting future emissions standards:

"EDC17: Ready for future demands

Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world's markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle's entire service life. The system therefore makes an important contribution to observing future exhaust gas emission limits."⁷¹ [underlining added by lawyer]

- 8.6. EDC17 has been implemented in vehicles from Volkswagen, Audi, Porsche, Mercedes, BMW, Ford, General Motors, Fiat Chrysler and all diesels from Renault since 2007. However, the EDC17 was anything but a "major contributor to compliance with future emissions standards." On the contrary, the software of the EDC17 was designed to make it very easy for car manufacturers to circumvent future emissions standards. Because EDC17 controlled all systems of the diesel vehicle, including the emission reduction systems, it was the means by which car manufacturers were able to commit the extensive diesel fraud.

⁶⁷ Bosch Group Annual Report 2016 (**Exhibit 63**).

⁶⁸ 'Bosch probes whether its staff helped VW's emissions rigging', Automotive News 27 January 2016 (**Exhibit 64**)

⁶⁹ M. Taylor, "EPA Investigating Bosch over VW Diesel Cheater Software," Car and Driver 23 November 2015 (**Exhibit 65**).

⁷⁰ Press release 'The brain of diesel injection: New Bosch EDC17 engine management system' Bosch 28 February 2006 (**Exhibit 66**)

⁷¹ *Ibidem*.

- 8.7. The exact functioning of the hardware and software is still unknown today, because Bosch refuses to give access to it. However, the firmware or software programmed into the ECU of modern cars is very complex and consists of millions of lines of code. Without access to the source code, it is virtually impossible to determine the exact operation of an EDC17.
- 8.8. Yet in 2017, using various technical documents gleaned from 'tuning' websites, researchers from the Ruhr-Universität in Bochum, Germany and the University of California-San Diego attempted to describe how the EDC17's software works in diesel vehicles made by Volkswagen and Fiat Chrysler.⁷² This was the same EDC17 that was implemented in Renault's Rigged diesels. In this investigation, which is of a highly technical nature, this documentation enabled the investigators to prove beyond doubt that Bosch had, in short, developed the EDC17 to recognise when the external conditions of the vehicle (outside temperature, air pressure, speed and driving time) were equal to or within pre-programmed parameters of the conditions observed in official certification tests and that, as such, the EDC17 therefore qualified as a defeat device.

"Both the Volkswagen and Fiat vehicles use the EDC17 diesel ECU manufactured by Bosch. Using a combination of manual reverse engineering of binary software images and insights obtained from manufacturer technical documentation traded in the performance tuner community (i.e., car enthusiasts who modify their software systems to improve performance), we identify the defeat devices used, how they inferred when the vehicle was under test, and how that inference was used to change engine behaviour. Notably, we find strong evidence that both defeat devices were created by Bosch and then enabled by Volkswagen and Fiat for their respective vehicles"⁷³

and specifically with regard to the EDC17 in Volkswagen, which was, however, identical to that in the Fiat 500 under investigation:

"The Volkswagen defeat device is a continually evolving family of devices. All instances are organized around a single condition monitoring block that determines if the vehicle is undergoing testing and points throughout emission-related ECU modules where the result of this determination can affect the behaviour of the module."⁷⁴

- 8.9. The functionality that triggers the activation or deactivation of the emission reduction systems upon detection of conditions indicative of an emissions test situation is referred to in Bosch's technical documentation as the "*acoustic condition*" of the EDC17, a neutral term that obscures the fact that it is a defeat device. After all, as explained at length above, the Emissions Regulation prohibits devices which can (partially) switch off emission reduction systems or devices which detect when the vehicle is in a test situation. Bosch knew this very well. A writ of summons issued against Bosch in the United States ("**Third Amended Complaint**") reveals the existence of internal emails - including between executives and Bosch employees - that discuss the fact that the software of the EDC17 in diesel vehicles manufactured by Volkswagen recognizes when the vehicle is undergoing an emissions test and at that point (partially) activates the emissions reduction systems, a process described by the employees with the not very concealing term "*cycle-beating*".⁷⁵ The Foundation discusses these e-mails in more detail below.

⁷² M. Contag et al, 'How They Did It: An Analysis of Emission Defeat Devices in Modern Automobiles', *Ruhr-Universität Bochum & University of California* (**Exhibit 67**).

⁷³ *Ibidem*, p. 2.

⁷⁴ *Ibidem*, p. 6.

⁷⁵ *Volkswagen v. Robert Bosch, LLC*, MDL No. 2672 CRB (JSC) (N.D. Cal) (Third amended Volkswagen-branded franchise dealer amended and consolidated class action complaint)(**Exhibit 68**). N.B.: The Foundation hereby submits a version of the Third Amended Complaint in which the emails in question have been blacked out because confidentiality rules in the United States do not permit the submission of an unedited version.

- 8.10. The investigators further found that the software of the EDC17 was written by Bosch, but that manufacturers could calibrate the software using so-called '*software constants*' included in the '*function sheets*' so that the EDC17 applies specifically to their vehicle:

"The EDC17 ECU is manufactured by Bosch and bought by automakers, including Volkswagen and Fiat, to control their diesel engines. The exact details of the business relationship between Bosch and its customers is not public; however, media reports, court filings [15], and the documentation we have obtained indicates the following basic structure: Bosch builds the ECU hardware and develops the software running on the ECU. Manufacturers then specialize an ECU for each vehicle model by calibrating characteristic software constants whose semantics are explained in the ECU documentation. We have found no evidence that automobile manufacturers write any of the code running on the ECU. All code we analyzed in this work was documented in documents copyrighted by Bosch and identified automakers as the intended customers"⁷⁶

- 8.11. This allowed car manufacturers to determine, for example, which emission reduction systems the EDC 17 would activate or deactivate if the programmed parameters were exceeded. The investigation showed that the EDC17 in the Volkswagen took different measures than the EDC17 in the Fiat 500. Although car manufacturers were thus able to tailor EDC17 to their own vehicles, it is important to note that the parameters which allow EDC17 to verify that the vehicle is in a test situation are (permanently) programmed into the EDC17 software by Bosch and cannot be removed by car manufacturers. It is therefore not the case that Bosch supplied a "neutral" product to the car manufacturers, which the car manufacturers then fraudulently deployed. The EDC17 was developed *from* the outset with the intention of being able to recognise when the vehicle was in a test situation.
- 8.12. The German/American study is not an isolated case. After the discovery of the Volkswagen scandal, various government agencies launched investigations into Bosch's involvement in the fraud. In 2015, the EPA launched an investigation into Bosch's involvement in Volkswagen's diesel fraud in America. In 2017, German authorities also launched two separate investigations into Bosch's involvement in diesel fraud by Volkswagen and Daimler:

"Three Bosch Managers Targeted as German Diesel Probe Expands

A German probe into whether Robert Bosch GmbH helped Volkswagen AG cheat on emissions tests intensified as Stuttgart prosecutors said they were focusing on three managers at the car-parts maker.

While Stuttgart prosecutors didn't identify the employees, the step indicates that investigators may have found specific evidence in the probe. Previously, prosecutors have said they were looking into the role "unidentified" Bosch employees may have played in providing software that was used to cheat on emission tests.

"We have opened a probe against all three on suspicions they aided fraud in connection to possible manipulation in emissions treatments in VW cars," Jan Holzner, a spokesman for the agency, said in an emailed statement. "All of them are managers with the highest in middle management."

Bosch, which is also being investigated by the U.S. Department of Justice, has been caught up in the VW diesel scandal that emerged in 2015 over allegations its employees may have helped rig software that helped the car maker to cheat emission tests. Earlier this year, Stuttgart prosecutors opened a similar probe into Bosch's role in connection with emission tests of Daimler cars.

A spokesman for Bosch said that while he can't comment on individual employees, the company "takes the overall allegations in diesel cases seriously and has been cooperating fully from the beginning of the probes."

The Stuttgart probe is running parallel to the central criminal investigation in Braunschweig, closer to VW's headquarters. That investigation is targeting nearly 40 people on fraud allegations related to diesel-emission software, including former VW Chief Executive Officer, Martin Winterkorn.

Prosecutors' interest extends to multiple units in the VW family -- including luxury brands Audi and Porsche. In addition, Stuttgart prosecutors are also reviewing a third case related to Bosch's cooperation with Fiat Chrysler Automobiles NV on software for diesel engines."⁷⁷

- 8.13. The results of these investigations have not been made public, but have led to a substantial fine from the German Public Prosecutor's Office of over 100 million euros. This in any case makes it clear that Bosch's role was highly dubious, to say the least, and that various parties at least doubted that Bosch had done everything possible to prevent the fraud.
- 8.14. Bosch obviously realises this too. On April 24, 2018, Bosch issued a press release announcing new policy rules.⁷⁸ In it, Bosch CEO Volkmar Denner refers to the (new) rule that "*the incorporation of functions that automatically detect cycle tests is strictly forbidden.*" Further, Denner announced a new policy requirement that "*Bosch products must not be optimized for test situations.*"
- 8.15. In doing so, Bosch is effectively acknowledging that its existing hardware and software (i.e. the EDC17) are not compliant. By stating that the incorporation of software which detects when a vehicle is in a test situation is strictly forbidden and that Bosch products must in future no longer be optimised specifically for test situations, Bosch is implying that its then existing products contained prohibited functionalities and were in fact tailored to test situations.
- 8.16. To the best of the Foundation's knowledge, however, Bosch did not go any further than the implicit admission of liability contained in this press release. It continues to officially deny its involvement in and liability for the diesel fraud(s). It is worth noting in this context that Bosch has already reached comprehensive settlements in the USA in three separate cases concerning the presence of EDC17 in diesel vehicles manufactured by Volkswagen, Fiat Chrysler and Daimler. The amounts involved were \$327.5 million (Volkswagen), \$27.5 million (Fiat Chrysler) and \$63 million (Daimler), respectively.⁷⁹ In addition, Bosch is currently a co-defendant in three further cases concerning the implementation of EDC17 in diesel vehicles manufactured by BMW, General Motors, and Ford.⁸⁰ In Germany, Bosch has paid fines to the German public prosecutor's office for its role in the Volkswagen diesel scandal.⁸¹
- 8.17. These circumstances do not square with Bosch's apparent assertion that it was not involved in the diesel fraud, or at least that it cannot be held liable for the damage caused by it.

Concrete indications for cooperation between Bosch and the automobile manufacturers

- 8.18. These are the general connecting factors for the Foundation's assertion that Bosch can be held liable for the damage suffered by the Aggrieved Parties as a result of the presence of EDC17 in the rigged

⁷⁷ K. Matussek, "Three Bosch Managers Targeted as German Diesel Probe Expands," Bloomberg June 29, 2017 (**Exhibit 69**).

⁷⁸ Press release Bosch PI10617 BBM FF/KB dated 25 April 2018 (**Exhibit 70**).

⁷⁹ *Volkswagen v. Robert Bosch, LLC*, MDL No. 2672 CRB (JSC) (N.D. Cal) (Class Action Settlement Agreement and Release (Amended)); *In Re Chrysler-Dodge-Jeep Ecodiesel Marketing Sales Practices, and Products Liability Litigation* Case No. 3:17-md-02-777-EMC, art. 4.10 and 10.1 (Amended Consumer and Reseller Dealership Class Action Settlement Agreement and Release); *In Re Mercedes-Benz Emissions Litigation* Civil Action No. 2:16-CV-881 (KM) (ESK), par. 11, exhibit A, art. 4.3 and 11.1 (Declaration of Steve W. Berman in support of motion for preliminary approval) (**Exhibit 71**).

⁸⁰ *Rickman v. BMW of N. Am.*, Civ. No. 18-4363 (KM) (JBC) (D.N.J.); *In re Duramax Diesel Litig.*, Case No. 17-11661 (E.D. Mich.); *Counts v. General Motors, LLC*, No. 1:16-CV-12541-TLL (ED. Mich.); *Gamboa et al. v. Ford Motor Co.*, Case No. 18-10106 (E.D. Mich.) (**Exhibit 72**).

⁸¹ A. Krok, "Germany slaps Bosch with \$100 million fine for role in Dieselgate," *CNET* May 23, 2019 (**Exhibit 73**).

diesels. In view of (i) the results of the investigation into the functioning of Bosch's software, (ii) the governmental investigations into Bosch's involvement in the diesel fraud, (iii) its apparent willingness to settle civil lawsuits, possibly in order to prevent incriminating information from becoming public, and (iv) the content of its press release in 2018; it can, however, already be safely assumed on the basis of this that it knew that the EDC17 was a defeat device and that it knowingly participated in its implementation, or at least did nothing to prevent its use by manufacturers to circumvent emissions standards.

- 8.19. Below, the Foundation will explain why it is convinced that Bosch was *fully* aware that the EDC17 was being used to implement a defeat device and that it also knew that this was being used in practice by Renault to circumvent emissions standards.
- 8.20. For this, the Foundation is reliant on the emails cited in the Third Amended Complaint. The Foundation submits as **Exhibit 68** a partially blacked-out version of the Third Amended Complaint that quotes the various emails relevant to these proceedings. Although they mainly concern Volkswagen's use of EDC17, these documents are highly relevant to the present proceedings. This is because the EDC17 implemented in the rigged diesels is not fundamentally different from the EDC17 implemented in Volkswagen's diesel vehicles. It is of course completely implausible that the EDC17 in general was developed by Bosch to recognise when the vehicle in which it was implemented was subject to an emissions test but that the EDC17 modules produced for Renault did not possess that functionality. It is also highly unlikely that, if Bosch was fully aware that the EDC17 was also used by Volkswagen in practice to circumvent emissions standards, it would not have known about this in the case of Renault.
- 8.21. In an email exchanged between Bosch executives, one executive stated that Bosch would have a potential defence if the "*cycle-beating*" that occurred at Volkswagen became public knowledge:
- "PLEASE DO NOT FORWARD
- In my view this discussion does not get us anywhere. Customized, we set requirements usually without much thought" around and do not even notice that it may be a cycle beater. So we do not break the law; after all we are not acting grossly negligent."⁸²
- 8.22. Regardless of what this director thinks about the legal consequences of Bosch's involvement, it is clear from this e-mail that the fact that the EDC17 was a defeat device was known and discussed at the highest level.
- 8.23. In March 2007, a Bosch engineer asked her colleagues in an email if the EDC17 was a "cycle-beater" and complained that "*how bad does it have to be, that we even fake the documentation?*" In an e-mail in 2008, another Bosch associate acknowledges that the "acoustic function," as the EDC17 is called in VW's technical documentation, was in fact "cycle recognition," since it was essentially a program that recognized when the vehicle was subjected to emissions tests and adjusted the systems accordingly (marginal number 129 of the Third Amended Complaint). Here, too, the Foundation finds evidence that it was generally known within Bosch that EDC17 was, or at least contained, a defeat device.
- 8.24. Further evidence appears to have been provided by a letter from Bosch to Volkswagen in 2008, in which Bosch expressly demanded that Volkswagen indemnify it against the foreseeable liability resulting from the use of the defeat device developed by Bosch - Bosch explicitly refers to the

⁸² Exhibit 68, par. 99.

software as a "defeat device" - the term utilised in the English translation of the Emissions Regulation for a defeat device - which Bosch knew was "*prohibited pursuant to*

- 8.25. In another email between Bosch employees, which has the telling title "*Extending the Cycle Beater with D5240*". The 'D5240' in the title refers to a specific task in the software development spreadsheet that was shared between Volkswagen and Bosch (marginal number 138-139 Third Amended Complaint)
- 8.26. Other documents discuss the adjustment of the 'urea dosage' in an SCR emission control system (which although not used in Renault's Rigged diesels is indicative of the role of Bosch) and show that Bosch knew that this circumvention technique was used for 'cycle-beating':

"Different Applications at Emissions cycle/normal operation?"

1. By distinguishing between precontrol and alternative precontrol, the urea dosing in the same vehicle can be designed differently.
2. The switching conditions are another function linked to the 'acoustic function', which can distinguish between normal operation and operation in an emissions measuring cycle.
3. By combining these two functions and corresponding parameters, the system can be designed so that the SCR function in the emissions measuring cycle meets the legal requirements. In all normal driving conditions, significantly less urea is injected, thereby extending service intervals for refilling urea and avoiding the risk of odour from dosing slightly excessive urea."⁸³

- 8.27. In a reply to this document, another Bosch executive explained the following:

"Short answer to your questions:

The function is the so-called "online dosage", developed in 2006/7.

This was jointly designed by the 4 German OEMs and implemented "interface conformance" with the help of DS / EAS and DS-ET, without System development contribution by RB.

The background for the function is to influence the metering quantity in certain operating points (for example also ammonia slip, ...) with the additional effect of saving metering, which is advantageous due to the limited AdBlue tank volume.

All 4 OEMs use the Fkt, but in slightly customized variants.

Since the function contains a lot of degrees of freedom, it was agreed with the 4 OEM that the application responsibility lies with the OEMs and that also the "justification" of the function in the case of the Authorities through the OEMs. This was also documented in a protocol.

Suggestion for further action.

We provide (...) with information about the function and our agreements with the OEM, and then jointly determine if and what further action is necessary."⁸⁴

- 8.28. One of the 'OEMs' (Original Equipment Manufacturers) is Renault. This e-mail again makes it clear that Bosch was familiar with the operation and use of the EDC17 up to the highest level. The fact that it may have been agreed with the car manufacturers that responsibility for use rests with them does not, of course, release Bosch from its duty of care towards third parties, such as the Aggrieved Parties.
- 8.29. Due to confidentiality obligations imposed in the United States, the Foundation does not have access to the emails themselves. Insofar as the court will not order Bosch, of its own motion, to bring these

⁸³ *Ibidem*, para. 156.

⁸⁴ *Ibidem*, para. 157.

documents and correspondence specifically related to Renault into the proceedings, the Foundation will institute incidental proceedings under article 843a DCCP. This will, of course, include requests for additional emails and documentation specifically relating to Bosch's knowledge of the use of the EDC17 in the Rigged diesels. In the Foundation's view, however, based on the above, it has already demonstrated sufficiently that Bosch was aware of Renault's use of EDC17 and that this knowledge and the resulting liability should be accepted as established, in the absence of proof to the contrary.

Conclusion

- 8.30. It follows from the above that the EDC17 developed by Bosch, to which it can claim copyright, was capable of recognising when the vehicle in which it was implemented was subject to an emissions test. This clearly qualifies the EDC17, or at least that functionality, as a defeat device within the meaning of the Emissions Regulation. There is no doubt that Bosch was aware that this process, which it refers to internally as "cycle-beating," was in breach of the applicable emissions regulations.
- 8.31. It is also clear from the cited e-mails that Bosch was aware that the EDC17 was also used by Volkswagen to circumvent emissions standards. Bosch, however, has failed to shoulder its responsibility in this regard by prohibiting the use of the software for illegal purposes. On the contrary, it has - apparently out of commercial interest - justified internally the use of the defeat device by pointing out the possibility of downplaying its role and invoking possible indemnity should the nature of the software become publicly known.
- 8.32. The EDC17 found in the Volkswagen and Fiat Chrysler diesel vehicles under investigation are essentially the same as the EDC17 implemented in the Rigged diesel vehicles. While car manufacturers were able to choose how EDC17 used the vehicle-specific emission control systems to meet the applicable emission standards during detected test conditions, only Bosch had the ability to modify the underlying software that detected the test conditions. In other words, car manufacturers could not tune EDC17 so that it would no longer detect that the car was subject to an emissions test.
- 8.33. The investigations discussed in sections 6 and 7, as well as Renault's admission regarding the 17 degrees Celsius limit, clearly show that the EDC17 in the diesel vehicles under investigation switched the emission reduction systems on and off under certain conditions. The fact that the way in which EDC17 disguised the excessive NOx emissions in the case of the Rigged diesels may have been different from that in the case of diesel vehicles of other makes is, as mentioned above, irrelevant for Bosch's liability. Given Bosch's knowledge of the actual use of EDC17 to circumvent emissions standards at Volkswagen and its intensive monitoring of the use of its software, it is highly implausible that it was not also aware that its software was being used by Renault to circumvent emissions standards. Bosch thus failed to exercise the due care that could have been expected of it as the manufacturer of this essential operating system, and is directly liable in tort for the damage caused by it.

Deel III. LEGAL ARGUMENTATION

9. UNLAWFUL ACT OF DEFENDANTS

Starting point: unlawful conduct on the part of Renault (findings of fact)

- 9.1. All investigations into Renault's Rigged diesels have shown that the test results for actual use deviate significantly from the results obtained during the official tests (on the roller bench), resulting in emissions of harmful NOx that are up to 16 times higher than the legally permitted level. Renault did this by fully activating its emission control systems only during official tests, and (partially) deactivating them when the car was actually in use. Renault also admitted using prohibited defeat devices by setting its emission control systems to switch off when the outside temperature reached 17 degrees Celsius.
- 9.2. Under Article 5(2) of the Emissions Regulation, it is not permitted to use defeat devices that reduce the effectiveness of the emission control system. However, this is exactly what Renault has done. In any case, Renault used the following defeat devices:
 - one or more sensors that detect that the vehicle is on a roller bench and allows the reduction systems (at a 'cold' start) to function optimally for as long as possible.
 - one or more temperature sensors that switch off the reduction systems at ambient temperatures below 17 degrees Celsius (or above 35 degrees Celsius);
 - One or more sensors which disable the reduction systems at driving speeds below 50 km/h.
- 9.3. Moreover, Article 4(2) of the Emissions Regulation requires Renault to ensure that '*exhaust and evaporative emissions are effectively limited, in accordance with this Regulation, throughout the normal life of the vehicles under normal conditions of use*'. That this is not the case is clear now that every single investigation shows that Renault is flouting the emission standards in force.
- 9.4. It is therefore an established fact that Renault used prohibited defeat devices in order to get its Rigged Diesels to come out of the tests well. Now that all the investigations have shown that there are differences between the official measurements on the roller bench and the actual driving conditions, not a single test has shown that a particular type of car is satisfactory (quite the reverse, since Renault is the front-runner among polluting diesels). All the cars are driven by Bosch's EDC17 and Renault itself had announced that it intended to modify its emission-limiting systems. It is obvious that the fraud was committed on all the Rigged diesels which have to meet the Euro 5 and Euro 6 emission standards, and that all these Rigged diesels therefore contain prohibited defeat devices.
- 9.5. Nevertheless, the Foundation limits its claims to Rigged diesels produced under the Euro 5 and Euro 6 diesel vehicles and those during the Relevant Period (i.e. 1 September 2009 when the Euro 5 standard came into force until 1 September 2019 when the temporary Euro 6.d standard came into force) were leased or purchased.
- 9.6. Renault's argument that, although it uses devices to disable its emission control systems, these do not constitute defeat devices because they are necessary 'to protect the engine', is untenable and implausible. The European Court of Justice therefore makes it clear that car manufacturers can only invoke such a protective defence in exceptional cases. This is in any event not the case if these systems do not work below an outside temperature of 17 degrees Celsius (which is after all associated with normal use in the Netherlands). Renault cannot therefore claim any such justification for its defeat devices.

Liability Renault (art. 6:162 DCC)

9.7. As set out in detail in this writ of summons, Renault has acted unlawfully in several ways. This includes at least the following actions:

- Renault committed widespread fraud in the emissions of their diesel engines by circumventing the legally required emissions standards using prohibited defeat devices whereby the emission control systems were (partially) switched off when the vehicles were not in a test environment.
- By using these defeat devices, Renault has infringed the prohibition in Article 5 of the Emissions Regulation. With the ruling of the Court of Justice of 17 December 2020, it is certain that these violations do not fall under the exemptions of the Emissions Regulation.
- As a result of the fraud, Renault's rigged diesels also fail to meet applicable emissions standards by producing up to 16 times more emissions during daily use than measured in official tests.
- Renault then applied for European type approval for each model on spurious grounds and wrongly obtained it. As a result, all certificates of conformity issued in the Netherlands (by Renault and/or its importer) were issued incorrectly and the Rigged Diesels could not have been sold and/or registered in the Netherlands (and the rest of the EU).
- In addition, Renault deceived the market on a large scale by advertising and selling the Rigged diesels as "clean". As the group leader, it has authority and control over all aspects of the Rigged diesels that were distributed in the Netherlands. This concerns (among other things) marketing, advertisements and other commercial statements intended for and aimed at the Dutch market. Renault, in addition to its role as manufacturer of the Rigged diesels, is therefore ultimately responsible for the large-scale deception of the Dutch market.
- Renault's fraud has not only exceeded emission standards but has also caused real damage to the environment and to public health. That these are not abstract events can be seen from the consequences of the nitrogen crisis in the Netherlands (to which the Rigged diesels made a significant contribution as the second best-selling car after Volkswagen) and the recent ruling in England which, for the first time, established that pollution by cars was the cause of the death of a young girl.

9.8. These acts - each on its own but certainly in combination - constitute an unlawful act for which Renault is liable pursuant to Article 6:162 of the Dutch Civil Code.

Liability of importer (art. 6:162 DCC)

9.9. The Importer played a central role in the importation, marketing, advertising and other commercial communications with regard to Rigged diesels throughout the Netherlands.

9.10. To begin with, the importer is responsible for, or at least has been involved in, the vehicle registration of all Diesels in the Netherlands with the RDW. The Foundation deduces this, among other things, from the fact that the recall register of the RDW shows that all recall actions involving Renault and Dacia vehicles are reported by the Importer. The Foundation assumes that the various certificates of conformity issued for the Diesels were sent to the RDW by the Importer. The Importer is then responsible for the sale of the imported cars to the Dutch dealer network. The Foundation deduces this, among other things, from Renault's 2019 annual report, which shows sales figures to the dealer network for 2017 and 2018.

- 9.11. As a party involved in the importation and distribution of the Rigged diesels, the Importer has a separate obligation to verify that the Rigged diesels meet the applicable emission standards. In view of this position and the responsibility that goes with it, it cannot hide behind the fact that EU type approval (as the basis for the certificates of conformity) was obtained in France. Insofar as it claims not to have been aware of the fraud - which the Foundation disputes, given that the Importer is part of the group headed by Renault - it is liable at its own risk and is (also) responsible for the fact that the Rigged diesels imported into the Netherlands did not meet the emission standards.
- 9.12. The Importer is also the owner or manager of the Dutch Renault website operating under the domain name [renault.nl](https://www.renault.nl). This follows, among other things, from the general terms and conditions of use that can be consulted at the bottom of the website under the link 'disclaimer'.⁸⁵ At the top of the terms and conditions, the Importer's contact details are clearly stated and it follows that it is responsible for the website (art. 3:15d DCC). This also follows from the copyright notices and contact details displayed in the various brochures on the website⁸⁶ which show that the brochures have been compiled by the Importer.
- 9.13. On the website, misleading advertising and other marketing statements were made frequently during the Relevant Period in relation to the Rigged diesels. The Foundation has provided several examples of that in this writ of summons. In addition, it is unreservedly plausible that the Importer is (co-)responsible for advertising or marketing communications and/or press releases that relate to the Dutch market and have taken place outside the Importer's website (e.g. by means of the brochures already mentioned).
- 9.14. All these marketing communications boil down to the suggestion that the Rigged diesels are 'green', or at least meet the strict emissions standards, when that was patently not the case. This constitutes, besides various unfair trade practices towards consumers (both buyers and lessees), an unlawful act pursuant to Article 6:162 of the Dutch Civil Code because the Importer misled the Dutch market although as part of the Renault group they knew (or at least should have known and/or been aware of the accuracy of the statements) that the information provided was incorrect.

Liability Bosch (art. 6:162 DCC)

- 9.15. Renault's large-scale fraud would not have been possible without Bosch. As explained in detail in this writ of summons, Bosch acted unlawfully in several ways:
- Bosch is at the root of Dieselgate in Europe and the US as it supplied an essential component for diesel vehicles to several car makers (including Renault) (namely the EDC17) which enabled the car makers to implement the defeat devices.
 - Without Bosch's active cooperation in the development of the EDC17 and associated software, Renault would not have been able to commit the large-scale diesel fraud. Bosch not only develops, manufactures and supplies the EDC17 to Renault, but also works closely with Renault in testing, calibrating and parameterizing the software in the EDC17 that controls the entire combustion process.
 - Bosch *knew* that the EDC17 it had developed was a defeat device and that its hardware and software were being used by car manufacturers, including Renault in particular, to circumvent

⁸⁵ <https://www.renault.nl/disclaimer.html>

⁸⁶ By way of illustration, see <https://cdn.group.renault.com/ren/nl/brochures-en-prijslijsten/brochures/espace-brochure.pdf.asset.pdf/e2e4c3d004.pdf>

emissions regulations. If there was no collusion, Bosch certainly did nothing to stop this fraud (although, as the owner of the software, it could have done so).

9.16. With these acts Bosch, together with Renault, committed an unlawful act and is directly (jointly and severally) liable for the damage caused under article 6:162 of the Dutch Civil Code. In addition, Bosch did not exercise the due care that could be expected of it as manufacturer of this essential operating system, which constitutes an independent wrongful act.

10. DAMAGE

10.1. As already discussed, the Aggrieved Parties suffered damage as a result of the wrongful acts of Renault, its Importer and Bosch. This damage consists (inter alia) of the following elements:

- The amount the Aggrieved Parties overpaid for the Rigged diesel, referred to as the *overcharge*. This is the difference between the price the buyers paid for the Rigged diesel and the price they would have paid if Renault had not misled them. For lessees, the *overcharge* refers to the overpayment for the Rigged diesel in question.
- In addition, the Aggrieved Parties have suffered, or will suffer, damages as a result of the restrictions on the use of their polluting Rigged diesels. This concerns the risk of partial or total bans on driving Rigged diesels, as is already the case in several Dutch inner cities. As a result, the Rigged Diesels can no longer be used there and the Aggrieved Parties have to arrange other transport.
- Finally, the Aggrieved Parties will suffer damage if the defeat devices are removed or disabled after a recall and the emission control systems then resume full functioning. In that case there will be much higher consumption (of both diesel and the various filters in the emission control systems) and the user experience will be considerably lower (in terms of noise and the 'feeling of performance').

10.2. This damage is causally related to the unlawful acts of Renault, its Importer and Bosch. Indeed, without the large-scale defeat device fraud by Renault - which would not have been possible without Bosch not only as a supplier of the EDC17 but also as an active participant in the (software-based) implementation of the defeat device - this would not have occurred. Moreover, there would not have been an *overcharge* if Renault and its importer had correctly informed the market of the existence of the defeat devices, or at least the actual characteristics of the Rigged diesels.

10.3. In these proceedings, the Foundation will first seek a declaratory judgment that Renault, its importer and Bosch are liable for these damages. It will then request a referral to the Statement of Damages to calculate these damages. The starting point for this is the claim settlement as set out by the Foundation in marginal number 10.1, which, in brief, boils down to the following:

- the *overcharge* is calculated on the list price set by Renault for each model. This is the new price set per country by Renault or its importer when a model is launched. Insofar as these data are no longer available, the Foundation will use the registered value of each Rigged diesel as stated in the RDW vehicle register.
- thus establishing the damage suffered by the first purchaser. The same *overcharge* applies to (possible) subsequent buyers; after all, they too have paid too much for their second-hand Rigged diesel. However, because the first buyer made a higher profit on the sale than on actual knowledge due to the actual passing-on of the *overcharge*, their *overcharge* is reduced

proportionally. The result is that the overcharge is divided pro rata between all successive purchasers of a Rigged diesel.

- in a lease structure, the lessor, as purchaser, is also entitled to the *overcharge*. After all, the (residual) value of the Rigged diesel is lower than it would have been if the facts had been correctly presented. He must, however, have the higher lease proceeds deducted. After all, the lessee has also paid too much for the lease of the rigged diesel and is therefore entitled to the related *overcharge* (i.e. the value of the car that determines the basis of the periodic lease payment).

10.4. Based on these assumptions, the loss incurred by the Aggrieved Parties can be determined for each Rigged diesel. The Foundation will specify the exact number (currently estimated at around 250,000 Diesels) and the exact *overcharge* at a later stage of the proceedings. However, if it proves impossible to calculate actual damages, the Foundation asks the Court to award damages for each diesel in question by means of a profit transfer (Art. 6:104 DCC). After all, the situation in the present case is exactly what the legislator had in mind here:

"The rationale behind this provision is that it was considered unreasonable to leave unauthorized gain obtained at the expense of another with the recipient, where loss is presumed to have been suffered by the other party, but is by its nature not readily provable."⁸⁷

11. APPLICABILITY OF WAMCA

11.1. In the Foundation's view, the claims it brings primarily on behalf of the Aggrieved Parties should be judged entirely on the basis of the WAMCA.

Temporal application

11.2. The acceptance of the amendment proposed by member of the Lower House, Van Gent,⁸⁸ has resulted in the WAMCA not only applying to collective claims that relate to events that took place after 15 November 2016 (the date on which the initial bill of the WAMCA was presented to the House of Representatives), but also to events that occurred before this date, provided that they have continued after this date.

"In the theoretical case of a series of events occurring both before and after November 15, 2016, the law will apply as it stands at the time the last event to which the claim relates occurred. The amendment assumes that the WAMCA will apply to events prior to November 15, 2016 in that case."⁸⁹

11.3. The present case demonstrates that an unlawful act committed before November 15, 2016, but continuing thereafter, is far from theoretical.

11.4. First, the Foundation accuses Renault et al. of deliberately adjusting the EDC17 developed by Bosch in its diesel vehicles in such a way that, in practice, the diesel vehicles were considerably more polluting than permitted by the applicable Euro 5 and 6 emission standards. Second, the Foundation accused Renault et al. of having certified the diesel vehicles at the time of their importation into the Netherlands, or at least having given instructions to that effect, thereby - inter alia - deliberately creating the justified expectation that the vehicles would comply with the applicable emissions standards. Finally, the Foundation accuses Renault et al. of not having removed the defects in spite

⁸⁷ T&C Property Law, note 1 to art. 6:104 DCC (with PG source references).

⁸⁸ *Parliamentary Papers* II 2018-2019, 34 608, no. 13 (Van Gent Amendment) (**Exhibit 74**).

⁸⁹ *Ibidem*, p. 2.

of the aforementioned knowledge, but of consciously allowing them to exist and disputing their existence, or at least trying to cover them up.

- 11.5. Any software updates (whether or not in the context of possible recall actions) do not alter this because - even if these updates had already been implemented (which the Foundation disputes) - this only occurred after 15 November 2016, and therefore too late to remove the acts committed before 15 November 2016 from the scope of the WAMCA. Moreover, these updates cannot remove the non-conformity. Even if the software in the Rigged diesels were tuned so that the emission reduction systems were always fully operational, the engines' NOx emissions would not remain below the limit under all circumstances. In addition, this would create other shortcomings (e.g. increased fuel consumption, earlier wear and tear or "full" filters and an overall reduction in the user experience of the diesels). This would therefore still not have resulted in a car on the market that met the current emissions regulations and the created expectations (i.e., fuel-efficient and clean). This has been explained in detail above under the facts.
- 11.6. The Foundation also blames Bosch for the fraud. First, Bosch developed the hardware and software - the EDC17 - that allowed the manufacturer to circumvent emissions standards. The Foundation does not rule out the possibility that this was explicitly agreed with the car manufacturers, which would make Bosch one of the fraudsters. But even if this is not the case, Bosch knew at a very early stage that the EDC17 was actually being used by Renault to circumvent emissions regulations, since Bosch was actively involved in the implementation and parameterization of these control systems for the engine of every diesel vehicle as well as in periodic maintenance operations involving the application of software updates. Although it had *in any* event observed, when updating the software or when (introducing) a new model, that the software had been adjusted in such a way that the emission reduction systems of the vehicle in question were only activated under certain circumstances, it did not draw attention to this and did not do anything to prevent or further inhibit it, although it was in its power to do so as the party entitled to the software. This makes Bosch *at least* an accessory to the perpetuation of the fraud.
- 11.7. Renault et al. have a general duty of care under applicable Dutch law to only market diesel vehicles in the Netherlands market that comply with the applicable emissions regulations. Knowingly breaching this obligation is fraudulent and constitutes an unlawful act. This fraud and the damage caused by it continues to this day.
- 11.8. In the Foundation's view, this fraud should be viewed as a single event for purposes of the applicability of the WAMCA, whereby the events on which the Foundation bases its collective claims - to the extent that they occurred prior to November 15, 2016 - continue after November 15, 2016. In the unlikely event that the unlawful conduct had to be determined on a per-imported diesel vehicle basis, the WAMCA would still apply to the entirety of the claims brought by the Foundation because the Defendants' obligation to cease and desist the fraud with respect to every diesel vehicle placed on the Dutch market prior to 15 November 2016 continues to this day. This means that there is a series of events that took place both before and after 15 November 2016.
- 11.9. Only to the extent that the court should unexpectedly find that the WAMCA does not apply to the Foundation's claims to the extent that they relate to diesel vehicles sold/leased or registered in the Netherlands prior to 15 November 2016, the Foundation requests your court to adjudicate that portion of the claimed declaratory decisions under the then applicable WCAM (Class Actions (Settlement of Large-scale Losses or Damage)), and only adjudicate the portion of the claims relating to the diesel vehicles sold/leased or registered in the Netherlands after 15 November 2016 under the WAMCA.

The Foundation requests the court to give it the opportunity in that case to amend its claims accordingly.

Writ of summons requirements under the WAMCA (overview)

11.10. Section 1018c (1) under a through e of the Dutch Code of Civil Procedure, which was implemented by the WAMCA in the Dutch Code of Civil Procedure , sets a number of further requirements to which this summons must conform. An explanation of the events relevant to the collective claims (Section 1018c subsection 1 paragraph a of the Dutch Code of Civil Procedure) has already been discussed at length in the factual section above.

11.11. The Foundation will now address in turn:

- the description of the persons whose interests it is seeking to protect (Section 1018c(1)(b) of the Dutch Code of Civil Procedure);
- the commonality of the questions of fact and of law to be answered, their bundling and the extent to which the claims brought promote effective and efficient legal protection of the group represented (Section 1018c(1)(c) of the Dutch Code of Civil Procedure, in conjunction with Section 1018c paragraph 5 sub b Dutch Code of Civil Procedure in conjunction with Section 3:305a paragraph 1 DCC);
- the admissibility of the Foundation (Section 1018c subsection 1 sub d DCCP. in conjunction with 3:305a DCC); and
- the suitability of the Foundation to be appointed as Exclusive Representative Entity (Article 1018c (1)(e) of the Dutch Code of Civil Procedure).

Description of narrowly defined group (Section 1018c (1) (b) of the Dutch Code of Civil Procedure)

11.12. The Foundation will represent in these proceedings the interests of the Aggrieved Parties (as defined in par. 3.5 above). This concerns all (first and successive) buyers and all lessees of the Rigged Diesels (always with the exception of the Defendants themselves) that were sold, leased and/or registered in the Netherlands during the Relevant Period.

11.13. The group on whose behalf the Foundation acts in these proceedings is therefore limited, on the one hand, to buyers and lessees of Rigged diesels that were sold/leased and/or registered in the Netherlands after the Euro 5 standard came into effect (1 September 2009) and, on the other hand (as a result of the admissibility requirement set out in Article 3:305a paragraph 3(b) of the Dutch Civil Code that the claims must have a sufficient connection with the legal sphere of the Netherlands) is limited to the territory of the Netherlands by choosing to act only for (former) owners and (former) lessees of Rigged diesels that were sold, leased and/or registered in the Netherlands during the Relevant Period. Of course, it is possible that such Rigged diesels were exported abroad after the purchase or lease, but this will only apply to a minority of them and is insufficient to break the link between the Foundation's claims and the Dutch legal sphere, which is a relevant factor for its admissibility.

11.14. The Foundation seeks a declaratory judgment that Renault et al. and Bosch acted unlawfully towards the Aggrieved Parties, and as such are liable for the damage suffered by them. The Foundation also claims damages on behalf of the Aggrieved Parties.

Renault dealers are not involved in this procedure

11.15. The Foundation is aware that in similar proceedings against other car manufacturers, claims have also been made against the official dealers of the relevant manufacturer in the Netherlands. In these proceedings, other claimant foundations are primarily seeking to have the contracts of sale concluded by the dealers annulled on the grounds of non-conformity. Although the Foundation agrees that the vehicles sold by the Renault dealers were indeed non-compliant as a result of the presence of the defeat devices, the Foundation deliberately chose not to involve the Renault dealers in these proceedings. Not only does this involve a large number of dealers, which does not benefit the clarity of the procedure or the efficient and effective handling of the collective claims of the Aggrieved Parties, but the Foundation also believes that by primarily targeting the dealers, the true perpetrators remain out of range.

11.16. The Foundation does not consider it plausible, or at least it has no evidence, that Renault dealers were actively involved in the unlawful actions of Renault and Bosch, in the sense that they were aware of the defects. It is possible that they became aware of this in due course through media reports, but even if that were the case, the Foundation considers it wrong to place the consequences of the liability for the diesel fraud predominantly on them by seeking to rescind the purchase agreements primarily on the grounds of non-conformity. In the Foundation's opinion, this would cause chaos in the market because such a judgment would affect not only the Rigged diesels sold by Renault dealers, but potentially all subsequent purchase or lease agreements - including those between private individuals - concluded in relation to the Rigged diesels. These undesirable effects, in combination with the advantages of not including the dealers in the proceedings and the Foundation's desire to hold the actual perpetrators accountable for the considerable damage they have caused, led the Foundation to decide not to involve the Renault dealers in these proceedings.

Claims settlement

11.17. As discussed in Section 10, the damages suffered by the Aggrieved Parties consist of the amount they overpaid for the Rigged diesels (the *overcharge*). The Foundation will specify the number of Rigged diesels and the exact overcharge at a later stage in the proceedings. However, in view of the seriousness of the defect, it is to be expected that the overcharge per vehicle will run into thousands of euros in any case. On that basis, the Foundation expects the total damage to run into the hundreds of millions of euros.

11.18. The amount of damage per Rigged diesel will be divided pro rata among the number of users of the vehicle concerned, depending on the nature of their use. After all, every owner of a Rigged diesel has paid too much whether it involves the purchase price or lease instalments. However, this damage has gradually been passed down through the chain and at the moment rests primarily with the current owner of the vehicle. The basic assumption is that previous owners may have bought the Rigged diesel for too much, but also sold it for too much. In the case of several owners, the amount to be determined for each type of Rigged diesel involved will therefore have to be apportioned in accordance with an allocation formula to be determined, although the current owner will have to receive the largest percentage share of the damage. In the case of leased vehicles, the loss is apportioned between the lessor and the lessee(s) of that vehicle. If necessary, this will be explained at a later stage in the procedure.

11.19. What is important in this calculation or settlement of damages is (as will also be explained below when discussing the admissibility requirements pursuant to Section 3:305a of the Dutch Civil Code) that the choice to always take each and every Rigged diesel as a starting point when calculating the damages means that an assessment of the personal circumstances of each and every Aggrieved Party harmed is not necessary when determining the extent of the damage. Nor is it necessary for

holding that Renault et al. and Bosch acted unlawfully vis-à-vis the Aggrieved Parties by developing defeat devices, manufacturing and/or importing Rigged diesels into the Netherlands and misleading the market. The claims therefore lend themselves without further ado to joint processing. Another advantage of the choice to calculate the loss on the basis of the Rigged diesels that were sold, leased and/or registered in the Netherlands is that there can be no doubt as to the close link to the Dutch legal sphere (Art. 305a paragraph 3 sub b DCC) or about the jurisdiction of the Dutch court.

Joint claims (Section 1018c subsection 1 under c and subsection 5 DCCP in conjunction with Section 3:305a subsection 1 DCC)

- 11.20. An important question in class actions is whether the claims brought are suitable for joint processing. This is the case here. The Supreme Court already ruled in 2010 that in the context of a claim pursuant to Section 3:305a of the Dutch Civil Code (old) the interests to be protected are similar if "*they lend themselves to bundling, so as to promote efficient and effective legal protection for the benefit of the interested parties.*"⁹⁰
- 11.21. It is undeniable that in this case similar interests are at stake. After all, all Aggrieved Parties own or have owned a Rigged diesel which contains a defeat device as a result of which they have suffered damage.
- 11.22. The nature of the claims brought does not affect the suitability of the Aggrieved Parties' claims for bundling, as will be explained below.

Declaratory judgment

- 11.23. On behalf of the Aggrieved Parties, the Foundation seeks a declaratory judgment that Renault, its importer, and Bosch acted unlawfully towards them by developing or using hardware and software, or at least by implementing defeat devices, or at least by issuing certificates for non-compliant Rigged Diesels and making misleading statements about them. This type of claim was also possible under the WCAM; it is beyond dispute that the interests of the Aggrieved Parties are susceptible to bundling in this respect. Such a declaration requires a finding that Renault (in collaboration with Bosch) acted unlawfully by breaching the emissions standards applicable during the Relevant Period. This does not require an individual assessment of the personal circumstances of each of the Aggrieved Parties on whose behalf the claim is made, which makes the claim eminently suitable for bundling.
- 11.24. In a similar matter concerning claims filed by the claim foundation Stichting Volkswagen Car Claim in 2017 under the WCAM against (among others) Volkswagen regarding the implementation of defeat devices in cars produced by that manufacturer, the District Court of Amsterdam ruled in an interlocutory judgment of 20 November 2019⁹¹ that the declaratory judgment that Volkswagen has acted unlawfully lends itself to joint treatment and rejected Volkswagen's appeal that, in view of the differences between the interests of car owners, this claim does not lead to efficient and effective legal protection (legal ground 6.34):

"The District Court is of the opinion that the starting point is that Volkswagen et al. intentionally applied a Defeat device in all the Vehicles Concerned put on the market in the Netherlands. This means that the interests of all the Car Owners who claim to have been disadvantaged by this are similar and can therefore be combined. The alleged differences do not alter this, because in no case did they result in the buyer becoming aware of the Defeat device."⁹²

⁹⁰ Supreme Court 26 February 2010, ECLI:NL:HR:2010:BK5756, legal ground 4.2(**Exhibit 75**).

⁹¹ District Court Amsterdam 20 November 2019, ECLI:NL:RBAMS:2019:8741, legal ground 6.11(**Exhibit 76**).

⁹² *Ibidem*, legal ground 6.34

11.25. In the present proceedings, too, there may be differences between the interests of the Aggrieved Parties, although the Foundation believes that these - where they exist - are very limited, but this does not preclude a joint assessment of the question of whether the defendants acted unlawfully by marketing Rigged diesels equipped with defeat devices, or at least by performing acts conducive to that purpose.

Action for damages

11.26. The Foundation is also claiming collective damages. This claim, too, in light of the new rules and safeguards provided by the WAMCA, must be considered to promote the effective and efficient legal protection of the Aggrieved Parties. The Minister notes in the explanatory memorandum to the WAMCA:

"Finally, the procedure itself has been designed in such a way that the fact that certain questions involved in a mass claim can only be answered individually does not have to stand in the way of an efficient and effective settlement. (...). The proposed procedure can be used for the settlement of all types of damage. Nor is the procedure limited to certain potential claimants.

[...]

The proposed procedure does not distinguish between the causes of the damage. (...) If the court has ruled that the other party has acted unlawfully, the mass damage caused by it can be settled in the proposed procedure."⁹³

11.27. When introducing the WAMCA, the Minister explicitly acknowledged the objection (raised in the past) to a collective action for damages, namely that causation and damages can only be determined individually, by incorporating various procedural safeguards that promote the efficient and effective settlement of a collective compensation claim. These safeguards include the centralisation of collective actions for damages in the District Court of Amsterdam, the additional requirements imposed on the professionalism of the representative, and the appointment of an Exclusive Representative Entity to create clarity for the party/parties sued about the party with whom a settlement may be negotiated, and the various powers of judges to encourage parties to reach a settlement.⁹⁴

11.28. The foregoing makes it clear that the legislator has structured the procedure under the WAMCA in such a way that possible individual factors that may play a role in determining the extent of the damage in the event of unlawful acts do not have to stand in the way of a collective action for damages, because the built-in procedural safeguards must be deemed to promote the efficient and effective settlement of mass claims. This means that, unlike in the past, the starting point must now be that collective damages lend themselves to aggregation, and defendants cannot successfully defend against this merely by pointing out the individual factors (such as causation, own fault, etc.) that may be relevant to the assessment of damages in general.

11.29. As already discussed, the Foundation has also opted to use the list (new) price of each model of a Rigged diesel as the basis for its claim for damages. Damages are thus in a sense abstracted from the individual circumstances of the Aggrieved Parties. This promotes the effective and efficient legal protection of the Aggrieved Parties because it removes the discussion of the extent of each Aggrieved Party's loss and shifts it to how the total loss should be calculated. The manner in which that damage is to be apportioned may, at the most, be relevant in the context of assessing the

⁹³ *Parliamentary Papers* II 2016-2017, 34 608, no. 3 (Explanatory Memorandum), p. 7(**Exhibit 77**).

⁹⁴ *Ibidem*.

reasonableness of a settlement to be reached - that will have to be assessed at a later stage - but it cannot, *a priori*, play a role in the assessment of the Foundation's admissibility.

11.30. The conclusion from the foregoing is that all claims filed can be bundled, on the one hand, and that they promote effective and efficient legal protection of the Aggrieved Parties, on the other hand, and are therefore suitable for joint processing. This requirement is therefore fulfilled.

Admissibility of the Foundation (Section 1018c (1) under d of the Dutch Code of Civil Procedure in conjunction with Section 3:305a of the Dutch Civil Code)

11.31. The Foundation has submitted claims based on Article 3:305a of the Dutch Civil Code. With the introduction of the WAMCA on 1 January 2020, the legislator has also made it possible to bring a collective action for damages. In order to prevent unjustified or frivolous use of such a claim and to promote the effective and efficient legal protection of the Aggrieved Parties, the legislator has supplemented the admissibility requirements laid down in Article 3:305a (old) with a number of further admissibility requirements to be fulfilled by a representative of a collective interest in Article 3:305a (1) to (3) DCC (new). These new requirements partly concern a legal enshrinement of (parts of) the Claims Code which was introduced in 2011 and revised in 2019.⁹⁵ It serves the promotion of quality and transparency of interest groups through self-regulation.

11.32. The Foundation will explain below that it meets all of the requirements for admissibility under the WAMCA. Subsequently, the Foundation will briefly discuss the principles of the Claims Code which, although not legally enshrined, it has nonetheless, in its desire to be as transparent as possible, conformed to as far as possible.

Similar interests, articles of association and guarantee of representation of interests (art. 3:305a paragraph 1 DCC)

11.33. Article 3:305a paragraph 1 of the Dutch Civil Code prescribes that a Foundation may institute legal proceedings to protect the similar interests of other persons, in so far as it promotes these interests pursuant to its Articles of Association and these interests are sufficiently safeguarded.

11.34. It has already been explained above that the interests of the Aggrieved Parties in these proceedings are similar and promote efficient and effective legal protection of these interests, and that the Foundation promotes these interests according to its Articles of Association. This requirement is therefore fulfilled.

11.35. However, the Foundation wishes to point out that it limits its activities in these proceedings to the territory of the Netherlands as much as possible, but that it does not necessarily intend to continue to do so. After all, it intends to do more to protect the interests of victims of vehicle emission manipulation (see its mission statement in Article 3.3 of its Articles of Association), and it is certainly conceivable that this will take on a more international character in the future. As already mentioned in the introduction, these proceedings are the second proceedings the Foundation has brought against a major car manufacturer in the Netherlands. It also cooperates closely with Hagens Berman UK LLP in its *group litigation* against (among others) Mercedes in England and Wales (see also par. 11.97 below). Although the Foundation was initially set up to call the perpetrators of the diesel fraud to account, it has since broadened its field of activity and is therefore not an 'ad hoc organisation' that was set up specifically to conduct a single proceedings (as described by the Minister in the

⁹⁵ Claims Code 2019 (**Exhibit 78**).

explanatory memorandum to the WAMCA), or at least it does not intend to be.⁹⁶ Nor is it a commercial organisation which makes litigation of this kind its business model. As a non-profit foundation, it operates independently from its financiers, in the sense that control over strategy and litigation rests entirely with the Foundation. The interests of the people it represents are therefore expressly paramount, although it will of course have to take into account the remuneration requested by the financier for the risk it is taking.

11.36. The last criterion, namely that the Foundation must offer sufficient guarantees for adequate representation of interests, has been further elaborated in the new Article 3:305a (2) of the Dutch Civil Code with the introduction of the WAMCA. Briefly, this paragraph stipulates that the requirement of adequate safeguards is met if the representative entity is sufficiently representative. The Foundation addresses the relevant requirements below.

The Foundation is sufficiently representative (art. 3:305a paragraph 2 opening words Dutch Civil Code)

11.37. With the first sentence of this paragraph, the legislator intended to give the court the opportunity to test whether an interest group is sufficiently representative, in view of its members and the scope of the interests represented. It must be clear in advance that the representative entity represents a sufficiently large proportion of the group of victims. What constitutes a sufficient proportion may vary from case to case, but in any event must be assessed in relation to the total number of aggrieved parties represented. The explanatory memorandum explicitly mentions the number of aggrieved parties that have actively registered for the claim submitted by the Foundation as a way of testing this criterion.⁹⁷

11.38. The scrutiny referred to in the previous paragraph must take place at the time when the admissibility of the Foundation will be assessed by the court (*ex nunc*).

11.39. Although there are obviously many more victims of the diesel scandal caused by Renault worldwide, the Foundation represents the Aggrieved Parties as defined above. In the opinion of the Foundation, this is the only relevant group because other victims have little or no connection with the Dutch legal system. The Foundation will use its considerable resources to bring the existence of the Foundation to the attention of all the Aggrieved Parties and will ensure that prior to any hearing to be held in these proceedings, it will be able to demonstrate that it has sufficient support from an actual constituency for it to be admissible in these proceedings.

The Foundation has a supervisory body (art. 3:305a, paragraph 2, sub a DCC)

11.40. The Foundation has a Management Board, which now consists of five people, and a supervisory body, comprising three members, in the form of a Supervisory Board. The identity of the directors and supervisory directors and their expertise will be discussed below when dealing with the requirement of sufficient expertise (art. 3:305a, paragraph 2, sub e DCC).

Appropriate mechanisms for participation of the Aggrieved Parties (art. 3:305a, paragraph 2, sub b DCC)

11.41. The explanatory memorandum to the WAMCA states that it is up to the interest group itself to determine how it wishes to interpret this provision, but that one possibility is for a foundation to give

⁹⁶ Incidentally, being an 'ad hoc' organisation or a commercial organisation does not preclude a claim pursuant to Article 3:305a of the Dutch Civil Code.

⁹⁷ *Parliamentary Papers* II 2016-2017, 34 608, no. 3 (Explanatory Memorandum), p. 22 (Exhibit 77).

affiliated aggrieved parties the opportunity to express their views on certain decisions⁹⁸. The Foundation will show that it has found an appropriate solution for this.

11.42. Where an interest group is organised in accordance with the Claims Code, it may be assumed that this requirement is met.⁹⁹ As will be further explained, the Foundation fully complies with the requirements set out in the Claims Code in addition to the statutory requirements, so it should be assumed that the Foundation meets the requirement discussed here.

The Foundation can finance the proceedings (art. 3:305a, paragraph 2, sub c DCC)

11.43. The Foundation is obliged to ensure that it has sufficient financial resources to enable it to institute legal proceedings, whereby, moreover, control over the instigation of legal proceedings rests with the Foundation to a sufficient extent.

11.44. The explanatory memorandum states on this point that the scrutiny to be conducted by the court can only be marginal, but that in the case of external litigation financing, the court may request the financing agreement to examine how the financier's influence on the proceedings is regulated therein and whether this regulation does not impede careful representation of the injured parties' interests.¹⁰⁰

11.45. The Foundation is funded by an external financier (Emission Claim Trust B.V.: '**the Financier**'). It has concluded a financing agreement with this party. External funding is expressly permitted not only under the WAMCA but also under the Claims Code 2019 (Principle III - External Funding). The 2019 Claims Code imposes the following conditions on the funding agreement¹⁰¹

- The Foundation will investigate the track record and capitalization of the Financier (Principle III - elaboration 1);
- The agreement is recorded in writing and contains a choice of law for Dutch law and a choice of forum for the Dutch court (Principle III - elaboration 2);
- The agreement provides that control over the litigation and settlement strategy rests exclusively with the interest group (Principle III - elaboration 3);
- The agreement provides for an arrangement which safeguards the confidentiality of information belonging to the interest group and defines the information to which the external financier has confidential access (Principle III - elaboration 5);
- The agreement provides for an arrangement which ensures that the external financier cannot terminate the agreement before a final decision in the first instance has been obtained and that, for the rest, a reasonable period of notice is used which enables the interest group to obtain alternative financing (Principle III - elaboration 6).

11.46. Although these conditions (as *soft law*) do not strictly bind the Foundation, the Foundation declares that it fully complies with all these requirements. It has contacted the Financier, which deals exclusively with class actions in the United States. The Financier was chosen not only because of its substantial resources, which will be more than sufficient to fully litigate the claims against the defendants if necessary, but also because of its specific experience with class actions against automobile manufacturers that have implemented rigged software in their vehicles. In the United States, class actions have already been brought or commenced against Volkswagen, Fiat Chrysler,

⁹⁸ *Ibidem*, p. 23

⁹⁹ *Ibidem*, p. 23.

¹⁰⁰ *Ibidem*.

¹⁰¹ Claims Code 2019, p. 11 (Exhibit 78).

Daimler and General Motors, among others. The class actions against Volkswagen and Fiat Chrysler have now resulted in settlements that have been declared generally binding. A settlement has been reached with Daimler that is only awaiting final court approval. All these procedures involve Bosch as the manufacturer and supplier of EDC17, which is implemented in the diesel vehicles of all these manufacturers, in addition to the car manufacturer. The Foundation's Financier has played a central role in all of these proceedings, negotiating the settlements in the proceedings against Volkswagen (\$1.6 billion), Fiat Chrysler (\$307.5 million) and Daimler also. Although the settlement with Daimler and Bosch over the implementation of defeat devices in Mercedes vehicles for the U.S. market is still awaiting final approval, Daimler and Bosch will make a total amount of approximately USD 700,000,000 available to U.S. aggrieved parties under the provisionally approved settlement. Therefore, in addition to sufficient financial resources, the Financier also offers extensive expertise in the field of class actions against car manufacturers specifically in relation to the Dieselgate fraud in which Renault was also involved. In its choice of Financier, the Foundation was assisted by its own lawyers (Kennedy Van der Laan). The agreement with the Financier is governed by Dutch law and the Foundation has agreed on an arrangement regarding control over the process strategy, confidentiality and termination of the agreement.

11.47. The Foundation has not submitted the financing agreement with this writ of summons (given the confidential information). It is clear from the parliamentary proceedings that this abstention was explicitly permitted to the Foundation: "It is *not necessary, moreover, that the other party also be given access to the financing agreement*"¹⁰² and "[i]nspections on behalf of another party to the action would give it insight into the possibilities of carrying the proceedings further (the 'war chest')." *Such insight is not desirable because it allows the sued party to adjust its litigation strategy. For example, it might try to approach financiers to stop funding or try to delay the proceedings because it knows of the defendant's limited financial resources.*"¹⁰³ The Foundation has agreed with the Financier that it will produce the agreement only pursuant to an order of the court to that effect. If the court does indeed order this, the Foundation requests the court not to bring the agreement to the attention of the other litigants in these proceedings.

The Foundation has a generally accessible website (art. 3:305a, paragraph 2, sub d DCC)

11.48. The Foundation has a website accessible via www.emissionclaim.nl and www.emissionclaim.com (hereinafter referred to as 'the Website').

11.49. Section 8 (own contribution) is not applicable because, as a result of the Foundation's decision to attract external funding, no own contribution is required from the Aggrieved Parties. Parts 3 and 4 will be implemented as soon as the first annual accountability report and the first management report, respectively, will be issued.

11.50. In addition to these legal requirements, the Foundation also states on its website, in accordance with elaboration 7 of Principle III of the Claims Code, that i) there is external financing ii) the identity and business address of the Financier and iii) an overview of the way in which the external financing takes place, including the agreed percentage that will be paid to the Financier in the event of a settlement.

The Foundation has sufficient experience and expertise (Art. 3:305a, paragraph 2, sub e DCC)

¹⁰² *Parliamentary Papers II 2016-2017*, 34 608, no. 3 (Explanatory Memorandum), p. 23 (Exhibit 77).

¹⁰³ *Parliamentary Papers II 2017-2018*, 34 608, no. 6 (NV II), p. 11-12 (**Exhibit 79**).

- 11.51. The last requirement of this paragraph is that the Foundation must be able to demonstrate that it has sufficient experience and expertise, or access thereto, in relation to instituting and conducting legal proceedings. This requirement may be satisfied by evidence of previous work in the field, by previous collective action or by participation in the board of persons having such experience.¹⁰⁴
- 11.52. The Foundation has a Management Board and a Supervisory Board. At the time of the issuance of this writ of summons, these consist of five directors, Sergei Purewal (Chairman), George Bisnought, Martha Seijas, Pete Lennon, Melanie Ormos and Michael Gallagher. The latter has no voting rights. The Supervisory Board currently consists of three members, Prof. Arno Akkermans (chairman), Steven Berman and Prof. Astrid Stadler. As **Exhibit 80**, the Foundation submits the CVs of the directors and supervisory directors, which it has also published on the Website.
- 11.53. Mr Berman and Mr Gallagher are directors of the Financier. Both are partners in the UK law firm Hagens Berman UK LLP and Mr Berman is also the managing partner of the US law firm Hagens Berman which, as already mentioned, has conducted several *class actions* against various car manufacturers in the US. As permitted under the Claims Code, the Financier may propose one member of the Supervisory Board, other than the Chairman. Although Mr Gallagher is a member of the Management Board, he does not have voting rights and therefore cannot influence policy within the Foundation. He deals with the day-to-day business in an executive role, which has become necessary due to the expanding activities of the Foundation.
- 11.54. The Claims Code further requires that both bodies include at least one member with sufficient relevant legal expertise and one member with sufficient relevant financial expertise¹⁰⁵. This requirement has been met. As far as the board is concerned, Prof. Dr. Astrid Stadler (legal expertise) and Pete Lennon (financial expertise). As far as the Supervisory Board is concerned, all three members have considerable legal experience, with Mr Berman, as already mentioned, having been very closely involved in the settlements reached in the United States with various car manufacturers and Bosch. Mr Berman also has sufficient financial expertise to adequately supervise the Management Board and to determine the Foundation's strategy in that area.
- 11.55. In addition to the competence of the Management Board members and members of the Supervisory Board, the Foundation is supported by the extensive and specific experience of its Financier in various class actions against car manufacturers in the US, as already explained above (para 3.56). The Foundation is further assisted by its own lawyers, giving it access to specific expertise on WCAM, WAMCA and liability issues in the Netherlands in general. All in all, the Foundation therefore has access to more than sufficient expertise to represent the interests of the Aggrieved Parties in these proceedings. This requirement of admissibility is therefore also met.

Directors have no direct or indirect profit motive (Art. 3:305a, paragraph 3, sub a DCC)

- 11.56. The purpose of this requirement is to prevent directors from having access to the funds of the foundation or association as if they were their own funds. None of the members of the Management Board has such a direct or indirect profit motive.

Sufficiently close connection to the Dutch legal sphere (art. 3:305a, paragraph 3, sub b DCC)

- 11.57. A sufficient connection within the meaning of this paragraph shall be deemed to exist if (a) the persons on whose behalf the legal action is brought have their habitual residence in the Netherlands, (b) the person against whom the legal action is directed has its registered office in the Netherlands,

¹⁰⁴ *Parliamentary Papers* II 2016-2017, 34 608, no. 3 (Explanatory Memorandum), p. 24 (Exhibit 77).

¹⁰⁵ *Ibidem*, Principle V, elaborations 2 and 3, and Principle VII elaborations 4 and 5, respectively.

or (c) the event on which the legal action is based has taken place in the Netherlands. Virtually all the Aggrieved Parties will be resident or established in the Netherlands, while the Rigged Diesels were sold, leased or registered in the Netherlands. The claims submitted by the Foundation therefore have a sufficient connection to the Dutch legal environment with regard to all Defendants to be judged on their merits (see also par. 11.92 et seq. above).

The Foundation has made sufficient attempts to conduct amicable negotiations (art. 3:305a, paragraph 3, sub c DCC)

11.58. This paragraph explicitly states that a period of two weeks after receipt by the defendant, stating the claim, is sufficient. The Foundation, by separate letters dated 18 March 2021, held Renault, its Importer and Bosch liable for the damages suffered by the Aggrieved Parties and invited them to acknowledge such liability and to enter into negotiations concerning such damages. The Foundation submits these letters (which were sent to the Defendants by courier, email and/or fax) as **Exhibit 81**. The Foundation gave the defendants one month, i.e. two weeks more than the statutory minimum, to accept its invitation to enter into negotiations. Nothing more has been heard from Bosch, except the (negative) reaction to the first proceedings. As Exhibit 2, the Foundation brings into the proceedings the response (by letter from the lawyer) of Renault in which Renault, in short, disputes that its diesel vehicles do not comply with European emission regulations and rejects any liability.

11.59. It should be clear that none of the defendants is prepared to enter into amicable negotiations on this matter, so that the Foundation has no other option than to bring this case before the court. This last requirement for admissibility has thus also been met.

Conclusion on the statutory admissibility requirements

11.60. It is clear from the above that the Foundation more than satisfies the statutory admissibility requirements laid down in Article 3:305a (2) and (3) of the Dutch Civil Code. It therefore asks the court to declare its collective claims admissible.

Further (voluntary) compliance with the Claims Code

11.61. As mentioned above, a number of elements of the Claims Code have found a legal basis in the first three paragraphs of article 3:305a of the Dutch Civil Code. For the rest, the Claims Code does not bind the Foundation, but the Foundation has chosen to fully comply with it as far as it applies to it. The Foundation explains below how it complies with the Claims Code.

Principle I - Compliance with and enforcement of the Code

11.62. The Foundation has outlined its governance structure on its website - www.emissionclaim.nl (elaboration 1).

11.63. The Foundation has committed itself in article 6.5. of its articles of association to update its governance structure yearly where needed (elaboration 1) and to explain any deviations from the Claims Code. All information that it places on the website in this regard will remain on the website (elaboration 2). The Foundation submits changes to its governance structure to the Supervisory Board for discussion (Article 6.6. of the Articles of Association and elaboration 3).

Principle II - Representing the collective interests on a non-profit basis

11.64. Article 4.3 of the Foundation's Articles of Association prohibits any natural person or legal entity from being able to dispose, in whole or in part, of the assets and income of the Foundation. The articles

of association further provide (article 7.1.) that the Foundation is represented by the Management Board or by two directors acting jointly. A two-signature system is thus in place (elaboration 1).

11.65. Elaboration 3 of the Code of Claims requires that the articles of association stipulate that any surplus shall be used for the objects of the Foundation as much as possible and shall benefit the participants of the Foundation or an ANBI institution (elaboration 3). Article 17.3 of the Foundation's Articles of Association states that any surplus will be used for the purpose of the Foundation as far as possible.

Principle III - External Financing

11.66. The Foundation has secured a solid external financier (see section 3.55 et seq. above). It investigated the Financier's capitalization, track record and reputation (elaboration 1). These were all found to be more than adequate.

11.67. A written financing agreement has been concluded between the financier and the Foundation. The Foundation has stipulated that it has the power to notify the court of the agreement if so ordered, on the understanding that the Foundation's counterparties will not be allowed to inspect it - as far as possible (elaboration 8).

11.68. The Foundation has furthermore stipulated in the engagement letter to its lawyers (Kennedy Van der Laan N.V.) that they will act exclusively for and on behalf of the Foundation and its supporters under the articles of association, and that they will not accept any instructions in this matter from the Financier or any legal entities directly or indirectly affiliated with it (elaboration 4).

11.69. Finally, on its website, the Foundation stated (i) that external funding is involved, (ii) the identity and place of business of the financier and (iii) the basic principles of the fee(s) and services agreed with the external financier, including the percentage claimed by the financier in the event of a settlement (elaboration 7)

Principle IV - Independence and Avoidance of Conflicts of Interest

11.70. As stated above, at the time when this writ of summons was issued, the Management Board of the Foundation consisted of the five persons mentioned above.

11.71. The Foundation has ensured in Article 5.2. of its Articles of Association that the directors are independent of each other (elaboration 1). They currently hold no conflicting ancillary positions. Any future ancillary positions will be listed on the Foundation's website (elaboration 2). Pursuant to Article 6.3 of the Articles of Association, the Board is not authorised to conclude agreements with parties in which they themselves are directly or indirectly involved (elaboration 3).

Principle V - the composition, duties and working methods of the Management Board

11.72. The Management Board of the Foundation consists of the three members mentioned above (elaboration 1). As evidenced by the curricula vitae of the directors, the Management Board has the specific expertise required to represent the interests set out in the articles of association, in particular with regard to experience with (the handling of) class actions, and at least one member of the Management Board has the specific legal expertise required for this purpose and one member has the financial expertise required (elaborations 2, 3 and 4). They represent the Board jointly (Article 7.1 of the Articles of Association and elaboration 5).

11.73. In accordance with Article 15.4 of the Articles of Association, the Management Board submits a balance sheet and statement of income and expenditure and the budget to the Supervisory Board for approval (elaboration 6).

11.74. Finally, the Management Board may decide, pursuant to Article 8.11., to subject to its approval any decision it deems important. Article 8.12. of the Articles of Association provides that the Foundation will involve the Aggrieved Parties in any settlement agreement that may be reached in respect of claims (elaboration 7).

11.75. Finally, the Management Board of the Foundation maintains a website (www.emissionclaim.nl) on which the elements mentioned in elaboration 8 of the Claims Code are all mentioned (cf. par. 3.58 et seq.). In addition to the legal requirements of the website, the website also states:

- The curricula vitae of the members of the Management Board and Supervisory Board (elaboration 8 vii)
- As part of the registration information: a plan of action which will enable the potential participant to assess whether the nature and working method of the Foundation are in line with his/her interests
- An overview of the settlement agreements concluded by the interest group. In this connection, the Foundation has mentioned the settlement agreements concluded in the United States as a result of the actions of the Financier. Although strictly speaking this agreement was not reached by the Foundation, as the only party in these proceedings it has access to the expertise of those who were responsible for it.

Principle VI - Remuneration of Directors

11.76. The directors are paid a reasonable fee of EUR 250 per hour. This remuneration is determined by the Supervisory Board on the basis of Article 9.1 of the Articles of Association (elaboration 1). Pursuant to Article 9.2 of the Articles of Association, the directors only receive remuneration from the Foundation (elaboration 2). The remuneration agreed with the directors is included in the Foundation's annual report pursuant to Article 9.3 of the Articles of Association (elaboration 3). As already mentioned, the remuneration of the directors is stated on the website (elaboration 4).

Principle VII - The Supervisory Board

11.77. At the time of issuing this writ of summons, the Supervisory Board consisted of the three persons referred to above (Prof. Arno Akkermans, Prof. Astrid Stadler and Steve Berman). The Foundation thus complies with Article 10.1 of the Articles of Association and the introduction to Principle VII. Although the composition of the Supervisory Board may change, the minimum number of three people will be maintained.

11.78. Pursuant to Article 12.1, the Supervisory Board meets at least once a year (elaboration 1). The Foundation has included in Article 10.3 that the members of the Supervisory Board must be able to operate independently and critically with regard to each other and the Management Board and with regard to the interests promoted by the Foundation. This is the case with the aforementioned complement (elaboration 2).

11.79. The Foundation's Financier has nominated one member to the Supervisory Board (elaboration 3). This is Steve Berman. The Foundation notes that he has a direct personal interest in any settlement to be reached by the Foundation. To this extent, the Foundation deviates from the Claims Code. It has made the following announcement about this on its website:

"Steve is the financier's representative at the Foundation. He is waiving his hourly rate to further the mission."

- 11.80. It follows from the CVs of the supervisory directors that they have sufficient legal and financial expertise to adequately represent the interests of the victims (elaborations 4 and 5). Pursuant to Articles 11.2 and 11.3 of the Articles of Association, the Management Board provides the Supervisory Board with the documentation required for the performance of its duties and allows it to inspect all of the foundation's books, records and data carriers (elaboration 6).
- 11.81. Pursuant to Article 15.5, the Supervisory Board is entitled to have the balance sheet and statement of income and expenditure examined by a chartered accountant appointed by the Supervisory Board, who will report to the Supervisory Board. The report will be brought to the attention of the Management Board. (elaboration 7).
- 11.82. Pursuant to Article 11.6 of the Articles of Association, the Supervisory Board draws up a document every year in which it renders account in general terms of the supervision it has conducted. This overview will be mentioned on the website (elaboration 8).
- 11.83. Pursuant to Article 13.1 of the Articles of Association, the remuneration of the Supervisory Board is determined in the joint meeting of the Management Board and Supervisory Board. The fees set are not excessive and are published on the website. Pursuant to Article 13.2 of the Articles of Association, the members of the Supervisory Board do not receive any other remuneration. Thus, elaboration 9 has also been met.

Application for designation as Exclusive Representative Entity (ex art. 1018e DCC)

- 11.84. . The Foundation requests that the Court designate it as an Exclusive Representative Entity and will discuss the relevant criteria below.

Preliminary remark concerning finality

- 11.85. The legislator hesitated for a long time about the introduction of the possibility of also filing a claim for damages within the framework of collective actions. The fear was (among others) that this could lead to "American situations" in which *claim vehicles* could subsequently claim enormous damages in all conceivable situations. In addition, the introduction of such a mass claim regime (based on the American model) could also lead to a distortion of the position of the Netherlands (and its companies) on the international stage, particularly within the EU. After all, other countries do not (yet) have comparable collective actions, but they may, in principle, be affected by actions instituted in the Netherlands.
- 11.86. This fear was eventually addressed by a system of safeguards that the Foundation has already discussed in detail above. What has not yet been addressed is the rationale behind the enactment of the WAMCA that must be considered in determining who is ultimately best positioned to act as the Aggrieved Parties' representative entity.
- 11.87. The expansion of the Dutch class action regime by the WAMCA aims to resolve many similar claims at once. This will not only serve the economy as such by bringing the claim on behalf of all the Aggrieved Parties and paying for it, but will also ensure that the judiciary is not unnecessarily burdened. The latter follows, for example, from the Dexia affair which led to a veritable tidal wave of proceedings in the Netherlands. The basic premise of the WAMCA, therefore, is that one claimant (or a group of claimants) will combine all relevant claims to present the problem to the court at one time. This possibility has existed for some time in competition law, where civil actions for damages form the final link in the chain of public fines in which, for example, the members of a cartel are fined.

- 11.88. The difference with these so-called follow-on procedures, however, is that the WAMCA is not primarily geared to conduct legal proceedings on all legal points of contention as to the merits of the claims. Instead, the law assumes that the parties will first attempt to reach a settlement. Even if this fails, later in the process the idea of an efficient solution conceived jointly by the two parties (who after all can both submit a proposal for the collective settlement of the damage) returns.
- 11.89. In the end, it is all about finality. In short, all points of contention must be addressed together so that the underlying problem is solved in one go. However, this can only be achieved if there are realistic and feasible claims on the table, directed against all parties involved, which can lead to a collective settlement. The focus will have to be primarily on damages, because other claims, such as the annulment or dissolution of individual contracts (like purchase or lease), will lead to new complications which cannot be resolved collectively. To mention a few questions that are relevant to other ongoing collective actions: is it possible to request the annulment or termination of all agreements, also later in the chain (second hand market)? How to deal with the practicalities, i.e. the return of the vehicles involved? How can this damage ultimately be recovered from Renault as the party ultimately responsible or from the other party or parties causing this problem (Bosch)? And what procedural complications could this lead to with potentially years of proceedings with mutual indemnities?
- 11.90. Apart from these questions concerning the practical settlement of the class actions, the interests of the Defendants and other parties involved should also be considered. After all, finality also means that one procedure is enough to solve the problem for the entire market. This is also in the interest of the defendants, who can thus draw a line under the deception of the market (caused by them). Finally, this balancing of interests should also take account of broader aspects, such as the parties' shareholders, the need to be able to continue once again - with a literal and figurative clean slate - and to supply the market with Renault vehicles.

The size of the group of persons on whose behalf the claimant acts (Article 1018e paragraph 1 sub a DCCP)

- 11.91. The Foundation is acting in these proceedings on behalf of all persons or entities who owned or were lessees of a Rigged diesel during the Relevant Period. As explained above, this choice ensures that the Foundation's claims have a link to the Dutch legal environment, either because of the domicile or place of establishment of the Aggrieved Parties, or because of the registration of the relevant Rigged diesel.
- 11.92. The choice to limit the group of Aggrieved Parties in this way was prompted, among other things, by IPR issues. After all, questions of jurisdiction and applicable law are not relevant for this group of Aggrieved Parties. The vast majority of them will be living in the Netherlands and will have purchased or leased the Rigged diesel in the Netherlands. This creates jurisdiction under article 7 paragraph 2 of the revised Brussels I Regulation¹⁰⁶ (in this case: *Erfolgsort*) against the German and French defendants (Bosch and Renault respectively) for the Dutch court, whereas for the Importer this already follows from its place of residence (art. 2 DCCP). Dutch law will always apply to the claims; this follows for events after 11 January 2009 from the Rome II Regulation, which stipulates that the

¹⁰⁶ Regulation (EC) 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 ("**Brussels I Regulation**").

law of the country where the damage occurs is applicable.¹⁰⁷ In all cases, this is the Netherlands, because that is where the Rigged Diesels were put on the market.

11.93. By limiting its claims to claims by - primarily - injured parties who suffered damage in the Netherlands as a result of the unlawful acts of Renault et al. and Bosch, it not only has a "*close connection with the Dutch legal sphere*", but also addresses the parties most responsible. The Foundation's claims also take into account the interests of other stakeholders in this dispute. Finally, they address the entire problem that arises on the Dutch market while minimising distortion of the Dutch market. In the Foundation's opinion, these claims against these defendants protect the interests of the Aggrieved Parties in the most effective and efficient manner.

The size of the financial interest represented (Article 1018e paragraph 1 sub b DCCP)

11.94. The size of the financial interest represented is difficult to estimate at present. A rough estimate, based on data obtained by the Foundation from the RdW, shows that in the Relevant Period, approximately 225,000 Diesel Vehicles were registered in the Netherlands. This number will be specified at a later stage in these proceedings. The damage has to be assessed per vehicle. However, even on the basis of just a few thousand euros per vehicle, the financial stakes are hundreds of millions, if not billions of euros.

Other activities performed by the claimant on behalf of those for whom he acts (Section 1018e subsection 1 paragraph c DCCP)

11.95. The explanatory memorandum explicitly mentions as an example that the representative entity acts as a mouthpiece for the victims. This is exactly what the Foundation intends to do. It aims to represent the interests of the Aggrieved Parties not only in court but also outside. The Foundation will explicitly involve itself in the public debate. To this end, it is considering appointing a committee to deal with the press and the public debate on the diesel scandal affecting the Aggrieved Parties.

Previous activities performed by the Foundation or class actions instituted (Section 1018e (1) sub d DCCP)

11.96. Although the Foundation was set up only recently, it is funded and has access to the knowledge and expertise of the US law firm referred to in the introduction, which has extensive expertise in handling US *class actions* (the one that inspired the WAMCA), in particular against car manufacturers and Bosch over the frauds that are also the subject of these proceedings. As mentioned above, the Financier has played a central role in all the proceedings and settlements reached to date in the United States between car manufacturers and victims of the Diesel scandal. This means that a party closely involved with the Foundation has already done what the WAMCA intends; namely, has sat down with the liable parties to negotiate a settlement that solves the problem for the entire market. This not only demonstrates that the reasoning and evidence to be presented in these proceedings have led to a concrete result, but also that the Foundation can get to the table more quickly through this access, since Bosch was obviously involved in the settlement negotiations in the US as head office.

11.97. In addition, as stated, a legal entity affiliated with the Foundation is currently preparing what is referred to as *group litigation* in England against Daimler and Bosch, among others. In accordance with the

¹⁰⁷ 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 ("**Rome II Regulation**"), Art. 4 para 1: "*Unless otherwise provided in this Regulation, the law applicable to a tort or delict shall be the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country in which the indirect consequences of that event occur.*"

procedural rules applicable there, a '*Letter before Action*' was drafted for the English court, setting out the relevant facts and claims and allowing the English defendants a reasonable time to respond. The first hearing is now set for 16 July 2021.

- 11.98. In the Foundation's opinion, its exclusive access to these sources of expertise makes it ideally suited to try to reach a settlement with Renault et al and Bosch in the Netherlands. Moreover, in addition to the research already carried out by various independent organisations, the Foundation has access to comparable research *of its own* (and the necessary expertise) that has already been carried out in various proceedings in the US into the functioning of various makes of rigged diesels.

Conclusion

- 11.99. Based on the foregoing, the Foundation requests that the Court designate it as Exclusive Representative Entity. It reserves the right to supplement in due course its statements on this point and on its admissibility.

12. KNOWN DEFENCES

- 12.1. As already mentioned, by letter dated 16 April 2021 (Exhibit 2, (the lawyer for) Renault and its Importer responded to the 18 March 2021 liability claim by, in short, disputing that there was anything wrong with the emissions of its diesel vehicles and rejecting any liability out of hand.
- 12.2. From Bosch's side nothing more has been heard except for the response (through its lawyer) on 22 December 2020 in response to the first proceedings (**Exhibit 82**) in which it also rejected any responsibility.
- 12.3. The Foundation is therefore not aware of any (other) defences of the defendants.

Deel IV. OTHER

13. JURISDICTION OF THE COURT OF AMSTERDAM AND APPLICABLE LAW

13.1. In addition to the explanations given in par. 11.92 above, the Foundation makes the following comments on jurisdiction:

- Pursuant to article 7(2) of the (recast) Brussels I Regulation¹⁰⁸, the Court has jurisdiction to hear claims against Renault and Bosch. After all, it concerns damage suffered by the Aggrieved Parties in the Netherlands (as *Erfolgsort*) because they purchased or registered the Rigged Diesels in the Netherlands.
- The jurisdiction of the Court with respect to the Importer stems from its domicile (art. 4 para 1 revised Brussels I Regulation, see also art. 2 DCCP).
- Pursuant to Section 1018d(1) of the Dutch Code of Civil Procedure, the District Court has jurisdiction (also in relative terms) to adjudicate this specific dispute.

13.2. With regard to the applicable law, the Foundation also notes:

- that the wrongful act of Renault or Bosch should be judged under Dutch law pursuant to Article 4(1) of the Rome II Regulation¹⁰⁹; and
- that Dutch law is also applicable to the wrongful act of the Importer (which took place in the Netherlands in its entirety).

14. EVIDENCE

14.1. In support of its claims, the Foundation refers to the Exhibits 1 up to and including 82 mentioned in this writ of summons, which will be handed in during the submission (by deed).

14.2. Without being under any obligation to assume the burden of proof, it furthermore offers to further substantiate its claims by all legal means, including by hearing witnesses or experts who were involved in, or can otherwise testify about, the diesel fraud committed by Renault and Bosch. The Foundation will make a concrete offer of proof to this effect at a later stage in these proceedings.

FOR THESE REASONS:

May it please the court to deliver a judgment, as far as possible provisionally enforceable:

Request for appointment of Exclusive Representative Entity

1. Insofar as the WAMCA is applicable to the present proceedings, designate the Foundation as Exclusive Representative Entity within the meaning of Section 1018e, subsection 1, of the Dutch Code of Civil Procedure;

¹⁰⁸ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of the European Union on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

¹⁰⁹ 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.

Declaratory decisions

In respect of Renault, the importer and Bosch

2. Declare that each of them (i.e. Renault, the Importer and Bosch) acted unlawfully towards the Aggrieved Parties;
3. Declare that Renault, the Importer and Bosch are jointly and severally liable for the damage suffered by the Aggrieved Parties as a result of their unlawful conduct, and are liable to compensate that damage;

Application for an order for damages and reimbursement of legal costs

In respect of Renault, the importer and Bosch

4. Order Renault, the Importer and Bosch jointly and severally to pay compensation for the damage suffered by the Aggrieved Parties, to be assessed later during separate follow-up proceedings;

In respect of all Defendants

5. Order the defendants jointly and severally to pay the costs of this action, including the subsequent costs at least - insofar as the WAMCA is applicable and the court pronounces a judgment pursuant to Section 1018i of the DCCP and the reasonable and proportionate costs incurred by the Foundation in connection with instituting these proceedings as referred to in Section 1018l (2) of the Dutch Civil Code, to be further determined by the Court, all of which to be increased by the statutory interest as from the date of pronouncement of the judgment to be rendered in these proceedings until the date of full payment.

The costs for me, the bailiff, are € 83.38

This case is handled by Messrs. C. Jeloschek, M.R.S. Bacon and E. Jagt of Kennedy Van der Laan, P.O. Box 58188, (1040 HD) Amsterdam, 020-5506843 / christoph.jeloschek@kvdl.com

EXHIBIT OVERVIEW

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|-------------------|---|
| Exhibit 1. | S. Laville, 'Air pollution a cause in girl's death, coroner rules in landmark case', <i>The Guardian</i> 16 December 2020 |
| Exhibit 2. | Renault's response to liability |
| Exhibit 3. | Renault SA Articles of Association |
| Exhibit 4. | Annual report Renault SA 2020 |
| Exhibit 5. | Articles of Association of Renault Nederland NV dated |
| Exhibit 6. | Annual report Renault Nederland NV 2018 |
| Exhibit 7. | Extract for Robert Bosch GmbH from Trade Register, Stuttgart City Court, dated 14 December 2020 |
| Exhibit 8. | Articles of Association of Stichting Emission Claim dated 11 December 2020 |
| Exhibit 9. | U.S. Department of Energy, Just the Basics - Diesel Engine, August 2003 |

- Exhibit 10.** WHO, IARC - Diesel Engine Exhaust Carcinogenic, Press Release No. 213 dated. 12 June 2012
- Exhibit 11.** S. van Mersbergen, "Corona blijkt stuk harder toe te slaan in gebieden met intensieve veehouderij", *Het Parool* 30 April 2020
- Exhibit 12.** European Environment Agency, Air quality in Europe - 2020 report, ISSN 1977-8449, September 2020
- Exhibit 13.** TNO, 'Factsheet emissies en depositie van stikstof in Nederland', October 2019
- Exhibit 14.** R. Oldenkamp et al, 'Valuing the human health damage caused by the fraud of Volkswagen', *Elsevier* vol. 212, p. 121-127
- Exhibit 15.** P.C. Guillaume et al, 'Public health impacts of excess NOx emissions from Volkswagen diesel passenger vehicles in Germany', *Environmental Research Letters* 12 (2017) 034014 dated 03 March 2016
- Exhibit 16.** .E. Jonson, J. Borcken-Kleefeld, D. Simpson, A. Nyiri, M. Posch and C. Heyes 'Impact of excess NOx emissions from diesel cars on air quality, public health and eutrophication in Europe', *Environmental Research Letters* 12 (2017) 094017 dated 24 March 2017
- Exhibit 17.** European Commission, 'The Clean Air for Europe (CAFE) Programme - Towards a Thematic Strategy for Air Quality, COM(2001) 245 final dated 04 May 2001
- Exhibit 18.** Information on environmental zones in the Netherlands - cars and delivery vans
- Exhibit 19.** M. Hijink & C. Houtekamer, 'Niet alleen Volkswagen probeert zich schoon en zuinig voor te doen', *NRC* 22 September 2015
- Exhibit 20.** Renault press release on the LNT system of 25 June 2008
- Exhibit 21.** Y. Bernard et al, 'White paper - Catching defeat devices', *ICCT* June 2019
- Exhibit 22.** Print screen of annual report 2008 Renault (p. 27)
- Exhibit 23.** Print screen of annual report 2010 Renault (p. 32.
- Exhibit 24.** Printscreen Wayback Machine, 16 August 2011
- Exhibit 25.** Printscreen Wayback Machine, 16 August 2011
- Exhibit 26.** Printscreen Wayback Machine, 15 November 2012
- Exhibit 27.** Printscreen website Renault via Wayback Machine, 17 November 2016
- Exhibit 28.** V. Franco and others 'Real-world exhaust emissions from modern diesel cars (Part 1 - Aggregated results)', *ICCT October 2014* .
- Exhibit 29.** T. Gardner, P. Lienert, D. Morgan, 'After year of stonewalling, Volkswagen stunned U.S. regulators with confession' *Reuters* 24 September 2015
- Exhibit 30.** C. Houtekamer, 'Alles wat je wil weten over het Volkswagenschandaal ', *NRC* 23 September 2015
- Exhibit 31.** K. Mathiesen & A. Neslen, 'VW scandal caused nearly 1m tonnes of extra pollution, analysis shows', *The Guardian* 23 September 2015
- Exhibit 32.** L. Van Eeckhout and Philippe Jacqué, 'Renault contraint de s'expliquer sur les failles de son moteur diesel', *Le Monde*, 19 January 2016.
- Exhibit 33.** TNO Report 2016 R11177 dated 10 October 2016.

- Exhibit 34.** Berner Fachhochschule, 'NOx-Emissionsmessung von einem Personenwagen Renault Espace Diesel, EURO 6b auf dem Rollenprüfstand', November 2015.
- Exhibit 35.** Deutsche Umwelthilfe RDE test Renault models 2017
- Exhibit 36.** Department for Transport report April 2016
- Exhibit 37.** The International Council on Clean Transportation, 'Road Tested: 'Comparative Overview of Real-World Versus Type-Approval NOx and CO2 Emissions from Diesel Cars in Europe', September 2017
- Exhibit 38.** Five facts about diesel the car industry would rather not tell you, *Transport & Environment* September 2015
- Exhibit 39.** Dieseldate: Who? What? How?, *Transport & Environment*, September 2016
- Exhibit 40.** Damian Carrington, 'Extremely polluting Nissan and Renault diesel cars still on sale, data reveals', *The Guardian*, 26 May 2017
- Exhibit 41.** Air quality... it's hotting up, *Emission Analytics*
- Exhibit 42.** 'Consumers being misled on emissions - with or without illegal acts', *Emission Analytics* 27 August 2015
- Exhibit 43.** Adrian Porter, 'Which? 'Test reveal the worst diesel cars for air pollution', 22 March 2017
- Exhibit 44.** Eoin Bannon, 'French probe uncovers more misleading emissions data', *T&E*, 29 February 2016
- Exhibit 45.** Report Commission Royal, L'union technique de l'automobile 2016
- Exhibit 46.** Royal Commission Final Report July 2016
- Exhibit 47.** IFPEN Report May 2017
- Exhibit 48.** Statement by Renault on results Royal Commission 19 January 2016
- Exhibit 49.** Declaration Renault EGR system
(https://www.europarl.europa.eu/cmsdata/112679/20160713-Renault_.pdf)
- Exhibit 50.** Olivier Duquesne, Renault: free adaptation of Euro 6n diesel engines', *Autogids.be*, April 6, 2016
- Exhibit 51.** Jean-Michel Hauteville, 'Report: 'Renault Accused of Decades of Emissions Cheating', *Handelsblatt*,
- Exhibit 52.** Jean-Christophe Féraud and Franck Bouaziz, 'Renault : des voitures option pollution incluse', *Libération*', 14 March 2017
- Exhibit 53.** Peter Vermaas, 'Report: '25 years of fraud with Renault engines', *NRC Handelsblad* 16 March 2017
- Exhibit 54.** Achille Prick, 'French justice starts criminal investigation Renault over diesel fraud', *NOS*, 13 January 2017
- Exhibit 55.** Laurence Frost, 'Renault diesel allegations upheld by court study: report', *Reuters* 13 May 2019 Bundesministerium für Verkehr und digitale Infrastruktur, 'Bericht der Untersuchungskommission "Volkswagen"', April 2016
- Exhibit 56.**

- Exhibit 57.** Annika Grah and Anne-Beatrice Clasmann, 'Rückruf von 630,000 Autos, Sächsische DE, 22 April 2016
- Exhibit 58.** Civil proceedings in Germany
- Exhibit 59.** <https://www.bussgeldkatalog.org/renault-diesel-skandal/> (KBA recall Mercedes Vito engine Renault)
- Exhibit 60.** Jim Holder, 'Nissan has been found guilty of using a cheat device in South Korea', *Autocar*, 9 February 2017
- Exhibit 61.** Concl. AG Sharpston 30 April 2020, ECLI:EU:C:2020:323 (C-693 18)
- Exhibit 62.** ECJ 17 December 2020, ECLI:NL:EU:C:2020:1040 (C-693 18)
- Exhibit 63.** Bosch Group Annual Report 2016
- Exhibit 64.** 'Bosch probes whether its staff helped VW's emissions rigging', *Automotive News* 27 January 2016
- Exhibit 65.** M. Taylor, 'EPA Investigating Bosch over VW Diesel Cheater Software', *Car and Driver* 23 November 2015
- Exhibit 66.** Press release 'The brain of diesel injection - New Bosch EDC17 engine management system', *Bosch* 28 February 2006
- Exhibit 67.** M. Contag et al, 'How They Did It- An Analysis of Emission Defeat Devices in Modern Automobiles', Ruhr-Universität Bochum & University of California
- Exhibit 68.** *Volkswagen v. Robert Bosch, LLC*, MDL No. 2672 CRB (JSC) (N.D. Cal) (Third amended Volkswagen-branded franchise dealer amended and consolidated class action complaint)
- Exhibit 69.** K. Matussek, "Three Bosch Managers Targeted as German Diesel Probe Expands," *Bloomberg*, 29 June 2017
- Exhibit 70.** Persbericht Bosch PI10617 BBM FFKB dated 25 April 2018
- Exhibit 71.** American settlement agreements between Bosch and Volkswagen, Fiat Chrysler and Daimler
- Exhibit 72.** Cases in which Bosch is a co-defendant with regard to EDC17 in diesel vehicles in BMW, General Motors and Ford
- Exhibit 73.** A. Krok, "Germany slaps Bosch with \$100 million fine for role in Dieselgate," *CNET* 23 May 2019
- Exhibit 74.** Parliamentary Papers II 2018-2019, 34 608, no. 13 (Van Gent Amendment)
- Exhibit 75.** Supreme Court 26 February 2010, ECLI:NL:HR:2010:BK5756
- Exhibit 76.** District Court Amsterdam 20 November 2019, ECLI:NL:RBAMS:2019:8741
- Exhibit 77.** Parliamentary Papers II 2016-2017, 34 608, no. 3 (Explanatory Memorandum)
- Exhibit 78.** Claims Code 2019
- Exhibit 79.** Parliamentary Papers II 2017-2018, 34 608, no. 6 (NV II)
- Exhibit 80.** CVs of directors and supervisory directors Foundation
- Exhibit 81.** Liability of Renault, Importer and Bosch 18 March 2021
- Exhibit 82.** Reaction of (lawyer for) Bosch of 22 December 2020 to the first claim for liability