

# Stichting Diesel Emissions Justice Claim Code Compliance Document regarding the year 2020 - “Governance Statement”

## INTRODUCTION

1. Stichting Diesel Emissions Justice (the **Foundation**) was established in 2019.
2. The Foundation endorses the Claim Code that came into force on 4 March 2019 (the **Claim Code**), although it takes its guidance primarily from the recently revised Section 3:305a of the Dutch Civil Code (**DCC**) which contains legal criteria for representative organisations that are less elaborate than the criteria set out in the Claim Codes which apply only to representative organisations pursuing litigation under the revised section 3:305a of the DCC. As the Foundation is pursuing litigation, primarily, under the revised section 3:305a of the DCC, the new legal regime does apply to the extent that the (district) court considers the new regime applicable to the Foundation’s litigation effort.
3. The Claim Code consists of seven principles (the **Principles**, and each a **Principle**) that are considered to be broadly accepted general guidelines and views on the way claim vehicles and associations should represent collective interests, including – but not limited to – litigation. The Principles contain a set of standards for the founders, board members, supervisory board members, consultants and advisors engaged by the claim vehicle. The Foundation's compliance with the Claim Code is set out below.
4. This Claim Code compliance document, together with the board report (“*bestuursverslag*”), has been prepared with a view to informing the Foundation’s constituency, including the Damaged Parties (the **Damaged Parties**), as defined in the articles of association of the Foundation (the

**Articles**) and other interested persons, in accordance with section 3:305a(5) DCC.

## PRINCIPLE I: COMPLIANCE WITH THE CLAIM CODE

5. The Foundation's governance has been tailored to the needs of the Foundation and the Damaged Parties it represents, as follows from Principle I of the Claim Code. Against this backdrop, it is important to consider that the Damaged Parties (as defined in Articles) consist of EU-wide based car owners. Damaged Parties who decide to be involved actively enter into a participation agreement with the Foundation. The participation agreements empower the Foundation to conduct negotiations and litigate on behalf of the Participants. In addition, the participation agreement contains several safeguards for Participants and the Foundation's officials and advisors.
6. The Foundation currently has a board (the **Board**) consisting of three directors and a supervisory board currently consisting of three members (the **Supervisory Board**). In addition, the Foundation has hired a managing director, who is responsible for the Foundation’s day-to-day business on a full-time basis.
7. The compliance of the Foundation with the Claim Code is discussed throughout the year in the frequent meetings of the Board and the Supervisory Board.
8. This document is a document as set out in article 6.4 of the Articles and Elaboration 1 of Principle I of the Claim Code and will be published on the Foundation’s website: <https://www.emissionsjustice.com/>
9. If and when the Board wishes to deviate from the applicable Claim Code, it will discuss the relevant item with the Supervisory Board as set out in article 6.5 of the Articles.

## PRINCIPLE II: PROTECTING COLLECTIVE INTERESTS ON A NON-PROFIT BASIS

10. The Foundation acts as a non-profit entity in

the collective interests of the persons and entities who suffered losses as a result of the Entities' and Policymakers' acts or omissions on which the Claims are based (as defined in the Articles) and, primarily, have entered into a participation agreement with the Foundation (the **Participants**), or, in general, qualify as Damaged Parties.

11. The Foundation does not generate revenues, for instance by requiring Participants to pay a registration fee. Only in the event that the Foundation actually secures a settlement or court decision in favour of the Participants, a pre-agreed contingency fee becomes due up to a maximum 27.5% (including VAT, if applicable).
12. The Foundation has entered into three litigation funding agreements (the **Funding Agreements**) with Consumer Justice Network B.V. (**CJN**). CJN is envisaged to make a return in line with market practice, as laid down in Elaboration 2 of Principle II of the Claim Code.
13. Apart from making sufficient funds available to the Foundation, CJN provides certain services, including book building efforts, the design and upkeep of the Foundation's website and a number of commercial and administrative services. For the purpose of the Funding Agreement, these services are considered investments by CJN.
14. Elaboration II.3 of Principle II of the Claim Code provides that the Articles also include a provision that a liquidation surplus should be distributed amongst the Foundation's participants. This Principle is laid down in article 17.3 of the Articles.

#### PRINCIPLE III: EXTERNAL FUNDING

15. The Foundation entered into three separate Funding Agreements with CJN. CJN is a third-party litigation funder headquartered in Amsterdam.
16. The Foundation has verified the financial soundness of CJN, the track record of its founding members and its integrity and

resolved that it fits the Foundation's purpose.

17. The Funding Agreements were concluded in writing. Pursuant to the Funding Agreements, the Amsterdam District Court has exclusive jurisdiction and Dutch law applies. The Funder has its residence in the Netherlands.
18. It follows from the Funding Agreements and the Foundation's governance that the Foundation will act independently and autonomously of the Funder. The Foundation's local counsel acts only for the Foundation; it does not act for CJN.
19. The Funding Agreements are confidential, and parties have agreed on conditional information-sharing, to the extent relevant for CJN and that, in the view of the Foundation, information will only be disclosed to CJN subject to the relevant confidentiality restrictions.
20. The Foundation and CJN agreed on separate budgets per case for conducting proceedings before the court of first instance and, if applicable, proceedings pursuant to the Dutch Collective Settlements Act (*Wet collectieve afwikkeling massaschade*).
21. If ordered by the (district) court, the Foundation may disclose the Funding Agreement(s) to the relevant (district) court, provided that the Foundation will apply reasonable efforts to ensure that the (district) court only reviews the Funding Agreement(s) *in camera* and does not disclose any of its contents in a decision which is shared with any of the defendants and/or the public through publication on the Dutch judiciary's website.

#### PRINCIPLE IV: INDEPENDENCE OF THE FOUNDATION AND AVOIDING CONFLICTS OF INTERESTS

22. In accordance with the Claim Code, any apparent conflict of interest between the Foundation's engaged advisors, the Supervisory Board and the Board should be avoided. If a direct or indirect conflict of

interest between the Foundation and one or more members of the Board or the Supervisory Board were to occur, the relevant (Supervisory) Board member will not take part in the deliberations and decision-making process (articles 8.14 (Board) and 12.12 (Supervisory Board) of the Articles). This principle is adhered to strictly by the Board and Supervisory Board and in discussions regarding the Funding Agreement, the Funder's representative has not been privy to the deliberations and decision making.

23. One of the members of the Supervisory is a shareholder and director of the Funder and, acts as the Funder's representative in the Supervisory Board (as explicitly permitted under Elaboration 2 of Principle VII).

#### PRINCIPLE V: COMPOSITION OF THE BOARD

24. The Board of the Foundation consists of three individuals with adequate legal and financial expertise and experience. As a consequence, the Foundation complies with Elaboration III.1 of the Claim Code. The members of the Board are:
- a. Mr. Andrew Goodman as chairman, a UK-based barrister with vast experience in the field of dispute resolution on a worldwide basis, including class actions;
  - b. Mrs. Maria José Azar-Baud, an internationally recognised expert on collective redress in comparative law. She is a Lecturer at Paris-Saclay University and also teaches at several national and international universities in the field of consumer and distribution law, international contracts, and comparative procedural law; and
  - c. Mr. Miguel Sousa Ferro, professor at the University of Lisbon Law School and at the European University in Lisbon, where he lectures in the fields of Competition Law, EU Law,

Economic Law and Introduction to Economics. Miguel is a practicing lawyer with extensive experience in competition consultancy and litigation (including the first antitrust consumer class action in Portugal).

25. The 2020 Annual Financial Statements have been compiled by an independent chartered accountant on the basis of the bookkeeping kept by Van Heugten & Dekker Belastingadviseurs BV. The compilation engagement with the independent accountant has been performed in accordance with Dutch law, including the Dutch Standard 4410, "Compilation engagements", which is applicable to accountants. This standard requires accountants to assist in preparing and presenting of the financial statements in accordance to the chosen and described accounting policies in the financial statements. To this end the accountant has applied his professional expertise in accounting and financial reporting.
26. The Board requires the approval of the Supervisory Board for certain resolutions that can significantly impact the Foundation and/or its objects and its endeavours to achieve its objects. In line with the Claim Code, the conclusion of settlement agreements requires the Supervisory Board's approval (article 8.10 Articles).
27. The Foundation's website can be found at <https://www.emissionsjustice.com>. On this website stakeholders have access to all relevant information, including – but not limited to – the following documents: (i) the Articles, (ii) this Claim Code Compliance or Governance Document, (iii) the management reports over the previous book year, (iv) the résumés of the members of the Board and the Supervisory Board and the Foundation's Managing Director, and (v) updates on any pending litigation.

#### PRINCIPLE VI: RENUMERATION OF THE MEMBERS OF THE BOARD

28. The Board members receive management

fees for services rendered to the Foundation pursuant to the following schedule.

Chairperson EUR 15,000 per year and EUR 250 per hour for pre- approved overtime.

Board Members EUR 12,000 per year and EUR 200 per hour for pre- approved overtime.

29. Concerning the year 2020, overtime has been spent in connection with in person meetings in Paris; the determination and implementation of the Foundation's expanded international (legal) strategy; the launch of supplementary proceedings in Belgium and France; the support of and instruction to local counsel and the launch of book building efforts in France. The fixed management fee plus variable fees for overtime resulted in remuneration payments to the Board in the amount of EUR 172, 213 in the aggregate.

#### PRINCIPLE VII: THE SUPERVISORY BOARD

30. The Supervisory Board consists of three individuals with adequate legal and financial expertise and experience, and its composition is therefore fully compliant with Elaboration VII.1 of Principle VII of the Claim Code.
31. On 3 June 2020, Mr Arco Krijgsman took over the role of the Supervisory Board's chairperson, from Mr. Jan Hendrik Crucq who passed away in February 2020.
32. The current members of the Supervisory Board are
- a. Mr. Arco Krijgsman as chairman, who has been active in the field of litigation funding and collective actions in the Netherlands for over a decade, and serves on the board of various plaintiff foundations as an expert in litigation funding, book-build, governance and pre-resolution administration and support;
  - b. Mr. George Tsetsekos, a professor of Finance and Dean Emeritus at Drexel's LeBow College of Business in Philadelphia USA. George's

research covers the broad areas of corporate finance, investments, and international finance; and

- c. Mr. Greg Coleman, a U.S. class action attorney and successfully involved in numerous class actions in the U.S., Greg is one of the founders of CJN, the funder of the Foundation's actions.
33. The members of the Supervisory Board, other than Greg Coleman, who receives no fee for his Supervisory Board membership, are remunerated as follows:
- Chairperson: EUR 12,500 per year and EUR 250 per hour for pre- approved overtime  
Board Member: EUR 10,000 per year and EUR 200 per hour for pre- approved overtime
34. Concerning the year 2020, payment to the Supervisory Board of the fixed management fee plus variable fees for overtime in the amount of EUR 24,184 in the aggregate has been made.
35. The Board and Supervisory Board has held 18 joint meetings (only one in person in Paris because of Covid19) and 32 by conference/video call) in 2020 and have been closely involved in all relevant developments of the Foundation's efforts in connection with the Claims (as defined in the Articles).

Amsterdam, 16 June 2021