# VOGIIIS

**AMSTERDAM COURT**

Private law department

**Judgment** of **10 April**

**2024 Cases joined on roll**

in the case with case number / rolniiminer: C/l 3/702519 / HA ZA 21-500 of

the foundation
**EMISSION CLAIM FOUNDATION,**
established in Amsterdam,
lawyer Mr C. Jeloschek, e i
s e r e s,

at

1 . the legal person under foreign law
**RENAULT S.A.,**
established in Boulogne-B illaneourt (France), lawyer
Mr Y. Borrius,
2. the toh lazy company
**RENAULT** NETHERLANDS N.V.,
established at Schiphol-Rijk,
lawyer M r Y. Borrius,
D e d a g e,

[Respondent 3 was granted discharge from authority].

and in the case with case number / rolntimmer C/13/7 1041 4 / HA ZA 21 -1028

of the foundation
**CAR CLAIM FOUNDATION,**
established in Rotterdam,
lawyer Mr P. Haas,
e i s e r e s,

against the defendants referred to above at l and 2 and against

4. the legal person under foreign law
**RENAULT S.A.S.,**
established in Boulogne-Billancourt (France),
lawyer Mr Y. Borrius,
5. the legal person under foreign law
**AUTOMOBILE DACIA S.A.,**
based in Bucharest/Mioveni (Romania),

Advocate Mr Y.
Borrius, concurring,
6. the private limited liability company RENAULT-
NISSAN B.V.,
based in Amsterdam,
defaulted,
7. the private limited liability company
AUTOMOBIELBEDRIJF "DE MARKIES B.V.",
based in Bergen op Zoom,
8. the private l i m i t e d liability company AUTOBEDRIJF
BRAAL B.V.,
based in Schouwen-Duiveland,
9. the private company with limited liability
QUICKSERVICE KIEVIT HELLEVOETSLUIS B.V.,
based in Hellevoetsluis,
10. the private limited liability company ZEEUW &
ZEEUW I B.V.,
based in Wateringen,
11. the private l i m i t e d liability company VAN MOSSEL
DORZO RENAULT DACIA NISSAN B.V.,
based in Waalwijk,
12. the private limited liability company VAN MOSSEL
RENAULT DACIA B.V.,
based in Tiel,
13. the private limited liability company VAN MOSSEL
RENAULT DACIA 2 B.V.,
based in Waalwijk,
14. the private company with limited liability
AUTOBEDRIJF HOPMANS B.V.,
based in Zevenbergen,
15. the private limited liability company AUTOBEDRIJF
WISSE B.V.,
based in Terneuzen,
16. the private limited liability company AUTOBEDRIJF
ROOCAR B.V,
based in Krimpen aan den IJssel,
17. the private limited liability company HEDIN
AUTOMOTIVE 2R B.V.,
(formerly named Stern 2R B.V.),
based in Eindhoven,
18. the private company with limited liability
AUTOBEDRIJF JOHAN DE JONG B.V.,
based in Kaatsheuvel,
19. the private limited liability company VAN AAKEN
MIDDELBEERS B.V.,
based in Oost-,West-Midde1beers,
20. the private limited liability company AUTOBEDRIJEN
VERDONK B.V.,
based in Veldhoven,
21. the private company with limited liability JANSSEN
KERRES VENLO B.V.,

(formerly named Autobedrijf J. Janssen Venlo B.V.), established in Venlo,
22. the private limited liability company JANSSEN KERRES KERKRADE B.V.,
(formerly named Autobedrijf Kerres Kerkrade B.V.), established in Kerkrade,
23. the private limited liability company JANSSEN KERRES SITTARD B.V.,
(formerly named Autobedrijf Kerres Sittard B.V.), established in Sittard,
24. the private limited liability company JANSSEN KERRES HEERLEN B.V.,
(formerly named Autobedrijf Kerres Heerlen B.V.), established in Heerlen,
25. the private company with limited liability JANSSEN KERRES MAASTRICHT B.V.,
(formerly named Autobedrijf Kerres Maastricht B.V.), established in Maastricht,
26. the private limited liability company JANSSEN KERRES HELMOND B.V.,
(formerly named Autobedrijf J. Janssen Helmond B.V.), established in Helmond,
27. the private company with limited liability AUTOBEDRIJF J. JANSSEN B.V.,
based in Nuenen,
28. the private l i m i t e d liability company VOGELS AUTOBEDRIJF B.V.,
based in Gemert,
29. the private limited liability company **AUTO YAN DUCK** B.V.,
based in Hapert,
declared bankrupt,
30. the private company with limited liability AUTOMOBIELBEDRIJF VAN GOMPEL B.V.,
based in Reusel,
31. the private l i m i t e d liability company AUTOBEDRIJF COPPES B.V.,
based in Bergharen,
32. the private l i m i t e d liability company BOCHANE AUTO I B.V.,
based in Veenendaal,
33. the private limited liability company AUTO HEURKENS ECHT B.V.,
based in Echt,
34. the private limited liability company AUTO HEURKENS WEERT B.V.,
based in Weert,
35. the private limited liability company AUTO HEURKENS ROERMOND B.V.,
based in Roermond,
36. the private limited liability company

**CAR COMPANY** MANDERS DEURNE B.V.,
based in Deurne,
37. the private limited liability company
**CAR COMPANY H. STRIJBOSCH VENRAY** B.V.,
based in Venray,
38. the private limited liability company
**AUTO HERCOM DOETINCHEM** B.V.,
Based in Doetinchem,
39. the private limited liability company AUTO
HERCOM NEEDE B.V.,
Based in Neede,
40. the private limited liability company AUTO
HERWERS ZEVENAAR B.V.,
based in Zevenaar,
41. the private limited liability company AUTOBEDRIJF
JOS HERWERS HENGELO (G) B.V.,
Based in Hengelo (Gelderland),
42. the private limited liability company GARAGE
**KLEINE & ZONEN** B.V.,
Based at Doesburg,
43. the general partnership
**V.O.F. GARAGE LEIJENAAR,**
Having offices at Bathmen, municipality of

Deventer, [defendants 44 to 47 merged into defendant

50]

48. the private limited liability company
**AUTO MUNSTERHUIS** B.V.,
Based in Hengelo (Overijssel),
49. the private limited liability company
**AUTOCENTRE CENTS** B.V.,
based in Ommen,
50. the private limited liability company TERWOLDE B.V.,
successor in title to defendants 44 to 47,
established in Groningen,
Sl. the private limited liability company
**CAR COMPANY J. HOITING** VALLEYS B.V,
based in Dalen,
52. the general partnership
V.O.F. AUTOBEDRIJF VOS,
office located in Smilde, Municipality of Midden-Drenthe,
53. the private limited liability company
**CAR COMPANY MATTER MEPPEL** B.V.,
based in Meppel,
54. the private limited liability company
**CAR COMPANY MATTER STEENWIJK** B.V.,
Based in Steenwijk,
55. the private company with limited liability
AUTOMOBIELBEDRIJF **H.J.G.** HERBERS B.V.,
based in Vlagtwedde,

56. the private company with limited liability
AUTOBEDRIJF SCHOON B.V.,
based in Stadskanaal,
57. the private company with limited liability
AUTOBEDRIJF VAN KESTEREN B.V.,
based in IJsselmuiden,
58. the private limited liability company ABD GROEP B.V.,
based in Drachten,
59. the private limited liability company AUTO BEERDA
B.V.,
Based in Kollumerland and Nieuwkruisland,
60. the general partnership
V.O.F. GARAGE DROS,
office at De Cocksdorp, municipality of Texel,
61. the private limited liability company STOKMAN
ALKMAAR B.Y.,
based in Alkmaar,
62. the private limited liability company STOKMAN DEN
HELDER B.V.,
based in Den Helder,
63. the private limited liability company STOKMAN
HOORN B.V.,
based in Hoorn (Noord-Holland),
64. the private limited liability company AUTOZENTER
SCHAGEN B.V.,
based in Schagen,
65. the private limited liability company FRANS
STOKMAN B.V.,
based in Heerhugowaard,
66. the general partnership
GARAGE JOHAN BOERLAGE AUTOCENTRE BOERLAGE ACB,
office located in Edam, municipality of Edam-Volendam,
67. the private l i m i t e d liability company DUT'S
AUTOBEDRIJF BEHEER B.V.,
based in Beemster,
68. the private limited liability company AUTO
DROGTROP B.V.,
based in Beverwijk,
69. the private l i m i t e d liability company AUTOBEDRIJF
NIEUWENDIJK BADHOEVEDORP B.V.,
based in Haarlemmermeer,
70. the private company with limited liability
AUTOBEDRIJF NIEUWENDIJK HOOFDDORP B.V.,
based in Haarlemmermeer,
71. the private company with limited liability
AUTOMOBIELBEDRIJF BENELUX AMSTELVEEN B.V.,
based in Amstelveen,
72. the private limited liability company
BEHEERMAATSCHAPPIJ **C.A. NIEUWENDIJK** B.V.,
based in Aalsmeer,

73. the private limited liability company
**AUTOMOBILE COMPANY** VROEGOP B.V.,
based in Amstelveen,
74. the private limited liability company
**CAR COMPANY NIEUWENDIJK** B.V.,
based in Aalsmeer,
75. the private limited liability company STAM
AUTOBEDRIJYEN B.V.,
based in Amersfoort,
76. the private company with limited liability AUTO
BERNAULT B.V.,
based in Mijdrecht,
77. the private company with limited liability
AUTOBEDRIJF HANS JONGERIUS B.V.,
based in Woerden,
78. the private limited liability company AUTOBEDRIJF
VAN RAMSHORST B.V.,
based in Nijkerk,
79. the private limited liability company KEMPENAAR
**ALPHEN** AAN DEN **RIJN** B.V.,
based in Alphen aan den Rijn,
80. the private company with limited liability
KEMPENAAR BODEGRAVEN B.V.,
based in Bodegraven,
81. the private limited liability company
AUTOMOBIELBEDRIJF VELSERBEEK B.V.,
based in Velsen,
82. ALBERTUS CHRISTOFFEL DE ROO, trading as AUTOBEDRIJF VAN WINDEN,
doing business at Berkel en Rodenrijs, municipality of Lansingerland,
Advocate Mr R.J. van der Weijden,
g e d a g e 7 to 82,

and in the case with case number/role number C/13/710434 HA ZA 21-

1030 the foundation,
DIESEL EMISSIONS **JUSTICE FOUNDATION,**
established in Amsterdam,
lawyer Mr J.D. EdiKhoven, e i
s e r e s,

against defendants 1, 2, 4, 5 and 7 to 82 above.

Plaintiffs will hereinafter be referred to separately as SEC, SCC and SDEJ. Collectively, they will be referred to as the Foundations. Renault S.A., Renault Nederland N.V., Renault S.A.S. and Automobile Dacia S.A. will hereinafter be collectively referred to as Renault et al. Defendants 7 to 82 will hereinafter be collectively referred to as the Car Dealers.

The cases will hereinafter be referred to separately as the SEC case, the SCC case and the SDEJ case.

1. The trial process in

the SEC case

1.1. The conduct of the proceedings is evidenced by:
- the interlocutory judgment of 1 February 2023,
- the incidental claim phase 2 of Renault S.A. and Renault Nederland N.V., with exhibits,
- SEC's deed of production,
- the minutes of the oral hearing of 29 January 2024 (and the documents referred to therein),
- SEC's deed submission production, with a production,
- The letter dated 13 February 2024 regarding transmission of SEC financing agreement,
- Renault et al's letter of 27 February with comments on the minutes,
- the reply act of Renault et al.

1.2. The court has ruled that judgment will be delivered today. in

the SCC case

1.3. The conduct of the proceedings is evidenced by:
- the interlocutory judgment of 1 February 2023,
- the incidental claim phase 2 of Renault et al, with productions,
- Autodealers' Phase 2 incidental claim, with exhibits,
- SCC's deed of production,
- The deed of submission of productions of the Auto Dealers,
- the minutes of the oral hearing of 29 January 2024 (and the documents referred to therein),
- SCC's deed of submission of financing agreement, with exhibits,
- Renault et al's letter of 27 February with comments on the minutes,
- Renault et al's reply deed, also on behalf of the Car Dealers,
- Autodealers' reply deed, referring to Renault et al's reply deed.

1.4. The court directed that judgment be delivered today.

In the SDEJ case

1.5. The conduct of the proceedings is evidenced by:
- the interlocutory judgment of 1 February 2023,
- the incidental claim phase 2 of Renault et al, with productions,
- Autodealers' Phase 2 incidental claim, with exhibits,
- SDEJ's deed of production,
- the minutes of the oral hearing of 29 January 2024 (and the documents referred to therein),
- The deed submitting financing agreement and redacted budget of SDEJ,
- The deed submission not redacted budget of SDEJ,
- Renault et al's letter of 27 February with comments on the minutes,
- Renault et al's reply deed, also on behalf of the Car Dealers,
- Autodealers' reply deed, referring to Renault et al's reply deed.

1.6. The court directed that judgment be delivered today.

## 2. Introduction

2.1. These cases are so-called collective actions. The Foundations stand up for the interests of their constituencies. According to the Foundations, their constituencies have suffered damages because Renault c.s. has placed Renault and Dacia vehicles on the Dutch market with an illegal manipulation device. SEC brought claims against Renault S.A. and Renault Nederland N.V. SCC and SDEJ brought claims against Renault c.s. and the Car Dealers.

2.2. By judgment of 1 February 2023, the court considered that it had jurisdiction to hear the claims of the Foundations. In addition, the court ruled that Article 3:305a (old) of the Civil Code applies to these collective actions and that the Foundations are sufficiently representative within the meaning of Article 3:305a (old) of the Civil Code.
In this judgment, the court will rule on (i) the admissibility of the Foundations under Article 3:305a (old) of the Civil Code, except for the representativeness of the Foundations and (ii) the applicable law to the claims of the Foundations.

2.3. On each of the various claims, the court decided whether they were sufficiently 'bundleable' to be adjudicated in a class action. This leads to some of the claims being admissible and some not. A summary of these decisions is set out at 7.51.
On the admissibility of SDEJ and SEC, the court cannot yet make a final decision. SDEJ and SEC may still comment further on their funding agreements.
It is also noted that Dutch law applies to the claims of the Foundations.

## 3. The teiten

3.1. The judgment of 1 February 2023 contains a number of facts. These facts are repeated and supplemented here to the extent still relevant.

in the SEC case

3.2. SEC was incorporated on 11 December 2020.

3.3. SEC's bylaws, so far as relevant here, begin as follows:

> **"DEFINITIONS**
>
> For the purposes of the articles of association, the following definitions shall apply: (...)
> c) Claims: One or more complaints, demands, contentions and or (legal) claims made by the Complainants and/or the Foundation in the interest of the Complainants, on any legal basis whatsoever, against the Motor Vehicle Manufacturers or other Entities and,'or their Policy Makers in respect of any form of detriment, loss or damage which the Complainants allege to have suffered or to be suffered individually or collectively, as a result of the manipulation of the emissions of Manipulated Vehicles in certain test situations and/or the misrepresentations made by Motor Vehicle Manufacturers, Entities and/or their Policy Makers as to the actual levels of emissions, including

but not limited to claims or contentions of Defendants related to the purchase, ownership or lease of vehicles and claims related to emissions of environmentally hazardous substances;
d) Entities: all (legal) persons who are or have been involved in the production and/or development, import, distribution and/or sale or lease of Manipulated Vehicles and all entities and/or (supervisory) organisations, and/or their Policy Holders, who are (have been) involved in any way in the authorisation and/or approval of the Manipulated Vehicles, all in the broadest sense;
e) Victims: (legal) persons who have purchased or leased one or more Manipulated Vehicles;
f) Manipulated Vehicle means a vehicle equipped with or featuring a Manipulation Instrument or software or technology installed to operate as such;
g) Manipulation device means a constructional part of a motor vehicle prohibited under Article 5(2) of EU Regulation (EC) No 715/2007 that measures temperature, vehicle speed, engine speed, acceleration, intake depression or other parameters for the purpose of activating, modulating, decelerating or deactivating any part of the emission control system so as to reduce the effectiveness of the emission control system under conditions that would be expected during **normal** vehicle use;
h) Motor vehicle manufacturers: all legal entities (and their (de facto) Executives) affiliated to, belonging or having belonged to the group of companies of a manufacturer or supplier of passenger cars, commercial vehicles, trucks and other motor vehicles, including their affiliated or associated companies, as well as component suppliers, that are or have been involved in the manipulation or modification of emissions, or the production or supply of
such devices or technology, including but not limited to companies involved or potentially involved in regulatory or investigative processes related to what is known as the "emissions scandal" or "dieselgate"; (...)
(j) conflict of interest means a direct or indirect personal interest that conflicts with the interests of the foundation; (...)".

3.4. SEC's bylaws further read, in so far as relevant here:

**"ARTICLE 2 - PURPOSE**
2.1. The purpose of the foundation is to represent the interests of the Victims who have purchased or leased one or more Manipulated Vehicles, including but not limited to:
a. establishing and investigating the course of events that led to and involved (i) the development and installation of one or more Manipulation Instruments in Manipulated Vehicles and (ii) the sale and/or supply of Manipulated Vehicles to the Defendants;
b. Promoting the interests of Defendants and representing Defendants in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;
c. representing the interests of Victims worldwide in connection with the Claims;
d. obtaining and distributing financial compensation for (part of) the damage the Victims claim to have suffered;
e. representing the collective interests of Victims in environmental matters, in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;

f. anything related or conducive to the above, all in the broadest sense;
all to the extent deemed **appropriate** by the board.

**ARTICLE** 3 - ORGANS **AND STRUCTURE**
3.1. The foundation has the following bodies:
(a) a board;
(b) a supervisory board; and
(c) a joint meeting of management and supervisory board.
3.2. The governance structure of the foundation is set up in accordance with the provisions of the Claims Code.

**ARTICLE** 5 - BOARD: **COMPOSITION, APPOINTMENT,** RESIGNATION
5.1. The board of the foundation shall consist of a number of natural persons of at least three to be determined by the Supervisory Board. (...)
5.2. No close family or similar relationships, including but not limited to marriage, registered partnership or unmarried cohabitation, may exist within the management and supervisory board and between management and supervisory board members. If the foundation has a funding agreement with an external party, the same applies to the relationships of directors and supervisors with persons associated with that external party.
5.3. The directors have no direct or indirect profit motive realised through the foundation.
5.4. Board members are appointed and suspended by the supervisory board. The Code of Claims contains provisions on the desired composition of the foundation's board. When appointing board members, these provisions are followed to the extent practicable. (...)

**ARTICLE** 6 - MANAGEMENT: DUTIES AND **POWERS**

6.3. If the Foundation has a funding or litigation funding agreement with an external party, the board shall ensure that
a. the individual members of the **Executive Board** and members of the Supervisory Board, as well as the lawyer or other service providers engaged by the foundation, are independent and autonomous from the external financier and the direct or indirect affiliated (legal) persons, as well as that the external financier and its directly or indirectly affiliated (legal) persons are independent of the other party to the collective action; and
b. the terms of funding (including the amount and system of compensation to be agreed) do not reasonably conflict with the collective interest of the Deterred Parties.
(...)
6.5. The managing board is obliged to explain annually the main features of the governance structure of the foundation based on the Code of Claims. In this explanation, the managing board shall include the extent to which the foundation follows the provisions of the Code of Claims. To **the extent that the Board** deviates from the Code of Claims, it shall explain why and to what extent the foundation deviates from it.
6.6. The **board is** obliged to submit any proposed substantial change in the governance **structure** of the foundation and in its compliance with the Claims Code to **the supervisory board** for discussion**.** (...)

**ARTICLE** 10 - SUPERVISORY **BOARD: COMPOSITION, APPOINTMENT, RESIGNATION**

10.1. The Supervisory Board of the foundation consists of a number of three or more natural persons to be determined by the Supervisory Board.

10.2. The Code of Claims includes provisions on the desired composition of the foundation's supervisory board. When appointing supervisory board members, these provisions are followed to the extent possible.

10.3. No close family or similar relationships, including but not limited to marriage, registered partnership or unmarried cohabitation, may exist within the Supervisory Board and the Board, or between Supervisory Board members and Board members. If the foundation has a funding agreement with an external party, the same applies to supervisory board members' relationships with persons associated with that external party. Main or ancillary positions of board members and supervisory board members that impair independence should also be avoided. (. ..)

**ARTICLE 12 - SUPERVISORY BOARD: DECISION-MAKING** (...)

12.12 If a member of the supervisory board has a potential conflict of interest, he shall notify the other members of the supervisory board thereof without delay. A member of the supervisory board shall not participate in the deliberations and decision-making if there is a conflict of interest.

Where this prevents the Supervisory Board from taking a decision, the decision shall be taken by the Board under a written record of the considerations underlying the decision. (...)".

3.5. The SEC's bill of claim amendment, so far as relevant, states the following:

"(...) In these proceedings, the Foundation represents the interests of all (first and subsequent) buyers and all lessees of Sjoemeldiesels that were i'mported in the Netherlands, registered in the Netherlands (with the RDW) and/or sold or leased in the Netherlands in the period between 1 September 2009 and 1 September 2019 (the "Relevant Period"), always excluding Defendants. This group includes both consumers and professional parties (such as rental companies, leasing companies, companies with their own fleet of vehicles or taxi companies), collectively referred to as "the Defendants (...)".

3.6. SEC sent a letter to Renault S.A. and Renault S.A. on 18 March 2021, holding them liable and inviting them to consult on an amicable settlement.

<u>in the SCC case</u>

3.7. SCC was incorporated on 1 October 2015 and amended its articles of association on 3 July 2020.

3.8. SCC's articles of association, so far as relevant here, begin as follows:

**"DEFINITIONS**

For the purposes of the articles of association, the following definitions shall apply: (...)

b. Car Owner: (legal) person who purchased or leased one or more Manipulated Vehicles during the Relevant Period;
c. Car manufacturer: all legal entities (and their (actual) policymakers) that belong or have belonged to the group of companies of a car manufacturer that is or has been involved in an emissions scandal; (...)
i. Manipulated Vehicle means a vehicle of one of the brands carried by a Car Manufacturer, equipped or fitted with hardware and/or software (...) with the intention of manipulating emission tests and/or as a result of which the legal emission standards are exceeded; (...)
k. Local Dealer: a dealer officially authorised by a Car Manufacturer in (one or more) Manipulated Vehicles during the Relevant Period with (at the time) an outlet in the Netherlands; (...)
o. Relevant Period: the period during which Manipulated Vehicles were sold and/or delivered; (... .)
u. Update: soft- and/or hardware modifications applied to (part of) the Manipulated Vehicles by which the prohibited soft- and/or hardware was allegedly removed, as a result of which the Manipulated Vehicles would allegedly meet legal emission standards; (...)".

3.9. SCC's articles of association further read, in so far as relevant here:

**"PURPOSE**
**ARTICLE 2**
1. The foundation aims to promote the interests of Car Owners, including but not limited to:
a. establishing and investigating the course of events leading to and involving (i) the development and installation of prohibited software and/or hardware in the Manipulated Vehicles and (ii) the sale and*or supply of the Manipulated Vehicles to the Car Owners;
b. determining and investigating the course of events leading to and relating to (the consequences of) the application of one or more Updates to the Manipulated Vehicles;
c. determining and investigating (i) all (financial) consequences of the above for the Car Owners, (ii) the possibility for the Car Owners to enforce Claims against (one or more) Car Manufacturers, including, but not limited to rescinding the purchase agreements of Manipulated Vehicles concluded by them with Local Dealers against (full) reimbursement of the purchase price, (iii) the possibility for the Car Owners to obtain (full) compensation from the responsible parties for the damages suffered and to be suffered by them, (iv) the ability of the Car Owners to obtain all necessary indemnities and/or warranties in respect of all possible negative consequences of the manipulation of the Manipulated Vehicles - both before and after one or more Updates - for Manipulated Vehicles, in order to continue the undisturbed use of the Manipulated Vehicles and (v) alternative options for solving the emission problems of Manipulated Vehicles;
d. Obtaining a declaratory (liability) judgment from any court of competent jurisdiction that (one or more) Car Manufacturers, Bosch, their (former) boards of directors, their (former) supervisory boards, (one or more) Importers, (one or more) Local Dealers and/or other culpable parties have violated applicable laws and regulations including but not limited to violation of laws and regulations relating to environmental (standards), unfair trade practices, misleading advertising and/or the

(consumer) sales law and any obligations to the Car Owners arising from it;
e. bringing actions for injunctions and/or seizures;
f. Obtaining compensation for the (financial) impact on Car Owners; and
g. anything related or conducive to the above, all in the broadest sense.

**ORGANS AND GOVERNANCE STRUCTURE**
**ARTICLE 3**
1. The foundation has the following bodies:
a. a board;
b. a supervisory board; and
c. a joint meeting of management and supervisory board.
2. The governance structure of the foundation is set up in accordance with the provisions of the Claims Code. (...)
3. The board and the supervisory board are responsible for maintaining the foundation's governance structure and compliance with the Claims Code.

**BOARD: COMPOSITION, APPOINTMENT, RESIGNATION**
**ARTICLE 5**
1. The board of the foundation consists of a number of three or more natural persons to be determined by the supervisory board.
2. The Code of Claims includes provisions on the desired composition of the foundation's board. When appointing board members, these provisions are followed as much as possible.

**BOARD: TASK AND POWERS ARTICLE 6**

4. The board is required to set out annually the main features of the foundation's governance structure based on the Claims Code. In this statement, the executive board shall include the extent to which the foundation follows the provisions of the Code of Claims. To the extent that the Board deviates from the Code of Claims, it shall explain why and to what extent the foundation deviates from it.
5. The board is obliged to submit any proposed change in the governance structure of the foundation and in compliance with the Claims Code to the supervisory board for discussion. The board will include the foregoing as a separate agenda item on the meeting agenda.

SUPERVISORY **BOARD: COMPOSITION, APPOINTM ENT, RESIGNATION**
**ARTICLE 10**
1. The Supervisory Board of the foundation consists of a number of three or more natural persons to be determined by the Supervisory Board.
2. The Code of Claims includes provisions on the desired composition of the foundation's supervisory board. When appointing members of the supervisory board, these provisions are followed as far as possible. (...)".

3.10. SCC's subpoena, so far as relevant, states the following:

| | |
|---|---|
| "(...) GLOSSARY OF TERMS<br>Car owners Affected Vehicles | The Private Parties and Business Parties (...) Euro 5 and Euro 6 diesel vehicles of category M1, M2, N1 and/or N2 within the meaning of Article 2 of the Emissions Regulation, placed on the market under the Renault and Dacia brands from l September 2009 to 1 September 2019, including in each **case the models specified in Production** 1. |

IV. THE INJURED PARTIES ON WHOSE BEHALF THE FOUNDATION STANDS IN THESE PROCEEDINGS (...)

Car Claim is conducting these proceedings **on behalf of Car Owners.** (...)

The group of Car Owners is territorially limited to Car Owners who were ordinarily resident in The Netherlands at the time the relevant Agreement(s) were entered into. This does not alter the fact that some Car Owners may have emigrated from the Netherlands over the years. For that (only limited) group of Car Claim owners, Car Claim requests the court, in view of article 10 l8f paragraph 5 last sentence of the Dutch Code of Civil Procedure, to rule that these proceedings will also result in an "opt-out" obligation for them (in accordance with article 1018f paragraph 1 of the Dutch Code of Civil Procedure). (...)

Every Car Owner has a claim against Defendants as a result of the purchase or lease of an Affected Vehicle. (...)

Private Parties consist of natural persons, not acting in the exercise of a profession or business, who:
(i) have purchased a new Affected Vehicle from a Dealer or obtained it through a Dealer through a leasing arrangement (Private Parties A);
(ii) purchased a second-hand Affected Vehicle from a Dealer or obtained it through and Dealer through a leasing arrangement (Private Parties B); and
(iii) have purchased a new or second-hand Affected Vehicle from, or obtained the use of, a new or second-hand Affected Vehicle through a leasing arrangement through a party other than a Dealer, e.g. in a private transaction, from a used dealer or other leasing company (Private Parties C). (...)

Business Parties refer to non-Private Parties, which:
(i) have purchased a new Affected Vehicle from a Dealer or have been given the use of a Vehicle through a lease arrangement through a Dealer (Business Parties A);
(ii) have purchased a second-hand Affected Vehicle from a Dealer or have obtained its use through a lease arrangement through a Dealer (Business Parties B); and
(iii) have purchased a new or second-hand Affected Vehicle from, or received its use through a lease arrangement through a party other than a Dealer, e.g. in a private transaction, from a used dealer or other leasing company (Business Parties C)."

3.11. SCC sent a letter on 24 June 2021 to Renault S.A., Renault S.A.S. and Automobile Dacia S.A., holding them liable and inviting them to consult on an amicable settlement.

3.12. SCC sent a letter to the Car Dealers on 14 September 2021, holding the Car Dealers liable, asking for repair and replacement and inviting the Car Dealers to consult on an amicable settlement.

in the SDEJ case

3.13. SDEJ was established on 1 July 2019.

3.14. The statutes of SDEJ, so far as relevant here, begin as follows:

> **"DEFINITIONS**
> In the articles of association, the following definitions shall apply:
>
> "(...) b. Claim or Claims: Complaints, demands and*or claims made by the Complainants and/or the Foundation in the interest of the Complainants, on any legal basis whatsoever, against one or more Entities and/or their Policies with respect to any form of detriment, loss or damage which the Complainants claim to have suffered or to be suffering, individually or collectively as a result of unauthorised manipulation of vehicle emissions in certain test situations and/or the misrepresentations by the Entities as to the actual levels of such emissions, commonly known as the diesel emissions scandal, which expressly includes, but is not limited to, claims by the Complainants in connection with the purchase, ownership or leasing of vehicles and claims in connection with emissions of environmentally hazardous substances;
> c. Victims: all natural persons or legal persons under private or public law, or their legal successors, who have been directly or indirectly harmed or injured in any way whatsoever by the acts or omissions of the Entities and Policymakers and on which the Claims are based, in the broadest sense of the word;
> d. Entities:
> i. all (legal) persons, in particular manufacturers of passenger cars, commercial vehicles, trucks and other vehicles, including their affiliated companies, who focus on the production and/or sale of such vehicles, of which it has become apparent or the foundation has any suspicion that they contain one or more Unauthorised Manipulation Instruments, all in the broadest sense of the word;
> ii. all (legal) persons who are or were involved in the production and/or development of an Unauthorised Manipulation Device, all in the broadest sense;
> iii. all (legal) persons who are or were involved in the import, distribution and/or sale or lease of vehicles with an Unauthorised Manipulation Device, including the (exclusive) importers and dealers of the relevant car manufacturers referred to under i. above, all this in the broadest sense of the word;
> iv. the Policy Officers of the entities referred to above under (i.) to (iii.); and/or
> v. other entities and/or (supervisory) organisations, and/or their Policy Holders, who are (have been) involved in any way in the authorisation and/or approval of the relevant vehicles;

e. Unauthorised Manipulation Device or Unauthorised Manipulation Device means a manipulation device within the meaning of Article 3(10) of European Regulation No.... 71S/2007, or within the meaning of a similar provision in successor legislation, that does not fall within any of the exceptions defined in this regulation or successor legislation; (. . .)".

3.15. SDEJ's articles of association further read, in so far as relevant here:

**"PURPOSE**
**ARTICLE 2**
1. The purpose of the foundation is to promote and pursue the interests of the Victims (...), including but not limited to:
a. representing the interests of Victims worldwide in connection with the Claim;
b. Promoting the interests of Defendants and representing Defendants in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;
c. obtaining and distributing financial compensation for (part of) the damage the Victims (...) claim to have s u f f e r e d ;
d. representing the collective interests of Victims in environmental matters, in legal proceedings within the Netherlands and in other jurisdictions, such as civil, criminal and administrative proceedings, as appropriate;
e. anything related or conducive to the above, all in the broadest sense;
all to the extent deemed appropriate by the board.

**ORGANS AND GOVERNANCE STRUCTURE**
**ARTICLE 3**
1. The foundation has the following bodies:
a. a board;
b. a supervisory board; and
c. a joint meeting of management and supervisory board.
2. The foundation has Unitholders. (...)

**BOARD: TASK AND POWERS ARTICLE 6**
(...) 4. The outline of the foundation's governance structure is set out by the board each year, based on the principles contained in the Code of Claims. The board indicates the extent to which it follows the provisions contained in the Code of Claims.
To the extent that the foundation does not follow the provisions of the Code of Claims, the board will state why and to what extent it deviates from them.
5. The board is obliged to submit any proposed substantial change in the governance structure of the foundation to the supervisory board for discussion. The board shall put the foregoing as a separate agenda item on the agenda of the meeting. (...)

**SUPERVISORY BOARD: COMPOSITION, APPOINTMENT, RESIGNATION**
**ARTICLE 10**
1. The supervisory board of the foundation consists of three or more natural persons. (...)
3. Members of supervisory board shall be appointed and suspended by the supervisory board. The Code of Claims contains provisions on the desired composition of the supervisory board of

the foundation. When appointing members of the supervisory board, these provisions shall be followed as far as possible. (...)".

3.16. SDEJ's subpoena, so far as relevant, states the following:

"(...) The aggrieved persons whose interests the Foundation represents (...)
The Foundation concurs with the delineation of the Closely Defined Group as contained in section IV of the Car Claim Summons. It requests the Court to consider the provisions of that section as repeated and inserted here. This concerns Car Owners who had their usual place of residence in the Netherlands at the time the Agreement(s) were entered into. To the extent that certain Car Owners have meanwhile emigrated from the Netherlands, the Foundation requests the Court to rule that the proceedings will lead to them being bound on an opt-out basis (Section 1018f, subsection 1 of the Dutch Code of Civil Procedure). Like Car Claim, the Stichting makes a distinction between Private Parties (subcategories A, B and C) and Business Parties (subcategories A, B and C). (...)".

3.17. SDEJ sent a letter to defendants on 8 November 2021, in which SDEJ held them liable and invited them to consult on an amicable settlement.

in all matters

*Renault c.s.*

3.18. Renault S.A. is the parent company of, among others, car manufacturers Renault S.A.S. and Automobile Dacia S.A. Renault Nederland N.V. is the Netherlands-based importer of Renault and Dacia vehicles destined for the Dutch market.

*Car dealers*

3.19. The Car Dealers are a group of Netherlands-based car dealers operating under Selling more Renault and Dacia vehicles.

*The Car Owners*

3.20. The Foundations each represent their own constituencies, which they have defined in their separate subpoenas as the Car Owners. The court will also use this definition when referring to the constituency of each of the Foundations.

## 4. Parties' positions

4.1. In this judgment, the court will rule on:
i. The admissibility of the Foundations under Article 3:305a (old) BW, with exception of the representativeness of the Foundations, and
ii. the law applicable to the Foundations' claims.'

' The Foundations' claims are reproduced verbatim in Annexes I to III attached to this judgment.

4.2. The Foundations argue that they meet the admissibility requirements under Article 3:305a (old) of the Civil Code and that Dutch law applies to their claims.

4.3. According to the defendants, the admissibility requirements are not met by the Foundations. The similarity requirement is not met. The claims brought by the Foundations do not lend themselves to collective treatment. A collective treatment of the claims does not lead to efficient and effective legal protection for the interested parties. Nor do the Foundations meet the guarantee requirement. The Foundations' constituencies, if the claims are upheld, will not benefit sufficiently. In addition, the Foundations do not have sufficient knowledge and skills to conduct the proceedings. Defendants agree with the Foundations that Dutch law applies to the claims.

4.4. The parties' contentions are discussed in more detail below, to the extent relevant.

**The court's assessment**

**5. Admissibility of Foundations under Article 3:305a (old)** of the Civil Code

in all matters

5.1. The court stated the following.

5.2. Article 3:305a paragraph 1 (old) of the Dutch Civil Code stipulates that a foundation (i) may bring an action to protect the similar interests of other persons (the similarity requirement), (ii) insofar as it promotes these interests pursuant to its articles of association (the articles of association requirement). Paragraph 2 provides that an interest group is inadmissible if (iii) in the circumstances it has not made sufficient efforts to achieve the claimed objective by conducting consultations with the defendant(s) (the consultation requirement) or if (iv) the legal action does not sufficiently safeguard the interests of the persons on whose behalf the legal action is brought (the safeguard requirement).

5.3. The Foundations bear the burden of proof with regard to the requirements mentioned in Article 3:305a(l) (old) of the Civil Code. After all, these are the two conditions to be able to bring a legal action as a collective action organisation. On the other hand, the defendants have, in principle, the duty of proposing and, if necessary, the burden of proof that there is a situation as referred to in Article 3:305a paragraph 2 (old) of the Civil Code. After all, these situations form an exception to paragraph 1 and it is the defendants who invoke the legal consequences thereof.

5.4. There is no dispute between the parties that the Foundations meet the statute requirement and the consultation requirement. The court also has no indications to assume that the Foundations do not meet these two requirements. The parties do differ on whether the similarity requirement and the guarantee requirement have been met. Those two requirements will be dealt with below under 7 et seq.

**6. Admissibility - no monetary damages**

6.1. Article 3:305a(3) (old) of the Civil Code stipulates that the claim cannot extend to monetary damages. To the extent the claims of the Foundations extend to

payment of monetary damages, they cannot therefore be brought in these collective proceedings. SCC is therefore declared inadmissible in claims 7 and 10. SDEJ is also declared inadmissible in claims 7 and 10.

6.2. Renault c.s. argued that it is established case law that also the claimed declarations of liability for damages do not lend themselves to collective proceedings under the applicable law. With Renault c.s., the court considers that such declarations of law are not possible under Article 3:305a paragraph 3 (old) of the Civil Code. SEC is therefore inadmissible insofar as it concerns the words 'and be obliged to compensate that sehade' in its claim under 2.[2]

**7. Admissibility - similarity**

in all matters

7.1. The issue here is whether the claims brought by the Foundations seek to protect similar interests of other persons.

7.2. According to established case law of the Supreme Court, the requirement of similarity is met if the interests which the claims are intended to protect lend themselves to bundling, so that efficient and effective legal protection can be promoted for the benefit of the interested parties. The claims lend themselves to bundling if they can be decided in a single procedure without looking at the particular circumstances of the individual interested parties'. Sufficient similarity of interests does not require that the positions, backgrounds and interests of those on whose behalf a collective action is brought are identical or even predominantly the same. The point is that this can be abstracted from; in a collective action, therefore, some abstract review is appropriate.[4]

7.3. The Foundations take the view that the similarity requirement has been met. The defendants have put forward several arguments as to why there are no sufficiently similar interests that lend themselves to bundling.
Below, the court first addresses a number of issues relevant to several of the Foundations' claims and then discusses the individual claims.

*Oiivold importance*

7.4. According to Renault c.s., the Foundations do not have a sufficient interest in the collective actions at issue. In summary, the Foundations have not made it plausible that there was an illegal manipulation device in the vehicles, as a result of which the Car Owners (may) have suffered damage, nor that this is collectively ascertainable in the context of SCC's, SDEJ's and SEC's disparate claims and interests. The lack of interest already therefore leads to inadmissibility of the Foundations' claims.

[2] This refers to claim 2 as mentioned under the heading "To the extent the right of action predates 1 January 2020".
[3] See HR 26 February 2010, ECU:NL:HR:2010:BK5756, Baas in Eigen Huis v Plazacasa. Compare HR 27 November 2009, ECU:NL:HR:2009:BH2l62, WorldOnline, para 4.8.

7.5. The court ruled otherwise. It is sufficiently clear that the Foundations are standing up for a constituency, all of whom they claim have been owners, lessees or buyers of a vehicle with a prohibited manipulation device. The question of whether that is in fact the case and whether sufficient evidence has been put forward to that effect need not be answered at this stage and only arises on any substantive assessment. This therefore does not lead to inadmissibility of the Foundations' claims. The question whether it can be collectively determined whether there was an illegal manipulation device, as a result of which the Car Owners (may) have suffered damages, will be answered below.

*The vehicles*

7.6. Renault c.s. **argues** that collective treatment of the claims is not possible because the vehicles covered by the claims are completely dissimilar in terms of make, model, vehicle category and engine type. The distinction between different engine types and emission classes is relevant because the software differs for each engine type and emission class. Moreover, the software comes from different suppliers. According to Renault et al, no common judgment can be reached on the underlying key question whether the vehicles are equipped with illegal manipulation devices. The calibration of the software depends on the specific model and version in which the engine is implemented. The operation of the software and thus the emission control system is thus adapted to the specific characteristics of the vehicle (such as driving stability, weight and a manual or automatic transmission). If the court has to pass judgment on the admissibility of the software and emission control systems in all vehicles, this assessment cannot be made collectively without taking into account the individual characteristics of each vehicle. All vehicles must be assessed individually against the Emissions Regulation and Framework Directive by make, model, vehicle category, engine type, emission class and emission control system. This entails an individual assessment of a large number of different type approvals, Renault et al say.

7.7. The court rejects this defence. Renault c.s. has always applied for and obtained type approvals for vehicles of a particular make and model containing a particular engine. To obtain the type approval, these vehicles were tested to either Euro 5 standards or one of the Euro 6 variants. Renault c.s. then produced vehicles corresponding to that type approval and presented a certificate of conformity to the Dutch competent authority (the RDW), after which these vehicles were sold in the Netherlands, through dealers to end users and to leasing companies. It can be assumed at this stage of the proceedings that the vehicles complying with a particular type approval are at least in conformity when it comes to meeting the requirements of the Emissions Regulation. If they fail to do so because a prohibited defeat device is present, it can be assumed that these vehicles of the same type all fail to do so in the same way. The interests of purchasers of these vehicles are therefore identical at least per type-approval and thus bundleable.

7.8. Renault c.s. has argued that as far as Renault and Dacia diesel vehicles are concerned, several hundred type-approvals were involved in the relevant period. The Foundations have refuted this. According to SEC and SCC, this case involves 225,000 vehicles and, according to SDEJ, to 161,047 vehicles, so it is unlikely that hundreds of type approvals are involved. The court ruled that even if several hundred type approvals were involved, it cannot be said that within these

group are so few vehicles that are similar on the point relevant to this case (namely, the presence or absence of a prohibited manipulation device) that the interests of the Car Owners would not be bundleable. Given the total number of vehicles involved, it is plausible that hundreds, thousands or tens of thousands of units of the various types have been sold. Moreover, it cannot be ruled out that different type approvals are similar in so far as they are equipped with the same manipulation device.

7.9. Renault et al also argued that engines may have different calibrations, so that even vehicles with the same type of engine are still not comparable.

7.10. This does not lead to a different judgement because - in the absence of further substantiation of this view - it can be assumed for the time being that each specimen manufactured according to a particular type approval has the same calibration.

7.11. Renault et al also pointed out further differences between the vehicles, in terms of whether or not updates were carried out. For this reason too, the vehicles are incomparable. According to Renault c.s., its vehicles were never equipped with a prohibited manipulation device, but an update cancels its presence in any case. Failure to undergo an update after being invited to do so is a Car Owner's own fault.

7.12. The fact that there are differences in the vehicles in terms of updates does not mean that stakeholders' interests are not bundleable. A recall or update always concerns a certain category of similar vehicles, so that, in any event, the interests of interested parties in those vehicles are bundleable insofar as it concerns the acquisition of a vehicle in which (as the Foundations claim and Renault c.s. disputes) a prohibited manipulation device was present before the update. Whether the update abolishes the presence of a prohibited manipulation device and what consequence results from not undergoing an offered update need not be answered at this stage of the proceedings.

*The stakeholder groups being advocated for*

7.13. Renault et al. argue that collective treatment of the claims is not possible because the constituencies listed by the Foundations are too broad and diffuse. According to Renault et al, this follows from the Foundations' own descriptions of their constituencies. The Car Owners each have their own position and interests, which are incompatible. By way of illustration, Renault c.s. points to the following: i) the conflicting interests between Car Owners of the same first-hand, second-hand, third-hand (and successor) vehicle and ii) the insufficiently similar interests between the Car Owners at the level of causation, culpability and damages.

7.14. The court also rejects this defence. The court sees no contradiction between car owners of first-hand and successor vehicles because, if the Foundations are right, every Car Owner has obtained a vehicle with a prohibited
manipulation tool. All successive Car Owners can then pursue claims against Renault et al and the Car Dealers, to the extent the vehicle was purchased from any of the Car Dealers.

Whether the Car Owners have sufficiently similar interests at the level of causation, culpability and damages is irrelevant. Indeed, under old law, the court cannot award monetary damages.
The fact that different groups can be distinguished within the foundations' constituencies, which are dissimilar in different factual and/or legal respects, does not detract from the fact that certain interests within those groups are sufficiently similar to be assessed in a collective action. In any case, the members of the Foundations' constituencies have in common that they are or have been, by purchase or lease, owners of a vehicle in which, according to the Foundations' contentions, a prohibited manipulation device is or was present. That is what it is all about. If necessary, certain differences may be taken into account in the assessment.

*Basis of receivables*

** The declarations of law that certain parties are to be considered Private Parties*

7.15. This concerns SCC's claim under 4 and SDEJ's claim under 4.

7.16. These claims that relate to the reflex effect for small self-employed persons cannot be assessed collectively. In order to answer the question whether a self-employed person can rely on the protection afforded to consumers (under the Unfair Commercial Practices Act), the individual circumstances of the person concerned are important, including whether the vehicle was purchased partly for private use. SCC and SDEJ are therefore inadmissible in these claims.

** Tort claims*

7.17. SEC seeks declarations that Renault S.A. and Renault Nederland N.V. have acted unlawfully towards the duped parties and that they are jointly and severally liable for the damages suffered by duped parties as a result of their unlawful actions. The SEC's claims are under 1 and 2 under the heading "To the extent the right of action predates 1 January 2020".
SCC and SDEJ are seeking declarations of law that Renault c.s. has acted unlawfully towards the Car Owners and that Renault c.s. is jointly and severally liable for the damage suffered and to be suffered as a result. The claims of SCC under
5.i. to iv and SDEJ's claims under 5.i. to iv.

7.18. Renault c.s. has argued that these claims cannot be assessed collectively. Renault c.s. argues that the basic principle is that legal grounds cannot be applied collectively if the particular circumstances of the individual case are an inherent part of the assessment framework. According to Renault c.s., that is the case here for the following reasons. The legal grounds on which the Foundations rely in these proceedings build on the core allegation raised that the vehicles would not comply with the Emissions Regulation and the Framework Directive because of the alleged illegal manipulation device. To make a judgment on that,
in each case, vehicles must be tested against the Emissions Regulation and the Framework Directive separately for each make, model, vehicle category, engine type, emission class and emission control system software.

7.19. This argument does not stand up. This already follows from what has been considered under 7.6 to 7.12. In the District Court's opinion, the claimed declarations of law that Renault c.s. (or at least Renault S.A. and Renault Nederland N.V.) has/have acted unlawfully towards the Car Owners serve to protect similar interests, as a result of which these claims can be assessed collectively. Given what the Foundations have based these declarations of law on, it will have to be assessed in the substantive phase whether the Euro 5 and Euro 6 diesel vehicles put on the Dutch market from 1 September 2009 and subsequently purchased or leased by the Car Owners contain prohibited manipulation devices. In assessing whether unlawful action was taken, the particular circumstances on the side of the Car Owners can be abstracted from. Following a given illegality judgment in the present proceedings, special circumstances may possibly be raised in individual follow-up proceedings. The fact that differences exist between the Car Owners therefore does not detract from this. The interests of the Car Owners who claim to have been adversely affected by the imputed conduct are similar in this respect and are therefore bundleable.

7.20. Thus, in this class action, a judgment of alleged illegality can be rendered in general terms. This also applies to declarations of law that defendants are jointly and severally liable.

* ***Unfair trade practices claims***

7.21. To the extent that the Foundations have also grounded the claims in the petition about unlawful conduct by Renault et al. on unfair commercial practices and misleading advertising, Renault et al. concludes that these legal grounds do not lend themselves to collective assessment. To this end, it submits the following. In order to assess whether there is a violation of the Unfair Commercial Practices Act, it is important what specific information was provided to a car owner at the time of the purchase. This cannot be assessed collectively. Neither can it be assessed collectively whether a misleading communication or omission was made, as this also has to be answered on a vehicle-by-vehicle basis. This also applies to the question whether there is misleading advertising within the meaning of Section 6:194 of the Civil Code, Renault c.s. said.

7.22. This defence fails. This also follows from what has been considered above under 7.6. to 7.12. In the court's view, the interests of the injured parties are similar insofar as it concerns allegations of the installation of, and concealment of, a prohibited manipulation device. If and to the extent that it should be established that a prohibited manipulation device was involved in certain vehicles, what information was disclosed to a particular Car Owner at the time of purchase can be left open for discussion. Renault et al have not argued that the Car Owners were informed about the presence of a prohibited manipulation device. That omission therefore applies to all Car Owners. Indeed, as far as the information provided at the time of purchase is concerned, this will vary from case to case, so it will have to be assessed individually. The Foundations' claims, insofar as they are based on the Unfair Commercial Practices Act, are therefore also admissible, but only insofar as it concerns the concealment of the presence of a manipulation device towards all Car Owners.

** The claims for fraud*

7.23. With regard to (possible) allegations by the Foundations that the Car Dealers were guilty of fraud pursuant to Section 3:44(3) of the Dutch Civil Code, the Car Dealers submit the following. Fraud, as a legal basis, does not lend itself to a collective assessment, because the nature of the invoked standard implies that the causal link between the alleged presence of the illegal manipulation device and the concrete information that would have been provided or correctly concealed must be tested for each individual Car Owner. Moreover, in each individual case, the Car Dealers should have the opportunity to cite any special circumstances and, if necessary, provide (counter)evidence thereof, for which there is no place in a collective action.

7.24. ln general, a claim of fraud requires an assessment of individual circumstances to assess whether, in the absence of the other party's fraudulent conduct, the interested party would not have entered into the contract (on the same terms).
In this case, however, all Car Owners are concerned with the same circumstance on which the claim of fraud is based. The Car Dealers are accused of deliberately concealing the presence of a prohibited manipulation device at the time of purchase of the vehicle. At this stage, it is by no means established that the Car Dealers knew of the presence of a manipulation device, nor, therefore, that they deliberately concealed it. That will only come up on the substantive assessment. The issue now is whether this deliberate concealment - if it were to be established - carries such weight that even without additional individual circumstances, it could lead to the judgment that the Car Dealers would not have entered into their agreement (on the same terms) if it had been disregarded. This is the case. The interests of the Car Owners are therefore sufficiently similar to that extent to be assessed in a collective action.

** SCC and SDEJ's claims based on non-conformity*

7.25. These are SCC's claims under 6.i. to 6.iii and SDEJ's claims under 6.i. to 6.iii.

7.26. SCC and SDEJ based these claims on the non-conformity of the affected vehicles due to the alleged presence of a prohibited manipulation device. To this they then attach the right to partial rescission and price reduction.

Declarations of right non-conformity

7.27. ln the first place, SCC and SDEJ seek declarations of law that the affected vehicles do not possess the properties required for normal use, or at least that the affected vehicles possess non-use properties that do not comply with the agreements. The vehicles are non-conforming.

7.28. The Car Dealers have argued that the non-conformity claims do not lend themselves to collective bundling. At issue in these proceedings is not one specific type of engine, as in the Volkswagen case, but a non-exhaustive laundry list of Renault and Dacia models and engines manufactured over a 10-year period (2009-

2019) have been placed on the market. In their view, there is no homogeneous group of affected vehicles, in the sense that it is sufficiently clear at this stage of the proceedings that a single collective opinion on non-conformity can be given for atle engine types and emission control systems covered by that definition. The Car Dealers also refer in this regard to all that Renault c.s. has argued about all the differences that exist between the affected vehicles.

7.29. This argument of the Car Dealers does not stand up. This follows from what is stated at 7.6. to
7.12 considered. If the alleged allegation about the presence of a prohibited manipulation device is established, then, in the court's opinion, the positions of the Car Owners correspond on that (essential) point (see 7.22). This means that SCC is admissible in its claim under 6.i. and SDEJ is admissible in its claim under 6.i.

Statements of law on the reasonable termiin to repair or replacement

7.30. This concerns SCC's claim under 6.ii and SDEJ's claim under 6.ii. SCC and SDEJ are seeking a declaratory judgment that the reasonable period to repair or replace the (alleged) defects in the affected vehicles pursuant to Section 7:21(3) of the Civil Code has expired unused. The basis for this is that independent repair by the Car Dealers is not (technically) possible in this case and that the Car Dealers did not respond to SCC's request of 14 September 2021 to proceed with repair**.**

7.31. The Car Dealers take the view that these claims do not lend themselves to collective assessment and argue the following. The power to rescind the contract or reduce the price only arises when the seller has failed in its obligation to repair or replace the item purchased within a reasonable time at the buyer's request. SCC has referred to its letter to Car Dealers dated 14 September 2021, in which it allegedly requested repair and replacement. However, that letter can only have effect under Section 7:21(3) of the Civil Code, at most, for private parties A and B (i) with whom SCC already had a participation agreement at that time and
(ii) who owned the affected vehicle at the time. However, this requires individual assessment. It is not possible to ask for repair or replacement on behalf of an undefined and unknown constituency without specifying exactly which vehicles would be affected and who is the party entitled to those vehicles at the time. Indeed, that would have the undesirable consequence that the reasonable period of time under Section 7:21(3) of the Civil Code would already start running, while the relevant Car Dealer does not know towards whom and in respect of which affected vehicles he is supposed to comply with his obligation under Section 7:21(1) of the Civil Code.
SDEJ does not explain at all how the requirement would have been met. In any case, its letter of 8 November 2021 says nothing about it.

7.32. This argument of the Car Dealers does not succeed. SCC and SDEJ are acting on behalf of all owners and lessees of affected vehicles. The substantive assessment will have to assess whether the letters addressed to the Car Dealers set a reasonable time limit within the meaning of Section 7:21(3) of the Civil Code. If that is the case, that deadline should be deemed to have been set on behalf of each of the interested parties vis-à-vis the Car Dealer where that interested party purchased the affected vehicle. Since the letter was addressed to all Car Dealers and all affected vehicles were purchased from one of the Car Dealers

no individual assessment is required, so the said claims can be heard and decided in collective action.

Dissolution

7.33. This concerns SCC's claim under 8 and SDEJ's claim under 8. They claim that the court should order the partial termination of the purchase agreements between the Car Dealers and Car Owners.

7.34. The Car Dealers take the view that these claims do not lend themselves to assessment and adjudication in the present proceedings. After all, a judgment under Article 3:305a (old) of the Civil Code can only acquire res judicata between SCC, SDEJ on the one hand and the Car Dealers on the other. It cannot bind the Car Dealers because the Car Dealers are not parties to the proceedings.

7.35. This defence succeeds. There is a difference between a claim for a declaratory judgment to the effect that Car Dealers is entitled to partial rescission and a claim *to declare* rescission as claimed here. With Car Dealers, the court considers that the claims to *declare* dissolution indeed do not lend themselves to assessment and adjudication in this collective action within the meaning of Article 3:305a (old) of the Civil Code, because Car Owners are not parties to these proceedings. For this reason, SCC is inadmissible in its claim under 8 and SDEJ is likewise inadmissible in its claim under 8.

Reduction of the purchase price

7.36. This concerns SCC's claim under 6.iii. and SDEJ's claim under 6.iii. They each seek a declaratory judgment that private and corporate parties A and B are entitled to reduce the purchase price on partial rescission.

7.37. These claims also lend themselves to a class action. Previously, the court ruled that the claimed declarations of law regarding non-conformity are similar. The claimed declarations of law regarding partial dissolution are an extension of this, because dissolution is one of the remedies in the event of non-conformity (see Article 7:22 paragraph 1 under a of the Civil Code). On the basis of Article 7:22(l)(a) of the Civil Code, it must be assessed whether an affected vehicle using a prohibited manipulation device complies with the agreement. Whether a vehicle in question containing a prohibited manipulation device constitutes a deviation from what was agreed, justifying the consequences of dissolution, can, it seems, be answered in general terms. After all, although all circumstances of the case must be taken into account when weighing up the pros and cons, there may be such a significant deviation that it justifies termination in any case, whatever the individual circumstances of the case. It cannot be ruled out beforehand that in this case the default requirement has been met on a basis which, given the nature of the alleged defect in the performance, applies to all Car Owners.
In the event that the Foundations' allegations are justified, the question whether a purchase price reduction is warranted in a partial termination based on the alleged non-conformity can be answered in general terms. Moreover, it cannot be ruled out that, in this case, the extent of a purchase price reduction due to the alleged presence of a manipulation device (which circumstance would apply to all Car Owners) can also be answered in general terms. In that case, it may be

abstracted from individual circumstances. SCC and SDEJ are therefore admissible in their claims under 6.iii.
In line with this, SCC and SDEJ are also admissible in their claims under 6.vi. which relate to the dueness of statutory interest on a price reduction. Indeed, the question of whether statutory interest is due can also be answered in general terms.

7.38. In all that the Car Dealers have otherwise submitted, the court sees no reason to declare SCC and SDEJ inadmissible. The Car Dealers have argued that there are many sets of general terms and conditions applicable to the contracts, which contain provisions on warranties, exonerations and periods within which complaints must be made on pain of forfeiture of any claim. And in any other case, Articles 6:89 of the Civil Code and/or 7:23 of the Civil Code apply, according to the Car Dealers. In the court's view, none of this precludes the bundling of the claims. During the substantive hearing of the case, an opinion will first be given on whether the vehicles contain prohibited manipulation devices. These issues will be addressed later. That these cannot be adjudicated in one proceeding without looking at the particular circumstances per agreement is not a foregone conclusion. This also applies to any reliance by the Car Dealers on prescription and to the circumstance that the statutory retention period of the documents would have expired.

7.39. The Car Dealers also pointed out that in the collective proceedings concerning Volkswagen, the court ruled that reliance on the duty to complain would be unacceptable by the standards of reasonableness and fairness (ex Section 6:248(2) of the Civil Code). According to them, however, it is settled case-law of the Supreme Court that a reliance on the derogatory effect of reasonableness and fairness should be assessed on the basis of all the circumstances of the case. This includes the circumstances that differ per individual Car Owner (and Car Dealer) and therefore do not lend themselves to a collective assessment.
This defence does not succeed. ln a collective action, it is very well possible that the situations of injured parties are so similar that the same relevant circumstances of the case arise in each of them, so that in each of those cases reliance on the duty to complain could be contrary to reasonableness and fairness, without having to consider the individual circumstances. On the merits, it will have to be assessed whether that is so in this case.

* *SCC and SDEJ's claims based on error*

7.40. These are SCC's claimed declarations of law at 6 iv. and v. and SDEJ's claimed declarations of law at 6 iv. and v. They seek declarations of law that the defects in the affected vehicles are so essential that right-thinking purchasers would not have entered into the contracts (on the same terms) if they had been properly presented. They further seek a declaratory judgment that private and corporate parties A and B are entitled to reduce the amounts paid by them for the affected vehicles under the contracts on the grounds of partial annulment by an amount to be determined by the court.

7.41. The Car Dealers took the position that a collective assessment of the reliance on error is not possible. The question of whether a contract was concluded under the influence of error and whether the contract would not have been concluded (on the same) terms in the event of a correct presentation of the facts, lends itself to its

nature not for a collective assessment and requires an enquiry tailored to the individual contractor. The assessment of whether a person has erred in entering into a contract involves a representation to an individual person. According to Car Dealers, it depends on numerous individual factors whether the presence of an alleged illegal manipulation device means that Car Owners would not have bought the affected vehicles or would not have bought them on the same terms. This cannot be answered in general terms. Not all buyers place the same value on a car's emission values relative to its other features. Moreover, in the relevant period from 2009 to 2019, the importance attached to climate and climate change has also changed significantly. It cannot be said that any buyer in the knowledge of the defect would not have been willing to enter into the contract on the same terms. Nor can it be said that any price reduction should be the same in all cases. After all, the price a buyer is willing to pay for a car depends on many factors. The estimate made by the court in the Volkswagen case cannot. Price reduction also depends on the circumstances of the case and does not lend itself to a collective determination, Car Dealers said.

7.42. The court considered as follows. In general, a claim of error requires an assessment of individual circumstances on the part of the interested party and their influence on the formation of the will. In this case, however, all Car Owners are concerned with exactly the same circumstance, namely the ignorance of the alleged presence of a prohibited manipulation device when purchasing the vehicle and the consequent failure to comply with the applicable Dutch and European laws and regulations. It cannot be ruled out beforehand that this circumstance carries so much weight that it could lead to the granting of the requested declaratory judgment even without additional individual circumstances. The same applies to the Car Owners' unfamiliarity with the (possibly) less environmentally friendly performance of the vehicles. The interests of the Car Owners are therefore sufficiently similar to that extent to be assessed in a collective action. Whether the presence of a prohibited manipulation device and/or the less environmentally friendly performance of a vehicle are such essential characteristics that no right-thinking purchaser would buy the vehicle in question under the same conditions upon knowledge thereof will be assessed at the substantive stage of the proceedings.
Whether a timely complaint was made could possibly be answered in general terms if it were established that the alleged defect (the presence of a prohibited manipulation device) could not reasonably have been discovered by an individual buyer.

7.43. In conclusion, SCC and SDEJ's claims under 6. iv. are bundleable. SCC and SDEJ have also taken the view that the Car Owners are entitled to a price reduction as a result of the alleged error (on grounds of partial annulment). This claim is also bundleable, so that SCC and SDEJ are also admissible in their claims under 6.v. When it comes to the extent of the price reduction following a successful reliance on partial annulment, the same applies as considered in 7.37.

* *The claims for partial annulment of the Agreements*

7.44. This concerns SCC's claim under 9 and SDEJ's claim under 9.

7.45. SCC and SDEJ are inadmissible in these claims against the Car Owners. These claims do not lend themselves to assessment and adjudication in this collective action within the meaning of Section 3:305a (old) of the Civil Code, because the Car Owners are not parties to these proceedings. See what has been considered under 7.35.

*And on*

* *Are certain groups identified by the Foundations excluded from collective action?*

in all matters

7.46. Renault et al argued in all cases that certain groups identified by the Foundations were outside the collective actions.
First of all, these are the Euro 6c, Euro 6d-TEMP and Euro 6d vehicles. According to Renault c.s., the Foundations use definitions which show that they are acting on behalf of Car Owners of Euro 5 and Euro 6 diesel vehicles. Because the Euro 6 standard consists of several variants, the Foundations' general definition of Euro 6 vehicles implies that all revisions would also fall within the scope of this collective action. This is not so. Only the Euro 5 and Euro 6b standards are relevant to these proceedings, because those vehicles had to pass the *New European Driving Cycle test* for the purposes of European Vehicle or Engine Type Approval. Thus increasingly Renault et al.

7.47. The Foundations explained that there should be no limitation to only vehicles that had to pass the *New European Driving* CJfcfe test. Rather than violations of the Test Regulation (and its successor, Regulation EU 2017/1151), they base their claims on violations of the Emissions Regulation. Articles 4 and 5 of the Emissions Regulation require vehicles to comply with all applicable legal requirements including emission limits under normal conditions of use and not be fitted with prohibited defeat devices. This is independent of how the affected vehicles were tested (NEDC, WLTP or RDE). The Foundations argue that all affected vehicles do not comply with this.

7.48. In view of this explanation given by the Foundations, the court now sees no reason to limit the group of vehicles in the manner envisaged by Renault et al.

in the S E C case

7.49. Renault et al argued in the SEC case that categories of all kinds of professional parties, such as rental companies and leasing companies, were outside the scope of the proceedings. SEC has argued without substantiation that it also represents the interests of professional parties with a non-exhaustive specification of categories that would be covered. Such a group of interested parties with different legal relationships - not always being car owners or users - cannot be subsumed under the buyers and lessees of lousy diesels claimed by SEC for whom SEC represents.
The categories of Car Owners used by SEC, whose interests SEC claims to represent in these proceedings, are not consistent with the scope of the proceedings and definitions used by SEC. Thus Renault et al.

7.50. The court understands the SEC's position to mean that it is standing up for buyers and lessees of shoddy diesels. Under which legal relationship they became so is irrelevant. There is no inconsistency therein.

*The conclusion on the similarity requirement*

7.51. Within the limits drawn above, the similarity requirement has been met in all cases.
For clarity, what has been decided on each of the various claims is shown below, omitting claims that would be relevant only if the WAMCA applied. Each of the claims for interest and costs is also admissible; these have also been omitted from the table.

| Foundation | Claim | Decision | Point of law |
|---|---|---|---|
| | | | |
| SEC' | 1 | Admissible | 7.20 |
| | 2 | Partly admissible | 7.20, 6.2 |
| | | | |
| SCC and SDEJ | 4 | Inadmissible | 7.16 |
| | 5.i. to iv. | Admissible | 7.20 |
| | 6.i | Admissible | 7.29 |
| | 6.ii | Admissible | 7.32 |
| | 6.iii | Admissible | 7.37 |
| | 6.iv and 6.v | Admissible | 7.43 |
| | 6.vi | Admissible | 7.37 |
| | 7 | Inadmissible | 6.1 |
| | 8 | Inadmissible | 7.35 |
| | 9 | Inadmissible | 7.45 |
| | 10 | Inadmissible | 6.1 |

## 8. Inadmissibility - guarantee requirement

in all matters

8.1. The court stated the following. Article 3:305a paragraph 2 (old) of the Dutch Civil Code stipulates, among other things, that an interest organisation is inadmissible if the legal action does not sufficiently safeguard the interests of the persons for whose benefit the legal action was instituted. This so-called safeguard requirement aims in particular to bar incompetent organisations or organisations with impure motives. The requirement provides the court with a handle to critically assess the admissibility in a collective action in case of doubt about the motives for bringing the action.

8.2. The question of whether the collective action adequately safeguards the interests of the persons concerned must be assessed on the basis of the facts and circumstances of the specific case. That test must take place on the basis of the situation as it is now ('ex nunc'). In doing so, according to the legislative history, two central questions must be answered in the event of a dispute:

' This refers to the claims listed under the heading *'To the extent the right of action predates 1 January 2020'.*

1. to what extent those affected will ultimately benefit from the collective action if the claim is upheld; and
2. To what extent can the claimant organisation be trusted to have sufficient knowledge and skills to conduct the proceedings.

Viewpoints that may play a role here in a general sense include[6] :

a. What other work has the organisation done to advocate for the interests of stakeholders and has the organisation actually been able to achieve objectives in the past and,
b. if it is an ad hoc organisation, it has been set up by a pre-existing organisation that has successfully represented the interests of those affected in the past,
c. how many injured parties are affiliated with the organisation and to what extent they support the collective action, and
d. Whether the organisation complies with the principles set out in the Claims Code.

8.3. The Claim Code is a document drafted by the Claims Code Committee in 2011 and revised and supplemented in 2019, which elaborates principles that organisations acting, like the Foundations, under article 3:305a (old) of the Dutch Civil Code must comply with. The Claim Code is a form of self-regulation by concerned market parties, intended to prevent proliferation of legal entities acting pursuant to Article 3:305a (old) of the Dutch Civil Code and to ensure that the interests of victims are safeguarded and not the (commercial) interests of the founders of these legal entities. Compliance with the principles of the Claim Code is not a legal condition for admissibility, but since 1 July 2013, the Claim Code has an indirect anchorage in the law, via Article 3:305a(2), last sentence, (old) Civil Code. In answering the question whether and to what extent it may be relied upon that the claimant organisation has sufficient knowledge and skills to represent the interests of the persons for whom it claims to act, an indication may be that the organisation complies with the 'principles' contained in the Claim Code. Compliance or non-compliance with the principles of the Claim Code is therefore an important viewpoint when assessing whether the interests of aggrieved persons are sufficiently safeguarded. Deviation from the principles and elaborations of the Claim Code may be justified under special circumstances.

8.4. The defendants take the view that the Foundations lack the necessary safeguards to exercise the collective action right. The benefit criterion and the knowledge criterion are not met.

*The benefit criterion*

8.5. According to the defendants, the benefit criterion is not met. In this regard, they refer, inter alia, to the case *Stichting Elco Foundation/Rabobank c.s.,* in which it was ruled that the individual interested parties in that case did not benefit from the granting of the claimed declarations of law. This was ruled in that case, because on the basis of an awarded declaratory judgment in the collective action, it was not easy to claim damages in follow-up proceedings. Incidentally, it has since been ruled otherwise on appeal.[7]
Unlike in that case, the court held in the present case that individual interested parties in the present proceedings based on the

[6] Parliamentary Papers II 2011-2012, 33 126, no 3 (MoT), p.12-13.
[7] Amsterdam Court of Appeal, 5 March 2024, ECLI:NL:GHAMS:2024:451.

granted declarations of law, to the extent that they are granted, do have a straightforward claim for damages in individual follow-up proceedings. If a prohibited manipulation device has been established in collective proceedings, this actually facilitates the case of individual consumers in individual follow-up proceedings. To that extent, they would therefore benefit from having the claim granted.

8.6. Nor does the fact that the declarations of law sought by the Foundations would be too generally worded, which the defendants have further argued, alter the foregoing. If a declaratory judgment is granted that Renault c.s. acted unlawfully and/or that the vehicles sold by the Car Dealers were non-compliant, then it should follow from the considerations in the judgment that this relates to the presence of an illegal manipulation device. Given what the Foundations have based their claims on, it is clear that the statements sought relate to this. It is hard to see why the Foundations' constituencies would not benefit from such granted declarations of law.

8.7. Defendants argue that the Car Owners do not benefit from three identical class actions against Renault et al and two identical actions against the Car Dealers. That multiple (possibly identical) proceedings are being brought against Renault et al and against the Car Dealers by different foundations does not mean that the Car Owners will not benefit from each of these class actions if the claims are eventually upheld.

8.8. The Car Dealers put forward a number of further arguments on the basis of which they argue that the benefit criterion is not met. The court discusses them below.

8.9. First, the Car Dealers pointed out that involving more than 70 Renault dealers and authorised repairers in these proceedings does not serve any reasonable purpose and does not lead to (more) effective and efficient legal protection for the allegedly aggrieved Car Owners. These proceedings hit these entrepreneurs' interests unreasonably hard, especially the sole traders and SMEs in this group. There is no added value in including them in these proceedings alongside Renault et al. This should lead to SCC and SDEJ being declared inadmissible in the claims against the Car Dealers, it said. The court considered as follows. The fact that many, more than 70, car dealers and repairers have been sued, and that these include sole traders and SMEs, does not in itself give cause to declare SCC and SDEJ inadmissible in the claims against the Car Dealers (see also 8.20 below). As the Foundations have rightly argued, they are free to sue both car manufacturers and car dealers on behalf of the Car Owners (see also 8.16 below).

8.10. Second, the Car Dealers pointed out that SCC and SDEJ are acting on behalf of a group that does not exist. New vehicles are basically sold only through official Renault dealers. Thus, the category of "Parties C" who bought a new car through parties other than an official Renault dealer (being one of the sued Car Dealers) does not exist. In addition, there are no Car Dealers that lease vehicles themselves, that is always through leasing companies that are not parties to these proceedings. Thus, the category of parties A and B who have leased an affected vehicle from a Car Dealer does not exist either. SCC and SDEJ thus pretend to stand up for groups of allegedly aggrieved Car Owners who are not there.

The court ruled as follows. The Car Dealers explained at the hearing that only the Car Dealers sell new vehicles. SCC and SDEJ countered that non-Car Dealers can also order and sell new vehicles. The court cannot now assess which party is right on this point, but that does not matter for answering the admissibility question. This is because this category of parties did not buy its car from any of the Car Dealers and therefore cannot have a claim against any of the Car Dealers. This therefore leads to SCC and SDEJ being inadmissible in their claims brought against the Car Dealers for parties C who bought a new car through parties other than one of the Car Dealers.
To the extent that SCC and SDEJ brought claims against the Car Dealers for Parties A and B who leased an affected vehicle from a Car Dealer, it is undisputed that this group does not exist. SCC and SDEJ are therefore held inadmissible in these claims.

8.11. Third, the Car Dealers pointed out the following. According to the Car Dealers, SCC and SDEJ have wrongly failed to disclose how many of those registered with them have purchased a vehicle from one of the Car Dealers. No insight has been provided as to (a) how many of the Car Owners who registered with it as participants belong to the group of parties A and B who bought their vehicle from one of the Car Dealers, (b) from which Car Dealers they bought their vehicle, or
(c) how many different affected vehicles are involved. On this state of affairs, it cannot be established that the group that could theoretically have an interest in the claims against the Car Dealers is of such a size that it is justified, from the point of view of efficiency, to include more than 70 Dealers in the present collective action in addition to the car manufacturers. According to the Car Dealers, it is relevant how many participants may benefit from a claim against a Car Dealer, because otherwise it cannot be ruled out that none of the participants bought a car from one of the Car Dealers or only a very small number. Or that the constituency consists mainly of parties C, who, as mentioned above, by definition do not benefit from the claims against the Car Dealers. In that case, a collective action is not efficient and effective and it cannot be established that the total group of car owners for whom SCC and SDEJ claim to stand up actually benefits from the collective claims against the Car Dealers.

8.12. The court considered as follows. It is not relevant to clarify which affected vehicles were sold at which Car Dealers It is relevant *whether* affected vehicles were sold at any of the Car Dealers. Given the large number of vehicles involved, it is sufficiently obvious that this is the case. Moreover, none of the Car Dealers has claimed that it has not sold any affected vehicles.

8.13. In addition, the Car Dealers have argued that some of the constituencies whose interests the Foundations represent do not benefit from the claims brought against the Car Dealers. These are parties C. According to the definition lists of SCC and SDEJ, that group consists of parties who bought or leased a new or second-hand affected vehicle through a party other than a Car Dealers. These parties have not bought their vehicle from any of the Car Dealers and hence cannot have a claim against any of the Car Dealers.

8.14. The court finds that the Car Dealers are right on this point. The private and business parties C did not enter into any agreements with any of the Car Dealers and therefore have no interest in the claims brought by SCC and SDEJ against the Car Dealers. This leads to SCC and SDEJ being inadmissible in

their claims against the Car Dealers in respect of private and business parties C.

8.15. The Car Dealers have also taken the position that a collective action against the Car Dealers is no longer necessary in view of the case-law of the European Court of Justice (hereinafter: EUCJ). Indeed, the Car Dealers argue that since the ECJ's ruling of 21 March 2023, it is clear that car owners can assert a direct claim against the car manufacturer in case of the presence of a manipulation device prohibited under the Emissions Regulation, because the car manufacturer has acted unlawfully towards car owners in that case.

8.16. The court ruled as follows. The fact that the EU's ECJ has ruled that a car owner can bring a direct claim against the car manufacturer does not mean that a car owner can no longer bring a claim against a Car Dealer.

8.17. **Further,** according to the Car Dealers, a collective action against the Car Dealers is not efficient because the constituency can only go to a Car Dealer with whom it has an agreement. There is no joint and several liability of Autodealers. This leads to fragmentation, which does not contribute to a collective solution, e.g. in the form of a collective settlement.

8.18. This argument also fails. In a collective action against the Car Dealers, general rulings can be made on the rights of interested parties against the Car Dealers. This is more efficient and effective than having each interested party litigate about it individually. The fact that each of the individual interested parties for each vehicle has a claim only against the Car Dealer who sold him the car does not take away the fact that in a separate proceeding against that Car Dealer he can rely on the decision taken in a collective action on what the interested parties can claim against the Car Dealers.

8.19. Also, according to the Car Dealers, a collective action against the Car Dealers is not efficient and effective, because the Car Dealers, in turn, will want to recover the amounts owed to the Car Owners from Renault et al in the event of a court judgment, which may require further proceedings. Moreover, it is highly questionable whether the Car Dealers are able to pre-finance such amounts. This may also lead to financial consequences for the Car Owners.

8.20. The fact that the Autodealers wish to recover from Renault the amount they might be ordered to pay, and that they would have to pre-finance the damages awarded in the process, does not diminish the efficiency and effectiveness of the collective action on behalf of the *interested parties.* Indeed, the same could be the case if all interested parties litigated individually against the Car Dealers. Accordingly, the court sees no reason in the foregoing to conclude that the interested parties would not benefit from granting the claim.

8.21. Car dealers have also pointed to the social burden of class action lawsuits; they point out that claims foundations involve dozens, sometimes more than 100, car dealers and repair shops in litigation and, as a result, insurance premiums rise.

8.22. That circumstance does not in itself make the aggrieved parties not benefit from a collective action. It cannot lead to inadmissibility of SCC or SDEJ.

8.23. The Car Dealers have argued that the loss suffered by Car Owners need only be compensated once. If the collective claims against both the manufacturer and the Car Dealers are granted, the settlement will have to check whether a Car Owner who reports to his Car Dealer with a claim has not also filed a claim with Renault et al. as manufacturer (and
vice versa). This is unnecessarily time-consuming and complex. Thus, efficient and effective settlement is not served by the possibility of claiming through 'two counters'.

8.24. The court considered as follows. First and foremost, there is no claim for damages in these proceedings. To the extent that Car Owners would claim damages individually after these collective proceedings, there is indeed a possibility that they will claim both the Car Dealers and Renault et al. However, the court sees no reason in this possible complication in an ultimate settlement of damages to declare the Foundations inadmissible now in their collective claims against the Car Dealers. It is up to Renault et al. and the Car Dealers to reach agreements to prevent injured parties from receiving compensation twice.

8.25. The Car Dealers have also argued that SCC and SDEJ have not explained in what respect the Car Dealers differ from other sellers of particularly second-hand affected **vehicles.** Allocation **of** claims against the Car Dealers has a knock-on effect on the rest of the chain of sales. It is impossible to see why the Car Dealers could and other (certainly professional) sellers - including Car Owners - could not
be sued on the grounds of non-conformity or error. This could lead to a proliferation of follow-up proceedings between buyers and sellers of used cars, **whereas** this could be avoided by directing the collective claims only against Renault c.s. as manufacturer. SCC and SDEJ also misunderstand in this regard that Car Dealers will often be buyers of (used) cars and Car Owners will often be sellers.

8.26. The court considered as follows. The claim foundations have the choice of involving both their constituents' contractual counterparty (the Car Dealers) and the car manufacturer in litigation. The arguments raised above do not make the Car Owners no longer benefit from granting the claim. Involving both the contractual counterparty and the car manufacturers increases the likelihood of effective compensation for damages for this group.

8.27. That some of the Car Owners may also have sold an affected vehicle themselves does not lead to a different judgement. After all, it can be assumed of the Car Owners that if the vehicle sold contains a prohibited manipulation device, they were not aware of it and a resulting failure to perform cannot be imputed to them either according to the common law. Whether the Car Owners have a claim due to the presence of a prohibited manipulation device against professional sellers other than the Car Dealers can be left open as they are not involved in these proceedings.

8.28. Then the Car Dealers pointed out the following. There is a risk for individual Car Owners in follow-on proceedings against an individual Car Dealer that they may run into contractual defences, such as a claim for a

exoneration clause or reliance on a duty to complain. This does not arise in proceedings against the car manufacturer.

8.29. The court sees no reason in this to rule that individual car owners do not benefit from the claim against the Car Dealers. For example, as already held above, Car Owners benefit from a declaratory judgment that the vehicles are non-conforming. The circumstance that a contractual defence may be raised by the Car Dealers in individual follow-up proceedings does not mean that Car Owners do not benefit from the claimed declaratory judgment. After all, one part, e.g. the non-conformity of a vehicle, is then already established. A first threshold has then already been removed.

*The knowledge criterion*

**8.30.** This moved the court to assess the knowledge criterion. The defendants have argued that the Foundations do not meet the knowledge criterion. The court will assess this using the points of view listed under 8.2, noting that point of view c has already been addressed in the judgment of l February 2023.

*Viewpoints a and b (track record and ad hoc organisation)*

8.31. The Foundations have - in summary - argued that they have sufficient experience and expertise to engage in advocacy.

8.32. The defendants have argued that, in connection with this class action, the Foundations *have* no *track record* and that the Foundations are ad hoc *claim vehicles*.

8.33. The court finds that testing against these viewpoints does not prevent any of the Foundations from meeting the guarantee requirement. The circumstance that the Foundations were set up specifically to carry out collective actions does not mean that the Foundations do not meet the guarantee requirement. After all, it is allowed to set up organisations with the (main) purpose of conducting collective action. A *track record* is recommended but not a prerequisite for starting a collective action. Both SEC and SCC and SDEJ have been conducting multiple class actions for some time. So they do have experience in conducting this kind of proceedings. SCC has also already conducted proceedings that resulted in a final judgment (against Volkswagen, among others).'

8.34. The defendants have further argued that there is no evidence that the Foundations acted as mouthpieces in the media in the context of this collective action. Here, acting as a mouthpiece in the media is a circumstance mentioned in the Explanatory Memorandum as a possible indication that the guarantee requirement has been met. Of course, the reverse does not follow from this, namely that if this is not the case, the guarantee requirement has not been met. Admissibility does not require that all points of view formulated by the legislator be satisfied. Even if certain viewpoints are deviated from, the interest representation by the interest organisation can be sufficiently guaranteed. To the extent that one or more of the

' Amsterdam District Court, 14 July 2021, ECLI:NL:RBAMS:2021:3617.

**Foundations currently does not yet** act as a mouthpiece iñ the media **therefore does not weigh that heavily for the court.**

*Viewpoint d (the principles of the claim code)*

8.35. Defendants claim that the Foundations do not comply with principles II, III, IV, V and VII of the 2019 Code of Claims in respect of their governance.

8.36. Principle II concerns the representation of collective interests on a non-profit basis and reads as follows: "(...) *The statutory objective, actual activity and governance of the interest organisation show that the interest organisation and the (legal) persons directly or indirectly associated with the interest organisation have no profit motive in carrying out their activities."*

8.37. Principle **III** concerns external funding and reads as follows: "*The interest organisation may enter into an agreement with a sound external financier for the purpose of financing its statutory activities. The board shall ensure that individual board members and members of the supervisory board, as well as the lawyer or other service providers engaged by the interest organisation, are independent and autonomous from the external financier and the (legal) persons directly or indirectly associated with it, as well as that the external financier and the (legal) persons directly or indirectly associated with it are independent from the other party to the collective action. The agreement shall provide for arrangements to ensure the independence and autonomy referred to in the previous sentence. The board shall ensure that the financing conditions (including the scope and system of the remuneration to be agreed upon) do not reasonably conflict with the collective interest of the (legal) persons for whose benefit the interest organisation acts pursuant to its statutory objective."*

8.38. Principle IV concerns independence and avoidance of conflict of interest. This principle reads as follows: "*The board is santined in such a way that the members can operate independently and critically in relation to each other, the supervisory board, any external funder and stakeholders in' the interest group."*

8.39. Principle V concerns the role, composition and functioning of the board and reads as follows: "*The board has a balanced composition and is charged with the management of the interest group, which means, among other things, that it is responsible for determining and implementing the (financial) policy and the strategy aimed at achieving the statutory objective. The board of the foundation is accountable for this to the supervisory board at least once a year. The board of the association is accountable for this at least once a year to the general meeting of members."*

8.40. Principle VII concerns the supervisory board and reads as follows: "*The foundation has a supervisory board consisting "ir at least three natural persons, no more than one of whom is appointed on the recommendation of any funder. The task of the Supervisory Board is to supervise the policy and strategy of the Executive Board and the general course of affairs of the foundation. This also includes financial supervision and exercising those duties and powers assigned to the Supervisory Board in this Code and the foundation's Articles of Association. The Supervisory Board provides the Board with solicited and unsolicited advice on all important issues and focuses on the*

*performance of its duties on the interests defined in the foundation's statutory objective."*

8.41. The Foundations brought their funding agreements with the litigation financier into play. The available budgets - with the agreement of Renault et al - were not made available to Renault et al but only to the court.
The court will assess below whether the Foundations' governance complies with the law and the Claims Code. This will include assessing whether the Foundations are autonomous and independent from the litigation funder. The court will also assess whether the Foundations' budgets are sufficient for normal proceedings.

* *Defendants' objections regarding SEC governance*

8.42. Defendants raised several objections regarding SEC governance.

8.43. Defendants have pointed to the position of Steve Berman (hereinafter Berman). His position, according to defendants, violates principles III, IV and VII of the Claims Code.

8.44. In the court's view, Berman's position is not incompatible with the requirements of sound governance. Berman is a member of SEC's supervisory board and also has an influential position with SEC's financier as a director and shareholder of Hagens Berman Sobol Shapiro LLP (and its affiliates). Berman also has a personal interest in the outcome of these proceedings, as he shares in the profits through Hagens Berman if these proceedings result in a financially positive outcome for SEC supporters. But that does not mean that SEC's governance is inadequate. Indeed, the Code of Claims allows only with regard to the supervisory board that one of its members, other than the chairman, is appointed upon nomination by the financier (see principle VII, elaboration 3, of the Code of Claims). Thereby, the Claim Code allows a limited form of participation on the part of the funder. The parties disagree on the question whether the Claim Code leaves room for the appointment of (someone from) the funder itself to the supervisory board (instead of the appointment of a third party nominated by the funder to the supervisory board). The court does not see a substantial difference here, as the degree of control from the financier is the same, as it may be assumed that a third party nominated by the financier also speaks on behalf of the financier. Of decisive or unacceptable
influence or control of the funder does not exist in this case with Berman's membership of the supervisory board. In fact, in addition to Berman, the supervisory board consists of four more people, all of whom are independent of the funder. Nor is Berman the chairman of the supervisory board. Furthermore, SEC's board is in charge of running the foundation. The task of the supervisory board is limited to supervising the board's policy and strategy. SEC's (current) directors are independent of the funder.

8.45. The defendants' objections regarding other natural persons, such as Michael Gallagher, Sergei Purewal and George Bisnought, since they are all no longer part of the SEC's board, can be left moot. After all, the court is reviewing ex nunc.

8.46. The defendants further take the position that SEC does not operate independently of its litigation financier Hagens Berman. In support, the defendants referred, inter alia, to Article 6.3 of the funding agreement with Hagens Berman. Article 6.3 provides that *"The Agreement can be terminated by HB if there has been, in the reasonable discretion of the lawyers prosecuting the case for SEC, a Material Adverse Decline."* The definition list defines this term and there it says that it refers to a situation *"such that HB does not consider it advisable to continue to invest in the proceedings (...)"*.

8.47. In the court's opinion, this provision is contrary to Article 3:305a (old) of the Civil Code and the Claims Code. Under these provisions, the litigation financier has the right to stop funding if the foundation's lawyer deems it appropriate. This undermines the claim foundation's freedom to determine its policy independently of the litigation funder.
The court will give SEC an opportunity to amend this provision. Contrary to the defendants' argument, the court considers that SEC should be given a remedy. This part of the collective action law is still under development and the question of whether this provision is permissible has not been addressed before.

8.48. Article 6.6 of the financing agreement with Hagens Berman, which stipulates that upon termination of the financing agreement, Hagens Berman is entitled to repay the total amount it invested, does not, in the court's opinion, violate Article 3:305a (old) of the Civil Code and the Claims Code. The invested amount is primarily a loan, the parties agreed. This does not prevent SEC from operating independently and autonomously from Hagens Berman.

8.49. Clause 6.2 and clause 6.3 of the funding agreement do not violate Principle III, elaboration 6 of the Claims Code, contrary to defendants' contention. Pursuant to elaboration 6, in the event of early termination of the funding agreement, it must be ensured that a notice period is given such that the interest group has a *reasonable* opportunity to attract alternative funding. This requirement is met, in the aforementioned provisions dealing with early termination. That it may be *difficult* to attract alternative funding does not make it different.

8.50. Clause 9.1 of the financing agreement, which provides for a right of information for Hagens Berman, also does not violate the Claims Code. The information right does not affect SEC's autonomy and independence.
In view of what has been considered under 8.44, the circumstance that Berman signed on behalf of Hagens Berman does not illustrate that Berman's position violates the Claim Code.

8.51. The defendants further took the position that clause 10.2 of the financing agreement was inadmissible.

8.52. The court follows the defendants herein. ln article 10.2 of the financing agreement it is stipulated that in case of conflict between the Claims Code and/or the applicable collective action regime on the one hand and the financing agreement on the other hand, the provisions of the financing agreement shall prevail. Such a provision in which the financing agreement prevails over the law is manifestly inadmissible. The court will give SEC the opportunity to amend this provision.

8.53. Regarding the profit motive allegedly existing at SEC and its affiliated entities, which, according to defendants, would violate Principle II of the Code of Claims, the court considers the following. No profit motive has been shown to exist at SEC. SEC is a foundation and has no profit motive. The *success fee* paid by the participants accrues to the funder. That the funder has a profit motive and can make money from the collective action is permissible under the Claims Code.

8.54. The defendants' objections about the lack of transparency about the reimbursement of costs to SEC, about the litigation financier and related (legal) persons also do not cut it. SEC has explained how the funding actually took place. SEC's website clearly states that SEC is funded by Hagens Berman. It also states there that the *success fee* of up to 25% is used to meet the costs of the proceedings and compensate the funder for the investment in the proceedings and the risk it has taken. This is also stated in SEC's terms of participation.

* *Defendants' objections regarding the governance of SCC*

8.55. With regard to SCC's governance, the defendants argued that it violated Principles II, III, IV, V and VH of the Code of Claims.

8.56. Defendants have raised objections against Labaton Keller Sucharow LLP. Those objections can remain moot because Labaton is not the funder. It is clear who the funder of **SCC** is. That is stated in the summons. That is Fortress Investment Group LLC. It was also explained at the hearing by SCC that the financing agreement was concluded with an operating entity under Fortress, CF ND Car Ltd, based in the Cayman Islands. This is stated in the financing agreement, in the publicly available annual reports of 2021 and 2022 and also on SCC's website. This also makes it sufficiently clear how the financing took place.
The defendants' argument that it cannot assess the governance of SCC does not stand up. It is clear who the members are on **SCC'**s board of directors and supervisory board**. There** are also no concrete evidence that there is a violation of Principles IV, V and YII.

8.57. SCC further explained at the hearing that it actively informs its supporters about the funding arrangements with Fortress. It does so through its website, through its annual report and through the participation agreements entered into with the Car Owners, among others. This is sufficient. There is no lack of transparency.
Regarding the existence of a profit motive, the court considers the following. The court sees no profit motive at SCC. That SCC's financier has a profit motive is permissible under the Claims Code.

8.58. The defendants took the position that articles 5.1land 13.2c of SCC's financing agreement with Fortress violated the guarantee requirement.

8.59. . Clause 5.11 provides that SCC (and AKD) may not raise funding from a third party during the term of the funding agreement (without Fortress' consent). In the court's view, this provision is permissible because it does not affect SCC's control over the litigation and settlement strategy (or SCC's independence) and the budget already available is sufficient (see number 8.71). This also applies to clause 13.2 c of the funding agreement, which is

included that Fortress does not have to pay the costs associated with a new *"cause of action"* added to the proceedings by SCC. Again, this article does not affect SCC's independence from Fortress. The parties may enter into such agreements.

8.60. This also applies to the provisions in the fioinancing agreement that deal with the distribution of the proceeds according to a *'waterfall'*. Defendants make the point that several parties (SDEJ, Fortress, CSS and AKD) are entitled to a share of the proceeds (that is, the fee of 25% of any damages to be obtained). These parties all have a financial interest at stake, the defendants say.
The court sees no violation of Article 3:305a (old) of the Civil Code or the Claims Code in this. Indeed, the fact that these parties, including CSS, are entitled to a share of the proceeds does not mean that they also have control. Nor has this been explained in any way by the defendants.

8.61. Nor does the fact that Fortress has a right of consultation on adjustments to the participant terms, as included in clause 3.5 b of the financing agreement, mean that it has control over the litigation strategy or claims. This article is therefore permissible.
The court also sees no concerns with regard to Article 20 of the financing agreement. This article on *'deepest resolution'* does not concern Car Owners but contains a dispute resolution provision for the parties to financing agreement.

8.62. All that the defendants have argued about AKD's role and position is beyond the assessment of the financing agreement.

8.63. The court concludes that the interests of the injured parties are sufficiently safeguarded. SCC can operate independently of Fortress, as evidenced by the financing agreement and SCC's governance.

* *Defendants' objections regarding governance of SDEJ*

8.64. Defendants have argued with regard to SDEJ that Principles II, III, IV and VII of the Code of Claims are not met.

8.65. The court considered as follows. The litigation financier of SDEJ is Consumer Justice Network B.V. (CJN). That it has a profit motive in the class action is permissible under the Claims Code. This does not lead to inadmissibility of SDEJ.
The objections raised by the defendants regarding the involvement of Orlando Kadir and Greg Coleman, also do not lead to inadmissibility. Kadir is one of the directors of Corpocon Legal/Letselenschadeclaim.nl B.V., this company being one of the founders of CJN. According to the defendants, he is said to be controversial, but there is no evidence of influence or control vis-à-vis SDEJ. As this has not been shown, the court ignores the defendants' contention. Moreover, the Claims Code requires investigation of the funder, but not of the funder's founder.
What has been argued about Coleman can go unchallenged. Coleman has been a director of CJN from its inception with effect from 1 July 2019. From September 2019 to March 9, 2023, he has been a member of the supervisory board of SDEJ. Since he has stepped down as a member of the supervisory board and the court is reviewing ex nunc, his various positions can remain unreviewed. There are no further concrete indications that

Coleman currently has an influence on SDEJ's policies that would violate the law or the Claims Code. Similarly, that insufficient transparency was provided in the past about Coleman's role cannot now lead to inadmissibility. The partnership with Litigo B.V., of which Jacob Krijgsman is the director, does not constitute a breach of the Claims Code for the same reason. Krijgsman was chairman of the supervisory board of SDEJ from 3 June 2020 to 14 October 2021, but he is no longer so, so there is no violation of Principle IV (elaboration 3) Claim Code.

8.66. The defendants are of the view that there are provisions in SDEJ's funding agreement with CJN that affect SDEJ's independence. According to the defendants, these are Articles 5.1.1, 2.2, 7.2 and 8.3. According to the defendants, the obligation for SDEJ to take CJN's *'return'* on its investment into account when entering into settlements, for example, is objectionable (Article 5.1.1). The same applies to the obligation for SDEJ to take CJN's opinion into account when replacing the lawyer if necessary (Article 7.2). Article 2.2. and Article 8.3 entail information and consultation rights for SDEJ.

8.67. In the court's view, all these articles do not affect SDEJ's control. These provisions are permissible.

8.68. With regard to the defendants' position that the involvement of Litigo, CJN and other possible third parties affects SDEJ's control, the court considers the following. The mere fact that other parties are involved and receive part of the proceeds does not affect SDEJ's control. Therefore, this does not pose an immediate problem. However, SDEJ should still bring into the proceedings the missing pages of the agreement with Litigo dated 25 August 2021. During the oral hearing, the Foundations were ordered to produce the financing agreement including
annexes into the proceedings. The annex (schedule 3) containing the agreement with Litigo is not complete. The court should be able to assess the entire annex. Once the annex has been brought into the proceedings, the court will rule on SDEJ's application for an injunction against disclosure.

* *Defendants' objections tnet to litigation finance fees*

8.69. The defendants have raised concerns about the level of fees for litigation funders and that there is a lack of transparency. According to them, it is unclear what part of the percentage they retain in the event of final damages is used to reimburse costs incurred.

8.70. The Foundations have included in their participation agreements with their participants that they are (under circumstances) entitled to be reimbursed for costs incurred by them (if they fail to make the costs they have incurred part of a settlement or court judgment). SEC and SCC charge a fee of up to 25%. This is equal to the upper limit of the 10% to 25% range previously adopted in case law (see Amsterdam Court of Appeal 13 July 2028, ECLI:NL:GHAMS:2018:2422), as also included in the explanatory note to the Claims Code. SDEJ is the only one applying a fee of up to 27.5%. The court is not yet convinced that a rate of 27.5% is justified. The higher the percentage of the fee to be charged by a claims foundation, the more difficult it may be to reach a settlement. This is not in the interest of SDEJ's supporters. Moreover, it is unclear what portion of the percentage charged by the Foundations on the

possible damages will be used to reimburse costs incurred by them. At present, however, this is not yet a reason for declaring SDEJ or the other foundations inadmissible, as this issue will only be fully addressed when declaring a possible settlement agreement generally binding in WCAM proceedings (Sections 7:907-910 DCC and 1013-1018a Rv). ln WCAM proceedings, it could still be ruled that the interests of the Foundations' supporters are insufficiently safeguarded for the reasons mentioned above. The court will not draw any consequences in these proceedings, in which the collective claims of the Foundations, due to the applicability of the old collective action law, concern declarations by right and not compensation in money. The court does recommend that SDEJ bring its compensation in line with the range previously adopted in case law.

* *Defendants' objections regarding* ïo/ *the Foundations' budgets*

8.71. The defendants have asked the court to critically assess whether the Foundations have sufficient financial resources to (continue to) fund normal proceedings. In particular, because a number of technical questions arise in these proceedings for which experts may have to be engaged. This implies that the proceedings will be longer and more costly than without experts.

8.72. The court has taken note of the budgets of all three Foundations and is of the opinion that they have sufficient financial resources to continue funding the normal conduct of proceedings, including the hiring of experts.

8.73. What the defendants have argued with regard to Articles 21.4 and 21.5 of SCC's funding agreement with Fortress does not lead to a different opinion. It is clear from those articles that Fortress' obligation to fund SCC ceases when the *'Cost Limit'* is reached, that Fortress decides on budget increases (which SCC can request) and that Fortress is therefore not committed to funding the proceedings as such. According to the defendants, this violates the guarantee requirement. The court sees this differently. What matters is that the Foundations have sufficient financial resources to (continue to) fund normal proceedings. This is the case.

*The conclusion*

8.74. The conclusion from the above is that, for now, only SCC as an interest group is admissible. Whether SEC and SDEJ are also admissible will be decided in the next judgment.

**9. Applicable law to the claims of the Foundations**

9.1. The court must assess ex officio which law applies to the claims of the Foundations against the foreign defendants. At issue are the claims of SEC against Renault S.A. and of SCC and SDEJ against Renault S.A., Renault S.A.S. and Automobile Dacia S.A. Those claims, in short, were based on the fact that the aforementioned defendants acted unlawfully.

9.2. The applicable law to an alleged tort must be determined by reference to Regulation Rome II.[9]
When interpreting concepts used in the Rome 11 Regulation, the court is free to use the conceptual system of the Brussels I bis Regulation and the related case-law of the CJEU.'°

9.3. Under Article 4(l) Regulation Rome II, the law of the country where the damage occurs applies.

9.4. In its ruling of 9 July 2020, the CJEU[1] ' ruled that Article 7(2) of Regulation Brussels I-bis must be interpreted as meaning that, where vehicles have been unlawfully fitted with software manipulating emissions data by their manufacturer in a Member State before being purchased from a third party in another Member State, the place where the damage occurs is in the latter Member State. Thus, the place where the car was purchased is the place where the harmful event occurred. It follows that the place where the alleged damage of Car Owners who bought their car in the Netherlands occurs is the Netherlands. This means that Dutch law applies to the claims against Renault S.A., Renault S.A.S. and Automobile Dacia S.A.

9.5. Moreover, the parties agree on the applicability of Dutch law to the claims against Renault S.A., Renault S.A.S. and Automobile Dacia S.A.

**10. Request to open interim appeal**

10.1. If the court declares one or more of the Foundations inadmissible in its collective action, at least in respect of part of its claims, Renault c.s. requests the court, pursuant to Section 337(2) Rv, to stipulate that an interim appeal may be lodged from the judgment to be rendered. Renault c.s. notes its interest in doing so. In the event of admissibility, the collective actions will continue, which will take years and only then will Renault c.s. be able to lodge a possible appeal. If the appeal court will then annul the admissibility of one of the Foundations (in part), unnecessary litigation has taken place with all the associated costs. This is what Renault c.s. wants to avoid.

10.2. The court sees no reason to grant an interim appeal in this case stand. This would lead to unreasonable delays in the proceedings.

**11. Continuation of proceedings**

11.1. The court will refer the SEC case to the roll of 24 April 2024, giving SEC the opportunity to restore clause 6.3 and clause 10.2 of its financing agreement. The SDEJ case will also be referred to the roll of 24 April 2024. SDEJ

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 1 1July 2007 on the law applicable to non-contractual obligations ("Rome ll") (OJEU 2007, L 199/40; hereinafter: Regulation Rome II).
'0 Supreme Court 3 June 2016, ECLI:NL:HR:2016:1054, para 3.7.
" ECJ EU 9 July 2020, C-343/19, ECLI:EU:C:2020:534 (Verein fdr Konsumenteninformation v Volkswagen AG).

will be given the opportunity to bring the full agreement with Litigo into the proceedings. Then, after two weeks (on the roll of 8 May 2024), defendants may respond to it by reply deed.
The SCC case will be stayed. Thereafter, the court will decide further, in the SEC and SDEJ cases on admissibility and in all three cases on possible joinder of the cases and further proceedings.

## 12. The decision

The court

in the SEC case

12.1. refers the matter to the roll of 24 April 2024 for deed on the part of SEC as referred to in paragraphs 8.47 and 8.52, thereafter reply deed of defendants at two weeks' notice,

12.2. reserves any further decision, in the

SCC case

12.3. refers the case to the roll of 19 June 2024 for judgment,

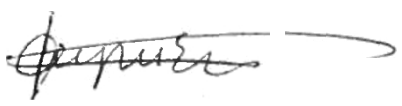
12.4. stays any further decision, in SDEJ

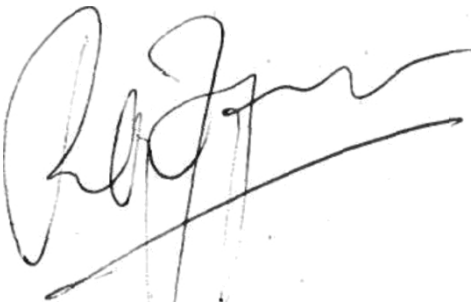
case

12.5. refers the matter to the roll of 24 April 2024 for deed on the part of SDEJ as referred to in legal notice 8.68, then defendants' reply deed on a two-week deadline,

12.6. reserves any further decision.

This judgment was rendered by No. R.H.C. Jongeneel, M.R. Jöbsis and R.P.F. de Groot, Judges, assisted by P. Palanciyan, Registrar, and pronounced in public on
10 April 2024.





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**ANNEX I**

**SEC claims (after claim modification)**

*To the extent the WAMCA applies* f'A.
Request designation Exclusive Advocate
1. To the extent that the WAMCA applies to the present claims; designate the Foundation as Exclusive Advocate within the meaning of Section 1018e(1) Rv;

Statements of law
2. To declare that Renault and the Importer have each acted unlawfully towards the Victims;

3. Declare that Renault and the Importer are jointly and severally liable for the damage suffered by the Victims as a result of their wrongful acts and
be obliged to compensate those damages;

Claim for damages and reimbursement of costs of proceedings
4. Order Renault and the Importer jointly and severally to pay compensation for the damage suffered by Decedents;

5. order Renault and the Importer jointly and severally to pay the costs of these proceedings, including the follow-up costs, or at least - in so far as the WAMCA is applicable and your court gives judgment pursuant to section 1018i Rv - the reasonable and proportionate costs to be determined by your court which the Foundation incurred in connection with bringing these
proceedings as referred to in section 10181(2) Rv, and all these costs to be increased by the statutory interest from the date of the judgment to be given in these proceedings until the date of full payment;

*To the extent that action law prior to I January 2020 applies:*
1. To declare that Renault and the Importer have each acted unlawfully towards the Victims;

2. Declare that Renault and the Importer are jointly and severally liable for the damage suffered by the Victims as a result of their wrongful acts and
be obliged to compensate those damages;

3. order Renault and the Importer jointly and severally to pay the costs of these proceedings, including the follow-up costs, all such costs to be increased by the statutory interest from the date of the judgment to be given in these proceedings to the date of full payment
fulfillment.

**ANNEX 2**

**Yorderingen SCC**

Admissibility and exclusive advocate
1. rule that Car Claim is admissible in this collective action procedure;

2. Designate Car Claim as exclusive advocate;

Opt out
3. To provide that:
i. any Car Claim holder domiciled or resident in the Netherlands may, for a period of three months after the announcement of the judgment designating Car Claim as exclusive representative of his interests, notify the registry of the court in writing that he wishes to withdraw from the representation of his interests in this collective claim (opt-out, article l0l8f paragraph 1 Rv);
ii. any Car Claim owner without residence or domicile in the Netherlands may, for a period of three months after the announcement of the judgment designating Car Claim as exclusive representative of his interests, notify the registry of the court in writing that he wishes to withdraw from the representation of his interests in this collective claim (opt-out, article 1018f paragraph 5 final sentence Rv);

Statements for justice
4. rule that natural persons working as self-employed persons without staff and sole proprietorships with only one employee are also to be regarded as Private Parties in the judgments to be awarded in these proceedings;

5. rule that:
i. Renault et al, the Importer and Renault-Nissan acted unlawfully towards the Car Owners;
ii. Renault et al, the Importer and Renault-Nissan are jointly and severally liable for compensation for the damages suffered and to be suffered by the Car Owners;
iii. the damage suffered by Auto Owners is at least equal to the price reduction under 6(iii) or 6(v) to be determined by the court in good faith;
iv. Renault'c.s., the Importer and Renault-Nissan shall be liable to pay statutory interest on the compensation payable to the Car Owners from the date the relevant Car Owners have paid the purchase price, lease price or addition, to be made out by statement if necessary and to be settled in accordance with the law;

6. rule that:
*primary*
i. the Affected Vehicles do not possess the properties required for normal use, or at least that the Affected Vehicles possess properties other than those determining use that do not comply with the Agreements;
ii. the reasonable period to repair and/or replace the defects in the Affected Vehicles pursuant to Section 7:21(3) of the Civil Code has expired unused;
iii. Private Parties A and B and Business Parties A and B shall be entitled to reduce the amounts paid by them for the Affected Vehicles under the Agreements by virtue of partial termination by an amount to be further determined by the Court;

*alternatively*
iv. the defects and omissions to the Affected Vehicles referred to in subparagraph 6(i) are so essential that, on a correct representation, right-thinking purchasers would not have entered into the Agreements, or at least not on the same terms;
v. Private Parties A and B and Business Parties A and B are authorised to reduce the amounts paid by them for the Affected Vehicles under the Agreements on the grounds of partial annulment by an amount to be determined by the Court;

*primarily and alternatively*
vi. the Dealers shall be liable to pay statutory interest on the price reduction to the Private Parties A and B, and statutory commercial interest to the Business Parties A and B from the date on which the relevant Car Owners have paid the purchase price/lease payments;

Claim for undoing, restitution and damages

Towards Renault c.s., the Importer and Renault-Nissan
7. order Renault Holding, Renault, Dacia, the Importer and Renault-Nissan jointly and severally to compensate the Car Owners for the damage they have suffered, by paying them damages to be determined by the court, plus statutory interest, to be made up as necessary by statement and to be settled according to law;

Towards Traders
*primary*
8. declare the partial termination of the Agreements between Private Parties A and B and Business Parties A and B and the relevant Traders;

*alternatively*
9. declare the partial annulment of the Agreements between Private Parties A and B and Business Parties A and B and the relevant Traders;

*primarily and alternatively*
10. to order the respective Dealers to pay to Private Parties A and B and Business Parties A and B that part of the purchase price which such Car Owners overpaid to them for the Affected Vehicles (the price reduction), in the case of Private Parties to be increased by statutory interest and in the case of Business Parties statutory commercial interest, from the date the relevant Car Owners paid the purchase price, to be made up by state and settled in accordance with the law, if necessary;

Collective claim settlement
11. order that all compensation owed by Defendants to Car Claim shall be paid to Car Claim on terms of collective redress to be determined by the court with due regard to the provisions of section 1018i(2) Rv;

Extrajudicial costs and (legal) costs (art. 6:96 BW and art. 10181 paragraph 2 Rv)
12. Order the defendants jointly and severally to pay compensation to Car Claim of:
i. the full extrajudicial costs incurred by Car Claim, to be increased by the statutory interest from the date of the judgment to be given in these proceedings until the day of payment in full, to be drawn up by statement of account if necessary and to be settled in accordance with the law;
ii. pay Car Claim's full legal costs, including the costs of its litigation financier, plus statutory interest from the date of the final judgment to be delivered in these proceedings until the date of full payment, to be incurred by state and settled in accordance with the law, if necessary;
iii. the costs to be incurred by Car Claim in connection with the acts that Car Claim shall be deemed to perform in its capacity as exclusive advocate until the final judgment, including but not limited to costs pursuant to article 1018f paragraph 3 of the Civil Code;
iv. Car Claim's full costs it will incur in connection with the settlement of damages from the final judgment to be given in these proceedings, to be increased by the statutory

interest from the date of the final judgment to be delivered in these proceedings until the date of payment in full, to be recorded, if necessary, and to be paid in accordance with the law; and
v. the costs to be incurred by Car Claim in determining the damage and liability, plus statutory interest from the date of the final judgment to be given in these proceedings until the day of payment in full, to be made up as necessary by statement of account and settled in accordance with the law.

all this on the understanding that to the extent that the court holds that the underlying complex of facts is subject to the collective action law as it applied prior to the entry into force of the Act on Settlement of Mass Damage in a Collective Action, then the claims under 2, 3, 7, 10 and 12(iii) of this petition shall lapse.

**ANNEX 3**

**Receivables SDEJ**

Admissibility and exclusive advocate
l. rule that SDEJ is admissible in these collective action proceedings;

2. provide that
primary
Car Claim shall be appointed as exclusive advocate to the extent that it is admissible in its claim against Defendants, subject to the provision that SDEJ shall remain competent to take independent procedural steps in those proceedings as then; and in the alternative
in case Car Claim is inadmissible or otherwise will not be designated as EB, SDEJ will be designated as exclusive advocate;

Opt-out
3. To provide that:
i. any Car Owner domiciled or resident in the Netherlands who belongs to the Closely Associated Group may, for a period of three months after the announcement of the judgment in the manner referred to in Article l0l8f, paragraph 3 Rv, notify the registry of the court in writing that he wishes to withdraw from the representation of his interests in this collective claim (opt-out, Article l0l8f, paragraph 1 Rv);
ii. any Car Owner without residence or domicile in the Netherlands who belongs to the Closely Associated Group may, during a period of three months after the announcement of the judgment in the manner referred to in Article 1018f, paragraph 3 of the Dutch Code of Civil Procedure, notify the registry of the court in writing that he wishes to withdraw from the representation of his interests in this collective claim (opt-out, Article 1018f, paragraph 5 final sentence of the Dutch Code of Civil Procedure);

Statements of law
4. rule that natural persons working as self-employed persons without staff and sole proprietorships with only one employee are also to be regarded as Private Parties in the judgments to be awarded in these proceedings;

5. rule that:
i. Renault et al. and the Importer acted unlawfully towards the Car Owners;
ii. Renault et al. and the Importer are jointly and severally liable for compensation for damages suffered and to be suffered by the Car Owners;

iii. the damage suffered by Auto Owners is at least equal to the price reduction under 6(iii) or 6(v) to be determined by the court in good faith;
iv. Renault et al. and the Importer shall owe statutory interest on the compensation payable to the Car Owners from the date that the relevant Car Owners have paid the purchase price, lease price or addition, to be made out by state and settled in accordance with the law, if necessary;

6. rule that:
*primary*
i. the Affected Vehicles do not possess the properties required for normal use, or at least that the Affected Vehicles possess properties other than those determining use that do not comply with the Agreements;
ii. the reasonable period to repair and/or replace the defects in the Affected Vehicles pursuant to Section 7:21(3) of the Civil Code has expired unused;
iii. Private Parties A and B and Business Parties A and B shall be entitled to reduce the amounts paid by them for the Affected Vehicles under the Agreements by virtue of partial termination by an amount to be further determined by the Court;

*alternatively*
iv. the defects and omissions to the Affected Vehicles referred to in subparagraph 6(i) are so essential that, on a correct representation, right-thinking purchasers would not have entered into the Agreements, or at least not on the same terms;
v. Private Parties A and B and Business Parties A and B are authorised to reduce the amounts paid by them for the Affected Vehicles under the Agreements on the grounds of partial annulment by an amount to be determined by the Court;

*primarily and alternatively*
vi. the Traders shall be liable to pay statutory interest on the price reduction to Private Parties A and B, and statutory commercial interest to Business Parties A and B from the date on which the relevant Car Owners have paid the purchase price/lease payments;

Claim for undoing, restitution and damages

Towards Renault c.s. and the Importer
7. Order Renault Holding, Renault, Renault-Nissan, Dacia and the Importer jointly and severally to compensate the Car Owners for the damage they have suffered, by paying them damages to be further determined by the court, plus statutory interest, to be made up as necessary by state and to be settled according to law;

Towards Traders
primary
8, declare the partial termination of the Agreements between Private Parties A and B and Business Parties A and B and the relevant Traders;

alternatively
9. declare the partial annulment of the Agreements between Private Parties A and B and Business Parties A and B and the relevant Traders;

primarily and alternatively
10. order the respective Dealers to pay to Private Parties A and B and Business Parties A and B that part of the purchase price which such Car Owners overpaid to them for the Affected Vehicles (the price reduction), to be increased by statutory interest in the case of Private Parties and statutory commercial interest in the case of Business Parties, from the date the relevant Car Owners paid the purchase price, to be made up by state and settled in accordance with the law, if necessary;

Collective claim settlement
11. order that all compensation owed by Defendants to Auto Owners shall be paid to the exclusive representative to be appointed on terms of collective redress to be determined by the court with due regard to the provisions of section 1018i(2) Rv;

Extrajudicial costs and (litigation) costs (art. 6:96 BW and art. 10181 paragraph 2 Rv)
12. Order the defendants jointly and severally to reimburse SDEJ for:
i. the full extrajudicial costs incurred by SDEJ, to be increased by the statutory interest from the date of the judgment to be given in these proceedings until the day of payment in full, to be made out by statement if necessary and to be settled in accordance with the law;
ii. SDEJ's full legal costs, including the costs of its litigation financier (the Funder), plus statutory interest from the date
of the final judgment to be given in these proceedings until the day of full satisfaction, to be made out by statement if necessary and to be settled in accordance with the law;
iii. the costs that SDEJ will incur in connection with the acts that Car Claim or SDEJ in its capacity as (co-)exclusive advocate will be expected to perform until the final judgment, including but not limited to costs pursuant to art. l0l8f paragraph 3 of the Civil Code;
iv. SDEJ's full costs that it will incur in connection with the settlement of damages from the final judgment to be given in these proceedings, plus statutory interest from the date of the final judgment to be given in these proceedings to the date of full satisfaction, to be made out by statement of account if necessary and to be settled in accordance with the law; and
v. the costs to be incurred by SDEJ in determining the damage and liability, plus statutory interest from the date of the final judgment to be given in these proceedings until the day of payment in full, to be made out by statement of account if necessary and to be settled in accordance with the law.

all this on the understanding that, to the extent that the court holds that the underlying complex of facts is subject to collective action law as it applied prior to the entry into force of the Settlement of Mass Damage in Collective Action Act, then the claims under 2, 3, 5(iii) and 8 shall lapse.