

In the name of the King

AMSTERDAM COURT

Private law department

Judgment of 19 June 2024

Cases joined on a roll

in the case with case number C/13/7025 19 / 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 Botilogne-Billancourt (France), lawyer
Mr Y. Borrius,
2. the public limited company
RENAULT NE DERLAND N.V.,
established at Schiphol-Rijk, lawyer
Mr Y. Borrius,
D e d a g e.

[Respondent 3 was granted discharge from ilistance].

and in the case with case number / rolntlminer C/13'710414 / 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 under 1 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), ad
vocaat Mr Y. Borrius,

6. the private limited liability company
RENAULT-NISSAN B.V.,
based in Amsterdam,
defaulted,

and against

defendants 7 to 43 and 48 to 82,
THE AUTODEALERS,
Advocate R.J. van der Weijden,
summoned and,

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. Edixhoven, e
i s e r e s,

Against the aforementioned defendants 1, 2, 4, 5 and 7 to 43 and 48 to 82.

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 43 and 48 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 proceedings in the SEC case

1.1. The conduct of the proceedings is evidenced by:
- the interlocutory judgment of 10 April 2024,
- SEC's deeded submission of amended financing agreement, with production,
- the reply act of Renault et al.

1.2. Finally, judgment was rendered.

2. The proceedings in the SCC case

2.1. The conduct of the proceedings is evidenced by:
- the interlocutory judgment of 10 April 2024.

2.2. Finally, judgment was rendered.

' For details of defendants 7 to 43 and 48 to 82, please refer to the judgment dated 10 April 2024.

3. The proceedings in the SDEJ case

3.1. The conduct of the proceedings is evidenced by:
- the interlocutory judgment of 10 April 2024,
- SDEJ's deed surrender agreement Litigo, with production,
- Renault et al's reply act,
- Car dealers' reply act.

3.2. Finally, judgment was rendered.

4. Further assessment in

the SEC case

4.1. In the interlocutory judgment of 10 April 2024, the court gave SEC the opportunity to amend two articles in its financing agreement. These were articles 6.3 and 10.2 of the financing agreement. SEC amended its financing agreement on these points, removing these provisions. Renault c.s. did not comment on this. Ex officio, the court also sees no further objections. The conclusion is that SEC is admissible.

in the SDEJ case

4.2. In the interlocutory order of 10 April 2024, the court gave SDEJ the opportunity to bring a full annex to the financing agreement, containing the agreement with Litigo. SDEJ brought the full annex into the proceedings. Taking into account the submissions made by Renault c.s. and the Autodealers, the court concludes that SDEJ is also admissible.

in all matters

4.3. In conclusion, all three foundations are admissible. This means that all three cases will proceed to substantive hearing.

5. Orders under section 22 Rv

5.1. The court will have to rule on the question that is central to this dispute, namely whether prohibited manipulation devices are present in the diesel-powered vehicles that Renault placed on the Dutch market during the relevant period. Renault has so far denied the presence of prohibited defeat devices. To assess that, it will first have to be established whether manipulation devices are present, and if so which ones, and then whether they are permissible.

5.2. The CJEU ruled as follows in its judgment of 17 December 2020, C-693/18, ECLI:EU:C:2020:1040 (Manipulation device in diesel engines):

"(I) Article 3(10) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on the typeapproval of motor vehicles with

relating to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and access to repair and maintenance information should be implemented in such a way that software built into, or interacting with, the engine management system is a "structural component" within the meaning of this provision, to the extent that the software acts on the operation of the emission control system and reduces its efficiency.

2) *Article 3(10) of Regulation No 715/2007 is to be interpreted as meaning that the term "emission control system" within the meaning of that provision covers both the technologies and the so-called uilate gas aftertreatment strategy which limit emissions ex-post - that is, after their formation - and the technologies and strategy which, like the exhaust gas recirculation system, limit emissions ex-ante - that is, during their formation.*

3) *Article 3(10) of Regulation No 715/2007 must be interpreted as meaning that an instrument which recognises parameters relating to the conduct of the approval procedures provided for by that regulation in order to improve the performance of the emission control system during those procedures with a view to obtaining the approval of the vehicle constitutes a 'manipulation device' within the meaning of that provision, even if such an improvement can be sporadically also be observed under normal operating conditions.*

4) *Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a manipulation tool, such as that at issue in the main proceedings, which systematically assesses the performance of the emission control system of vehicles during the approval procedures, must be interpreted as meaning that it is not possible to use that tool. 715/2007 must be interpreted as meaning that a manipulation device, such as that at issue in the main proceedings, which systematically improves the performance of the emission control system of vehicles during the type-approval procedures in order to comply with the emission limits imposed by that regulation and thereby obtain the type-approval of those vehicles, cannot come within the exception to the prohibition of such devices laid down in that provision, which relates to the protection of the engine against damage or accidents and to the safe operation of the vehicle, even though the device may prevent ageing or fouling of the engine. R! the instrument prevent aging or pollution of the engine."*

5.3. The CJEU ruled as follows in its judgment of 14 July 2022, C-128/20, ECLI:EU:C:2022:570 (GSMB Invest v Auto trainer):

"1) *Article 3(10) of Regulation (EC) No . 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro d) and on access to vehicle repair and maintenance ff'n information, read in conjunction with Article 5, ff'd l, of that regulation must be interpreted as meaning that an instrument which guarantees compliance with the emission limits laid down in that regulation only at an outside temperature of between 15 and 33 degrees Celsius and at a driving height of less than 1 000 metres constitutes a 'defeat device' within the meaning of that Article 3(10).*

2) *Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a manipulation device which ensures compliance with the emission limits laid down in that regulation only at an outside temperature of between 15 and 33 degrees Celsius and at a driving height of less than 1 000 metres cannot fall within the uft exception to the prohibition on the use of such devices laid down in that provision merely because that device uses components such as the*

exhaust gas recirculation valve, the exhaust gas recirculation cooler and the diesel particulate filter shall be exempted, unless it is demonstrated that this device serves continuously to prevent acute risks of safety or defects to the engine due to a malfunction of any of these components to the extent that it creates an actual hazard while driving may a vehicle equipped with that system. In any event, a manipulation device that should operate for most of the year under normal traffic conditions in order to protect the engine from damage or accidents and to ensure the safe operation of the vehicle cannot fall within the exception of Article 5(2)(a) of Regulation 715/2007."

5.4. The CJEU ruled as follows in its judgment of 14 July 2022, C-134/20, ECLI:EU:C:2022:571 (IR/Volkswagen):

[1 and 2: similar to the judgment mentioned in the previous recital].

3) *Article 5(1) and (2) of Regulation No 715/2007, read in conjunction with Article 3(1) of that regulation, must be interpreted exclusively as meaning that the circumstance that a manipulation device, within the meaning of the latter provision, is used for the entry into circulation of a vehicle by way of repair within the meaning of Article 3(2) of Directive 1999/744/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees is not relevant for the purpose of determining whether the use of the instrument is prohibited under this Article 5(2).*

5.5. The CJEU ruled as follows in the judgment of 14 July 2022, C-145/20, ECLI:EU:C:2022:572 (DS v Porsche Inter Auto and Volkswagen):

"The Court (Grand Chamber) declares for justice:

1) *Article 2(2)(d) of Directive 1999/744/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees is to be interpreted as meaning that a motor vehicle which falls within the scope of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, does not correspond to the quality which is normal for goods of the same type and which consumers may reasonably expect, if the vehicle has a valid EC type-approval and may therefore be used on the road, but is fitted with a defeat device whose use is prohibited under Article 5(2) of this Regulation.*

1) In support of the decision at 2 in judgments of 14 July 2022, C-128/20 and C-134/20, ECLI:EU:C:2022:570 and 571]

3) *Article 3(6) of Directive 1999/744 must be interpreted as meaning that a non-conformity consisting in the fact that a vehicle is equipped with a manipulation device the use of which is prohibited by Article 5(2) of Regulation No 715/2007 cannot be classified as a defect 'of minor importance', even if*

consumers would have bought that vehicle even if the presence of this manipulation device and its operation had been known to them."

5.6. The court deduces from the aforementioned decisions of the CJEU that even if a type-approval has been granted, it is necessary to assess separately whether there is a prohibited manipulation device. That assessment is in any case necessary to assess whether the vehicle in question offers the quality which is normal for goods of the same type and which consumers may reasonably expect. A vehicle with a prohibited manipulation device does not meet that standard and this is not a minor defect. The assessment of whether there is one or more prohibited manipulation devices is at issue in this case insofar as the claims are against the Car Dealers because a claim is made against them that the delivered vehicle does not conform to the contract. But the question whether or not prohibited manipulation devices are present will also have to be assessed in this case in order to decide the claims against Renault et al in tort.

5.7. Thereby, it can be deduced from the aforementioned case-law that a prohibited manipulation device must be understood to mean not only a device that recognises parameters related to the conduct of the approval procedure referred to in the Emissions Regulation, but any device that causes the emission control system to be switched off or its operation reduced "*under normal traffic conditions*". This is different only if such deactivation or reduced operation is necessary for "*preventing acute risks of engine damage or failure*". Such acute risks are exceptional. In any case, this exception does not justify a manipulation device always disabling or reducing the operation of the emission control system under "*normal traffic conditions*".

5.8. In this case, using various studies, including the Heitz report, the plaintiffs have sufficiently substantiated that manipulation devices may be present in Renault vehicles and potentially prohibited. It is known to Renault as the manufacturer whether manipulation devices are present and, if so, how they are set. The court infers from the case-law of the CJEU that the court will have to assess whether those settings are such that the manipulation device is prohibited or not.

5.9. The basic principle of the European regulations is that a manufacturer presents a type that it intends to build in series for inspection, so that it can be determined whether this type meets the requirements of the Emissions Regulation, and then copies of this type are placed on the market after type approval. The court will therefore take the type approvals granted as a basis. It will assume that the vehicles corresponding to these type approvals are similar to each other at least in terms of compliance with the Emissions Regulation and thus have identical hardware and software when it comes to the emission control system. In case Renault claims that this is not the case, it should explain under which provision(s) it is free to market vehicles on the basis of a given type approval whose emission control system differs from the approved type. For the time being, the starting point is that if the type submitted for inspection contains a manipulation device (i.e. an element of design which measures temperature, travel speed, engine speed, acceleration, intake depression or other parameters

to actuate, modulate, delay or render inoperative any element of the emission control system such that the effectiveness of the emission control system is reduced), it is the same manipulation device for each example of the relevant type and it is set in the same way. The permissibility of a defeat device should always be assessed, i.e. whether or not it has the effect of reducing the effectiveness of the emission control system under conditions foreseeable in normal use of the vehicle and whether any of the exceptions in Article 5(2) of the Emissions Regulation apply.

5.10. The court orders Renault c.s., pursuant to the provisions of Section 22 Rv, to bring into the proceedings: all type approvals within the meaning of the Emissions Regulation' as issued to it for diesel-powered vehicles of the Renault and Dacia brands marketed in the Netherlands in the period 2009-2019. If the type-approval (excluding annexes) consists of more than 25 pages, the pages showing: the make and type to which the type-approval relates, the engine type present in these vehicles, and that and when the type-approval was issued and by which approval authority will suffice. If the total number of pages of all type approvals exceeds 500, it is sufficient to submit them electronically only.

5.11. The court orders Renault c.s., pursuant to the provisions of Section 22 Rv, to explain its claim that a prohibited manipulation device was not used in any of the vehicles in question by answering the following questions for each type approval separately. The court orders Renault c.s. to present these answers conveniently, preferably in an Excel sheet. To the extent that answers to questions do not fit conveniently into an Excel summary, references to a separate document may be used. If the same answer is given to questions for different type approvals, reference may be made to a previously given answer. If the total number of pages of this overview exceeds 200 or if the overview cannot be printed out on a maximum A3 size, it may suffice to submit these explanatory notes electronically only.

5.12. The questions to be answered by type approval are as follows.

5.12.1. *A. General*

1. Which make and type does the type approval refer to?
2. What engine type is present in these vehicles?
3. On what date was the type approval issued?
4. By which inspection body?
5. Which standard (Euro 5 or one of its variants Euro 6) applies to this type approval?
6. How many vehicles of this type have been sold in the Netherlands?

Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information. Terms used in the questions are used with the meaning given to them in the Emissions Regulation.

7. Is a recall was ordered for this type by the inspection authority because of a prohibited manipulation device?
If so, what changes took place in the update?
 8. Has there been a voluntary recall for this type to change emission control system settings?
If so, what changes took place in the update?
- 5.12.2. B. *Temperature verister*
1. Has a temperature window been applied to vehicles complying with this type approval?
 2. If so,
 - a. What are the settings of this temperature window? At what temperature is the operation of the emission control system reduced or completely disabled?
 - b. Does this apply to the entire emission control system?
 - c. If question b is answered no: at what temperature does each of the individual components present (such as the EGR valve, the LNT {*Lean NOx Trap*}, the SCR {*Selective Catalytic Rediiction*}, the *post-heating*, the particulate filter and any other parts of the emission control system) are disabled or their operation is reduced?
 - d. What justification is there for this?
- 5.12.3. C. *Hot restart*
1. In the vehicles complying with this type approval, has a '*hot restari*' feature been applied, i.e. a hardware and software setting that causes the emission control system to react differently when starting a cold engine than when starting a hot engine?
 2. If so,
 - a. According to this setting, when is a cold start and when is a hot start? What differences in setting are there **between** cold city and hot start in
 - b. terms of the operation of the emission control system? What justifies this difference?
 - c.
- 3.12.4. D. *Speed*
1. Do the vehicles complying with this type approval have a hardware and software setting that causes the emission control system to be reduced or inactive at certain speeds?
 2. If so,

- a. At what speed is the emission control system reduced active and to what extent, and at what speeds is it completely disabled?
- b. What is the justification for that?

5.12.5. *E. Postheating*

1. Is a 'postheating function' present in the vehicles complying with this type approval?
2. If so,
 - a. Is it part of the emission control system?
 - b. Is this function active at every temperature or is this subject to a temperature window? (in the latter case, please refer to the answers to question B2).

5.12.6. *F. Other manipulation insviimeites*

1. Are any structural components (hardware or software), other than those listed above, present that measure temperature, driving speed, engine speed, acceleration, intake depression or other parameters to actuate, modulate, delay or render inoperative any component of the emission control system to reduce the effectiveness of the emission control system?
2. If so,
 - a. at what value of the listed parameter(s) is the operation of the emission control system reduced or disabled?
 - b. What is the justification for this?

General comment on the justification of a manipulation device

5.13. Renault is invited, if it believes that an instrument of manipulation is present but justified, to explicitly address the Court of Justice's requirements for such justification (see, inter alia, the ECJ judgment cited above, CJEU 14 July 2022, ELCI:EU:C:2022:570 (GSMB v Automobile trainer) on the following questions:

- Is the effectiveness of the emission control system reduced under conditions that can be expected during normal use of the vehicle?
- Do any of the exceptions in Article 5(2) of the Emissions Regulation apply?

6. Continuation of proceedings

6.1. During the oral hearing, it was discussed with the parties that the court intends to reduce the separate proceedings between the parties to two cases: (i) one by the Foundations against Renault c.s. and (ii) one by SCC and SDEJ against the Car Dealers. It will first split and then join the separate proceedings for this purpose. The parties have not objected to this. As requested by the Foundations, the documents already filed will hereafter form part of the two remaining cases.

6.2. The court will first split the three proceedings into five proceedings. This will proceed as follows. SCC's proceedings (with case number 710414) will be split into SCC's proceedings against Renault c.s. and SCC's proceedings against the Car Dealers. SDEJ's proceedings (with case number 710434) will also be split into SDEJ's proceedings against Renault c.s. and SDEJ's proceedings against the Car Dealers. SEC's proceedings against Renault S.A. and Renault Nederland N.V. (with case number 702519) proceedings will not be split. Subsequently, the three proceedings against Renault c.s. (comprising SEC's proceedings against Renault S.A. and Renault Nederland N.V., SCC's proceedings against Renault c.s. and SDEJ's proceedings against Renault c.s.) will be merged ex officio into one proceeding.

Also, the two proceedings against the Car Dealers (comprising SCC's proceedings against the Car Dealers and SDEJ's proceedings against the Car Dealers) will be merged into one proceeding.

6.3. On the further course, the court determines as follows. After Renault c.s. has complied with the request of 22 Rv, the Foundations will be allowed to respond. On that occasion, the Foundations will also be allowed to update their summonses, in view of what has been decided in this judgment regarding the division and joinder, the earlier judgment that the WAMCA does not apply and developments in the case law of the CJEU. Subsequently, the two cases will be referred to the roll for the defendants to file a statement of reply. Defendants will be given a period of three months to do so.

7. The decision

The court

in the SEC case (**with case number/role number C/13/702519 / HA ZA 21-500**)

7.1. does not split this procedure;

in the SCC case (with case number/role number C/13/710414 / HA ZA 21-1028)

7.2. splits the proceedings initiated by SCC into two separate proceedings:

1. SCC v Renault c.s. with case and roll number C/13/710414 / HA ZA 21-1028;
2. SCC v Car Dealers with case and roll number C/13/751970 HA ZA 24-615;

in the SDEJ case (with case number/role number C/13/710434 HA ZA 21-1030)

7.3. splits the proceedings initiated by SDEJ into two separate proceedings:

1. SDEJ v Renault c.s. with case and role number C/13/710434 HA ZA 21-1030;
2. SDEJ v Car Dealers with case and roll number C/13/751971 HA ZA 24-616;

7.4. joins SEC's proceedings (with case number / role number C/13/702519 / HA ZA 21-500) with SCC's proceedings against Renault c.s. (with case number / role number C/13/710414 / HA ZA 21-1028) and SDEJ's proceedings against Renault c.s. (with case number / role number C/13/710434 HA ZA 21-1030);

7.5. joins the proceedings of SCC v Car Dealers (with case number/role number C/13/751970 HA ZA 24-615) with the proceedings of SDEJ v Car Dealers (with case number/role number C/13/751971 HA ZA 24-616);

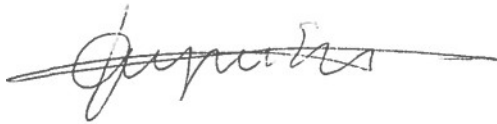
7.6. provides that pleadings filed to date shall be deemed to have been filed in each of the proceedings in which the party filing the pleading is a party after the above division and joinder,

in the two cases following the above split and joinder

7.7. stipulates that these cases will be joined on the roll,

7.8. refers the cases to the roll of 18 September 2024 for deed ex Article 22 Rv on the part of Renault et al.

This judgment was rendered by R. H.C. Jongeneel, M.R. Jöbbsis and R. P.F. de Groot, Judges, assisted by P. Palanciyan, Registrar, and was pronounced in public on 19 June 2024.



ISSUED FOR

The Registrar of
rechtbank Amsterdam

GROSSE

