

ECLI:NL:RBAMS:2024:6874

Authority	Amsterdam Court
Date of decision	13-11-2024
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Case number	C/13/702519 / HA ZA 21-500, C/13/710414 / HA ZA 21-1028, C/13/710434 HA ZA 21-1030
Areas of law	Civil procedural law Special
features	First instance - plural Interim ruling
Content indication	Mass tort case about 'tampering software'. Injunction under Section 22 Rv to elicit assertion that no prohibited manipulation device was used in vehicles with diuesel engine by answering a number of questions.
Findings	Rechtspraak.nl

Excerpt

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judgment

AMSTERDAM COURT

Private law department

Judgment of 13 November 2024

in the following joined cases

in the case with case number/role number: C/13/702519 / 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-Billancourt (France), lawyer

Mr Y. Borrius,

2. the public limited company

RENAULT NETHERLANDS N.V.,

established at Schiphol-

Rijk, lawyer Mr Y. Borrius,

D e d a g e,

[Respondent 3 was granted discharge from authority].

and in the case with case number/role number 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.,

established in Bucharest/Mioveni (Romania), lawyer

Mr Y. Borrius,

6. the private limited liability company

RENAULT-NISSAN B.V.,

based in Amsterdam,

defaulted,

D e d a g e,

and in the case with case number/role number C/13/710434 HA ZA 21-1030 of

the foundation

DIESEL EMISSIONS JUSTICE FOUNDATION,

established in Amsterdam,

lawyer Mr J.D. Edixhoven, e i

s e r e s,

against the defendants named above in points 1, 2, 4 and 5.

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.

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

1 The procedure

in the SEC case

1.1. The conduct of the proceedings is evidenced by:

- the interlocutory judgment of 19 June 2024, ECLI:NL:RBAMS:2024:3708,
- Renault et al's reply deed under Article 22 Rv.

1.2. Finally, judgment was rendered.

in the SCC case

1.3. The conduct of the proceedings is evidenced by:

- the interlocutory judgment of 19 June 2024, ECLI:NL:RBAMS:2024:3708,
- Renault et al's reply deed under Article 22 Rv.

1.4. Finally, judgment was rendered.

in the SDEJ case

1.5. The conduct of the proceedings is evidenced by:

- the interlocutory judgment of 19 June 2024, ECLI:NL:RBAMS:2024:3708,
- Renault et al's reply deed under Article 22 Rv.

1.6. Finally, judgment was rendered.

2 The further assessment

In the three joined cases against Renault c.s.

- 2.1. In the interlocutory judgment of 16 June 2024, the court ordered Renault c.s., pursuant to the provisions of Article 22 Rv, to bring into the proceedings: all type approvals within the meaning of the Emissions Regulation as issued to it for diesel-engined vehicles of the Renault c.s. and Dacia brands marketed in the Netherlands in the period 2009-2019. The court further ordered Renault c.s., pursuant to the provisions of Article 22 Rv, to explain its claim that a prohibited manipulation device had not been applied in any of the vehicles in question by answering a number of questions, for each type approval separately. Renault c.s. refers to these orders together as the Information Order.
- 2.2. Renault et al took a deed in which it only partially complied with the order. In its deed, it objected to the Information Order. Its objection relates in particular to:
- (i) The timing of the Information Assignment;
 - (ii) the advance the court takes on legal and substantive aspects of the case;
 - (iii) using a (technically) incorrect system of categorising vehicles by type approval;
 - (iv) incorrect assumptions and ambiguities in the court's questioning, and
 - (v) The scope of the (potentially) intended information provision, and its cost.
- Renault c.s. argues that it is factually and legally unable to comply with the Information Assignment.
- 2.3. The court will address all these concerns below. This culminates in a proposed amended Information Order, to which the parties will be allowed to respond.

3 Objections by Renault et al to the Article 22 order given

The timing of the Information

Assignment The position of Renault et al.

- 3.1. According to Renault c.s., the Foundations have not yet developed their general contentions in stages 1 and 2 (given the burden of proof on the Foundations), let alone substantiated. A report raised by SCC in the context of the phase 2 debate (so-called Heitz report) has not (yet) been clarified or substantiated and - as SCC has announced - will be supplemented. Relevant and concrete facts, data or other sources to substantiate accusations made against Renault et al. are lacking.
- 3.2. In the interlocutory judgment, it was considered that the claimants have sufficiently substantiated through various studies, including the Heitz report, that there are possible manipulation devices in Renault c.s. vehicles and that these may be prohibited. According to Renault et al, this consideration is incomprehensible and incorrect. The Foundations have not made their claims at all plausible. Renault c.s. considers it incongruous for the court to come to (pre-judgment) judgments while Renault c.s. has not yet been able, in view of the stage of the proceedings, to comment in substance on contentions, exhibits and issues raised.

The court's opinion

3.3. Section 22 Rv empowers the court to make the orders mentioned in that section at any stage of the proceedings. This does not yet give a judgment on the case, not even a preliminary judgment. A section 22 order only serves to obtain the information necessary for the decision. In doing so, the court is free to determine, on the basis of the party's debate up to that point, which information is still lacking and will be necessary to decide on the case after a substantive hearing. The fact that Renault c.s. has not yet submitted a statement of reply is not a reason not to grant the order yet; the court considers it important that the relevant information becomes available as early as possible in the proceedings, so that both parties can adopt their positions at the oral hearing on the basis of that information. The information injunction therefore does not prejudice the defence interest of Renault et al.

3.4. SCC submitted a report by Dr Markus Heitz entitled "*Defeat Devices in Renault c.s. Diesel Vehicles: In Depth Analysis of Motor Management Software, December 20, 2023*" prior to the hearing on 29 January 2024.

At the hearing, according to the speaking notes submitted, this report was explained as follows:

"19. At Car Claim's request, a leading expert on engine management software, Dr Markus Heitz (Heitz), examined which Manipulation Instruments the Affected Vehicles were equipped with (Production 02.07.110). Heitz examined different software versions of Affected Vehicles, both a pre-software update version and a version modified by Renault et al through a software update. The software versions examined were from different software suppliers (Bosch, Siemens and Continental). Car Claim deliberately had different software versions examined partly in light of Renault's defence et al that not all software versions would contain prohibited Manipulation Instruments.

20. The Heitz investigation confirmed that the Affected Vehicles contained several prohibited Manipulation Devices. Besides a Thermo Window, the Affected Vehicles are equipped with technologies that limit or completely disable the operation of the emission control systems EGR and NSC under normal operating conditions at certain minimum speeds, speed windows, distance travelled, altitude, fuel consumption and gears selected by Renault et al.

21. It further follows from Heitz's investigation that the prohibited Manipulation Devices found are in both the original engine management software of the Affected Vehicles and in the versions updated by Renault et al. The updated versions are summarily modified, but still significantly limit the effectiveness of the emission control systems under normal operating conditions, or disable those systems altogether. For example, the effectiveness of the EGR is reduced after the update as the temperature drops below 9°C, and the NSC (LNT) no longer regenerates at all at speeds below 50 km/h, as a result of which the Affected Vehicles emit significantly more NO than permissible by law. This is not an exhaustive list of what the expert found. How exactly the Manipulation Instruments found work will be explained by Car Claim in the third stage of the proceedings. For now, it limits itself to finding that the Manipulation Instruments found limit the effectiveness of the emission control systems in the Affected Vehicles in (at least) ten different ways.

22. Heitz focused his investigation on Affected Vehicles equipped with the so-called K9K diesel engine. This is Renault c.s.'s only diesel engine with a displacement of 1,461cc (1.5DCI) (Production 02.07.111).

23. With the summons, Car Claim submitted as production 02.03.001 a list of the different models of Affected Vehicles. In that list, Car Claim indicated for each model the cylinder capacity of that model.

24. Based on data from RDW of affected vehicles registered in the Netherlands (reference date July 2021), Car Claim has selected the affected vehicles with the 1.5 DCI. From this data, it follows that the majority of all Affected Vehicles placed on the Dutch market have a 1.5 diesel engine: the K9K (Production 02.07.112). Heitz's report is therefore representative and

confirms the widespread use of prohibited Manipulation Instruments in the Affected Vehicles." 1

3.5. Renault et al. argue that SCC only involved a few (global) assertions about the Heitz report. That assertion is not tenable in view of the detailed explanation cited under 3.4. Accordingly, there is no reason to disregard the Heitz Report when considering the substance of the legal dispute. Even if certain functions mentioned in this report have not yet been debated in essence, for all the functions mentioned by the Foundations to date, the fact that, according to Heitz, they have been found in research is sufficient reason to ask specific questions about them. Moreover, for the question of what the scope of the legal dispute is, not only the Heitz report should be considered. The SCC summons mentioned the Royal Commission's final report. According to SCC, it shows that several Euro 5 and Euro 6 models of Renault c.s. emit significantly more NOx than allowed by law when tested under normal operating conditions. It further states the results of the IFPEN and DGCCRF studies and some other studies. The subpoena also states that Renault et al were formally charged on 8 June 2021 on grounds of deception for using prohibited manipulation devices. The SCC subpoena lists as manipulation devices found in investigations:

- thermal windows (137, 245),
- preconditioning (201-203),
- the hot restart function (margins 233-234),
- test recognition software (margin number 244).

3.6. In margin numbers 251-252 of SCC's summons, a press publication was cited which was brought into the proceedings as production 54.2 This is a report of an interview by the Royal Commission of [name], technical director of Renault c.s., on 5 April 2016. This report states the following:

"() Lorsque nous avons adopté ce système de recirculation des gaz d'échappement dit à basse pression au milieu des années 2000, il constituait le nec plus ultra. Mais nous avons très vite vu ses limitations : lorsque l'air ambiant est trop froid ou trop chaud ou trop humide, on constate un phénomène de vernissage des dépôts de suie qui colmatent et bloquent la vanne EGR. Avec parfois de lourdes conséquences sur la longévité du moteur. Pour les éviter, nous avons paramétré le logiciel de pilotage de sorte à limiter le taux de recirculation des gaz d'échappement lorsque l'air est hors de la plage de températures définies (entre 17°C et 35°C)."

The summons gave the following translation of this:

"When we started using this so-called low-pressure exhaust gas recirculation system in the mid-2000s, it was the ultimate. But we soon saw the limitations: when the ambient air is too cold or too hot or too humid, we notice a phenomenon of soot deposits that clog and block the EGR valve. With sometimes severe consequences for the life of the engine.

To avoid this, we configured the control software to limit the exhaust gas recirculation rate when the air is outside the set temperature range (between 17°C and 35°C)."

3.7. The SDEJ subpoena cites the same manipulation devices as SCC and refers to SCC's subpoena.

3.8. The SEC subpoena (the first in this case) mentions some of the studies also mentioned in SCC's subpoena and discusses the thermal windows and the test recognition software, and also mentions as a manipulation device: "one or more sensors that disable the reduction systems at driving speeds below 50 km/h" (marginal 9.2).

3.9. Renault et al argued the following in its Phase 2 Incidental Conclusion in the SCC case (margin number 6):

*Renault c.s. has not been guilty of using 'Illegal Manipulation Instruments' - it has also always denied it - and it lacks any decision by an appropriate supervisory authority or court from which that would follow.*³

3.10. The court will have to distinguish between two questions in its assessment:

1. the actual question of whether manipulation devices are present in the vehicles concerned, and
2. the legal question of whether, given the settings of that manipulation tool, it is a prohibited manipulation tool.

3.11. The court considers that the aforementioned contentions in the subpoenas of the Foundations (which are largely similar and in any case nowhere contradictory) are sufficiently specific and supported by documentary evidence to consider the possibility plausible that Renault c.s. used manipulation tools, with further assessment to be made following a response from Renault c.s. as to whether this is actually the case and whether these are also prohibited manipulation tools.

It is therefore in any case justified to raise questions about the actual presence of manipulation devices on the basis of Article 22 Rv in order to explain the position of Renault c.s. presented under 3.9 above. The said position is to be regarded as a preliminary position in view of the stage of the proceedings at which it was taken.

3.12. That Renault c.s. denies the presence of prohibited manipulation devices can either mean that there are no manipulation devices, or that there are, but they are not prohibited. Since a senior employee of Renault c.s. ([name] , the technical director of Renault c.s.) stated about the presence of a temperature window (see under 3.6), according to the press publication brought into the proceedings by SCC, the court takes Renault c.s.'s position for the time being as a denial of the *prohibited nature* of manipulation instruments present. The answers to the questions to be asked may possibly show otherwise.

3.13. A detailed understanding of the presence of manipulation devices is essential for substantive discussion, as only a full overview of the relevant facts allows for meaningful substantive discussion.

Renault c.s., as manufacturer of the vehicles in question, is deemed to be aware of the emission control system used in them. The Foundations have only fragmentary knowledge of it. Therefore, Renault c.s. must provide sufficient factual information to justify its claim that it did not use prohibited defeat devices in the Vehicles Involved, in order to provide the Claimants with leads for possible proof. To that extent, Renault et al. are under an increased obligation to present evidence. The Article 22 injunction is also aimed at this.

Aggravated presumption

3.14. Renault c.s. objected to this heightened burden of proof. It argues that the rationale is that without this construction, the burden of proof on the party with the burden of proof would become too heavy, so heavy in fact that it would be illusory, with the result that the legal protection that substantive law is intended to afford that party would be too compromised. According to Renault et al. an intervention in the scope of the duty to provide evidence is only appropriate in certain procedural constellations, where there is a threat of such a serious disturbance of the procedural balance that the realisation of substantive law would be too much at risk without intervention. The mere fact that certain information is in the defendant's domain is in no way a basis for such intervention.

3.15. Renault c.s.'s argument is correct. However, application thereof - contrary to Renault c.s.'s opinion - does in this case precisely lead to an increased obligation for Renault c.s. to put forward evidence. This case concerns the emission control system built into each of the vehicles at issue, and in particular the software used in it. Its operation is known to the manufacturer who programs the software, whereas purchasers of a vehicle (for whom the Foundations act) have no insight into the

operation of that software. While the Foundations can investigate particular copies of the Vehicles Involved, even if they manage to show that they contain a manipulation device, they lack the knowledge necessary to determine in which other vehicles that manipulation device might be present. Without the aggravated obligation to present evidence, the Foundations' burden of proof is therefore so heavy that realisation of substantive law would be practically impossible.

Factual and legal questions

- 3.16. The distinction between the factual question whether manipulation devices are present and the legal question whether they are prohibited leads the court to order Renault c.s. to answer the questions relating to the factual presence of manipulation devices in a deed to be taken after this judgment. In that deed, it may also already address the legal question of whether or not they are prohibited, but Renault c.s. will be free to address that question only in the reply.
- 3.17. Renault c.s. rightly argued that the question whether the court has jurisdiction to rule on the prohibited nature of manipulation devices will still have to be discussed separately in these proceedings. The parties will be given the opportunity to do so, see paragraph 6.2.

The court does not prejudge the legal and substantive aspects of the case

- 3.18. The objections set out in 3.2 above are unfounded. In the context of the Article 22 order to be granted, it will not be assessed whether the Foundations have made their claims plausible; no substantive judgment will yet be given on the Foundations' contentions and claims. However, the court sees in what has been submitted and the defence put forward so far reason to ask Renault c.s. to explain its contentions. In the remainder of the proceedings, Renault c.s. will have every opportunity to comment on the content of the statements made by the Foundations and the exhibits they have submitted.
- 3.19. Renault c.s. argued that under Section 22 Rv, the court cannot order it to answer questions of law or take further legal positions.
- 3.20. Section 22 Rv generally provides that the court may order the parties to clarify certain contentions. It is not clear from the text of the law that this should only involve factual contentions. Renault c.s. has not made clear on what it bases this position. The court's task is not only to do justice on the basis of the facts, but also to understand the parties' positions as well as possible. The order to clarify contentions may therefore include asking a party, in order to clarify its position, what legal consequences it wishes to attach to certain facts.

The court remains within the bounds of the rule of law

- 3.21. Stressing party autonomy, Renault et al. argue that the court should not co-proceed and should stay within the bounds of the legal battle. This is correct. The court will therefore have to determine what the battle of law is in this case.
- 3.22. The SEC's subpoena states the following.
- 1.1 () *By this writ of summons, the Foundation seeks, in short, collective compensation for the damages suffered by the victims of the diesel fraud committed by Renault et al. and Bosch in the Netherlands and some declarations of law in respect of the consequences of this diesel fraud. ()*
- 1.6 () *In reality, Renault c.s. diesel autos are among the most polluting diesels tested by various bodies in Europe, and official emissions tests on the roller-bench by*

Renault c.s. deliberately manipulated diesel cars to appear to be clean cars (only) on paper. Renault et al's diesel cars are therefore also referred to as Shoemel diesels in this summons.

1.7. Renault et al thus join the ranks of European carmakers that have committed widespread, and possibly collusive, fraud with the emissions of their diesel engines. In 2015/16, this diesel scandal (also known as Dieselgate) came to light involving Volkswagen, Audi, Porsche and Fiat Chrysler, among others. Later, Daimler, among others, was also found to have rigged diesel engines. In all cases, the carmakers evaded the legally required emission standards by using banned manipulation devices, co-developed by their supplier Bosch, which (partially) disabled emission-reducing systems when the vehicles were not in a test environment."

The writs of SCC and SDEJ identified the subject matter of the proceedings in similar terms.

SCC:

6. This subpoena from Car Claim primarily targets car manufacturers Renault et al and Dacia for their role in the diesel emissions scandal. Car Claim accuses Renault c.s. of putting affected vehicles into circulation between 1 September 2009 and 1 September 2019 that did not comply with applicable laws and regulations. As a result, millions of motorists, including Car Claim owners, were harmed.

SDEJ:

"This subpoena concerns the actions of Renault et al in the Diesel scandal. After it became known in 2015 that Volkswagen had widely misled its customers and the authorities about the emissions of its vehicles, the realisation slowly dawned that other major car manufacturers had also gone wrong. One such manufacturer is Renault et al. Renault c.s. is, as Car Claim rightly points out, one of the naughtiest boys in the class."

3.23. Since Renault et al did not acknowledge the presence of prohibited manipulation devices, the stake of the legal dispute is the presence of illegal manipulation devices in the vehicles in question. The Article 22 injunction contained in the interlocutory judgment of 19 June 2024 was aimed at this and this is no different for the amended Article 22 injunction to be issued below. The court further refers to what has been considered above in paragraphs 3.4 and following on the scope of the legal dispute.

3.24. Renault c.s. cannot accuse the court of co-litigation. An information injunction had already been requested in SDEJ's summons (marginal 284) and it was stated that Renault et al. had an aggravated obligation to present evidence. For that matter, the court would be free to issue an Article 22 order even without an express request to do so and is therefore not cooperating in the proceedings, because an Article 22 order does not contain a substantive judgment on the case, while it has been explained above that the given Article 22 order remains within the limits of the legal battle, which also applies to the Article 22 order to be issued below.

Confidentiality and sensitivity of information requested

3.25. Renault invoked the confidentiality and competitive sensitivity of the requested company data.

3.26. Renault did not elaborate. Without further explanation, this objection cannot be assessed. After the order is made final, Renault may refuse to comply with the order or communicate that only the court may take cognisance of the requested information. Thereafter, the merits of that refusal or that communication will have to be assessed (Article 22(3)). The court will not anticipate this. If Renault intends to refuse to answer one or more of the questions in the amended Article 22 order below, it should give notice of this in the

deed.

4 No categorisation of vehicles by type approval

- 4.1. In its deed, Renault et al provided an overview of the rules related to type approval and how they work in practice. In short, the court's assumption that vehicles with the same type approval also have the same emission control system is incorrect. Renault et al. explained that therefore both Vehicle Type Approval and Emission Type Approval cannot provide a starting point for categorising the vehicles in question. Vehicles with the same Emission Type Approval may differ in terms of the hardware and software of the emission control system. Moreover, there is a system of 'revisions' and 'extensions' of Emission Type Approvals.
- 4.2. The court finds Renault et al's contentions convincing on this point. This means that the type approvals cannot be used to categorise Renault et al's statement. That will have to lead to amendment of the Article 22 order.

Reduction in effectiveness of emission control system

- 4.3. Renault c.s. argues that the fact that a component of the emission control system is controlled or modulated using the parameters set out in Article 3(10) of the Emissions Regulation does not, without more, mean that it is a manipulation device.
- 4.4. This is correct, since it only becomes a defeat device if it modulates, delays or disables the emission control system on the basis of certain parameters, thereby reducing the effectiveness of the emission control system. The ECJ's ruling in DS v Porsche Inter Auto and Volkswagen⁴ shows that reduction in effectiveness should be understood as the situation where the emission limits set are not achieved. See the ECJ's answer to the second question in this case:

"Article 5(2)(a) of Regulation no. 715/2007 must be interpreted as meaning that a defeat device which ensures, in particular, compliance with the emission limits laid down by that regulation only at an outside temperature of between 15 and 33 degrees Celsius may be justified under that provision only on condition that it is demonstrated that the sole purpose of that device is to prevent acute risks of engine damage or defects resulting from the malfunctioning of a component of the exhaust gas recirculation system in such a way as to create an actual hazard while driving a vehicle equipped with that system. In any event, a defeat device which, under normal traffic conditions, should function for most of the year in order to protect the engine from damage or malfunction and to ensure the safe operation of the vehicle cannot fall within the exception provided for in Article 5(2)(a) of Regulation No 715/2007."

The justification of manipulation tools

- 4.5. Renault et al argue that the question of under what circumstances use of a manipulation device is justifiable requires further legal (and technical) debate.
- 4.6. This is correct; this debate can take place at the substantive stage.

The final question

4.7. Renault et al objected to what it calls the sweep question, i.e. the final question whether manipulation tools other than those mentioned in the earlier questions are present. It argues that this question is legal in nature. She also points out that the legal text of Section 22 Rv speaks of 'certain' contentions and 'certain' documents, and that this question is therefore formulated too broadly. These terms are also found in section 843a Rv, which aims to be within prevent so-called 'fishing expeditions' in the context of access claims.

4.8. As explained in section 3.10, the question on the presence of manipulation devices is a factual question. Therefore, the question on manipulation instruments other than those mentioned is also a factual question. This final question is further sufficiently specific because it asks about manipulation instruments that affect a component of the emission control system to reduce its effectiveness. The questions (including the closing question) are asked in order to obtain further information on the actual presence of manipulation instruments given the position taken to date that Renault c.s. has not applied any prohibited manipulation instruments, see paragraphs 3.9 and 3.12 above. After that factual presence has been fully clarified, the legal debate on permissibility of the manipulation devices present can be conducted.

Scope and cost of Article 22 injunction

4.9. Renault c.s. complained about the scope of the information requested in the Article 22 order and its cost. The court assumes that this applied to the order as given in the interlocutory order of 19 June 2024 based on type approvals and that it should be revisited on the basis of the amended information order. It will therefore not address this.

Questions answered by Renault et al.

4.10. Renault c.s. argued that it could answer the following questions (which had been asked per type approval), in general terms:

4.

By which inspection body [are Vehicle and Emission Type Approvals for the Renault and Dacia diesel vehicles issued]5?

5. Which standard (Euro 5 or one of the variants of Euro 6) applies to [the Renault and Dacia diesel vehicles marketed in the Netherlands in the period 2009-2019]?

7. Has (...) a recall been ordered by the inspection authority due to a prohibited manipulation device? If so what changes have taken place in the update?

8. Has (...) a voluntary recall taken place to change the settings of the emission control system? If yes, what changes took place in the update?

4.11. Renault et al answered these questions as follows.

"Question 4: Referring to its Phase 1 Reply Deed (Nos 105 - 114), Renault c.s. replied to this question that inspection of Renault and Dacia vehicles takes place (mainly) in France and that the Sous-Direction de la Sécurité des Émissions des Véhicules (the "SD6") has been designated as the competent type-approval authority. In that context, the SD6 appointed the Union Technique de l'Automobile, du Motorcycle et du Cycle (the "UTAC") as the technical service responsible for carrying out the tests to qualify for European Vehicle Type-Approval and European Motor-Type-Approval. In France, European Vehicle Type Approval and European Motorbike Type Approval are ultimately issued by the Centre National de Réception des Véhicules (the "CNRV")."

Question 5: On 1 September 2009, the Euro 5 standard came into force for new Vehicle types; from 1 January 2011 for all new vehicles

(B) On 1 September 2014, the Euro 6b standard came into force for new Vehicle types; from 1 September 2015 for all new vehicles.

The Euro 6 standard includes several revisions, including Euro 6b, Euro 6c and Euro 6d TEMP. The emission limits for all these variants are the same, the difference is only in the test method used.

(C) On 1 September 2018, the Euro 6c standard came into force for all new vehicles.

Question 7: Renault c.s. claims that the CNRV did not order any recall(s) of any of the affected vehicles. To the extent that Renault c.s. has taken any measures in relation to the affected vehicles, they are voluntary in nature and have been approved by the CNRV.

Question 8: In general terms, Renault c.s. confirms that the vehicles in question were not subject to a voluntary recall in order to change the settings of the emission control system. In April 2016, Renault c.s. announced the so-called 'Improvement Plan' on its own initiative: From the past (the knowledge and insights gained) and with a view to the future (increasingly stringent emission standards), Renault c.s. wanted to optimise the software of Euro 6b diesel engines for the purpose of further reducing NOx emissions. From the fourth quarter of 2016, this software update was offered free of charge. According to Renault et al, this 'Improvement Plan' is not related to a (voluntary) recall, let alone the presence of a prohibited manipulation device."

There has been a voluntary recall of a specific Renault Captur and Kadjar model, to fix a calibration error in the so-called 'DeSox' system that controls the desulphurisation of the NOx stage.

4.12. The court thus considers questions 4, 7 and 8 adequately answered, so that the original Article 22 order has been complied with. The court will therefore no longer ask these questions in the amended Article 22 order. Question 5 needs specific answers and therefore reappears in the amended Article 22 order.

5 Adjusted Article 22 injunction

- 5.1. Since the type approvals cannot be used to categorise Renault et al's statement, the court will use a different arrangement. The pleadings to date show that this dispute involves (at least) two engine types, the K9K and the R9M. Those engines have been used in various vehicle types. Renault c.s. has argued that different emission classes may apply to a given engine. Furthermore, Renault c.s. argues that the calibration of the software depends on the specific model and version in which the engine is implemented. The court will therefore organise the information order according to engine types.
- 5.2. In any case, Renault c.s. expressly requests the court to give it the opportunity to express its views in advance on any amended information request before the court would impose it.
- 5.3. The court will allow that, on the understanding that in doing so Renault c.s. may only comment on the practical enforceability of the aforementioned Article 22 order. If any part is not practicable or highly objectionable, Renault c.s. may propose an alternative that is practicable for it and provides essentially the same information. Should Renault c.s. intend to refuse to answer one or more questions, it should give notice at this stage.
- 5.4. Hearings require that the Foundations also have the opportunity to respond to the amended Article 22 order.

Amended order under section 22 Rv

- 5.5. The foregoing leads to the following revised order under section 22 Rv. The court orders Renault c.s. to answer the following questions to explain its claim that it did not apply prohibited manipulation devices in the vehicles in question.

1. Which engine types did Renault c.s. use in the vehicles in question during the relevant period and in which Emission Class do they fall.

Notes

The relevant period means the period from 1 January 2009 to 31 January 2019.

The vehicles in question are diesel-engined vehicles marketed in the Netherlands by Renault et al during the relevant period.

This question serves as an introduction and is used to organise the task of manipulation tools.

If an engine type has versions applied under different emission classes, the follow-up questions are intended to be answered separately for the different emission classes. The questions need only be answered for emission classes 5 and 6 to 6c.

2. Follow-up question for each of the engine types mentioned in question 1:
Which of the following manipulation tools were used in all or part of these engines:

- a. one or more temperature windows, i.e. a function or functions measuring the intake air temperature, the SCR temperature, the engine temperature or related values such as the coolant temperature or the temperature of any other engine component in order to trigger, modulate, delay or deactivate a component of the emission control system if it exceeds or falls below a given value, thereby reducing the effectiveness of the emission control system;
- b. preconditioning recognition or test recognition means one or more functions which serve to recognise the condition of the vehicle when it is being prepared for test (preconditioning) or when it is being tested in order to activate or modulate a component of the emission control system in that event so as to achieve the prescribed emission values, where those values are achieved only under those specific conditions and not outside those conditions,
- c. a "hot restart" function, which, after engine start-up, measures the SCR temperature or any other temperature to trigger, modulate, delay or deactivate a component of the emission control system if it is above a certain value, thus reducing the efficiency of the emission control system;
- d. a function whose purpose is to actuate, modulate, delay or render inoperative a component of the emission control system at driving speeds above or below a specified value, thereby reducing the effectiveness of the emission control system;
- e. a function whose purpose is to actuate, modulate, delay or deactivate any component of the emission control system in one or more gears so as to reduce the effectiveness of the emission control system;
- f. a "planned obsolescence" function, the purpose of which is to trigger, modulate, delay or deactivate a component of the emission control system when a certain total distance travelled by the vehicle has been reached, thereby reducing the effectiveness of the emission control system;
- g. a "postheating" function, which turns on the glow plugs only at a certain engine temperature and air pressure as can be expected at test conditions in order to heat the NSC catalyst faster,
- h. a function that measures average fuel consumption for the purpose of activating, modulating, delaying or deactivating any component of the emission control system to reduce the effectiveness of the emission control system;
- i. a function that measures air pressure for the purpose of activating, modulating, decelerating or deactivating a component of the emission control system to reduce the effectiveness of the emission control system;
- j. other structural components (hardware or software) that measure temperature, engine speed, acceleration, intake depression or other parameters to trigger, modulate, delay or render inoperative any component of the emission control system, thereby reducing the effectiveness of the emission control system?

Note: Means a manipulation device as defined in Article 3(10) of the Emissions Regulation 6 . It refers to the situation before any update. If desired, the situation after an update can also be mentioned.

In each case, "a component of the emission control system" shall also mean one or more of its components.

3. Which calibration or different calibrations were applied to each of the manipulation instruments listed in question 2.

Notes:

These are calibrations in the situation prior to any update. If desired, the situation after an update can also be mentioned. The purpose of this question is to gain insight into the

conditions under which the manipulation device operates. For example, in the case of a temperature window: below or above which temperature a component of the emission control system is triggered, modulated, delayed or rendered inoperative, thus reducing the efficiency of the emission control system. In other words, the intention is to explain the operation of the manipulation device.

4. In any combination of the manipulation instruments mentioned under question 2 and the different calibrations applied to them: according to Renault c.s., there is one of the cases mentioned in Article 5(2) of the Emissions Regulation, namely cases in which a manipulation instrument is not prohibited.

Notes:

After the amended Article 22 order has been finally adopted, the case will be referred to the roll for deed to answer questions 1 to 3. Renault c.s. will be free to answer question 4 at its option also in that deed or in its statement of reply.

6 Progress of proceedings

6.1. From the point of view of efficient litigation, Renault c.s. prefers that the Claims Foundations jointly arrive at an amended summons. This is also the court's preference.

6.2. The court supplements what was considered about the further course of the proceedings in the judgment of 19 June 2024 at paragraph 6.3.

The proceedings will continue as follows.

- Renault et al will be allowed to take a deed on the practicality of the amended Article 22 order. It may also express in it its intention to refuse to answer certain questions. |
- Foundations may also respond to the amended Article 22 order.
- The court will then finalise the Article 22 order. Renault c.s. will set a deadline of three months to comply with the order.
- After Renault c.s. has complied with the 22 Rv request, the Foundations will be allowed to respond. On that occasion, the Foundations will also be allowed to update and supplement their summonses, taking into account, inter alia, what was decided in the interlocutory judgment of 16 June 2024 regarding the demerger and joinder, the earlier judgment that the WAMCA does not apply and the developments since the summonses, including developments in the case law of the CJEU. They will also be allowed to address whether the court has jurisdiction to rule on the prohibited nature of manipulation devices. The Foundations will be given a two-month deadline to do so.
- It is the court's preference that the Foundations submit their amended summonses and combine further procedural documents as much as possible.
- The two cases will then be referred to the roll for conclusion of response by defendants. For this, defendants are given a three-month deadline.
- After that, the substantive oral hearing will take place.

7 The decision

The court

7.1. refers the matter to the roll of **11 December 2024** for act to be taken by Renault et al. as referred to in paragraphs 3.26 and 5.3, and for act to be taken by the Foundations as referred to under 5.4.

7.2. reserves any further decision.

This judgment was rendered by R.H.C. Jongeneel, M.R. Jöbsis and R.P.F. de Groot, Judges, assisted by P. Palanciyan, Registrar, and pronounced in public on 13 November 2024.

¹ The footnotes are omitted in this citation.

² [Internet site]

³ The same passage can also be found in the Phase 2 Incidental Opinion in the SDEJ case (margin number 6) and in the SEC case (marginal 6).

⁴ CJEU 14 July 2022, ECLI:EU:C:2022:572, C-145/20 (DS v Porsche Inter Auto and Volkswagen).

⁵ The additions in square brackets are by Renault et al, to indicate the context of the question.

⁶ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on the type-approval of motor vehicles with regard to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and access to repair and maintenance information.
