

Contribution to Webinar “Closing the Dieselgate Saga: Paving the Way for a Fair and Green Recovery of the European Car Sector” on 16 July 2020 by Dr. Marten Oosting, Chair Supervisory Board Stichting Car Claim

Dear Chairman, dear members of the European Parliament, dear participants to this digital conference,

1. First, I would like to thank the chair of today’s important conference for inviting me to address all of you in my capacity as chair of the supervisory board of Stichting Car Claim and as the voice of the many millions of European consumers that are affected by the Dieselgate scandal. Since the scandal emerged in the fall of 2015, Stichting Car Claim has been at the forefront of the efforts to convince car manufacturers to accept responsibility for their actions, to clean up their closets and to compensate those who were harmed by their behavior.
2. Already in March 2017, the EMIS committee of the European Parliament published its excellent report, clearly pinpointing where our European and national institutions have failed to prevent the massive breach of European law by the car industry. Since then, disappointingly little has changed. There is mounting proof that the car industry has continued to make use of defeat devices up to this very day. Tens of millions of “dirty diesels” are still crowding the European roads, significantly contributing to serious public health problems and environmental harm.
3. European car manufacturers have largely turned their backs on consumers during the last 5 years. National politics in member states - protecting perceived job security- play a critical role in shielding the car industry against the looming costs of compensation for the harm inflicted on European citizens. European institutions have been much too passive in tackling these problems. Despite strong language and condemnation of the behavior of car manufacturers by various past Commissioners, the European Commission only halfheartedly takes on member states that fail to properly enforce the existing rules.
4. This situation has allowed European carmakers to continue to generate record profits with the use of old technology. However, it has also resulted in these companies becoming extremely vulnerable to outside competition. In today’s webinar we learn that the ambitions of the new Commission, as set out in its Green Deal, remain unchanged. Various programs aimed at making up for the technological backlog and driving innovation and new job creation in the automotive industry have been developed. Programs that should be further accelerated in these unprecedented times of Covid-19.
5. Undertaking a journey at full speed into the future, however, cannot happen without due reconciliation with the past. Consumers in Europe have not been blind to the obvious fact that car manufacturers have brought tens of millions of defective products on the market. As a result, consumers have searched refuge in large numbers in courts all over Europe. However, despite the massive litigation against companies such as Volkswagen, the car industry is hardly scared-off by court cases. In fact, it has emerged that car manufacturers have agreed on an apparent collective strategy of stalling against all claims as long as possible. They invest billions of euros not on compensating car owners, but on legal fees to delay cases as long as possible.
6. In their defenses, car manufacturers make maximum use of the inaction of national type approval authorities. Furthermore, car manufacturers count on the fact that although hundreds of thousands of consumers undertake legal action, this will eventually only include

a relatively small percentage of the total number of affected car owners. Car manufacturers also massively postpone the outcome of court cases in order to maximize the height of a potential set-off of usage fees for miles driven during the time that consumers continued to use the cars against the compensation they are ordered to pay. With this strategy they aim to save millions of euros per day. It is – again - up to the courts to rule on the immorality of such practice. On top of that, car manufacturers have been able to successfully postpone rulings from national Supreme Courts and the European Court of Justice by quickly settling claims in full in anticipation of far-reaching negative rulings. Much to the frustration of all those many judges who are confronted with an overflow of their judicial systems.

7. Although tens of thousands of cases against Volkswagen have been processed in Europe's legal systems, there are still approximately 80,000 individual cases and mass claims pending in the various European courts. Only last May, the German Supreme Court finally got a chance to set an important precedent in which it qualified Volkswagen's behavior as immoral. However, this has not resulted in stimulating Volkswagen's willingness to settle. I can report first hand that in our own case, a mass action procedure in the Netherlands, which has already been running for over 3 (!) years now, Volkswagen never responded to calls for out of court settlement.
8. Volkswagen is not on its own. Daimler and BMW are suspected by the European Commission to have colluded with Volkswagen on the use of inferior technology in their diesel cars, needing them to cheat on real driving emissions. Tens of thousands of cases are pending against Daimler. Similarly, we notice a new wave of cases against BMW. In the event that later this year the ECJ will render a judgment on the definition of "*forbidden defeat devices*" in line with the conclusion of Advocate-General Sharpston, the floodgates will be opened for claims against many other car manufacturers as well, such as Renault, PSA and FCA. It is a public secret that all these companies have applied some form of a so-called "*thermal window*" or other defeat device in their diesel models. Our courts have so far been the only reliable factor in protecting the rights of European citizens during the Dieselgate scandal. I am extremely worried about the enormous burden that the car industry puts on our national courts, that already suffer serious backlog due to the Covid-19 crisis.
9. I am deeply concerned by the total lack of corporate social responsibility of the car industry. In two consecutive ways. Of course, and first of all: the Dieselgate scandal as such. Numerous courts at different levels, in different jurisdictions, have condemned the actions of Volkswagen and other car manufacturers as unlawful and in blatant violation of legal regulations regarding environment and public health. An embarrassing outcome for such an important industry. But moreover, in dealing with the scandal against this background, it is unacceptable that car manufacturers persist in rejecting any willingness to settle. Acknowledging the risk of a serious destabilization of our civil courts resulting therefrom in the near future, this behavior is careless both towards deceived consumers and to society as a whole.
10. I therefore urge the European car manufacturers to turn halfway, and to show readiness for consultation aimed at a friendly settlement. I also appeal to the bodies of the EU to make an effort to ensure that the car industry recognizes and takes its responsibility in this regard. An initiative endorsed and guided by the European Commission whereby representatives of the car industry on the one hand and representatives of the various stakeholders affected by the scandal on the other hand will negotiate a reasonable compromise to clean up the harmful effects of Dieselgate, would be an excellent way forward to achieve this. Stichting Car Claim – also speaking for its many partners all over Europe - is ready to participate in such initiative. We believe that such a solution is feasible. In fact, such compromise would largely mirror what has happened in the US, where consumer claims, environmental claims, administrative

claims and criminal claims were largely addressed in one series of settlements. Only when the “*Green Deal*” will go hand in hand with such a “*Clean Deal*”, the path will be cleared toward a sustainable future for the European car industry.

Thank you!