

STICHTING  
**VOLKSWAGEN CAR CLAIM**

**Annual Report 2017**

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# Report of the Supervisory Board

## ***Performance***

During the financial year 2017 the Supervisory Board monitored the foundation's governance, financial policy, legal strategy, and general affairs. The Supervisory Board has provided its findings to the Management Board and the legal advisors of the foundation. These findings particularly concerned the following subjects:

- Governance
  - o appointment Supervisory Board members;
  - o amendment articles of association;
  - o remuneration schemes of the Management Board and Supervisory Board;
- Financial policy
  - o the funding (structure) of the foundation;
- Legal strategy
  - o litigation proceedings both in and outside the Netherlands;
  - o joinder proceedings;
- Political strategy
- Media policy
- Other endeavours (to be) initiated by the foundation

## ***Composition and compliance***

The foundation has welcomed Mr Marten Oosting as a member of the Supervisory Board. Mr Oosting was appointed as per April 6, 2017. Mr Oosting has broad experience when it comes to consumer rights. He is a former National Ombudsman and the former president of the International Ombudsman Institute (1994 until 1999). Mr Oosting also served as a member of the Dutch Council of State (January 1 2000 until May 1, 2009), as an extraordinary State councillor (from May 1, 2009 until September 1, 2010) and as a State Councillor for the Advisory Division of the Dutch Council of State (from September 1, 2010, until December 1, 2013).

Ms Wolf remained to occupy the position as chairwoman of the Supervisory Board during 2017.

The articles of association of the foundation require three Supervisory Board members. The Supervisory Board had one outstanding vacancy during 2017. It is expected that this vacancy will be fulfilled during the financial year 2018.

## ***Meetings***

Joint meetings with the Management Board were held in Rotterdam on May 24, 2017 and on November 23, 2017. The Supervisory Board, the Management Board and the legal advisors

of the foundation also consulted each other via (conference) calls and email on multiple occasions. The meetings, conversations and messages focused on the general course of affairs, the foundation's financial position, operational strategy, organisational changes and the findings as mentioned above.

The Supervisory Board recognises the achievements of the foundation's management and legal counsel in 2017 and hereby expresses its appreciation to them.

Rotterdam, 13 June 2018

A large black rectangular redaction box covering the signature of Mr Marten Oosting.

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Mr Marten Oosting

## **Directors' Statement**

### ***Mission***

Stichting Volkswagen Car Claim is a non-profit organisation, which is duly incorporated under Dutch law on October 2, 2015. It has its registered seat in Rotterdam, the Netherlands.

### ***Representation***

The foundation represents the interests of European Volkswagen AG group car owners, such as consumers and (leasing) companies, whose cars are being equipped with defeat devices and in a later stage were (and possibly will be) provided with an insufficient update (the 'fix').

### ***Objective and approach***

The foundation aims to achieve recovery for affected car owners from *inter alia* Volkswagen AG Group, its (former) directors, its local car traders in the Netherlands and Robert Bosch GmbH for the damages suffered as a result of the Volkswagen scandal.

The articles of the foundation are drafted in light of the principle to reach a fair and reasonable solution for all the parties that are involved in the scandal. The Boards of the foundation have instructed their legal counsel to work with the abovementioned parties in a spirit of mutual respect in order to find a reasonable and fair solution to this multifaceted and multinational problem. This primarily implies negotiations which ultimately could result in entering in a voluntary settlement. Such a solution should further entail that affected European car owners can continue to make use of their cars without any risk or damage.

Unfortunately Volkswagen ea. did not accept the invitations of the foundation to enter into amicable settlement negotiations. Therefore, the Board of the foundation have instructed their legal counsel to initiate litigation proceedings against all the abovementioned parties at the end of 2017 (reference is made to paragraph "*Actions of the foundation over the year 2017*" of this Annual Report).

### ***Governance***

#### ***Management Board***

The foundation is governed and represented by a professional Management Board. The Management Board is responsible for the strategy, financial policy and day-to-day business of the foundation. The Management Board is appointed by the Supervisory Board.

In 2017, the Management Board consisted of Mr Fausto Pocar (former president of the International Criminal Tribunal for the former Yugoslavia (ICTY)), Mr Arie van der Steen (accountant and former CFO of a number of private companies), and Mr Guido van

Woerkom (former president of the Royal Dutch Touring Club (ANWB)) who was appointed as a Management Board member per April 6, 2017.

#### Supervisory Board

The foundation's Supervisory Board supervises the foundation's Management Board and the general course of affairs and business of the foundation. This includes, but is not limited to, the supervision of the foundation's strategy, the foundation's financial affairs and the realisation of the foundation's objectives. The members of the Supervisory Board perform their duties independently.

In 2017 the Supervisory board consisted of Ms Ulrike Wolf (senior legal counsel at the Austrian Consumer Association (VKI)) and Mr Marten Oosting (former National Ombudsman and former member of the Council of State) who was appointed as a Supervisory Board member per April 6, 2017.

#### Articles of association

The foundation amended its articles of association during 2017 in the run-up to the litigation proceedings in the Netherlands. A lot of factual information has come to light since the beginning of the scandal. This has *inter alia* shed further light on the role, the responsibility and accountability of more parties than Volkswagen alone (i.e. Volkswagen's subsidiaries, its (former) directors, software supplier Bosch, importer PON and the Dutch local traders). These new facts and circumstances have also further defined and specified (i) which vehicles are affected, (ii) the consequences of the update for affected vehicles, and (iii) the non-compliance of affected vehicles with the applicable emission regulation after the update.

#### Advisory Board

Members of the Advisory Board have special knowledge and/or experience which will be useful to the objects of the Foundation. The duties and powers of the Advisory Board are included in the by-laws (*huishoudelijk reglement*) of the foundation.

Mr Gerhart Baum (former German Minister of Interior) continued to chair the Advisory Board during the financial year 2017. The foundation consulted the advisory board on multiple topics of foreign law (e.g. (interruption of) statute of limitations, director's liability, etc.)

#### **Annual report 2016**

The annual report over the financial year 2016 has been adopted on November 23, 2017.

#### **Claim Code 2011**

The foundation complies with the rules of the so-called Claim Code 2011, a code of conduct drawn up by experts operating in the Dutch collective redress market. The compliance table included in the Annual Report (page 19) provides specific insights on the foundation's

compliance with the Claim Code 2011.

### ***Actions of the foundation over the year 2017***

#### *Communication with Volkswagen ea.*

In 2017 the foundation continued to reach out to the Volkswagen Group. It sent letters to the Volkswagen Group in April, June, July and December 2017. In these letters the foundation extensively set out the impact of the (continuing) scandal for the affected car owners, the role and responsibility of Volkswagen and the legal rights of the affected car owners towards Volkswagen in this respect. The foundation also repeated its preferred scenario to discuss a fair and reasonable settlement in the interest of the affected car owners.

The foundation also sent letters to Robert Bosch GmbH (April, July and December 2017), Pon's Automobielenhandel (December 2017), the official Dutch local traders of the Volkswagen Group (in April and via the Dutch Dealcouncil in December 2017), Mr Winterkorn (December 2017) and Mr Müller (December 2017). In all of these letters the foundation provided the abovementioned parties with an overview of the 'Dieselgate' scandal, discussed the responsibility of each party and invited all parties to elaborate on the possibility to reach a fair and reasonable settlement for the car owners that are affected by the scandal.

#### *Support base and cooperation*

The foundation continued to expand its significant support base from aggrieved car owners residing all over Europe. It also continued to work in close cooperation with other European consumer (litigation) initiatives and maintained a close dialogue with other stakeholders, such as environmental and public health organizations.

The foundation also communicated on a regular basis with other consumer organisations, such as the Dutch Consumer Association and the Dutch Consumer Authority and (international) automobile associations (such as ANWB, ADAC, ÖAMTC and FIA).

#### *Legal proceedings*

Unfortunately, the claim letters and multiple other attempts to communicate with Volkswagen and others remained without a positive answer. In absence of Volkswagen's cooperation it became clear that further action is needed to bring the company to the table. Therefore the foundation *inter alia* decided to initiate legal actions in and outside the Netherlands.

**US Discovery Proceedings** – the foundation already filed an application for an order pursuant to 28 U.S.C. § 1782 to obtain discovery for the use in foreign proceedings in September 2016.

The foundation sought discovery of documents in the United States as these documents

would help to demonstrate Volkswagen's in-depth knowledge of the manipulation practices, the technical implications of the manipulation and the impact on car performance, emission values, fuel consumption, etc. The request was filed with the Californian court that was also dealing with the US class action. The foundation has asked to get access to all documents submitted by Volkswagen in those proceedings. The request has been denied by the Magistrate Judge in February 2017. The main reason for denial was that Volkswagen (and the other defendants) could not be found in the district of California. The foundation appealed the order to the District Judge. In March 2017 the District Judge issued an order denying the foundation's request for discovery and refusing to overturn the Magistrate Judge's order.

**Dutch Proceedings** – the foundation has initiated litigation proceedings on behalf of approximately 170,000 Dutch car owners affected by 'Dieselgate' against the following parties:

- Volkswagen AG
- Audi AG
- Škoda a.s.
- SEAT S.A.
- Robert Bosch GmbH
- Martin Winterkorn
- Matthias Müller
- Pon's Automobielhandel B.V.
- Volkswagen Group's Dutch local traders

In its writ of summons the foundation is seeking (amongst others) a declaratory judgment that aggrieved Dutch car owners are entitled to return their vehicles with the Dutch local traders and that all the mentioned defendants acted unlawfully towards the aggrieved car owners. Since the declaratory proceedings relate to issues of liability only, no actual damage amounts will be claimed by the foundation in this stadium of the proceedings.

The writ of summons has been served to the defendants in December 2017. The legal proceedings are filed at the Amsterdam District Court. All of the mentioned defendants have appeared in the litigation proceedings. On May 2, 2018 the foundation submitted the writ of summons with the District Court of Amsterdam. In view of the number of parties involved, the foundation requested the court for a pretrial hearing, in order to establish procedural arrangements. Further court actions are to be expected in the course of 2018.

**Joinder filing proceedings** – the foundation has interrupted the statute of limitation for injured parties domiciled in the Netherlands regarding their claims to Volkswagen e.a. As the scope of 'injured parties' in the foundation's articles of association also include affected car owners from other European countries it has actively sought for alternative ways to safeguard the interruption of the statute of limitation for this group.

An opportunity was found in August 2017, when the Austrian prosecutor officially started criminal investigations against Volkswagen AG and Bosch. The Austrian criminal proceedings offer victims a possibility to file a Joinder. A Joinder is considered as a legal action in many jurisdictions. Hence, filing a Joinder is often sufficient to interrupt the statute of limitations. The foundation has prepared a swift procedure to file Joinders for its participants via [www.volksklagen.de](http://www.volksklagen.de). Participants that file a joinder won't lose their rights. After the launch



of the Joinder service in Germany the foundation will anticipate to further extent the joinder service in other European countries in the course of 2018.

#### WOB-requests

In order to get to the bottom of the scandal and to obtain further information which could be relevant for the pending legal proceedings against Volkswagen ea., the foundation filed multiple WOB requests (requests to a governmental body to disclose information) in the Netherlands (with the RDW), in Germany (with the KBA) and Brussels (with the European Commission). Multiple WOB requests have already resulted in additional insight and information about the scandal. Other WOB requests and additional requests are currently pending.

#### Political strategy

A last element of our strategy is to further mobilize political support for the foundation's endeavour. The foundation has retained the services of a political consultant in Brussels who assists us by collecting the required support.

In February 2017 the legal advisors met with a delegation of the European Parliament, consisting of Chair and Co-rapporteur of the Emissions Measurements in the Automotive Sector (EMIS) Committee, Ms Kathleen Van Brempt and rapporteur Mr Gerben-Jan Gerbrandy. In September 2017 the legal advisors of the foundation met with the European Commission in Brussels in order to strengthen political support for the foundation's endeavor.

The political advisors of the foundation furthermore presented an opportunity to participate in a conference regarding the VW emission scandal in Brussels in 2018. The foundation will attend the conference in order to represent the united voice of the European consumer and to create further awareness with regard to the negative consequences that car owners of affected diesel vehicles are facing as a result of Volkswagen's diesel scandal.

### **Financials**

#### Funding

The foundation follows a strict "no-cure-no-pay" arrangement with its participants. Car owners can join the foundation completely free of charge. All costs (including legal costs) are borne by the foundation, for which we have obtained external funding. Only in the event that the foundation is successful in its endeavors (i.e. as a result of a settlement or through successful litigation) it will seek a reasonable percentage of such amount, which will be in the range between eighteen to twenty five percent.

The initial funding of the foundation was provided by two third-party funders. With the preparation and start of the Dutch litigation proceedings it was projected that the foundation would require additional funding from other professional parties from 2017 onwards.

In 2017 the foundation held multiple conversations with potential funders, thereby taking into account the interest of its participants and the Claim Code. It ultimately selected a professional litigation funder from the UK to provide the required funding. One of the initial funders will stay on board as funder and partner in the project. The other funder has made a formal request to withdraw as a funder.

#### Tax authorities

The foundation has regularly corresponded with the tax authorities regarding its tax obligations. So far the tax authorities concluded that the Foundation is not liable to pay any taxes.

#### Administration

Mr Van der Steen – being the treasurer of the foundation – took care of the day-to-day financial administration of the foundation.

#### **Meetings**

Joint meetings with the Supervisory Board and legal counsel of the foundation were held in Rotterdam on May 24, 2017 and on November 23, 2017. The Management Board, the Supervisory Board and the legal advisors of the foundation also consulted each other via (conference) calls and email on multiple occasions and on a regular basis.

#### **Communication and media**

The foundation also keeps its participants informed on any developments through periodical newsletters, press releases and updates via its websites.

Dutch participants are been kept informed via the website [www.derclaim.com](http://www.derclaim.com). On this website Dutch car owners can also register with the foundation, after which they receive a personal account. This allows registered participants to provide basic input on their ideal settlement, change their personal information, and keep in touch with the foundation through frequent notifications.

Car owners throughout Europe can register with the foundation via the website [www.stichtingvolkswagencarclaim.com](http://www.stichtingvolkswagencarclaim.com).

The endeavours of the foundation have had broad exposure in the Dutch and international media, under which [The Financial Times](#), [Reuters](#), [The Telegraph](#), [Euronews](#), [het Financieele Dagblad](#), [NRC](#), [RTL](#) and [De Telegraaf](#). Representatives of the foundation also gave several interviews on Dutch national radio and television, such as [BNR](#) (September 23, 2017) and [EenVandaag](#) (December 11, 2017).

Rotterdam, 13 June 2018



Mr. Fausto Pocar  
Chairman

# Annual Accounts 2017

## A. Balance Sheet

	<u>31.12.2016</u>	<u>31.12.2017</u>
<b><u>FIXED ASSETS</u></b>		
Intangible fixed assets	--	--
Tangible fixed assets	--	--
<b><u>CURRENT ASSETS</u></b>		
Inventories	--	--
Receivables	--	--
Cash and bank balances	€11,758	€ 14,193
<b><u>CURRENT LIABILITIES</u></b>		
Creditors	--	--
Accrued liabilities	€11,758	€ 14,193
Current assets minus current liabilities	€ 0	€ 0
Assets minus current liabilities	€ 0	€ 0
<b><u>EQUITY</u></b>	€ 0	€ 0

## B. Statement of Income and Expenses

	<u>2016</u>	<u>2017</u>
<b><u>INCOME</u></b>		
Third Party Funding	€36,169	€ 22,541
<b>Total</b>	<b>€ 36,169</b>	<b>€ 22,541</b>
<b><u>EXPENSES</u></b>		
Notary	€ 5,862	€ 2,764
ICT	€ 9,045	€ 845
Call Center	€ 325	€ 501
D&O Insurance	€ 4,008	€ 1,331
Management/Remuneration Fees	€ 7,513	€ 17,066
Other	€ 80	€ 34
<b>Total</b>	<b>€ 36,169</b>	<b>€ 22,541</b>
<b>Operating Income</b>	--	--
<b>Non-operating income</b>	--	--
<b><u>NET INCOME</u></b>	<b>€ 0</b>	<b>€ 0</b>

## **Notes to the Annual Accounts 2017**

## **A. Notes to the Balance Sheet**

### **BALANCE SHEET VALUATION POLICIES**

#### **General**

Valuation of assets and liabilities and determination of the result take place under the historical cost convention.

Unless mentioned otherwise at the relevant principle for the specific balance sheet item, assets and liabilities are presented at face value.

#### **Receivables**

Upon initial recognition the receivables are recorded at the fair value and subsequently valued at the amortized cost. The fair value and amortized cost equal the face value. Provisions deemed necessary for doubtful accounts are deducted. These provisions are determined by individual assessment of the receivables.

#### **Cash and cash equivalents**

Cash and cash equivalents are valued at nominal value and, insofar as not stated otherwise, are at the free disposal of the company.

#### **Current liabilities**

Current liabilities concern debts with a term of less than one year. Upon initial recognition the current liabilities are recorded at the fair value and subsequently valued at the amortized cost.



## **B. Notes to the Statement of Income and Expenses**

### **PRINCIPLES FOR THE DETERMINATION OF INCOME AND EXPENSES**

#### **Income**

Net income represents amounts invoiced for services rendered during the financial year reported on, net of discounts and value added taxes.

#### **Expenses**

Expenses are attributed to the financial year to which they relate.

#### **LEGAL FEES**

The foundation is funded by third party funders. The third party funders pay the operational expenses of the foundation. The fees of the legal counsel of the foundation are directly paid by the third party funders without involvement of the foundation.

Part of the fees of the legal counsel of the foundation remained unpaid in 2017. These fees will be settled in 2018.

#### **Overview Legal Costs 2017**

In 2017 € 927,714 has been paid by the funders for legal fees and third party costs.



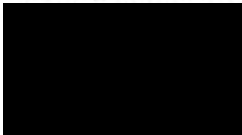
## Compliance Table Claim Code 2011

Principle		Provision in Articles of Association where principles are embedded	Explanation
<b>Principle I</b>		3.1-3.3	<b>Compliance</b>
Application 1		6.4, <i>factual</i>	<i>Publication information about governance structure</i>
Application 2		<i>factual</i>	<i>Accessibility published information</i>
Application 3		6.5, <i>factual</i>	<i>substantial change</i>
Application 4	n.a.	n.a.	<i>n.a.</i>
<b>Principle II</b>		2.3	<b>Non-Profit</b>
Application 1		4.3, <i>generally embedded in Articles, factual</i>	
Application 2		17.3	
Application 3	n.a.	n.a.	<i>n.a.</i>
<b>Principle III</b>		5-6	<b>Management Board</b>
Application 1		5.1, <i>factual</i>	<i>Management Board consist of at least three natural persons</i>
Application 2		5.2	<i>Specific expertise of the Management Board members</i>
Application 3		5.2, <i>factual</i>	<i>At least one lawyer</i>
Application 4		7.1	<i>Representation by the Management Board</i>
Application 5		15.2, 15.7	
Application 6		5.4, 8.10, 8.11	
Application 7		<i>Factual, website</i>	<i>Information on website</i>
Application 8		<i>Factual, website</i>	<i>Other means of access to information</i>
Application 9	n.a.	n.a.	<i>n.a.</i>
<b>Principle IV</b>		5.3	<b>Independence</b>

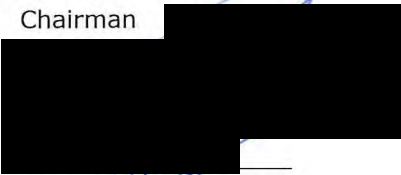
Application 1		5.3, 10.3, <i>factual</i>	<i>no family or similar relationships</i>
Application 2		6.3, <i>factual</i>	<i>Involvement</i>
<b>Principle V</b>		9.1-9.3	<b>Remuneration Management Board</b>
Application 1		9.1	<i>Determination of Remuneration</i>
Application 2		9.2, <i>factual</i>	<i>Remuneration of others</i>
Application 3		9.3, <i>factual</i>	<i>Explanation remuneration</i>
<b>Principle VI</b>		11.1	<b>Supervision</b>
Application 1		10.1	<i>Supervisory Board consist of at least three natural persons</i>
Application 2		12.1, 14.1	
Application 3		10.2, 10.3, 12.12	
Application 4		<i>factual</i>	<i>At least one lawyer</i>
Application 5		<i>factual</i>	<i>At least one financial expert</i>
Application 6		11.2, 11.3	
Application 7		15.5, 15.6	
Application 8		11.6, <i>factual</i>	
Application 9		13.1, 13.2	
Application 10	n.a.	n/a	<i>Small foundations</i>

Rotterdam, 13 June 2018

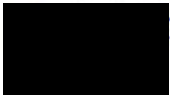
**Management Board**



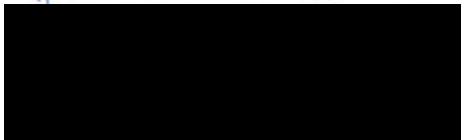
Mr Fausto Pocar  
Chairman



Mr Guido van Woerkom



**Supervisory Board**



Mr Marten Oosting



Mr Arie van der Steen