# STICHTING VOLKSWAGEN CAR CLAIM

# Annual Report 2018

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## **Report of the Supervisory Board**

### Performance

During the financial year 2018, 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
  - appointment Supervisory Board members;
  - amendment articles of association;
  - remuneration schemes of the Management Board and Supervisory Board;
- Financial policy
  - the funding (structure) of the foundation;
- Legal strategy
  - litigation proceedings both in and outside the Netherlands;
  - joinder proceedings;
- Political strategy
- Media policy
- Other endeavours (to be) initiated by the foundation

#### Composition and compliance

The foundation has welcomed Mr Hans de Savornin Lohan as a member of the Supervisory Board. Mr De Savornin Lohman has been appointed as per June 18<sup>th</sup>, 2018. He is a deputy justice at the Court of Appeal in The Hague and has more than 25 years of litigation experience as an attorney.

During the financial year 2019, the foundation also welcomed Mr Jan Zielonka as a Supervisory Board member. Mr Zielonka has been appointed on February 7<sup>th</sup>, 2019. His main areas of expertise are in Comparative Politics, Ethics, International Relations and Political Theory. Before accepting his position as a Professor of European Politics at the University of Oxford, Mr Zielonka was employed at the University of Warsaw, Leiden and the European University in Florence.

Ms Ulrike Wolf has resigned as Supervisory Board member as of May 25<sup>th</sup>, 2018. The Supervisory Board is grateful for the services of Ms Wolf.

## Meetings

Joint meetings with the Management Board were held on April 13<sup>th</sup>, 2018, June 13<sup>th</sup>, 2018 and on November 17<sup>th</sup>, 2018. 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

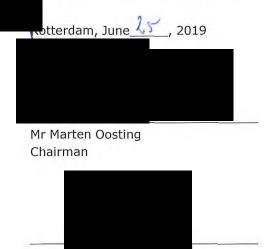
the findings as mentioned above.

#### Other appearances

Mr Oosting represented the foundation during the high-level multi-stakeholder conference "Dieselgate, What Next" that was held on June 27<sup>th</sup>, 2018 in the European Parliament. Representatives of the European Commission, of various stakeholders and of the automobile sector talked about a pan-European solution for the still looming diesel scandal.

During the conference, Mr Oosting pointed at the responsibility of the European institutions to ensure that a true and effective dialogue on a solution will be opened between representatives of the automotive industry on the one hand and a collective platform of all relevant stakeholders on the other hand. This approach should ensure that Dieselgate-like breaches of consumer regulations could not take place again.

The Supervisory Board recognises the achievements of the foundation's management and legal counsel in 2018 and hereby expresses its appreciation to them.



Mr Hans de Savornin Lohman



## **Directors' Statement**

#### Mission

Stichting Volkswagen Car Claim is a non-profit organisation, which is duly incorporated under Dutch law on October 2<sup>nd</sup>, 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 because 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 that 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 Boards of the foundation have instructed their legal counsel to initiate litigation proceedings (reference is made to the paragraph "*Actions of the foundation"* 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 2018, 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)).

## Supervisory Board

The foundation's Supervisory Board advises and 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 2018, the Supervisory board consisted of Mr Marten Oosting, Mr Hans de Savornin Lohman (appointed as per June 18<sup>th</sup>, 2018) and Ms Ulrike Wolf (resigned as per May 25<sup>th</sup>, 2018). Mr Jan Zielonka has been appointed as a Supervisory Board member after the financial book year 2018 (as per February 7<sup>th</sup>, 2019).

## 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.

## Annual report 2017

The annual report over the financial year 2017 has been adopted on June 13<sup>th</sup>, 2018.

## Claim Code 2019

The foundation complies with the rules of the so-called Claim Code. The Claim Code is a code of conduct drawn up by experts operating in the Dutch collective redress market and was first published in 2011. In March 2019, the Claim Code was amended. Formally seen, over the financial year 2018, the foundation has to comply the (old) Principles of the Claim Code 2011.

Since the Annual Report 2018 is adopted after the Claim Code 2019 was published, the foundation opts to voluntarily comply with the new Principles of the Claim Code 2019. In that regard, an explanatory notice of compliance is included in the Annual Report (page 19 et seq.). The notice of compliance provides specific insights on the foundation's compliance with the Claim Code 2019.

## Actions of the foundation

### Communication with Volkswagen ea.

Over the last years, the Foundation has sent multiple letters to the Volkswagen Group. 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, Pon's Automobielhandel, the official Dutch local traders of the Volkswagen Group, Mr Winterkorn and Mr Müller. 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.

## Legal proceedings

Unfortunately, the claim letters and multiple other attempts to communicate with Volkswagen and others remained without a positive answer. In the 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 the Netherlands.

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

SEAT S.A.

Martin Winterkorn

Audi AG

Matthias Müller

- Škoda a.s.
- Pon's Automobielhandel B.V.
- Volkswagen Group's Dutch local traders
- Robert Bosch GmbH

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 phase of the proceedings.

#### <u>Status</u>

The writ of summons has been served on the defendants in December 2017. The legal proceedings have been filed with the Amsterdam District Court. All of the mentioned defendants have appeared in the litigation proceedings.

On May 2<sup>nd</sup>, 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.

The pretrial hearing took place on November 6<sup>th</sup>, 2018. The aim was to establish a procedural order to ensure that unnecessary delays are avoided. After hearing all the arguments of the parties, the court decided to divide the proceedings into the following three phases:

Jurisdiction of the Dutch court; 1.

- 2. Preliminary defenses and possible interim proceedings (applicable law, admissibility of the claim, representativeness of the foundation etc.);
- 3. Merits of the case.

During the first phase, only the former CEOs of Volkswagen objected to the jurisdiction of the Amsterdam Court. Volkswagen and the other defendants have accepted the jurisdiction of the Amsterdam Court. Because the proceedings against all defendants are dealt with at the same time, the proceedings against the former CEOs would unnecessarily delay the progress of the proceedings against Volkswagen and the other defendants. The foundation finds this undesirable. To speed up the proceedings, the foundation has therefore decided to remove the former CEOs from the current proceedings. In this way, the second phase could be started immediately, in which the Amsterdam Court will address preliminary defenses and possible interim proceedings. The former CEOs of Volkswagen could still be involved in separate legal proceedings.

The Amsterdam Court has now set the hearing date for oral pleadings in the second phase on October  $7^{th}$ , 2019.

**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). Multiple WOB requests have already resulted in additional insight and information about the scandal. Other WOB requests and additional requests are currently pending.

## <u>Status</u>

The foundation has received (part of) the requested documents from the Dutch type approval authority (RDW). These documents were almost completely blackened. The foundation raised its objections against the blackening of the documents in proceedings under administrative law. This objection was honored to a limited extent, but largely passed. The foundation cannot agree with the decision on objection and will appeal against it.

The German type approval authority (KBA) has confirmed that the scope of the foundation's request includes documents that the KBA has and will partly grant the request. What the foundation will eventually get, when and how legible the documents will be, is currently unknown.

#### Political strategy

A last element of the foundation's 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.

The foundation attended several conferences and meetings in Brussels during the financial year 2018.

During the European Diesel Summit on November 6<sup>th</sup>, 2018, the foundation spoke with different yet like-minded stakeholders about a total European solution that would deal with all relevant aspects of Dieselgate. A solution whereby the car industry would get clean with the past and at the same time would contribute to a better future.

The Foundation is involved in communication with NGO's, local communities and European politicians to operate such strategy and is happy to contribute in that respect.

The political advisors of the foundation also presented an opportunity to participate in the European Parliament multi-stakeholder conference '*Dieselgate, what next?*' in on June 27<sup>th</sup>, 2018. During this conference, the Dieselgate damaged parties agreed to join forces to ensure that finally a fair and reasonable settlement is reached with the European car industry, similar to the U.S. model. Mr Oosting, on behalf of the foundation, attended 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 because of Volkswagen's diesel scandal.

## Financials

## <u>Funding</u>

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 endeavours (i.e. as a result of a settlement or through successful litigation) it will seek no more than eighteen to twenty-five percent of a certain amount, which shall be paid to its funders.

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.

In 2018, 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 withdrawn 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.

#### <u>Administration</u>

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 April 13<sup>th</sup>, 2018, June 13<sup>th</sup>, 2018, and on September 11<sup>th</sup>, 2018. 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 have been kept informed via the website <u>www.derclaim.com</u>. 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.

#### Relaunch international website

Car owners throughout Europe can register with the foundation via the website www.stichtingvolkswagencarclaim.com.

During 2018, the international website of the Foundation was updated and relaunched. The style and content is now consistent with the Dutch website: <u>www.derclaim.nl</u>

The international website is meant to (i) inform non-Dutch car owners about its endeavor on a European level, (ii) invite these car owners to register with the Foundation, and (iii) redirect participants who want to litigate to its partners in the respective jurisdictions.

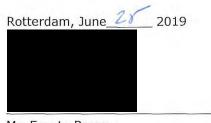
The website can be visited through the following link: www.stichtingvolkswagencarclaim.com

#### Q&A interview

During 2018, the foundation also prepared a Q&A interview with Mr Guido van Woerkom, which was placed on the website. In the Q&A interview, Mr Van Woerkom addressed the most frequently asked questions of the constituents of the foundation on video. The foundation received very positive responses from its constituents on the Q&A interview. It will further investigate over 2019 whether this means of communication will be used more frequently.

The endeavours of the foundation have had broad exposure in the media, under which NRC

(I), (II) Telegraaf, and Algemeen Dagblad.



Mr. Fausto Pocar Chairman

**Annual Accounts 2018** 

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# A. Balance Sheet

# **B.** Statement of Income and Expenses

	<u>2018</u>	<u>2017</u>
INCOME		
Third Party Funding	€ 169,211	€ 22,541
Total	€ 169,211	€ 22,541
<u>EXPENSES</u>		
Notary	€ 1,416	€ 2,764
ICT	€ 534	€ 845
Call Center	€ 387	€ 501
D&O Insurance	€ 1,331	€ 1,331
Management/Remuneration Fees	€ 23,783	€ 17,066
Supervisory board	€ 7,683	
Back office	€ 133,952	
Other	€ 125	€ 34
Total	€ 169,211	€ 22,541
Operating Income		
Non-operating income		
NET INCOME	€0	€0

Notes to the Annual Accounts 2018

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## 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 legal costs over the financial year 2017 that were due and unpaid have been fully paid for in the financial year 2018.

The following costs and (legal) fees have been invoiced to the foundation in the financial year 2018:

Legal costs (directly related to Dutch legal Proceedings)

o EUR 85,149.96

**Running Costs** (legal fees and other costs related to the foundation's activities, excluding Dutch legal proceedings, including costs related to political endeavors, marketing and media, including third party expenses)

o EUR 616,754.61

## COMPLIANCE OVERVIEW CLAIM CODE 2019

## Introduction

The foundation was established in October 2015 and is an interest organization within the meaning of article 3:305a Dutch Civil Code ('**DCC**'). Currently, the foundation has a management board ('**MB**') consisting of three members and a supervisory board ('**SB**') also consisting of three members.

The foundation fully commits to the Claim Code that came into force on 1 July 2011 and was recently amended in March 2019 ('Claim Code'). The Claim Code is a private initiative that currently consists of seven principles ('Principles') that are accepted general guidelines and views on the way interest organizations such as the foundation should represent collective interests. The Principles contain a set of standards for the founders, board members, supervisory board members, consultants and advisors engaged by the interest organization.

With this underlying document, the MB provides a high-level explanation of the foundation's compliance to the Claim Code (in conformity with Principle I, elaboration 1 of the Claim Code).

## Principle I: Compliance with the Claim Code 2019

The governance structure of the foundation is set up in accordance with the principles of the Claim Code. The articles of association of the foundation ('**Articles**') determine that the MB and SB together are responsible for the conservation of that governance.

The compliance of the foundation to the Claim Code will be discussed annually within the (joint) MB and SB meeting. If the MB wishes to deviate from the Claim Code, it will need prior written approval of the SB as set out in clause 6.5 of the Articles.

This document is a document as set out in clause 6.4 of the Articles and elaboration 1 of Principle I of the Claim code and will be published together with the Annual Report on the Foundation's websites <u>www.derclaim.nl</u> and <u>www.stichtingvolkswagencarclaim.com</u>.

## Principle II: Protecting collective interests on a non-profit basis

The foundation is a non-profit organization that represents the interests of all private and corporate owners of vehicles from one of the brands carried by *inter alia* Volkswagen AG, Audi AG, SEAT S.A. and/or Škoda a.s. (**'Volkswagen c.s.**'), which have been delivered with an engine affected by the Volkswagen diesel-emissions-scandal.

The Articles of the foundation provide important safeguards, which prevent that any natural or legal person can – directly or indirectly – dispose of the capital or income of the foundation (within the meaning of elaboration 1, Principle II of the Claim Code). As a result, the risk of inappropriate use of the foundation's funds – for which the Claim Code provides important safeguards, is absent. The foundation also does not generate revenues. Participants are not

required to pay a registration fee. This further reduces the risk of inappropriate use of the foundation's funds.

In conformity with elaboration 3 of Principle II of the Claim Code, the Articles determine that the MB shall, subject to approval from the SB and with due observance of the interests of the participants of the foundation, determine the appropriation of the surplus after dissolution. The appropriation will have to approach the objects of the foundation as closely as possible and shall be distribute to the participants or an organization within the meaning of Section 6.33 paragraph 1 section b of the Income Tax Act 2001.

## Principle III:

The foundation entered into a funding agreement with Vannin Capital PCC ('**Vannin**'), with its registered office in Jersey, to provide funding to the foundation in order to pursue its statutory objects.

Vannin Capital is a pioneer of the rapidly evolving market of legal finance. Its businesses include litigation finance and risk management, asset recovery and a wide range of legal finance and advisory activities, providing tailored funding solutions and expert support to corporations and law firms involved in high value, commercial disputes.

Vannin works with law firms and clients around the world, combining global resources and local expertise from its offices in London, Jersey, Paris, New York, Washington, Sydney, Melbourne and Bonn. For more information about Vannin: <u>www.vannin.com</u>.

The members of the MB, SB and the lawyers of the foundation are fully independent from the funder. The funding conditions also do not conflict with the collective interests within the meaning of the statutory objects of the foundation. In return for the funding costs and the risk incurred, the funder receives a premium, which is 18% to 25% of any financial recovery achieved through a (collective) settlement or litigation (dependent on the number of participants included in such resolution).

Elaboration 2 of Principle III of the Claim Code provides that the funding agreement should *inter alia* contain (i) a provision that Dutch law is applicable and (ii) choice of competent jurisdiction for the Dutch court or a Dutch arbitral tribunal. The funding agreement deviates from this elaboration, as the funding agreement was concluded before new Principle III of the Claim Code (2019) was published.

The funding agreement determines that any dispute between the foundation and the funder will be handled through mediation or arbitration in Rotterdam, the Netherlands.

## Principle IV: Independency and avoiding conflict of interests

In accordance with elaboration 1 of Principle IV of the Claim Code, any apparent conflict of interest between the foundation's MB, SB, the external funder and the engaged advisors should be avoided (see for instance clause 5.3, 8.14, 10.3 and 12.12 of the Articles). If a(n)

(in)direct conflict of interest should exist, the concerning member of the SB/MB will not take part in the deliberations and decision-making process (clause 8.14 (MB) and 12.12 (SB) of the Articles).

In accordance with elaboration 3 of Principle IV of the Claim Code, the Articles of the foundation do not allow the foundation to enter into agreements with a legal entity or natural person or other entities, whereby a MB or SB member – whether or not trough a relationship within the meaning of elaboration 1 of Principle IV of the Claim Code - in the capacity of board member, founder, shareholder, supervisor or employee (clause 6.3 of the Articles).

## Principle V: Composition of the MB

In conformity with elaboration 1 of Principle V of the Claim Code, the MB currently consists of three natural persons: Messrs. **Fausto Pocar** (former president of the International Criminal Tribunal for the former Yugoslavia (ICTY)), **Guido van Woerkom** (former president of the Royal Dutch Touring Club (ANWB) and **Arie van der Steen** (accountant and former CFO of a number of private companies).

With these members, the MB has sufficient legal and financial expertise (within the meaning of elaborations 3 and 4 of Principle V of the Claim Code) to successfully pursue the statutory purpose of the foundation.

#### Principle VI: Remuneration of the members of the MB

The members of the MB receive a management fee for their services to the foundation. For meetings of the MB or joint meetings with the supervisory board, members of the MB are compensated a remuneration of EUR 1,000 (excluding VAT) per day attended.

For additional services related to the activities of the foundation, members of the MB are entitled to a service fee of EUR 150 per hour excluding VAT. Given the experience of the MB members, this is a very modest hourly rate.

The total amount received by the members of the MB in 2018 amounts to EUR 23,783 (including VAT).

## Principle VII:

In conformity with elaboration 1 of Principle V of the Claim Code, the SB currently consists of three natural persons: Messrs. **Marten Oosting** (former National Ombudsman, former Member of the Council of State (Chairman of the Advisory Council of State of Finance, Social Affairs and Employment, Health, Welfare and Sport)), **Hans de Savornin Lohman** (Attorneyat law with more than 25 years of litigation experience, as well as Counsellor at the Court of Appeal in The Hague) and **Jan Zielonka** (professor of European Politics at Oxford University with his main areas of expertise in Comparative Politics, Ethics, International Relations and Political Theory).

With these members, the SB has sufficient legal and financial expertise and experience (in accordance with elaborations 4 and 5 of Principle VII of the Claim Code) to successfully pursue the statutory purpose of the foundation.

The total amount received by the members of the MB in 2018 amounts to EUR 7,683 (including VAT), consisting of (i) reimbursement of reasonable expenses and (ii) so-called *vacatiegeld* for meetings of the SB or joint meetings with the MB of EUR 1,000 (excluding VAT) per day attended.



