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Decision

Decision on objection of Volkswagen AG

Our reference : ACM/UIT/501404 (ACM/UIT/492987)

Case number : ACM/17/023193

Date : November 25th, 2018

1 Summary

1. On October 18th, 2017, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) made a decision imposing a fine of EUR 450,000 on Volkswagen Aktiengesellschaft (hereinafter: Volkswagen AG). In the decision, it was established that Volkswagen AG had acted contrary to the requirements of professional diligence, provided misleading information, and claimed that it had obtained type approval for diesel cars, despite failing to satisfy the conditions for that approval. Volkswagen AG lodged an objection against the decision of ACM. ACM declares the objection of Volkswagen AG unfounded and upholds its decision while providing additional reasons.

2 Course of the investigation

2. Pursuant to a decision of October 18th, 2017 (hereinafter: the contested decision), ACM imposed a fine on Volkswagen AG.[1] On November 10th, 2017, ACM decided to publish the contested decision,[2] after which the contested decision was posted on www.acm.nl in late November 2017.

3. By letter of November 27th, 2017[3], Volkswagen AG lodged a pro forma objection to the contested decision and submitted its grounds for this objection within the set time limit.[4]

4. By letter of February 21th, 2018, the Dutch Consumers' Association expressed the wish to take part in the proceedings as an interested party as defined in Section 7.2 of the Dutch Act on Enforcement of Consumer Protection (*Wet handhaving consumentenbescherming; hereinafter: the Act on Enforcement of Consumer Protection*). [5] ACM confirmed this participation,[6] after

[1] Reference ACM/UIT/230480. The course of the investigation until October 18th, 2017 is outlined in section 3 of the contested decision.
[2] Reference ACM/UIT/306086.
[3] Reference ACM/IN/283820.
[4] Letter of April 4th, 2018 with reference ACM/IN/414728. Volkswagen AG requested and was granted an extension of the period for the submission of its grounds for objection.
[5] Reference ACM/IN/395265.
[6] Letters of February 26th, 2018 with references ACM/UIT/472647 and ACM/UIT/472649.

which the Dutch Consumers' Association submitted its opinion on the grounds for objection as put forward by Volkswagen AG.[7]

5. By email of April 19th, 2018, Volkswagen AG indicated that it felt no need to provide an oral clarification of its objection.[8] The Dutch Consumers' Association also declined the opportunity to provide an oral explanation of its written opinion.[9] ACM confirmed to parties that no hearing would take place in this objection procedure.[10]

6. On June 5th, 2018, ACM informed Volkswagen AG and the Dutch Consumers' Association that it was unable to make its decision on the objection within the set statutory term.[11] Volkswagen AG[12] and the Dutch Consumers' Association[13] agreed to an extension of this term, as was confirmed to them in writing by ACM.[14]

7. On June 18th, 2018, ACM notified parties of its intention to include public information in its assessment of the case.[15] The Dutch Consumers' Association[16] and Volkswagen AG[17] responded to this.

8. On August 27th, 2018, Volkswagen AG submitted an additional ground for objection to ACM.[18] At the request of ACM[19], Volkswagen AG supplemented this ground for objection with additional information.[20] The Dutch Consumers' Association then responded to the substance of this additional ground for objection.[21]

3 The contested decision

9. Volkswagen AG installed software in tens of thousands of cars of the Volkswagen, SEAT, ŠKODA and Audi brands that it manufactured between 2009 and 2015. This software (hereinafter: EGR Software) recognized the NEDC test environment as prescribed by European law and ensured that the nitrogen oxide (hereinafter: NO_x) emissions in that test environment were lower than under real driving conditions on the road. In the Netherlands, 43,376 Volkswagens, 9,179 Audis, 15,437 ŠKODAs and 14,195 SEATs fitted with EGR Software were brought onto the market and sold to consumers (hereinafter: the affected cars). In the same period, Volkswagen AG advertised itself to customers as an environmentally-conscious and green-minded organization. It also claimed that type approval had been obtained for the affected cars, even though the terms of approval had in actual fact not been satisfied. In the contested decision, ACM established that Volkswagen AG had thus acted in breach of:

   - Section 8.8 of the Act on Enforcement of Consumer Protection in conjunction with Section 6:193b, paragraphs 1 and 2, opening lines and under (a) of the Dutch Civil Code (acting contrary to the requirements of professional diligence);

[7] Letter of May 4th, 2018 with reference ACM/IN/416029.
[8] Reference ACM/IN/415481.
[9] Confirmed on April 24th, 2018 by telephone to ACM.
[10] Letters of April 25th, 2018 with references ACM/UIT/493619 and ACM/UIT/493629.
[11] References ACM/UIT/495226 and ACM/UIT/495323.
[12] Email of June 5th, 2018 with reference ACM/IN/417000.
[13] Email of June 14th, 2018 with reference ACM/IN/417523.
[14] Letters of June 19th, 2018 with references ACM/UIT/495908 and ACM/UIT/495922.
[15] References ACM/UIT/495909 and ACM/UIT/495910.
[16] Letter of July 6th, 2018 with reference ACM/IN/418561.
[17] Email of July 19th, 2018 with reference ACM/IN/419127.
[18] Letter of August 27th, 2018 with reference ACM/IN/420444.
[19] Letter of September 28th, 2018 with reference ACM/UIT/498899.
[20] Letter of September 6th, 2018 with reference ACM/IN/420919.
[21] Letter of October 1st, 2018 with reference ACM/IN/421666.

- Section 8.8 of the Act on Enforcement of Consumer Protection in conjunction with Section 6:193c, under (b) of the Dutch Civil Code (provision of misleading information); and
- Section 8.8 of the Act on Enforcement of Consumer Protection in conjunction with Section 6:193g, opening lines and under (d) of the Dutch Civil Code (black list of misleading commercial practices).

10. ACM imposed a penalty of EUR 450,000 in total on Volkswagen AG for this infringement.

4 Volkswagen AG's grounds for objection

11. Volkswagen AG claims first of all that ACM either ignored or misconstrued certain facts in the contested decision.

12. Volkswagen AG furthermore asserts that ACM acted contrary to general principles of good administration. It failed to carry out a careful and impartial investigation, and wrongly relied on investigations by the authorities in the US and statements made by the German type approval authority Kraftfahrt-Bundesambt (hereinafter: KBA). Furthermore, the case file is incomplete as the documents about the contacts between ACM and the European Commission and other European supervisors about this matter are missing. In addition, Volkswagen AG considers the consultation of publicly available figures in the objection phase to be both prejudiced and an investigative act that ACM was not authorized to perform in this phase of the proceedings.

13. Furthermore, Volkswagen AG challenges ACM's conclusion regarding the three infringements on the grounds that the facts cannot be classified as infringements or because ACM provided insufficient proof for reaching said conclusion. In addition, Volkswagen AG asserts that it cannot be regarded as a 'trader' engaging in a relevant 'commercial practice' towards any Dutch consumer.

14. Volkswagen AG also states that it cannot be treated as an offender as it does not satisfy any of the slurry ruling ('*Drijfmest')* criteria. Nor does Volkswagen AG believe that it acted in a culpable manner. ACM, it claims, should have established the culpability for each infringement separately. The communications from Volkswagen AG in order to retain the consumer's trust should not be confused with an acknowledgement of a legal infringement.

15. Finally, Volkswagen AG argues that ACM was wrong to establish that three infringements had been perpetrated. ACM also acted in breach of the *non bis in idem* principle by (i) imposing a fine for all three infringements instead of a single fine for a single infringement, and (ii) by imposing a fine for facts for which Volkswagen AG had already been convicted in a final judgement in a decision of June 13th, 2018 of the German Staatsanwaltschaft Braunschweig (hereinafter: the German decision).

5 Opinion of Dutch Consumers' Association

16. The Dutch Consumers' Association agrees in all respects with the contested decision and refers to the enforcement request that it submitted. The Dutch Consumers' Association requests ACM to declare the objections of Volkswagen AG unfounded and to uphold the fine. Further to ACM's consultation of public sources, the Dutch Consumers' Association has provided its own analysis using public sales figures. According to the Dutch Consumers' Association, the *non bis in idem* principle was not breached as the German Public Prosecution Office has no jurisdiction over the infringements that were penalized by ACM. Moreover, both the '*idem*' and the '*bis'* criterion were not satisfied.

6 Assessment of ACM

6.1 Factual aspects

17. Volkswagen AG holds that ACM ignored or misinterpreted certain factual circumstances that led to the contested decision. In this context, it states first of all that the affected cars were not fitted with a defeat device as defined in the Emissions Regulation.[22]

18. ACM does not follow Volkswagen AG's reasoning on this point. In its statement of October 14th, 2015, the KBA established the non-conformity of, among other things, the affected cars. This non-conformity concerned the use of defeat device software as defined in Article 5, paragraph 2 of the Emissions Regulation. The KBA thus established that the EGR Software used by Volkswagen AG could be regarded as a forbidden defeat device, so that the affected cars failed to conform to the issued type approval. The KBA informed the other European approval authorities of this[23] and ordered a recall action. According to the KBA, conformity with the law will only be restored once all defeat device software has been removed and replaced with approved software. The RDW reaffirmed this in its email of January 20th, 2017: "…*due to the presence in the vehicle of a defeat device, the vehicle does not meet the terms of approval*."[24]

19. Aside from this point, the grounds that Volkswagen AG puts forward for its objection do not cast new light on the question whether or not a defeat device as defined in the Emissions Regulation was used. As already stated in the contested decision,[25] the EGR Software meets the legal definition of Article 3, opening lines and under (10) of the Emissions Regulation. It is an element of design that senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system with a view to reducing the effectiveness of the emission control system under conditions that may reasonably be expected to be encountered in normal vehicle operation and use. The software used by Volkswagen AG measures (by means of sensors) various parameters to determine whether or not the car is running in an NEDC test environment. According to ACM, this software, in combination with the various sensors, constitutes such an element of design. The software's purpose was to modulate the mixture of air and recirculated emission gases induced into the cylinder through the positioning of the EGR valve. In this way, the engine's NO_x emissions could be influenced. The emission control system must therefore be seen as the whole system that controls and modulates the car's emissions. The emissions are influenced by the amount of combustion gas that is led back, via the EGR system, to the combustion chambers. The use of the software reduces the effectiveness of the emission control system.

20. In addition, Volkswagen AG claims that the vehicles meet the Euro 5 emissions standard as required under the prescribed NEDC test, adding that the Netherlands Vehicle Authority confirmed this in its answers to questions from ACM.[26] At the hearing preceding the contested

[22] Regulation (EC) No. 715/2007 of the European Parliament and of the Council of June 20th, 2007 on type approval of motor vehicles with respect to emissions from light passenger cars and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (*OJEU* 2007, L 171/1).
[23] File document 26, Answer to additional questions about Volkswagen, Annex 2.
[24] File document 45.
[25] See also section 8.3.2 of the contested decision.
[26] File document 45, Answer to additional questions about Volkswagen.

decision, Volkswagen AG referred to this as a "flaw" in European legislation, which had been the subject of much political debate.

21. In this context, there is no need to discuss whether or not the affected cars meet the actual Euro 5 emissions standard or whether they emit too much NO_x during normal vehicle operation and use. The central point is that by manipulating the NEDC test via the EGR software, Volkswagen AG does not meet the type approval requirements. As the test was manipulated and the type approval procedure was not properly conducted, it is not possible to simply claim that the cars meet the Euro 5 emissions standard, irrespective of the actual emissions of the affected cars on the public road.

22. Finally, Volkswagen AG asserts that it cannot verify the number of affected cars as defined in the contested decision as only the Dutch importer has this information. ACM argues in this connection that, first of all, the exact number of affected cards is irrelevant for establishing the perpetration of the infringements and determining the size of the fine. The numbers only give an indication that the EGRS software was fitted in a large number of cars that were sold to Dutch consumers. This proves that Volkswagen's practices affected many Dutch consumers. Accordingly, ACM holds that it was right to conclude that an infringement that, due to its systematic nature, constituted an infringement of the collective interests of consumers as defined in the Act on Enforcement of Consumer Protection had been perpetrated. Volkswagen AG, incidentally, did not dispute this. Moreover, it is true that the importer brought the aforementioned numbers into the investigation ahead of the contested decision, but this was done to substantiate an assertion made by both the importer and Volkswagen AG in the sanction phase.[27] The grounds for objection put forward by Volkswagen AG give ACM no reason to doubt the accuracy of the numbers referred to.

6.2 General principles of good administration

23. Volkswagen AG asserts that ACM failed to act with due care as it based its opinion exclusively on public sources and statements by the KBA, without conducting independent investigative actions. Volkswagen AG furthermore contends that ACM was prejudiced in the investigative process as it was evidently a foregone conclusion that the investigation would result in the imposition of a fine in order to facilitate consumer claims. Volkswagen AG also argues that the file is incomplete as it does not contain all case-related documentation about contacts between the European Commission and ACM. Finally, Volkswagen AG does not agree with the fact that ACM took public sales figures into account in its reconsideration of the case (see marginal 47). In Volkswagen AG's opinion, this demonstrates that ACM was prejudiced and performed investigative actions that went beyond its authority in the sanction phase.

24. These grounds for objection of Volkswagen AG lack foundation. There is no legal measure or general principle of good administration that requires ACM to perform certain investigative actions in order to establish the occurrence of an infringement. In the present investigation, ACM is of the opinion that that public sources, statements from the KBA, and information from the Netherlands Vehicle Authority provided sufficient evidence to conclude that Volkswagen AG had committed three infringements.

25. In this connection, ACM notes that in its opinion the reliance placed on statements from the KBA in reaching its sanction decision cannot be seen as a failure to act with due care. These

[27] Written opinion Volkswagen AG dated July 24th, 2017, marginal 1.4, under d.

statements came from an institute that is authorized to make judgements about the type approval. ACM is justified to assume that this information is correct. It did not need to carry out an additional investigation of its own.

26. Insofar as Volkswagen AG claims that ACM based its conclusion that an infringement had occurred (in part) on the installation of software in cars in the United States (or on statements of the US authorities in this respect), ACM notes that this is not the case. ACM agrees with Volkswagen AG that the regulations and the cars in the United States are not identical to those in Europe. Though the situation in the United States is relevant for the context of the current sanction procedure, ACM assessed the practices of Volkswagen AG towards Dutch consumers on their own merits and separately from the situation in the United States.

27. In addition, in its reconsideration ACM found no evidence that it had acted with partiality in the investigative process that led to the current sanction procedure. The press statement submitted by ACM[28] and the preceding draft version of this statement[29] should not lead to the conclusion that ACM already had the fixed intention of imposing a fine on Volkswagen AG before conducting the investigation. As already set out in marginal 60 of the contested decision, in view of the continuing public attention for the 'diesel scandal', ACM considered it desirable to inform the public of its intention to start an investigation. This does not entail that the outcome of the investigation was a foregone conclusion. As is evident from the wording of the draft version of the press statement, ACM adheres to the principle set out in the Act on Enforcement of Consumer Protection that public enforcement only takes place if the market itself fails to provide an effective and efficient solution for consumer problems. [30] This does not entail an automatic assumption that infringements had taken place for which ACM would impose a fine.

28. Nor does the announcement of the European Commission[31] cited by Volkswagen AG indicate that ACM was partial in this matter. This announcement, after all, concerns other facts, namely the practices of Volkswagen AG from 2016 in relation to the recall action and its communication about this matter with consumers. The present process relates to the sanctioning of practices of Volkswagen AG in the period from 2009 to 2015. These therefore are two separate processes that, though discussed in parallel with each other by Volkswagen AG with the supervisors, differ in substance. The announcements of the European Commission and ACM therefore do not concern the current process and say nothing about the outcome of the investigation conducted by ACM. In this light, the documentation about these contacts cannot be regarded as 'relating to the case' within the meaning of Section 8:42 of the Dutch General Administrative Law Act. This concerns documentation about a different process relating to other facts and is irrelevant to the resolution of the outstanding points of dispute in the current procedure.[32]

29. Finally, insofar as Volkswagen argues that ACM intends or intended to facilitate consumer claims, ACM notes that its actions concern the public enforcement of the Act on Enforcement of Consumer Protection that falls within ACM's supervision. A sanction decision may indeed lead to consumer claims, but this is not in itself the objective or intention of ACM.

30. Finally, there are no grounds for the opinion that ACM acted in breach of any principle of law by taking additional information into account in its reconsideration. No rule of law prevents ACM from using generally available information that is believed to be relevant in preparing its

[28] https://www.acm.nl/nl/publicaties/publicatie/16737/ACM-start-onderzoek-naar-Volkswagen.
[29] See File document 35.
[30] *Parliamentary Documents II* 2006/07, 30928, 3, p. 7.
[31] https://finance.yahoo.com/news/eu-consumer-agencies-join-forces-193258487.html.
[32] Cf. HR May 4th, 2018, ECLI:NL:HR:2018:672.

decision on an objection, merely because this information was not considered in the first instance.[33] In addition, there is no rule of law that says that ACM cannot, as part of its reconsideration, base its decision on the objection on different or additional reasons compared to those used for the original decision.

31. In view of all of the foregoing, ACM does not see that it acted in breach of any general principle of good administration. The objection of Volkswagen AG therefore does not stand up in this respect.

6.3 Applicability of the rules

32. Volkswagen AG argues that there is no question of a commercial practice. Based on a recital in the preamble to the Unfair Commercial Practices Directive[34] (hereinafter: UCP Directive), Volkswagen AG asserts that "commercial practices" are restricted to practices that are directly related to the exercise of influence over consumer decisions. A potentially unfair commercial practice can only occur if the activity in question can be treated as a commercial practice. There is no question of this according to Volkswagen AG.

33. ACM does not follow Volkswagen AG in this reasoning. The first important consideration is that the UCP Directive, in accordance with settled case-law, is characterized by a "particularly wide scope of application" that extends to every commercial practice that is directly related to the promotion, sale or delivery of a product to consumers.[35] In addition, each of the infringements in question is based on a practice that is clearly commercial.

34. The commercial practice underlying the practices that are in breach of the requirements of professional diligence concerns the installation of forbidden defeat device software in the affected cars with a view to obtaining type approval. Obtaining type approval is a necessary preparatory action for the delivery and sale of the car. This entails that a direct relationship exists with the sale or delivery of the affected cars to consumers. Such necessary preparatory actions fall within the scope of application of the term 'commercial practice'. If this were otherwise, the entire production process prior to the marketing of a product could escape the scope of a commercial practice, which would be in direct conflict with the wide scope of application of the term.

[33] Cf. CBb August 14th, 2018, ECLI:NL:CBB:2018:400.
[34] Directive 2005/29/EG of the European Parliament and of the Council of May 11th, 2005 concerning unfair business-to- consumer commercial practices in the internal market and amending Directive 84/450/EEC of the Council, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and of Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (*OJEU* 2005, L 149/22).
[35] The Court has included the following within that 'particularly wide' scope: combined offers (judgment of April 23rd, 2009, VTB-VAB and Galatea, C-261/07 and C-299/07, EU:C:2009:244, paragraphs 49 et seq.); promotional campaigns linking free participation in a lottery to the purchase of goods or services (judgments of January 14th, 2010, Plus Warenhandelsgesellschaft, C-304/08, EU:C:2010:12, paragraphs 36 et seq., and of November 9th, 2010, Mediaprint Zeitungs- und Zeitschriftenverlag, C-540/08, EU:C:2010:660, paragraph 17 et seq.); the indication in a consumer credit agreement of an Annual Percentage Rate lower than the real rate (judgment of March 15th, 2012, Pereničová and Perenič, C-453/10, EU:C:2012:144, paragraphs 38 et seq.); the publication of information relating to a clearance sale of goods in a shop (judgment of January 17th, 2013, Köck, C-206/11, EU:C:2013:14, paragraph 26 et seq.); the publication of information relating to exclusivity enjoyed by a travel agency (judgment of September 19th, 2013, CHS Tour Services, C-435/11, EU:C:2013:574, paragraphs 27 et seq.); advertising for medicinal products (judgment of July 16th, 2015, Abcur, C-544/13 and C-545/13, EU:C:2015:481, paragraphs 74 et seq.); advertising for oral and dental care services (judgment of May 4th, 2017, Vanderborght, C-339/15, EU:C:2017:335, paragraphs 23 et seq.); and debt collection activities (judgment of July 20th, 2017, Gelvora, C-357/16, EU:C:2017:573, paragraphs 19 et seq.). See also: CBb August 25th, 2015, ECLI:NL:CBB:2015:285, r.o. 9.4.

35. The commercial practice underlying the provision of misleading information concerns the production of commercial statements for the affected cars (see also section 6.4.2). As described in the contested decision (marginals 29-34), Volkswagen AG also supplies the design of brochures for the Dutch-language websites, templates of adverts and product information used in commercials for the Dutch market. These practices can, without any question, be classified as a commercial practice as they are related to the promotion of the sale of the affected cars in the Netherlands.[36]

36. The commercial practice underlying the misleading commercial practice that is on the black list concerns the assertions of Volkswagen AG that all conditions for type approvals were met in connection with the issuance of a Certificate of Conformity (CoC) to obtain a registration certificate (see also section 6.4.3). Just as a manufacturer must obtain type approval, it must also obtain a CoC as a necessary preparatory action before a car can be brought to market. Such preparatory practices are directly related to the delivery of the affected cars to consumers.

37. Volkswagen AG furthermore argues that not a single entity within the Volkswagen Group conducted commercial activities towards consumers in the Netherlands. Accordingly, Volkswagen AG cannot be regarded as a trader for the purposes of Section 6:193b of the Dutch Civil Code.

38. ACM is also unable to follow Volkswagen AG in this reasoning. The mere fact that Volkswagen AG exclusively sells cars through dealers in the Dutch market does not mean that Volkswagen AG cannot be classified as a trader as defined in Section 6:193b of the Dutch Civil Code. ACM refers in this connection to marginal 53 of the contested decision: an effective protection of the consumer could be seriously undermined if the prohibition of unfair commercial practices were restricted to the last link in the sales chain to the consumer. This would mean that in situations where the last link in the sales chain cannot be held culpable for an unfair commercial practice, the consumer would no longer have access to effective legal protection. This is not in accordance with the purpose of the UCP Directive, which is designed to ensure a high level of consumer protection.[37]

6.4 The infringements

6.4.1 Infringement of requirements of professional diligence

39. Volkswagen AG disputes that ACM has demonstrated an infringement of Section 6:193b, paragraph 2 of the Dutch Civil Code. It argues that the installation of the EGR Software was not in conflict with the Automotive Industry Guiding Principles (AECA) or its own Environmental Policy and, in addition, cannot be treated as a breach of the standards of special skill and care. Volkswagen AG points in this connection to a contradiction between marginals 76 and 83/90 of the contested decision, which, it says, demonstrates that the use of the EGR Software cannot be treated as an unfair commercial practice. According to Volkswagen AG, there is no proof or legal basis for establishing the perpetration of this infringement. In its opinion, ACM applied an improper measure. Based on this measure, it says, any incident at a producer could be treated as an unfair commercial practice. Finally, Volkswagen AG contends that all its communications

[36] See cases cited in footnote 31.
[37] See cases cited in footnote 31.

were factually correct and that ACM provided no evidence that its practices had had an impact or potential impact on the consumer.

40. These arguments are not convincing. After reconsideration, ACM does acknowledge a need to clarify its reasons regarding certain aspects.

41. Regarding the alleged contradiction in the contested decision, ACM states that the following was considered in marginal 76 of the contested decision: "*The use of prohibited defeat device software does not in itself constitute an unfair commercial practice*." In so doing, ACM may have inadvertently given the impression that the installation of defeat device software by Volkswagen AG could not be treated as an unfair commercial practice. In its reconsideration, ACM clarifies that the use of prohibited defeat device software to obtain type approval for the sale of the affected cars in the market can be treated as a commercial practice as defined in Section 6:193b of the Dutch Civil Code (see also marginal 34). ACM holds, moreover, that the installation of, use of and failure to disclose the EGR Software in the context of obtaining the type approval can be treated as an *unfair* commercial practice under Section 6:193b of the Dutch Civil Code. In essence, the infringement concerns the simple fact that consumers must be able to expect a producer to act in good faith in a product's pre-market approval process. When a product comes onto the market, the consumer must be able to trust that it has been properly tested and that the producer meets all statutory requirements for bringing the product onto the market.

42. Additionally, ACM considers it relevant, though not necessary to establish this infringement, that Volkswagen AG's practices are at odds with the ACEA's aspiration to achieve effective environmental protection throughout the entire production chain. This commitment to sustainability is compromised if producers fit their cars with software to manipulate test results. Also, by installing EGR Software, Volkswagen AG failed to adhere to its own sustainability and integrity objectives as set out in its Environmental Policy and seriously undermined the consumer's trust in Volkswagen AG as a sustainable enterprise.

43. Through these practices, consumers were directly subjected to an unfair commercial practice. Consumers were sold cars that Volkswagen AG had fitted of its own accord with EGR software, leading to a direct and serious betrayal of the trust of consumers who made their purchase in the firm belief that the product had been properly approved. This sufficiently demonstrates that the installation of, use of and failure to disclose the EGR Software in the context of obtaining the type approval can be treated as an unfair commercial practice.

44. Volkswagen AG's argument that ACM applied an improper measure for establishing an infringement holds no water. According to Volkswagen AG, the use of this measure would mean that any 'incident' at a producer that could appear to be at odds with the organization's internal objectives would constitute an infringement of the Act on Enforcement of Consumer Protection. This is not the case. Neither the fact that Volkswagen AG installed the EGR Software in the affected cars, nor the fact that this software was used to obtain type approval is under discussion. Volkswagen AG cannot convincingly contest the claim that, as a result of these facts, these cars did not meet the EU type approval requirements, as was also sufficiently confirmed by the findings of the KBA and the subsequent recall of the affected cars. The fact that Dutch consumers purchased these cars is not under discussion. All these facts contribute to the conclusion that Volkswagen AG brought a product onto the market without meeting the legal requirements for doing so. Volkswagen AG acted in breach of the requirements of professional diligence by failing to disclose that the test results of the affected cars were

manipulated in the type approval process with the installed EGR Software. This was not an incident but a deliberate practice lasting many years, as a result of which Volkswagen AG seriously damaged the trust of consumers.

45. Regarding the evidence in relation to the impact or potential impact of the practices towards consumers, ACM wishes to clarify the following. Based on Section 6:193b, paragraph 2 (b) of the Dutch Civil Code, ACM must demonstrate that the installation of, use of and failure to disclose the EGR Software in the context of obtaining the type approval has or may have noticeably impaired the average consumer's ability to make an informed decision, thereby causing or possibly causing the average consumer to make a transactional decision that he would otherwise not have made.

46. Again, in the context of the commercial practice at the center of this dispute, the core of the matter is that consumers are entitled to expect a trader to act in good faith in a pre-market product approval process. When purchasing a product, a consumer must at least be able to assume that a producer has met all legal requirements for bringing that product onto the market. If a producer deliberately offers a product to a consumer without meeting the conditions for bringing that product onto the market, a consumer's ability to make an informed decision is by definition noticeably impaired. By deliberately manipulating test results in the type approval process, the consumer's ability to make a choice is therefore also noticeably influenced. Consumers have been denied the opportunity to make a fully informed decision. They might have decided not to buy an affected car if they had known that Volkswagen AG had manipulated test results in the type approval process by installing EGR Software. The requirement of Section 6:193b, paragraph 2 of the Dutch Civil Code has thus already been met.

47. Additionally, the publicly available sales figures of Volkswagen AG from 2016 and 2017 provide no indications that consumers considering the purchase of a Volkswagen car attach no importance to the installation of the EGR Software by Volkswagen AG. Sales of Volkswagen-branded cars were over 20% lower in 2016 than in 2015.[38] The market as a whole also declined in that year, but 'only' by around 15%. In 2017, the overall Dutch market subsequently grew 8.4 %, while sales of Volkswagen-branded cars fell some 2%.

48. In a reaction to these figures, Volkswagen AG argued that the decline in sales was not linked to the 'diesel issue'. According to Volkswagen AG, the year 2015 cannot be arbitrarily selected as a benchmark for the sales in 2016 and 2017. The figures for the past 15 years provide a more nuanced picture of the Volkswagen market share. The year 2015 was an extremely successful year and the market share of 2016 and 2017, according to Volkswagen, was roughly comparable with the market share in previous years as well as in 2018. Volkswagen asserts that the movements in the Volkswagen market share reflect the normal fluctuation in the mass model cycles. In addition, the Audi, SEAT and ŠKODA brands had actually increased their market shares in 2015 and 2016, which disproves that the diesel issue had a negative impact on the sales of Volkswagen AG.[39]

49. The sales figures were sent to the Dutch Consumers' Association,[40] whose analysis shows that total car sales in the Dutch market in 2016 fell 15% compared to 2015. The Volkswagen Group also sold 15% less cars in 2016. The sales of Volkswagen-branded cars showed an even

[38] This can be concluded on the basis of the sales figures of Volkswagen in the Netherlands, see: https://www.autoweek.nl/verkoopcijfers/volkswagen/.
[39] Email of July 19th, 2018 with reference ACM/IN/419127.
[40] Letter of July 6th, 2018 with reference ACM/IN/418561.

stronger decline of 22%. The Dutch Consumers' Association notes that the market-wide decline in 2016 was mainly due to the decrease in the total number of diesel car sales in 2016 in the Netherlands (46%). According to the Dutch Consumers' Association, the analysis leads to the conclusion that Dutch consumers shunned diesel cars after the onset of the 'diesel scandal' in 2015. The total Dutch car market reported falling sales figures in the 2015-2016 period, a decline that the Dutch Consumers' Association attributes in particular to the significant decrease in diesel car sales in that same period. According to the Dutch Consumers' Association, the consulted statistics appear to confirm that the diesel scandal substantially damaged the trust of consumers.

50. Volkswagen AG's reaction to the public sales figures gives no cause to reconsider the arguments set out above in marginals 46 and 47. The Volkswagen brand saw its market share fall from 2016 to 2017 to its lowest level since 2010. These figures give no indication that consumers attach no importance to the installation of the EGR Software by Volkswagen AG in their decision to purchase a Volkswagen car or that the consumer's trust was not undermined in this period. It is not surprising that this decline was not visible for the Audi, SEAT and ŠKODA models as the media coverage of the diesel issue centered on the Volkswagen brand, and that consumers will more readily associate Volkswagen AG's manipulation of test results with the Volkswagen brand. Volkswagen AG's reference to the normal fluctuation in the mass model cycles as an explanation for the decline in sales of Volkswagen-branded cars was not substantiated with supporting evidence and gives no cause to review the consideration set out in this recital.

6.4.2 Provision of misleading information

51. Volkswagen AG argues that its sustainability claims are factually correct and that all emissions standards were met, so that there is no question of the provision of misleading information.

52. These arguments do not stand up. A commercial practice is misleading if the information provided is factually incorrect or misleads or could mislead the average consumer, either through the general presentation of that information or otherwise, such as in relation to the main characteristics of the product, including the benefits, execution, composition, fitness for purpose, specifications, results to be expected from its use, or the results and material features of tests or checks carried out on the product. This therefore concerns information that is either not based on the truth or information that, though factually correct, can somehow mislead the consumer due to the method of presentation.[41]

53. As already described in section 6.1, the affected cars were fitted with EGR Software that can be classified as manipulation software as defined in Article 3, opening lines and (10) of the Emissions Regulation and Article 5, paragraph 2 of the Emissions Regulation. The affected cars thus did not meet the requirements of the EU type approval, which was also what the KBA concluded on October 14th, 2015. The NO_x emissions under real driving conditions on the road were much higher than in the test environment.[42] The cars were therefore less environmentally friendly than consumers were led to believe in the first instance. Statements about the environmental friendliness of the affected cars could therefore be misleading, even if based on vague and general claims such as "*really green*", "*most ecological*" and "*clean cars*".[43] This means that the information and claims on the Volkswagen, Audi, SEAT and ŠKODA websites

[41] *Parliamentary Documents II* 2006/07, 30928, 3, p. 15.
[42] As the then State Secretary of Infrastructure & Environment also informed the House of Representatives in her letter of September 30th, 2015 based on TNO tests.
[43] See also contested decision marginal 93 ff.

and in the brochures mentioned in the contested decision are misleading. This applies to the general green or environmental claims on the grounds that (NO_x) emissions form part of the bigger environmental sustainability picture. But it applies in particular to the claims that the cars meet the Euro 5 emissions standard as made in the many brochures of Volkswagen, Audi, SEAT and ŠKODA. As already outlined in marginal 21, the fact that Volkswagen AG manipulated the type approval process entails that it can no longer claim compliance with the Euro 5 emissions standard, irrespective of the actual NO_x emissions under real driving conditions on the road. It was therefore misleading to make this claim in the brochures. And this applies all the more so to the claim in the 2011 Volkswagen Passat brochure "*BlueTDI: the cleanest diesel of today, without NO_x emissions*". The first diesel car with zero NO_x emissions has yet to be invented, which means that the latter claim is factually incorrect.

54. ACM was therefore right to conclude that misleading information had been provided. The potentially misleading effect was made sufficiently plausible in the sanction decision. As growing environmental awareness can influence the economic behavior of consumers, the misleading information may have induced consumers to make a transactional decision they would otherwise not have made. Regarding this infringement, Volkswagen AG merely states that the consumer was not potentially influenced, but provides no arguments to justify this standpoint. ACM therefore concludes that the transaction test has been met.

6.4.3 Black list of misleading commercial practices

55. Volkswagen AG argues that there was no question of a misleading commercial practice that is on the black list and adds that ACM established this infringement on the basis of incorrect assumptions. The affected vehicles, after all, consistently had and still have valid type approvals. All requirements for obtaining the type approvals were also met, according to Volkswagen AG. The EGR Software is not a defeat device as defined in Article 5 of the Emissions Regulation as the EGR system is not a part of the emission control system and there is no impact on this system during normal use of the vehicle.

56. These arguments do not convince ACM. As also described in section 6.1, the affected cars were fitted with EGR Software. This software can be classified as a defeat device as defined in Article 3, opening lines and (10) of the Emissions Regulation.

57. On these grounds, it is immaterial why the EGR Software was installed in the affected cars and whether the Euro 5 emissions standard was complied with or not. The mere fact that a defeat device was used means that the affected cars did not meet the type approval conditions. The product therefore did not satisfy the condition for approval as described in Section 6:193g opening lines and (d) of the Dutch Civil Code.

58. Volkswagen AG's argument that Article 4 of Annex I to the UCP Directive indicates that the text is actually about conditions *linked to* the approval in no way detracts from this conclusion. A black-listed misleading commercial practice may also have occurred if the conditions linked to the approval have not been met. The Dutch text of Article 4 of Annex I of the Directive states that black-listed practices include: 'beweren dat is voldaan aan de voorwaarde voor goedkeuring terwijl dit niet het geval is' ('claiming that the condition for approval has been met when it has not'). The fact that a slightly different wording is used in other EU languages does not detract from the fact that the provision also covers the practice at the heart of this case. That is also logical. If 'claiming that a product meets the conditions *linked to* the approval while it does not' is a black-listed practice, then 'claiming that a product meets the conditions for approval while it does not' is most definitely a black-listed practice.

59. Volkswagen AG furthermore argues that the decision fails to explain how consumers were misled. The type approvals of the affected cars were validly obtained and always remained valid. If the various certificates of a car state that the car complies with all regulations and if the use of EGR Software is an infringement of such regulations, then every practice is misleading in situations where a product has been approved but retrospectively turns out to have failed to meet a specific requirement. As an example, Volkswagen AG mentions a production error.

60. Briefly put, culpability does not form part of the description of the infringement in question, but clearly the degree of culpability does play a part in the determination of the size of the penalty. ACM sets out this reasoning in more detail in section 6.6.

6.5 Identification of offender

61. Volkswagen AG argues that all infringements put forward by ACM are disputed and that Volkswagen AG in no way acknowledges that any legal requirement was breached through the installation of EGR Software. According to Volkswagen AG, the contested decision ignores the fact that the Volkswagen Group carried out no commercial activities whatsoever towards consumers in the Netherlands. In addition, ACM has not demonstrated that any activity can be attributed to the Volkswagen Group. Moreover, ACM has misinterpreted the criteria established by the Dutch Supreme Court in the slurry ruling ('*Drijfmest* arrest'). Volkswagen AG meets none of these criteria. According to Volkswagen AG, exercising decisive influence is not a criterion that follows from the cited ruling ('*Drijfmest* arrest'). No actual commercial practice towards the Dutch consumer was demonstrated. This, says Volkswagen AG, is confirmed by the redress options available under civil law to consumers who purchase a product as a result of unfair commercial practices. Right of redress, Volkswagen claims, is in all cases against the seller and not against the holding company of a group of manufacturers.

62. These arguments of Volkswagen AG are not convincing. ACM sees a need to clarify its reasons for establishing that Volkswagen AG is the offender.

63. ACM re-emphasizes that several crucial aspects are not under discussion here. In the first place, regarding the failure to meet the requirements of professional diligence, whether Volkswagen AG installed EGR Software in the affected cars is not under discussion. Nor is it under discussion that this software was used to obtain type approval. That these cars thus failed to meet the EU type approval requirements cannot be convincingly disputed by Volkswagen AG and has been sufficiently confirmed by the findings of the KBA and the subsequent recall action. The fact that Dutch consumers purchased these cars is not under discussion. All these facts contribute to the conclusion that Volkswagen AG brought a product onto the market without meeting the legal requirements for doing so. Regarding this infringement, the installation of, use of and failure to disclose the EGR Software in the context of obtaining the type approval is in breach of the requirements of professional diligence. Volkswagen AG can be seen as the offender on account of the fact that these practices took place within the sphere of control of the legal person Volkswagen AG.

64. The affected cars were sold via a dealer in the Dutch market. The mere fact that the end sale of the affected cars was not performed by Volkswagen AG but by a dealer leaves intact that Volkswagen AG produces cars for sale in the Dutch market and is involved in commercial activities towards Dutch consumers, including via commercial communications. ACM also refers in this connection to the fact that effective protection of the consumer would be seriously

undermined if the prohibition on unfair commercial practices only applied to the last link in the sales chain (see also marginal 53 of the contested decision).

65. Volkswagen AG argues that public acknowledgement of the fact that EGR Software was used cannot be seen as an acknowledgement of an infringement. Nor has ACM stated this us such. The reasons why the practices of Volkswagen AG are classified as an infringement were already set out in the foregoing. The relevant question in establishing which party is the offender is whether the practices – regardless of whether these constitute a material infringement – can be reasonably attributed to Volkswagen AG. For the purposes of this assessment, the fact that Volkswagen AG implicitly and explicitly acknowledges that these practices took place within the sphere of control of the legal person Volkswagen AG is most definitely relevant. By accepting responsibility for the adaptations of all affected cars, Volkswagen AG has confirmed that the original installation, use and failure to disclose the EGR Software in the context of obtaining the type approval falls within Volkswagen Group's sphere of control – regardless of the question whether the practices in question can also be classified as an infringement.

66. Given that all practices described in the foregoing (the installation of the EGR Software in the context of obtaining type approval, the misleading sustainability claims, and the false statements regarding the issuance of a CoC to obtain a registration certificate) took place within the Volkswagen AG Group and in view of the fact that Volkswagen AG holds virtually 100% of the shares in all subsidiaries involved,[44] it is justifiable to assume that Volkswagen AG exercised decisive influence over the policy of its subsidiaries and, for this reason, forms an entity with its subsidiaries. In these circumstances, it is sufficient for ACM to prove that, based on the group relationships, Volkswagen AG was able to exercise decisive influence over its subsidiaries in order to conclude that Volkswagen AG was able to control the commercial policy of its subsidiaries, which ACM deems to include all practices described above.

67. In these circumstances, therefore, the criteria of the slurry ruling ('*Drijfmest* arrest') have been fulfilled and ACM was right to conclude that Volkswagen AG was able to control whether the practices took place or not. Accordingly, it is up to Volkswagen AG to demonstrate that it had no control over the practices in question, for instance by proving that its subsidiary does not follow its instructions and therefore acts as an autonomous entity in the market. In addition, the practices formed part of the normal operations of Volkswagen AG over a long period of time. Briefly put, ACM refers in this context to the relevant considerations in chapter 9 of the contested decision and in particular to marginal 126.

68. The argument of Volkswagen AG regarding the consumer's options for civil law redress vis-à-vis a foreign holding company also does not stand up in this context. The analogy is already confusing because the present case concerns the question whether the practices can be attributed to Volkswagen AG in conformity with the criteria from the slurry ruling ('*Drijfmest* arrest'). In addition, it is definitely conceivable from a legal point of view that a consumer can have civil law redress vis-à-vis a foreign parent if the unlawful act can be attributed to the parent company.

[44] File document 5, Volkswagen Annual Report 2015, p.58 and 188 ff. At the hearing preceding the contested decision, Volkswagen AG confirmed that it was directly or indirectly 100% owner of SEAT and ŠKODA and virtually 100% owner of AUDI. See report of the hearing, p. 4.

6.6 Culpability

69. Volkswagen AG asserts that ACM is obliged to establish the culpability for each infringement separately. Volkswagen AG takes the standpoint that it is not Volkswagen AG that must prove that it acted in accordance with the law, but ACM that must demonstrate that an infringement was perpetrated. Volkswagen AG furthermore asserts that ACM does not go into the fact that Volkswagen AG is of the opinion that it acted in accordance with Article 5 of the Emissions Regulation. It claims that it is up to ACM to demonstrate culpability in a situation in which the KBA only established retrospectively that an irregularity had occurred. In addition, Volkswagen AG states that, in view of the type approvals issued by the KBA, Volkswagen AG was justifiably convinced that the affected cars could be brought onto the market and that the type approvals remained valid even after the discovery of EGR Software. Volkswagen AG re-emphasizes that the acknowledgement of the fact that the consumer's trust had been seriously damaged is not in itself an acknowledgement of guilt.

70. These arguments of Volkswagen AG do not stand up. Many of Volkswagen AG's arguments regarding culpability are based on a misconception regarding the role of culpability in the context of the imposition of an administrative fine by ACM. Culpability is not an element of the legal provisions that Volkswagen AG has breached. In this connection, Volkswagen AG states specifically in respect of the infringement of Section 8.8 of the Act on Enforcement of Consumer Protection in conjunction with Section 6:193g, opening lines and (d) of the Dutch Civil Code (black list of misleading commercial practices) that ACM must establish a culpable commercial practice and refers in this connection to a decision from 2009 of the Consumer Authority. [45] The passage quoted by Volkswagen AG illustrates its misunderstanding of the role of culpability: "*the term misleading [implies] a certain degree of deliberate intent, and therefore culpability, [and for this reason] the degree of culpability was taken on board in the determination of the seriousness of the infringement*". According to Volkswagen AG, this represents an acknowledgement on the part of ACM that in order to establish a misleading practice in the context of Section 6:193g, opening lines and (d) of the Dutch Civil Code, it is also necessary to demonstrate culpability. However, as also specified in the quoted passage, this concerns the determination of the seriousness of the infringement as part of the determination of the size of the fine. In doing so, ACM takes account of the degree of culpability. This, however, does not imply that ACM is required to prove culpability. ACM is allowed to assume culpability if the identity of the offender has been established. Clearly, ACM shall not impose a fine if there is no question of culpability. To escape the imposition of a fine, however, Volkswagen AG must invoke absence of all guilt and plausibly demonstrate this absence of all guilt. Volkswagen AG has not succeeded in doing this.

71. The only argument put forward by Volkswagen AG in the objection procedure that could potentially remove its culpability is that the KBA issued the type approvals and did not withdraw the type approvals after establishing the irregularities. However, this argument too does not stand up. First of all, the original type approvals were issued while Volkswagen AG was making use of the EGR Software. If the KBA had known that Volkswagen AG was making use of the EGR Software, the type approvals would not have been issued. It is, after all, not for nothing that the KBA established non-conformity. The fact that the KBA obliged Volkswagen AG to carry out a software update does not demonstrate that Volkswagen AG is free of culpability. It

[45] In marginal 6.47 of the objections of Volkswagen AG, reference is made to a Decision of the Consumer Board of ACM (Consumer Authority) to the objections of Keukenconcurrent B.V. against the Consumer Authority's decision of November 19th, 2009, of July 2nd, 2010 with reference CA/NB/427/64, point 17.

merely demonstrates that in the given circumstances KBA opted to solve the non-conformity via a software update.

6.7 Connection between infringements

72. Volkswagen AG argues that ACM acted incorrectly in establishing three separate infringements based on the same set of facts and the same legal standard. ACM is not authorized to do this according to Volkswagen AG as it entails that the legal person is tried more than once for the same fact. Volkswagen AG also asserts that it has been penalized several times as it received a fine for all three infringements instead of one fine for one infringement. This, it says, is in conflict with the *non bis in idem* principle. Moreover, ACM does not have the authority to establish infringements without also imposing a sanction (declaratory conclusion). Finally, Volkswagen AG is of the opinion that ACM should revoke the contested decision as a result of the German decision in which it has already been convicted by means of a final judgment for the same set of facts. Article 50 of the Charter entails that ACM may not penalize Volkswagen AG again for these facts.

73. This ground for objection of Volkswagen AG does not stand up. As a supervisor responsible for the enforcement of compliance with the provisions falling within its authority, ACM is entitled to assume that the legislator intended to set a separate standard with each separate provision in the Dutch Act on Enforcement of Consumer Protection.[46] Each of the infringements of Part 3A, Title 3, Book 6 of the Dutch Civil Code is of a misleading nature and could independently lead to the exercise of misleading influence over the economic behavior of consumers. Contrary to what Volkswagen AG states, ACM is authorized as supervisor of compliance with the Dutch Act on Enforcement of Consumer Protection to establish each of these infringements separately.

74. Regarding the identified connection between the infringements, ACM has established that the proven practices cannot be regarded as a set of facts that are sufficiently connected and sufficiently simultaneous in time and place to hold Volkswagen AG (essentially) culpable for a single infringement.[47] In the present case, ACM notes that the practices, though connected, constitute three separate culpable actions. ACM is authorized to treat these three separate culpable actions as separate infringements.

75. On the grounds of Section 5:8 of the Dutch General Administrative Law Act, ACM is also authorized to impose separate fines for these infringements. However, Section 2.1, paragraph 1 of the Fining Policy Regulation ACM 2014[48] provides for the option of imposing only a single administrative fine for the complete set of infringements. In view of the connection between the three infringements, ACM considered it appropriate in the contested decision to impose a single fine for the complete set of infringements. In so doing, ACM prevented disproportionate penalization of different, but connected, punishable infringements. There is therefore no question of an accumulation of fines or double penalization. In its reconsideration, ACM therefore considers the size of the penalty that ACM has imposed for the complete set of infringements as proportionate and, given the circumstances, the minimum required in order to act as a deterrent. Now that ACM has established the infringements and has penalized these

[46] Cf. recommendation in case CA/NB/510 of the Objections Advisory Committee of the Consumer Authority, marginal 5.141 and recommendation in case CA/NCB/17/185 of the Objections Advisory Committee of the Consumer Authority, marginal. 5.6.12.
[47] HR June 5th, 2018, ECLI:NL:HR:2018:831, r.o. 3.3.1.
[48] Policy rule of the Minister of Economic Affairs of July 4th, 2014, no. WJZ/14112617 relating to the imposition of administrative penalties by the Authority for Consumers & Markets (Fining Policy Regulation ACM 2014), Official Gazette, *Stcrt.*2014, 1976.

infringements as a connected whole, there is no question whatsoever of a declaratory conclusion.

76. Nor has the *non bis in idem* principle as laid down in Article 50 of the Charter been breached. The German decision, after all, sees to the enforcement of Article 130 in conjunction with Article 9 Gesetz über Ordnungswidrigkeiten (OWiG). These Articles do not activate Union Law. The German decision thus, in the first place, falls outside the scope of Article 50 of the Charter. In addition, there is no question of double penalization as a result of the German decision. The German decision mentions a multitude of insufficiently interpretable facts and seems to be mainly based on the fact that there was insufficient supervision within Volkswagen AG. The contested decision by contrast is based on facts that confirm that Volkswagen AG installed defeat device software in cars that were sold to consumers in the Netherlands and made misleading communications about this.

6.8 Conclusion

77. In view of the foregoing, none of the grounds for objection put forward by Volkswagen AG stand up. ACM therefore dismisses the objection as unfounded. ACM took note of the opinion of the Dutch Consumers' Association in the foregoing.

7 Decision

78. The Authority for Consumers and Market rules that the objection of Volkswagen Aktiengesellschaft is unfounded and upholds its decision, with additional reasons as outlined above, of October 18th, 2017 with reference ACM/UIT/230480.

Netherlands Authority for Consumers and Markets,
on its behalf:

was signed

C.M.L. Hijmans van den Bergh
Member of the Board

If you are a directly interested party, you can lodge an appeal against this decision. Send your appeal with reasons to the Court of Rotterdam, Administrative Law Sector, P.O. Box 50951, 3007 BM Rotterdam. You must do this within six weeks after notification of this decision. More information about the appeal procedure can be found at www.rechtspraak.nl.