

# Stichting Truck Claim

**Annual Report 2022**

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# Report of the Supervisory Board

## ***Performance***

During the financial year 2022, the supervisory board monitored the foundation's governance, financial policy, (legal and operational) strategy, and general affairs. The supervisory board has provided its findings to the management board and to the legal advisors of the foundation.

## ***Composition and compliance***

During the financial year 2022, the supervisory board of the foundation consisted of Mr Arie van der Steen. Given the scope and workload of its activities, the supervisory board currently has no need for additional members. The foundation will have its articles of association amended so that the supervisory board in its capacity consists of at least one member, with the option of appointing additional members if necessary.

## ***Meetings***

The supervisory board, the management board and the legal advisors of the foundation had various meetings and consulted each other via (conference) calls and email on multiple occasions during 2022. 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 in this annual report.

The supervisory board recognises the achievements of the foundation's management and legal advisors in 2022 and hereby expresses its appreciation to them.

Willemstad, 19 December 2023

w.g.

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Aire van der Steen

# Directors' Statement

## ***Mission***

Stichting Truck Claim (the 'foundation') is a non-profit Dutch foundation with its registered seat in Rotterdam, the Netherlands.

## ***Representation***

The foundation represents the interests of professional users, being transport companies that have bought or leased one or more trucks or truck combinations in the period 1997-2011, and have paid too much for the purchase or lease of these trucks or truck combinations, and are not engaged in any civil proceedings against one or more truck manufacturers in connection with the cartel.

## ***Objective and approach***

The foundation was incorporated on 1 December 2016 to recoup the damages that have been incurred by trucking companies as a result of the truck cartel. The foundation intends to obtain redress for these affected companies from the truck manufacturers in two ways:

- **Settlement** - The objectives of the foundation are drafted in light of the primary goal of concluding a fair and reasonable solution for all involved parties by means of reaching a collective settlement.
- **Litigation** - If (one or multiple) truck manufacturer(s) would not be willing to pursue an out of court solution the Dutch legal system enables litigation on the merits of the case in the Netherlands.

By virtue of its articles of association the foundation is allowed to collect claims of affected companies and subsequently file one or more lawsuits in order to obtain redress for these companies.

## ***Governance***

### ***Management and Supervisory Board***

The foundation is governed and represented by the management board. The management board is responsible for the strategy, financial policy and day-to-day business of the foundation. In 2022, the management board consisted of Mr Cornelis den Ouden. Given the scope and workload of its activities, the management board currently has no need for additional members. The foundation will have its articles of association amended so that the management board in its capacity consists of at least one member, with the option of appointing additional members if necessary.

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 realization of the foundation's objectives. supervisory board members perform their duties independently.

In 2022, the supervisory board consisted of Mr. Arie van der Steen.

### ***Case Background***

On 19 July 2016, the European Commission (EC) found that MAN, Volvo/Renault, Daimler, Iveco, and DAF breached EU Antitrust rules. On 27 September 2017, the European Commission adopted a decision holding Scania liable as well. Scania appealed to the General Court later the same year. On 2 February 2022, the General Court rendered a judgment that confirmed the EU Commission's findings against Scania, dismissed Scania's appeal entirely and upheld the amount of fines as set by the EU Commission.

The truck manufacturers were involved in prohibited collusion on truck pricing and on passing on the costs of compliance with stricter emission rules for a period of about 14 years. The five truck manufacturers (and subsidiaries) listed in the decision acknowledged their liability for the cartel and reached a settlement with the EC. Scania chose not to cooperate with the EC during the investigation, but was fined in a later stage. MAN escaped a fine since they applied for leniency and revealed the existence of the cartel.

### ***The EC decision***

The EC found that the anticompetitive behavior of the truck manufacturers was related to (at least):

- coordinating prices at "gross list" level for medium (6-16 tons) and heavy (>16 tons) trucks in the EEA;
- the timing for the introduction of emission technologies for medium and heavy trucks to comply with the increasingly strict European emissions standards (from Euro III through to the currently applicable Euro VI); and
- the passing on to customers of the costs for the emissions technologies required to comply with the increasingly strict European emissions standards (from Euro III through to the currently applicable Euro VI).

### ***Scope and period***

The infringement covered the entire European Economic Area (EEA), including the UK, and lasted about 14 years - roughly from 1997 until January 2011 - when the EC carried out unannounced inspections of the firms.

### ***Affected companies***

The truck cartel has affected a significant number of haulers operating in Europe, together

with companies which have their own fleets. These are *inter alia* businesses which purchased medium and heavy duty trucks from MAN, Volvo/Renault, Daimler, Iveco and/or DAF between 17 January 1997 and 20 September 2010 (MAN) /18 January 2011 (others).

By virtue of its articles of association, the foundation represents the interests of all these affected companies.

### ***Participants and Partners***

#### *Participants*

Since its incorporation, the foundation has built a portfolio of affected companies in multiple European jurisdictions, thereby focusing on SME companies. This approach allows the foundation to bundle damage claims and data relating to the same infringement.

The terms and conditions of the participation are laid down in a Participation Agreement.

#### *Partners*

The foundation has concluded partnerships with organizations from local jurisdictions to help the foundation with (the collection of) claims in the start-up phase. Partners of the foundation provide multiple services, such as:

- rendering general advice and expertise to the foundation with respect to relevant aspects of law within the partner's jurisdiction;
- operating as a local contact for local victims, other relevant interest groups and the media;
- securing active support of victims that become a participant in the foundation; and
- promoting of the foundation and its efforts within the certain jurisdiction.

### ***Actions of the foundation during the year 2022***

The year 2022 has been the sixth financial year since the incorporation of the foundation on 1 December 2016.

#### *Background Legal Proceedings in the Netherlands*

On 18 December 2019, the foundation submitted a writ of summons with the Amsterdam Court on behalf of its participants.

Apart from the foundation's proceedings, there are several other cases ongoing in the Netherlands. The Amsterdam Court tries to coordinate these cases as much as possible. Legal proceedings that have been filed within a certain period are clustered in "Batches" so that these legal proceedings can be addressed in an efficient manner.

The foundation's proceedings for the participants are part of the "Second Batch".

### Developments "Second Batch" during 2022<sup>1</sup>

A hearing was originally scheduled for 13-15 September 2022. Unfortunately, this hearing was postponed due to illness of the presiding judge. To prevent further delay, the court referred the case for an additional round of submissions. These submissions were filed on 14 December 2022 and 8 February 2023.

The written submissions concerned the following topics:

- Scope of EC decisions and claims;
- Applicable law;
- Validity Dutch assignment / mandate model;
- Admissibility claim initiatives.

### Next steps

The aforementioned submissions are followed by a hearing that will take place on 7 June 2023.

### **Financials**

The foundation follows a strict "no-cure-no-pay" arrangement with its participants. Participants can join the foundation completely free of charge. All costs (including legal costs) will be borne by the foundation, for which it has obtained external funding from Vannin Capital – a professional litigation funder from the UK.

In return, the foundation deducts a certain percentage of the settlement amount (if aggrieved companies settle their claim) or from the compensation amount that has been obtained in court (in case of successful litigation on the merits). This is 20% of the compensation amount after successfully litigating individual claims and 15% of the settlement amount after a voluntarily settlement.

The foundation has corresponded with the tax authorities regarding its tax obligations. It

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<sup>1</sup> The Dutch court already rendered a positive ruling on these topics in the "First Batch". On 27 July 2022, the Amsterdam Court ruled that damages actions on behalf of claimants from different EU countries can be covered by Dutch law. The court also held that the Dutch model for assignment and mandates can apply to foreign entities seeking compensation. Lastly, the court rejected the Truck Manufacturers' arguments that the claim initiatives were not admissible because they had to comply with the class action regime rules. This judgment could also be relevant for the legal proceedings in the "Second Batch".

obtained a preliminary ruling from the tax authorities that it is able to deduct VAT.

### ***Meetings***

The management board, supervisory board, legal counsel and funders of the foundation regularly consulted each other via email, phone and have held (digital) meetings. The conversations and messages focused on the foundation's (legal and operational) strategy, the governance, the financial affairs of the foundation, and the general course of affairs around the truck cartel case.

### ***Information and communication***

#### *Website and registration platform*

The foundation has developed an international platform where participants can simply register and upload the necessary data.

The claim platform is assessable for participants through the website of the Foundation: [www.truckclaim.org](http://www.truckclaim.org). The claim platform provides a structured and safe way to information that is needed to fully register with the foundation. The participants on their end will be able to monitor the registration process from their personal account.

#### *News letters*

The webpage is particularly focused on the international market and allows an easy registration for trucking companies.

During 2022, the foundation sent newsletters to its participants. These newsletters provide the participants with a general update on the courses of action of the foundation, particularly regarding the ongoing legal proceedings against the Truck Manufacturers for its participants before the Amsterdam Court in the Netherlands.



# Annual Accounts 2022

## A. Balance Sheet

	<u>31.12.2022</u>	<u>31.12.2021</u>
<b><u>FIXED ASSETS</u></b>		
Intangible fixed assets	--	--
Tangible fixed assets	--	--
<b><u>CURRENT ASSETS</u></b>		
Inventories	--	--
Receivables	€ 219,714	€ 38,591
Cash and bank balances	€ 58,384	€ 78,762
<b><u>CURRENT LIABILITIES</u></b>		
Creditors	€ 187,377	€ 11,392
Accrued liabilities	€ 13,654	€ 20,560
Current assets minus current liabilities	€ 77,067	€ 85,401
Assets minus current liabilities	€ 77,067	€ 85,401
<b><u>EQUITY</u></b>	€ 77,067	€ 85,401

## B. Statement of Income and Expenses

	<u>2022</u>		<u>2021</u>	
<b><u>INCOME</u></b>				
Third Party Funding	€	0	€	0
<b>Total</b>	<b>€</b>	<b>0</b>	<b>€</b>	<b>0</b>
<b><u>EXPENSES</u></b>				
Legal & Notary	€	187,596	€	83,522
Management/Remuneration Fees	€	13,633	€	7,000
Other	€	66,428	€	75,394
<b>Total</b>	<b>€</b>	<b>267,657</b>	<b>€</b>	<b>165,916</b>
<b>Operating Income</b>	<b>€</b>	<b>(267,657)</b>	<b>€</b>	<b>(165,916)</b>
<b>Non-operating Income</b>	<b>€</b>	<b>0</b>	<b>€</b>	<b>0</b>
<b>Net result</b>	<b>€</b>	<b>(267,657)</b>	<b>€</b>	<b>(165,916)</b>

## **Notes to the Annual Accounts 2022**

## A. Notes to the Balance Sheet

### **BALANCE SHEET VALUATION POLICIES**

#### **General**

Stichting Truck Claim is a Dutch non-profit foundation and represents the interests of European Trucking Companies that suffered damage as a result of the Truck Cartel.

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.

#### **Equity**

The equity is the actual funding up to 31 December 2021 minus the expenses made up to and including 31 December 2021. Additional funding is guaranteed by the funding acquired in April 2019.

	2021	2021
Equity start of the year	€ 85,401	€ 85.926
Funding received	€ 259,323	€ 165.391
Result for the year	<u>€ (267,657)</u>	<u>€ (165.916)</u>
Equity end of the year	€ 77,067	€ 85.401

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

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

#### **General**

The foundation is founded 1 December 2016 and this sixth financial year comprises of twelve months up to 31 December 2022.

#### **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.

Willemstad, 19 December 2023,

Management Board

Supervisory Board

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Cornelis den Ouden

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Arie van der Steen