



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-343/19
Verein für Konsumenteninformation v Volkswagen AG

AG Campos Sánchez-Bordona: a company can be sued by the purchasers of vehicles that it manipulated before the courts of the Member State where the vehicles were purchased

The German company Volkswagen installed a device in its motor vehicles (manipulative software) which masked, on the test bench, the true exhaust emission values, contrary to provisions of EU law.¹ That manipulation was disclosed to the public on 18 September 2015.

The Austrian consumer association Verein für Konsumenteninformation ('VKI'), which is pursuing claims for damages assigned by 574 purchasers of manipulated vehicles, brought an action in September 2018 against Volkswagen before the Landesgericht Klagenfurt (Regional Court, Klagenfurt, Austria). The purchasers acquired those vehicles in Austria from commercial car dealers or private sellers, before the public disclosure of the manipulations.

VKI seeks compensation from Volkswagen in respect of the damage caused (in essence; the difference between the price of a manipulated vehicle and the price actually paid), together with a declaration establishing the liability of Volkswagen for as yet unquantifiable future damages (such as the greater depreciation in market value of or the driving bans on the vehicles concerned). The Austrian court is unsure as to whether it has international jurisdiction to hear the case, for which reason it made a reference for a preliminary ruling to the Court of Justice to obtain clarification from the latter on its case-law concerning the Regulation on jurisdiction.²

In today's Opinion on this case, **Advocate General Manuel Campos Sánchez-Bordona** sets out, in the first place, that, in accordance with the **general rule on international jurisdiction**, applicants must sue in the courts of the Member State in which the defendant is domiciled ('**courts of the defendant's State of domicile**'). There are, however, **alternative jurisdictions**. Thus, in **matters relating to tort, delict or quasi-delict**, the Regulation offers applicants the possibility of suing in the courts of **the place where the harmful event occurred or may occur**.

Although this covers a wide variety of situations, the choice of forum must comply with the **principles of foreseeability** of the rules for the parties and of **proximity**: that is to say, there must be a **particularly close connection** between the court which has jurisdiction and the dispute, so as to ensure legal certainty and to prevent a person from being sued in a court of a Member State which that person could not reasonably have foreseen.

Where the unlawful conduct and its consequences are situated in different Member States, the applicant can choose between the court of the place where the damage occurred ('**the place where the damage arose**'), or the court of the place where the event giving rise to the harm occurred ('**the place where the event giving rise to the harm occurred**'), since it is assumed that both places have a significant connection to the dispute.

¹ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (€5 and €6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1).

² Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012, L 351, p. 1).

Advocate General Campos Sánchez Bordona takes the view that, in the present case, **the event giving rise to the harm is the installation, during the vehicle manufacturing process, of software which alters the vehicle's emissions data.** The **place where the event giving rise to the harm occurred is Germany**, since that is where the manipulated vehicles were manufactured. Accordingly, in line with the general rule, the vehicle manufacturer, as a person domiciled in Germany, would, in principle be subject to the jurisdiction of the courts of that Member State. However, since the basis for the claim is a tortious, delictual or quasi-delictual act, it is also possible for that person to be sued in the courts of the place where the damage arose.

In order to identify **where the damage occurred**, the case-law holds that only initial, and not consequential, damage is to be taken into account, that is, only damage sustained by the direct victim and not damage sustained by a third party 'by ricochet'.

In the Advocate General's opinion, in this case, the difference between the price paid and the value of the manipulated vehicle causes **a financial loss** which occurs at the same time as the purchase of the vehicle (but which, however, will not be discovered until later). That financial damage is initial and not consequential, since it is derived directly from the event giving rise to the damage (manipulation of the engine) and not from earlier damage.

In the second place, he takes the view that **the persons who purchased the cars are direct victims**, given that the financial loss they allege does not follow on from earlier damage sustained by other individuals before them. That is due to the fact that **the loss of value of the vehicles did not become a reality until the manipulation of the engines was made public.** Persons who obtained the vehicle from another, previous buyer are therefore also direct victims; the latter did not experience any loss because, at that time, the damage was latent and was not disclosed until later when it affected the then owner.

Given that the location of the vehicle is unforeseeable, the Advocate General considers that the **place where the damage occurred is the place where that transaction was concluded, pursuant to which the product became part of the assets of the person concerned and caused the damage.**

The courts for that place will have (international) jurisdiction if the other **specific circumstances of the case** also support the allocation of jurisdiction to those courts, **having regard to the criteria of proximity and foreseeability.** Mr Campos Sánchez Bordona points out that, where the damage is purely financial, those circumstances vary depending on the characteristics of each dispute. In the present case, he considers that **a vehicle manufacturer like Volkswagen is in a position to foresee with ease that its vehicles will be placed on the market in Austria, so that it could itself reasonably foresee that an action to establish civil liability might be brought against it by future purchasers who acquire vehicles in that country.**

The Advocate General emphasises that **the sole purpose of the examination of those circumstances as a whole must be to confirm (or reject) the jurisdiction of the court of the place where the damage occurred.** However, that examination must not be used to *choose* which court (in this case, the Austrian courts or the German courts) should decide on the substance of the case, on the grounds that it is closer and foreseeable. **The court of the place where the damage occurred is not, therefore, authorised to determine that it does or does not have jurisdiction based exclusively on an appraisal of those other circumstances of the case.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE : A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the

dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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