



Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-177/19 P, C-178/19 P and
C-179/19 P

Germany and Hungary v Ville de Paris, Ville de Bruxelles, Ayuntamiento de
Madrid and Commission

Press and Information

Commission v Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid

Advocate General Bobek: the Court should dismiss the appeals against the General Court's judgment annulling the excessive oxides of nitrogen emission limits the Commission set for real driving tests in the wake of the 'dieselgate' scandal

The Commission unlawfully altered the existing emission limits adopted by the Parliament and the Council

In 2016, in response to the 'dieselgate' scandal, the Commission introduced a real driving emissions (RDE) testing procedure to complement the previous laboratory procedure with a view to addressing the finding that the latter procedure does not reflect the true level of pollutants during real driving. In this context, the Commission adopted a regulation ¹ (the Amending Regulation) defining the not-to-exceed emission limits for oxides of nitrogen during the new RDE tests to which car manufactures must subject light passenger and commercial vehicles, in particular in the context of approving new vehicle types. The Commission set those limits on the basis of the limits defined for the Euro 6 standard in the Type Approval Regulation ² to which it applied correction coefficients in order to take account of, in its view, statistical and technical uncertainties. For example, for a limit defined in the Euro 6 standard at 80 mg/km, the limit was set for RDE tests at 168 mg/km for a transitional period, and subsequently at 120 mg/km.

The cities of Paris, Brussels and Madrid disputed the emission limits adopted by the Commission and each city brought an action for annulment before the General Court of the European Union.

By judgment of 13 December 2018, ³ the General Court upheld these actions and annulled the Amending Regulation to the extent that it set excessively high oxides of nitrogen emission limits. In essence, the General Court found that, by setting those values too high, the Commission had in practice amended the Euro 6 standard adopted by the Parliament and the Council, for which it lacked the power.

The Commission, Germany and Hungary have each brought an appeal against the General Court's judgment before the Court of Justice.

In today's Opinion, Advocate General Mr Michal Bobek analyses, first, whether the General Court was right in finding that the cities of Paris, Brussels and Madrid were entitled to contest before it the validity of the emission limits set out in the Amending Regulation. In this regard, he recalls that the actions brought by these cities can be considered admissible if, on the one hand, the Amending Regulation directly affects them and, on the other hand, if this legal act does not require adoption of implementing measures in order that it can be applicable to them.

¹ Commission Regulation (EU) 2016/646 of 20 April 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6) (OJ 2016 L 109, p. 1).

² 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 (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information

³ Judgment of the General Court of 13 December 2018, *Ville de Paris v Commission*, [T-339/16](#), *Ville de Bruxelles v Commission*, [T-352/16](#), and *Ayuntamiento de Madrid v Commission*, [T-391/16](#); see also Press Release [No 198/18](#).

In this context, the Advocate General takes the view that the General Court **erred in concluding that these cities were directly affected by the Amending Regulation through its interaction with the Type Approval Framework Directive.** ⁴ On this point, he stresses that the directive only regulates the technical, **product standards** to be set for type-approval **at the moment of the initial placement** of the vehicle on the market. However, it does not aim to prevent local authorities from introducing measures regulating the **subsequent use** of vehicles and their traffic in their respective territories, in particular on **environmental grounds**. Therefore, **a local regulation that the cities in question may introduce in order to limit the circulation of vehicles** in some specific areas, even where potentially using parameters on emissions that are stricter than those used for the Euro 6 standard, **is not capable of interfering with the directive.**

Nevertheless, the Advocate General considers that the Amending Regulation indeed has an impact on the way in which local entities are able to lawfully exercise their specific powers and fulfil their obligations, which may also flow from EU law itself, in the area of environmental protection and the protection of public health when tackling pollution and ensuring the appropriate standards of air quality. In fact, the choice of the measures to be adopted by these entities in order to exercise these powers and honour these obligations, as well as the manner in which those measures will have to be implemented, **is bound to be reduced in a significant manner as a direct consequence of the Amending Regulation.** The Advocate General is therefore of the view that **the Amending Regulation directly affects the three cities in question.**

As the Advocate General upholds the General Court's finding that the Amending Regulation does not require adoption of implementing measures in order that it can be applicable to three cities in question, he comes to the conclusion that **the actions these municipalities brought against the Amending Regulation are admissible.**

As to the merits of the actions, the Advocate General takes the view that **the oxides of nitrogen emission limits** set out in the Type Approval Regulation **constitute an essential element** of that piece of legislation. Therefore, **only the authors of the Type Approval Regulation, namely the Parliament and the Council, were entitled to amend the emission limits with the Commission lacking the power in that regard.** In this context, the Advocate General comes to the conclusion **that the General Court did not err in taking the view that, through the Amending Regulation, the Commission had in practice amended the Euro 6 standard specified in the Type Approval Regulation.**

Under these conditions, the Advocate General proposes that **the Court should dismiss the appeals in their entirety.**

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: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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⁴ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles.