



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 41/22**

Luxembourg, 3 March 2022

Advocate General's Opinion in Case C-873/19  
Deutsche Umwelthilfe (Approval of motor vehicles)

**Advocate General Rantos: approved environmental associations must be able to bring legal proceedings to challenge an EC type-approval of vehicles equipped with 'defeat devices' that may be prohibited**

*A so-called 'temperature window' device can be permissible only under strict conditions*

The Kraftfahrt-Bundesamt (Federal Motor Transport Authority, Germany), the competent body in Germany for granting EC type-approval,<sup>1</sup> authorised, for vehicles manufactured by the motor vehicle manufacturer Volkswagen and equipped with a Euro 5<sup>2</sup> generation diesel engine, software installed in the electronic engine controller which, under certain external temperature conditions, reduces the recirculation of exhaust gases (temperature window),<sup>3</sup> which results in an increase in nitrogen oxide (NOx) emissions.

Deutsche Umwelthilfe, an environmental association approved in Germany, has brought an action against that decision before the Schleswig Holsteinisches Verwaltungsgericht (Administrative Court, Schleswig-Holstein, Germany), claiming that that software is a 'defeat device' that is prohibited by the EU regulation on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6).<sup>4</sup>

According to the Schleswig Holsteinisches Verwaltungsgericht, Deutsche Umwelthilfe does not have standing under German law to bring proceedings to challenge the decision of the Kraftfahrt-Bundesamt. Its rights have not, in that court's view, been impaired by that decision, which is not one authorising a project for a fixed installation but is a product authorisation.

That court has therefore asked the Court of Justice, first, whether the Aarhus Convention,<sup>5</sup> read in conjunction with the right to an effective remedy laid down by the Charter of Fundamental Rights of the European Union, requires that such an association should be able to challenge before the national courts an administrative decision granting EC type-approval of vehicles in the light of the prohibition on defeat devices.

Secondly, if that answer is in the affirmative, that court seeks to ascertain whether the 'need' for a defeat device, such as the temperature window at issue, which might make its use permissible, is to be assessed according to the state of the art at the time when the EC type-approval is granted

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<sup>1</sup> EC type-approval is the procedure whereby a Member State certifies that a type of vehicle, system, component or separate technical unit satisfies the relevant administrative provisions and technical requirements.

<sup>2</sup> These are VW Golf Plus TDI motor vehicles, equipped with a Euro 5 generation EA 189-type diesel engine with a capacity of 2 litres.

<sup>3</sup> According to the Advocate General, this temperature window corresponds to that at issue in Cases [C-128/20](#), [GSMB Invest](#), [C-134/20](#), [Volkswagen](#), and [C-145/20](#), [Porsche Inter Auto and Volkswagen](#), in which he delivered his Opinion on 23 September 2021 (see [PR No 162/21](#)).

<sup>4</sup> 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 (OJ 2007 L 171, p. 1), as amended by Regulation (EC) No 692/2008 of 18 July 2008 (OJ 2008 L 199, p. 1).

<sup>5</sup> Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus (Denmark) on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

to the vehicles concerned and whether account must be taken of other circumstances which may render such a defeat device permissible.

In his Opinion delivered today, **Advocate General Athanasios Rantos** proposes that the first question be answered in the affirmative.

In his view, **an approved environmental association, which is entitled to bring legal proceedings under national law, must be able to challenge, before a national court, an administrative decision granting EC type-approval of vehicles which may be contrary to the prohibition on defeat devices.**

The Aarhus Convention, read in conjunction with the Charter of Fundamental Rights, imposes on Member States an obligation to ensure **effective judicial protection of the rights conferred by EU environmental law.**

In that regard, the rules of EU environmental law are most frequently in the general interest, rather than simply in the interests of certain individuals. It is precisely environmental associations that have the objective of defending that general interest.

Furthermore, the provision of EU law that, subject to certain exceptions, prohibits defeat devices is directly applicable in the Member States and must be regarded as forming part of the provisions of national law relating to the environment.

Its effectiveness, examined from the viewpoint of the fundamental right to an effective judicial remedy, requires, according to the Advocate General, that the right to challenge **an administrative decision allowing EC type-approval** be guaranteed to approved environmental associations. There does not appear to be any objective of general interest recognised by the European Union that could militate against such access to justice.

So far as the second question is concerned, the Advocate General takes the view that **the ‘need’ for a defeat device in order to protect the engine against damage or accident and for safe operation of the vehicle, which might make that device permissible, is not to be assessed in the light of the state of the art at the time when the EC type-approval is granted.**

**The regulation is designed to be neutral from a technological perspective. Thus, vehicle manufacturers must simply apply appropriate technical means to comply with those limit values, without the technology used necessarily being the best possible or being required.**

Moreover, in the absence of a ‘need’ for the defeat device,<sup>6</sup> there are no other circumstances which may lead to the permissibility of a defeat device, with the result that **it is not necessary to take account of circumstances other than that ‘need’** in order to examine the lawfulness of a defeat device.

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**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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<sup>6</sup> And in so far as the two other exceptions to the prohibition on defeat devices provided for by the regulation are not applicable, as in the present case.

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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