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Advocate General's Opinion C-100/21 | Mercedes-Benz Group (Liability of manufacturers of vehicles equipped with unlawful defeat devices)

Unlawful defeat devices in diesel vehicles: Advocate General Rantos considers that the purchaser of a vehicle equipped with such a device must have a right to compensation against the vehicle manufacturer

In his view, it is for the Member States to define the methods of calculating such compensation in so far as, in accordance with the principle of effectiveness, that compensation is commensurate with the loss or damage sustained

The purchaser of a used Mercedes C 220 CDI whose exhaust gas recirculation system establishes a 'temperature window' brought an action for damages against the manufacturer Mercedes-Benz before the Regional Court, Ravensburg (Germany). That temperature window leads to a reduction in the exhaust gas recirculation rate when outside temperatures are colder, resulting in an increase in nitrogen oxide emissions (NOx).

According to the provisional assessment of the Regional Court, Ravensburg, the temperature window in question constitutes an unlawful defeat device for the purposes of EU law in that the device seeks not to protect the engine against the immediate risks of damage which create a specific hazard when the vehicle is driven, but only to protect that engine against wear and tear.¹

The Regional Court, Ravensburg asked the Court of Justice whether EU law confers on an individual purchaser of a vehicle equipped with an unlawful defeat device a right to compensation against the vehicle manufacturer, on the basis of tortious liability, and even in the case of simple negligence. It seems that Mercedes-Benz did not act intentionally. In the present case, such liability presupposes, according to German law, that EU law on EC type-approval of vehicles prohibiting such provisions also seeks to protect the interests of an individual purchaser.

In the affirmative, the referring court seeks to understand how to calculate that compensation, in particular if the benefit, which the purchaser has of the use of the vehicle, must be offset against the reimbursement of the purchase price of that vehicle.

In his Opinion delivered today, Advocate General Athanasios Rantos proposes that the Court answers, first, that EU law on EC type-approval of vehicles protects the interests of an individual purchaser of a motor vehicle, in particular the interest in not acquiring a vehicle which is equipped with an unlawful defeat device. By the EC certificate of conformity, the manufacturer gives the purchaser the assurance that the vehicle he or she has acquired complies

¹ See to that effect, judgment of the Court 17 December 2020, *CLCV and Others (Defeat device on diesel engines)*, [C-693/18](#) (see also [Press Release n° 170/20](#)). See also the Opinion of Advocate General Rantos of 23 September 2021 in the pending cases [C-128/20](#), *GSMB Invest*, [C-134/20](#), *Volkswagen*, and [C-145/20](#), *Porsche Inter Auto and Volkswagen*, concerning, like the present case, a temperature window (see also [Press Release n° 162/21](#)).

with the requirements of EU law.

Secondly, the Advocate General proposes stating that EU law requires Member States to provide that a purchaser of a vehicle has a right to compensation from the vehicle manufacturer where that vehicle is equipped with an unlawful defeat device. In that regard, Member States must implement effective, proportionate and dissuasive penalties.

As regards, third, the calculation of compensation, the Advocate General considers that it is for the Member States to define the rules concerning the method of that calculation. Nevertheless, in accordance with the principle of effectiveness laid down by EU law, that compensation must be commensurate with the loss or damage sustained.

In the present case, it is for the Regional Court, Ravensburg to ascertain to what extent offsetting the benefit of the actual use made of the motor vehicle (under normal conditions of use of the vehicle) against the reimbursement of the purchase price of the vehicle would ensure adequate compensation for the purchaser.

In that regard, he adds that it is not for the Court to decide whether the benefit of the use made of the vehicle must be calculated on the basis of its full purchase price, without any deduction being made for the reduction in value of the vehicle resulting from its being equipped with an unlawful defeat device and/or in view of use of a vehicle which does not comply with EU law.

Finally, as regards an aspect of German civil procedural law, the Advocate General considers, in a subsidiary manner, that EU law precludes national legislation under which a single judge, who considers, in a case pending before him or her, that a question has been raised which concerns the interpretation or validity of EU law and requires a decision by the Court, must refer that question to a civil chamber, thereby preventing him or her from making a request to the Court of Justice for a preliminary ruling.

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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