



## PRESS RELEASE No 100/25

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Judgment of the Court in Case C-666/23 | Volkswagen (Right to adequate compensation)

### **A vehicle manufacturer cannot be exempted from its liability for an unlawful defeat device on the grounds that an EC type-approval has been granted**

*Furthermore, EU law does not preclude the deduction, from the amount of compensation due to the purchaser, of an amount corresponding to the benefit derived from the use of the vehicle, or the limitation of that compensation to an amount representing 15% of the purchase price of the vehicle, provided that that compensation is adequate for the loss or damage suffered*

Two purchasers of diesel vehicles from the vehicle manufacturer Volkswagen have brought actions before a German court <sup>1</sup> seeking damages from Volkswagen on the grounds that those vehicles are equipped with an allegedly unlawful defeat device. <sup>2</sup>

That defeat device is a software commonly referred to as a 'temperature window' which aims to reduce the exhaust gas recirculation rate above an ambient temperature of 10 degrees Celsius, resulting in higher nitrogen oxide emissions. In one of the two vehicles, that software was originally installed, while in the other, it was installed as part of a software update for the vehicle.

Having regard, first, to the arguments put forward by Volkswagen and, second, to the judgment of the German Federal Court of Justice of 26 June 2023, according to which a vehicle manufacturer may rely, as a ground for exemption from liability, on the existence of an unavoidable error as regards the unlawfulness of a defeat device, the German court before which the actions have been brought referred several questions to the Court of Justice concerning the interpretation of the relevant provisions of EU law.

First, the Court answers that **a vehicle manufacturer cannot be exempted from its liability for an unlawful defeat device on the ground that the type of vehicle or the device itself has been approved by the competent national authority.**

EC type-approval does not, in fact, necessarily mean that the competent national authority has confirmed the vehicle manufacturer's assessment as regards the allegedly lawful nature of the device.

Secondly, the Court states that the vehicle manufacturer's liability applies both in the case where the unlawful defeat device was installed at the stage of production of the vehicle and where that defeat device was installed subsequently.

Thirdly, **EU law does not, in principle, preclude the deduction from the amount of compensation due to the purchaser of a vehicle equipped with an unlawful defeat device, who has suffered loss or damage caused by that device, of an amount corresponding to the benefit derived from the use of that vehicle.**

**Nor does it, in principle, preclude a limitation of that compensation to an amount representing 15% of the purchase price of the vehicle.**

**However, that compensation must constitute adequate reparation for the loss or damage suffered.**

It is therefore for the court before which the action has been brought to ascertain, where appropriate, whether the offsetting of the benefit and the limitation at issue ensure such adequate compensation.

**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 EU law or the validity of an EU 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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> Regional Court, Ravensburg.

<sup>2</sup> The Court has previously held that Member States are required to provide that the purchaser of a motor vehicle equipped with an unlawful defeat device has a right to compensation from the manufacturer of that vehicle where that device has caused loss or damage to that purchaser: see judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles equipped with defeat devices)*, [C-100/21](#) (see also Press Release [No 51/23](#)).