

Case C-240/21

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

14 April 2021

Referring court:

Landgericht Ravensburg (Germany)

Date of the decision to refer:

31 March 2021

Applicants:

SA

FT

LH

IL

TN

Defendant:

Daimler AG

Subject matter of the main proceedings

Defeat devices in diesel motor vehicles – Compensation – Offsetting of benefits from the actual use made of the motor vehicle – Entitlement of a single judge to request a preliminary ruling

Subject matter and legal basis of the request

Interpretation of EU law, Article 267 TFEU

Questions referred for a preliminary ruling

1. Are Articles 18(1), 26(1) and 46 of Directive 2007/46/EC, read in conjunction with Article 5(2) of Regulation (EC) No 715/2007, also intended to protect the interests of individual purchasers of motor vehicles?

If so:

2. Does this also include the interest of an individual purchaser of a vehicle in not purchasing a vehicle which does not comply with the requirements of EU law, and in particular in not purchasing a vehicle equipped with a prohibited defeat device within the meaning of Article 5(2) of Regulation (EC) No 715/2007?

Irrespective of the answers to Questions 1 and 2:

3. Is it incompatible with EU law if a purchaser who has unintentionally purchased a vehicle placed on the market by the manufacturer with a prohibited defeat device within the meaning of Article 5(2) of Regulation (EC) No 715/2007 is able to assert civil claims for damages against the vehicle manufacturer on the basis of tortious liability – including, in particular, a claim for reimbursement of the purchase price paid for the vehicle against return and transfer of ownership of the vehicle – only in exceptional cases where the vehicle manufacturer has acted with intent and in a manner contrary to accepted principles of morality?

If so:

4. Does EU law require that the purchaser of a vehicle has a civil claim for damages against the vehicle manufacturer on the basis of tortious liability in the event of any culpable (negligent or intentional) act on the part of the vehicle manufacturer in relation to the placing on the market of a vehicle equipped with a prohibited defeat device within the meaning of Article 5(2) of Regulation (EC) No 715/2007?

Irrespective of the answers to Questions 1 to 4:

5. Is it incompatible with EU law if, under national law, the purchaser of a vehicle must accept offsetting the benefit of the actual use made of the motor vehicle where he or she seeks, by way of compensation based on tortious liability, reimbursement from the manufacturer of the purchase price of a vehicle placed on the market by the manufacturer with a prohibited defeat device within the meaning of Article 5(2) of Regulation (EC) No 715/2007 against return and transfer of ownership of the vehicle?

If not:

6. Is it incompatible with EU law for that benefit of use to be calculated on the basis of the full purchase price without any deduction being made for the reduction in value of the vehicle resulting from its being equipped with a prohibited defeat device and/or in view of the purchaser's inadvertent use of a vehicle which does not comply with EU law?

Irrespective of the answers to Questions 1 to 6:

7. Inasmuch as it also refers to orders for reference in accordance with the second paragraph of Article 267 TFEU, is Paragraph 348(3), point 2, of the Zivilprozessordnung (German Code of Civil Procedure; 'the ZPO') incompatible with the right conferred on the national courts to request a preliminary ruling pursuant to the second paragraph of Article 267 TFEU and must it therefore not be applied to orders for reference?

Provisions of EU law cited

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 (Framework Directive) (OJ 2007 L 263, p. 1), in particular Article 18(1), Article 26(1) and Article 46

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), in particular Article 5(2)

Provisions of national law cited

Bürgerliches Gesetzbuch (German Civil Code; 'the BGB'), in particular Paragraph 823(2) (Duty to provide compensation in the event of an infringement of a provision of law intended to protect another person) and Paragraph 826 (Duty to provide compensation in the event of damage caused intentionally and in a manner contrary to accepted principles of morality)

Zivilprozessordnung (German Code of Civil Procedure; 'the ZPO'), in particular Paragraphs 348 and 348a (Competence of the single judge)

Grundgesetz (German Basic Law; 'the GG'), in particular the second sentence of Article 101(1) (Right to be heard by a court or tribunal established in accordance with the law)

Succinct presentation of the facts and procedure in the main proceedings

- 1 The present request for a preliminary ruling is based on five different sets of facts.
- 2 The applicants each acquired diesel vehicles of emission classes EU5 or EU6 placed on the market by the defendant, some of which were new cars, others of which were used cars. The vehicles were each equipped with a ‘temperature window’. A temperature window refers to a certain temperature range within which the exhaust gas recirculation is reduced, with the result that fewer harmful emissions are reduced than in the case of exhaust gas recirculation that has not been reduced.
- 3 The applicants claim that, below a certain ambient temperature (the precise temperature specified in the respective proceedings varies), exhaust gas recirculation in their respective vehicles is reduced and the emission of pollutants is thereby increased. The applicants therefore take the view that their vehicles are equipped with a prohibited defeat device pursuant to point 10 of Article 3 of Regulation No 715/2007, read in conjunction with the first sentence of Article 5(2) thereof, and that the defendant thereby deceived them and caused them harm intentionally and in a manner contrary to accepted principles of morality.
- 4 They therefore seek compensation, minus – in some of the cases and where appropriate – compensation for the use made of the vehicle, the amount of which is specifically stated or to be specified by the defendant, or, alternatively, the method for calculating that compensation has yet to be determined by the national court.
- 5 The defendant claims that the action should be dismissed in each case on the ground that the EU type approval precludes the classification of the temperature window as a defeat device. The temperature window is not a defeat device, because it works in the same way on the test bench and on the road. According to the defendant, the exhaust gas recirculation system remains active even in double-digit sub-zero temperatures. Furthermore, the thermal window is in any event permissible under Article 5(2)(a) of Regulation No 715/2007 because the need for it is justified in terms of protecting the engine. In the alternative, the defendant submits that it based its approach on a defensible understanding of the legislation and therefore did not act in a manner contrary to accepted principles of morality.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 6 The referring court itself points out that the questions referred for a preliminary ruling are virtually identical to those in the requests for a preliminary ruling in Cases C-100/21 and C-178/21, for which reason the referring court’s statements on the individual questions are, in essence, identical to those in those respective requests for a preliminary ruling and it is proposed that the cases be joined.

- 7 With regard to Questions 5 and 6, it is added that, if Question 5 is answered in the affirmative, a benefit of use is to be taken into account in the various proceedings only in so far as an applicant offsets his or her benefit of use against his or her claim to payment and claims only the remainder of the claim by way of the action. If Question 6 is answered in the affirmative, it is necessary, first, that the reduction in value of each vehicle resulting from the defeat device be determined by means of a court-commissioned expert report or estimated by the court and deducted from the sale value. The objective value of the vehicle determined in this way would then have to be used as a basis for the benefit of use to be determined by the court in respect of the kilometres driven by each applicant.
- 8 Lastly, the referring court points out that the questions referred in Case C-440/20 overlap with all of the questions in the present order for reference and that Question 1 in Case C-276/20 overlaps with Questions 5 and 6 in the present order for reference, for which reason consideration could be given to the possibility of joining these proceedings with those two sets of proceedings.

WORKING DOCUMENT