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Judgment of the Court in Case C-873/19 | Deutsche Umwelthilfe (Approval of motor vehicles)

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

Software in diesel vehicles which reduces the effectiveness of the emission control system at normal temperatures during most of the year constitutes a prohibited defeat device

Deutsche Umwelthilfe, an environmental association authorised to bring legal proceedings in accordance with the German legislation, challenges before the Administrative Court, Schleswig-Holstein, the decision of the German Federal Motor Transport Authority authorising, for certain vehicles of the Volkswagen brand, ¹ the use of software reducing the recirculation of gaseous pollutants according to outside temperature.

The software at issue establishes a temperature window under which the exhaust gas recirculation (EGR) rate is 0% when the outside temperature is below -9 °C, 85% when it is between -9 and 11 °C, and increases above 11 °C to be 100% operational only at outside temperatures above 15 °C. The EGR rate is, therefore, reduced to 85% where the average temperatures recorded in Germany — which for 2018 would have been 10.4 °C — are reached.

According to Deutsche Umwelthilfe, such a temperature window constitutes a defeat device prohibited by EU law.

The Federal Republic of Germany, against which the action was brought, contends that Deutsche Umwelthilfe does not have standing to bring proceedings against the contested decision, which amends an EC type-approval, with the result that its action is inadmissible. In addition, it argues that the temperature window at issue is compatible with EU law.

Since it was uncertain about those two points, the Administrative Court, Schleswig-Holstein, requested the Court of Justice to interpret, first, the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, read in conjunction with the Charter of Fundamental Rights of the European Union ('the Charter') and, secondly, Regulation No 715/2007 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.

By today's judgment, the Court answers, **first**, that **the Aarhus Convention, read in conjunction with the Charter**, must be interpreted as **precluding a situation where an environmental association, authorised to bring legal proceedings in accordance with national law, is unable to challenge before a national court an administrative decision granting or amending EC type-approval which may be contrary to the prohibition on the use of defeat devices** which reduce the effectiveness of emission control systems.

¹ The model in question is the VW Golf Plus TDI, equipped with a Euro 5 generation EA 189-type diesel engine.

Indeed, the Aarhus Convention, read in conjunction with the Charter, imposes on Member States an obligation to ensure effective judicial protection and prohibits them from depriving environmental associations of any possibility of verifying that certain rules of EU environmental law are being complied with.

Secondly, as regards the temperature window at issue, the Court points out that it has already held, having regard to an identical temperature window, ² that **a device which ensures compliance with the emission limit values only where the outside temperature is between 15 °C and 33 °C and the driving altitude is below 1 000 metres constitutes a 'defeat device'**.

According to Regulation No 715/2007, the use of defeat devices that reduce the effectiveness of emission control systems must be prohibited. However, **a defeat device can, as the Court has already held, be justified exceptionally where it is established that that device strictly meets the need to avoid immediate risks of damage or accident to the engine, caused by a malfunction of a component of the exhaust gas recirculation system, of such a serious nature as to give rise to a specific hazard when a vehicle fitted with that device is driven.** In the present case, such a determination falls to the referring court.

Furthermore, as the Court has also already held, **such a 'need' to use a defeat device exists only where, at the time of the EC type-approval of that device or of the vehicle equipped with it, no other technical solution makes it possible to avoid immediate risks of damage or accident to the engine, which give rise to a specific hazard when driving the vehicle.**

In any event, the Court points out that even if the abovementioned need existed, **a defeat device which, under normal driving conditions, operated during most of the year, is prohibited.** Indeed, to accept such a device could result in the exception being applied more frequently than the prohibition and would, therefore, result in a disproportionate infringement of the principle of limiting nitrogen oxide (NO_x) emissions.

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 judgment and the [résumé](#) are published on the CURIA website on the day of delivery.

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² Judgments of the Court of 14 July 2022, *GSMB Invest*, [C-128/20](#), *Volkswagen*, [C-134/20](#), and *Porsche Inter Auto and Volkswagen*, [C-145/20](#) (see also [Press Release No 124/22](#)).