

Defendants: TN, Société MAAF assurances, Fonds de garantie des assurances obligatoires de dommages (FGAO), PQ

Question referred

Must Articles 3 and 13 of Directive 2009/103 of the European Parliament and of the Council of 16 September 2009 ⁽¹⁾ be interpreted as precluding the nullity of a contract for civil liability motor insurance from being declared enforceable against a passenger who is a victim where that person is also the policyholder and intentionally made a false statement at the time of conclusion of the contract which gave rise to that nullity?

⁽¹⁾ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).

Request for a preliminary ruling from the Landgericht Duisburg (Germany) lodged on 19 April 2023 — OB v Mercedes-Benz Group AG

(Case C-251/23, Mercedes-Benz Group)

(2023/C 296/18)

Language of the case: German

Referring court

Landgericht Duisburg

Parties to the main proceedings

Applicant: OB

Defendant: Mercedes-Benz Group AG

Questions referred

1. Is a diesel-powered passenger vehicle to which the Euro 5 emissions standard applies contrary to the rules of European law, irrespective of whether a switching device that is to be classified conceptually as a defeat device within the meaning of Article 3(10) of Regulation No 715/2007 ⁽¹⁾ is installed in its control system, if it is clear from the outset, on the basis of its design and the control system for the installed functions, that after the engine has warmed up it emits more than 180 mg of nitrogen oxide per km in the 'mix' even if it completes a NEDC test run in that state?
2. Can an element of design in a vehicle which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of modulating the parameters of the combustion process in the engine depending on the results of the sensing operation reduce the effectiveness of the emission control system within the meaning of Article 3(10) of Regulation No 715/2007 and therefore constitute a defeat device within the meaning of Article 3(10) of Regulation No 715/2007 even where the modulation of the parameters of the combustion process effected by the element of design based on the results of the sensing operation increases emissions of a certain harmful substance, such as nitrogen oxide, while at the same time reducing emissions of one or more other harmful substances, such as particulates, hydrocarbons, carbon monoxide and/or carbon dioxide?
3. If Question 2 is to be answered in the affirmative: Under what conditions does the element of design in such a case constitute a defeat device within the meaning of Article 3(10) of Regulation No 715/2007?

4. If Question 2 is to be answered in the affirmative: Are rules of national law which require the purchaser of a vehicle to the full extent to prove the presence of a defeat device within the meaning of Article 3(10) of Regulation No 715/2007, even though the vehicle manufacturer does not have to contribute information in this regard in measures of inquiry, contrary to the provisions of Article 18(1), Article 26(1) and Article 46 of Directive 2007/46, which are mentioned in the judgment of the Court of Justice of 21 March 2023 (Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices), C 100/21, EU:C:2023:229) ⁽²⁾ in so far as it follows from those provisions that the purchaser of a vehicle must, in the event that a prohibited defeat device is installed in it, have a right to compensation against its manufacturer (see paragraphs 91 and 93 of that judgment)?
5. If Question 4 is to be answered in the affirmative: What allocation of the burden of proof is provided for under European law in a dispute between the purchaser of a vehicle and its manufacturer regarding the former's right to compensation against the latter in respect of the presence of a defeat device within the meaning of Article 3(10) of Regulation No 715/2007? Do the parties each benefit from a lighter burden of proof or are they subject to obligations where applicable and, if so, which? If obligations do apply, what are the consequences of non-compliance?

⁽¹⁾ 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).

⁽²⁾ 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).

**Request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles
(Belgium) lodged on 11 May 2023 — Ordre des barreaux francophones et germanophones de
Belgique and Others v État belge**

(Case C-299/23, *Darvate and Others* ⁽¹⁾)

(2023/C 296/19)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Parties to the main proceedings

Applicants: Ordre des barreaux francophones et germanophones de Belgique, Coordination et Initiatives pour et avec les Réfugiés et Étrangers ASBL, NX

Defendant: État Belge

Questions referred

Does Article 34 of Directive 2016/801/EU on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, alone or in conjunction with Articles 7, 14 and 47 of the Charter of Fundamental Rights and the principle of effectiveness, and in the light of the objective pursued by that directive to strengthen the procedural guarantees available to third-country nationals and to encourage foreign students to come to the European Union, require:

1. that a foreign student have the option of bringing an exceptional appeal, in conditions of extreme urgency, where he or she demonstrates that he or she has exercised all due diligence and that compliance with the time limits imposed in order to conduct an ordinary procedure (for suspension/annulment) could hamper the pursuit of the studies in question?

If the answer to that question is in the negative, must the same negative answer be given where failure to adopt a decision in a short period of time risks causing the person concerned irretrievably to lose a year of study?