



C/2024/624

15.1.2024

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 26 September 2023 — LK, AK v Volkswagen AG

(Case C-592/23, Volkswagen)

(C/2024/624)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: LK, AK

Defendant: Volkswagen AG

Questions referred

1. Must Article 2(6) of and Annex III, section 3.13.4 to Implementing Regulation (EC) No 692/2008 ⁽¹⁾ (in conjunction with Article 3(10) of Regulation (EC) No 715/2007 ⁽²⁾) be interpreted as meaning that a pollution control device (control programme for the regeneration of the storage catalyst in the preparation cycle), which is deemed to be a continuously regenerating system because regeneration (cleaning process) occurs at least once per type 1 test, and the device has already regenerated at least once during the vehicle preparation cycle (Precon or preconditioning), is a defeat device within the meaning of Article 3(10) of Regulation (EC) No 715/2007?
2. (a) Must Article 5(2)(c) of Regulation (EC) No 715/2007 (in conjunction with Article 3(10) of Regulation (EC) No 715/2007 and Article 2(6) of and Annex III, section 3.13.4 to Implementing Regulation (EC) No 692/2008) be interpreted as meaning that (if so) such a defeat device is permissible because the conditions are, in essence, included in the relevant emissions test procedure?

(b) Must Article 5(1) of Regulation (EC) No 715/2007 (in conjunction with Article 3(10) of Regulation (EC) No 715/2007 and Article 2(6) of and Annex III, section 3.13.4 to Implementing Regulation (EC) No 692/2008) be interpreted as meaning that (if so) such a defeat device is permissible if the emission-related operation it exhibits in the test procedure (approval test) is present in 80 % of cases, even in normal use (in real-life operation)?
3. Must paragraph 2.20 of and Annex 13, paragraph 3 to the UNECE ⁽³⁾ Regulation (in conjunction with Annex III, section 3.13.1 to and Article 2(6) of Implementing Regulation (EC) No 692/2008) be interpreted as meaning that the arrangement laid down in the second sentence of Annex 13, paragraph 3 to the UNECE Regulation, in accordance with which the switch (to prevent or permit the regeneration process) may be activated during preconditioning cycles only in order to prevent regeneration, applies only to the special test procedure provided for in Annex 13 to the UNECE Regulation and thus to the emissions testing of a vehicle with a periodically regenerating system and not also in respect of a vehicle with a continuously regenerating system?

⁽¹⁾ Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council 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 2008 L 199, p. 1).

⁽²⁾ 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).

⁽³⁾ Regulation No 83 of the Economic Commission for Europe of the United Nations (UNECE) — Uniform provisions concerning the approval of vehicles with regard to the emission of pollutants according to engine fuel requirements [2015/1038] (OJ 2015 L 172, p. 1)