



C/2024/2914

6.5.2024

Request for a preliminary ruling from the Landgericht Duisburg (Germany) lodged on 7 December 2023 – SP v BMW Bayerische Motorenwerke AG

(Case C-750/23, BMW)

(C/2024/2914)

Language of the case: German

Referring court

Landgericht Duisburg

Parties to the main proceedings

Applicant: SP

Defendant: BMW Bayerische Motorenwerke AG

Questions referred for a preliminary ruling

1. In cases where an EC type-approval has been granted for a type of motor vehicle, can the power of a civil court of an EU Member State to grant claims for damages, in particular against the seller and/or manufacturer, brought by the purchaser of a motor vehicle which, according to the manufacturer, was manufactured and placed on the market on the basis of that type-approval on the grounds that the vehicle in question, as a result of certain circumstances, does not satisfy the requirements of EU law because of non-compliance with the approved type and/or the unlawfulness of the EC type-approval itself – without one of the authorities specified in the second subparagraph of Article 5(2) of Regulation (EU) 2018/858 ⁽¹⁾ having issued, after the grant of the EC type-approval on the basis of which that vehicle was manufactured and placed on the market, a legally binding statement that the vehicle in question, because of precisely those circumstances and on precisely those grounds, namely non-compliance with the approved type and/or the unlawfulness of the EC type-approval itself, does not satisfy the requirements of EU law – be suspended or at least limited?

2. **If question 1 is answered in the affirmative:**

In precisely what such instances and to precisely what extent are the civil courts of a Member State restricted in granting claims for damages, in particular against the seller and/or manufacturer, brought by the purchaser of a motor vehicle which, according to the manufacturer, was manufactured and placed on the market on the basis of that type-approval on the grounds that the vehicle in question, as a result of certain circumstances, does not satisfy the requirements of EU law because of non-compliance with the approved type and/or the unlawfulness of the EC type-approval itself?

3. **If question 1 is answered in the affirmative:**

Does EU law establish requirements in respect of the apportionment of the duty to adduce evidence and the burden of proof, the obligations incumbent on the parties and any easing of the burden of proof in connection with the gathering of evidence relating to the existence of those conditions under which the civil court of a Member State is empowered to grant claims for damages brought by the purchaser of a motor vehicle on the grounds that the vehicle in question, as a result of certain circumstances, does not satisfy the requirements of EU law because of non-compliance with the approved type and/or the unlawfulness of the EC type-approval itself in a civil dispute between the purchaser of a motor vehicle and its manufacturer concerning the manufacturer's liability for damages vis-à-vis the purchaser?

⁽¹⁾ Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ 2018 L 151, p. 1).

4. **If question 3 is answered in the affirmative and there are requirements in place under EU law:**

How must the duty to adduce evidence be apportioned under EU law?

How must the burden of proof be apportioned under EU law?

In particular, must the burden of proof be eased for either party? If yes, in what way(s)?

Must either party fulfil obligations in the course of the gathering of evidence about the conditions in question? If yes, what are they? If there are obligations to be upheld, what legal consequences must be attached under EU law to non-fulfilment by either party of those obligations?

5. In instances where one of the authorities specified in the second subparagraph of Article 5(2) of Regulation 2018/858 has issued a legally binding statement that a motor vehicle, as a result of certain circumstances, does not satisfy the requirements of EU law because of non-compliance with the approved type and/or the unlawfulness of the EC type-approval itself, can the power of a civil court of an EU Member State to deny claims for damages against the seller and/or manufacturer brought by the purchaser of that vehicle on the grounds that, contrary to that legally binding statement, the vehicle in question, for factual and/or legal reasons, does satisfy the requirements of EU law be suspended or at least limited?

6. **If question 5 is answered in the affirmative:**

In precisely what such instances and to precisely what extent are the civil courts of a Member State restricted in denying the claim for damages against the seller and/or manufacturer brought by the purchaser of that vehicle on the grounds that, contrary to that legally binding statement, the vehicle in question, for factual and/or legal reasons, does satisfy the requirements of EU law?

In particular, does the limitation of the power of a civil court of a Member State in those instances extend only to denial of claims for damages for factual reasons, only to denial of claims for damages for legal reasons or both to denial of claims for damages for factual reasons and to denial of claims for damages for legal reasons?

7. Under what conditions do the limit values established under Regulation (EC) No 715/2007 ⁽²⁾ for motor vehicles covered by the Euro 5 emission standard apply?

8. **If, according to the substance of the answers to questions 1 to 6, instances may be envisaged in which a civil court of a Member State, in a dispute between the purchaser of a motor vehicle and its manufacturer and/or seller concerning the purchaser's claim for damages against the manufacturer and/or seller based on the vehicle's characteristics allegedly contravening the requirements of EU law, is empowered to establish independent findings on whether the vehicle in question satisfies the requirements of EU law regarding compliance with emission limits:**

Does EU law establish requirements in respect of the apportionment of the burden of proof, the obligations incumbent on the parties and any easing of the burden of proof in connection with the gathering of evidence relating to whether the emissions of motor vehicles, under those conditions under which the limit values set for them apply, are in compliance with those limit values, in a civil dispute between the purchaser of a motor vehicle and its manufacturer concerning the purchaser's claim for damages against the manufacturer based on purported exceeding of the legally prescribed limit values for emissions caused by the vehicle under conditions under which they apply?

⁽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).

9. **If question 8 is answered in the affirmative and there are requirements in place under EU law:**

How must the burden of proof be apportioned under EU law?

In particular, must the burden of proof be eased for either party? If yes, in what way(s)?

Must either party fulfil obligations in the course of the gathering of evidence? If yes, what are they?

If there are obligations to be upheld, what legal consequences must be attached under EU law to non-fulfilment by either party of those obligations?

10. Can an element of design in a motor vehicle which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of modulating according to that measurement the parameters of the combustion process within the engine reduce the effectiveness of the emission control system within the meaning of Article 3(10) of Regulation No 715/2007, and thereby represent a defeat device within the meaning of Article 3(10) of that regulation, even where the modulation of the parameters of the combustion process effected according to the measurement by the element of design, while on the one hand increasing the emissions of one or more noxious substance(s), such as nitrogen oxides, simultaneously reduces the emissions of one or more other noxious substance(s), such as particulates, hydrocarbons, carbon monoxide and/or carbon dioxide?

11. **If question 10 is answered in the affirmative:**

Under what conditions does an element of design constitute a defeat device in such an instance?

12. Can a circuit or control system in a vehicle which, by means of the modulation it effects in the parameters of the combustion process, while on the one hand increasing the emissions of one or more noxious substance(s), such as nitrogen oxides, simultaneously reduces the emissions of one or more other noxious substance(s), such as particulates, hydrocarbons, carbon monoxide and/or carbon dioxide, be prohibited under EU law on the basis of factors other than whether it constitutes a defeat device within the meaning of Article 3(10) of Regulation No 715/2007?

13. **If question 12 is answered in the affirmative:**

Under what conditions is that the case?

14. **If question 10 is answered in the affirmative:**

Is a defeat device within the meaning of Article 3(10) of Regulation No 715/2007 permitted under point (a) of the second sentence of Article 5(2) of that regulation if the need for the device, while not justified in terms of protecting the engine against damage or accident, is justified in terms of ensuring the safe operation of the vehicle?

15. **If, according to the substance of the answers to questions 1 to 6, instances may be envisaged in which a civil court of a Member State, in a dispute between the purchaser of a motor vehicle and its manufacturer and/or seller concerning the purchaser's claim for damages against the manufacturer and/or seller based on the vehicle's characteristics allegedly contravening the requirements of EU law, is empowered to establish independent findings on whether the vehicle in question satisfies the requirements of EU law with regard to the circuits and control systems installed therein**

and, at the same time,

question 10 is moreover answered in the affirmative:

Does EU law establish requirements in respect of the burden of proof, the obligations incumbent on the parties and any easing of the burden of proof in connection with the gathering of evidence in a civil dispute between the purchaser of a motor vehicle and its manufacturer concerning the purchaser's claim for damages against the manufacturer based on a prohibited defeat device within the meaning of Article 3(10) of Regulation No 715/2007 allegedly installed in the vehicle, if the parties disagree on the facts from which the existence of the defeat device and its prohibited nature are derived?

16. If question 15 is answered in the affirmative and there are requirements in place under EU law:

How must the burden of proof be apportioned under EU law in that respect?

In particular, must the burden of proof be eased for either party? If yes, in what way(s)?

Must either party fulfil obligations in the course of the gathering of evidence? If yes, what are they?

If there are obligations to be upheld, what legal consequences must be attached under EU law to non-fulfilment by either party of those obligations?

17. If, according to the substance of the answers to questions 1 to 6, instances may be envisaged in which a civil court of a Member State, in a dispute between the purchaser of a motor vehicle and its manufacturer concerning the purchaser's claim for damages against the manufacturer based on the vehicle's characteristics allegedly contravening the requirements of EU law, is empowered to establish independent findings on whether the vehicle in question satisfies the requirements of EU law with regard to the circuits and control systems installed therein

and, at the same time,

question 12 is answered in the affirmative:

Does EU law establish requirements in respect of the apportionment of the burden of proof, the obligations incumbent on the parties and any easing of the burden of proof in connection with the gathering of evidence in a civil dispute between the purchaser of a motor vehicle and its manufacturer concerning the purchaser's claim for damages against the manufacturer based on a circuit or control system allegedly installed in the vehicle which, while not to be characterised as a defeat device within the meaning of Article 3(10) of Regulation No 715/2007, is purported to be prohibited for other reasons, if the parties disagree on the facts from which the existence of the circuit or control system and its prohibited nature are derived?

18. If question 17 is answered in the affirmative and there are requirements in place under EU law:

How must the burden of proof be apportioned under EU law in that respect?

In particular, must the burden of proof be eased for either party? If yes, in what way(s)?

Must either party fulfil obligations in the course of the gathering of evidence? If yes, what are they?

If there are obligations to be upheld, what legal consequences must be attached under EU law to non-fulfilment by either party of those obligations?

19. Do the provisions of Directive 2007/46/EC, ⁽³⁾ in particular Article 18(1), the first subparagraph of Article 26(1) and Article 3(36) of that directive, and the provisions to be adopted on that basis by the Member States also have the purpose of always or at least in certain instances protecting the individual purchaser of a motor vehicle, irrespective of from whom he or she purchased the vehicle, including vis-à-vis the manufacturer, from making an economically disadvantageous purchase of a motor vehicle which does not comply with the requirements of EU law, which he or she would not have made had he or she known that it did not satisfy the requirements of EU law because he or she would not have wanted to (protection of so-called negative interest in not concluding a contract of sale of that nature)? If that is the case only in certain instances and/or only to a limited extent, in what instances and/or to what extent is it the case?

⁽³⁾ 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).

20. If the first part of question 19 is answered in the affirmative:

Do the provisions of Directive 2007/46, in particular Article 18(1), the first subparagraph of Article 26(1) and Article 3(36) of that directive, and the provisions to be adopted on that basis by the Member States also have the purpose of always or at least in certain instances protecting the individual purchaser of a motor vehicle, irrespective of from whom he or she purchased the vehicle, including vis-à-vis the manufacturer, specifically from being bound even in part by an economically disadvantageous purchase of a vehicle which does not comply with the requirements of EU law, which he or she would not have made had he or she known that it did not satisfy the requirements of EU law because he or she would not have wanted to, and bearing even in part the consequences of that purchase; and, in addition, from being burdened with costs reasonably incurred in claiming full relief from an unwanted purchase of that nature? If that is the case only in certain instances and/or only to a limited extent, in what instances and/or to what extent is it the case?

21. If the first part of question 19 is answered in the affirmative:

In the event of a breach committed by the manufacturer of a motor vehicle of the provisions adopted by the Member States on the basis of Article 18(1), the first subparagraph of Article 26(1) and Article 3(36) of Directive 2007/46 in the form of a breach on the part of the vehicle manufacturer of the prohibition against issuing inaccurate certificates of conformity, must the manufacturer, for other reasons under EU law, irrespective of the answer to question 20 above, always or at least in certain instances be obliged to release the purchaser in full, irrespective of from whom he or she purchased the vehicle, from the consequences of the economically disadvantageous purchase, which was made on the basis of that breach, of a vehicle which does not fulfil the requirements of EU law, which he or she would not have wanted to make had he or she known that it did not satisfy the requirements of EU law, and in particular, if the purchaser so wishes, to reimburse him or her for the costs of purchasing the vehicle – in return, if appropriate, for handover and transfer of ownership of the vehicle and taking into account the value of any other benefits obtained by the purchaser as a result of the purchase of the vehicle – and, moreover, to reimburse the reasonable costs incurred by the purchaser in asserting his or her claim for reimbursement of the costs of purchasing the vehicle? If that is the case only in certain instances and/or to a limited extent, in what instances and/or to what extent is it the case?

22. If the first part of question 20 is answered in the affirmative only in respect of certain instances:

Does EU law establish requirements in respect of the apportionment of the burden of proof, the obligations incumbent on the parties and any easing of the burden of proof in connection with the gathering of evidence relating to whether an instance meets the conditions for the provisions of Directive 2007/46, in particular Article 18(1) and Article 3(36) of that directive, and the provisions to be adopted on that basis by the Member States also to have the purpose of always or at least in certain instances protecting the individual purchaser of a motor vehicle, irrespective of from whom he or she purchased the vehicle, including vis-à-vis the manufacturer, specifically from being bound even in part by an economically disadvantageous purchase of a vehicle which does not comply with the requirements of EU law, which he or she would not have made had he or she known that it did not satisfy the requirements of EU law because he or she would not have wanted to, and bearing even in part the consequences of that purchase; and, in addition, from being burdened with costs reasonably incurred in claiming full relief from an unwanted purchase of that nature in a civil dispute between the purchaser of a motor vehicle and its defendant manufacturer concerning the purchaser's claim for damages against the manufacturer based on purportedly unlawful characteristics of the vehicle?

23. If question 22 is answered in the affirmative and there are requirements in place under EU law:

How must the burden of proof be apportioned under EU law in that respect?

In particular, must the burden of proof be eased for either party? If yes, in what way(s)?

Must either party fulfil obligations in the course of the gathering of evidence? If yes, what are they?

If there are obligations to be upheld, what legal consequences must be attached under EU law to non-fulfilment by either party of those obligations?

24. If the first part of question 21 is answered in the affirmative only in respect of certain instances:

Does EU law establish requirements in respect of the apportionment of the burden of proof, the obligations incumbent on the parties and any easing of the burden of proof in connection with the gathering of evidence relating to whether, in the event of a breach committed by the manufacturer of a motor vehicle of the provisions adopted by the Member States on the basis of Article 18(1), the first subparagraph of Article 26(1) and Article 3(36) of Directive 2007/46 in the form of a breach on the part of the vehicle manufacturer of the prohibition against issuing inaccurate certificates of conformity, an instance meets the conditions for the manufacturer, under EU law, for reasons other than those stated in question 20, to be necessarily obliged to release the purchaser in full, irrespective of from whom he or she purchased the vehicle, from the consequences of the purchase, which was made on the basis of that breach, of a vehicle which does not fulfil the requirements of EU law, which he or she would not have wanted to make had he or she known that it did not satisfy the requirements of EU law, and in particular, if the purchaser so wishes, to reimburse him or her for the costs of purchasing the vehicle – in return, if appropriate, for handover and transfer of ownership of the vehicle and taking into account the value of any other benefits obtained by the purchaser as a result of the purchase of the vehicle – and, moreover, to reimburse the costs reasonably incurred by the purchaser in asserting his or her claim for reimbursement of the costs of purchasing the vehicle in a civil dispute between the purchaser of a motor vehicle and its manufacturer concerning the purchaser's claim for damages against the manufacturer based on purportedly unlawful characteristics of the vehicle?

25. If question 24 is answered in the affirmative and there are requirements in place under EU law:

How must the burden of proof be apportioned under EU law in that respect?

In particular, must the burden of proof be eased for either party? If yes, in what way(s)?

Must either party fulfil obligations in the course of the gathering of evidence? If yes, what are they?

If there are obligations to be upheld, what legal consequences must be attached under EU law to non-fulfilment by either party of those obligations?

26. If the first part of question 19 is answered in the affirmative:

If the purchaser of a vehicle which does not satisfy the requirements of EU law regarding its emissions and/or the characteristics of its emission control system asserts a claim for minor damages against its manufacturer on account of a breach committed by the manufacturer of Paragraphs 6 and 27 of the EG-Fahrzeugsgenehmigungsverordnung (EC Motor Vehicle Type-Approval Regulation), namely a claim for reimbursement solely of the amount by which the purchase price paid by the purchaser exceeds the value of the vehicle, is a limitation of his or her claim to a maximum of 15% of the purchase price always in accordance with the requirements of EU law, where the manufacturer merely negligently issued the certificate of conformity for the vehicle in which it is incorrectly stated that that vehicle complied with all regulatory acts at the time of its production? If that is not the case, in what instances is it not the case?

27. If the first part of question 19 is answered in the affirmative and the parts of question 26 are answered to the effect that the limitation of the claim of the purchaser of the vehicle, referred to in the first part of question 26, is in accordance with EU law at least in certain instances:

Is the limitation of the claim of the purchaser of the vehicle, referred to in the first part of question 26, always or at least in certain instances required by EU law? If such a limitation is required only in certain instances, in what instances is it the case?

28. Does EU law require that, in instances where the manufacturer is liable in principle to pay damages to the purchaser of a motor vehicle because of the issuance of a certificate of conformity in which it is incorrectly stated that that vehicle complied with all regulatory acts at the time of its production, the purchaser of the motor vehicle be awarded minimum damages against its manufacturer subject to an offsetting of benefits obtained from the purchase, even where the purchaser has in fact suffered no damage at all or only minor damage without taking the offsetting of benefits into account? If that is the case only in certain instances, in what instances is there such a requirement?
29. **If question 28 is answered in the affirmative at least in respect of certain instances:**
What is the amount of the minimum damages to be awarded subject to an offsetting of benefits obtained from the purchase?
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