

2. Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device, which guarantees compliance with the emission limits laid down by that regulation only where the outside temperature is between 15 and 33 °C and the driving altitude is less than 1 000 metres, cannot fall within the exception to the prohibition on the use of such devices, laid down in that provision, solely because that device contributes to the protection of parts such as the exhaust gas recirculation valve, the exhaust gas recirculation cooler and the diesel particulate filter, unless 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 one of those parts, of such a serious nature as to give rise to a specific hazard when a vehicle fitted with that device is driven. In any event, a defeat device which, under normal driving conditions, operated during most of the year in order to protect the engine from damage or accident and ensure the safe operation of the vehicle could not fall within the exception provided for in Article 5(2)(a) of Regulation No 715/2007.

(¹) OJ C 271, 17.8.2020.

Judgment of the Court (Grand Chamber) of 14 July 2022 (request for a preliminary ruling from the Landesgericht Eisenstadt — Austria) — IR v Volkswagen AG

(Case C-134/20) (¹)

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 715/2007 — Approval of motor vehicles — Article 3(10) — Article 5(1) and (2) — Defeat device — Motor vehicles — Diesel engines — Pollutant emissions — Emission control system — Software installed in the electronic engine controller — Exhaust gas recirculation valve ('EGR valve') — Reduction in nitrogen oxide (NOx) emissions limited by a 'temperature window' — Prohibition on the use of defeat devices that reduce the effectiveness of emission control systems — Article 5(2)(a) — Exception to that prohibition — Directive 1999/44/EC — Sale of consumer goods and associated guarantees — Article 3(2) — Device installed during the repair of a vehicle)

(2022/C 340/07)

Language of the case: German

Referring court

Landesgericht Eisenstadt

Parties to the main proceedings

Applicant: IR

Defendant: Volkswagen AG

Operative part of the judgment

1. Article 3(10) of 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, read in conjunction with Article 5(1) of that regulation, must be interpreted as meaning that a device which ensures compliance with the emission limits laid down by that regulation only when the outside temperature is between 15 and 33 °C and the driving altitude is below 1 000 metres constitutes a 'defeat device' within the meaning of Article 3(10) of that regulation.
2. Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device, which guarantees compliance with the emission limits laid down by that regulation only where the outside temperature is between 15 and 33 °C, and the driving altitude is less than 1 000 metres, cannot fall within the exception to the prohibition on the use of such devices, laid down in that provision, solely because that device is intended to protect the exhaust gas recirculation valve, unless 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 that part, of such a serious nature as to give rise to a specific hazard when a vehicle fitted with that device is driven. In any event, a defeat device which, under normal driving conditions, operated during most of the year in order to protect the engine from damage or accident and ensure the safe operation of the vehicle could not fall within the exception provided for in Article 5(2)(a) of Regulation No 715/2007.

3. Article 5(1) and (2) of Regulation No 715/2007, read in conjunction with Article 3(10) of that regulation, must be interpreted as meaning that the fact that a defeat device, within the meaning of that provision, was installed after a vehicle was put into service, in the course of a repair, within the meaning of Article 3(2) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, is irrelevant for the purposes of assessing whether the use of that device is prohibited under Article 5(2) of that directive.

(¹) OJ C 271, 17.8.2020.

Judgment of the Court (Grand Chamber) of 14 July 2022 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — DS v Porsche Inter Auto GmbH & Co. KG, Volkswagen AG

(Case C-145/20) (¹)

(Reference for a preliminary ruling — Approximation of laws — Regulation (EC) No 715/2007 — Approval of motor vehicles — Article 5(2) — Defeat device — Motor vehicles — Diesel engines — Emission control system — Software installed in the electronic engine controller — Exhaust gas recirculation valve ('EGR valve') — Reduction in nitrogen oxide (NOx) emissions limited by a 'temperature window' — Prohibition on the use of defeat devices that reduce the effectiveness of emission control systems — Article 5(2)(a) — Exception to that prohibition — Consumer protection — Directive 1999/44/EC — Sale of consumer goods and associated guarantees — Article 2(2)(d) — Concept of 'goods which show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods' — Vehicle covered by an EC type-approval — Article 3(6) — Concept of a 'minor lack of conformity')

(2022/C 340/08)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: DS

Defendant: Porsche Inter Auto GmbH & Co. KG, Volkswagen AG

Operative part of the judgment

1. Article 2(2)(d) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees must be interpreted as meaning that a motor vehicle that falls within the scope of 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 does not show the quality which is normal in goods of the same type and which the consumer can reasonably expect where, although it is covered by a valid EC type-approval and may, consequently, be used on the road, that vehicle is fitted with a defeat device, the use of which is prohibited under Article 5(2) of that regulation.