

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.

2. Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device, which guarantees, in particular, compliance with the emission limits laid down by that regulation only where the outside temperature is between 15 and 33 °C, can be justified under that provision only 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 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 3(6) of Directive 1999/44 must be interpreted as meaning that a lack of conformity consisting of the presence, in a vehicle, of a defeat device, the use of which is prohibited under Article 5(2) of Regulation No 715/2007, is not to be classified as ‘minor’ even where the consumer would still have purchased that vehicle if he or she had been aware of the existence and operation of that device.

(¹) OJ C 279, 24.8.2020.

Judgment of the Court (Fifth Chamber) of 14 July 2022 — European Commission v Kingdom of Denmark

(Case C-159/20) (¹)

(Failure of a Member State to fulfil obligations — Regulation (EU) No 1151/2012 — Quality schemes for agricultural products and foodstuffs — Article 13 — Use of the protected designation of origin (PDO) ‘Feta’ to designate cheese produced in Denmark and intended for export to third countries — Article 4(3) TEU — Principle of sincere cooperation)

(2022/C 340/09)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: M. Konstantinidis, I. Naglis and U. Nielsen, acting as Agents)

Defendant: Kingdom of Denmark (represented by: M.P. Brøchner Jespersen, J. Nymann-Lindegren, V. Pasternak Jørgensen, M. Søndahl Wolff and L. Teilgård, acting as Agents)

Interveners in support of the applicant: Hellenic Republic (represented by: E.-E. Krompa, E. Leftheriotou, E. Tsaousi and A.-E. Vasilopoulou, acting as Agents), Republic of Cyprus (represented by: V. Christoforou and E. Zachariadou, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by failing to prevent or stop the use by Danish dairy producers of the protected designation of origin (PDO) ‘Feta’ to designate cheese which does not comply with the product specification for that PDO, the Kingdom of Denmark has failed to fulfil its obligations under Article 13(3) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs;
2. Dismisses the action as to the remainder;
3. Orders the Kingdom of Denmark to bear its own costs and to pay four fifths of the costs of the European Commission;