

Request for a preliminary ruling from the Landgericht Stuttgart (Germany) lodged on 13 March 2020 — O. v P. AG

(Case C-138/20)

(2020/C 262/14)

Language of the case: German

Referring court

Landgericht Stuttgart

Parties to the main proceedings

Applicant: O.

Defendant: P.AG

Questions referred

1. Interpretation of the term ‘defeat device’

1-1: Is **point 10 of Article 3** of Regulation (EC) No 715/2007 ⁽¹⁾ to be interpreted and applied as meaning that the term ‘element of design’ only covers exclusively mechanical elements of a physical structure?

If Question 1-1 is answered in the negative:

1-2: Is **point 10 of Article 3** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that the emission control system only covers the exhaust gas purification installation downstream in the engine system (for example, in the form of diesel oxidation catalysts, diesel particulate filters, NO_x reduction catalysts)?

1-3: Is **point 10 of Article 3** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that the emission control system covers both engine-internal and engine-external emission reduction measures?

2. Interpretation of the term ‘normal use’

2-1: Is **Article 5(1)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that the term ‘normal use’ only refers to the driving conditions in the NEDC cycle?

If Question 2-1 is answered in the negative:

2-2: Is the **second subparagraph of Article 4(1) in conjunction with Article 5(1)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that manufacturers must ensure that the limits laid down in Annex I to the Regulation are also complied with in everyday use?

If Question 2-2 is answered in the affirmative:

2-3: Is **Article 5(1)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that the term ‘normal use’ refers to the actual driving conditions in everyday use?

If Question 2-3 is answered in the negative:

2-4: Is **Article 5(1)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that the term ‘normal use’ refers to the actual driving conditions in everyday use on the basis of an average speed of 33.6 km/h and a maximum speed of 120 km/h?

3. Permissibility of temperature-dependent emission reduction strategies

3-1: Is **Article 5(1)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that it is not permissible to equip a vehicle so that a component likely to affect emissions is designed so as to regulate the exhaust gas recirculation rate in such a way that it only ensures a low-emission mode between 20° and 30 °C and is gradually reduced outside of that temperature window?

If Question 3-1 is answered in the negative:

3-2: Is **Article 5(2)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that a defeat device is nevertheless prohibited if it continually operates outside of the temperature window between 20° and 30 °C to protect the engine and the exhaust gas recirculation is thereby significantly reduced?

4. Interpretation of the term 'need' within the meaning of the exception

4-1: Is **Article 5(2)(a)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that a need for the use of defeat devices within the meaning of that provision is only to be found if, even using the state-of-the-art technology available when type approval was obtained for the vehicle model in question, the protection of the engine against damage or accident and the safe operation of the vehicle could not be guaranteed?

If Question 4-1 is answered in the negative:

4-2: Is **Article 5(2)(a)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that a need for the use of defeat devices within the meaning of that provision is to be excluded if the parameters set in the engine control unit are selected such that, on account of its predetermined temperature dependency, the exhaust gas purification is not activated or only activated to a limited extent for most of the year due to the temperatures which are usually to be expected?

5. Interpretation of the term 'damage' within the meaning of the exception

5-1: Is **Article 5(2)(a)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that only the engine is to be protected against damage?

5-2: Is **Article 5(2)(a)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that the concept of damage is to be excluded if what are known as wear parts (for example, the EGR valve) are affected?

5-3: Is **Article 5(2)(a)** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that other components of the vehicle, in particular the components downstream in the exhaust gas system, are also to be protected against damage or accident?

6. Legal and penal consequences of breaches of EU law

6-1: Are the **second subparagraph of Article 4(1), the second subparagraph of Article 4(2), Article 5(1) and (2) and Article 13** of Regulation (EC) No 715/2007 to be interpreted and applied as at least also protecting the assets of the purchaser of a vehicle which does not meet the requirements of Regulation (EC) No 715/2007?

If Question 6-1 is answered in the negative:

6-2: Are the **second subparagraph of Article 4(1), the second subparagraph of Article 4(2), Article 5(1) and (2) and Article 13** of Regulation (EC) No 715/2007 to be interpreted and applied as meaning that the Member States must provide a penalty mechanism granting purchasers of vehicles, for reasons of effet utile, a right of action for the enforcement of market-regulating EU law?

6-3: Are **Article 18(1) and Article 26(1)** of Directive 2007/46/EC⁽²⁾ to be interpreted and applied as meaning that the manufacturer is in breach of his obligation to issue a valid certificate of conformity under Article 18(1) of Directive 2007/46/EC if he has installed in the vehicle a prohibited defeat device within the meaning of Article 5(2) of Regulation (EC) No 715/2007, and that placing such a vehicle on the market is in breach of the prohibition of sale without a valid certificate of conformity under Article 26(1) of Directive 2007/46/EC?

6-4: Is it the **purpose and intention** of Regulation (EC) No 715/2007 and of Directive 2007/46/EC that the limits laid down in Annex I to Regulation (EC) No 715/2007 and the certificate of conformity within the meaning of Article 18 (1) of Directive 2007/46/EC in conjunction with Regulation (EC) No 385/2009 ⁽³⁾ establish customer-protection rights in such a way that breach of the quality-establishing limits of the Regulation or of approval law prohibits, under EU law, offsetting of benefits of use if the vehicle is returned to the manufacturer?

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- (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).
- (³) Commission Regulation (EC) No 385/2009 of 7 May 2009 replacing Annex IX to Directive 2007/46/EC of the European Parliament and of the Council 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 2009 L 118, p. 13).

Reference for a preliminary ruling from the High Court of Justice Business and Property Courts of England and Wales (United Kingdom) made on 22 April 2020 — Joint Trustee (1) in Bankruptcy of Mr M. and Joint Trustee (2) in Bankruptcy of Mr M. v Mrs M, MH, ILA and Mr M

(Case C-168/20)

(2020/C 262/15)

Language of the case: English

Referring court

High Court of Justice Business and Property Courts of England and Wales

Parties to the main proceedings

Applicants: Joint Trustee (1) in Bankruptcy of Mr M. and Joint Trustee (2) in Bankruptcy of Mr M.

Respondents: Mrs M, MH, ILA and Mr M

Questions referred

- 1) Where a national of a Member State has exercised his rights under Articles 21, 49 TFEU and the Citizens' Rights Directive (Parliament and Council Directive 2004/38/EC) ⁽¹⁾ by moving to or establishing himself in the United Kingdom, is it compatible with those provisions for section 11 WRPA 1999 to make exclusion from bankruptcy of pension rights in a pension scheme, including those established and tax approved in another Member State, dependent on the pension scheme being, at the time of the bankruptcy, registered under s 153 FA 2004 or prescribed by regulation 2 of the 2002 Regulations and thus tax approved in the United Kingdom?
- 2) In answering Question 1), is it relevant or necessary:
 - a) to determine whether the individual moved to the United Kingdom in order, primarily, to declare his bankruptcy in the United Kingdom?
 - b) to take into account (i) the protections which may be available to the bankrupt in respect of unapproved pension schemes under s 12 WRPA 1999 and (ii) the possibility for the trustees in bankruptcy to recover sums in respect of approved pension arrangements?
 - c) to take into account the requirements to which pension schemes registered and tax approved in the United Kingdom are subject?

(¹) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004, L 158, p. 77).
