



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 March 2023*

(Reference for a preliminary ruling – Approximation of laws – Approval of motor vehicles – Directive 2007/46/EC – Article 18(1) – Article 26(1) – Article 46 – Regulation (EC) No 715/2007 – Article 5(2) – Motor vehicles – Diesel engine – Pollutant emissions – Exhaust gas recirculation valve (EGR valve) – Reduction in nitrogen oxide (NO_x) emissions limited by a ‘temperature window’ – Defeat device – Protection of the interests of an individual purchaser of a vehicle equipped with an unlawful defeat device – Right to compensation from the vehicle manufacturer on the basis of tortious liability – Method of calculating compensation – Principle of effectiveness – Article 267 TFEU – Admissibility – Reference to the Court from a single judge)

In Case C-100/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Ravensburg (Regional Court, Ravensburg, Germany), made by decision of 12 February 2021, received at the Court on 17 February 2021, in the proceedings

QB

v

Mercedes-Benz Group AG, formerly Daimler AG

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe and P.G. Xuereb (Rapporteur), Presidents of Chambers, M. Ilešič, N. Piçarra, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, I. Ziemele, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: A. Rantos,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 8 March 2022,

after considering the observations submitted on behalf of:

– QB, by P. Franz, N. Gellert, R. Ghaffari, R. Klinger, K. Meiser and A. Pacura, Rechtsanwälte,

* Language of the case: English.

- Mercedes-Benz Group AG, by M. Ruttloff, U. Soltész, E. Wagner and N. Wimmer, Rechtsanwälte,
- the German Government, by J. Möller and D. Klebs, acting as Agents,
- the European Commission, by M. Huttunen, M. Noll-Ehlers and K. Talabér-Ritz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2022,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 18(1), Article 26(1) and Article 46 of 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), as amended by Commission Regulation (EC) No 385/2009 of 7 May 2009 (OJ 2009 L 118, p. 13) ('the Framework Directive'), read in conjunction with Article 5(2) 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 (OJ 2007 L 171, p. 1), and of the second paragraph of Article 267 TFEU.
- 2 The request has been made in proceedings between QB and Mercedes-Benz Group AG, formerly Daimler AG, a car manufacturer, concerning the right to compensation invoked by QB and the calculation of the amount of damages he may be owed on account of his purchase of a diesel vehicle equipped with software which reduces the recirculation of pollutant gases of that vehicle depending on the outside temperature and which does not comply with the requirements of EU law.

Legal context

European Union law

The Framework Directive

- 3 The Framework Directive was repealed by 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 No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46 (OJ 2018 L 151, p. 1), with effect from 1 September 2020. However, in view of the date of the facts of the dispute in the main proceedings, the Framework Directive remains applicable to that dispute.

4 According to recital 3 of that framework directive:

‘The technical requirements applicable to systems, components, separate technical units and vehicles should be harmonised and specified in regulatory acts. Those regulatory acts should primarily seek to ensure a high level of road safety, health protection, environmental protection, energy efficiency and protection against unauthorised use.’

5 Article 1 of the Framework Directive stated:

‘This Directive establishes a harmonised framework containing the administrative provisions and general technical requirements for approval of all new vehicles within its scope and of the systems, components and separate technical units intended for those vehicles, with a view to facilitating their registration, sale and entry into service within the Community.

...

Specific technical requirements concerning the construction and functioning of vehicles shall be laid down in application of this Directive in regulatory acts, the exhaustive list of which is set out in Annex IV.’

6 Article 3(5) and (36) of the Framework Directive provided:

‘For the purposes of this Directive and of the regulatory acts listed in Annex IV, save as otherwise provided therein:

...

5. “EC type-approval” means the procedure whereby a Member State certifies that a type of vehicle, system, component or separate technical unit satisfies the relevant administrative provisions and technical requirements of this Directive and of the regulatory acts listed in Annex IV or XI;

...

36. “certificate of conformity” means the document set out in Annex IX, issued by the manufacturer and certifying that a vehicle belonging to the series of the type approved in accordance with this Directive complied with all regulatory acts at the time of its production’.

7 Article 4 of that framework directive was worded as follows:

‘1. Member States shall ensure that manufacturers applying for approval comply with their obligations under this Directive.

2. Member States shall approve only such vehicles, systems, components or separate technical units as satisfy the requirements of this Directive.

3. Member States shall register or permit the sale or entry into service only of such vehicles, components and separate technical units as satisfy the requirements of this Directive.

...’

8 Article 8(6) of the Framework Directive provided:

‘The approval authority shall inform without delay the approval authorities of the other Member States of its refusal or withdrawal of any vehicle approval, together with the reasons for its decision.’

9 Article 13(1) of that framework directive stated:

‘The manufacturer shall inform without delay the Member State that granted the EC type-approval of any change in the particulars recorded in the information package. That Member State shall decide, in accordance with the rules laid down in this Chapter, which procedure is to be followed. Where necessary, the Member State may decide, in consultation with the manufacturer, that a new EC type-approval is to be granted.’

10 Article 18(1) of that framework directive provided:

‘The manufacturer, in his capacity as the holder of an EC type-approval of a vehicle, shall deliver a certificate of conformity to accompany each vehicle, whether complete, incomplete or completed, that is manufactured in conformity with the approved vehicle type.

...’

11 Article 26(1) of the Framework Directive read as follows:

‘Without prejudice to the provisions of Articles 29 and 30, Member States shall register, and permit the sale or entry into service of, vehicles only if they are accompanied by a valid certificate of conformity issued in accordance with Article 18.

...’

12 Article 30(1) of the Framework Directive provided:

‘If a Member State which has granted an EC type-approval finds that new vehicles, systems, components or separate technical units accompanied by a certificate of conformity or bearing an approval mark do not conform to the type it has approved, it shall take the necessary measures, including, where necessary, the withdrawal of type-approval, to ensure that production vehicles, systems, components or separate technical units, as the case may be, are brought into conformity with the approved type. The approval authority of that Member State shall advise the approval authorities of the other Member States of the measures taken.’

13 Article 46 of that framework directive stated:

‘Member States shall determine the penalties applicable for infringement of the provisions of this Directive, and in particular of the prohibitions contained in or resulting from Article 31, and of the regulatory acts listed in Part I of Annex IV and shall take all necessary measures for their implementation. The penalties determined shall be effective, proportionate and dissuasive. Member States shall notify these provisions to the [European] Commission no later than 29 April 2009 and shall notify any subsequent modifications thereof as soon as possible.’

- 14 Annex IX to the Framework Directive described the content of the EC certificate of conformity. Point 0 of that annex stated:

‘The certificate of conformity is a statement delivered by the vehicle manufacturer to the buyer in order to assure him that the vehicle acquired complies with the legislation in force in the European Union at the time it was produced.

The certificate of conformity also serves the purpose to enable the competent authorities of the Member States to register vehicles without having to require the applicant to supply additional technical documentation.

...’

Regulation No 715/2007

- 15 Recitals 1, 5, 6 and 17 of Regulation No 715/2007 state:

‘(1) ... The technical requirements for the type approval of motor vehicles with regard to emissions should ... be harmonised to avoid requirements that differ from one Member State to another, and to ensure a high level of environmental protection.

...

(5) Achieving EU air quality objectives requires a continuing effort to reduce vehicle emissions. ...

(6) In particular, a considerable reduction in nitrogen oxide emissions from diesel vehicles is necessary to improve air quality and comply with limit values for pollution. ...

...

(17) A standardised method of measuring fuel consumption and carbon dioxide emissions of vehicles is necessary to ensure that no technical barriers to trade arise between Member States. Furthermore, it is also necessary to ensure that customers and users are supplied with objective and precise information.’

- 16 Article 1(1) of that regulation provides:

‘This Regulation establishes common technical requirements for the type approval of motor vehicles (vehicles) and replacement parts, such as replacement pollution control devices, with regard to their emissions.’

- 17 Article 3(10) of Regulation No 715/2007 provides:

‘For the purposes of this Regulation and its implementing measures the following definitions shall apply:

...

(10) “defeat device” means any element of design which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use’.

18 Article 4(1) to (3) of that regulation states:

‘1. Manufacturers shall demonstrate that all new vehicles sold, registered or put into service in the Community are type approved in accordance with this Regulation and its implementing measures. Manufacturers shall also demonstrate that all new replacement pollution control devices requiring type approval which are sold or put into service in the Community are type approved in accordance with this Regulation and its implementing measures.

These obligations include meeting the emission limits set out in Annex I and the implementing measures referred to in Article 5.

2. Manufacturers shall ensure that type approval procedures for verifying conformity of production, durability of pollution control devices and in-service conformity are met.

In addition, the technical measures taken by the manufacturer must be such as to ensure that the tailpipe and evaporative emissions are effectively limited, pursuant to this Regulation, throughout the normal life of the vehicles under normal conditions of use. ...

...

3. Manufacturers shall set out carbon dioxide emissions and fuel consumption figures in a document given to the purchaser of the vehicle at the time of purchase.’

19 Article 5(1) and (2) of Regulation No 715/2007 reads as follows:

‘1. The manufacturer shall equip vehicles so that the components likely to affect emissions are designed, constructed and assembled so as to enable the vehicle, in normal use, to comply with this Regulation and its implementing measures.

2. The use of defeat devices that reduce the effectiveness of emission control systems shall be prohibited. The prohibition shall not apply where:

(a) the need for the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle;

...’

20 Pursuant to Article 13 of that regulation:

‘1. Member States shall lay down the provisions on penalties applicable for infringement by manufacturers of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. ...

2. The types of infringements which are subject to a penalty shall include:

...

(d) use of defeat devices;

...'

German law

21 Paragraph 823 of the Bürgerliches Gesetzbuch (Civil Code; 'the BGB') provides:

'1. Any person who, with intent or through negligence, unlawfully injures the life, body, health, freedom, property or other right of another person shall be obliged to compensate that other person for the resulting damage.

2. The same obligation shall be imposed on a person who infringes a law which is intended to protect another person. If, according to the content of that law, it may also be infringed without fault, the obligation to provide compensation shall arise only in the event of fault.'

22 Paragraph 348 of the Zivilprozessordnung (Code of Civil Procedure; 'the ZPO') provides:

(1) The civil chamber shall give its decisions through one of its members as a single judge. ...

...

(3) The single judge shall refer the dispute to the civil chamber for a decision as to whether it should take it over, where:

1. the case presents particular difficulties of fact or law,

2. the case is of fundamental importance, or

3. the parties unanimously request that the judge do so.

The civil chamber shall take over the dispute if the requirements laid down in points 1 or 2 of the first sentence are fulfilled. It shall make its decision in that regard by order. A further transfer to the single judge is precluded.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

23 On 20 March 2014, QB purchased from Auto Y GmbH a used Mercedes-Benz motor vehicle, model C 220 CDI, equipped with a Euro 5 generation diesel engine, with a mileage of 28 591 km, for the price of EUR 29 999. That vehicle, placed on the market by the car manufacturer Daimler, was first registered on 15 March 2013.

- 24 The vehicle is equipped with engine programming software that reduces the exhaust gas recirculation rate when outside temperatures are below a certain threshold, which results in an increase in NO_x emissions. Accordingly, that recirculation is fully effective only if the outside temperature does not fall below that threshold ('the temperature window'). In that regard, the precise outside temperature under which the reduction in that recirculation rate takes place and the extent of that reduction are disputed by the parties to the main proceedings.
- 25 QB brought an action before the Landgericht Ravensburg (Regional Court, Ravensburg, Germany), the referring court, seeking compensation for the damage allegedly caused to him by Mercedes-Benz Group by equipping the vehicle in question with defeat devices, prohibited under Article 5(2) of Regulation No 715/2007.
- 26 Before that court, the parties to the main proceedings thus exchanged arguments as to whether the vehicle in question is equipped with such unlawful devices, the extent of any right to compensation on the part of QB, and the possibility of offsetting the benefit which QB derived from the use of that vehicle against the amount of compensation.
- 27 The referring court considers that the temperature window is a prohibited defeat device within the meaning of Article 3(10) and Article 5(2) of Regulation No 715/2007. It states that the exhaust gas recirculation rate of the vehicle in question and, accordingly, the effectiveness of the emission control system are already reduced at an outside temperature of more than 0 °C, a temperature which falls within the 'conditions which may reasonably be expected to be encountered in normal vehicle operation and use', within the meaning of Article 3(10) of Regulation No 715/2007.
- 28 The referring court also considers that, on the face of it, the exception laid down in Article 5(2)(a) of Regulation No 715/2007 does not apply to the dispute in the main proceedings, since only immediate risks of damage which create a specific hazard when the vehicle is driven are such as to justify the use of a defeat device (judgment of 17 December 2020, *CLCV and Others (Defeat device on diesel engines)*, C-693/18, EU:C:2020:1040, paragraph 114). It doubts whether a temperature window the objective of which is to prevent the formation of deposits in the engine and thus to prevent wear and tear meets the strict conditions for the application of that exception.
- 29 According to the referring court, QB may have a right to compensation under Paragraph 823(2) of the BGB, which requires only ordinary negligence. However, that provision presupposes the infringement of a law intended to protect others, which, according to the case-law of the Bundesgerichtshof (Federal Court of Justice, Germany), means that that law is intended to protect an individual or a group of persons against a failure to have regard to a specific legal interest. In that respect, it is sufficient that that law was adopted with the objective of conferring legal protection on that individual or group of persons, even if it principally concerns the protection of a public interest. In addition, that provision implies that the danger against which that law is intended to confer protection arises in the form of specific damage and that the person or persons actually harmed fall within the scope *ratione personae* of the law in question. Accordingly, the referring court is uncertain whether Article 18(1), Article 26(1) and Article 46 of the Framework Directive and Article 5(2) of Regulation No 715/2007 are intended to protect, in addition to public interests, the interests of an individual who is the purchaser of a vehicle which does not comply with EU law, inter alia where that vehicle is fitted with a defeat device prohibited under the latter provision.

- 30 There are differing interpretations of those questions in German case-law and academic writing. The Bundesgerichtshof (Federal Court of Justice) considers that acts of the European Union adopted with a view to harmonising technical requirements applicable to vehicles are principally aimed at ensuring a high level of road safety and of protection of health and the environment. Furthermore, in its view, Article 5 of Regulation No 715/2007 is not intended to protect the right to economic self-determination of the individual purchaser of a vehicle.
- 31 By contrast, several regional courts consider that Article 18(1), Article 26(1) and Article 46 of the Framework Directive and Article 5(2) of Regulation No 715/2007 are also aimed at the individual protection of the purchaser of a vehicle. According to that view, one of the objectives of the certificate of conformity is, in accordance with Annex IX to the Framework Directive, that the manufacturer of a vehicle should assure the purchaser of that vehicle that it complies with the legal provisions applicable in the European Union at the time of its manufacture. The purpose of that certificate is also to facilitate the administrative registration procedure and the free movement of goods within the European Union.
- 32 In the event that it is held that the provisions referred to in paragraph 29 above protect only general legal interests and not the specific interests of purchasers, the referring court also questions whether the principle of effectiveness could require that any fault, whether intentional or negligent, committed by a car manufacturer by placing on the market vehicles equipped with an unlawful defeat device under Article 5 of Regulation No 715/2007 should be penalised by the possibility, for the purchaser concerned, of asserting a right to compensation based on the tortious liability of that manufacturer.
- 33 In that regard, according to the Landgericht Stuttgart (Regional Court, Stuttgart, Germany), the applicability of Paragraph 823(2) of the BGB is based on the fact that, in the interest of the effective application of EU law, it is necessary to attach civil law penalties to the relevant provisions of EU law.
- 34 In the event that QB may have such a right to compensation on the basis of Paragraph 823(2) of the BGB, the referring court wonders whether it is necessary, in order to give practical effect to the applicable provisions of EU law, that the benefit derived from the use of the vehicle in question not be offset against the right to compensation or be offset only to a limited extent. That question is also the subject of differing views in German case-law and academic writing, including as regards the influence which the prohibition of unjust enrichment could have on such offsetting.
- 35 In that regard, the Bundesgerichtshof (Federal Court of Justice) considers, first, that, in view of the prohibition of unjust enrichment provided for by the German law on compensation, the injured party cannot be placed in a more favourable position than he or she would have been in had the harmful event not occurred and, secondly, that only the benefits linked to that event must be offset against the right to compensation, so that the offsetting does not disproportionately relieve the perpetrator of the damage. By contrast, several regional courts consider that the benefit derived from the use of a vehicle equipped with an unlawful defeat device may be offset against the right to compensation.
- 36 Lastly, the referring court, which adjudicates as a single judge in the case in the main proceedings, notes that, under points 1 and 2 of the first sentence of Paragraph 348(3) of the ZPO, the original single judge is required to refer the dispute to the civil chamber for a decision as to whether that chamber should take over the dispute, where it presents particular difficulties of a factual or legal

nature or where it is of fundamental importance. The single judge has no discretion in that regard. More specifically, it is apparent from the case-law of the Bundesgerichtshof (Federal Court of Justice) that where a single judge makes a reference to the Court of Justice for a preliminary ruling without first referring the dispute to the civil chamber for a decision as to whether that chamber should take over the dispute, that judge infringes the constitutional principle of the lawful judge, laid down in the second sentence of Article 101(1) of the Grundgesetz (Basic Law).

- 37 The referring court takes the view that the second paragraph of Article 267 TFEU precludes such an obligation to refer the dispute to the civil chamber. Indeed, according to the referring court, in its judgment of 13 December 2018, *Rittinger and Others* (C-492/17, EU:C:2018:1019), the Court of Justice held that a request for a preliminary ruling from a single judge is admissible as a matter of EU law, irrespective of whether or not that request complies with national procedural rules. However, the Court did not examine whether the second paragraph of Article 267 TFEU precludes a national provision limiting the possibility of making such a request to the Court.
- 38 In those circumstances, the Landgericht Ravensburg (Regional Court, Ravensburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are Articles 18(1), 26(1) and 46 of [the Framework Directive], read in conjunction with Article 5(2) of [Regulation No 715/2007], also intended to protect the interests of individual purchasers of motor vehicles?

If so:

- (2) Does this also include the interest of an individual purchaser of a vehicle in not purchasing a vehicle which does not comply with the requirements of EU law, and in particular in not purchasing a vehicle equipped with a prohibited defeat device within the meaning of Article 5(2) of [Regulation No 715/2007]?

If Question 1 is answered in the negative:

- (3) Is it incompatible with EU law if a purchaser who has unintentionally purchased a vehicle placed on the market by the manufacturer with a prohibited defeat device within the meaning of Article 5(2) of [Regulation No 715/2007] is able to assert civil claims for damages against the vehicle manufacturer on the basis of tortious liability – including, in particular, a claim for reimbursement of the purchase price paid for the vehicle against return and transfer of ownership of the vehicle – only in exceptional cases where the vehicle manufacturer has acted with intent and in a manner contrary to accepted principles of morality?

If so:

- (4) Does EU law require that the purchaser of a vehicle has a civil claim for damages against the vehicle manufacturer on the basis of tortious liability in the event of any culpable (negligent or intentional) act on the part of the vehicle manufacturer in relation to the placing on the market of a vehicle equipped with a prohibited defeat device within the meaning of Article 5(2) of [Regulation No 715/2007]?

Irrespective of the answers to Questions 1 to 4:

- (5) Is it incompatible with EU law if, under national law, the purchaser of a vehicle must accept offsetting the benefit of the actual use made of the motor vehicle where he or she seeks, by way of compensation based on tortious liability, reimbursement from the manufacturer of the purchase price of a vehicle placed on the market by the manufacturer with a prohibited defeat device within the meaning of Article 5(2) of [Regulation No 715/2007] against return and transfer of ownership of the vehicle?

If not:

- (6) Is it incompatible with EU law for that benefit of use to be calculated on the basis of the full purchase price without any deduction being made for the reduction in value of the vehicle resulting from its being equipped with a prohibited defeat device and/or in view of the purchaser's inadvertent use of a vehicle which does not comply with EU law?

Irrespective of the answers to Questions 1 to 6:

- (7) Inasmuch as it also refers to orders for reference in accordance with the second paragraph of Article 267 TFEU, is Paragraph 348(3) of the [ZPO], incompatible with the right conferred on the national courts to request a preliminary ruling pursuant to the second paragraph of Article 267 TFEU and must it therefore be disapplied to orders for reference?

The request that the oral part of the procedure be reopened

- 39 Following the delivery of the Advocate General's Opinion, the German Government and Mercedes-Benz Group, by documents lodged at the Court Registry on 11 and 14 July 2022 respectively, applied for the oral part of the procedure to be reopened, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.
- 40 In support of its request, Mercedes-Benz Group submits, in essence, that the Advocate General was wrong to take the view, in point 49 of his Opinion, that possession of a vehicle which does not comply with the provisions of EU law on environmental protection, as a result of pollutant gas emissions which exceed the prescribed limit values causes non-material damage to the purchaser. The existence of any non-material damage was not raised by the national court and was not debated between the parties.
- 41 In its request, the German Government submits, in essence, first, that the Advocate General's Opinion is based on new factors, not yet debated between the parties, in so far as it refers to Annex IX to the Framework Directive and point 0 of that annex. Secondly, the German Government challenges the validity of that point 0.
- 42 Furthermore, the German Government states that it disagrees with the Advocate General's Opinion in so far as it disregards the relationship between the Framework Directive and 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 (OJ 1999 L 171, p. 12). According to the German Government, first, it would be incompatible with the general scheme of the latter

directive to grant the consumer a right to compensation for mere fault. Secondly, a certificate of conformity, within the meaning of the Framework Directive, cannot be regarded as equivalent to a manufacturer guarantee.

- 43 In that regard, it must be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the interested parties referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion (judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 30 and the case-law cited).
- 44 Secondly, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by the Advocate General's submissions or by the reasoning which led to those submissions. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 31 and the case-law cited).
- 45 It is true that, in accordance with Article 83 of the Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information, or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the interested persons.
- 46 However, in this instance, the Court notes that it has all the information necessary to give a ruling and that the present case does not have to be decided on the basis of arguments which have not been debated between the interested persons. Lastly, the two requests that the oral part of the procedure be reopened referred to in paragraph 39 above do not reveal any new fact which is of such a nature as to be a decisive factor for the decision which the Court is called upon to give in this case.
- 47 In those circumstances, the Court considers, after hearing the Advocate General, that there is no need to order that the oral part of the procedure be reopened.

Consideration of the questions referred

Admissibility

- 48 By its seventh question, the referring court asks, in essence, whether the second paragraph of Article 267 TFEU must be interpreted as precluding national legislation under which a single judge is required, inter alia because the case before him or her is of fundamental importance, to refer that case to a civil chamber composed of three judges and to refrain from making a request for a preliminary ruling to the Court in that case.

- 49 Mercedes-Benz Group argues that that question is inadmissible on the ground that, in proceedings brought under Article 267 TFEU, the Court does not have jurisdiction to rule on the compatibility of national law with EU law.
- 50 The German Government submits that an answer from the Court to that question is not necessary in order for the referring court to be able to rule on the dispute in the main proceedings.
- 51 According to the Commission, the question whether or not national law allows a single judge to make a reference to the Court for a preliminary ruling is not relevant for the purposes of ruling on that dispute, which concerns the existence of a right to compensation, alleged by the purchaser of a vehicle against a car manufacturer, on account of the presence, in that vehicle, of a defeat device prohibited under Article 5(2) of Regulation No 715/2007. In addition, that question is hypothetical, since it is apparent from the order for reference that the dispute in the main proceedings was not the subject of an appeal at the time when the matter was referred to the Court.
- 52 It should be noted that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 54 and the case-law cited).
- 53 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26 and the case-law cited).
- 54 In the present case, it must be noted that the seventh question concerns the interpretation of the second paragraph of Article 267 TFEU and that the referring court has not explained why the interpretation of that provision is necessary to enable it to resolve the dispute before it. It merely stated that the power of the single judge to make the present request for a preliminary ruling to the Court could be challenged. However, it does not specify how the order for reference or, as the case may be, the decision closing the proceedings would be affected by any procedural defect arising from the fact that a single judge has made a reference for a preliminary ruling to the Court without referring the case in the main proceedings to a formation composed of several judges. In particular, it is not apparent from the order for reference that that order is, at this stage of the proceedings, the subject of an appeal in which it is alleged that it is vitiated by such a defect.
- 55 The seventh question must therefore be declared inadmissible.

Substance

Preliminary observations

- 56 In the first place, it should be recalled that Article 3(10) of Regulation No 715/2007 defines a ‘defeat device’ as being ‘any element of design which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use’.
- 57 In the present case, it is apparent from the request for a preliminary ruling that the software referred to in paragraph 24 above creates a temperature window by means of which the exhaust gas recirculation is fully effective only if the outside temperature does not fall below a certain threshold. In that regard, the referring court states that the exhaust gas recirculation rate and, accordingly, the effectiveness of the emission control system are already reduced at an outside temperature of more than 0 °C, that is to say, a temperature falling within conditions which may reasonably be expected to be encountered in normal vehicle operation and use, within the meaning of Article 3(10) of Regulation No 715/2007.
- 58 As regards a temperature window similar to that at issue in the main proceedings, the Court has held that Article 3(10) of Regulation No 715/2007, read in conjunction with Article 5(1) of that regulation, must be interpreted as meaning that a device which ensures compliance with the emission limit values laid down by that regulation only where the outside temperature is between 15 °C 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 (see, to that effect, judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraph 47).
- 59 In that respect, the referring court notes that the precise outside temperature under which the reduction in the exhaust gas recirculation rate takes place and the extent of that reduction are disputed by the parties to the main proceedings. Nevertheless, it should be borne in mind that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law (judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraph 29 and the case-law cited). It is therefore for the referring court to decide, where appropriate, whether, in the light of the clarifications provided in the case-law cited in paragraph 58 above, the software referred to in paragraph 24 above constitutes a ‘defeat device’, within the meaning of Article 3(10) of Regulation No 715/2007.
- 60 In the second place, under Article 5(2) of Regulation No 715/2007, the use of defeat devices that reduce the effectiveness of emission control systems is to be prohibited. However, there are three exceptions to that prohibition, including the exception set out in Article 5(2)(a) of Regulation No 715/2007, which, according to the referring court, is the only one relevant in the present case. That exception concerns the situation where ‘the need for the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle’.
- 61 In so far as it lays down an exception to the prohibition on the use of defeat devices that reduce the effectiveness of emission control systems, Article 5(2)(a) of Regulation No 715/2007 must be interpreted strictly (judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraph 50).

- 62 It is apparent from the very wording of that provision that, in order to fall within the scope of the exception provided for in that provision, the need for a defeat device must be justified not only in terms of protecting the engine against damage or accident, but also in terms of the safe operation of the vehicle. In view of the use of the conjunction ‘and’ in that provision, it must be interpreted as meaning that the conditions laid down therein are cumulative (judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraph 61).
- 63 The prohibition laid down in the first sentence of Article 5(2) of that regulation would be devoid of substance and deprived of any effectiveness if car manufacturers were permitted to equip motor vehicles with such defeat devices with the sole aim of protecting the engine against clogging up and ageing (see, to that effect, judgment of 17 December 2020, *CLCV and Others (Defeat device on diesel engines)*, C-693/18, EU:C:2020:1040, paragraph 113).
- 64 Consequently, software such as that at issue in the main proceedings – if it is found to be a defeat device – can be justified under that exception 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 (see, to that effect, judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraph 62).
- 65 Furthermore, as regards a temperature window similar to that at issue in the main proceedings, the Court has held that, while it is true that Article 5(2)(a) of Regulation No 715/2007 does not formally impose any further conditions for the application of the exception laid down in that provision, the fact remains that 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, would clearly run counter to the objective pursued by that regulation, from which that provision allows derogation only in very specific circumstances, and would result in a disproportionate infringement of the principle of limiting NO_x emissions from vehicles (judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraph 63).
- 66 The Court thus concluded that such a defeat device cannot be justified under that provision. To accept that such a defeat device may fall within the exception provided for in that provision would result in that exception being applicable for most of the year under real driving conditions prevalent in the territory of the European Union, with the result that the principle of the prohibition of such defeat devices, laid down in the first sentence of Article 5(2) of that regulation, could, in practice, be applied less frequently than that exception (judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraphs 64 and 65).
- 67 It is for the referring court to carry out the factual assessments necessary for the purposes of applying the conditions referred to in paragraphs 60 to 66 above.

The first and second questions

- 68 By its first and second questions, which it is appropriate to answer together, the referring court asks, in essence, whether Article 18(1), Article 26(1) and Article 46 of the Framework Directive, read in conjunction with Article 5(2) of Regulation No 715/2007, must be interpreted as protecting, in addition to public interests, the specific interests of the individual purchaser of a motor vehicle vis-à-vis the manufacturer of that vehicle where that vehicle is equipped with a prohibited defeat device, within the meaning of Article 5(2) of that regulation.

- 69 It is apparent from the request for a preliminary ruling that those questions are motivated by the fact that, according to the referring court, the exercise, by the individual purchaser of a motor vehicle which does not comply with EU law, of the right to compensation provided for in Paragraph 823(2) of the BGB presupposes the infringement of a law intended to protect others.
- 70 As regards Article 5(2) of Regulation No 715/2007, it should be borne in mind that the objective pursued by that regulation, as is apparent from recitals 1 and 6 thereof, is to ensure a high level of environmental protection and, more specifically, to considerably reduce the NO_x emissions from diesel vehicles in order to improve air quality and comply with limit values for pollution (judgment of 14 July 2022, *GSMB Invest*, C-128/20, EU:C:2022:570, paragraph 43 and the case-law cited). The prohibition, under the first sentence of Article 5(2) of that regulation, of the use of defeat devices that reduce the effectiveness of emission control is intended precisely to limit emissions of gaseous pollutants and thus to contribute to the environmental protection objective pursued by that regulation (see, to that effect, judgment of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)*, C-873/19, EU:C:2022:857, paragraph 57).
- 71 It must therefore be held that that provision, like the regulation of which it forms part, pursues a general objective of ensuring a high level of environmental protection.
- 72 As the Advocate General observed in point 40 of his Opinion, the obligation on manufacturers, laid down in Article 4(3) of Regulation No 715/2007, to provide the purchaser of the vehicle, at the time of purchase, with a document setting out the carbon dioxide emissions and fuel consumption figures forms part of the pursuit of that general objective. That obligation is intended, as can be inferred from recital 17 of that regulation, to ensure that customers and users are supplied with objective and precise information as to the extent to which vehicles are polluting when making their purchasing decisions.
- 73 That being said, in order to answer the first and second questions, Regulation No 715/2007 must be placed in its proper context. In that regard, Article 5 of that regulation must be examined not only in the light of the various provisions of that regulation, but also in view of the regulatory framework for the approval of motor vehicles within the European Union of which that regulation forms part (see, to that effect, judgment of 17 December 2020, *CLCV and Others (Defeat device on diesel engines)*, C-693/18, EU:C:2020:1040, paragraph 75).
- 74 Article 3(5) of the Framework Directive defined the ‘EC type-approval’ of a motor vehicle, such as that at issue in the main proceedings, as the ‘procedure whereby a Member State certifies that a type of vehicle, system, component or separate technical unit satisfies the relevant administrative provisions and technical requirements of [that framework directive] and of the regulatory acts listed in Annex IV or XI’ to that framework directive. That Annex IV, entitled ‘List of requirements for the purpose of EC type-approval of vehicles’, referred, in Part I thereof, entitled ‘Regulatory acts for EC type-approval of vehicles produced in unlimited series’, to Regulation No 715/2007 in connection with ‘emissions (Euro 5 and 6) light duty vehicles/access to information’.
- 75 It should also be noted that the first subparagraph of Article 4(3) of that framework directive stated that Member States are to register or permit the sale or entry into service only of such vehicles as satisfy the requirements of that framework directive.

- 76 Lastly, Article 4(1) of Regulation No 715/2007 provides that manufacturers are to demonstrate that all new vehicles sold, registered or put into service in the European Union are type approved in accordance with that regulation and its implementing measures.
- 77 It follows from the provisions referred to in paragraphs 74 to 76 above, first, that vehicles falling within the scope of the Framework Directive are to be type approved and, secondly, that such type-approval may be granted only if the type of vehicle in question satisfies the provisions of Regulation No 715/2007, in particular those relating to emissions, which includes Article 5 thereof (judgment of 14 July 2022, *Porsche Inter Auto and Volkswagen*, C-145/20, EU:C:2022:572, paragraph 52).
- 78 In addition to those requirements relating to EC type-approval, manufacturers are also required to issue a certificate of conformity to the individual purchaser of a vehicle. Article 18(1) of the Framework Directive provided that manufacturers, in their capacity as holders of an EC type-approval of a vehicle, were to issue a certificate of conformity to accompany each vehicle, whether complete, incomplete or completed, that was manufactured in conformity with the approved vehicle type.
- 79 In accordance with Article 26(1) of that framework directive, that certificate is required for the purposes of registration and sale or entry into service of a vehicle. That obligation is explained by the fact that that certificate, according to the definition given in Article 3(36) of the Framework Directive, is ‘issued by the manufacturer and certif[ies] that a vehicle belonging to the series of the type approved in accordance with [that framework directive] complied with all regulatory acts at the time of its production’.
- 80 Furthermore, in addition to the objective of establishing and operating an internal market characterised by fair competition between manufacturers pursued by Article 46 of the Framework Directive, the penalties referred to in that article must also ensure that the purchaser of a vehicle has a certificate of conformity enabling him, in accordance with Annex IX to that framework directive, to register that vehicle in any Member State without having to provide additional technical documents (judgment of 4 October 2018, *Commission v Germany*, C-668/16, EU:C:2018:802, paragraph 87).
- 81 When acquiring a vehicle model of a type that has been approved and is, therefore, accompanied by a certificate of conformity, an individual purchaser can reasonably expect that Regulation No 715/2007, and, inter alia, Article 5 thereof, has been complied with in respect of that vehicle (see, to that effect, judgment of 14 July 2022, *Porsche Inter Auto and Volkswagen*, C-145/20, EU:C:2022:572, paragraph 54).
- 82 Consequently, it follows from the provisions of the Framework Directive referred to in paragraphs 78 to 80 above that it establishes a direct link between the car manufacturer and the individual purchaser of a motor vehicle intended to guarantee to the latter that that vehicle complies with the relevant EU legislation. In particular, since the manufacturer of a vehicle must comply with the requirements arising from Article 5 of Regulation No 715/2007 when issuing the certificate of conformity to the individual purchaser of that vehicle with a view to the registration and sale or entry into service of that vehicle, that certificate allows that purchaser to be protected against that manufacturer’s failure to fulfil its obligation to place on the market vehicles which comply with that provision.

- 83 It cannot be ruled out that a vehicle type covered by an EC type-approval allowing that vehicle to be driven on the road may, initially, be approved by the approval authority without the presence of the software referred to in paragraph 24 above having been disclosed to it. In that respect, the Framework Directive envisages the situation in which the unlawfulness of an element of design of a vehicle, for example in the light of the requirements of Article 5 of Regulation No 715/2007, is discovered only after that approval has been granted. Thus, Article 8(6) of that framework directive provides that that authority may withdraw the approval of a vehicle. Furthermore, it follows from the first and third sentences of Article 13(1) of that framework directive that, where a manufacturer informs a Member State which has granted EC type-approval of a change in the information package, that Member State may, where necessary, decide, in consultation with the manufacturer, that a new EC type-approval is to be granted (see, to that effect, judgment of 14 July 2022, *Porsche Inter Auto and Volkswagen*, C-145/20, EU:C:2022:572, paragraph 56). Lastly, Article 30(1) of the Framework Directive provided that, if a Member State which had granted an EC type-approval found a lack of conformity to the vehicle type it had approved, it was to take the necessary measures, including, where necessary, the withdrawal of that type-approval, to ensure that the produced vehicles were brought into conformity with that type.
- 84 Consequently, the unlawfulness of a defeat device equipped in a motor vehicle, discovered after the grant of EC type-approval for that vehicle, is capable of calling into question the validity of that type-approval and, by extension, the validity of the certificate of conformity intended to certify that that vehicle, belonging to the series of the type approved, complied with all regulatory acts at the time of its production. In the light of the rule laid down in Article 26(1) of the Framework Directive, that unlawfulness is thus liable, inter alia, to create uncertainty as to the possibility of registering, selling or entering into service that vehicle and, ultimately, to harm the purchaser of a vehicle equipped with an unlawful defeat device.
- 85 In the light of the foregoing considerations, the answer to the first and second questions is that Article 18(1), Article 26(1) and Article 46 of the Framework Directive, read in conjunction with Article 5(2) of Regulation No 715/2007, must be interpreted as protecting, in addition to public interests, the specific interests of the individual purchaser of a motor vehicle vis-à-vis the manufacturer of that vehicle where that vehicle is equipped with a prohibited defeat device, within the meaning of the latter provision.

The third and fourth questions

- 86 In view of the answer given to the first and second questions, there is no need to answer the third and fourth questions.

The fifth and sixth questions

- 87 By its fifth and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether EU law must be interpreted as precluding – in the context of compensation for damage caused to the purchaser of a vehicle equipped with a prohibited defeat device, within the meaning of Article 5(2) of Regulation No 715/2007 – the offsetting of the benefit derived from the actual use of that vehicle against the reimbursement of the purchase price of that vehicle and, if that is not the case, the calculation of that benefit on the basis of the total purchase price of that vehicle.

- 88 In that regard, it should be noted that, as is apparent from the answer to the first and second questions, Article 18(1), Article 26(1) and Article 46 of the Framework Directive, read in conjunction with Article 5(2) of Regulation No 715/2007, protect the specific interests of the individual purchaser of a motor vehicle vis-à-vis the manufacturer of that vehicle where that vehicle is equipped with a prohibited defeat device, within the meaning of the latter provision.
- 89 Thus, it is apparent from those provisions that an individual purchaser of a motor vehicle has, vis-à-vis the manufacturer of that vehicle, the right that that vehicle not be fitted with a prohibited defeat device, within the meaning of Article 5(2) of that regulation.
- 90 Furthermore, as has already been pointed out, in essence, in paragraph 80 above, it is for the Member States, under Article 46 of the Framework Directive, to determine the penalties applicable for infringement of the provisions of that framework directive. These penalties are to be effective, proportionate and dissuasive. Furthermore, in accordance with Article 13(1) of Regulation No 715/2007, Member States are to lay down the provisions on penalties applicable for infringements of the provisions of that regulation. The penalties provided for are to be effective, proportionate and dissuasive.
- 91 In those circumstances, it must be held that it follows from Article 18(1), Article 26(1) and Article 46 of the Framework Directive, read in conjunction with Article 5(2) of Regulation No 715/2007, that the Member States are required to provide that the purchaser of a motor vehicle equipped with a prohibited defeat device, within the meaning of Article 5(2) of that regulation, has a right to compensation from the manufacturer of that vehicle where that device has caused damage to that purchaser.
- 92 In the absence of provisions of EU law governing the detailed rules under which purchasers concerned by the acquisition of such a vehicle may obtain compensation, it is for each Member State to determine those rules.
- 93 That being said, national legislation which makes it, in practice, impossible or excessively difficult for the purchaser of a motor vehicle to obtain adequate compensation for the damage caused to him or her by the infringement, by the manufacturer of that vehicle, of the prohibition laid down in Article 5(2) of Regulation No 715/2007 would not be compatible with the principle of effectiveness.
- 94 Subject to that proviso, it is appropriate to note that national courts are entitled to ensure that the protection of rights guaranteed by the legal order of the Union does not result in unjust enrichment of the persons concerned (judgment of 25 March 2021, *Balgarska Narodna Banka*, C-501/18, EU:C:2021:249, paragraph 125).
- 95 In the present case, it is for the referring court to determine whether the offsetting of the benefit derived from the actual use of the vehicle in question ensures adequate compensation for the purchaser concerned, if it is established that that purchaser suffered damage connected with the installation in that vehicle of a prohibited defeat device within the meaning of Article 5(2) of Regulation No 715/2007.
- 96 Consequently, the answer to the fifth and sixth questions is that EU law must be interpreted as meaning that, in the absence of provisions of EU law governing the matter, it is for the law of the Member State concerned to determine the rules concerning compensation for damage actually

caused to the purchaser of a vehicle equipped with a prohibited defeat device, within the meaning of Article 5(2) of Regulation No 715/2007, provided that that compensation is adequate with respect to the damage suffered.

Costs

- 97 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. Article 18(1), Article 26(1) and Article 46 of 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), as amended by Commission Regulation (EC) No 385/2009 of 7 May 2009, read in conjunction with Article 5(2) 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,**

must be interpreted as protecting, in addition to public interests, the specific interests of the individual purchaser of a motor vehicle vis-à-vis the manufacturer of that vehicle where that vehicle is equipped with a prohibited defeat device, within the meaning of the latter provision.

- 2. EU law must be interpreted as meaning that, in the absence of provisions of EU law governing the matter, it is for the law of the Member State concerned to determine the rules concerning compensation for damage actually caused to the purchaser of a vehicle equipped with a prohibited defeat device, within the meaning of Article 5(2) of Regulation No 715/2007, provided that that compensation is adequate with respect to the damage suffered.**

[Signatures]