



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

19 September 2019*

(Reference for a preliminary ruling — Approximation of laws — Motor vehicles — Regulation (EC) No 715/2007 — First sentence of Article 6(1) — Vehicle repair and maintenance information — Manufacturers' obligations towards independent operators — Unrestricted access in a standardised format to that information — Procedures — Prohibition of discrimination)

In Case C-527/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 21 June 2018, received at the Court on 13 August 2018, in the proceedings

Gesamtverband Autoteile-Handel eV

v

KIA Motors Corporation,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz, C. Vajda, P.G. Xuereb (Rapporteur) and A. Kumin, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- Gesamtverband Autoteile-Handel eV, by M. Sacré, Rechtsanwalt,
- KIA Motors Corporation, by T. Kopp, R. Polley and W. Holzapfel, Rechtsanwälte,
- the European Commission, by M. Huttunen, J. Hradil and A.C. Becker, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

- 1 The request for a preliminary ruling concerns the interpretation of the first sentence of Article 6(1) 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).
- 2 The request has been made in proceedings between Gesamtverband Autoteile-Handel eV ('Gesamtverband'), a German trade association representing wholesalers of motor vehicle parts, and KIA Motors Corporation ('KIA'), a South Korean motor vehicle manufacturer, concerning that manufacturer's refusal to provide independent operators with access to vehicle repair and maintenance information in a form amenable to onward electronic processing.

Legal context

EU law

Regulation No 715/2007

- 3 Recital 8 of Regulation No 715/2007 reads:

'Unrestricted access to vehicle repair information, via a standardised format which can be used to retrieve the technical information, and effective competition on the market for vehicle repair and maintenance information services are necessary to improve the functioning of the internal market, particularly as regards the free movement of goods, freedom of establishment and freedom to provide services. A great proportion of such information is related to on-board diagnostic (OBD) systems and their interaction with other vehicle systems. It is appropriate to lay down technical specifications that manufacturers' websites should follow, along with targeted measures to ensure reasonable access for small and medium-sized enterprises (SMEs). Common standards agreed with the involvement of stakeholders, such as the [Organisation for the Advancement of Structured Information Standards (OASIS)] format, can facilitate the exchange of information between manufacturers and service providers. It is therefore appropriate to initially require the use of the technical specifications of the OASIS format and to ask the Commission to request CEN/ISO (European Committee for Standardisation/International Organisation for Standardisation) to further develop this format into a standard with a view to replacing the OASIS format in due course.'

- 4 According to recital 27 of that regulation, its objectives include 'the realisation of the internal market through the introduction of common technical requirements concerning emissions from motor vehicles and guaranteed access to vehicle repair and maintenance information for independent operators on the same basis as for authorised dealers and repairers'.
- 5 Article 3 of that regulation, entitled 'Definitions', provides in points 14 and 15:

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

...

- (14) “repair and maintenance information” means all information required for diagnosis, servicing, inspection, periodic monitoring, repair, re-programming or re-initialising of the vehicle and which the manufacturers provide for their authorised dealers and repairers, including all subsequent amendments and supplements to such information. This information includes all information required for fitting parts or equipment on vehicles;
- (15) “independent operator” means undertakings other than authorised dealers and repairers which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular repairers, manufacturers or distributors of repair equipment, tools or spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training for installers, manufacturers and repairers of equipment for alternative fuel vehicles.’

- 6 Paragraph 1 of Article 6 of Regulation No 715/2007, which is entitled ‘Manufacturers’ obligations’, provides:

‘Manufacturers shall provide unrestricted and standardised access to vehicle repair and maintenance information to independent operators through websites using a standardised format in a readily accessible and prompt manner, and in a manner which is non-discriminatory compared to the provision given or access granted to authorised dealers and repairers. With a view to facilitating the achievement of this objective, the information shall be submitted in a consistent manner, initially in accordance with the technical requirements of the OASIS format ...’

- 7 Article 8 of that regulation, entitled ‘Implementing measures’, provides:

‘The measures necessary for implementation of Articles 6 and 7, which are designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3). This shall include the definition and updating of technical specifications relating to the way in which OBD and vehicle repair and maintenance information shall be provided, with special attention being paid to the specific needs of SMEs.’

Regulation No 692/2008

- 8 Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation No 715/2007 (OJ 2008 L 199, p. 1) was amended by Commission Regulation (EU) No 566/2011 of 8 June 2011 (OJ 2011 L 158, p. 1.) (‘Regulation No 692/2008’) for the purposes, inter alia, of strengthening the procedures for the exchange of vehicle component data between vehicle manufacturers and independent operators.
- 9 Paragraph 1 of Article 13 of Regulation No 692/2008, which is entitled ‘Access to vehicle OBD and vehicle repair and maintenance information’, provides:

‘Manufacturers shall put in place the necessary arrangements and procedures, in accordance with Articles 6 and 7 of Regulation [No 715/2007] and Annex XIV [to] this regulation, to ensure that ... vehicle repair and maintenance information is readily accessible.’

- 10 Point 2.1 of Annex XIV to Regulation No 692/2008 is worded as follows:

‘... vehicle repair and maintenance information available through websites shall follow the technical specifications of OASIS Document SC2-D5, Format of Automotive Repair Information ... and of Sections 3.2, 3.5, (excluding 3.5.2), 3.6, 3.7 and 3.8 of OASIS Document SC1-D2, Autorepair Requirements Specification ..., using only open text and graphic formats or formats which can be

viewed and printed using only standard software plug-ins that are freely available, easy to install, and which run under computer operating systems commonly in use. ... Those requiring the right to duplicate or re-publish the information should negotiate directly with the manufacturer concerned. ...

Information on all parts of the vehicle, with which the vehicle, as identified by the vehicle identification number (VIN) and any additional criteria such as wheelbase, engine output, trim level or options, is equipped by the vehicle manufacturer and which can be replaced by spare parts offered by the vehicle manufacturer to its authorised repairers or dealers or third parties by means of reference to original equipment (OE) parts number, shall be made available in a database easily accessible to independent operators.

This database shall comprise the VIN, OE parts numbers, OE naming of the parts, validity attributes (valid-from and valid-to dates), fitting attributes and, where applicable, structuring characteristics.

The information on the database shall be regularly updated. The updates shall include in particular all modifications to individual vehicles after their production if this information is available to authorised dealers.'

Regulation No 566/2011

- 11 Recital 12 of Regulation No 566/2011 is worded as follows:

'In order to ensure effective competition on the market for vehicle repair and maintenance information services, and in order to clarify that the information concerned also covers information which needs to be provided to independent operators other than repairers, so as to ensure that the independent vehicle repair and maintenance market as a whole can compete with authorised dealers, regardless of whether the vehicle manufacturer gives such information to authorised dealers and repairers directly, further clarifications with regard to the details of the information to be provided under Regulation [No 715/2007] are necessary.'

German law

- 12 It is apparent from the order for reference that Gesamtverband alleges an infringement of certain provisions of the Gesetz gegen den unlauteren Wettbewerb (Law against unfair competition), both in the version in force up to 10 December 2015 ('the old version of the UWG') and in the version in force since that date ('the new version of the UWG').

- 13 Paragraph 4.11 of the old version of the UWG provided:

'A person shall be regarded as acting unfairly in particular where he

...

11. infringes a statutory provision that is also intended to regulate market conduct in the interest of market participants.'

- 14 That provision was replaced, in the new version of the UWG, by Paragraph 3a thereof, which provides:

'A person shall be regarded as acting unfairly where he infringes a statutory provision that is also intended to regulate market conduct in the interest of market participants and that infringement is liable to have a significantly adverse effect on the interests of consumers, other market participants or competitors.'

- 15 The first sentence of Paragraph 8(1) of the UWG, both in the old and the new versions, allows an action to be brought for an injunction requiring a person who engages in an unlawful commercial practice under Paragraphs 3 and 7 of that law to cease and desist and, in the event of recurrence, a prohibition order. Under Paragraph 3(1) of the old version of the UWG, unfair commercial practices are unlawful if they are liable to have a perceptibly adverse effect on the interests of competitors, consumers or other market participants. Under Paragraph 3(1) of the new version of the UWG, unfair commercial practices are unlawful.

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

- 16 Gesamtverband and the independent operators who are members of it have, for vehicles marketed by KIA, read-only access to a database in which repair and maintenance information for those vehicles within the meaning of Article 3(14) of Regulation No 715/2007 is stored.
- 17 Gesamtverband requested KIA to also provide both it and its members with information from the database in a form amenable to the onward electronic processing of that information.
- 18 Gesamtverband subsequently brought an action before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany) requesting it to order KIA to provide it and its members with that information in the requested form. That court found against KIA in accordance with the form of order sought by Gesamtverband. KIA appealed against that first-instance judgment to the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany), which held that Article 6(1) of Regulation No 715/2007 does not require KIA to grant Gesamtverband and its members access to that information in a form amenable to the onward electronic processing of that information. It ruled that, for independent operators, solely read-only access to that information had to be ensured, as that provision did not constitute discrimination between those operators, on the one hand, and the dealers and repairers contracted to KIA, on the other. Gesamtverband brought an appeal on a point of law (*Revision*) before the referring court, the Bundesgerichtshof (Federal Court of Justice, Germany), against the judgment delivered on appeal.
- 19 The referring court considers that the outcome of the proceedings before it depends on the answer to the question whether the way in which KIA chose to make the information at issue available to independent operators is consistent with the first sentence of Article 6(1) of Regulation No 715/2007 or whether, on the contrary, that provision requires such information to be provided in a form that is amenable to onward electronic processing.
- 20 According to the referring court, even if access to vehicle repair and maintenance information in a form amenable to onward electronic processing by independent operators could have a positive impact on the functioning of the internal market and promote effective competition on the market for vehicle repair and maintenance information services, an obligation to make that information available to independent operators in a form amenable to onward electronic processing does not appear to follow from the wording of the first sentence of Article 6(1) of Regulation No 715/2007 or from the reference to the OASIS format in that provision. The referring court also states that, in view of the wording of the first and fourth sentences of the first subparagraph and of the second subparagraph of point 2.1 of Annex XIV to Regulation No 692/2008 and the drafting history of that point 2.1, the first sentence of Article 6(1) of Regulation No 715/2007 could be interpreted as meaning that the manufacturer is not obliged to make the information at issue available in a form amenable to onward electronic processing. Such an interpretation would, moreover, be consistent with the Commission's intention to lay down, in the new Type Approval Framework Regulation, an obligation to make the information at issue available to independent operators in the form of machine-readable datasets amenable to onward electronic processing.

- 21 The referring court adds that the Court of Justice must also clarify the scope of the prohibition of discrimination provided for in the first sentence of Article 6(1) of Regulation No 715/2007 in a situation such as that at issue in the main proceedings, in which an automotive manufacturer opened, for the benefit of authorised dealers and repairers, a further channel for information on the sale of original replacement parts by engaging an information service provider.
- 22 As regards the information channels to which independent repairers have access, the referring court states that KIA makes its original parts catalogue available to the undertaking LexCom, which allows independent repairers to search, on that undertaking's internet portal 'partslink24', for original KIA replacement parts by vehicle identification number. The referring court points out that Gesamtverband did not claim that the vehicle repair and maintenance information included in the information channels to which the dealers and repairers contracted to KIA had access was more extensive or of better quality than that which independent operators could access by using KIA's internet portal.
- 23 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Do manufacturers have to supply the information to be provided to independent operators under the first sentence of Article 6(1) of Regulation No 715/2007 in a form amenable to onward electronic processing?
- (2) Is discrimination against independent operators as prohibited under the first sentence of Article 6(1) of Regulation No 715/2007 present in the case where a manufacturer, by engaging an information service provider, opens a further channel for information on the sale of original replacement parts by authorised dealers and repairers?'

Consideration of the questions referred

The first question

- 24 By its first question, the referring court essentially asks whether the first sentence of Article 6(1) of Regulation No 715/2007 must be interpreted as meaning that automotive manufacturers are required to provide independent operators with access to vehicle repair and maintenance information in a form that is amenable to onward electronic processing.
- 25 It should be recalled that, under that provision, manufacturers are required to provide unrestricted and standardised access to vehicle repair and maintenance information to independent operators through websites using a standardised format in a readily accessible and prompt manner, and in a manner which is non-discriminatory compared to the provision given or access granted to authorised dealers and repairers.
- 26 In that regard, it must be held that the wording of the first sentence of Article 6(1) of Regulation No 715/2007 does not, in itself, make it possible to answer the question posed by the referring court since, first of all, it merely states that the format in which that information has to be made available must be standardised, that specification not making it possible to determine whether that information must be made available merely in read-only access or in a form that is amenable to onward electronic processing.
- 27 It follows both from recital 8 and the second sentence of Article 6(1) of Regulation No 715/2007 and from the first subparagraph of point 2.1 of Annex XIV to Regulation No 692/2008 that the standardised format must be understood as meaning that the information concerned must comply

with the technical requirements of the OASIS format so that the relevant technical information can be retrieved and the exchange of information facilitated. However, it is not apparent from that rule that it requires manufacturers to provide access to the information at issue in a form amenable to onward electronic processing and even less so since both read-only access and a form amenable to onward electronic processing allow the requested technical information to be retrieved, whilst at the same time facilitating exchange.

- 28 Finally, while, according to the wording of the first sentence of Article 6(1) of Regulation No 715/2007, manufacturers are obliged to provide ‘unrestricted ... access’ to vehicle repair and maintenance information, making that information available in read-only access cannot be regarded, contrary to what Gesamtverband and the Commission have maintained, as a restriction on access to that information. Since that provision distinguishes between, on the one hand, the access to be provided, which must be ‘unrestricted’, and, on the other hand, the format in which it must be granted, the absence of restriction refers to the actual content of the information that must be provided to the independent operators and not to the ways in which it is provided.
- 29 Finally, the fact that, pursuant to the first sentence of Article 6(1) of Regulation No 715/2007, the information at issue must be readily and promptly accessible does not mean that it must be accessible in a form that is amenable to onward electronic processing. The same applies with regard to the requirement, resulting from the second sentence of Article 6(1) of Regulation No 715/2007, according to which the information must be presented in a consistent manner, that objective also being ensured by the standardised format.
- 30 However, the Court has consistently held that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, *inter alia*, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 44 and the case-law cited). The origins of a provision of EU law may also provide information relevant to its interpretation (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 47 and the case-law cited).
- 31 With regard, in the first place, to the context in which the first sentence of Article 6(1) of Regulation No 715/2007 occurs, it must be recalled that, first, the first subparagraph of point 2.1 of Annex XIV to Regulation No 692/2008 provides that the independent operator which requires the right to ‘duplicate or re-publish’ the information at issue should negotiate directly with the manufacturer concerned. It follows from this provision that the Commission, to which Article 8 of Regulation No 715/2007 entrusts the responsibility to adopt the measures necessary to implement Article 6 of that regulation, appears itself to have relied on the premise that the first sentence of Article 6(1) of Regulation No 715/2007 requires merely read-only access to the information at issue.
- 32 Second, the second subparagraph of point 2.1 of Annex XIV to Regulation No 692/2008 provides that the vehicle repair and maintenance information is to be made available ‘in a database’ without, however, specifying that access to that information must be provided in a form amenable to onward electronic processing. It follows that the only obligation imposed on the manufacturer by that provision is to create a database. Consequently, the ways in which independent operators can view the information included in such a database, namely the fact that they merely have read-only access to that information or that that information is made available to them in a form that is amenable to onward electronic processing, are not governed by that point 2.1.
- 33 Moreover, it is common ground that, when drafting Regulation No 566/2011, the Commission envisaged modifying point 2.1 of Annex XIV to Regulation No 692/2008 for the purpose of requiring access to the information at issue, or to at least some of it, to be provided in a form amenable to onward electronic processing. Yet that Commission proposal was not included in the final version of Regulation No 566/2011. Since, in recital 12 of Regulation No 566/2011, the Commission stated that ‘further clarifications with regard to the details of the information to be provided under Regulation

[No 715/2007] [were] necessary', it follows that the Commission took the view, on that date, that the first sentence of Article 6(1) of Regulation No 715/2007 did not require the information at issue to be made available in a form that was amenable to onward electronic processing, on the one hand, and that it was not necessary to introduce such an obligation through Regulation No 566/2011, on the other.

- 34 In addition, as regards Gesamtverband's argument that 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/EC (OJ 2018 L 151, p. 1), applicable, under Article 91 thereof, from 1 September 2020, is relevant for the interpretation of the first sentence of Article 6(1) of Regulation No 715/2007, suffice it to note that it was only during the legislative procedure relating to Regulation 2018/858 that the obligation to make vehicle repair and maintenance information available to independent operators in a form amenable to onward electronic processing, which is now included in Article 61(1) of that regulation, was introduced. Thus, such an obligation cannot be regarded as having already been set out in Regulation No 715/2007.
- 35 In the second place, regarding the objectives pursued by Regulation No 715/2007, it follows from recitals 8 and 27 thereof that it intends, by ensuring, in particular, unrestricted access to the information at issue, to realise and improve the functioning of the internal market in such a way as to ensure effective competition both on the market for vehicle repair and maintenance services and on the market for vehicle repair and maintenance information services. That objective also results, in essence, from recital 12 of Regulation No 566/2011.
- 36 In that regard, it must be held that, while the granting of access to the information at issue in such a way as to allow the onward electronic processing of that information would facilitate its use by those operators and, consequently, would contribute to ensuring effective competition on each of those markets and to the proper functioning of the internal market, there is nothing to suggest that those objectives could be achieved only by requiring the automotive manufacturers to provide access to the information at issue in such a format.
- 37 In the light of the foregoing, the answer to the first question is that the first sentence of Article 6(1) of Regulation No 715/2007 must be interpreted as not requiring automotive manufacturers to provide independent operators with access to vehicle repair and maintenance information in a form that is amenable to onward electronic processing.

The second question

- 38 By its second question, the referring court asks whether the first sentence of Article 6(1) of Regulation No 715/2007 must be interpreted as meaning that, for an automotive manufacturer to open, for the benefit of authorised dealers and repairers, a further channel for information on the sale of original replacement parts by engaging an information service provider constitutes access for independent operators that is discriminatory by comparison with the access granted to authorised dealers and repairers within the meaning of that provision.
- 39 In that regard, it must be recalled that it follows from the first sentence of Article 6(1) of Regulation No 715/2007 that the access to the information at issue which is granted to independent operators must not be discriminatory by comparison with the access granted to authorised dealers and repairers in that the latter must not be placed in a more advantageous position both in terms of the content of the information made available and of the ways in which that information is accessed.

- 40 In the main proceedings, Gesamtverband submits that independent repairers who carry out a search on the 'partslink24' website of the undertaking LexCom are able to find, as regards the replacement parts to be used for vehicles of the KIA brand, only original replacement parts from KIA's authorised dealers, a situation which is liable to constitute an advantage for the latter. However, this does not constitute discrimination within the meaning of the first sentence of Article 6(1) of Regulation No 715/2007, which refers only to the access to the information at issue granted to independent operators, on the one hand, and to authorised dealers and repairers, on the other. Yet it is apparent from the explanations provided by the referring court that Gesamtverband has not submitted that the dealers and repairers contracted to KIA have access, by using LexCom's internet portal, to more extensive or better vehicle repair and maintenance information than that which independent operators could access by using KIA's internet portal.
- 41 In the light of the foregoing, the answer to the second question is that the first sentence of Article 6(1) of Regulation No 715/2007 must be interpreted as meaning that, for an automotive manufacturer to open, for the benefit of authorised dealers and repairers, a further channel for information on the sale of original replacement parts by authorised dealers and repairers by engaging an information service provider does not constitute access for independent operators that is discriminatory by comparison with the access granted to authorised dealers and repairers, within the meaning of that provision, since the independent operators also have access to vehicle repair and maintenance information that is non-discriminatory with regard to the content provided and the access granted to authorised dealers and repairers.

Costs

- 42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Second Chamber) hereby rules:

1. **The first sentence of Article 6(1) 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 not requiring automotive manufacturers to provide independent operators with access to vehicle repair and maintenance information in a form that is amenable to onward electronic processing.**
2. **The first sentence of Article 6(1) of Regulation No 715/2007 must be interpreted as meaning that, for an automotive manufacturer to open, for the benefit of authorised dealers and repairers, a further channel for information on the sale of original replacement parts by authorised dealers and repairers by engaging an information service provider does not constitute access for independent operators that is discriminatory by comparison with the access granted to authorised dealers and repairers, within the meaning of that provision, since the independent operators also have access to vehicle repair and maintenance information that is non-discriminatory with regard to the content provided and the access granted to authorised dealers and repairers.**

[Signatures]