



20.2.2024

## NOTICE TO MEMBERS

**Subject: Petition No 1107/2020 by D. H. (German) on the consequences of the diesel scandal for his diesel vehicle and the assertion of his rights**

### 1. Summary of petition

The petitioner states that he purchased a Ford diesel vehicle in 2011 which complied with the Euro 5 standard, and which he therefore believed to be environmentally friendly. He claims that the value of the vehicle has plummeted since the diesel scandal was uncovered, and that inner-city bans on diesel vehicles are to be expected. He regards the rejection of all liability by Ford (the seller/manufacturer) as fraud, and bemoans the lack of political action. He therefore calls for long-overdue legal regulations to be adopted that enable the owners of the vehicles affected by this diesel scandal to take effective steps against the manufacturers.

### 2. Admissibility

Declared admissible on 21 January 2021. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 16 August 2021

The petition concerns a consumer who purchased a Ford diesel vehicle in 2011, which turned out to contain a defeat device, making the vehicle more polluting than advertised. The practices in question could amount to a breach of different EU and national laws. The petitioner is advised to seek further information about the applicable legal rights and relevant expiry periods at national level with consumer protection bodies, such as Verbraucherzentrale<sup>1</sup>.

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<sup>1</sup> Verbraucherzentrale, Diesel-Abgasskandal: Unsere Antworten auf häufige Fragen (24.8.2020), <https://www.verbraucherzentrale.de/wissen/vertraege-reklamation/kundenrechte/dieselabgasskandal-unsere-antworten-auf-haeufige-fragen-12260>

In the area of EU type approval legislation, the illegality of defeat devices was recently confirmed in the ruling of the Court of Justice of the European Union (CJEU) of 17 December 2020 in case C-693/18<sup>2</sup>. While this does not imply that consumers affected by this violation are automatically entitled to compensation under national laws, it can strengthen their claims at national level.

In the area of EU consumer and marketing law, the Unfair Commercial Practices Directive 2005/29/EC protects consumers from unfair business-to-consumer practices that harm their economic interests<sup>3</sup>. For example, the practice in question could raise concerns under Article 5 (practice contrary to professional diligence), Article 6 (providing consumers with misleading information about the main characteristics of the product) and – especially in view of the CJEU ruling C-693/18 – Annex I point no. 4 (claiming that a product has been approved by a public body without complying with the terms of the approval). According to Article 36 (1) in conjunction with the definition in Article 3 (5) of Regulation (EU) 2018/858<sup>4</sup>, manufacturers are under the obligation to issue a certificate of conformity stating that the sold vehicle complies with all regulatory acts that were applicable at the time of production. This includes the prohibition to use a defeat device as formulated by Article 5 (2) of Regulation (EC) 715/2007<sup>5</sup>. Manufacturers selling vehicles with an illegal defeat device could in consequence be in breach of the Unfair Commercial Practices Directive.

However, the enforcement of the Directive lies within the remit of national courts and enforcement authorities, and depends on the factual evidence of the individual case.

As regards compensation for harm incurred because of a breach of Directive 2005/29/EC, the EU recently adopted amendments to this Directive establishing that victims of unfair commercial practices should have access to proportionate and effective remedies, such as compensation for damage suffered<sup>6</sup>. Member States may determine the conditions for the application and effects of those remedies. These amendments will become applicable from 28 May 2022.

Furthermore, the EU recently adopted Directive 2020/1828 on representative actions, which provides for Member States to adopt a mechanism that enables qualified entities to seek redress measures, on behalf of the affected consumers<sup>7</sup>. Although type approval rules have not been

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<sup>2</sup> <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:62018CJ0693&from=en>

<sup>3</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ L 149, 11.6.2005, p. 22–39.

<sup>4</sup> 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 (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC, OJ L 151, 14.6.2018, p. 1-218.

<sup>5</sup> 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 L 171, 29.6.2007, p. 1-16.

<sup>6</sup> Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, p. 7–28.

<sup>7</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on

included in Annex I, the use of an illegal defeat device could be an unfair commercial practice that would allow such representative actions to claim compensation for victims of such unfair commercial practices. Member States must apply the measures transposing the Directive from 25 June 2023.

## Conclusion

In the area of EU consumer law, the EU has recently taken action to introduce a right to civil remedies for consumers that have been victims of unfair commercial practices. Furthermore, the EU has introduced a new mechanism of representative actions, which improves the private enforcement of consumer rights. It remains to the facts of the individual case whether the legal requirements for such actions are fulfilled. The enforcement of EU consumer law is within the remit of national courts and enforcement authorities. Member States may take further action to further improve the legal standing and rights of consumers at national level.

### **4. REV Commission reply, received on 20 February 2024**

The petition concerns a consumer who purchased a Ford diesel vehicle in 2011, which turned out to contain a defeat device, making the vehicle more polluting than advertised. The practices in question could amount to a breach of different EU and national laws. The petitioner is advised to seek further information about the applicable legal rights and relevant expiry periods at national level with consumer protection bodies, such as Verbraucherzentrale<sup>8</sup>.

In the area of EU type approval legislation, the illegality of defeat devices is clearly stated in Article 5 (1) of Regulation (EC) 715/2007 and was recently confirmed in the ruling of the Court of Justice of the European Union (CJEU) of 17 December 2020 in case C-693/18<sup>9</sup>. However, to give a basis for possible compensation claims, it is necessary that the existence of an illegal defeat device must be established. While this does not imply that consumers affected by this violation are automatically entitled to compensation under national laws, it can strengthen their claims at national level.

In the area of EU consumer and marketing law, the Unfair Commercial Practices Directive 2005/29/EC protects consumers from unfair business-to-consumer practices that harm their economic interests<sup>10</sup>. For example, the problem in question could raise concerns under Article 5 (practice contrary to professional diligence), Article 6 (providing consumers with misleading information about the main characteristics of the product) and – especially in view of the CJEU ruling C-693/18 – Annex I point no. 4 (claiming that a product has been approved by a public body without complying with the terms of the approval). According to Article 36 (1) in

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representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1–27.

<sup>8</sup> Verbraucherzentrale, Diesel-Abgasskandal: Unsere Antworten auf häufige Fragen (24.8.2020), <https://www.verbraucherzentrale.de/wissen/vertraege-reklamation/kundenrechte/dieselabgasskandal-unsere-antworten-auf-haeufige-fragen-12260>

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:62018CJ0693&from=en>

<sup>10</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ L 149, 11.6.2005, p. 22–39.

conjunction with the definition in Article 3 (5) of Regulation (EU) 2018/858<sup>11</sup>, manufacturers are under the obligation to issue a certificate of conformity stating that the sold vehicle complies with all regulatory acts that were applicable at the time of production. This includes the prohibition to use a defeat device by Article 5 (2) of Regulation (EC) 715/2007<sup>12</sup>. Consequently, manufacturers marketing cars as being compliant with the relevant approval scheme whilst that not being the case due to the illegal defeat device could be in breach of the Unfair Commercial Practices Directive.

The enforcement of Directive 2005/29/EC lies within the remit of national courts and enforcement authorities and depends on the factual circumstances of the individual case.

The EU recently adopted Directive (EU) 2019/2161 that amended, amongst others, Directive 2005/29/EC establishing that victims of unfair commercial practices should have access to proportionate and effective remedies, such as compensation for damage suffered<sup>13</sup>. Member States may determine the conditions for the application and effects of those remedies. Without prejudice to any pre-existing rights to civil remedies under national law, Member States must provide the consumers with the right to remedies in respect of unfair commercial practices that occurred after the date of application of Directive (EU) 2019/2161, i.e., 28 May 2022.

Furthermore, the EU recently adopted Directive 2020/1828 on representative actions, which provides for Member States to adopt a mechanism that enables qualified entities to seek redress measures, on behalf of the affected consumers<sup>14</sup>. Although type approval rules have not been included in Annex I enumerating the EU laws covered by the scope of application of the Directive, the use of an illegal defeat device could be an unfair commercial practice that would allow such representative actions to claim compensation for victims of such unfair commercial practices. Please find more information about this Directive on the Commission [website on the Representative Actions Directive](#).

Member States had to apply the measures transposing the Directive from 25 June 2023. Germany has already notified the European Commission about the full transposition of the Directive. These measures therefore already apply in Germany. The information on the designated qualified entities are available on the [website of the Federal Office of Justice](#).

## Conclusion

In the area of EU consumer law, the EU has recently introduced a right to civil remedies for consumers that have been victims of unfair commercial practices. Furthermore, the EU has introduced a new mechanism of representative actions, which improves the private enforcement of consumer rights. It remains for the national courts and competent authorities to assess the

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<sup>11</sup> 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 (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC, OJ L 151, 14.6.2018, p. 1-218.

<sup>12</sup> 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 L 171, 29.6.2007, p. 1-16.

<sup>13</sup> Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, p. 7-28.

<sup>14</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1-27.

facts of the individual cases and establish whether the legal requirements for such actions are fulfilled. The enforcement of EU consumer law is within the remit of national courts and enforcement authorities.