

EU legal advisor: Diesel software faces strict limits

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A top European Union legal adviser said Thursday that software installed in Volkswagen cars to alter the amount of pollutants coming out of their exhaust pipes in hot or cold weather and at high altitude doesn't conform to the 27-nation bloc's laws unless it prevents dangerous sudden engine damage.

The case arose when Austrian courts asked the European Court of Justice to rule on whether the software made by Volkswagen, which also includes Porsche, was permitted and not a "defeat device" used to cheat on car emissions tests.

In a legal opinion for the Luxembourg-based ECJ, European Court of Justice, Advocate General Athanasios Rantos said that "the software at issue reduces the effectiveness of the emission control system in normal vehicle operation and use, with the result that it constitutes a 'defeat device.'"

Rantos said it would not be such a device only if it prevents sudden engine damage that could not be avoided through routine maintenance. He said it would be up to national courts to decide if this is the case.

His legal opinion is not binding on the ECJ, but Europe's top court follows such advice in most cases.

The VW software reduces the purification of exhaust gases, chiefly nitrogen oxide, when the weather is colder than 15 C (59 F) or climbs above 33 C (91.4 F), as well as when the vehicle is driven at an altitude of 1,000 meters (3,280 feet) or more.

Rantos said that the temperature window when the exhaust fumes were being cleaned "is not representative of real driving conditions" because temperatures often drop below 15 C (59 F) in Austria and Germany, where cars are also routinely driven at higher altitude.

The automaker faced a diesel emissions scandal after the U.S. Environmental Protection Agency in 2015 found that the company had installed special software to rig U.S. emissions tests for its latest "clean diesel" vehicles. Volkswagen has apologized and paid more than 31 billion euros (\$36 billion) in fines, recall costs and compensation to car owners.

The German car manufacturer admitted to fitting millions of cars with the device and it turned out that the use of the cheating software hadn't been isolated to the U.S. In Europe, it had argued that the software could be justified by the fact that it helps protect the engine over time.

This story was first published on September 23, 2021. It was updated on September 24, 2021 to add that software in Volkswagen cars to alter pollutant emissions in hot or cold weather doesn't conform to EU law unless it prevents sudden damage to the engine in case of the failure of certain components, and that damage can't be prevented by regular maintenance.

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