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EUROPEAN CONSUMERS' PROTECTION IN DIESELGATE CASE: QUO VADIS, SERBIA?[3]

Abstract: *Digitalization has entered almost all branches of contemporary industry, including the automotive industry. The world's largest motor vehicle manufacturers are racing to improve the standards of electronic equipment intended both to improve vehicle performance and to meet (and even dictate) consumer needs. Part of the innovation related to vehicle performance is directly related to the obligation to protect the environment. During 2015 and 2016, thanks to the control performed by the US Environmental Protection Agency (EPA), the famous Dieselgate scandal came to the public eye. On the global scale, it raised the issue of consumer protection for certain Volkswagen diesel vehicles, including recuperation of the affected vehicles from consumers, compensation for damage, issuing an extended emissions warranty, etc. Diesel engines in these vehicles turned out to be equipped with a defeat software for controlling harmful exhaust emissions. In the meantime, it was discovered that the faulty software was used not only by Volkswagen but also by many other manufacturers (Audi, Seat, Skoda, Volvo, Citroen, Hyundai, Renault). When collective consumer*

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[3] This paper is based on the authors' presentation given under the same title at the Scientific Conference "*Digitalization and Law*", held at the Faculty of Law, University of Niš, on 23-24 April 2021. It is slightly modified and updated with reference to new cases brought before the CJEU involving other car manufactures as well as the inadequate application of the Serbian Rulebook on the technical inspection of the vehicles, particularly in terms of the pollutant emissions control which was officially announced for July 2021 (after the initial presentation of this topic at the Conference). This paper is a result of a project funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, the Contract No. 451-03-65/2024-03/200120 dated 5 February 2024.

protection actions started being filed with the courts in the EU countries, the Court of Justice (CJEU) on several occasions ruled on important preliminary issues, including the interpretation of the concepts of "a defective device", "emission control system", and "place of the harmful event". In 2020, in his opinion on the interpretation of the place of the harmful event in relation to the Brussels I recast Regulation, the EU Ombudsman referred to the problem of determining the circle of persons who must be considered direct victims, as well as the dilemma whether it includes consumers who are not in a contractual relationship with Volkswagen. Considering the ongoing European reflections of the Dieselgate affair, and the traditional popularity of Volkswagen vehicles in Serbia, the authors of the paper examine the effectiveness of consumer protection in Serbia, from the perspective of Commercial Law and Private international Law.

Keywords: *Dieselgate, consumer protection, pollutant emissions, defeat device, damage compensation, collective redress, place where the harmful event occurred or may occur.*

1. Introduction

The *Dieselgate* affair (less frequently referred to as the *Emissiongate)* emerged almost ten years ago. What seemed to be a (time)limited controversy over illegal use of defeat software in certain diesel-motor vehicles (mostly cars), believed at that time to be manufactured only by the Volkswagen Group (hereinafter: VW), turned into a saga with still relevant and far-reaching consequences regarding not only the consumers' protection but, consequently, the environment's protection as well. Let us present the key facts.

In September 2015, the *Dieselgate* scandal initially broke in the USA, where Environmental Protection Agency (EPA) has disclosed the software malfunction of an diesel engine aimed at controlling of the nitrogen oxide compounds emissions (hereinafter: pollutant emissions) when the vehicle is in motion. At that time, the EPA found that the car computer (the engine's control unit) was actually turned off during when the vehicle was in motion under normal driving conditions. In fact, this control unit should have given instructions to the engine to run in a way which would keep the levels of nitrogen oxide within the legally prescribed limits. In other words, the software was deliberately tuned by the VW to deceive the control testing of the vehicle's compliance with the allowed levels of pollutant emissions. Yet, the real levels of the pollutant emissions were extremely high - even 10-40 times higher (MacDougald, 2017: 83). In the automotive industry, defeat devices are prohibited under the United States environmental laws and regulations (MacDougald, 2017: 84).

The EPA also revealed that the Volkswagen AG (VW) admitted to installing undisclosed software in almost 500,000 diesel automobiles (MacDougald, 2017: 83). This software-fraud was aimed at obtaining an EU type approval which was mandatory for the lawful sale of the vehicles in the EU. In the USA, the VW was sentenced to pay the fine of 2,8 billion US dollars, along with various other substantial payments (Bertelli, 2021: 620-626). From the USA, the *Dieselgate* spread worldwide. For example, the *Dieselgate's* waves hit Australia, initiating mass litigation and collective redress of around 100,000 VW owners before the Australian Federal Court.[4] The court settlement of up to 87 millions of Australian dollars was approved in April 2020, but, given the large number of claimants, the total amount reached the impressive number of 125 millions.[5]

In the EU, in 2016, the VW revealed to the members of the European Parliament the shocking number of vehicles equipped with the defeat device which were sold in the EU: about eight million vehicles sold in the EU as compared to around eleven million vehicles sold worldwide (BEUC-European Consumer Organization, 2022: 3). The scandal revealed the involvement of not only VW in the fraud but also of almost entire automotive industry (Audi, Seat, Skoda, Volvo, Citroen, Hyundai, Renault), via the cartel card rules.[6] In 2017, the European Parliament adopted the Resolution on emission measurements in the automotive sector, which is significant in this case regarding the strong condemnation of commercial practices involving defeat devices in the automotive industry with further consequences to the air pollution.[7]

[4] The collective redress was based on the breach of Australian 2010 Competition and Consumer Act. The Act was amended in 2024 (Act No. 38, 2024); available at https://www.legislation.gov.au/C2004A00109/latest/text (last accessed on 5.11.2024). In Australia, the consumers in the VW collective redress lawsuit were represented by the Australian Competition & Consumer Commission (ACCC). The VW appealed to the Full Court of the Federal Court in 2020. The appeal was dismissed in April 2021. The VW filed for special leave to appeal to the High Court in May 2021, but the legal recourse was also dismissed. See for details Australian Competition & Consumer Commission (2024), https://www.accc.gov.au/media-release/high-court-denies-volkswagen-leave-to-appeal-125-million-penalty, (last accessed on 5.11.2024).

[5] Australian Competition & Consumer Commission (ACCC) release, https://www.accc.gov.au/media-release/high-court-denies-volkswagen-leave-to-appeal-125-million-penalty

[6] European Commission Press Release on Antitrust: Commission fines car manufacturers, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581

[7] European Parliament Resolution of 27 October 2015 on emission measurements in the automotive sector (2015/2865(RSP)), *OJ C 355,* 20.10.2017. As it is emphasized in the Resolution, the European Parliament "*Strongly condemns any fraud by automobile manufacturers and urges companies to take full responsibility for their actions and to cooperate fully with the authorities in any investigations; deplores the fact that millions of consumers have been*

It further led to class action lawsuits in several EU Member States, with different outcomes, mostly depending on the differences related to the possibility of instituting mass litigation before national courts, which ultimately revealed the drawbacks of collective redress in the EU Member States. It also triggered the CJEU rulings on preliminary issues in several cases.

Bearing in mind that the *Dieselgate* is not resolved yet and considering the numbers of proceedings before national courts in the EU Member States, as well as the page limit of this paper, the authors will discuss some highlights of this saga. First, we examine the most relevant CJEU preliminary rulings tackling the interpretation of the "defeat device" and point to some EU Private International Law aspects (interpretation of the "place where the harmful event occur or may occur"). As already noted, the VW is a e kind of a (sacred) "totem in the eyes of consumers" (Arbour, 2022: 670), which may also apply to consumers in the Republic of Serbia. Therefore, we discuss the main shortcomings of the consumer protection in Serbia in terms of the *Dieselgate* case. Due to legal constraints, consumers in Serbia are most unlikely to initiate a collective redress lawsuit, which ultimately leads to consumers' apathy.

2. The CJEU interpretation of the "defeat device" in terms of motor vehicle

In 2018, *Tribunal de grande instance de Paris* requested the CJEU preliminary ruling in case C-693/18[8] with regard to the interpretation of "defeat device" in terms of Article 5(2) of Regulation 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles and on access to vehicle repair and maintenance information (hereinafter: Regulation 715/2007).[9] Previously, the criminal proceedings against the

deceived and misled by false information regarding emissions from their vehicles" (under para. 1); thus expressly mentioning the VW and the number of acknowledged defeat devices vehicles sold in the EU ("*whereas VW has admitted to having installed defeat devices in at least 11 million of the diesel vehicles it has sold worldwide; whereas VW has announced that it will recall 8,5 million VW diesel vehicles in the EU following a decision of the German Federal Motor Transport Authority*", para. O).

[8] C-693/18, Judgment of the Court (Second Chamber) of 17 December 2020, ECLI:EU:C:2020:1040.

[9] 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 of 29.6.2007. A year later, the EU has adopted Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access

car manufacturer had been initiated before the Tribunal de grande instance de Paris for placing motor vehicles equipped with fraud-software on the French market. This defeat software was capable of adapting the controlling system of pollutant gas emissions to the detected driving conditions in order to pass the testing in the approval procedure.[10] The Tribunal in Paris engaged an expert to analyse the results of the tests conducted by the local administrative authority in order to explain how the software operated and its effects on the increase in pollutant emissions by the vehicles equipped with that software.[11] The expert stated that the vehicles were fitted with a device which detected the approval procedure, modified the operation of the exhaust gas recirculation system for the purposes of that approval, and reduced pollutant emissions for the purposes of that procedure. In fact, the emission control systems of those vehicles had been manipulated in order to increase the opening of the EGR valve[12] when an approval phase was detected.[13] The reduction in the opening of that valve under normal conditions of use of those vehicles reduced the effectiveness of the emission control system and resulted in an increase in pollutant emissions. However, if the operation of the EGR valve in normal conditions of use had been identical to its operation during the approval procedures, the vehicles concerned would have produced much less pollutant emissions.[14] Without that manipulation,

to vehicle repair and maintenance information, *OJ L* 199 of 28.7.2008. The new Regulation lays down measures for the implementation of Articles 4, 5 and 8 of Regulation (EC) No 715/2007 (Article 1 of the Regulation 692/2008). Eventually, the Regulation 692/2008 was repealed by the Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council 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, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Commission Regulation (EC) No 692/2008, *OJ L* 175, 07/07/2017.

[10] Arts. 34 para. 1 and 35 para. 1 (including Annex IV) of the 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 (*OJ L* 263 of 9.10.2007*)*, as amended by Commission Regulation (EC) No 1060/2008 of 7 October 2008 (*OJ L* 292 of 31.10.2008*)* referred to the UNECE Regulation No. 83 (2006).

[11] Para. 39 of the CJEU Judgment of 17 December 2020.

[12] The EGR valve is an abbreviation standing for the Exhaust Gas Recirculation valve. It is a crucial component in modern engines with primary function to reduce harmful nitrogen oxide emissions.

[13] Para. 40 of the CJEU Judgment of 17 December 2020.

[14] Para. 93 of the CJEU Judgment of 17 December 2020.

the vehicles concerned would not have been approved. In 2020, the CJEU in its judgment has ruled:

"... a device which detects any parameter related to the conduct of the approval procedures...in order to improve the performance of the emission control system during those procedures, and thus obtain approval of the vehicle, constitutes a 'defeat device',..., even if such an improvement may also be observed, occasionally, under normal conditions of vehicle use."

It should be noted that the notion of the defeat device envisaged in the Regulation 715/2007 heavily relies on the autonomous characterization introduced in the international law, more precisely, in the Regulation No 83 of the Economic Commission for Europe of the United Nations (hereinafter: UNECE Regulation No. 83).[15] The UNECE Regulation No. 83 (2006) defines the defeat device as "...any element of design which senses temperature, vehicle speed, engine rotational speed, 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."[16] Similarly, Regulation 715/2007 prescribes an autonomous notion of defeat device as "...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."[17]

In a crucial subsequent case C-873/19,[18] the CJEU ruled that:

"a defeat device can be justified...only where it is established that that device strictly meets the need to avoid immediate risks of damage or accident to

[15] Regulation No 83 of the Economic Commission for Europe of the United Nations (UNECE) – Uniform provisions concerning the approval of vehicles with regard to the emission of pollutants according to engine fuel requirements, OJ 2006 L 375. The EU expressly refers to this Regulation in Article 3 and Annex II of the Council Decision 97/836/EC of 27 November 1997 with a view to accession by the European Community to the Agreement of the United Nations Economic Commission for Europe concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ('Revised 1958 Agreement'), OJ 1997 L 346.

[16] Para. 2.16 of the UNECE Regulation No. 83.

[17] Article 3 para. 10 of the Regulation 715/2007.

[18] C-873/19, Judgment of the Court (Grand Chamber) 8 November 2022, ECLI:EU:C:2022:857.

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. Furthermore, the 'need' for a defeat device, within the meaning of that provision, exists only where, at the time of the EC type-approval of that device or of the vehicle equipped with it, no other technical solution makes it possible to avoid immediate risks of damage or accident to the engine, which give rise to a specific hazard when driving the vehicle."[19]

This case is of paramount significance regarding consumer's protection within the framework of environment protection. Volkswagen marketed motor vehicles, in particular VW Golf Plus TDI vehicles, which were equipped with a Euro 5 generation EA 189-type diesel engine equipped with a valve for exhaust gas recirculation (EGR valve) in order to control and reduce pollutant emissions.[20] Since the software was decisive, the VW did not notify the Federal Motor Transport Authority, Germany (KBA) of the existence of such software in the EC type-approval procedure for those vehicles.[21] The KBA ordered Volkswagen to remove that device and to take the necessary measures to ensure that the vehicles complied with the national legislation concerned and the EU legislation.[22] The VW updated the software, but the pollutant emission purification by that recirculation system was fully effective only if the external temperature was above 15 degrees Celsius ("temperature window").[23] The KBA granted authorisation for the software and stated that the defeat devices still present in the vehicles concerned were lawful.[24] Consequently, *Deutsche Umwelthilfe* brought an action before the Administrative Court of Schleswig-Holstein in Germany (*Schleswig-Holsteinisches Verwaltungsgericht*), seeking annulment of the contested decision since the vehicles were still equipped with an unlawful defeat device, within the meaning of Article 5(2) of Regulation No 715/2007 (given that device becomes active when the average temperatures recorded in Germany are reached).[25] So, the question for the CJEU preliminary ruling concerned the interpretation of Article 5(2) of Regulation 715/2007 and clarification whether a defeat device within the meaning of Article 3(10) of that regulation may be

[19] C-873/19, Judgment of the Court (Grand Chamber) 8 November 2022.

[20] C-873/19, para. 24 of Judgment of the Court (Grand Chamber) 8 November 2022.

[21] C-873/19, para. 26 of Judgment of the Court (Grand Chamber) 8 November 2022.

[22] C-873/19, para. 25 of Judgment of the Court (Grand Chamber) 8 November 2022.

[23] C-873/19, para. 27 of Judgment of the Court (Grand Chamber) 8 November 2022.

[24] C-873/19, para. 29 of Judgment of the Court (Grand Chamber) 8 November 2022.

[25] C-873/19, para. 31 of Judgment of the Court (Grand Chamber) 8 November 2022.

allowed under Article 5(2)(a) of that Regulation as an exception making the defeat device lawful. Considering that the software makes pollutant emission recirculation fully operational during driving only if outside temperatures are within the "temperature window", one can observe that the conditions set in the ruling of the CJEU are not met in this case. Thus, as noted in the legal theory, the reasonable expectations of the consumer with regard to the nature of the goods and taking into account the public statements on its specific characteristics by (or on behalf of) the seller must prevail over the absence of limitations in the use of the involved cars (Bertelli, 2023: 1227).

Another cornerstone in terms of consumers protection is the CJEU's ruling in the case 145/20,[26] where the request for a preliminary ruling was has been made in proceedings between DS, on the one hand, and Porsche Inter Auto GmbH & Co. KG and VW, on the other, concerning an application for annulment of a sales contract for a motor vehicle equipped with software reducing the recirculation of the vehicle's pollutant emissions according to the outside temperature detected (the use of "temperature window", again). The request for a preliminary ruling concerns the interpretation of Article 5(2) of Regulation 715/2007 and of Article 2(2)(d) and Article 3(6) of 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.[27] Although this Directive is not longer in force,[28] the CJEU interpretation in this case is still relevant.[29] In that respect, the CJEU ruled "that a lack of conformity consisting of the presence, in a vehicle, of a defeat device, the use of which is prohibited under Article 5(2) of Regulation No 715/2007, is not to be classified as 'minor' even where the consumer would still have purchased that vehicle if he or she had been aware of the existence and operation of that device."[30] The lack of conformity in this case appears as a direct consequence of the violation of a mandatory rule; therefore, its importance cannot be qualified as minor, and objective expectations based on the official certificates makes

[26] C-145/20, Judgment of the Court (Grand Chamber) of 14 July 2022 (request for a preliminary ruling from the Oberster Gerichtshof, Austria)– *DS v Porsche Inter Auto GmbH & Co. KG, Volkswagen AG*, ECLI:EU:C:2022:572.

[27] 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 L* 171, 7.7.1999.

[28] Ammended by the Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, *OJ L* 136, 22/05/2019.

[29] C-145/20, para. 3 of the Judgment of the Court (Grand Chamber) of 14 July 2022.

[30] C-145/20, Judgment of the Court (Grand Chamber) of 14 July 2022.

the subjective expectations of each consumer to the defect totally irrelevant (Bertelli, 2023: 1232).

3. CJEU interpretation of the "place where the harmful event occurred or may occur" under Brussels I recast Regulation - case C-343/19

Several months before the CJEU ruled on the notion of defeat device in C-693/18, the same Court had given its interpretation of the *place where the harmful event occurred or may occur* in case C-343/19 involving the vehicle equipped with the defeat device.[31] The request of the Austrian Regional Court (*Landesgericht Klagenfurt*) for a preliminary ruling concerns the interpretation of Article 7 (2) of the Brussels I recast Regulation[32] to the extent in which the Brussels I recast regulates the international jurisdiction criteria for non-contractual obligation.[33] The original proceeding had been instituted for collective redress between the Austrian Consumer Protection Organization (*Verein für Konsumenteninformation;* hereinafter: the plaintiff or VKI) and Volkswagen (VW), having its registered office in Germany. This mass litigation against the VW tackled its liability for damage arising from the installation of software that manipulates data relating to pollutant emissions in vehicles. The vehicles in question were purchased by Austrian consumers in Austria.[34] The plaintiff stated that the "place where the harmful event occurred or may occur could" (as criteria for direct international jurisdiction envisaged in the Brussels I recast refer to Austria rather than Germany (where the VW has its seat) since the sales contract were concluded in Austria, and the payment of the purchase price and the transfer or delivery of the vehicles in question also took place in Austria.[35] Further on, the case involves initial damage that confers jurisdiction to the Austrian court since the damage includes reduction in the value of the vehicle of each consumer concerned. The damage was sustained at the date of purchase and delivery of the vehicles in Austria.[36] According to the VKI, the conduct of VW took effect for the first time and directly caused damage to the consumers concerned in

[31] C-343/19, Judgment of the Court (First Chamber) of 9 July 2020, ECLI:EU:C:2020:534.

[32] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2012 L 351.

[33] Brussels I recast Regulation covers rather broad cross-border civil and commercial matters regarding the direct international jurisdiction, see Article 1 of the Brussels I recast Regulation.

[34] C-343/19, para. 8 of the Judgment of the Court (First Chamber) of 9 July 2020.

[35] C-343/19, para. 10 of the Judgment of the Court (First Chamber) of 9 July 2020.

[36] Ibid.

Austria. The plaintiff claimed that VW should be ordered to pay over three million EUR and associated costs while being declared liable for all damage that is not yet quantifiable and could occur in the future.[37] In its application, the VKI relied on the fact that the 574 consumers joined their claims in the collective redress proceeding regarding new or used vehicles purchased in Austria before the disclosure of VW's manipulation of gas emissions from those vehicles.[38] The plaintiff argued that those engines were equipped with a defeat device which is unlawful under Regulation 715/2007 because the software manipulates the data relating to those emissions and makes it possible to deceive the controlling tests when measurements of pollutant emissions are being taken, but a significantly higher level of pollutants was actually emitted when the vehicle is in motion.[39] Thus, by using that manipulative software, the VW was able to obtain the type approval envisaged in the EU legislation for vehicles with this type of engine.[40]

In order to bring the lawsuit before the court, the plaintiff relied on Article 7 (2) of the Brussels I recast Regulation which envisages the international jurisdiction criteria for non-contractual obligations*: the place where the harmful event occurred or may occur.* The referring court also commented on the CJEU's previous ruling in the *Universal Music International Holding* case,[41] since this ruling could be understood to be in favour of Germany as the place where the vehicle was bought and the damage occurred.[42]

As repeatedly held by the CJEU in its case-law concerning this provision of the Brussels I (now - recast), the concept of *the place where the harmful event occurred* is intended to cover both the place where the damage occurred and the place of the event giving rise to it, with the result that the defendant may be sued, at the option of the applicant, in the courts for either of those places.[43] The concept of the *place where the harmful event occurred* cannot include every place where the adverse consequences of an event, if the direct damage actually occurred elsewhere. Consequently, the *place where the harmful event*

[37] C-343/19, para. 7 of the Judgment of the Court (First Chamber) of 9 July 2020.

[38] C-343/19, para 8. of the Judgment of the Court (First Chamber) of 9 July 2020.

[39] Ibid.

[40] Ibid.

[41] *Case Universal Music International Holding*, C-12/15, Judgment of the Court (Second Chamber) of 16 June 2016, EU:C:2016:449.

[42] C-343/19, para. 15 of the Judgment of the Court (First Chamber) of 9 July 2020.

[43] As CJEU has already explained in the case *Zuid-Chemie*, C-189/08, Judgment of 16 July 2009, EU:C:2009:475, and in the case *Tibor-Trans*, C-451/18, Judgment of 29 July 2019, EU:C:2019:635.

occurred cannot include the place where the victims have suffered *financial damage* following initial damage arising in another State.[44] When interpreting the corresponding provisions of the Brussels Convention[45] (as the Brussels I recast's first predecessor), the CJEU had already ruled that damage which appears as the indirect consequence of the harm initially suffered by the direct victims of damage and which occurred at a place different from that where the indirect victim subsequently suffered harm cannot establish jurisdiction under *place where the harmful event occurred*.[46]

In the present case, the disclosure of the manipulative software relating to pollutant emissions made a defective vehicle, so the vehicle now has a lower value.[47] The CJEU concluded that "where vehicles equipped by their manufacturer with software that manipulates data relating to exhaust gas emissions are sold, the damage suffered by the final purchaser is neither indirect nor purely financial and occurs when such a vehicle is purchased from a third party."[48] The CJEU referred to the observation of the European Commission that the claim for damages expressed in euros does not mean that the damage is purely financial.[49] Following this observation, the CJEU considered that this case concerns material damage "resulting from a loss in value of each vehicle concerned and stemming from the fact that, with the disclosure that software which manipulates data relating to exhaust gas emissions was installed, the purchaser received, in return for the payment made to purchase such a vehicle, a vehicle which is defective and, accordingly, has a lower value."[50] Further on, the CJEU explained that when the vehicles originally equipped "with software that manipulates data relating to exhaust gas emissions are sold, the damage suffered by the final purchaser is neither indirect nor purely financial and occurs when such a vehicle is purchased from a third party."[51] Finally, a motor vehicle manufacturer established in a Member State and "engaging in unlawful tampering with vehicles sold in other Member States may reasonably expect to be sued in the courts of those

[44] CJEU has already taken the same standpoint in the case *Marinari,* C-364/93, Judgments of 19 September 1995, EU:C:1995:289 and in the case *Tibor-Trans*.

[45] Article 5(3) of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters *OJ L* 299*,* 31.12.1972.

[46] Case *Dumez France and Tracoba*, C-220/88, Judgment of 11 January 1990, EU:C:1990:8.

[47] C-343/19, paras. 29-31 of the Judgment of the Court (First Chamber) of 9 July 2020.

[48] C-343/19, para. 35 of the Judgment of the Court (First Chamber) of 9 July 2020.

[49] C-343/19, para. 33 of the Judgment of the Court (First Chamber) of 9 July 2020.

[50] C-343/19, para. 34 of the Judgment of the Court (First Chamber) of 9 July 2020.

[51] C-343/19, para. 35 of the Judgment of the Court (First Chamber) of 9 July 2020.

States"[52] - such manufacturer must anticipate that damage may occur at the place where the vehicle in question has been purchased.[53] Finally, the CJEU ruled that the relevant provision of the Brussels I recast on *place where the harmful event occurred* should be interpret in such a way that a manufacturer which unlawfully equipped its vehicles with software manipulating data on exhaust gas emissions in one Member State before those vehicles are purchased from a third party in another Member State could be sued in that latter Member State as a place where the damage occurred.[54]

4. CJEU interpretation in the case C-100/21

Although the Diesel scandal is mostly associated with VW, the most recent CJEU judgment rendered in case of the defeat device (a vehicle) involved the Mercedes-Benz. In the case C-100/21,[55] the request for a preliminary ruling was made in proceedings between QB and Mercedes-Benz Group AG, formerly Daimler AG, concerning the right to compensation and the calculation of the amount of damages which Mercedes-Benz owes to a QB (an individual - consumer) on account of his purchase of a diesel vehicle equipped with manipulated software (also aimed at reducing the recirculation of pollutant gases depending on the outside temperature).[56] The consumer seeks compensation for damage allegedly caused by a "temperature window" (again!). The

[52] The CJEU referred to its previous cases of *Kolassa*, C-375/13, Judgments of 28 January 2015, EU:C:2015:37, and of *Löber,* C-304/17, Judgments of 12 September 2018, EU:C:2018:701.

[53] C-343/19, para. 37 of the Judgment of the Court (First Chamber) of 9 July 2020.

[54] C-343/19, Judgment of the Court (First Chamber) of 9 July 2020.

[55] C-100/21, Judgment of the Court (Grand Chamber), 21 March 2023, ECLI:EU:C:2023:229.

[56] The 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, 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 (OJ 2007 L 171, p. 1), and of the second paragraph of Article 267 TFEU. The Directive 2007/46/EC 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 L* 151, 14.6.2018, with effect from 1 September 2020. However, taking into account the date of the facts of the dispute in the main proceedings, the previous Directive remains applicable.

referring court asked the CJEU to determine whether the Directive 2007/46/EC read in conjunction with the Regulation No 715/2007 protects only the public interest or the interests of individual purchasers of vehicles, as well.

The CJEU stated that the aforesaid Directive requires manufacturers to issue a "certificate of conformity" to the individual purchaser of a vehicle, as an evidence that "a vehicle belonging to the series of the type approved ...complied with all regulatory acts at the time of its production."[57] Consequently, the CJEU concluded that an consumer (purchaser) can reasonably expect that the vehicle complies fully with relevant EU legislation.[58] The CJEU recognized the relevant EU legislation 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."[59]

The CJEU also answered the question whether the infamous "temperature window" falls under a notion of a defeat device within the meaning of the Regulation 715/2007. Similarly, the Court was asked to clarify whether the relevant EU legislation oblige the purchaser of a vehicle to 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 against return and transfer of ownership of the vehicle.

Firstly, with reference to earlier case law, the CJEU stated that a "temperature window" might fall within the definition of defeat device under the Regulation, if none of the exceptions to that prohibitions were met (which should be interpreted strictly, leaving the necessary factual assessments to the referring court). Secondly, the CJEU ruled that the

"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."

Although this ruling leaves many EU law interpretation issues to national courts, the potential implications of this judgement are far-reaching as it

[57] C-100/21, Paras. 80 and 81 of the Judgment of the Court (Grand Chamber), 21 March 2023.

[58] C-100/21, Para. 82 of the Judgment of the Court (Grand Chamber), 21 March 2023.

[59] C-100/21, Judgment of the Court (Grand Chamber), 21 March 2023.

obliges the Member States to *de facto* harmonize the consumer's protection legislation on national law level in such cases.

5. The position of consumers in Serbia in terms of the *Dieselgate* case

In comparison to evolving cases of consumer protection in the EU and worldwide within the never-ending-*Dieselgate* story, the situation in Serbia could almost indicate that nothing important has happened. The defeat vehicles, environment's protection and consumer's right to seek reimbursement do not seem to bother the purchasers of diesel vehicles in Serbia. Pursuant to the data provided in personal communication of the authors with the National Organization for Consumers Protection, there are no registered cases on this matter, nor has any purchaser contacted them for information. In 2015, when the *Dieselgate* emerged, the Traffic Security Agency acknowledged that 7,885 (VW) vehicles could be affected by the scandal, but the actual number could be much higher.[60] Although the Consumers Protection Act (2021)[61] was drafted to correspond to the relevant EU legislation (Jovanović Zattila, 2022: 148-160), there are no cases involving car manufacturers involved in the *Dieselgate* case accused of a deceptive commercial activity envisaged in Article 18 in conjunction with Article 19 § 1 of the Consumers Protection Act (2021).

As it was emphasized in the analyzed CJEU cases, all of the main proceedings were instituted as a mass litigation where the consumers were represented by the relevant consumers protection organization. In a lawsuits initiated by collective redress, a defendant is not confronted with one claimant but either with a representative entity representing the interests of a group of claimants, or with a formal joinder of plaintiffs or a group of individual plaintiffs (Bosters, 2017: 2). In some EU member states, the collective reimbursement of pecuniary damages involves two stages: first, the declaratory judgment on a tort or contractual breach has to be rendered in a mass litigation case; second, that judgment is a legal ground for individual actions in order to establish the causal link and damages (Bosters, 2017: 5). At the level of the EU law, piecemeal legislation on individual issues and enforcement techniques are enacted as a consequence of a debate on collective redress at EU level over consumers and competition law, including the balance between public and private enforcement and the balance in enforcement jurisdiction between EU level and the national level of Member States which differently approach to

[60] See the example of Slovenia and the influence of their national Traffic Safety Agency on the environment protection and approval procedure in: Svetina, Zajc, Popović, 2012: 94-98.

[61] The Consumers Protection Act, *Official Gazette of the RS*, 88/2021.

the balance between public and private enforcement at the national law level (Hodges, Voet, 2018: 12). The collective redress is perceived as having the capacity to improve access to justice in the EU; thus, the EU has tried to boost its implementation in Member States (Pato, 2019: 45). In terms of the national legislations of EU member states, various instruments of collective redress are available, but many national collective redress tools are still defective (Pato, 2019: 47). In order to remedy these deficiencies, different reform processes have taken place since 2012, sharing similar patterns: extension of the scope of application of collective redress, ADR mechanisms and opt-out-based systems (Pato, 2019: 47).[62] In 2017, after the emergence of *Dieselgate* case, the European Commission announced a "New deal for consumers" to promote fairer and more efficient rules for consumers, which was officially published on 11 April 2018, bringing two pieces of legislation and several documents: findings of the Fitness Check of EU Consumer and Marketing Law of May 2017;[63] the evaluation of the 2011 Consumer Rights Directive, the report on collective redress of January 2018; the revision of the Consumer Protection Cooperation (CPC) Regulation;[64] the Directive on consumer ADR;[65] Communication from the Commission detailing its action plan;[66] a new proposal for a Directive on representative actions for the protection of collective interests of consumers aimed at facilitating consumer redress in mass harm situations;[67] and a proposal for a Directive on better enforcement and modernisation of EU consumer protection rules aimed at introducing several targeted amendments to substantive consumer rules laid down in

[62] For more on the national collective redress mechanisms in the EU Member States, see: Pato, 2019: 47 *et seq.*

[63] European Commission/EC (2017) Press release on the conclusions of the 2017 Fitness check: European Commission lays the groundwork for future action in EU consumer law, 29 May 2017; https://ec.europa.eu/commission/presscorner/detail/en/ip_17_1448

[64] EU Regulation 2017/2394 of the European Parliament and of the Council of 27 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation No 2006/2004 [2017], *OJ L* 345, 27.12.2017

[65] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes [2013] *OJ L* 165, 18.6.2013,

[66] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, A New Deal for Consumers, COM (2018) 183/3, April 2018.

[67] Proposal for a Directive of the European Parliament and the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, COM (2018) 184/3.

four different directives[68] (Biard, 2018: 197).[69] As noted in the legal theory, there are three pillars regarding the collective redress in the EU: the first one is the collective instrument for the recovery of damage or other consumers redress, such as reimbursement or reduction of the sales price, or repair (in a large number of EU Member States); the second and the third pillar are a mechanism of mass settlement entered by the parties to a *pending* mass litigation, and a parallel 'standalone' mechanism for a collective settlement entered into outside a collective action (Stadler, Jeuland, Smith, 2020: 92).

The latest intervention is the EU Directive (EU) on representative actions for the protection of collective interests of consumers (the RAD Directive).[70] The RAD Directive requires Member States to enact or amend at least one procedural mechanism by June 2023; this mechanism has to meet minimum standards set out in the RAD Directive, in order to enable consumers to seek collective redress against a business through breaches of the EU consumer laws. The Directive identifies two types of representative actions: domestic and cross-border. Member States must ensure that there is at least one domestic representative action mechanism which allows to seek injunctive and redress measures pursuant to the Directive. As noted, a certain degree of latitude concerning the implementing method in the EU states could open the door to a forum shopping (Fairgrieve, Salim, 2022: 469). However, in the EU legal theory, there is still a standpoint that different landscape of legal and institutional provision for private enforcement in the EU is inevitable as well as it is inevitable that patterns in the different EU Member States regarding competition litigation will continue to vary (Roger, 2014: 300). Yet, the full impact of the RAD Directive will show whether these predictions will be fulfilled and to which extent.

In Serbian legal system, the collective redress was introduced for the first time in the Consumers Protection Act (2010).[71] This Act introduced the judicial proceedings for the protection of consumer's rights; the consumer could

[68] Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules, COM (2018) 185/3.

[69] See details and the impact of the "New deal for consumers" in: Biard, 2018: 199-203.

[70] 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. The RAD Directive came into force on 24 December 2020.

[71] The Consumers Protection Act, Official Gazette of the RS, 73/2010.

be represented by the professional consumers protection organizations.[72] The second piece of legislation which regulated the collective redress was the Contentious Proceedings Act (2011), which is no longer in force.[73] Pursuant to the latter, the consumers could have been represented by the professional organizations, if this activity was aimed at protecting the common interests and rights of a greater number of citizens who suffered damage by the actions of the defendant (Jovanović Zattila, Vukadinović, 2017: 19). The first (and so far the only) mass litigation was initiated in 2013 before the Third Basic Court in Belgrade, when the professional organization "Efektiva" represented ten thousand consumers in the main proceeding against three banks on the issue of the impermissible contracting of the currency clause in Swiss francs and unilateral change of the interest rate. In 2013, the Serbian Constitutional Court rendered the decision that the provisions in Chapter XXXVI of the Contentious Proceedings Act (2011) were unconstitutional.[74] Under the current Consumers Protection Act (2021), the protection of citizens' collective interests in administrative proceedings is envisaged in Chapter XIV of this Act.[75] The collective redress is still not (re)introduced[76] in the latest Contentious Proceeding Act.[77]

When it comes to the Serbian Private International Law (PIL), the direct international jurisdiction against the car manufacturers involved in the *Dieselgate,* could be based on Articles 53 (non-contractual obligations) and 55 (contractual obligation) of the 1982 PIL Act.[78] In terms of non-contractual obligations, the criteria in Article 53 refers to prorogation of jurisdiction or the *forum loci damni*. The latter criteria is formulated in a way that it corresponds to the CJEU preliminary ruling on interpretation of Article 7/2) of the Brussels I recast Regulation (C-343/19). The criteria laid down in Article

[72] Article 137 of the Consumers Protection Act (2010).

[73] Collective redress was regulated in Arts. 494-505, Chapter XXXVI ("Proceeding for protection of citizens' collective rights and interests") of the Contentious Proceedings Act, Official Gazette of the RS, 72/2011.

[74] Decision of the Constitutional Court, UIz number 51/2012 of 23.5.2013, Official Gazette of the RS, 49/2013. See details in Protić, Grga, 2022: 23-24.

[75] Arts. 170-180 of the 2021 Consumers Protection Act.

[76] For example, Croatia introduced the collective redress following the reception of the EU legislation. See details in Pavlović, 2015: 801-803.

[77] The Contentious Proceedings Act, *Official Gazette of the RS*, 72/2011, 49/2013, 74/2013, 55/2014, 87/2018, 18/2020 and 10/2023.

[78] The Act on Resolving Conflict of Laws with the Regulations of other Countries (1982 PIL Act), Official Gazette of the SFRY 43/82 and 72/82-corr, *Official Journal of the FRY* 46/96, and *Official Gazette of the Republic of Serbia* 46/2006.

55 of the 1982 PIL Act refers to the disputes against a legal entity having its seat abroad. In this case, the criteria could be the fact that the obligation was created or must be performed in Serbia, provided that the legal entity has its representative office or agency in Serbia or if the seat of the legal entity to which it entrusted the conduct of its business is in Serbia. Since most of the car manufacturers involved in the *Dieselgate* case have representative office or agency in Serbia, this criteria could fit into disputes over contractual liability. In respect of the applicable law, Article 28 of the 1982 PIL Act applies to the non-contractual obligations, while Arts. 19 and 20 of the 1982 PIL Act envisage applicable law to contracts. In a matter of non-contractual obligations, the application of *lex loci delicti commissi* and *lex loci damni* is alternatively set, depending on the most favourable law for the person who suffered damage. When it comes to contracts, party autonomy[79] and exception clause[80] are envisaged as primary solutions, while the objective connecting factor for contract on sale leads to the application of the law of the place where the seller was domiciled or had its seat at the time of the receipt of the offer.[81] Potentially, all three solutions could refer to the foreign law as applicable in case of purchase of vehicles from a car manufacturer seated abroad. Nevertheless, as long as collective redress remains excluded from the court proceedings, the consumers are left on their own against a vehicle manufacturer as a dominant party. Hence, the possibility to submit a collective redress could be discussed as a safeguard of a weaker party protection principle as a general legal principle in the Serbian legal order. Bearing in mind that a vehicle manufacturers involved in the *Dieselgate* case have their seats abroad, the need for reinstituting the collective redress in the court proceedings especially comes to the fore in cross-border cases. This type of dispute does not only raise an issue of international jurisdiction and applicable law but it also necessarily involves the recognition and enforcements of Serbian court decision abroad. In terms of cross-border collective redress, the CJEU rendered a decision in the case C-498/16 *Schrems v Facebook Ireland Ltd*.[82] In a nutshell, the Court dismissed an attempt to bring a class action on behalf of 25,000 consumers before Austrian courts since Brussels I Regulation (then in force)[83] "does not provide specific provisions on the assignment

[79] Article 19 of the 1982 PIL Act.

[80] Article 20 para. 1 of the 1982 PIL Act.

[81] Article 20 para. 1(1) of the 1982 PIL Act.

[82] Case C-498/16, *Maximilian Schrems v Facebook Ireland Limited*, Judgment of the Court (Third Chamber) of 25 January 2018, EU:C:2018:37.

[83] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *OJ L* 12, 16.1.2001.

of claims or procedures for collective redress... The application of the consumer forum in cases of collective action is the object of heated debate".[84]

Bearing in mind that Serbia is importing used cars mostly from the EU and the fact that the provisions on the rigid control of pollutant emissions of the Rulebook on technical inspection of vehicles[85] are still not completely applied (in terms of pollutant emission control), one can expect that the awareness of the *Dieselgate* consequences will become apparent in Serbia at the time when this control becomes fully applied within the vehicle registration procedure. The rigid control of the pollutant emissions was first announced for July 2021, but it was postponed.[86] As a result, the limitation period for damage reimbursement may expire.[87]

6. Conclusion

Diesel cars have a significant impact on the environment and public health all around a globe, including Serbia. In this regard, the consumers protection and environment protection are intricately interconnected (Jovanović Zattila, 2011: 232). The full effects of the *Dieselgate* saga could have already occurred if the KBA in the analyzed case C-873/19 had actually revoked the EC type-approval for the vehicle type at issue. It would inevitably cause the ban on circulation of the defeated vehicles on EU roads (Bertelli, 2023: 1226). Although it has not coccured yet, such a scenario does not seem to be quite impossible in the future as, in November 2024, the CJEU assessed two additional cases, this time against Mercedes-Benz.[88] Once again, these cases entail the use of "temperature window" which was previously declared illegal. The forthcoming CJEU rulings against Mercedes-Benz in these cases could

[84] Opinion of Advocate General Bobek in Case C-498/16 *Schrems v Facebook Ireland Ltd,* 14 November 2016, EU:C:2017:863, para. 121.

[85] Article 34 para. 1(7) of the Rulebook on technical inspection of vehicles, *Official Gazette of the RS*, 31/2018, 70/2018 and 62/2022.

[86] It was estimated that 100,000 vehicles would not pass the pollutant emissions test in Serbia. See: Paragraf (2021). Pravilnik o tehničkom pregledu vozila (Rulebook on technical inspection of vehicles), 31.1.2021; https://www.paragraf.rs/dnevne-vesti/080221/080221-vest9.html

[87] The 2021 Consumers Protection Act envisages the objective limitation period of 10 years from the day the manufacturer put the defective product on the market (Article 63).

[88] C-251/23 (Case C-251/23, Mercedes-Benz Group: Request for a preliminary ruling from the *Landgericht Duisburg* (Germany) lodged on 19 April 2023 — *OB v Mercedes-Benz Group AG*, *OJ C* 296, 21.8.2023) and C-308/23 (Case C-308/23, Mercedes-Benz Group: Request for a preliminary ruling from the *Landgericht Duisburg* (Germany) lodged on 17 May 2023 — *YV v Mercedes-Benz Group AG*, *OJ C* 296, 21.8.2023).

render millions of Euro 5 and Euro 6 diesel cars illegal to drive, of which more than 8 million vehicles only in the EU.[89] Some of the consumers protection organizations in the EU member states have already recommended to the diesel car owners (especially for the models from 2014 onwards) to pursue the consumer rights of a fair compensation.[90]

Meanwhile, the consumers in Serbia remain unconcerned by all of these facts. Still liberal control of pollutant emissions within the vehicle registration procedure and non- existence of the collective redress in court proceedings lead to a conclusion that Serbia could become the graveyard of the vehicles equipped with defeat devices (including used vehicles imported from the EU), if the predictions after these two new CJEU cases come true. However, it should be born in mind that Serbia is obliged by the Stabilization and Association Agreement with the EU[91] to align its laws more closely with the EU legislation. It means that Serbia has agreed to ensure that its existing laws and future legislation will become compatible with the EU acquis and that such laws will be properly implemented and enforced,[92] including the consumers protection and possibility to (re)introduce the collective redress in court proceedings in line with the RAD Directive. Finally, the *Dieselgate* saga and possibility that diesel cars equipped with the defeat software eventually become illegal to drive could turn the famous lyrics into "Oh, Lord, don't you buy me a Mercedes-Benz!"

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[90] For details, see: Dieselgate Legal (2024).

[91] Stabilisation and Association Agreement, *Official Gazette of the RS - International Treaties,* 83/2008 [Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, *OJ L* 278, 18 October 2013].

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ЕВРОПСКА ЗАШТИТА ПОТРОШАЧА У СЛУЧАЈУ ДИЗЕЛГЕЈТ: QUO VADIS, СРБИЈА?

Резиме

Дизелгејт скандал отвора многа питања о заштити потрошача не само у Европској унији, већ широм света. Одлуке Суда правде ЕУ у којима је давао тумачења поводом претходних питања о манљивом уређају и месту где се договодио штетни догађај дале су смернице за даља тумачења и примену законодавства ЕУ о заштити потрошача. Такође, положај потрошача који на супротној страни има гиганте ауто индустрије указује на неопходност колективних тужби. Исто важи и за Републику Србију и њен правни систем у материји заштите потрошача, као и међународног приватног и процесног права. Наиме, апатија која влада у погледу аферe Дизелгејт у Србији једино се може објаснити недостатком пуне контроле емисија издувних гасова, што би иначе водило немогућности регистрације возила са последицама у погледу права потрошача. Међутим, потрошачи у Србији су већ сада погођени услед штете коју трпе због умањења вредности возила, а да тога, највероватније, нису ни свесни. Будући да су спорови са произвођачима возила обухваћених Дизелгејт скандалом нужно прекогранични, као и то да ЗРСЗ предвиђа основе међународне надлежности који се могу искористити за заснивање надлежности домаћих судова у овим случајевима, немогућност подношења колективних тужби ипак битно ремети начело заштите слабије стране као општег правног принципа и право на приступ правди.

Кључне речи: *Дизелгејт, заштита потрошача, штетне емисије издувних гасова, манљиви софтвер, накнада штете, одговорност произвођача.*