

EU4, EU5 and EU6 NEDC limits also in real driving conditions?

Case C-251/23, C-308/23: Oral hearing before the ECJ on 10 July 2024 and

Opinion of Advocate General Rantos of 21 November 2024

(Status: 3 December 2024)

Executive Summary

- **Reason:** On 10 July 2024, the ECJ heard two referrals from Duisburg Regional Court in proceedings concerning the Mercedes-Benz Group. On 21 November 2024 Advocate General (AG) Rantos delivered his opinion. His statements on one regulatory question lead to a general, high risk for consumers and the economy in the EU far beyond the individual case.
- **Key question:** Do EU5 and EU6 vehicles which at the time of their type approval did comply with the emission limit values on the legally specified chassis dynamometer test in the New European Driving Cycle (NEDC) according to the then valid Emissions Regulation (EC) No 715/2007 and its implementing Regulation (EC) 692/2008 and were not subject to the Real Driving Emissions (RDE) tests according to the later RDE Regulation (EC) No 2016/427 have nonetheless to comply with the limit values also in real driving conditions?
- **Opinion of Advocate General Rantos:** AG Rantos expressed in his opinion of 21 November 2024 the view that NEDC vehicles “must simultaneously comply with all of the limit values both in the NEDC test and in normal use under real driving conditions, as they are usually present in the territory of the EU” (para. 47, 48, 49, 61 of the opinion).
 - He stated that “Art. 4(2) and Art. 5 (1) of Regulation (EC) No 715/2007 ... must be interpreted as meaning that a Euro 5 generation diesel engine does not comply with the emission limit values set out in Annex I to that regulation ... in a situation where ... it emits more than 180 mg/km of nitrogen oxides when driving in real driving conditions, as they are usually present in the territory of the European Union” (para. 92).
 - Prompted by the question whether a vehicle has to meet the emission limit values in the NEDC test not only after a cold start (as Annex I requires) but also after a warm start (as Annex I does not require) the GA stated generally that Art. 4(2) and Art. 5(1) of Regulation (EC) No 715/2007 must be interpreted as such that “compliance with the NOx emission limit values must be verified not only in the context of the NEDC test but also under real driving conditions, in normal use” (para 47).
 - Since the AG interprets the scope Art. 4(2) and Art. 5(1) of Regulation (EC) No 715/2007 generally his view applies to all EU5 and EU6 NEDC light passenger and commercial vehicles, with a Diesel as well as a Petrol engine, and is relevant for all EU type approval and market surveillance authorities as well as courts who prove compliance of NEDC vehicles with the EU emissions regulation - far beyond the individual case.
- **Risks:** Should this view prevail, around 200 Mio of EU citizens, tradespeople, service providers, etc. in the EU could be exposed to the risk that their NEDC vehicles, which did comply with the statutory test when approved, would today be considered unlawful (NEDC are no RDE vehicles and can typically not meet the NEDC limits in real drive). This could lead to a massive recall of vehicles (could also be triggered by NGO court claims) and to damage claims, imposing an unbelievably high financial burden on car manufacturers and threatening their very survival.
- **No retroactive effects:** GA Rantos` view means that holders of NEDC vehicles would have to meet retroactively additional requirements which did not exist at the time of the type approval and marketing of the vehicles. This clearly infringes the fundamental legal principle that measures should not have retroactive effects.
- **Contradiction to legal status for 20 years:** For more than 20 years, EU law has provided that the limit values for NEDC vehicles are tested in the NEDC test only, not in real driving conditions. This would not have been even possible – for two reasons: First, until 2017 there was no regulated procedure in EU law for testing emission limits of EU4 EU5 and EU6 NEDC passenger cars and light duty vehicles. Each limit, however, requires a description of the test procedure with which it is to be tested. Second, there was no technical device with which emissions of NEDC passenger cars and light duty vehicles in real driving conditions could have been tested. The PEMS device for these vehicles was not available until the introduction of RDE tests in 2017.
- **Contradiction to factual status for last 20 years:** For more than 20 years, all EU member states, vehicle approval authorities, scientists, courts, manufacturers, importers, consumers and the EU Commission have applied the limit values for NEDC vehicles exclusively to the NEDC on the test bench, but not to normal use in real driving conditions.
- **Solution:** To avoid the high and imminent risks and to protect consumers, business and industry in the EU it is necessary that the EU Commission asap signals to clarify the EU law by introducing a new sentence 2 in Art. 5 para. 1 Regulation 715/2007 that for assessing whether vehicles comply with the value limits according to the regulation and its implementing measures only the test procedures laid down in the implementing measures apply. This clarification does not change but rather confirms the law as it has existed for the last 20 years.