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Judgments

Spain

Barcelona Provincial Court Judgment no. 7058/2023 of 5 July 2023. Vehicle sale and purchase; manufacturer's liability. Cidauto, S.L. and PSAG Automóviles Comercial España, S.A.

This judgment settles, by way of joinder, two statutory appeals lodged by the purchaser of a vehicle and CIDAUTO, S.L. (CIDAUTO) against the first instance judgment ordering PSAG Automóviles Comercial España, S.A. (PSAG) to pay the purchaser of the vehicle the cost of replacing the battery and CIDAUTO to pay the amount of the advertised equipment not installed in the vehicle, in both cases for breach of contract due to non-conformity of the product. Both the purchaser of the vehicle and CIDAUTO appealed the aforementioned decision, the former claiming from PSAG the repair of all the defects of the vehicle and not only the cost of replacing the battery (based on statutory warranties and additional warranties granted).

The Barcelona Provincial Court, with regard to the first appeal, rejects the buyer's claims, on the grounds that **time limit** to claim **liability from the manufacturer had lapsed**, clarifying, moreover, that the figures of the manufacturer and the seller are not the same, nor are their liability regimes (the manufacturer's liability being vicarious), and affirms the first instance ruling.

With regard to the appeal lodged by CIDAUTO, the Court states that the seller is contractually bound by the specifications included in the **advertising** or information brochure of the vehicle, so that these specifications are part of the content of the sale and must be respected, giving rise to the seller-dealer's obligation to deliver the vehicle with the equipment that appeared in the advertising provided to the buyer. In this case, as one of the elements was left out of the discussion, the appeal was partially upheld, ordering payment of the amount of the expert's appraisal of the equipment offered and not installed on the date of delivery of the vehicle and its installation.

Barcelona Provincial Court Judgment no. 7288/2023 of 5 July 2023. Claim for money; vehicle financing agreement. Mercedes-Benz Financial Services España, EFC, S.A.

This Judgment settles the statutory appeal lodged by the borrowers of a financing agreement with Mercedes-Benz Financial Services España EFC, S.A. (Mercedes-Benz) in relation to the first instance decision that fully upheld the claim filed by Mercedes-Benz for unpaid instalments under a financing agreement with a purchaser of movable property, recognising the validity of the **early repayment clause** due to breach of contract and the termination thereof, ordering the borrowers to pay, jointly and severally, the unpaid overdue and outstanding instalments.

The Provincial Court rejected the borrowers' claims, who claimed voidness of the contractual clause regulating the early termination of the agreement in the event of non-payment of any two of the instalments due, with the possibility of claiming the instalments overdue and outstanding. The borrowers consider the clause void under the doctrine of the Court of Justice of the European Union (CJEU) in the field of mortgage loans. The Provincial Court, with reference to the Su-

preme Court judgments 470/2015, of 7 September, and 705/2015, of 23 December, deems not unconscionable and therefore valid the clause that allows the financier to accelerate the loan when at least two instalments are not paid, in application of the Movable Property Hire Purchase Act and the Civil Procedure Act, and, in general, under the aegis of party autonomy, provided that the agreement clearly determines in which cases such termination can take place.

The claim of mistake in the assessment of evidence is also rejected, since it is confirmed that Mercedes-Benz issued the receipts in the prescribed manner and within the prescribed time limit and that no agreement was reached between the parties concerning payment in kind.

Alicante Provincial Court Judgment no. 1406/2023 of 18 July 2023. Sale and purchase of movable property; loan; financing; unconscionable clause. Volkswagen Bank GMBH, Sucursal en España

Volkswagen Bank GMBH, Sucursal en España, in its capacity as lender, instigated order for payment proceedings against the borrowers of a vehicle buyer financing agreement, for non-payment of six instalments, giving rise to the **early repayment of the debt,** partially upheld by the court of first instance. The borrowers appealed, claiming unconscionability and consequent voidness of the obligation contained in the agreement, according to which, in the event of early termination, they were obliged to repay the appropriate amounts, including the rebates, discounts and subsidies granted in the financing agreement.

It is disputed whether the obligation to return the amounts claimed for the reasons described above has the **purpose** of a **penalty for breach of contract** by the borrower, or whether its only purpose is the restitution of the lender's contractual balance, due to the borrower's unjust enrichment (in which case its validity would be questionable). It could be understood that it is not a penalty as such, but rather a restitution of the contractual balance due to unjust enrichment of the borrower, if the lender proves that, as a result of the termination of the contract, it is the lender and not the carmaker, nor the seller, who was harmed and whose profit margins were demonstrably reduced as a result of the breach.

The Provincial Court rejects the appeal, concluding that there is a clear punitive purpose in the early repayment clause for breach by the borrower of his payment obligations, taking into account, moreover, that the rewards, discounts and subsidies granted in the financing agreement are passed on to third parties (vehicle price, carmaker discount or maintenance service not provided by the lender) and no reduction of any kind in the lender's usual income has been proven.

Madrid Provincial Court Judgment no. 14555/2023 of 4 October 2023. Concept of "moped"

This judgment settles the appeal lodged by the defendant accused of an offence against road safety in relation to a summary trial judgement sentencing him to a 15-month fine and criminal liability in the alternative. The accused focused his appeal on three grounds.

Firstly, the error in the assessment of the evidence and correlative infringement of the law on the grounds that the class of offence under Article 384 of the Criminal Code does not apply, as the vehicle that the defendant-appellant was driving is not considered a **moped.** The Court dismissed this first defence and explained that the problem

lies in differentiating, in relation to this type of **electric vehicle**, what is a moped from what is a bicycle with an electric motor or an electric scooter.

Regulation (EU) No 168/2013, implemented by Royal Legislative Decree 6/2015, states in Annex 1.9 that two-wheeled vehicles with a maximum design vehicle speed ≤ 45 km/h, a combustion engine with a cylinder capacity ≤ 50 cc, or a power ≤ 4 kW if it has an electric engine, are considered to be mopeds. In accordance with this, and after describing that the vehicle in question is neither a scooter nor a bicycle with pedal assistance, the Court concludes that **it can be considered a moped**, and that a specific licence is required to drive it, at least the so-called AM licence.

Secondly, the accused raises as a defence to the violation of the law an unavoidable mistake of law as he was unaware that the vehicle could be considered a moped and that he therefore needed to obtain a licence. This defence was also rejected by the appellate court because, with reference to Supreme Court Judgment no. 1171/1997 of 29 September, it stated that mistakes are excluded if the agent is normally aware of the unlawfulness or at least suspects what is an unlawful act and that it is not permissible to invoke a mistake in those offences whose unlawfulness is patently obvious. In this case, we are not dealing with a person who is driving the vehicle for the first time, but one who should be aware of the possibility that such driving could be criminal, and therefore the **possibility of the concurrence of an avoidable or unavoidable mistake about the fact constituting the offence or about the unlawfulness of the same is ruled out.**

Finally, the defendant claims that a **disproportionate fine** was imposed, a fact that was considered proven by the appellate court, as no reasoning was provided to justify the imposition of a sentence exceeding the statutory minimum in the contested judgment, which reduced the fine in accordance with Article 50 of the Criminal Code.

Europe

Judgment of the Court (Eighth Chamber) of 5 October 2023 (*) (Reference for a preliminary ruling – Regulation (EU) 2018/858 – Approval and market surveillance for vehicle repair and maintenance information services of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicle s – Article 61(1) and (4) – Point 2.9 of Annex X – Motor vehicle on-board diagnostic (OBD) information – Unrestricted, standardised and non-discriminatory access – Manufacturers' obligations – Rights of independent operators)

Case C-296/22 concerns a reference for a preliminary ruling from the Cologne Regional Civil and Criminal Court (Germany) (Regional Court) in the proceedings between, on the one hand, A.T.U. Auto-Teile-Unger GmbH & Co. KG ('ATU'), a chain of independent repairers, and Carglass GmbH ('Carglass'), a vehicle glazing repair and replacement company, and, on the other, FCA Italy SpA ('FCA'), a subsidiary of the automotive group Fiat Chrysler Automobiles NV, which manufactures light passenger and commercial vehicles, concerning the making available, by Fiat Chrysler Automobiles NV, of the direct data stream of its vehicles.

ATU and Carglass are independent agents whose activities include vehicle diagnostics. FCA, as manufacturer, equips its vehicles with the 'Secure Gateway' system. In order to perform write operations, erase error codes, perform recalibrations and activate vehicle parts, independent r

epairers and authorised repairers must comply with the requirements stipulated by FCA, that is, to register beforehand with FCA, log in using personal connection data on a portal designated by FCA, purchase a paid subscription for use of multi-make diagnostic tools and connect them to that server via the internet. For ATU and Carglass, this unilateral imposition by FCA constitutes an infringement of the law, in response to which they bring an action before the competent court, which, in turn, refers a question to the Court of Justice for a preliminary ruling, asking whether, in essence, Article 61(1) and (4) of Regulation 2018/858, read in conjunction with point 2.9 of Annex X thereto, must be interpreted as meaning that the vehicle manufacturer must always ensure, including when implementing relevant safety measures, that the vehicle OBD, diagnostics, repair and maintenance, including the write operations necessary for these purposes, can be carried out by independent repairers using a universal and generic diagnostic tool, without any need to meet requirements, not expressly stipulated in Regulation 2018/858, for the device to have an internet connection to a server designated by the manufacturer and/or for the user to have personally registered with the vehicle manufacturer beforehand.

The Court resolves this question by referring to the obligations imposed by Regulation 2018/858 on car manufacturers to **provide unrestricted, standardised and non-discriminatory access to vehicle OBD information, diagnostic equipment, tools and vehicle repair and maintenance information**, including the obligation to allow independent operators to process and use such information. Furthermore, this information should be presented in an easily accessible manner in the form of machine-readable and electronically processable datasets.

It also points out that recitals 50 and 52 of Regulation 2018/858 advocate **effective competition** in the market for vehicle repair and maintenance information services, so that the independent vehicle repair and maintenance market can compete with that of authorised dealers. Moreover, it states that were manufacturers able to limit at their discretion access to the direct vehicle data stream within the meaning of Point 2.9 of Annex X to the regulation, it would be open to them to make access to that stream subject to conditions capable of making access impossible in practice.

Furthermore, the Court of Justice also refers to Regulation 2019/2144 as regards **safety and protection measures** for vehicle occupants and vulnerable road users, stating that these measures must be ensured at the design, manufacture and assembly stage of vehicles and must not be to the detriment of other market operators, such as independent operators.

In the light of the foregoing, the Court of Justice answers the question referred for a **preliminary ruling** by declaring that Article 61(1) and (4) of Regulation 2018/858, read in conjunction with Annex X thereto, must be interpreted as precluding a vehicle manufacturer from making access by independent operators to vehicle repair and maintenance information and to on-board diagnostic information, including write access to that information, subject to conditions other than those laid down in that regulation, and may not therefore require access to that information by means of a connection of the diagnostic tool via the internet to a server designated by the manufacturer or prior registration of independent operators with the manufacturer.

Judgment of the Court (Fifth Chamber) of 12 October 2023 (*) (Reference for a preliminary ruling – Insurance against civil liability in respect of the use of motor vehicles – Directive 2009/103/EC –

Point 1 of Article 1 – Concept of a 'vehicle' – National legislation providing for the automatic compensation of certain road users who are the victims of a road accident – Person not driving a 'motor vehicle' within the meaning of that legislation – Concept equivalent to that of 'vehicle' within the meaning of Directive 2009/103 – Bicycle equipped with an electric motor providing pedal assistance, equipped with a boost function which can be activated only after the use of muscular power)

In Case C-286/22: request for a preliminary ruling under Article 267 TFEU from the Court of Cassation in Belgium, made in proceedings between KBC Verzekeringen NV ('KBC'), a civil liability insurer, and P&V Verzekeringen CVBA ('P&V'), an occupational accident insurer, concerning the interpretation of Article 1(1) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to **insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability**.

The main dispute concerns the collision of a person ('victim') riding an electronic bicycle on a public road, caused by a car insured by KBC, resulting in the death of the victim and constituting a "commuting accident" for which P&V, the victim's employer's occupational accident insurer, paid compensation and was subrogated to the rights of the victim and those of his successors in title.

The question referred for a preliminary ruling by the Belgian Court of Cassation, in order to clarify which insurance company is to bear the costs of the accident, essentially asks whether the **definition of 'vehicle'** in Article 1(1) of Directive 2009/103, as "any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled", includes an electric bicycle whose engine provides pedal assistance only and which is equipped with a boost function, whereby the bicycle accelerates to a speed of 20 km/h when the boost button is pressed without pedalling, yet muscular power is required in order to be able to use the boost function.

The wording of Article 1(1) of Directive 2009/103 is not sufficient, by itself, to provide an answer to the question referred, since it does not indicate whether such mechanical power must be exclusively responsible for the propulsion of the vehicle concerned. There are indeed versions, in particular in the French, Italian, Dutch and Portuguese versions, which indicate that the vehicles concerned 'may' be propelled by mechanical power, which could be read as meaning that the concept of 'vehicles', within the meaning of that provision, encompasses not only vehicles propelled exclusively by mechanical power, but also those which may be propelled by other means. However, in other language versions, in particular the Spanish, German, Greek, English and Lithuanian versions, that provision is drafted differently, such that it cannot be interpreted in the same way.

The Court explains that one of the objectives pursued by Directive 2009/103 is to ensure the free movement of vehicles normally based on EU territory and of persons travelling in those vehicles and to guarantee that the victims of accidents caused by those vehicles will receive comparable treatment irrespective of where in the European Union the accidents occurred, as well as ensuring the protection of victims of accidents caused by motor vehicles, and therefore considers that devices propelled exclusively by mechanical power and which therefore cannot travel on land without the use of muscular power, such as the electric bicycle at issue in the main proceedings, which, in addition, may accelerate

to 20 km/h without pedalling, do not appear to be capable of causing comparable bodily harm or material damage to third parties, as regards gravity or scale, to the harm or damage that may be caused by motorcycles, cars, trucks or other vehicles, travelling on land, propelled exclusively by mechanical power, which can reach speeds significantly higher than those that can be achieved by such devices, and which, at present, predominate on the road.

The Court therefore concludes that Article 1(1) of Directive 2009/103 must be interpreted as meaning that the **concept of 'vehicle'**, within the meaning of that provision, **does not encompass a bicycle whose electric motor provides pedal assistance only and which is equipped with a function allowing the bicycle to accelerate to a speed of 20 km/h without pedalling**, a function which may however be activated only after the use of muscular power.

Legislation

Spain

Order PCM/814/2023, of 18 July, amending Schedule I to Royal Decree 265/2021, of 13 April, on end-of-life vehicles and amending the General Vehicle Regulations, approved by Royal Decree 2822/1998 of 23 December

By means of this ministerial order and in accordance with the principles of necessity and effectiveness based on environmental protection, the Commission Delegated Directive (EU) 2023/544 of 16 December 2022 is transposed into Spanish law, amending Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on **end-of-life vehicles** as regards exemptions relating to the use of lead in aluminium alloys for machining purposes, in copper alloys and in certain batteries. In compliance with this European obligation, Schedule I to Royal Decree 265/2021 of 13 April on end-of-life vehicles and amending the General Vehicle Regulations, approved by Royal Decree 2822/1998 of 23 December 1998, is amended.

In particular, the following **amendments are** detailed: (1) the setting of an expiry date for the exemption set out in point 2(c)(i) for the use of lead in aluminium alloys for machining purposes; (2) the setting of a new date for the review of the exemptions set out in point 2.(c)(ii) for the use of lead in aluminium alloys not covered by point 2(c)(i); in point 8(e) relating to the use of lead in high melting temperature solder pastes; and in point 8(g).(ii) on the use of lead in solders to create a viable electrical connection between the semiconductor hub and the carrier in flip-chip integrated circuit capsules meeting a number of requirements; (3) the setting of a new date for the review of the exemption set out in point 3 for the use of lead in copper alloys; and (4) the review of the exemption set out in point 5.b) related to lead in batteries, dividing it into two distinct headings, the first one, the new point 5.b).i), providing for an exemption for the use of lead in batteries used in 12 V applications and for the use of lead in batteries used in 24 V applications in special vehicles, and the setting of a new date for its review. In the other heading created, the new point 5(b)(ii) provides for a different exemption for the use of lead in batteries for other applications not covered elsewhere in the schedule, with a date for the expiry of this exemption to allow for the phase-out of lead in the batteries concerned.

Royal Decree 821/2023, of 14 November, adapting Royal Decree 266/2021, of 13 April, approving the granting of aid to the autonomous communities and the cities of Ceuta and Melilla, for the implementation of incentive programmes linked to electric mobility (MOVES III) and within the framework of the European Recovery, Transformation and Resilience Plan, and extends its validity

Royal Decree 821/2023, of 14 November, adapts Royal Decree 266/2021, of 13 April, to the European framework for State aid in the following areas: (1) it extends the validity of the incentive programmes for electric mobility approved by Royal Decree 266/2021 until 31 July 2024; (2) Article 13 of the aforementioned Royal Decree on eligible actions is amended and small and medium-sized enterprises are included in certain aid to final recipients, provided that they have expressly opted for this in the applications for the programme to support the deployment of the charging infrastructure; (3) it establishes the conditions for granting aid to certain recipients referred to in Royal Decree 266/2021, indicating that the granting of aid will be subject to the requirements and limits established in Regulation (EU) 2023/1315 of 23 June, applying the exemption corresponding to the category of aid for environmental protection. The average annual budget allocated to aid in this category may not exceed EUR 150 million and a limit of aid per final recipient will be established; (4) Schedule I to Royal Decree 266/2021 is amended to include that applications for aid for investments in recharging infrastructure that enables the transfer of electricity with a capacity of 22 kW or less, and which are covered by Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014, must demonstrate that they are capable of supporting smart recharging functionalities as defined in Article 2(65) of Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure and repealing Directive 2014/94/EU; (5) those small or medium-sized enterprises that prefer to apply for aid under the de minimis scheme are included in the aid limits established for the implementation of vehicle recharging infrastructure in Schedule III to Royal Decree 266/2021; (6) Schedule II on "Documentation" includes that, in the case of recharging with a capacity of 22 kW or less and under Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014, aid must be provided for the implementation of infrastructure for the recharging of alternative fuels.No 651/2014, documentation of technical specifications of the equipment must be provided, proving the capacity to support smart charging functionalities.

Europe

Commission Delegated Regulation (EU) 2023/2502 of 7 September 2023 amending Regulation (EU) 2019/631 of the European Parliament and of the Council as regards the adjustment of the mass values of new passenger cars and new light commercial vehicles

Commission Delegated Regulation (EU) 2023/2502 amends Annex I to Regulation (EU) 2019/631 in relation to the mass values of new passenger cars and new light commercial vehicles. The new Regulation 2023/2502 provides for adjustments to the **mass values of new vehicles**, defines obligations for manufacturers in relation to specific CO_2 emissions targets and amends Regulation 2019/631 to reflect these changes.

Regulation 2019/631 provides that the mass values of new light commercial vehicles are to be adjusted periodically until 2024 to reflect changes

in the average mass of vehicles registered in the Union, based on (1) the data in Annexes I to IV to Commission Implementing Decision (EU) 2021/973; (2) Annexes I and II to Commission Implementing Decision (EU) 2022/2087; (3) Annexes I to III to Commission Implementing Decision (EU) 2023/1623; and (4) the average mass in running order of new light commercial vehicles registered in 2019, 2020 and 2021, weighted according to the number of new registrations in each of those years, was 1 875.07 kg. The M value for 2024 referred to in Part B, point 4, of Annex I to Regulation (EU) 2019/631 should therefore be equal to that value.

The indicative TM values for 2025 should be calculated as the respective average test mass of all new passenger cars and all new light commercial vehicles registered in 2021. Based on the data in Commission Implementing Decision (EU) 2023/1623, the average test mass of all new passenger cars registered in 2021 was 1 609.6 kg, and the average test mass of all new light commercial vehicles registered in 2021 was 2 163.0 kg. The indicative TM values for 2025 referred to in Part A, point 6.2.1 and Part B, point 6.2.1 of Annex I to Regulation (EU) 2019/631 should therefore be equal to those values.

Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure and repealing Directive 2014/94/EU

This Regulation, applicable from 13 April 2024, establishes a set of measures to promote the deployment of alternative fuels infrastructure in transport in the European Union, ensuring technical standards, interoperability and coordination between member states to facilitate the use and accessibility of these fuels in transport, thus contributing to the reduction of emissions and the transition to a more sustainable transport system. This Regulation replaces and repeals Directive 2014/94/EC and Delegated Regulations (EU) 2019/1745 and (EU) 2021/1444.

It highlights the obligation of Member States to ensure the implementation of publicly accessible recharging stations for **light-duty electric vehicles**, providing sufficient power output for these vehicles, setting targets for available power from 2024, ensuring a minimum coverage of recharging points along the overall TEN-T road network, and establishing specific milestones for implementation time. The power output targets for each vehicle are: i) for each light-duty battery electric vehicle registered in their territory, a total power output of at least 1.3 kW through publicly accessible recharging stations, and; ii) for each light plug-in hybrid vehicle registered in their territory, a total power output of at least 0.80 kW through publicly accessible recharging stations. Targets are also set for recharging pools.

It also states that Member States shall ensure a minimum coverage of publicly accessible recharging points for **heavy-duty electric vehicles** within their territory and sets milestones for implementation time and minimum power output, establishing recharging pools with a capacity of at least 1 400 kW, with at least one recharging point with an individual power output of at least 350kW, along at least 15% of the length of the TEN-T road network, by 31 December 2025. Subsequent targets are also set.

As for the publicly accessible **recharging point operators**, they must offer the possibility to recharge the vehicle on an ad hoc basis and, from 13 April 2024, at publicly accessible recharging points, **electronic payments** shall be accepted through terminals and devices used for payment services, including at least payment card readers, devices with a contactless functionality

or, for publicly accessible points with a power output below 50 kW, devices using an internet connection and allowing for secure payment transactions. In addition, from 1 January 2027, recharging point operators shall ensure that all publicly accessible recharging points operated by them, with a power output equal to or more than 50 kW deployed along the TEN-T road network or deployed on a safe and secure parking area, including recharging points deployed before 13 April 2024, comply with the above requirements. They may also offer **automatic authentication** and charge an occupancy fee as a price per minute to discourage long occupancy of the recharging point. The price information shall show the ad hoc price per kWh and any possible **occupancy fee** in price per minute, prior to the start of the recharging and with a price comparison. This will apply to all points deployed from 13 April 2024. Recharging points must be **digitally connected** by 14 October 2024 and those built or renovated after 13 April 2024 should support **smart recharging**. Also by 14 April 2025 all DC publicly accessible recharging points must have a fixed recharging cable installed.

The deployment of publicly accessible hydrogen refuelling stations is encouraged by 31 December 2030, and the installation of one publicly accessible hydrogen refuelling station in each urban node. By 31 December 2024, each Member State shall prepare and transmit to the Commission a **draft national policy framework for the development of the market as regards alternative fuels** in the transport sector and the deployment of the relevant infrastructure. It requires Member States to submit various reports to the European Commission and establishes user information obligations on motor vehicles placed on the market that can be regularly recharged or refuelled, aimed at both manufacturers and operators of recharging points or dealers.

Member States shall appoint an Identification Registration Organisation ('**IDRO**'). The IDRO shall issue and manage unique identification codes to identify at least operators of recharging points and mobility service providers. In addition, operators of publicly accessible recharging points and refuelling points for alternative fuels, or owners of such points, shall ensure the **availability of static data and dynamic data** concerning alternative fuels infrastructure they operate or services inherently linked to such infrastructure that they provide or outsource free of charge. This information shall be made available through an application programme interface (API) providing free and unrestricted access, and shall submit the information to the national access points to be made available to all users, complying with the technical requirements set by the Commission. The Commission shall establish, by 31 December 2026, a common European access point that functions as a data gateway and that can be used by all data users.

Commission Delegated Regulation (EU) 2023/2867 of 5 October 2023 supplementing Regulation (EU) 2019/631 of the European Parliament and of the Council by setting out the guiding principles and criteria for defining the procedures for the verification of the CO emissions and fuel consumption values of passenger cars and light commercial vehicles in-service (in-service verification)

This Regulation aims to establish the guiding principles and criteria for defining the procedures for the **verification of CO emission and fuel consumption values** of passenger cars and light commercial vehicles in service, in compliance with Regulation (EU) 2019/631 of the European Parliament and of the Council.

All vehicle manufacturers are subject to in-service verification, except those vehicles exempt from measurement of CO emissions and manufacturers that , together with all of their connected undertakings, have been responsible for fewer than 1 000 new passenger cars or for fewer than 1 000 new light commercial vehicles registered in the Union in the calendar year two years before the calendar year in which in-service verification families are selected, in order to avoid excessive testing burden, without significantly affecting the overall CO emission performance. Each granting type-approval authority shall select annually a sample of in-service verification families for which it has issued emission type-approvals, including at least one family per manufacturer with emission type-approvals in the previous three years. In-service verification tests shall be carried out to verify that the emission and fuel consumption values recorded in the certificates of conformity correspond to the actual values of the vehicles in-service. Each manufacturer shall provide the granting type-approval authority and any entity conducting in-service verification tests with the documentation needed and undertakes to report on the tests carried out, making the reports available to the Commission, manufacturers and other relevant authorities. The granting type-approval authority shall assess the test results to determine whether there are discrepancies in the emission and fuel consumption values and the values recorded in the certificates of conformity, within ten months of the start of the test.

Commission Implementing Regulation (EU) 2023/2767 of 13 December 2023 establishing a procedure for the approval and certification of innovative technologies to reduce CO emissions from passenger cars and light commercial vehicles pursuant to Regulation (EU) 2019/631 of the European Parliament and of the Council

This Regulation sets out the procedure to be followed for the approval of **innovative technologies** in accordance with Article 11 of Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO_2 emission performance standards for new passenger cars and for new light commercial vehicles, which provides for the possibility to consider CO savings that are achieved through the use of such innovative technologies in passenger cars or light commercial vehicles, but which cannot be fully quantified using the Worldwide Harmonised Light Vehicles Test Procedure (WLTP).

The Commission intends to merge Implementing Regulations (EU) No 725/2011 and (EU) No 427/2014 into one Regulation, carrying over most of their provisions while introducing new provisions under Article 11 of Regulation (EU) 2019/631.

Manufacturers or suppliers may submit applications proposing an innovative technology as an **eco-innovation**, fulfilling all elements necessary to accurately determine the CO emission savings achieved, considering notably the identification of an appropriate baseline, the specific testing conditions and the real-world usage of the innovative technology. Such application should also include a verification report drawn up by an independent and certified body proving the eligibility and qualifications of the innovative technology. Furthermore, the applicant should be able to propose, in addition to a detailed testing methodology for determining the savings, a simplified evaluation method or pre-defined CO savings. Vehicle manufacturers wishing to use eco-innovations to benefit from a reduction of the average specific CO emissions of their fleet should determine the CO savings for the purpose of type-approval on the basis of the approval decisions. To limit the eco-innovations mechanism to the technologies with a more significant

impact on CO emissions, a minimum threshold of 0,5 g/km of savings per innovation should be set. Manufacturers will be able to benefit from combined CO emission savings, where the vehicle is equipped with more than one eco-innovation. The Commission will assess the completeness and content of the application and approve or reject the submitted innovative technology within nine months.

Commission Implementing Regulation (EU) 2023/2866 of 15 December 2023 implementing Regulation (EU) 2019/631 of the European Parliament and of the Council by determining the procedures for performing the verification of the CO_2 emission and fuel consumption values of passenger cars and light commercial vehicles in-service (in-service verification)

This Regulation determines the procedures for **verifying** that the **CO_2 emission and fuel consumption values** recorded in the certificates of conformity correspond to the CO_2 emissions from and the fuel consumption of vehicles in-service and the procedures for verifying the presence of any strategies on board or relating to the vehicles that artificially improve the vehicle's performance in the tests performed for the purpose of type-approval ('in-service verification'). It also establishes detailed rules on the procedures for reporting deviations found in the CO_2 emissions of vehicles in-service as compared to the specific emissions of CO_2 recorded in the certificates of conformity as a result of in-service verification and for taking those deviations into account in the calculation of the manufacturer's average specific emissions of CO_2. Excluded from the scope of application are vehicles exempted from the measurement of CO_2 emissions; manufacturers that, together with all of their connected undertakings, have been responsible for fewer than 1 000 new passenger cars or for fewer than 1 000 new light commercial vehicles registered in the Union in the calendar year two years before the calendar year in which in-service verification families are selected. The number of in-service verification families selected each year by a granting type-approval authority shall be at least 2 % of the total number of in-service verification families for which that authority has issued emissions type-approvals in the three calendar years preceding the in-service verification, in particular from those with tests indicating the presence of a deviation in the CO emission values or on the basis of the risk of deviations. At least one chassis dynamometer test (3 - 10 vehicles), road load test (3 - 10 vehicles) and/or artificial strategies test (at least 1 vehicle) shall be performed. The general criteria for the selection of vehicles to be tested shall be: (i) mileage between 3 000 and 40 000 km and (ii) not older than two years from the date of registration. The assessment of the test results shall be carried out by means of the statistical evaluation detailed in Annex I et seq. to the Regulation, according to the specific conditions of the Regulation depending on the type of test. The granting type-approval authority shall issue reports of the tests carried out, indicating whether or not there is a deviation in the CO emission values, as well as whether there is a lack of correspondence between the CO emission values of the in-service verification and the values recorded in the certificates of conformity. The deadline for the manufacturer to contest the results is 20 working days. The Commission shall also apply the size of the deviation of the CO emission values as specified in the conclusion for its provisional calculation of the average specific emissions of CO and notify the manufacturer. The values of these conclusions shall correct the manufacturer's average specific emissions of CO for the previous 10 years, starting in 2021.

The importance of transparency in the documentation of test results is emphasised, as well

as the notification to the Commission and the relevant manufacturer. It is stipulated that the test report must be made available to the Commission and the relevant manufacturer, and the test data must be submitted to the Commission using a dedicated platform. In case there is a deviation in the CO emission values found, the manufacturer concerned should be given the opportunity to react to the findings of the granting type-approval authority. The Commission shall assess the need to increase the minimum number of in-service verification families to be selected each year, taking into account several factors, such as the total number of in-service verification families and the availability of test facilities. The granting type-approval authority must publish an overview of the in-service verifications performed in the previous calendar year and its conclusions issued in that year, using the format set out in Annex VI to the Regulation. The Commission shall publish annually a report describing the methodology used for the assessment of in-service verifications and the main findings of that assessment.

News

Spain

Report on the tender conditions for the granting of licences for shared-use mopeds and motorbikes in metropolitan areas

The Catalan Competition Authority (ACCO) has presented a document with considerations on the Tender Conditions for the concession and management of temporary metropolitan licences for special common use of the publicly-owned property for the parking of mopeds and motorbikes for shared use under an economic exploitation scheme in the Llobregat-Barcelona-Besòs area (Regulatory Bases).

The aim of the report was to analyse whether the Tender Conditions, previously approved by the Barcelona Metropolitan Area (AMB), introduce restrictions to competition and, if so, to assess whether they comply with the principles of good economic regulation from the perspective of competition.

Although the ACCO considers the regulatory initiative undertaken by the AMB to be positive, it considers that certain aspects of the Tender Conditions, such as limiting the total number of mopeds and motorbikes for shared use with regards to the business activity and indirectly the number of operators, the licensing procedure, the allocation of vehicles, the obligation to provide a guarantee and to have civil liability insurance, and the parking rules applicable to these vehicles, pose certain problems in terms of competition and appropriate economic regulation, and should therefore be reviewed by the AMB with a view to future licensing procedures, so as not to limit the access of operators to the business activity.

For any questions, please contact:

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