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# Automobile Newsletter

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## Judgments and decisions

### Spain

#### Judgment of the Murcia Companies Court of 15 October 2018

Judgment of the Murcia Companies Court in response to an action brought by a private individual against Volvo Group España, S.A. (formerly Renault Trucks España, S.L.), in a claim for *damages for anti-competitive practices* of the defendant, as established by the European Commission Decision of 19 July 2016 (Case AT.39824 - Trucks) that found that there was a *cartel between manufacturers and sellers* of tractor trucks, by collusive arrangements on pricing and gross price increases in the EEA for trucks; and the timing and the passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards.

The claimant submitted an expert opinion in which it was determined that the claimant bore an additional cost of €128,756.75 in the purchase of tractor trucks, on which the Court relies in ordering Volvo Group España, S.A. to pay said amount in damages.

#### Judgment of the Audiencia Nacional (Judicial Review Division) of 15 October 2018

Judgment on judicial review application made by the car rental company Sixt Rent a Car ('Sixt') against decision of the Tax Tribunal ('TEAC') concluding that *Sixt had made an incorrect self-assessment of the Excise Duty on Certain Means of Transport ('Excise Duty')* in the years 2010 and 2011.

In accordance with art. 66(1)(c) of the Excise Duties Act 38/1992 of 28 December 1992 ('LIE'), *the exemption from excise duty applies to "the first registration of motor vehicles which are effectively and exclusively used in the carrying out of rental activities"*. Hence, the Court concludes that the exemption does not apply to vehicles assigned for use without receiving a certain price as consideration, because it considers that it is not rental. In the present case, as Sixt had assigned certain vehicles to hotel, airline, etc. executives or managers for promotional purposes without receiving financial compensation, the Court rules that the exemption does not apply.

Moreover, the Court rules that, when *calculating the tax base* for the first registration tax on used vehicles, the market value may be reduced in accordance with art. 69 LIE, *in the amount of indirect taxes paid*, as was done by Sixt, which reduced the tax base of the tax by the amount paid as VAT, in addition to the amount corresponding to the Excise Duty, since "art. 69 LIE is very clear, it only mentions the market value on the date on which the tax liability accrues, it does not establish anything else as in the case of those means of transport that had previously been registered abroad where a more complex system for determining the tax base is laid down". The Administration, for

its part, based its objection to the reduction on the fact that “even if the provision does not express it, the idea of the legislator is not that deduction since if he had wanted it expressly he would have established it as it happens in the cases of vehicles that had been previously registered abroad”. In addition, it supported its position on the Directorate-General for Taxation’s formal binding answer to taxpayer query V1587/2011, of 20 June, which states that the market value is “*the value that would have been agreed between independent parties under conditions of free competition, such value including input and non-allowable indirect taxes that taxed the acquisition and that represent an additional cost of sale*”.

Finally, the Court considers that, in cases where the car rental company buys the manufacturer's vehicles under a repurchase agreement, the exemption from registration tax in respect of vehicles intended for rental for a period of less than 6 months does not apply, since the last sub-paragraph of art. 66(1)(c) EIA provides that “*lease-sale and similar contracts and leases with an option to purchase shall not be regarded as car rental*”.

Sixt’s appeal is partially upheld and the decision of the TEAC is partially revoked.

### **Judgment of the Supreme Court (Judicial Review Division) no. 1634/2018 of 16 November 2018**

The Supreme Court (‘SC’) holds that the appeal on the grounds of a breach of the rules governing the determination of disputes (‘cassation’) lodged by Special Prices Auto Reisen (‘Auto Reisen’), *requesting express termination of the sanctioning procedure initiated by the Spanish Competition and Markets Authority (‘CNMC’) against AENA and some car rental without a driver companies (including Auto Reisen) for alleged restrictive trade practices consisting of exchanges of sensitive commercial information*, does not lie.

For said express termination, Auto Reisen offered as *commitments*: (i) the amendment of the dealer agreements concerning the content of information received from AENA; (ii) the limitation of the information exchanged between the parties; and (iii) the cooperation with the CNMC to enable the monitoring of compliance with the above commitments.

The CNMC rejected the proposal, regarding the *commitments as inadequate and unsuitable* to resolve the already felt in the market effects of the conduct under investigation.



## Legislation

### Spain

**Sustainable Mobility By-Law (City of Madrid) of 5 October 2018, Official Journal of the Region of Madrid ('BOCM') no. 253 of 23 October 2018; and Decision of the Madrid City Council of 29 October 2018 implementing the rules on management and operation of the "Madrid Central", Official Journal of the City of Madrid ('BOAM') no. 8268 of 30 October 2018**

The Sustainable Mobility By-Law (City of Madrid), approved by the Plenary of the City Council on 5 October 2018, creates a *low emission zone* ('ZBE'), defined in art. 21 as "the set of duly delimited public roads with geographical continuity, wherein special measures are implemented to regulate access, driving and parking of vehicles, in order to reduce pollutant emissions from traffic". Art. 23 creates, delimits and lays down criteria for access to the ZBE "Madrid Central", leaving to the local government's executive body (the Cabinet) the implementation of its management and operation.

Schedule I to the Decision of the Cabinet of the City of Madrid regulates *vehicle access to "Madrid Central"* according to an environmental classification category: (i) vehicles classified as 0 Emissions and ECO may access "Madrid Central" and be driven therein without limitation, as well as park in the controlled parking ('SER') zone; (ii) vehicles in *categories C or B* may only access "Madrid Central" to park in a public or private car park, a private parking space or a municipal parking space for residents. Motorcycles in the same categories (C or B) may gain access from 7 a.m. to 10 p.m. Exceptions to these restrictions are the cases listed in para. 2.3 of point Four of Schedule I (private hire vehicle ['VTC'] and taxicab, essential public services, guests, etc.); (iii) vehicles *without environmental markings* are not allowed access to "Madrid Central".

In addition, Schedule I contains the *criteria for the management of permits to access "Madrid Central"*.

**Order ICT/1212/2018, of 12 November, updating Schedules II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of Royal Decree 750/2010, of 4 June, regulating approval procedures for motor vehicles and their trailers, propelled or towed machinery, agricultural vehicles, as well as for systems, parts and pieces of such vehicles, Official Journal of Spain ('BOE') no. 280 of 20 November 2018**

The amendments contained in this Order are intended to *adapt national approval requirements to the criteria of European Union legislation* (Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009, Regulation (EU) No 167/2013 of the European Parliament and of

the Council of 5 February 2013 and Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013).

## **Royal Decree-Law 20/2018, of 7 December, on urgent measures to boost the economic competitiveness of the trade and industry sectors in Spain, BOE no. 296 of 8 December 2018**

Royal Decree-Law 20/2018 ('RDL 20/2018') introduces several measures that affect the automotive sector.

Art. 1 of RDL 20/2018 amends the recast version of the Social Security Act in respect of *phased retirements with retiree replacement contracts*. With the entry into force of this Royal Decree-Law (on the same day of its publication in the BOE), from the point of view of the company, a phased retirement with a retiree replacement contract will allow for the renewal of the workforce without the company incurring costs in the form of severance pay to workers nearing the retirement age. The phased retiree keeps his or her income in full, receiving part from the company as salary and the rest as pension, and avoids pension reduction coefficients that would apply to early collection.

On the other hand, art. 2 RDL 20/2018 amends arts. 34 and 35 of the *Industry Act 21/1992 of 16 July* ("Industry Act") and sets out a *new sanctioning regime* for non-compliance with the requirements provided in *product safety legislation* for adaption to European policies.

*The amount of penalties to be imposed is increased* (under the previous legislation, the highest penalty, for very serious infringements, reached 601,012.10 euros) and *new circumstances to take into account are added to scale the amount of the penalties*.

Thus, the sanctioning regime is now as follows:

- Minor infringements with fines of up to 60,000 euros...
- Serious infringements with fines of up to 6,000,000 euros...
- Very serious infringements with fines of up to 100,000,000 euros...

In determining the amount of penalties, the following circumstances shall be taken into account:

- The importance of the harm or impairment caused.
- The degree of participation and profit made.
- The infringer's ability to pay.

- The intentionality in the commission of the infringement.
- Recidivism.
- The number of infringing products placed on the market.
- The turnover of the undertaking, including the group to which it belongs.

**Royal Decree 1514/2018, of 28 December, amending the Road Traffic Regulations, approved by Royal Decree 1428/2003 of 21 November, BOE no. 314 of 29 December 2018**

Art. 48 of the Road Traffic Regulations is amended to lay down a *general limit of 90 km/h* for passenger cars, motorcycles, motorhomes with a maximum authorised mass equal to or less than 3,500 kg and pick-up trucks travelling on *conventional roads*. It enters into force on 29 January 2019.

**Act 11/2018, of 28 December 2018, amending the Code of Commerce, the recast version of the Companies Act approved by Royal Legislative Decree 1/2010 of 2 July, and the Auditing of Accounts Act 22/2015 of 20 July, concerning non-financial information and diversity, BOE no. 314 of 29 December 2018**

The amendments introduced by Act 11/2018 establish the obligations regarding the disclosure of non-financial information by companies limited by shares, which shall be applicable, as provided for in its Transitional Provision, for financial years beginning on or after 1 January 2018.

With regard to non-financial information, Act 11/2018 amends Arts. 44 and 49 of the Code of Commerce, Arts. 253, 262, 279 and 529 of the Companies Act ('LSC') and Art. 35 of the Auditing of Accounts Act, in relation to companies required to disclose non-financial information, the content of such information and its approval:

A. Obligation to prepare a non-financial information statement.

- **Obligees:** companies meeting the following requirements are obliged to draw up a non-financial statement of information: (i) the average number of company or group employees during the financial year exceeds 500; (ii) either they are considered public-interest entities or, during two consecutive financial years, have, at the closing date of each one of them, at least two of the following: 1. Total assets in excess of 20,000,000 euros. 2. An annual net turnover in excess of 40,000,000 euros. 3. An average number of employees in excess of 250 during the financial year.



- **Content of the non-financial information statement:** the non-financial information statement must include the information necessary for an understanding of the company's (or group's) development, performance, position and impact of its activity on a number of matters, namely: (i) business model; (ii) policies pursued; (iii) outcomes of those policies; (iv) principal risks; and (v) relevant non-financial key performance indicators.
- It should also include meaningful information on environmental, social and personnel matters (work organisation, health and safety, etc.), respect for human rights, the fight against corruption and bribery and society (company commitments to sustainable development, subcontracting and suppliers, consumers and tax information).
- **Production, approval, filing and publication:** the non-financial information statement may be incorporated in the directors' report or produced in a separate report. If produced in a separate document, it must be signed by all directors. The non-financial information report will be produced as a separate agenda item for approval at the general meeting of shareholders, and the information included therein will be verified by an independent assurance service provider. Companies may publish on the Social Responsibility Portal of the Ministry of Employment, Migrations and Social Security the non-financial information statement and, in any case, it will be made available to the public free of charge and will be easily accessible on the company's website.
- **Duties of auditors:** the auditor's opinion on whether the non-financial information statement is consistent with the accounts for the same financial year, and whether the content and production of the statement is in accordance with legislative requirements, is not required.

B. Directors' report.

The new wording of Art. 262(1)(3) LSC provides that *all companies*, except those qualifying as small and medium-sized enterprises under Directive 34/20131, to the extent necessary for the understanding of the company's development, performance or position, *must include in their directors' report both key financial and, where appropriate, non-financial indicators* that are relevant to the particular business activity, including information on matters relating to *environment, personnel and compliance with rules on equality, non-discrimination and disability*.

## Europe

Proposal for a Regulation of the European Parliament and of the Council on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/... and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009. COM/2018/286 final - 2018/0145 (COD)

The *Proposal for a General Safety Regulation*, which is in the stage of proposed amendments (the last one, by the EU Committee on Transport and Tourism, on 15 January 2019), includes specific provisions to adapt overall vehicle and infrastructure safety framework needs to developments in connected and automated driving.

This Regulation will lay down new requirements for the *type-approval of vehicles* (including automated vehicles), systems, components and separate technical units with regard to their *general characteristics and safety* and to tyre pressure monitoring systems, as well as of newly manufactured tyres.

It shall apply to vehicles of categories M (motor vehicles with at least four wheels designed to carry passengers), N (motor vehicles designed to carry goods) and O (trailers and semitrailers), and to systems, components and separate technical units designed and constructed for such vehicles.

In its current wording, this Regulation provides that vehicles must integrate a tyre pressure control system that warns the driver and avoids resetting or recalibration. In addition, vehicles of all categories shall be equipped, inter alia, with *intelligent speed assistance, alcohol interlock and drowsiness monitoring systems*.

*Vehicles of categories M1 and N1 shall be equipped with an advanced emergency braking system, a lane-keeping system, an event (accident) data recorder, a head impact protection zone, a frontal protection system.*

With regard to *buses and trucks (categories M2, M3, N2 and N3)*, in addition to the other requirements laid down in the Regulation and in the delegated acts, these vehicles must incorporate a *lane departure warning system, an advanced emergency braking system and a detection and warning system for vulnerable road users in close proximity*.

Hydrogen-powered vehicles, in addition to the other requirements applicable to categories M and N, shall comply with those set out in Annex V, concerning *the material qualification requirements for the hydrogen systems and their components*.

*Connected and automated vehicles shall comply with the specific requirements to be laid down in the delegated acts, in relation to (a) systems to replace the driver's control of the vehicle; (b) systems to provide the vehicle with real-time information on the state of the vehicle and the surrounding area; (c) driver readiness monitoring systems; (d) event (accident) data recorders; and (e) harmonised format for the exchange of data.*

Delegated acts adopted under this Regulation shall enter into force within 2 months of their notification to the European Parliament and the Council, provided that the latter do not object.

### **Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union. OJ L 303, 28.11.2018**

Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the *free flow of non-personal data in the European Union* will apply 6 months as of its publication, i.e. from May 2019.

The Regulation refers to the *Internet of Things, artificial intelligence and machine learning* as major sources of non-personal data. In the case of the automotive industry, we could consider as a specific example of non-personal data, insofar as they are aggregated sets of data, those generated by connected and automated vehicles: route data (origin and destination), vehicle maintenance status, driving data (speed, braking frequency), etc..

In this respect, Regulation 2018/1807 contains two measures to promote the free flow of non-personal data:

- a) **Free movement of data within the Union** (Article 4): data location requirements are prohibited "unless they are justified on grounds of public security in compliance with the principle of proportionality".
- b) **Porting of data** (Article 6): the European Commission will encourage the development of codes of conduct containing detailed information on best practices for switching service providers and the porting of data, as well as minimum information requirements to make it easier for users to port their data to their own IT systems.

### **Commission Implementing Decision (EU) 2018/2079 of 19 December 2018 on the approval of the engine idle coasting function as an innovative technology for reducing CO2 emissions from passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council. OJ L 331, 28.12.2018**

The European Commission finds that there are no grounds to object to the approval of the illicitness submitted by certain manufacturers (including Audi AG, BMW AG, Ford Motor Company, Hyundai

Motor Europe or JLR Jaguar Land Rover LTD) ('the applicants') for the approval of an *engine idle coasting function* as an *eco-innovation* in vehicles of category M1 with a conventional powertrain and an automatic or manual transmission.

This eco-innovation, which can be used to increase the rolling distance of the vehicle in situations where no propulsion or a slow reduction of speed is needed, as well as a *reduction in fuel consumption and CO2 emissions*, must still be certified by the type approval authority in order to be applicable.

The EU uses a variety of instruments to encourage investment in eco-innovation, such as sharing the risks of investing in eco-innovation or the eco-label. In addition, there are plans and initiatives that promote eco-innovation through the funding of actions aiming at environmental preservation through innovation, such as the Eco-innovation Action Plan or the Competitiveness and Innovation Framework Programme.

### **Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast). COM/2017/0676 final/2 - 2017/0293 (COD)**

The amendments approved by Committee of the Permanent Representatives of the Governments of the Member States to the European Union ('Coreper') to the *proposal for a Regulation* were ratified by the Parliament's Committee on the Environment, Public Health and Food Safety on 22 January 2019. The Proposal for a Regulation, which incorporates the changes identified below, is now continuing its legislative passage.

The amendments introduced (after an arduous debate) set new CO2 emission reduction targets: the average *CO2 emissions of new vehicles* registered in the EU should be, compared to 2021 emission levels, *15% lower by 2025 (Article 1.4(a)) and 37.5% lower by 2030 (Article 1.5(a))*. For its part, the average *CO2 emissions of new light commercial vehicles* should be *15% lower by 2025 (Article 1.4(b)) and 31% lower by 2030 (Article 1.5(b))* than the 2021 emission levels.

In addition, new targets for zero/low-emission vehicles have been introduced. From January 2025, new zero/low-emission vehicles registered shall be 15% of the total new and light commercial vehicles (Article 1.6); and from January 2030, new zero/low-emission vehicles shall be 35% of the total new vehicles and zero/low-emission light commercial vehicles shall be 30% of the total light commercial vehicles (Article 1.7).

Certain vehicle manufacturers are exempted from meeting the emission reduction targets set out in Annex I Part A until 2028, provided that the volume of vehicle sales is below certain thresholds (Article 10). Similarly, the Commission is empowered to adopt delegated acts in relation to the for-

mulae and thresholds applicable to exceptions.

The Commission shall submit a report to the European Parliament and Council in 2023 on the effectiveness of this Regulation. In the light of this report, the Commission is given (Article 14(1)(b)) the possibility to *review the emission targets set for 2030*, and to introduce, through amendments to this Regulation, new targets for 2035 and from 2040 onwards, in order to meet the objectives of the Paris Agreement.

Moreover, in this new version of the Proposal for a Regulation, rules are introduced to ensure the soundness of emission data: (i) increased control and monitoring of emissions under real driving conditions ("*real-drive emissions*") by the European Commission from the year 2021, for which data from measurements of on-board fuel and energy consumption measurement systems of vehicles, as well as certain specific data on vehicle consumption, must be provided; (ii) specifications for accepting innovative technologies to reduce CO<sub>2</sub> emissions from light commercial vehicles and new vehicles (*eco-innovation*) - the Commission may adjust the reduction targets with effect from 2025 in the light of these technological developments; (iii) new specifications for the verification of in-use vehicle emissions (Article 12.a).

## Other

### Early Day Motion on boosting the automotive industry and automotive equipment and components manufacturers, Journal of the Houses of Parliament ('BOCG') no. 470 of 21 December 2018

On 5 December 5, an early day motion was moved at the Lower House of Parliament to boost the automotive industry through a series of measures, among which the following stand out:

- Declaration as strategic for the automotive sector.
- Boost, through public-private partnerships, of the execution of the sectoral agenda of the automotive industry in order to develop a competitive sector.
- No restriction, either directly or indirectly, on diesel-related technologies.
- Incentivise the replacement of vehicles over 10 years old, encourage their replacement by new low-emission vehicles, reduce purchase tax and contribute to the effective development of zero/low-emission energy recharging infrastructure.

This Motion will be debated before the Plenary of the Congress of Deputies, without to this date a date having been set for its debate.



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